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**AGENDA REPORT  
April 24, 2018**

**SUBJECT:**

Binding Development Plan Acceptance, Re: Imperial South Inc. (17PZ00109) (District 4)

**FISCAL IMPACT:**

None

**DEPT/OFFICE:**

Planning and Development

**REQUESTED ACTION:**

In accordance with Section 62-1157, it is requested that the Board of County Commissioners accept and authorize the Chair to sign the Binding Development Plan.

**SUMMARY EXPLANATION and BACKGROUND:**

On February 1, 2018, the Board of County Commissioners approved a change of Zoning Classification from PIP to RU-2-15, contingent upon a Binding Development Plan (BDP). The BDP is a voluntary agreement presented by a property owner to self-impose limits upon development of a property in support of a change of zoning or conditional use permit. Pursuant to 62-1157, a BDP shall be recorded in the public records within 120 days of approval of the zoning application by the Board. Following staff and legal review, a BDP is routinely presented to the Board in recordable form as a Consent Agenda item in order to finalize the zoning action. The attached BDP contains the following stipulations:

- Developer/Owner shall provide an 8-foot high concrete masonry unit, or similar material, wall to separate the improvements to be built on the Property from the Plant Site.
- Developer/Owner shall limit density to 15 units per acre and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.
- No buildings or recreational facilities shall be constructed or located on any area of the Property that is either, (a.), within 300 ft. of the boundary line of the Plant Site, or (b.), south of the north property line of the Plant Site.
- Developer/Owner shall provide formal notification to proposed tenants acknowledging existence of the existing and proposed asphalt/concrete plants on the east side of the FECRR right-of-way and the potential noise factors.
- Developer/Owner shall not petition the County regarding operations of the asphalt/concrete plant, unless it is in regards to non-compliance with County ordinances.

Reference: 17PZ00109

**ATTACHMENTS:**

**Description**

- **Final BDP**
- **Action Agendas**
- **GIS Maps**

**REVIEWERS:**

<b>Department</b>	<b>Reviewer</b>
Planning and Development	Calkins, Tad
ACM Development	Denninghoff, John
County Manager	Abbate, Frank



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**ATTACHMENTS:**

**Description**

- ▢ **Final BDP**
- ▢ **Action Agendas**
- ▢ **GIS Maps**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

April 25, 2018

MEMORANDUM

TO: Jennifer Jones, Zoning

RE: Item II.A.3, Binding Development Plan Agreement with Imperial South Inc.

The Board of County Commissioners, in regular session on April 24, 2018, approved Binding Development Plan with Imperial South, Inc., for property located within 300 feet of the boundary line of the Plant Site or south of the north property line of the Plant Site. Said Plan was recorded in OR BK/PG 8148/974. Enclosed for your necessary action are two certified copies of the recorded document.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Rowe*

Tammy Rowe, Deputy Clerk

/dt

Encls. (2)

cc: Contracts Administration

On motion by Commissioner Barfield, seconded by Commissioner Tobia, the following resolution was adopted by a unanimous vote:

**WHEREAS, IMPERIAL SOUTH, INC.** has requested a change of classification from PIP (Planned Industrial Park) to RU-2-15 (Medium Density Multi-Family Residential) on property described as Tax Parcels 250, 265, and 756, as recorded in ORB 2889, Pages 1573 – 1577, of the Public Records of Brevard County; Tax Parcel 253, as recorded in ORB 2691, Pages 1322 – 1323, of the Public Records of Brevard County; and Tax Parcel 254, as recorded in ORB 2555, Page 0443, of the Public Records of Brevard County. (30.7 +/- acres) Located on the east side of Wickham Rd., approx. 330 ft. south of Jordan Blass Dr. (2975 Allen Hill Ave., Melbourne (Tax Parcel 253); 2600 Promenade Dr., Melbourne (Tax Parcel 254); 6375 N. Wickham Rd. Ste 107, Melbourne (Tax Parcel 756); Tax Parcels 265 and 250 have no assigned address and are in the Melbourne area)

Sections 13, 19

Township 26 S,

Range 36 E, and,

**WHEREAS,** a public hearing of the Brevard County Planning & Zoning Board Agency was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning & Zoning Board recommended that the application be approved with a BDP (Binding Development Plan) limited to 15 units per acre, an 8-foot high concrete masonry unit, a 50-foot natural vegetative buffer, no building or recreational facilities to be within 300 feet of the boundary line of the Plant Site, and notice shall be provided to prospective tenants acknowledging existence of existing and proposed asphalt/concrete plants; and

**WHEREAS,** the Board, after considering said application and the Brevard County Planning & Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be Approved as recommended; now therefore,

**BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from PIP to RU-2-15, be APPROVED with a BDP, recorded in ORB 8148, Pages 974 - 982, dated April 25, 2018, limited to 15 units per acre, an 8-foot high concrete masonry unit, a 50-foot natural vegetative buffer, no building or recreational facilities to be within 300 feet of the boundary line of the Plant Site, and notice shall be provided to prospective tenants acknowledging existence of existing and proposed asphalt/concrete plants. The zoning classification relating to the above described property shall be changed to **RU-2-15**, and the Planning & Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

**BE IT FURTHER RESOLVED** that this resolution shall become effective as of April 25, 2018.

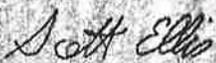
BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida



by Rita Pritchett, Chair  
Brevard County Commission

As approved by Brevard County Commission on April 24, 2018.

ATTEST:



SCOTT ELLIS, CLERK  
(SEAL)

(P&Z Hearing – January 8, 2018)

(BCC Zoning Hearing – February 1, 2018)

Please note: A Conditional Use Permit will generally expire on the three year anniversary of its approval if the use is not established prior to that date. Conditional Use Permits for Towers and Antennas shall expire if a site plan for the tower is not submitted within one (1) year of approval or if construction does not commence within two years of approval. A PUD Preliminary Development Plan expires if a final development plan is not filed within three years.

THE GRANTING OF THIS ZONING DOES NOT GUARANTEE PHYSICAL DEVELOPMENT OF THE PROPERTY. AT THE TIME OF DEVELOPMENT, SAID DEVELOPMENT MUST BE IN ACCORDANCE WITH THE CRITERIA OF THE BREVARD COUNTY COMPREHENSIVE PLAN AND OTHER APPLICABLE LAWS AND ORDINANCES.

11.A.3.

**RESOLUTION NO. 17PZ00109**

On motion by Commissioner Barfield, seconded by Commissioner Tobia, the following resolution was adopted by a unanimous vote:

**WHEREAS, IMPERIAL SOUTH, INC.** has requested a change of classification from PIP (Planned Industrial Park) to RU-2-15 (Medium Density Multi-Family Residential) on property described as Tax Parcels 250, 265, and 756, as recorded in ORB 2889, Pages 1573 – 1577, of the Public Records of Brevard County; Tax Parcel 253, as recorded in ORB 2691, Pages 1322 – 1323, of the Public Records of Brevard County; and Tax Parcel 254, as recorded in ORB 2555, Page 0443, of the Public Records of Brevard County. (30.7 +/- acres) Located on the east side of Wickham Rd., approx. 330 ft. south of Jordan Blass Dr. (2975 Allen Hill Ave., Melbourne (Tax Parcel 253); 2600 Promenade Dr., Melbourne (Tax Parcel 254); 6375 N. Wickham Rd. Ste 107, Melbourne (Tax Parcel 756); Tax Parcels 265 and 250 have no assigned address and are in the Melbourne area)

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**WHEREAS,** a public hearing of the Brevard County Planning & Zoning Board Agency was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning & Zoning Board recommended that the application be approved with a BDP (Binding Development Plan) limited to 15 units per acre, an 8-foot high concrete masonry unit, a 50-foot natural vegetative buffer, no building or recreational facilities to be within 300 feet of the boundary line of the Plant Site, and notice shall be provided to prospective tenants acknowledging existence of existing and proposed asphalt/concrete plants; and

**WHEREAS,** the Board, after considering said application and the Brevard County Planning & Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be Approved as recommended; now therefore,

**BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from PIP to RU-2-15, be APPROVED with a BDP, recorded in ORB 8148, Pages 974 - 982, dated April 25, 2018, limited to 15 units per acre, an 8-foot high concrete masonry unit, a 50-foot natural vegetative buffer, no building or recreational facilities to be within 300 feet of the boundary line of the Plant Site, and notice shall be provided to prospective tenants acknowledging existence of existing and proposed asphalt/concrete plants. The zoning classification relating to the above described property shall be changed to BU-2, and the Planning & Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

**BE IT FURTHER RESOLVED** that this resolution shall become effective as of April 25, 2018.

BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida



by Rita Pritchett, Chair  
Brevard County Commission

As approved by Brevard County Commission on April 24, 2018.

ATTEST:

  
SCOTT ELLIS, CLERK  
(SEAL)

(P&Z Hearing – January 8, 2018)  
(BCC Zoning Hearing – February 1, 2018)

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THE GRANTING OF THIS ZONING DOES NOT GUARANTEE PHYSICAL DEVELOPMENT OF THE PROPERTY. AT THE TIME OF DEVELOPMENT, SAID DEVELOPMENT MUST BE IN ACCORDANCE WITH THE CRITERIA OF THE BREVARD COUNTY COMPREHENSIVE PLAN AND OTHER APPLICABLE LAWS AND ORDINANCES.

Prepared by: MBV Engineering, Inc.  
Address: 1250 W. Eau Gallie Blvd., Melbourne, FL 32935

### BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Imperial South, Inc., a Florida corporation (hereinafter referred to as "Developer/Owner").

#### RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has requested the RU-2-15 zoning classification(s) and desires to develop the Property as multi-family apartments, and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.

2. Developer/Owner shall provide an 8 foot high concrete masonry unit, or similar material, wall to separate the improvements to be built on the Property from the Plant Site (hereinafter defined). The final location of such wall shall be determined during site plan review, but it shall be required that the wall shall run parallel along a portion of the eastern boundary (but not necessarily on such boundary) of the Property. Such wall shall run from the northern boundary of the wetlands located on the southeastern

end of the Property to the south boundary line of that certain parcel of land currently listed as Tax Parcel Account #2606105 (approximately 1,000 feet in length) . In addition to any other landscaping and vegetative buffering which may be required during site plan review elsewhere on the Property, an additional 50 foot natural vegetated buffer shall be preserved in the same approximate length as the wall - running adjacent to the wall. Such natural vegetation shall consist of the vegetation then existing around the area in which the wall shall be located. Any areas along the proposed wall site within the 50 foot buffer area which are void of vegetation (such that a significant portion of the wall may be seen by an average person with the naked eye standing at the edge of such vegetative buffer during times of full foliage) will be planted with additional non-invasive, natural vegetation appropriate for the area in keeping with normal Florida Friendly landscaping practices, which additional plants (though perhaps immature when planted) when grown to maturity will close such void.

3. The Developer/Owner shall limit density to 15 units per acre and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.

4. No buildings (including, without limitation, residential or office buildings) or recreational facilities (including, without limitation, pools), or any portion thereof, shall be constructed or located on any area of the Property that is either (i) within three hundred feet (300') of the boundary line of that certain parcel of land described and/or depicted in Exhibit "B", attached hereto and made a part hereof by this reference (hereinafter referred to as the "Plant Site"), or (ii) south of the north property line of the Plant Site as projected westerly to the west boundary of the Property along the same bearing (N 64 degrees 48' 23" E as shown on Exhibit "B").

5. The Developer/Owner shall provide formal notification to proposed tenants acknowledging existence of the existing and proposed asphalt/concrete plants on the eastside of the Florida East Coast Railroad right-of-way and the potential noise factors.

6. The Developer/Owner shall not petition the County regarding operations of the asphalt/concrete plant, unless it is in regards to non-compliance with County ordinances.

7. Developer/Owner shall comply with all regulations and ordinances of County. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against changes to the Comprehensive Plan or Land Development Regulations as they may apply to this Property.

8. Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in the Public Records of Brevard County, Florida.

9. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, which successor or assign shall be subject to the above referenced conditions as approved by the Board of County Commissioners on February 1, 2018. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

10. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as it may be amended.

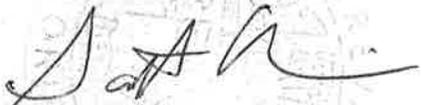
11. Conditions Precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 10 above.

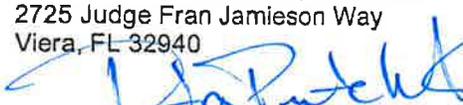
[SIGNATURES TO FOLLOW]

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:

"COUNTY"

  
\_\_\_\_\_  
Scott Ellis, Clerk  
(SEAL)

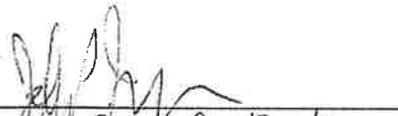
BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA  
2725 Judge Fran Jamieson Way  
Viera, FL 32940  
  
\_\_\_\_\_  
Rita Pritchett, Chair

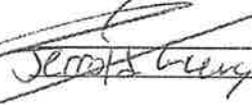
As approved by the Board on Apr. 24, 2018

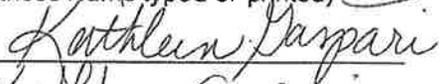
WITNESSES:

"DEVELOPER/OWNER"

IMPERIAL SOUTH, INC., a Florida corporation  
6767 N. Wickham Road, Ste. 400  
Melbourne, Florida 32940

  
\_\_\_\_\_  
Jeffrey P. Jardine  
(Witness Name typed or printed)

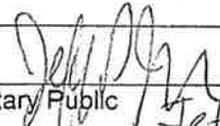
  
\_\_\_\_\_  
JERRY LEVY, as President

  
\_\_\_\_\_  
Kathleen Gaspari  
(Witness Name typed or printed)

STATE OF NEW YORK §  
COUNTY OF WESTCHESTER §

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of MARCH, 2018, by, JERRY LEVY as PRESIDENT of IMPERIAL SOUTH, INC., a Florida corporation, who is personally known to me or who has produced \_\_\_\_\_ as identification.

My commission expires  
SEAL  
Commission No.:

  
\_\_\_\_\_  
Notary Public  
Jeffrey P. Jardine  
(Name typed, printed or stamped)

JEFFREY P. JARDINE  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01JA6035216  
Qualified in Westchester County  
My Commission Expires January 31, 2022

TU  
3-22-18

**STATEMENT OF NO MORTGAGE**

KNOW ALL MEN BY THESE PRESENTS, that the above referenced Developer/Owner (Imperial South, Inc., a Florida corporation) does hereby confirm that no mortgage encumbers the Property.

WITNESSES:

"DEVELOPER/OWNER"

IMPERIAL SOUTH, INC., a Florida corporation  
6767 N. Wickham Road, Ste. 400  
Melbourne, Florida 32940

Jeffrey P. Jardine  
Jeffrey P. Jardine  
(Witness Name typed or printed)

Richard G. [Signature], as President

Kathleen Gaspari  
Kathleen Gaspari  
(Witness Name typed or printed)

STATE OF New York §  
COUNTY OF Westchester §

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of March, 2018, by, Jeffrey P. Jardine as PRESIDENT of IMPERIAL SOUTH, INC., a Florida corporation, who is personally known to me or who has produced \_\_\_\_\_ as identification.

My commission expires  
SEAL  
Commission No.:

Jeffrey P. Jardine  
Notary Public  
Jeffrey P. Jardine  
(Name typed, printed or stamped)

JEFFREY P. JARDINE  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01JA6035216  
Qualified in Westchester County  
My Commission Expires January 31, 2022

JH  
3-22-18

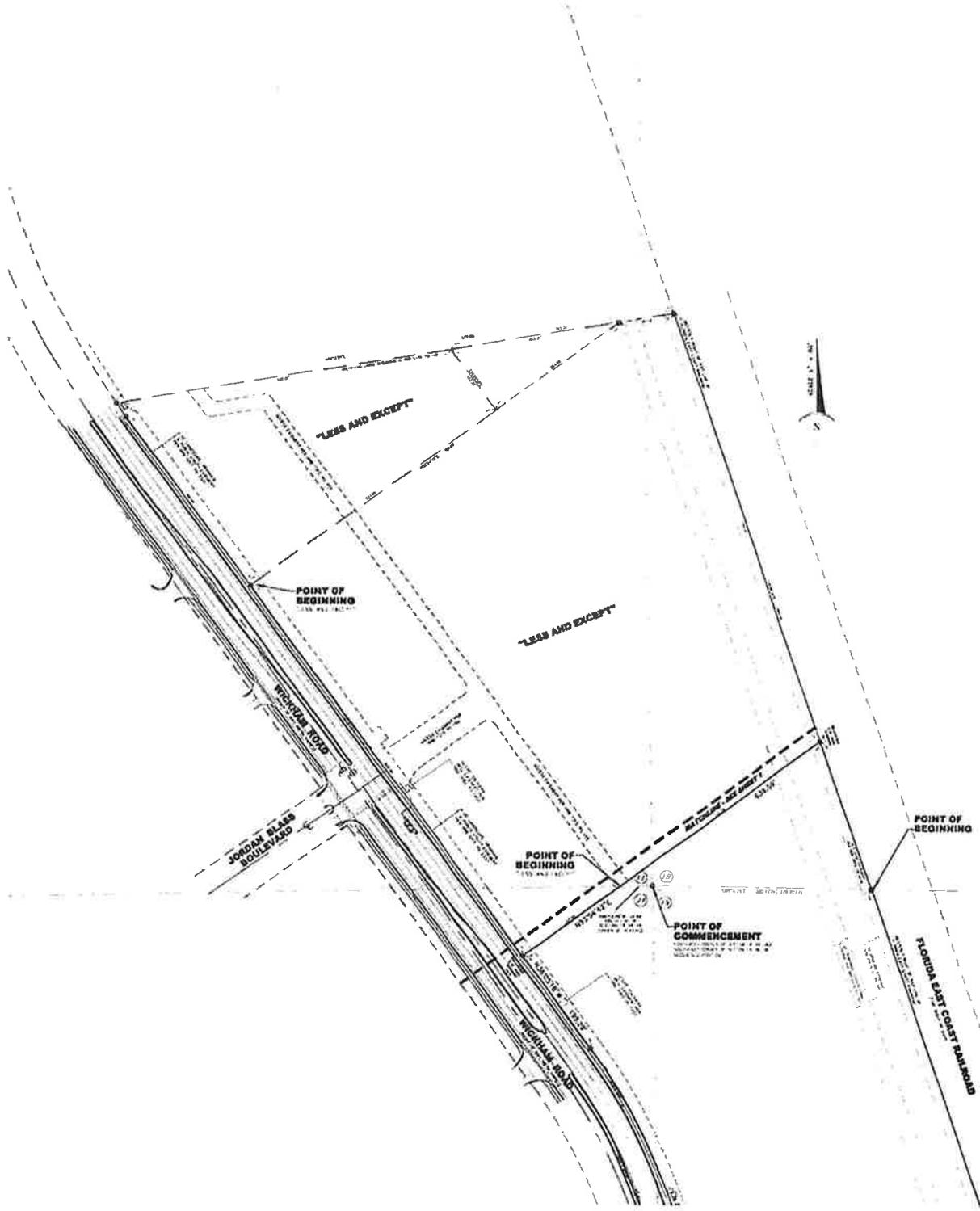
EXHIBIT "A"  
LEGAL DESCRIPTION OF PROPERTY  
(SEE ATTACHED)

ja  
3-22-18



BOUNDARY SURVEY

Sheet 1 of 2



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SHANKON SURVEYING, INC.  
 1450 N. W. 10th St., Suite 205  
 Ft. Lauderdale, FL 33304  
 (954) 774-8122 FAX 5808  
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3-27-14

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EXHIBIT "B" LEGAL DESCRIPTION OF PLANT SITE

SECTION 19, TOWNSHIP 26 SOUTH, RANGE 37 EAST  
MELBOURNE, BREVARD COUNTY, FLORIDA.

ALLEN HILL AVENUE

ASPHALT ROAD  
18574.08 FT. (5661.00')

PARCEL ID  
26-37-19-00-235.01

518.375' ±  
1788.44' (545.00')

SECTION 18, RANGE 37 E  
SECTION 21, RANGE 36 E

POINT OF COMMENCEMENT  
SECTION 19  
TOWNSHIP 26 SOUTH  
RANGE 37 EAST

- 1. ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF.
- 2. ALL BEARING ANGLES ARE IN DEGREES, MINUTES AND SECONDS.
- 3. ALL CURVES ARE CIRCULAR UNLESS OTHERWISE NOTED.
- 4. ALL DISTANCES ARE MEASURED ALONG THE CENTERLINE OF THE ROAD OR RAILROAD UNLESS OTHERWISE NOTED.
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U.S. HIGHWAY 1 (STATE ROAD #5)

JEN DRIVE

FLORIDA EAST COAST RAILROAD

NOTES:

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**EFIRD SURVEYING GROUP, INC.**  
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 DULAN, FLORIDA 32734  
 PHONE (386) 740-4144 FAX (386) 740-4155  
 WEBSITE www.efirdsurveying.com  
 Certificate of Authorization License Number 7230

Boundary Survey

19 2024

CAST CONSTRUCTION, INC.

Handwritten signature and date: JM 7-22-18