

## **ORDINANCE 15-44**

### **AN ORDINANCE APPROVING AND AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF DUNEDIN AND 203 N. MARION STREET, L.L.C.; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.**

**WHEREAS**, the City of Dunedin and 203 N. Marion Street, L.L.C. have entered into and concluded negotiations of a Development Agreement pertaining to and setting forth the terms and conditions for the development of certain parcels located at 940 and 966 Douglas Avenue, Dunedin, Florida; and

**WHEREAS**, the Local Planning Agency of the City of Dunedin, Florida, has duly considered the terms and conditions of the Development Agreement, and has recommended that the same be approved; and

**WHEREAS**, due and proper public hearings on the said Development Agreement having been completed pursuant to Section 104-33.7.2 of the City's Land Development Code and Florida Statute 163.3225; and

**WHEREAS**, the City Commission wishes to authorize the Mayor of the City to sign the said Development Agreement with 203 N. Marion Street, L.L.C.; now, therefore,

**BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DUNEDIN, FLORIDA, IN SESSION DULY AND REGULARLY ASSEMBLED:**

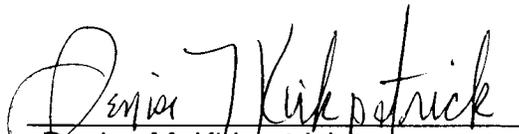
**Section 1:** That the Mayor is authorized to execute the Development Agreement between the City of Dunedin and 203 N. Marion Street, L.L.C., as attached hereto and incorporated by reference herein.

**Section 2:** This Ordinance shall become effective upon final passage and adoption.

**PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY  
OF DUNEDIN, FLORIDA, THIS 3rd day of March , 2016.**

  
\_\_\_\_\_  
Julie Ward Bujalski  
Mayor

ATTEST:

  
\_\_\_\_\_  
Denise M. Kirkpatrick  
City Clerk

READ FIRST TIME AND PASSED: February 4, 2016

READ SECOND TIME AND ADOPTED: March 3, 2016

**DEVELOPMENT AGREEMENT  
(ARTISAN APARTMENT HOMES)**

THIS AGREEMENT (the "Agreement") made and entered into this 11<sup>th</sup> day of March, 2016, by and between the CITY OF DUNEDIN, a Florida municipal corporation hereinafter referred to as "City" and 203 N. MARION STREET, L.L.C., a Florida limited liability company, hereinafter referred to as "Developer".

FOR AND IN CONSIDERATION of the mutual promises made and agreed to be kept hereunder and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the approval of certain uses by the City and conditioned on the performance in all respects of this Agreement by each of the parties, it is hereby agreed between the parties as follows:

**RECITALS**

1. Developer is the current fee simple owner and Developer of that certain tract of land located within the City of Dunedin, Pinellas County, Florida, hereinafter referred to as the "Developer's Property" and more particularly described in Exhibit "A" attached hereto and made a part hereof.

2. The City is presently the fee simple owner of the certain tract of land approximately 0.44 acres in size located within the City of Dunedin, Pinellas County, Florida, hereinafter referred to as "City Property" or "Monroe Street Property" said property being legally described in Exhibit "B" attached hereto and incorporated herein by reference.

A. The City shall convey the City Property to the Developer by June 1, 2016. The appraised value of the City Property is \$390,000.00, however the parties have agreed to set the value at \$400,000.00. Developer shall pay the recording costs of the deed and its attorney fees incurred relative to the transfer. City shall pay for the recording fees of any curative instruments for title, the documentary stamp tax on the deed, and the premium for an owner's policy of title insurance, together with its attorney fees incurred relative to the transfer.

B. Upon the conveyance by the City, the combined City's Property and Developer's Property shall hereafter be referred to as "Property".

3. Contemporaneously with the execution of this Development Agreement the City and the Developer are entering into a Parking Garage Lease, hereinafter referred to as "Lease" whereby the City shall lease 195 parking spaces in the parking garage contemplated in this Agreement and 20 parking spaces on the Monroe Street Property.

A. The terms of the Lease includes an annual maintenance cost to be paid by the City.

B. In return for the conveyance of the City Property to the Developer the Developer shall pay its purchase money obligation amortized over a 20 year period at 5.2% interest with annual installments in the amount of \$32,211.00. Said installments shall be in the form of an annual credit in the sum of \$32,211.00 in favor of the City and applied against the City's obligations under the terms and conditions of the Lease for the term thereof, provided said Lease remains in effect. Said credit shall be applied against the maintenance cost required to be paid by the City in the Lease.

C. Should the Lease be terminated by Developer prior to the expiration of the term of the Lease by reason of default by the City, the balance of the purchase price, together with accrued and unpaid interest and charges due related to the obligation shall be applied against the balance due to the City as a credit against all remaining sums due from Developer.

D. Should the lease be terminated by the City prior to the expiration of the term of the Lease by reason of default by Developer, the City may accelerate the purchase money obligation and demand payment in full, and the City shall have all available remedies under the Lease, at law or in equity..

4. In 2008 the Developer's predecessor in title, Keller Sales & Engineering, Inc. applied to the City to rezone its property to Downtown Core. The rezoning application was approved and rezoning ordinance (08-10) was adopted. Unfortunately the legal description attached to the ordinance was incorrect. In order to correct the rezoning ordinance the City will initiate a new rezoning application. The parties agree that until such time as the rezoning application is approved and the Downtown Core rezoning ordinance is adopted this Development Agreement and the Parking Garage Lease will not become effective.

5. The following development rights are hereby approved pursuant to this Agreement on the Property:

	<b>EXISTING</b>	<b>PROPOSED APARTMENTS</b>	<b>PROPOSED RETAIL</b>	<b>ALLOWED/ REQUIRED APARTMENTS</b>	<b>ALLOWED/ REQUIRED RETAIL</b>
<b>USE OF PROPERTY</b>	Parking	Apartments	Retail	Yes	Yes
<b>LAND USE CATEGORY</b>	CRD	CRD	CRD	CRD	CRD
<b>ZONING</b>	DC	DC	DC	DC	DC
<b>LOT AREA</b>	1.70 Dev / .44 City	2.14 AC	2.14 AC	N/A	N/A
<b>DENSITY</b>	30 U/A	30 U/A = 65	11,000 SF	YES	YES
<b>BLDG COVERAGE</b>	0%	1.469 AC = 68.6%	Same	YES	YES
<b>GROSS FLOOR AREA</b>	0 SF%	89,400 SF	11,000 SF	YES	YES
<b>SETBACKS</b>					
<b>FRONT</b>	0	0	0	YES	YES
<b>SECONDARY FRONT</b>	0	0	0	YES	YES
<b>SIDE</b>	0	25	25	YES	YES
<b>SIDE</b>	0	25	25	YES	YES
<b>REAR</b>	0	0	0	YES	YES
<b>BLDG HEIGHT</b>	0	45' 8"	45' 8"	52'	52'
<b>VEHICULAR USE AREA</b>	90,000 SF	115,000 SF	Same	N/A	N/A
<b>IMPERVIOUS SURFACE RATIO</b>	0.95%	0.74%	0.74%	0.85%	0.85%
<b>OPEN SPACE</b>	5%	25%	25%	15%	15%
<b>PARKING AREA INT LANDSCAPING</b>	0%	N/A	N/A	N/A	N/A
<b>PARKING</b>	86	101	28	65	28

more particularly set forth in the Final Site Plan attached hereto as Exhibit "C" (hereinafter referred to as the "Project").

6. It is agreed between the parties that the City is exercising its right as a property owner as to certain elements of this Agreement regarding the City Property in addition to the powers that it exercises as a governmental entity pursuant to the Act and Code. In requiring adherence to the Final Site Plan, Architectural Renderings and other development and use provisions set

forth herein, the City is not acting solely in its capacity as a governmental jurisdiction having zoning and land use regulatory control over the City Property. It is acknowledged between the parties that, acting as a private property owner, the City has the same latitude of choice and discretion as any other property owner and is not constrained in the exercise of that discretion in the same way as it would be operating only as a governmental authority regulating the development of the City Property pursuant to its ordinances and other land development regulations. The parties acknowledge and agree that within the scope of negotiating the terms of this Agreement, the City has acted in a manner that may otherwise be inappropriate if it was only exercising its governmental authority for regulation of the City Property and that the City has enjoyed a substantially greater latitude of choice as a private property owner. Notwithstanding anything to the contrary herein, the City acknowledges that the terms and conditions of this Agreement constitute legally binding and enforceable obligations of the City.

7. The Project shall be developed in accordance with the Architectural Renderings attached hereto as Exhibit "D", and incorporated herein by reference, and in accordance with the Final Site Plan attached hereto as Exhibit "C". The Architectural Renderings and Final Site Plan reflect the architectural style of the buildings to be built on the Property, exterior materials, building height of four stories, roofing system and color scheme and constitute a material part of this Agreement. The Architectural Renderings including the color scheme are specifically devised to be harmonious with the Dunedin downtown and the architectural preferences of the City and such requirements are agreed to by the parties in order to insure the continued compatibility of the Property with the future of the downtown. This same concept and obligation also applies to the Final Site Plan and constitutes a material part of the Agreement between the parties, without which the City would not have agreed to the sale of the City Property for commercial and residential uses. For this reason, the compliance by the City, Developer and respective successors in title with the Architectural Renderings and Final Site Plan, as described in Exhibits "D" and "C", respectively, on a continuing basis is of critical importance to the City and Developer, and any deviation therefrom without the written consent of the City shall be deemed to be a material breach of this Agreement and of the covenants which are entered into by the parties and are recorded for the long-term protection of the public.

It is the goal and intent of the parties hereto to develop the Property within the time periods set forth on Exhibit "E", attached hereto and made a part hereof, subject to acts of God and delays resulting from the review and approval process through the City and other governmental agencies and authorities as more particularly outlined in Recital 11 below, and shall, in all instances, as is commercially reasonable, comply with the provisions of said Project Schedule.

8. The Developer and City have agreed to the provisions, restrictions, limitations and requirements which are otherwise set forth in detail in this Agreement and any exhibits attached hereto.

9. It is of paramount importance to each of the parties hereto that the Property be developed as set forth in the Final Site Plan and in this Agreement and that the development of the Property be completed on a timely basis subject to delays resulting from the review and approval process through the City and other governmental agencies and authorities as more particularly outlined in Recital 11 below; that the Project be completed in its entirety; that the structures constructed on the Property be constructed in compliance with the terms of the Final Site Plan and this Agreement; that the uses allowed on the Property be limited as set forth in the Final Site Plan and this Agreement and in the Restrictive Covenant; and that such restrictions and controls be continued in accordance with their terms and be applicable to and binding upon the parties hereto and their respective successors and assigns.

10. The City Commission finds that the development permitted pursuant to this Agreement is consistent with the City's Comprehensive Land Use Plan and the land development regulations of the City.

11. The development rights set forth in this Agreement, and Final Site Plan approval are subject to the following conditions:

- A. Approval of this Agreement.
- B. Approval of the site development of the subject property as described and depicted in the approved Final Design Review for Case Number DEV-S/D 15-63.00.
- C. Where necessary to accommodate proposed development, the Developer shall be responsible for the removal and/or relocation of any and all public utilities located on the subject site, including the granting of easements as may be required. This is regardless of whether the public utilities are known at the time of site plan approval or discovered subsequent to such approval. Any required relocation will require approval from the City's Engineering Division.
- D. All construction associated with this project shall be subject to the current requirements of the Florida Building Code, the City of Dunedin's Land Development Code, the Florida Fire Prevention Code, Life Safety Code all other technical codes adopted by the City of Dunedin, and FEMA.
- E. All on-site construction activities related to erosion control shall be applied as required by the Florida Building Code and the City of Dunedin Code of Ordinances.
- F. Proof of SWFWMD approval or exemption of the drainage retention plan is required prior to building permits being issued.
- G. Final approval of the infrastructure permit from the City's Engineering Division prior to building permits being issued.
- H. Final approval from the Solid Waste Division of the plans for solid waste collection prior to building permits being issued.
- I. Final approval of the Planning & Development Department and the City's Engineering Division for the site's compliance with the approved site plan prior to the Certificate of Occupancy being issued.

12. All calculations for infrastructure improvements and land use requirements, such as but not limited to, drainage calculations, parking requirements and other requirements, shall be based on the site and character of the Project as provided for in the City's code at the time of execution hereof.

13. Developer represents that to the best of its knowledge, as of the date of the execution of this Agreement that there are no liens, encumbrances, mortgages, equitable interest or other types property interests held by any other person, firm or corporation whose legal or equitable interest in the lands constituting the Property will be affected by the matters contained in this Agreement which are not subordinated to this Agreement. The Developer has the full right and

legal authority to enter into this Agreement and to agree to and execute all the legal obligations set forth herein. The Developer further represents and warrants that it shall not cause any rights or encumbrances on the Property to arise at any time between the execution of this Agreement and the recording of this Agreement in the Public Records of Pinellas County, Florida, which are not subordinate to this Agreement.

14. The City desires to have the Project developed as a unified development with each portion of the Project being treated as an integral part of a unified development. In furtherance of the Developer's development of the Project as a cohesive whole, the Developer agrees that no subdivision of the Property shall be allowed without the written consent of the City.

15. The parties agree that both Sections 163.3220 through 163.3243 F.S. (2015), the Florida Local Government Development Agreement Act ("Act") and Section 104-33 of the Land Development Code of the City of Dunedin ("Code"), are fully complied with in all respects by the parties. The provisions of said Act and Code provisions are incorporated herein by reference, and in the event of any conflict between the language of this Development Agreement and the above sections of the City's Land Development Code, such conflict will be resolved in favor of the provisions of the Code in effect as of the date of this Agreement. Changes to the Code regarding life/safety matters (building codes, fire codes, etc.) shall be enforceable as of the effective date thereof. The Act, referenced Code provisions, the Final Design Review and terms of this Agreement shall govern the development of the Property and the relationship of the parties in the terms of this Agreement. Any matters required by State Statute, the Florida Administrative Code or City Code which are not specifically addressed as part of this Agreement shall, nevertheless, be complied with by the parties. The parties and their respective successors in title shall be responsible for the obligations as more particularly set forth under the terms of this Agreement and this Agreement shall act as a covenant running with the Property and shall be enforceable by the parties hereto.

The City shall have the absolute discretion to amend and/or enforce life safety codes of general applicability that may modify the provisions of this Agreement or may impose additional burdens on the Developer as is otherwise authorized by State Statutes, City ordinances or the regulation of governmental administrative agencies. The parties agree that the legislative discretion of the City Commission to adopt such life safety codes shall be superior to any agreements contained herein and such codes may be adopted without any special notice to the Developer and that the Developer shall not be entitled to any special hearing relative to the adoption of such codes.

16. The Project shall be developed in accordance with the Final Site Plan attached hereto as Exhibit "C", and incorporated herein by reference. For this reason, the compliance by the City, Developer and respective successors in title with the Final Site Plan, as described in Exhibit "C", on a continuing basis is of critical importance to the City and Developer, and any deviation therefrom shall be deemed to be a material breach of this Agreement and of the covenants which are entered into by the parties and are recorded for the long-term protection of the public.

17. The City hereby reserves the capacity in the public facilities necessary to serve the Project.

18. The Developer and City have agreed to the provisions, restrictions, limitations and requirements which are otherwise set forth in detail in this Agreement and any exhibits attached hereto.

## THE AGREEMENT BETWEEN THE PARTIES

20. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference as fully enforceable agreements and representations by the parties hereto.

21. Authority. This Agreement is authorized by Sections 163.3220 through 163.3243 F.S. (2015) and Section 104-33 of the Land Development Code of the City of Dunedin.

22. Effective Date. This Agreement shall be effective as of the day after it is fully executed and recorded in the Pinellas County public records ("Effective Date"). In the event that there is an appeal or legal proceeding challenging this Agreement or challenging the other matters affecting the purpose, intent, or the rights of the Developer or the City to develop the Property as contemplated hereby, the Effective Date of this Agreement shall be extended and shall commence upon the conclusion of such litigation, including appeals and upon all rights of appeal having expired. In the event that a Court decision materially changes any aspect of this Agreement or has made the performance of a portion of this Agreement impossible or unacceptable to one of the parties, either party may choose to terminate this Agreement upon thirty (30) days written notice to the other party and the parties shall assist each other in returning each party to the positions and legal status that it enjoyed immediately prior to the date of the entry into this Agreement; or, alternatively, the parties shall work together to restore the material benefit if such is reasonably possible.

In the event that this Agreement is subject to termination pursuant to the provisions hereof, either party may record an affidavit signed by all parties hereto or their respective successors and assigns in the Public Records of Pinellas County, Florida reflecting that such termination has occurred and that this Agreement is thereby terminated and by such affidavit, notice that the termination provisions of this Agreement pursuant to this paragraph have occurred. The party recording such affidavit shall send a copy of the recorded affidavit to the other party and this Agreement shall be terminated and shall be deemed void and of no further force and effect. In the event that the Developer's fee simple title is encumbered by any mortgages, liens or other rights of third persons which are not subordinated to the terms, conditions, covenants and restrictions set forth in this Agreement, said third party encumbrances shall be of no force and effect as to the provisions of this Agreement.

This Agreement shall be superior to any mortgages, liens or other rights of third persons. Any mortgages or liens or encumbrances on the Property created contemporaneously or after the transfer of title from the City to the Developer shall specifically provide that they are subject to and subordinate to the terms of this Agreement.

In the event that this Agreement is not executed by the Developer on or before 5:00 p.m. on the 1st day of June, 2016 this Agreement shall be null and void and of no further force and effect and any development permissions granted pursuant hereto shall no longer be valid.

23. Duration of Agreement. This Agreement shall terminate on July 31, 2037. This time period may be extended by mutual agreement of the parties.

24. Third Party Rights. The parties represent, to their respective best knowledge, that nothing herein is barred or prohibited by any other contractual agreement to which it is a party, or by any Statute or rule of any governmental agency, or any third party's rights or by the rights

of contract vendees, lien holders, mortgage holders or any other party with a direct or contingent interest in the Property, whether legal or equitable.

It shall be an absolute condition precedent to any obligation of the City under the terms of this Agreement that any mortgage holder consent to and subordinate its mortgage interest to the terms of this Agreement.

If the Developer has title to the Property prior to the execution of this Agreement, the Developer shall submit a title opinion by a title company or attorney at law certifying in writing as of the date of approval of this Agreement by the City Commission of the City of Dunedin as to the status of title of such lands including all lien holders, mortgagees or any other encumbrances. The City will rely on such certification. If any lienholder or mortgagee is shown by the title opinion, a satisfaction or subordination shall be received by the City of Dunedin prior to the time the City executes this Agreement although the approval of the execution of this Agreement may be made by the City Commission contingent upon the receipt of such consent and subordination.

Any lienholder or mortgagee shall have the right to perform any term, covenant or condition and to remedy any default hereunder, and City shall accept such performance with the same force and effect as if furnished by Developer.

**25. Law and Ordinance Compliance.** The ordinances, policies and procedures of the City concerning development of the Property that are in existence as of the approval of this Agreement shall govern the development of the Project, and the same shall be in compliance with the applicable regulations of County, State and Federal agencies. No subsequently adopted ordinances, policies, or procedures shall apply to the Project except in accordance with the provisions of Section 163.3233(2), Florida Statutes (2015). Notwithstanding the foregoing, the City shall have the absolute discretion to amend and/or adopt life safety codes such as but not limited to fire codes, that may conflict with the provisions herein or may impose additional burdens on the Developer as is otherwise authorized by State Statutes or the regulations of governmental administrative agencies, provided that such life safety codes retroactively apply to all development similar to the Project in the City. The parties agree that such codes may be adopted without any special notice to the Developer and that the Developer shall not be entitled to any special hearing relative to the adoption of such codes. Failure of this Agreement to address a particular permit, condition, term, restriction, or to require a development permission shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions in any matter or thing required under existing Ordinances of the City or regulations of any other governmental agency, or any other entity having legal authority over the Property. Except as provided in this Agreement, all applicable impact fees, development review fees, building permit fees and all other fees of any type or kind shall be paid by Developer in accordance with their terms and in such amount applicable as they become due and payable.

**26. No Estoppel.** The parties agree that prior to the approval of this Agreement by the City Commission, the City's interest in entering into this Agreement, the studies, surveys, environmental studies, consultant plans or investigations, the expenditure of substantial funds, the staff approval or recommendation relative to the proposed development and any other act in furtherance of this Agreement, shall not be used by the Developer or its successors in title in any way whatsoever as committing the City legally through a theory of equitable estoppel, action in reliance, or any other legal theory as to the approval of such proposed development in

the event that this Agreement is not approved by the City Commission or for any other reason does not take effect in all material respects.

The parties further agree that any and all action by the Developer or its representatives in negotiation of this Agreement, including all acts or expenditures in the implementation of this Agreement or submittals to other governmental bodies shall in no way be deemed to be an action in reliance giving rise to an equitable estoppel.

27. No Partnership or Joint Venture. The City and Developer agree that the matters contained in this Agreement shall under no circumstances constitute a joint venture, partnership or agency between them. No third party shall be deemed to have any beneficial interest in this Agreement or any expectation of benefit or property rights or any other rights of any kind arising from this Agreement.

28. Final Design Review. In order to avoid any adverse impacts from the development of the Property on the abutting property owners and on the residents of the City of Dunedin, the parties agree that the Property will be developed in substantial conformance with the Final Site Plan attached hereto as Exhibit "C" as such Final Site Plan may be modified by the requirements of other state and county governmental agencies having jurisdiction over the development of the Property. The appearance and use of the Property after development are the reasons that the City Commission exercised its legislative authority and entered into this Agreement. Except as may be authorized by the parties hereto and subject to any changes necessitated by the requirements of other state and county governmental agencies having jurisdiction over the development of the Property, any material deviation from the commitments made by the parties herein shall be considered material defaults in this Agreement. The City of Dunedin shall not otherwise consent to any modification unless it deems that such is in the best interest of the public and in its discretion in reaching such decision it shall be deemed to be acting in a legislative capacity and within its sole and absolute discretion taking into account the public health, safety and welfare. The following specific requirements shall also be met:

- A. The Property shall be developed and landscaped in accordance with the Final Site Plan attached hereto as Exhibit "C" and incorporated herein. A detailed Greenspace Plan is provided with the Final Design Review and attached hereto as Exhibit "H" shall be specifically adhered to. The landscaping within the Property shall be maintained by the Developer. The purpose of landscaping and the continued development and care of the landscaping on the Property is, in part, for the benefit of the abutting property owners and to screen light, noise and other possible negative aspects of the development. Such landscaping shall be provided prior to a certificate of occupancy being issued and will be maintained in good and healthy conditions at all times by the Developer.

There shall not be any material deviation from the provisions of the Final Site Plan, other than changes necessitated by the requirements of other state and county governmental agencies having jurisdiction over the development of the Property, unless such is approved by the City Commission of the City of Dunedin at a public hearing conducted for such purpose and this Agreement is modified in writing by the parties thereto for the purpose of agreeing to such deviation.

- B. All outdoor lighting on the Property shall be directed downward so as not to be disruptive to the residential neighborhoods abutting the Property and shall be oriented and shielded so that no light is cast directly on abutting property. Light cast onto abutting properties by reflection or otherwise shall be limited to an intensity that is substantially in

conformance with the lighting conditions in residential neighborhoods in the City of Dunedin. At no time shall the Developer allow a nuisance condition to exist on the Property.

- C. Dumpster and trash pickup will be contained within the Property and fully screened from adjacent residential properties.
- D. Ingress and egress to the Property shall be as shown on the Final Site Plan.
- E. Building heights, architectural style and location will be as shown on the Architectural Renderings provided with the Final Design Review and attached hereto as Exhibit "D". The architectural style reflected as an attachment to or being part of the Final Design Review shall be complied with in all material respects during the development of the Project.
- G. This Agreement and the Final Site Plan, Greenspace Plan and Architectural Renderings attached hereto specify certain minimum setbacks, building heights, sign sizes and similar dimensional requirements and agreements. No changes may be made in these agreed upon dimensional requirements or in any matter that is reflected on the Final Site Plan Greenspace Plan or Architectural Renderings or addressed specifically in this Agreement through any appeal process to the Board of Adjustment and Appeal for a variance, special exception or other process which would serve to vary or change the terms of this Development Agreement and the Final Site Plan, Greenspace Plan and Architectural Renderings attached hereto. The only change which may be requested by the parties is for an amendment to this Agreement which revised amendment is legislatively considered by the City Commission and agreed to by the City Commission, set forth in writing as an amendment to this Agreement and executed by the parties hereto or their successors or assigns. The Developer, and its successors and assigns specifically waive and relinquish any right to change the terms of this Agreement through any administrative or legal process, including a decision by a court of competent jurisdiction, unless agreed to by the parties.

29. Public Infrastructure. The Developer or its successor in title, as appropriate, at its sole cost, shall design, construct and maintain, until acceptance by the City and conveyance by recordable instrument or bill of sale, as appropriate, to the City, all public infrastructure facilities and lands necessary to serve the Project, provided that said public infrastructure facilities have received construction plan approval and that all applicable review procedures have been complied with fully, inspected and accepted by the City. Public infrastructure facilities shall include those facilities to be located in rights-of-way or easement areas conveyed to the City, as shown on the approved engineering construction drawings and shall include, but not be limited to the following:

- A. Pedestrian ways, sidewalks, and crosswalks located on the Property, as shown on the Final Site Plan.
- B. Sewer collection systems, located on the Property, including any necessary pumping facilities providing for transmission of sewage flows generated by the Project.
- C. Water distribution system located on the Property including fire protection facilities and reclaimed water facilities as may be necessary to serve the Project.

- D. Stormwater drainage systems serving public facilities located on the Property, serving to conduct, transmit, channel or otherwise provide for stormwater flow from, through and to adjoining lands according to the natural site topography including retention/detention ponds or any other stormwater facilities required by the City of Dunedin or any other governmental agency with jurisdiction concerning such facilities. Any required easements or other rights of access to insure the continued maintenance and working condition of said retention/detention ponds shall be granted to City by the Developer or to Developer by City, as may be applicable.
- E. Street signage and pavement striping.
- F. Utility easements or rights-of-way.
- G. Other facilities deemed necessary for public use, including but not limited to off-site road and drainage facilities as identified in the site plan review process, building permit issuance process, engineering review, fire department review, or any other review process of the City or other governmental agency with jurisdiction over such development.

Public infrastructure facilities shall be complete, and approved for acceptance by the City prior to the issuance of any certificate of occupancy on the Property, or the Developer shall provide the appropriate letter of credit in a form satisfactory to the City Attorney, drawable on or through a local Pinellas County bank. Said letter of credit shall be deposited with the City to guarantee the completion of public infrastructure facilities prior to the time that certificates of occupancy are issued on the Property and public access and facilities to serve the proposed structures are available in accordance with City regulations.

30. Public Facilities. The City shall cause to be provided to the boundary of the Property the following available City owned and operated facilities, to wit: infrastructure and services for fire protection, potable water and sanitary sewer to meet domestic and fire flow levels of service as required for the Project by City and other applicable regulations.

31. Permits. Development permits, which may need to be approved and issued, include, but are not limited to the following:

- A. City of Dunedin building permits.
- B. Southwest Florida Water Management District surface water management permit.
- C. City of Dunedin Engineering construction permit.
- D. Florida Department of Environmental Protection NPDES permit.
- E. Florida Department of Health drinking water permit.
- F. Florida Department of Environmental Protection wastewater collection permit.
- G. All other approvals or permits as required by existing governmental regulations as they now exist.

Except as set forth in this Agreement, all development permits required to be obtained by the Developer for the Project will be obtained at the sole cost of the Developer and in the event that any required development permissions issued by entities other than the City are not received, no further development of the Property shall be allowed until such time as the City and the Developer have reviewed the matter and determined whether to modify or terminate this Agreement.

32. City Impact Fee Credits. The City has computed and will grant certain impact fee credits for the Project to the Developer consistent with City ordinances and reflecting previous uses on the Property. The impact fee credits to be granted to Developer are as follows:

Credit of 50% against Transportation Impact Fees
Credit of 50% against Fire Public Facility Impact Fees
Credit of 50% against Law Enforcement Fees

33. Land Dedication By Developer. The City has computed the parkland dedication required for the Project pursuant to the Land Development Code. That calculation, reflecting the requirement of the Code and the credit given to the Developer, is attached hereto as Exhibit "G".

34. Recycling. The Developer and its successors-in-title will cooperate with City to encourage and promote recycling activities within the Project and such commitment will be reflected in a covenant running with the Project lands.

35. Annual Review. The City of Dunedin shall review the Project once every twelve (12) calendar months from the Effective Date.

36. Recordation. Not later than fourteen (14) days after the execution of this Agreement, the City shall record this Agreement with the Clerk of the Circuit Court in Pinellas County, Florida, and a copy of the recorded Agreement shall be submitted to the Florida Department of Economic Opportunity within fourteen (14) days after the Agreement is recorded. The burdens of this Agreement shall be binding upon, and the benefits of the Agreement shall inure to, all successors and assigns in interest to the parties to this Agreement.

37. Agreement as Covenant. This Agreement shall constitute a covenant running with the Property for the duration hereof and shall be binding upon the Developer and upon all persons deriving title by, through or under said Developer and upon its successors and assigns in title. The agreements contained herein shall benefit and limit all present and future owners of the Property, and the City for the term hereof.

38. Legislative Act. This Agreement is agreed to be an legislative act of the City in furtherance of its powers to regulate land use and development within its boundaries and, as such, shall be superior to the rights of existing mortgagees, lien holders or other persons with a legal or equitable interest in the Property and this Agreement and the obligations and responsibilities arising hereunder as to the Developer shall be superior to the rights of said mortgagees or lien holders and shall not be subject to foreclosure under the terms of mortgages or liens entered into or recorded prior to the execution and recordation of this Agreement. The execution of this Agreement or the consent to this Agreement by any existing mortgage holder, lien holder or other persons having an encumbrance on the Property shall be deemed to be in agreement with the matters set forth in this paragraph.

39. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and no modification hereof shall be made except by written agreement executed with the same formality as this Agreement. The parties agree that there are no outstanding agreements of any kind other than are reflected herein and, except as is otherwise specifically provided herein, for the term of the Agreement the Property shall be subject to the laws, ordinances and regulations of the City of Dunedin as they exist as of the date of this Agreement. Any reference in this Agreement to "Developer" contemplates and includes the fee simple title owners of record of the Property their heirs, assigns or successors in title and interest. Any oral agreements, agreements created by written correspondence or any other matter previously discussed or agreed upon between the parties are merged herein.

40. Enforcement. The parties agree that either party may seek legal and equitable remedies for the enforcement of this Agreement, provided however that neither the City nor the Developer may seek or be entitled to any monetary damages from each other as a result of any breach or default of this Agreement. In any litigation arising out of this Agreement, whether for enforcement or interpretation, the prevailing party shall be entitled to recover its costs and attorney's fees at mediation, trial and through any appellate proceedings.

Except as provided above, the parties agree that any legislative and quasi-judicial decisions, if any are required, by the City regarding the appropriate land use or other development regulations impacting the Property shall, in no event or under any conditions, give rise to a claim for monetary damages or attorney fees against the City and any claim for such damages or fees by the Developer or its successors or assigns are specifically waived.

41. Execution. The Developer represents and warrants that this Agreement has been executed by all persons or entities having equitable title in the subject Property.

The City represents that the officials executing this Agreement on behalf of the City have the legal authority to do so, that this Agreement has been approved in accordance with the ordinances and Charter of the City and applicable State law, that appropriate approval of this Agreement has been received in a public hearing and that the City Commission of the City of Dunedin has authorized the execution of this Agreement by the appropriate City officials.

42. Severability. In the event that any of the covenants, agreements, terms, or provisions contained in this Agreement shall be found invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity of the remaining covenants, agreements, terms, or provisions contained herein shall be in no way affected, prejudiced, or disturbed thereby.

43. Estoppel Certificates. Within twenty (20) days after request in writing by either party or any lender, the other party will furnish a written statement in form and substance reasonably acceptable to the requesting party, duly acknowledging the fact that (a) this Development Agreement is in full force and effect, (b) there are no uncured defaults hereunder by City or Developer, if that be the case, and (c) additional information concerning such other matters as reasonably requested. In the event that either party shall fail to deliver such estoppel certificate within such twenty (20) day period, the requesting party shall forward such request directly to the City Manager and the City Attorney or to the Developer with copies to the Developer's general counsel by certified mail, return receipt requested or by Federal Express or other delivery service in which delivery must be signed for. In the case where the Developer is the requesting party, the Developer may in its sole discretion but without obligation, appear at a public meeting and request the estoppel certificate to insure that the City Manager and staff are aware of the request and the Developer may rely on the statement of the City Manager at such

public meeting or may request that the City Manager be directed by the City Commission to respond to the estoppel certificate request in a timely manner.

44. Venue. Venue for the enforcement of this Agreement shall be exclusively in Pinellas County, Florida.

45. Default. Upon default or breach of any substantive portion of this Agreement by any party, the non-defaulting party shall provide written notice via overnight, traceable delivery service of the default and opportunity to cure within sixty (60) days to the defaulting party. Upon the failure of the Developer to cure such defaults, the City shall provide notice via overnight traceable delivery service to Developer of its intent to terminate this Agreement on a date not less than sixty (60) days from the date of such notice and upon the expiration of such period, the City, unless ordered otherwise by a court of competent jurisdiction, may revoke the then existing development permits issued by it and the Developer shall have no claim for damages against the City arising from such revocation. Alternatively, the City may proceed in court to obtain any legal or equitable remedies available to it to enforce the terms of this Agreement. In the event of any default or breach of any substantive portion of this Agreement by the City, the Developer may: (i) give written notice via overnight traceable delivery service to the City of said default with an opportunity to cure within sixty (60) days of receipt of such notice. Further, during such periods of default by City, all time periods required of Developer hereunder shall be extended for an amount of time equal to the sum of the total number of days of the City's default plus an additional 20 days to allow Developer to remobilize its resources allocated to performance under this Agreement. In the event City fails to cure within said time period, the Developer may thereafter proceed in a court of competent jurisdiction to institute proceedings for specific performance or to obtain any other legal or equitable remedy to cure the default of this Agreement by the City. In any litigation arising hereunder, the prevailing party shall be entitled to recover its costs and attorney's fees at mediation, trial and through any appellate proceedings.

46. Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid or by Federal Express, Air Borne Express or similar overnight delivery services, addressed as follows:

**To the City:**  
City Manager  
City of Dunedin  
542 Main Street  
Dunedin, FL 34698

**To the Developer:**  
203 N. Marion Street, L.L.C.  
Joseph Kokolakis, Managing Member  
202 East Center Street  
Tarpon Springs, FL 34689

**With copy to:**  
Thomas J. Trask, Esquire, City Attorney  
City of Dunedin  
Trask Daigneault, LLP  
1001 S. Fort Harrison Ave., Suite 201  
Clearwater, FL 33756

**With a copy to:**  
Michael E. Boutzoukas, Esq.  
Becker & Poiakoff, P.A.  
1511 N. Westshore Blvd., Ste. 1000  
Tampa, FL 33607  
[mboutzoukas@bplegal.com](mailto:mboutzoukas@bplegal.com)

Notice shall be deemed to have given upon receipt or refusal.

47. Binding Effect. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors and assigns in interest to the parties of this Agreement.

48. Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and their respective seals affixed as of this day of 3/16, 2016.

CITY OF DUNEDIN

ATTEST:

Denise Kirkpatrick  
Denise Kirkpatrick, City Clerk

Julie Ward Bujalski  
Julie Ward Bujalski, Mayor

APPROVED AS TO FORM:

Douglas Hutchens  
Douglas Hutchens, Interim City Manager

Thomas J. Trask  
Thomas J. Trask, City Attorney

STATE OF FLORIDA  
COUNTY OF PINELLAS

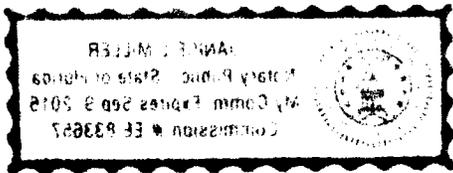
The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of March, 2016, by **Julie Ward Bujalski**, Mayor of the City of Dunedin, who  is personally known to me or  has produced a  driver's license or  as identification.

Sharon Toner  
Notary Public  
My Commission Expires:

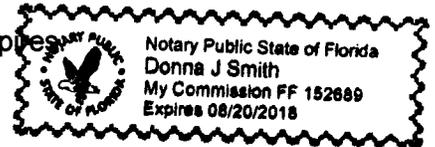


STATE OF FLORIDA  
COUNTY OF PINELLAS

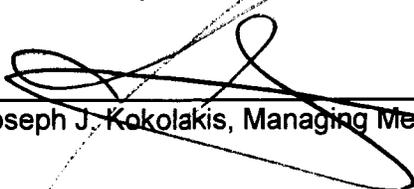
The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of March, 2016, by **Douglas Hutchens**, Interim City Manager of the City of Dunedin, who  is personally known to me or  has produced a  driver's license or  as identification.



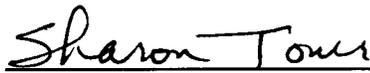
Donna J. Smith  
Notary Public  
My Commission Expires:



203 N. MARION STREET, L.L.C., a Florida limited liability company

  
\_\_\_\_\_  
Joseph J. Kokolakis, Managing Member

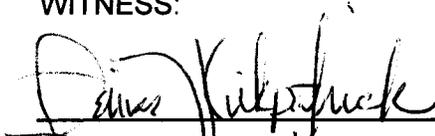
WITNESS:

  
\_\_\_\_\_

Sharon Toner  
\_\_\_\_\_

Print Name

WITNESS:

  
\_\_\_\_\_

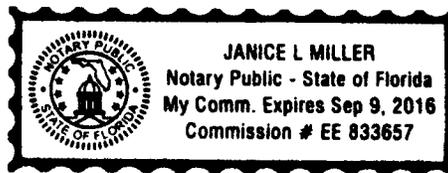
DENISE M. KIRKPATRICK  
\_\_\_\_\_

Print Name

STATE OF FLORIDA  
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of March, 2016, by **Joseph J. Kokolakis**, Managing Member of 203 N. MARION STREET, L.L.C., who is personally known to me or has produced a  driver's license or \_\_\_\_\_ as identification.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires:



**Exhibit "A"**

**Legal Description of Developer's Property**



## Exhibit "B"

### Legal Description of City Property ("Monroe Street Property")

Part of Lots 5, 6, 7, and 8, Block 18, and a part of a 10 foot alley lying adjacent to said Lots 5, 6, 7, and 8, MAP OF THE TOWN OF DUNEDIN, and REVISED AND CORRECTED MAP OF THE NORTH PORTION OF THE TOWN OF Dunedin, according to the map or plat thereof recorded in Plat Book 1, page 23 of the Public Records of Hillsborough County, of which Pinellas County was formerly a part, Florida, more particularly described as follows:

Commence at the South Quarter of Section 27, Township 26 South, Range 15 East, Pinellas County, Florida; thence N.00 degrees 12'13"W., along the North-South centerline of said Section 27, 279.70 feet; thence N.76 degrees 49'32"W., along the South boundary of Lots 5, 7, 8, and its Easterly projection, 159.90 feet to the POINT OF BEGINNING, thence continue N.76 degrees 49'32"W., 70.00 feet to the West boundary of said Lot 5; thence N.00 degrees 17'57"E., along said West boundary, 179.00 feet; thence S.86 degrees 25'53"E., 202.02 feet; thence S.00 degrees 12'13"E., along the East boundary of said Lot 8 and its Northerly projection, being 28.00 feet West of and parallel to the North-South centerline of said Section, 32.00 feet; thence S.89 degrees 47'47"W., 69.86 feet to a curve concave Southwesterly and having a radius of 48.00 feet; thence Southwesterly along said curve 53.49 feet through a central angle of 76 degrees 37'19" (Chord bearing S.51 degrees 29'08" W., 48.59 feet); thence S.13 degrees 10'28"W., 113.23 feet to the Point of Beginning.

**Exhibit "C"**

**Final Site Plan**



DATE	
REVISION	
DESCRIPTION	
DATE	

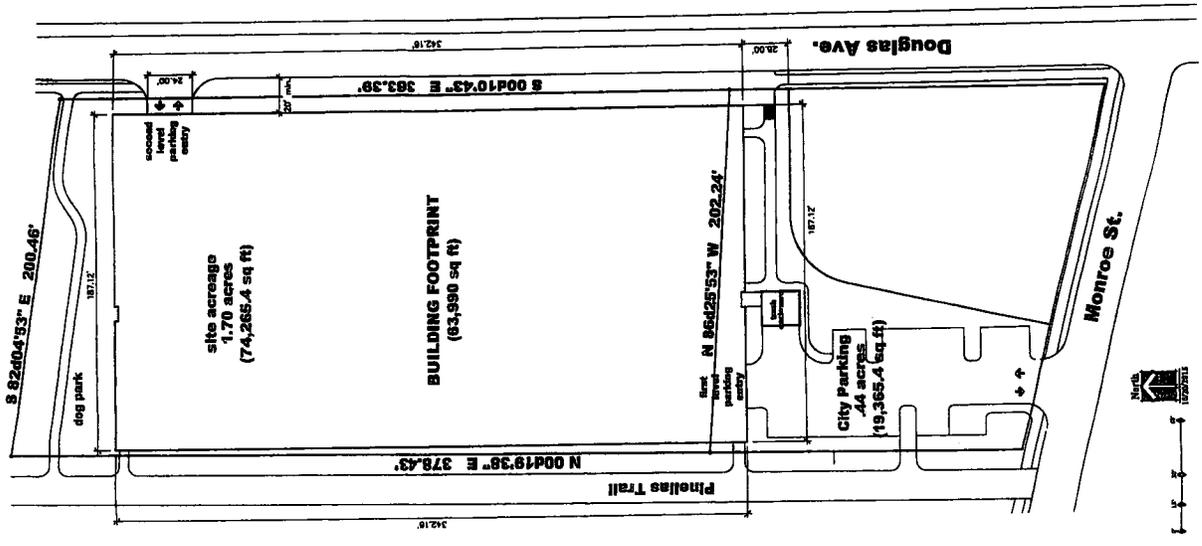
**J. KOKOLAKIS**  
CONTRACTING, INC.

**Douglas Avenue Lot's**  
Dunedin, Florida



15-18-D

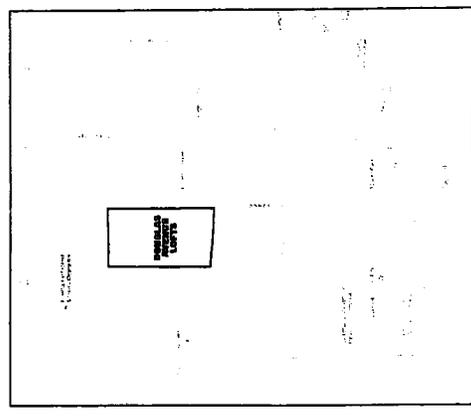
15

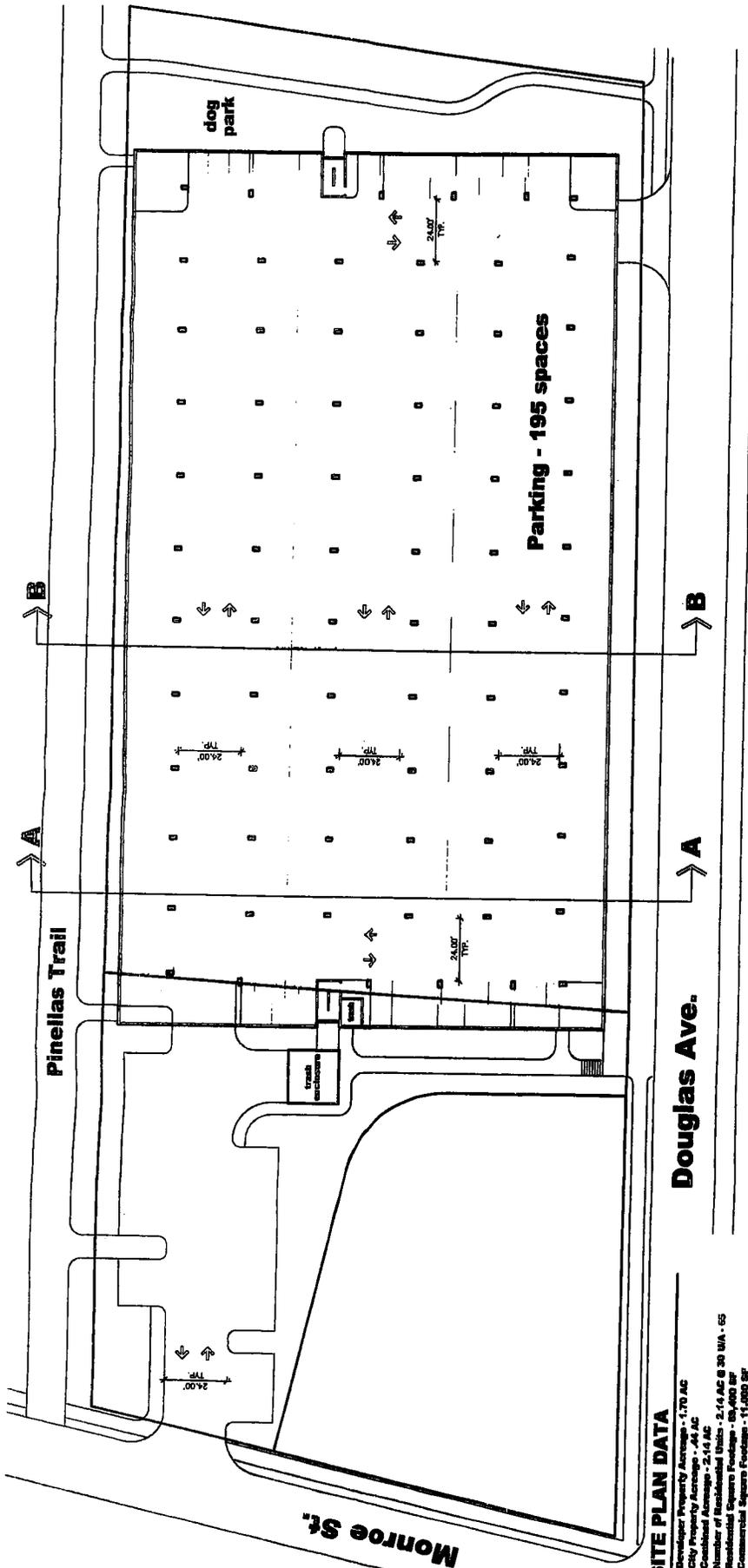


**SITE PLAN DATA**

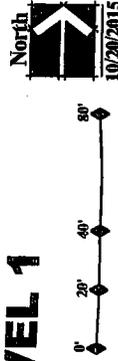
- Developer Property Acreage - 1.70 AC
- City Property Acreage - .44 AC
- Combined Acreage - 2.14 AC
- Number of Residential Units - 2.14 AC @ 30 U/A - 65
- Residential Square Footage - 89,400 SF
- Commercial Square Footage - 11,000 SF
- Parking Square Footage - 115,000 SF
- Building Coverage - 1.489 Acres - 86.0%
- Impervious Coverage - 1.170 Acres - 78.4%
- Front Setback - 0'
- Rear Setback - 0'
- Side Setback - 25' min.
- City Leased Parking Provided:
- 185 Structured Parking Spaces
- 20 Surface Parking Spaces
- 215 Total Public Parking Spaces
- Commercial Parking: Required - 28 spaces
- Provided - 28 spaces
- Residential Parking: Required - 65 spaces (1 space/DU)
- Provided - 101 spaces (1.55 spaces/DU)
- Building Height (at Douglas Ave.) - 45'
- Parcel Flood Zone - X

**VICINITY MAP**





# PRELIMINARY SITE PLAN BUILDING PLAN - LEVEL 1



SHEET  
**S2**

### SITE PLAN DATA

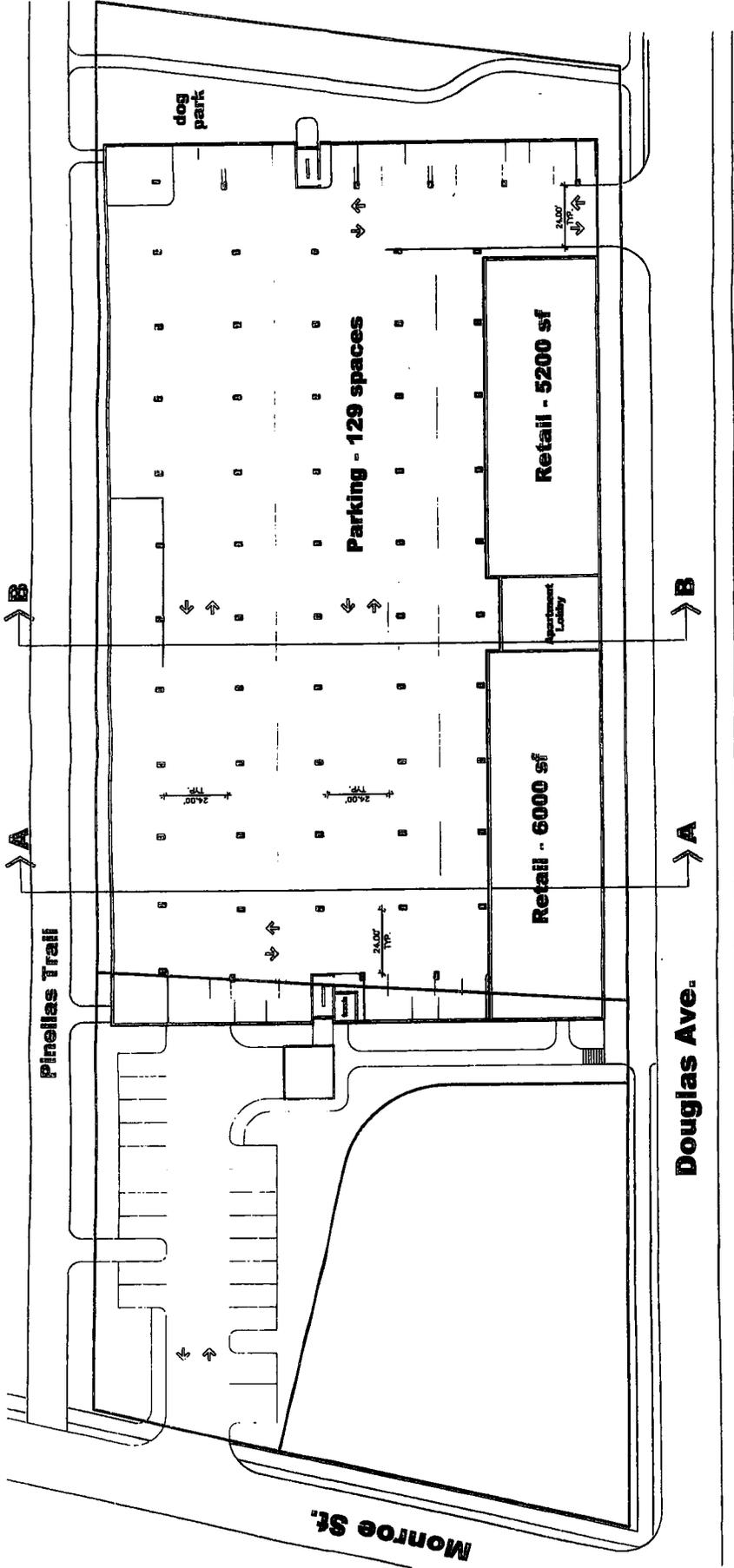
- Developer Property Acquire - 1.70 AC
- City Property Acquire - .44 AC
- Combined Acquire - 2.14 AC
- Number of Residential Units - 214 AC @ 30 U/A - 65
- Residential Square Footage - 85,400 SF
- Commercial Square Footage - 14,600 SF
- Parking Spaces Provided - 195
- Building Coverage - 4.9%
- Impervious Coverage - 1.79 Acres - 73.6%
- Front Setback - 0'
- Rear Setback - 0'
- Side Setback - 25' min.
- City Leased Parking Provided:
- 185 Structured Parking Spaces
- 214 Surface Parking Spaces
- 214 Total Parking Spaces
- Commercial Parking Provided - 28
- Residential Parking Provided - 167 (1,160 sq-ft/400)
- Residential Parking Required - 63 spaces (1 space/3U)
- Building Height (at Douglas Ave.) - 45' 0"
- Parcel Flood Zone - X

**J. KOKOLAKIS**  
CONTRACTING, INC.

**Douglas Avenue Lofts**  
Dunedin, Florida

October 21, 2015

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**PRELIMINARY SITE PLAN  
BUILDING PLAN - LEVEL 2**

• 129 parking spaces

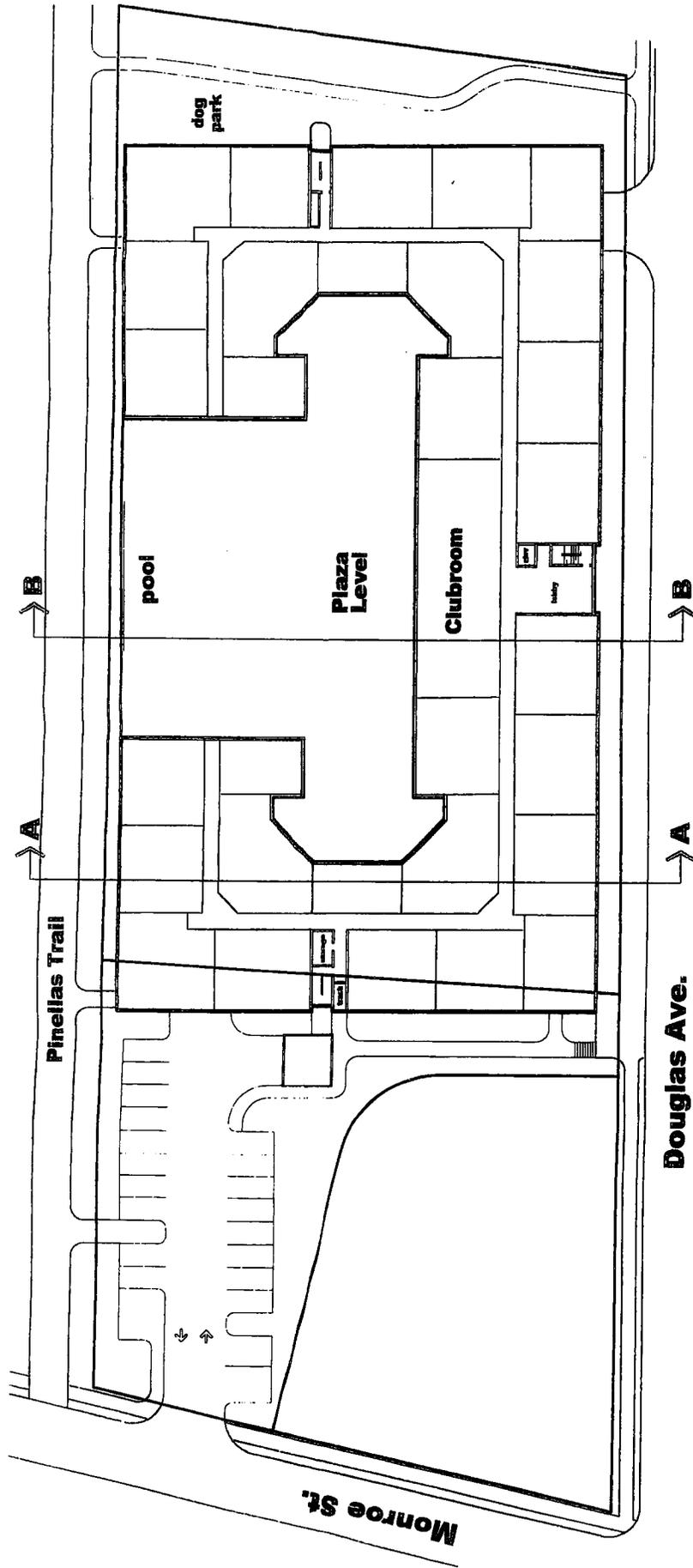
North  10/20/2015  
**SHEET S3**

**Douglas Avenue Lofts**  
 Dunedin, Florida

October 21, 2015  
 © 2015 J.K. Kokolakis, Inc.

**J.K. KOKOLAKIS**  
 CONTRACTING, INC.

THIS PLAN IS THE PROPERTY OF J.K. KOKOLAKIS CONTRACTING, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF J.K. KOKOLAKIS CONTRACTING, INC.



**30 apartments  
plaza level w/ pool**

**PRELIMINARY SITE PLAN  
BUILDING PLAN - LEVEL 3**

**J. KOKOLAKIS**  
CONTRACTING, INC.

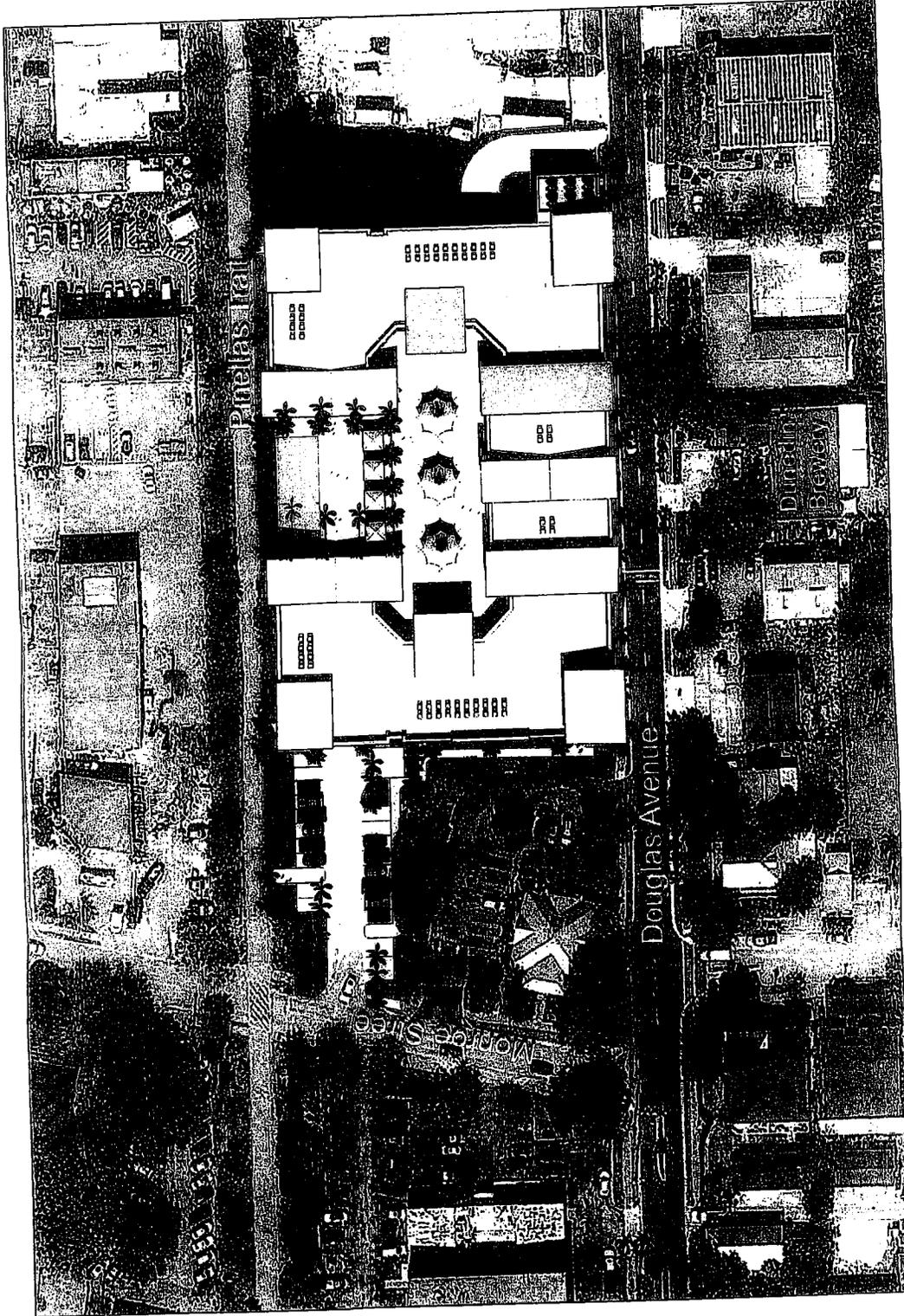
North  
10/20/2015

SHEET  
**S4**

**Douglas Avenue Lofts**  
Dunedin, Florida

October 21, 2015  
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North  
10/12/2015



Douglas Avenue Lofts  
Dunedin, Florida

October 21, 2015

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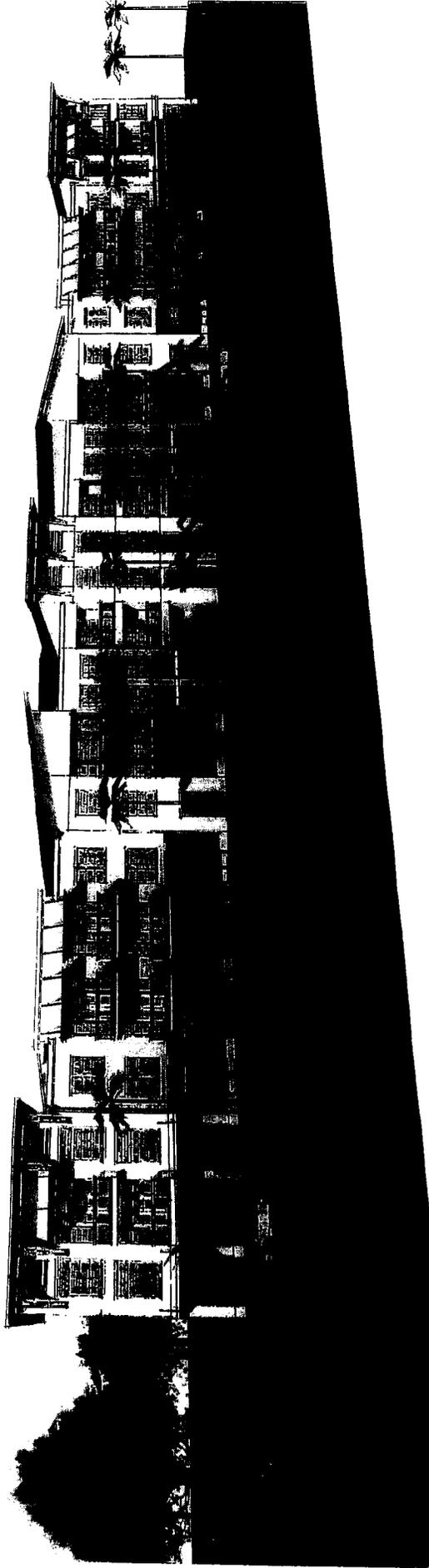
# AERIAL SITE PLAN

**J.J. KOKOLAKIS**  
CONTRACTING, INC.

10/12/2015 10:00 AM  
10/12/2015 10:00 AM  
10/12/2015 10:00 AM

**Exhibit "D"**

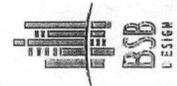
**Architectural Renderings**



# DOUGLAS AVE APARTMENTS

OCTOBER 28, 2015

OWNER



DOUGLAS AVE. APARTMENTS

OCTOBER 28, 2015

OWNER

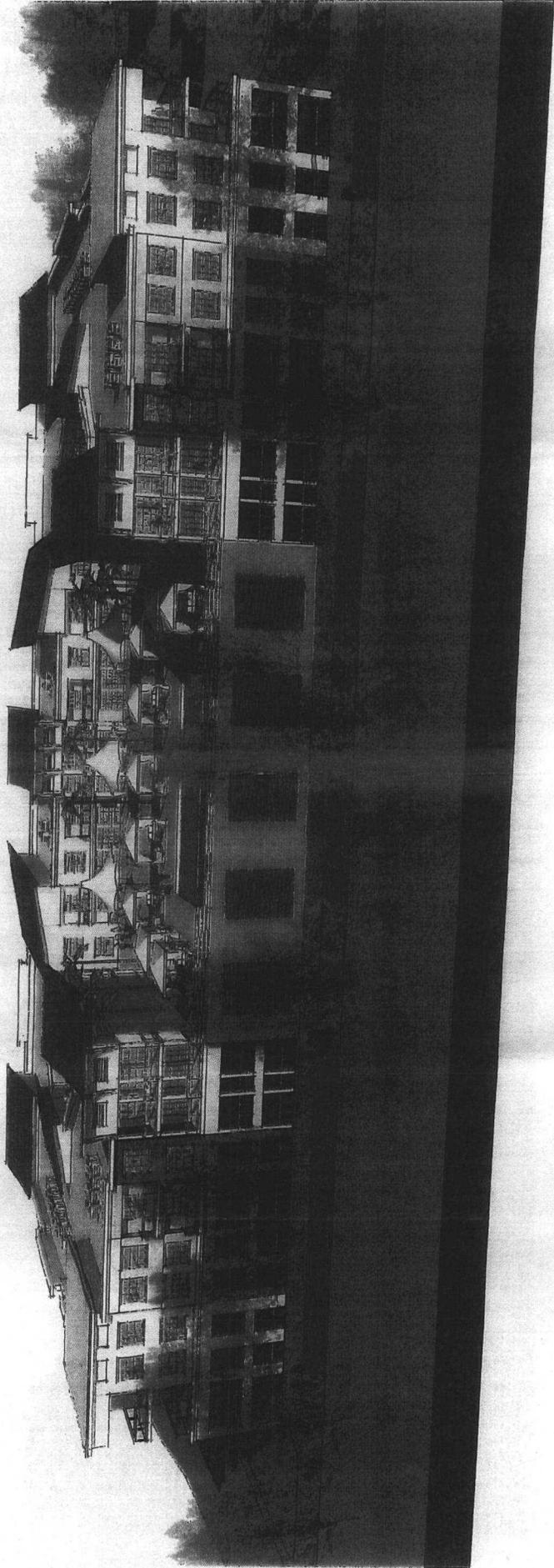


# DOUGLAS AVE. APARTMENTS

**JK** J. KOKOLAKIS

OCTOBER 28, 2015

OWNER



BSB  
DESIGN

# DOUGLAS AVE. APARTMENTS

**J** J. KOKOLAKIS

OCTOBER 28, 2015

OWNER

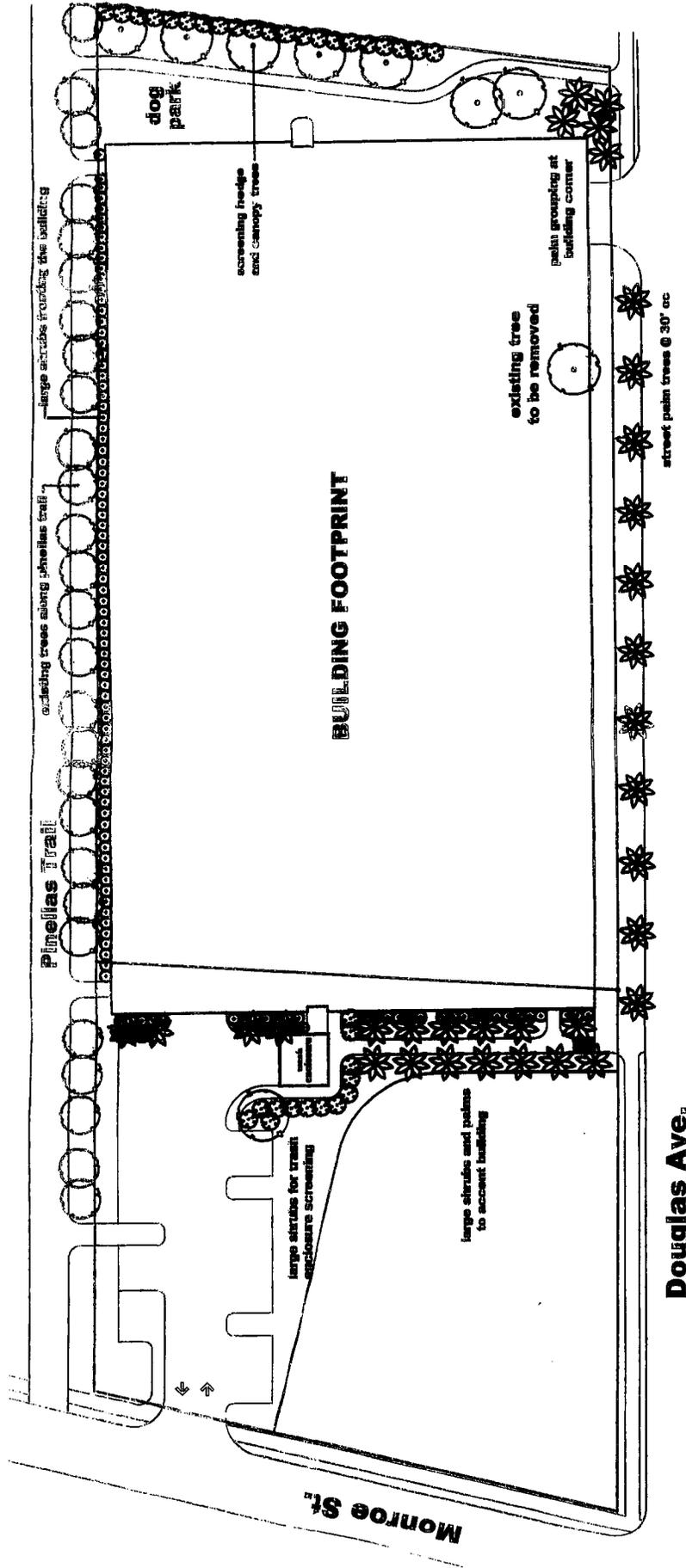
## **Exhibit "E"**

### **Project Schedule**

June 1, 2016	Developer commences construction
January 1, 2018	Developer completes construction and Certificate of Occupancy is issued.

**Exhibit "F"**

**Greenspace Plan**



**Notes**

newly planted trees along Douglas Ave. to be relocated on site

**JJ** J. KOKOLAKIS CONTRACTING, INC.

**PRELIMINARY SITE PLAN  
GREENSPACE PLAN**



SHEET

**L1**

10/20/2015

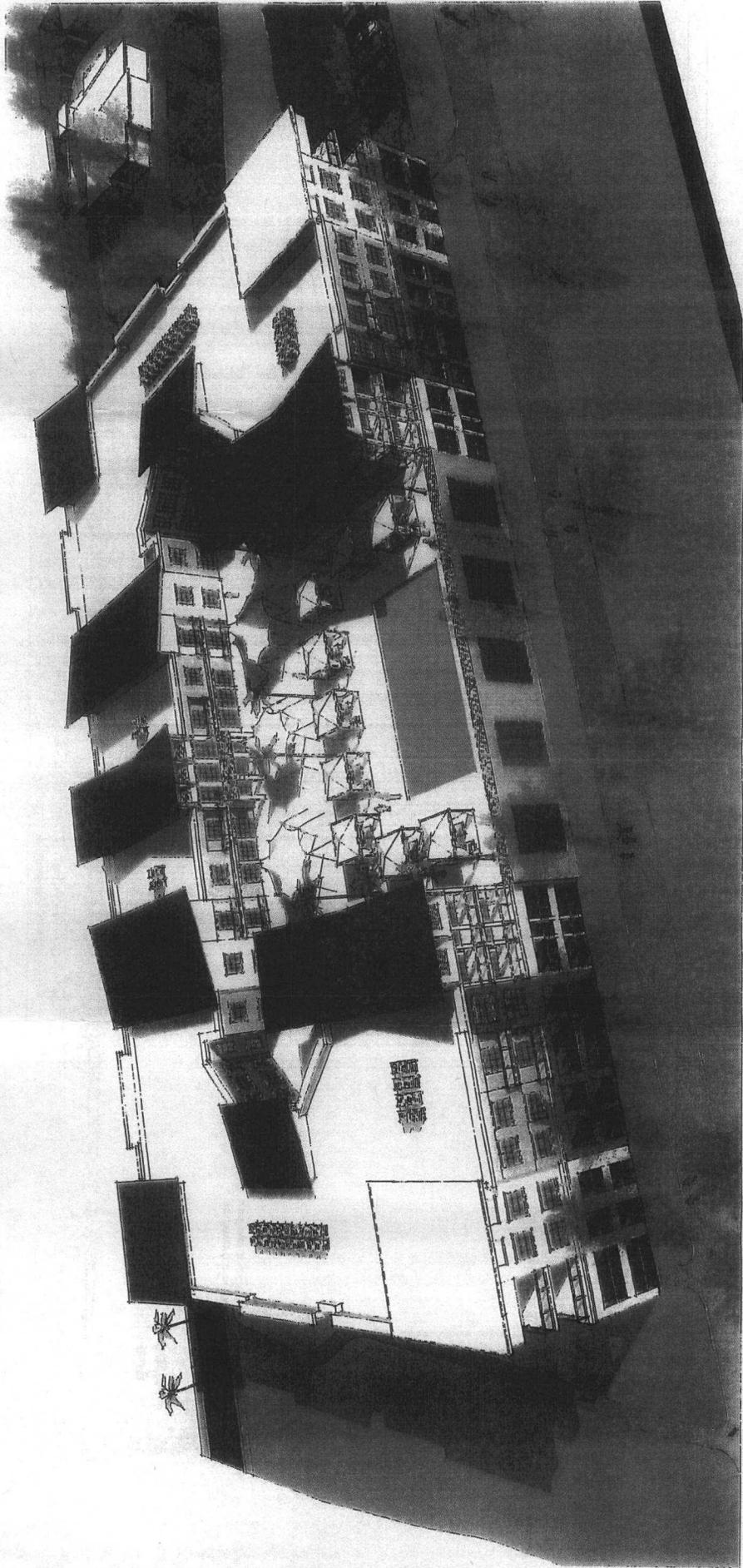
Douglas Avenue Lofts

Dunedin, Florida



October 21, 2015

© 2015 J.K. Kokolakis, Inc.



# DOUGLAS AVE. APARTMENTS

**J** J. KOKOLAKIS

OCTOBER 28, 2015

OWNER

**Exhibit "G"**

**LDO Table**

**LDO WORKSHEET**

**Project Name: Dunedin Lofts**

**Date: January 5, 2016**

Fair Market Value Recommendation (per acre):	882,000
Fair Market Value Approval (per acre):	882,000
A. No. of Units	65
B. Person/Unit Factor	2
C. No. of People (A x B)	130
D. Parkland Standard Factor	0.006
E. Acreage Requirement (C x D)	0.780
F. Acreage Dedicated	0.266
G. Remaining Acreage Required	0.514
H. Fair Market Value (per acre)	882,000
I. LD Fee Requirement (G x H)	453,348

**Private Recreation Credit Calculation**

J. Private Acreage for Credit Request	0.230
K. LDO Fee Credit	202,860
L. Total LDO Fee with Credit	250,488

**CRA Development Incentives**

50% CRA Adjustment	(125,244)
Vertical Mixed-Use Development (10% max)	(25,049)
High Quality Architecture (10% max)	(25,049)
Great Public Space (15% max)	(37,573)
Developer Contribution	37,573
Tax Increment Contribution	87,671

**Total to LDO Fund** 125,244

**TIF Funding by Year**

	2017	2018	2019	2020	2021	Total
Developer	37,573					37,573
CRA New Revenue			66,000			29,224
CRA New Revenue				66,000		29,224
CRA New Revenue					66,425	29,223

**Total \$ 125,244**