



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COUNCIL MEETING NOVEMBER 12, 2019

**6:00 PM, Shores Community Center, 3000 Bellemead Drive
Daytona Beach Shores, FL 32118**

Upon being recognized, a member of the public shall proceed to the podium and give his or her name and address and may, thereafter, speak for a maximum of three minutes on any matter relevant to a specific agenda item. During "Audience Comments," a member of the public may speak on any matter relevant to City business which is not on the agenda, for a maximum of three minutes in accordance with Section 2-1.1(d) and 2-2 of the City Code. In accordance with Section 2-2, during periods set aside for public discussion any person desiring to speak shall secure a form located at the agenda table, complete the form and present it to the City Clerk so the speaker can be recognized by the presiding officer. The use of profanity, obscene language, threats or any violent or abusive conduct by any person shall constitute a violation of this section. It shall be the duty of the Director of Public Safety, upon the order of the presiding officer at any such meeting, to forcibly, if necessary, evict any person violating the provisions of this section from the Council Meeting Hall. Any such violation shall subject the offender, upon conviction thereof, to a fine and/or imprisonment as prescribed by Section 1-8.

- 1. CALL TO ORDER BY MAYOR**
- 2. ROLL CALL BY CITY CLERK**
- 3. PRAYER**
- 4. PLEDGE OF ALLEGIANCE**
- 5. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:**
 - A. Employee service Awards**
- 6. APPROVAL OF MINUTES**
 - A. Approval of City Council Minutes Oct. 22, 2019**
- 7. CONSENT AGENDA:**

- A. Creech Enterprises, Inc. Non-Exclusive Franchise
- B. Samsula Landfill, Inc. Non-Exclusive Franchise
- C. WCA of Florida, LLC Non-Exclusive Franchise

8. REPORTS OF THE CITY ATTORNEY:

- A. Attorney Branch report for November 12, 2019

9. REPORTS OF THE CITY MANAGER:

- A. City Manager Report November 12, 2019

10. OLD BUSINESS:

11. NEW BUSINESS:

- A. Ordinance Revising 2019-09
- B. Resolution 2019-22 City Manager Evaluation Procedure
- C. Selection of TPO member for year 2020
- D. Consideration of Purchase and Sale Agreement for 2900 S. Atlantic Avenue

12. COUNCIL COMMENTS:

13. AUDIENCE REMARKS/PUBLIC COMMENTS:

14. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

15. ADJOURNMENT:

ANY PERSON WHO DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COUNCIL WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE HE OR SHE MAY NEED TO ENSURE AT HIS OR HER OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE OF THE PROCEEDINGS UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF DAYTONA BEACH SHORES, 2990 S. ATLANTIC AVENUE, DAYTONA BEACH SHORES, FLORIDA 32118, TELEPHONE NUMBER 386-763-5364, CSCHWAB@CITYOFDBS.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 7-1-1 or 1-800-955-8771.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

MINUTES
CITY COUNCIL MEETING
October 22, 2019
3000 Bellemead Drive, Daytona Beach Shores, FL 32118

ROLL CALL BY CITY CLERK

Present: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

Staff: City Clerk Cheri Schwab, Community Services Director Fred Hiatt, Finance Director Kurt Swartzlander, and Public Safety Director Stephan Dembinsky.

- A. Discussion on moving the general employee pension back to Florida Retirement System

Finance Director Swartzlander presented a Powerpoint to the City Council showing the pros and cons of going back into the Florida Retirement System for general employees. Currently, half of the general employees are in the City's 401A pension plan at either a 10% or 6% employer contribution. All sworn public safety officers and a small handful of general employees are in FRS. The pros included offering competitive benefits, ability to retain and recruit applicants who may already have time in FRS, and eventually a single retirement provider to audit each month. The cons included a slightly higher retirement expense for the annual budget and employees would have to contribute 3% of their salary. Slides were shown depicting pension payments for existing employees in the 401A pension plan versus what they would receive if they were in FRS. The historical contribution rates were also shown. The council asked questions regarding interest rates, investments and annuities. Private corporate pensions were also discussed. In order to continue the process, the council would have to approve the switch. The Finance Director inquired if council would like staff to prepare preliminary budget numbers and a consensus agreed.

ADJOURNMENT:

The workshop ended at 5:57 pm.

MAYOR
NANCY MILLER

CITY MANAGER
MICHAEL T. BOOKER

ATTEST:

CITY CLERK, CHERI SCHWAB

**MINUTES
CITY COUNCIL MEETING
October 22, 2019
3000 Bellemead Drive, Daytona Beach Shores, FL 32118**

1. CALL TO ORDER BY MAYOR

2. ROLL CALL BY CITY CLERK

Present: Councilmember Mel Lindauer, Councilmember Michael Politis, Councilmember Richard Frizalone, Vice Mayor Richard Bryan, Mayor Nancy Miller

Staff: City Clerk Cheri Schwab, City Attorney Raymond Branch, Community Services Director Fred Hiatt, Finance Director Kurt Swartzlander, and Public Safety Director Stephan Dembinsky.

3. PRAYER

4. PLEDGE OF ALLEGIANCE

5. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

6. APPROVAL OF MINUTES

A. **City Council Minutes October 8, 2019**

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by COUNCILMEMBER MICHAEL POLITIS to approve the minutes of October 8, 2019.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

7. CONSENT AGENDA:

A. **September Public Safety monthly report**

B. **Community Services September 2019 Report**

C. **Building Division September 2019 Monthly Report**

D. **August Monthly Financial Report**

COUNCILMEMBER MICHAEL POLITIS moved, seconded by VICE MAYOR RICHARD

BRYAN to approve the consent agenda.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

8. REPORTS OF THE CITY ATTORNEY:

Attorney Branch informed the council that the purchase and sale agreement for 2900 S. Atlantic Avenue was not ready to be discussed this evening. There is a meeting with the developer on Thursday and the contract should be ready for the November 12th council meeting. The council does need to approve an extension for Mr. Sullivan's letter of intent beyond October 31st.

9. REPORTS OF THE CITY MANAGER:

Acting City Manager Swartzlander read through the report provided by City Manager Booker. The city will be actively working to increase the census response next year. The city will have a computer available in the Community Center for residents to use to complete the census questionnaire. Informational workshops will also be held for the residents. A schedule of the community center events was provided. Mayor Miller noted that even though the parking lot may not be full, many residents walk to the center daily.

10. OLD BUSINESS:

11. NEW BUSINESS:

- A. Consideration to extend the contract with Stacy Conomos for the promotion of the economic development programs on social media platforms.

Both CMBRS Lindauer and Frizalone complimented Ms. Conomos on her hard work with the Economic Development Agency. She is doing much more than just the social media aspect. It was discussed to extend the contract for another 90 days.

COUNCILMEMBER MEL LINDAUER moved, seconded by COUNCILMEMBER RICHARD FRIZALONE to approve extending the contract with Stacy Conomos for another 90 days.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

- B. Consideration to approve contract for Special

Magistrate

The council was in agreement with the proposed contract as presented.

COUNCILMEMBER MICHAEL POLITIS moved, seconded by COUNCILMEMBER MEL LINDAUER to approve the contract for Special Magistrate with Attorney Steven deLaroche.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

C. Purchase and sales agreement for 2900 S. Atlantic Avenue

Attorney Branch explained that the Letter of Intent that was received by the developer would expire at the end of the month. In order to bring a sales and purchase contract to a future council meeting, an extension was needed. After a brief discussion, it was decided to allow until Dec 10th to consider the purchase and sales agreement for the property. Vice Mayor Bryan inquired what the "sticking points" were. It was explained that there are wells on the property and the city was attempting to provide what parcels are serviced by them. There are also a few financial issues regarding moving existing infrastructure.

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by VICE MAYOR RICHARD BRYAN to allow an extension until December 10th for a Purchase and sales agreement for 2900 S. Atlantic Avenue.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5 No = 0).

Yes: Mayor Nancy Miller, Vice Mayor Richard Bryan, Councilmember Richard Frizalone, Councilmember Mel Lindauer, Councilmember Michael Politis

12. COUNCIL COMMENTS:

Vice Mayor Bryan provided a written statement to be included in the minutes. He felt there was a misunderstanding of what he wanted included in the City Manager evaluation form. He would like to see cost effective data. CMBR Lindauer suggested that during the Veteran's Park dedication, ask any veterans in attendance to stand by the flag representing their branch of service. Mayor Miller stated that the City Manager evaluation form was supposed to be discussed at the next meeting but that she felt enough time and discussion had taken place on this item. By a consensus vote, the form that will be used is from FCCMA that includes ten categories for scoring. Areas for comments will be included on the form. Measurables will not be included, instead tasks could be assigned throughout the year by a councilmember. The task would then be considered during the next evaluation cycle. The Mayor reminded the audience of the following upcoming events: free concert this Friday, indoor Arts & Crafts on Saturday, Veteran's Park Dedication on Nov. 9th.

13. AUDIENCE REMARKS/PUBLIC COMMENTS:

Bob Rehobeth liked the work that was being done on the Veteran's Park area.

14. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

15. ADJOURNMENT:

The meeting ended at 6:42 pm.

**MAYOR
NANCY MILLER**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB

STATEMENT BY RICHARD BRYAN TO BE ADDED VERBATIM TO THE MINUTES

22 October 2019 - Evaluation criteria for the City Manager

Of course, we all want the residents and the employees of DBS to be happy. Although 100% of the people will never be happy about anything, it is a worthy goal to shoot for.

That can't be the only criteria by which the City Manager is evaluated. In my opinion, one of the most important jobs of a City Manager is to cost effectively (use taxpayer money wisely to) provide the level of services that the residents want. I believe it is the City Council's job to determine what the residents want and the City Managers job to cost effectively implement what the City Council asks him to do.

I would ask that you think of 3 hypothetical City Managers of DBS. All three have happy residents and happy employees and provide the same level of service. One does the job with 11.5 million dollars per year of taxpayer money. Another does the job with 13 million dollars of taxpayer money. A third does the job with 10 million dollars of taxpayer money per year.

Which City Manager is doing the best job?

My point is not that we know that DBS is not using taxpayer dollars in a cost-effective manner. My point is that we don't have the data we need to decide. I think it is our responsibility to get that data.

In addition to providing the existing services in a cost-effective manner, I believe that it is the City Manager's job to cost effectively implement tasks in a timely manner that are assigned to him by the City Council. Among these tasks that have been suggested by various Council Members are: Increasing Economic Development, Increasing Grant Money, Increasing Community Center Hours and Usage, Increasing Census Results, Implementing a system for notifying a large percentage of Residents of Emergencies and Non-Emergencies, Implementing a system for Polling a large percentage of Residents on various Issues, and Increasing Annexation.

There will be other tasks that are currently unknown that City Council will wish to assign to the City Manager during the year.

I don't think it is important to flesh out the details of all of the above listed tasks at the next meeting. We can just establish that we will be assigning tasks and perhaps flesh out the details for a few tasks. The details can be fleshed out for other tasks when we are ready to do so.

The choice is not between measuring everything and measuring nothing objectively. **I believe the prudent middle ground is to assign tasks throughout the year that are significant and objectively measurable.** Furthermore, we are not talking about having metrics for every employee of DBS. The evaluation process for most staff members will be recommended by the group that is to study pay and evaluation.



City of Daytona Beach Shores
Department of Community Services
2990 S. Atlantic Avenue
Daytona Beach Shores, FL 32118
Telephone (386) 763-5377
Fax (386) 763-5370



NON-EXCLUSIVE FRANCHISE APPLICATION

CONSTRUCTION AND DEMOLITION DEBRIS AND/OR RECYCLABLES COLLECTION

Applicant (Firm):

Business Address:

Business Phone:

Authorized Rep. Name & Title:

Authorized Rep. Contact Phone:

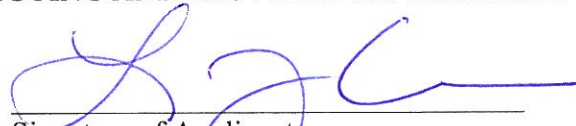
Creech Enterprises Inc. dba Southeast Containers
2960 S. Nova Rd., South Daytona FL 32119
386-547-4182
Lowry Creech, VP
386-547-4185

Items Required for Application Submission:

- ☒ **Application:** completed, signed by applicant, & notarized
- ☒ **Non-Exclusive Franchise Agreement:** completed, signed by franchisee, & attested-to
- ☒ **Proof of Liability Insurance** – All policies must have the City listed as additionally insured. Each franchisee shall secure and maintain a public liability insurance policy with the following minimum coverages:
 - \$1,000,000.00 for one (1) person injured
 - \$3,000,000.00 for more than one (1) person injured
 - \$3,000,000.00 for property damage
- ☒ **Performance Bond** in the amount of \$10,500.00.
- ☒ **Business Tax Receipt:** current, in the company's name
- ☒ **Disposal Plan:** Documentation of plan for disposal of all construction and demolition materials and/or recyclables collected within the City at an approved and licensed disposal site or recycling recovery facility.
- ☒ **Employee Policy:** Written policy addressing the hiring and retention of employees with regard to driving violations and random testing for use of illegal substances.
- ☒ **I agree,** as authorized representative, that I have received a copy of, read, and will comply with all provisions contained in DBS Ordinance Number 2009-07 and any applicable administrative rules.

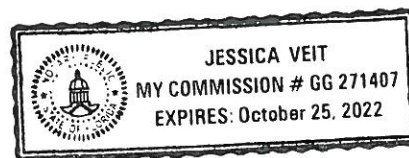
- ☒ I agree, as authorized representative, that the franchisee will be, and shall be, subject to the schedule of liquidated damages set forth in Exhibit "A."
- ☒ I agree, as authorized representative, that the City Manager, or designee, may conduct an investigation into information contained herein and related to criminal or personal records for myself as an individual or, if a corporation, for itself and its officers and directors.
- ☒ I agree, as authorized representative, that, for the right and privilege of utilizing the streets and roadways of the City of Daytona Beach Shores, Florida, and to compensate the City for the burden of monitoring and regulating the above business, the undersigned applicant agrees to abide by all applicable Federal, State, County and City laws, codes, ordinances, rules and regulations.
- ☒ I agree, as authorized representative, the franchisee and its surety indemnify and save harmless the City, all its officers, officials, representatives, agents and employees from and against any and all claims, liability and damages arising, in any way, from or based on the violation of any such laws, codes, ordinances, rules and regulations and any orders or other decrees, whether by the franchisee, the franchisee's employees, agents or subcontractors as to any claims, liability, or damages which are based, in any way whatsoever, on the franchisee's conduct, misconduct or omissions.

I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY AS PROVIDED FOR IN FLORIDA STATUTES 837.01, THAT THE FOREGOING AND PROVIDED INFORMATION IS TRUE TO THE BEST OF MY KNOWLEDGE.


Signature of Applicant

SWORN TO AND SUBSCRIBED BEFORE
ME BY Larry Creech,
THIS 17 DAY OF October 2019.


Notary Public



☒ Documentation reviewed and complete: Fred Hiatt on 10-29-19
Comm. Services Director Fred Hiatt Date

☐ Approved by City Manager: _____ on _____
M. Booker Date

☐ Franchise Issued by: _____ on _____



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Department of Community Services
2990 S. Atlantic Avenue
Daytona Beach Shores, FL 32118
Telephone (386) 763-5377
Fax (386) 763-5370



NON-EXCLUSIVE FRANCHISE APPLICATION

CONSTRUCTION AND DEMOLITION DEBRIS AND/OR RECYCLABLES COLLECTION

Applicant (Firm): Samsula Landfill
Business Address: 363 S. State Rd. 415, New Smyrna Beach, FL 32168
Business Phone: 386-423-6769
Authorized Rep. Name & Title: Natasha McDonald, VP/Sec.
Authorized Rep. Contact Phone: 386-423-6769

Items Required for Application Submission:

- ☒ **Application:** completed, signed by applicant, & notarized
- ☒ **Non-Exclusive Franchise Agreement:** completed, signed by franchisee, & attested-to
- ☒ **Proof of Liability Insurance** – All policies must have the City listed as additionally insured. Each franchisee shall secure and maintain a public liability insurance policy with the following minimum coverages:
 - \$1,000,000.00 for one (1) person injured
 - \$3,000,000.00 for more than one (1) person injured
 - \$3,000,000.00 for property damage
- ☒ **Performance Bond** in the amount of \$10,500.00.
- ☒ **Business Tax Receipt:** current, in the company's name
- ☒ **Disposal Plan:** Documentation of plan for disposal of all construction and demolition materials and/or recyclables collected within the City at an approved and licensed disposal site or recycling recovery facility.
- ☒ **Employee Policy:** Written policy addressing the hiring and retention of employees with regard to driving violations and random testing for use of illegal substances.
- ☒ **I agree**, as authorized representative, that I have received a copy of, read, and will comply with all provisions contained in DBS Ordinance Number 2009-07 and any applicable administrative rules.

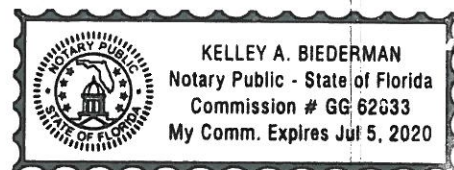
- ☒ I agree, as authorized representative, that the franchisee will be, and shall be, subject to the schedule of liquidated damages set forth in Exhibit "A."
- ☒ I agree, as authorized representative, that the City Manager, or designee, may conduct an investigation into information contained herein and related to criminal or personal records for myself as an individual or, if a corporation, for itself and its officers and directors.
- ☒ I agree, as authorized representative, that, for the right and privilege of utilizing the streets and roadways of the City of Daytona Beach Shores, Florida, and to compensate the City for the burden of monitoring and regulating the above business, the undersigned applicant agrees to abide by all applicable Federal, State, County and City laws, codes, ordinances, rules and regulations.
- ☒ I agree, as authorized representative, the franchisee and its surety indemnify and save harmless the City, all its officers, officials, representatives, agents and employees from and against any and all claims, liability and damages arising, in any way, from or based on the violation of any such laws, codes, ordinances, rules and regulations and any orders or other decrees, whether by the franchisee, the franchisee's employees, agents or subcontractors as to any claims, liability, or damages which are based, in any way whatsoever, on the franchisee's conduct, misconduct or omissions.

I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY AS PROVIDED FOR IN FLORIDA STATUTES 837.01, THAT THE FOREGOING AND PROVIDED INFORMATION IS TRUE TO THE BEST OF MY KNOWLEDGE.

D. McDonald
Signature of Applicant

SWORN TO AND SUBSCRIBED BEFORE
ME BY D. McDonald
THIS 15 DAY OF October 2019.

Kelley A. Biederman
Notary Public



☐ Documentation reviewed and complete: Fred Hiatt on 11-1-19
Comm. Services Director Fred Hiatt Date

☐ Approved by City Manager: _____ on _____
M. Booker Date

☐ Franchise Issued by: _____ on _____
F. Hiatt Date



City of Daytona Beach Shores
Department of Community Services
2990 S. Atlantic Avenue
Daytona Beach Shores, FL 32118
Telephone (386) 763-5377
Fax (386) 763-5370



NON-EXCLUSIVE FRANCHISE APPLICATION
CONSTRUCTION AND DEMOLITION DEBRIS
AND/OR RECYCLABLES COLLECTION

Applicant (Firm): WCA of Florida, LLC
Business Address: 1378-A S. Volusia Ave
Business Phone: 386-456-2010
Authorized Rep. Name & Title: Jake Pack - District Manager
Authorized Rep. Contact Phone: 912-656-7172

Items Required for Application Submission:

- ☒ **Application:** completed, signed by applicant, & notarized
- ☒ **Non-Exclusive Franchise Agreement:** completed, signed by franchisee, & attested-to
- ☒ **Proof of Liability Insurance** – All policies must have the City listed as additionally insured. Each franchisee shall secure and maintain a public liability insurance policy with the following minimum coverages:
 - \$1,000,000.00 for one (1) person injured
 - \$3,000,000.00 for more than one (1) person injured
 - \$3,000,000.00 for property damage
- ☐ **Performance Bond** in the amount of \$10,500.00.
- ☒ **Business Tax Receipt:** current, in the company's name
- ☒ **Disposal Plan:** Documentation of plan for disposal of all construction and demolition materials and/or recyclables collected within the City at an approved and licensed disposal site or recycling recovery facility. Tomoka Landfill & Gel Recycling
- ☒ **Employee Policy:** Written policy addressing the hiring and retention of employees with regard to driving violations and random testing for use of illegal substances. NO changes since last year
- ☒ **I agree**, as authorized representative, that I have received a copy of, read, and will comply with all provisions contained in DBS Ordinance Number 2009-07 and any applicable administrative rules.

RECEIVED

OCT 30 2019

BUILDING AND CODES DIVISION
CITY OF DAYTONA BEACH SHORES

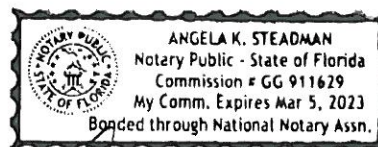
- ☒ I agree, as authorized representative, that the franchisee will be, and shall be subject to the schedule of liquidated damages set forth in Exhibit "A."
- ☒ I agree, as authorized representative, that the City Manager, or designee, may conduct an investigation into information contained herein and related to criminal or personal records for myself as an individual or, if a corporation, for itself and its officers and directors.
- ☒ I agree, as authorized representative, that, for the right and privilege of utilizing the streets and roadways of the City of Daytona Beach Shores, Florida, and to compensate the City for the burden of monitoring and regulating the above business, the undersigned applicant agrees to abide by all applicable Federal, State, County and City laws, codes, ordinances, rules and regulations.
- ☒ I agree, as authorized representative, the franchisee and its surety indemnify and save harmless the City, all its officers, officials, representatives, agents and employees from and against any and all claims, liability and damages arising, in any way, from or based on the violation of any such laws, codes, ordinances, rules and regulations and any orders or other decrees, whether by the franchisee, the franchisee's employees, agents or subcontractors as to any claims, liability, or damages which are based, in any way whatsoever, on the franchisee's conduct, misconduct or omissions.

I SWEAR OR AFFIRM UNDER PENALTY OF PERJURY AS PROVIDED FOR IN FLORIDA STATUTES 837.01, THAT THE FOREGOING AND PROVIDED INFORMATION IS TRUE TO THE BEST OF MY KNOWLEDGE.

Signature of Applicant

SWORN TO AND SUBSCRIBED BEFORE
ME BY Jake Pack
THIS 25th DAY OF October 2019.

Angela K. Steadman
Notary Public



☐ Documentation reviewed and complete: Fred Hiatt on 11-1-19
Comm. Services Director Fred Hiatt Date

☐ Approved by City Manager: _____ on _____
M. Booker Date

☐ Franchise Issued by: _____ on _____
F. Hiatt Date



Article II, Section 8, *Constitution of the State of Florida*: ***“Ethics in government.—A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse.”***

“LIFE IS BETTER HERE.”

**CITY COUNCIL AGENDA MEMORANDUM
NOVEMBER 12, 2019 AGENDA**

TO: Honorable Mayor and Members of the City Council
COPIES TO: Mike Booker, City Manager
Cheri Schwab, City Clerk
FROM: Raymond J. Branch, City Attorney
DATE: November 4, 2019
SUBJECT: City Attorney Report; November 12, 2019 City Council Meeting

Please accept this as my inaugural report to the City Council as to matters upon which I have been involved. Some of these matters have been already added to the agenda for this meeting or are matters I intend to raise for informational purposes at this meeting. Please advise if you have any questions, comments or concerns relative to these matters.

The following matters are brought to the attention of the City Council:

(1). Purchase and Sale Agreement (PSA) Re: 2900 S. Atlantic Avenue

The members of the Economic Development Committee (EDC) have negotiated terms of a proposed PSA for the vacant parcel of land owned by the City at 2900 S. Atlantic Avenue. Mr. Patrick Sullivan, on behalf of the developer, Florida Lifestyle Homes & Land, Inc., has signed the agreement and it has been placed on the agenda for this meeting. If the PSA is approved by the City Council, the next phase of the development process would be to complete the terms of a Development Agreement between the parties within the targeted time frame of 40 days from the PSA approval date.

(2). Amendments to Ordinance 2019-09

During recent meetings of the EDC at which implementation of the above enhanced code enforcement ordinance was discussed, concerns were addressed regarding the scope of some of the requirements regarding vacant and abandoned buildings. After further consideration, certain amendments were drafted and are recommended by the committee for approval of the City Council, which amendments are intended to reduce potential liability exposure of the City.

(3). City Manager Performance Evaluation Process:

I have submitted to the City Clerk a proposed process for the annual evaluation of the City Manager as required by City Charter, Article III, Section 3.03 and a general overview of which was approved by consensus of the City Council at its meeting of October 22, 2019. The Resolution and the proposed evaluation process therein conforms to the Florida Government-in-the-Sunshine Law, specifically, §286.011, Fla. Stat. (2019), AGO 93-90 and 97-23 and the City Charter.

(4). Opioid Litigation:

I was recently forwarded correspondence regarding the class action lawsuit against various opioid manufacturers and distributors. We have been notified by plaintiff's lead counsel that plaintiff class members will be certified by the court as "litigating and non-litigating" members. The City of Daytona Beach Shores is a proposed non-litigating member of the class. If the City of Daytona Beach Shores should choose to be excluded as a class member, it must submit an "opt-out" form to lead counsel no later than November 22, 2019. Failure to timely submit the opt-out form will mean that the City will be certified as a class member. It is my understanding that this is contingent fee litigation, generally meaning that payment of attorney's fees is contingent on a recovery. However, I'm unaware of a signed retainer agreement by the City in this matter. A retainer agreement, if one had been signed by the City, could obligate the City for costs. I request that, if the City Council decides to opt-out, it take action at the meeting of November 12, 2019 so that we may timely comply with the court's notice requirements. If the City Council takes no action, it will be a certified class member in the litigation. I have attached hereto for your reference the most recent documents forwarded to me from the Volusia County Attorney for the County Council meeting of November 5, 2019.

Date: 11/05/2019		AGENDA ITEM		Item: 06	
☐ Ordinance		☐ Resolution		☐ Budget Resolution	
☒ Other					
County Goals					
☐	Thriving Communities	☐	Economic & Financial Vitality	☐	Excellence in Government
				☒	NA
Department: Legal Department					
Division: Legal					
Subject: Opioid litigation negotiation class.					
Daniel D. Eckert Director Legal Department  Department Approval				Legal Daniel D. Eckert County Attorney Director Legal Department  Approved as to Form and Legality	
Division Approval				County Manager's Office Ryan Ossowski Chief Financial Officer 	
Council Action:					
Modification:					
Account Number(s): NA					
Total Item Budget: NA					
Staff Contact(s): Arthur Graham				Phone: 386 736 5950	Ext. 13241
Summary/Highlights: The county is one of approximately 2200 counties and cities that are plaintiffs in litigation seeking damages against manufacturers and distributors of opioids. Like Volusia, most are plaintiffs in federal multi-district litigation in the Southern District of Ohio. This multi-district litigation consolidates pre-trial proceedings in separate cases filed across the country. To facilitate potential settlement, that court has certified a class of counties and cities for the purpose of negotiation that will continue for five years from the date of its order on September 11, 2019. This is the first certification of such a class in any litigation. There are two subclasses: those counties and cities that filed suit by June 14, 2019, litigating entities (including Volusia, which filed in 2018; and Daytona Beach and Deltona, which timely followed in 2019); and those that did not file suit by that date, non-litigating entities. The court has set a deadline of November 22, 2019, for a county or city to opt out of the class. If the county does not opt out of the class, it will be a class member. Each litigating county or city in the class will have its vote on a proposed settlement counted three ways: by one vote per entity; weighted according to its population; and based upon the number of opioid units distributed in its boundary. The non-litigating entities will have their vote counted in the same manner, but in separate groups. For a proposed settlement agreement to be approved, seventy-five percent or more of each voting method of both litigating and non-					

litigating counties and cities, must vote for the settlement. In other words, class approval of a settlement requires that all six voting counts must be at least seventy-five percent favorable. The court then also must review and approve the settlement, as it must for any class settlement.

If a settlement is reached, seventy-five percent of its total amount will be allocated to class members based upon a formula that relies on information existing within federal databases described below. Fifteen percent would be set aside to enable entities suffering special harm or incurring litigation costs to apply for additional payment. The litigation expenses that would be contractually owed by the county to its attorneys upon a recovery could be the subject of such an application. Ten percent would be used to cover attorneys' fees. The attorneys representing the county, Levin Papantonio, etc., et al., have indicated that should a class settlement be reached, they would seek fees only from the allocated ten percent; and waive the twenty-five percent contingency fee provided by the agreement for representation.

The seventy-five percent portion of any class settlement proceeds would be allocated to negotiation class counties by the following equally weighted factors: the amount of opioids shipped into the county; the number of opioid-involved deaths in the county, and the number of persons who suffer opioid use disorder in the county. (An adjustment to the shipment amount will benefit those smaller counties that have suffered relatively more severe effects.) The county and cities may agree on distribution among them; if not, a default allocation applies. The county or any city also may ask a special master to apply a different formula.

A website has been set up to illustrate how the class system would work based on a hypothetical one billion dollar global settlement. That amount is an example, not an indicator of litigation value. The website is www.opioidsnegotiationclass.info. Attached from the website are frequently asked questions and the portion of the allocation map pertinent to Volusia.

A county or city opting out of the negotiation class would not receive funds from any class settlement; and would have to proceed separately to trial or negotiate its own settlement. If the county stays in the negotiation class, it is agreeing to the methodology for voting and allocation and to the amount of any class settlement. Claims against those manufacturers or distributors which have sought protection in bankruptcy court stand apart from the negotiation class which has been certified.

The county's attorneys in this litigation believe that class participation is the best method to attempt to resolve the case and recommend that the county remain in the negotiation class. The county attorney concurs in that recommendation.

Recommended Motion: Approval to stay in the negotiation class.

**CLASS ACTION NOTICE AND FREQUENTLY ASKED
QUESTIONS (“FAQs”)**

**To: All U.S. Counties, Cities, and Local Governments as
listed at www.OpioidsNegotiationClass.info**

A court authorized this notice. This is not a solicitation from a lawyer.

- Counties and cities across the country have sued manufacturers, distributors, and retailers of prescription opiate drugs seeking, among other things, reimbursement for monies spent addressing the opioid crisis. All federal actions have been centralized into one court in Ohio and are entitled, In re: National Prescription Opiate Litigation, MDL No. 2804 (N.D. Ohio). Additional cases are pending in state courts.
- The Court in In re: National Prescription Opiate Litigation has certified a voluntary “Negotiation Class” (“Class”). The Class is defined as: **all counties, parishes, and boroughs (collectively, “counties”); and all incorporated places, including without limitation cities, towns, townships, villages, and municipalities (collectively “cities”)**. The Class includes all counties and cities, whether they have filed a lawsuit or not. The complete current list of Class Members is available at the Class website: www.OpioidsNegotiationClass.info. This list may be updated as the Court may order.
- **NO SETTLEMENT HAS BEEN REACHED. HOWEVER, IF YOUR COUNTY OR CITY STAYS IN THE CLASS**, it will be bound if a Class settlement is approved in the future. Your county or city will likely **NOT** be provided another opportunity to be excluded from this Class action, so you should read this notice carefully and consult with your counsel regarding your county or city’s rights.
- The Court has certified two Racketeer Influenced and Corrupt Organizations Act (“RICO”) claims under Rule 23(b)(3) and two Controlled Substances Act (“CSA”) issues under Rule 23(c)(4). (see FAQ 7). The Class is certified solely to consider and vote on any future settlement offers made to the Class by one or more of 13 defendants (see FAQ 5). The purposes of the Class are (a) to unify cities and counties into a single negotiating entity to maximize their bargaining power and (b) to provide finality to opioids litigation for any settling Defendant.
- This Negotiation Class will not decide any claims or defenses in opioids litigation on the merits. It is certified as a Negotiation Class only, to facilitate Class Members’ approval or rejection of proposed settlements. There are no proposed settlements at this time, and no guarantee that there will be in the future. **However, your legal rights are affected and it is recommended that you consult with counsel regarding the choice you have to make now.**

Questions? Visit www.OpioidsNegotiationClass.info

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
STAY IN THE CLASS REQUIRES NO ACTION	Stay in the Class. Await the negotiation outcome, but retain the right to pursue your own lawsuit in the meantime. Give up certain rights if a Class settlement is reached and approved by the Class and Court, but get a share of any Class settlement. By taking no action in response to this Notice, you remain in the Class. As a Class Member, you will still retain your right to pursue your own case unless and until any possible Class settlement is approved by the Court. As a Class Member, you have the right to vote on any settlement proposed to the Negotiation Class. A settlement will not be accepted unless supported by 75% of the voting Class Members, counted by number, population, and allocation, for both litigating and non-litigating entities, and approved by the Court. Settlement funds will be distributed at the county level and each county's share – and city's suggested share – can be viewed now by utilizing the Allocation Map at the Class website, www.OpioidsNegotiationClass.info. If the Court approves any settlement, that judgment will prohibit Class Members from suing the settling Defendant(s) about the claims and issues in the litigation.
REMOVE YOURSELF FROM THE CLASS REQUIRES ACTION BY NOVEMBER 22, 2019	Get out of the Class. Get no portion of any settlement. Keep rights. Those who exclude themselves from the Class cannot vote on, will not have the right to be paid under, and will not be bound by, any Class settlement. You keep any rights to negotiate separately about the same legal claims in this lawsuit, even if the Court approves a settlement for the Class. Class Members may exclude themselves from ("opt out" of) the Class by having an authorized officer or employee complete and sign the Exclusion Request Form enclosed here and submit it on or before November 22, 2019 by email or mail in accordance with the instructions in FAQ 26 below.

- Class representatives and Class counsel will represent the Class in negotiations with Defendants who choose to do so. You may enter an appearance through an attorney (at your own expense) if you desire, but it is not required. Class Membership does not eliminate existing agreements with individual counsel. The procedure for payment of Class/common benefit attorneys' fees/costs in connection with any Class settlement must be approved by the Court. Details of the proposed options and procedures for fees and costs are posted on the Class website.
- For complete information on the Class, the settlement allocation formulas, the Class certification motion and Order, the list of included Class Members, the voting process to be used by the Class in accepting or rejecting any Class settlement offer, and an Allocation Map determining your allocation of any proposed settlement, go to www.OpioidsNegotiationClass.info. Important information on the Opioids-related litigation, including all pertinent Orders and Schedules, and Frequently Asked Questions, will be available on the Class website on an ongoing and current basis.

Your rights and options are further explained below.

Any questions? Read on and visit www.OpioidsNegotiationClass.info.

DO NOT WRITE OR CALL THE COURT OR THE CLERK'S OFFICE FOR INFORMATION

Questions? Visit www.OpioidsNegotiationClass.info

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Questions? Visit www.OpioidsNegotiationClass.info

BASIC INFORMATION

1. Why is a Negotiation Class being formed? What is its purpose?

The purpose of the Negotiation Class is to create a cohesive group of cities and counties to negotiate Classwide settlements, on a voluntary basis, with Defendants who make, distribute, or sell opioids nationwide. Class Representatives and Class Counsel will represent the Negotiation Class. Class Members will vote on any Class settlement proposal. If 75% of those Class Members who vote (as described in FAQ 18 and 19 below) support a proposed Settlement, Class Counsel will ask the Court to approve it. The ultimate purpose of the Negotiation Class is to make settlement easier to obtain.

2. Is this the first Negotiation Class Action?

Yes. This is a new use of the Class action mechanism under Federal Rule of Civil Procedure 23, reflecting the unique nature of the national opioids litigation. Unlike any mass litigation before, thousands of cities and counties nationwide are pursuing claims against major defendants. The goal is to recover money to help fight the opioids epidemic, provide prevention and treatment services going forward, and change Defendants' practices.

3. Why use a Class mechanism?

Joining all cities and counties together as a Negotiation Class gives them maximum negotiating power, makes the negotiation of comprehensive settlements a more practical process, enables Defendants to know the group with which they are negotiating, and enables Class Members to vote on resulting settlement offers.

4. Who are the Class Representatives?

The Court has authorized the following 49 counties and cities to serve as the Negotiation Class's Class Representatives: (1) County of Albany, New York; (2) City of Atlanta, Georgia; (3) Bergen County, New Jersey; (4) City of Baton Rouge/East Baton Rouge Parish, Louisiana; (5) Broward County, Florida; (6) Camden County, New Jersey; (7) Cass County, North Dakota; (8) City of Chicago, Illinois; (9) Cobb County, Georgia; (10) City of Concord, New Hampshire; (11) Cumberland County, Maine; (12) City of Delray Beach, Florida; (13) Denver, Colorado; (14) Escambia County, Florida; (15) Essex County, New Jersey; (16) County of Fannin, Georgia; (17) Franklin County, Ohio; (18) Galveston County, Texas; (19) County of Gooding, Idaho; (20) City of Grand Forks, North Dakota; (21) County of Hennepin, Minnesota; (22) City of Indianapolis, Indiana; (23) County of Jefferson, Alabama; (24) Jefferson County/City of Louisville, Kentucky; (25) Jersey City, New Jersey; (26) Kanawha County, West Virginia; (27) King County, Washington; (28) City of Lakewood, Ohio; (29) City of Los Angeles, California; (30) City of Lowell, Massachusetts; (31) City of Manchester, New Hampshire; (32) Maricopa County, Arizona; (33) Mecklenburg County, North Carolina; (34) The Metropolitan Government of Nashville and Davidson County, Tennessee; (35) Milwaukee County, Wisconsin; (36) Monterey County, California; (37) City of Norwalk, Connecticut; (38) County of Palm Beach, Florida; (39) Paterson City, New Jersey; (40) City of Phoenix, Arizona; (41) Prince George's County, Maryland; (42) Riverside County, California; (43) City of Saint Paul, Minnesota; (44) City of Roanoke, Virginia; (45) County of Rockland, New York; (46) City and County of San Francisco, California; (47) County of Smith, Texas; (48) County of Tulsa, Oklahoma; and (49) Wayne County, Michigan.

Questions? Visit www.OpioidsNegotiationClass.info

5. Who are the Defendants?

The Court has authorized the Negotiation Class to negotiate with 13 Defendants (including their affiliates): (1) Purdue, (2) Cephalon, (3) Endo, (4) Mallinckrodt, (5) Actavis, (6) Janssen, (7) McKesson, (8) Cardinal, (9) AmerisourceBergen, (10) CVS Rx Services, Inc., (11) Rite-Aid Corporation, (12) Walgreens, and (13) Wal-Mart. The Negotiation Class is authorized to negotiate settlements with any of these 13 Defendants, on any of the claims or issues identified below in FAQ 7, or other claims or issues arising out of the same factual predicate. If Class Counsel seek to negotiate for the Class with any other defendants, they can file a motion asking the Court to amend the Class certification order.

6. Has a Class settlement been reached with Defendants yet?

No. No Class settlement has been reached yet with any Defendant. But the existence of a Negotiation Class makes the possibility of Class settlement more feasible because a Defendant will know the group with which it is negotiating. There is no guarantee, however, that there will be a Class settlement and it is possible that there will be settlements that do not encompass the Class, such as settlements between one or more Class Members and one or more Defendants.

THE CLASS CLAIMS AND ISSUES

7. What claims and issues are certified for the Negotiation Class?

In this Negotiation Class, the Court certified two federal Racketeer Influenced and Corrupt Organizations Act (“RICO”) claims and two federal Controlled Substances Act (“CSA”) issues. The RICO claims and the issues related to the CSA are similar across the country and the Class. The first RICO claim alleges that five Defendants misled physicians and the public about the need for and addictiveness of prescription opioids, all in an effort to increase sales. The second RICO claim alleges that eight Defendants ignored their responsibilities to report and halt suspicious opioid sales, all in an effort to artificially sustain and increase federally-set limits (quotas) on opioid sales. The CSA issues allege that the CSA required Defendants to create systems to identify, suspend, and report unlawful opioid sales, and that Defendants failed to meet those obligations. As noted in FAQ 5, above, the Negotiation Class is authorized to negotiate Class settlements concerning these claims and issues or other claims or issues arising out of the same factual predicate. **However, this Negotiation Class does not involve claims by State governments against the Defendants and no Class settlement will release or otherwise interfere with any State government’s current or future litigation. This Negotiation Class concerns claims only of counties and cities.** You can read more about these claims and issues in the Court’s Memorandum Opinion certifying this Class, which is posted at www.OpioidsNegotiationClass.info.

8. Has the Court decided any claims or issues?

No. The Court has not decided any Classwide claims or defenses on the merits and the Court will not render any Classwide decisions on the merits of any claims asserted by the Class or individual Members of it. By establishing this Negotiation Class and issuing this notice, the Court is not suggesting the Class would win or lose this case. This Class has been certified for negotiation purposes only.

Questions? Visit www.OpioidsNegotiationClass.info

WHO IS IN THE CLASS

9. What entities are included in the Negotiation Class?

The Negotiation Class is defined as:

All counties, parishes, and boroughs (collectively, “counties”); and all incorporated places, including without limitation cities, towns, townships, villages, and municipalities (collectively “cities”).

A complete current list of Class Members is available at www.OpioidsNegotiationClass.info. The list may be updated as the Court may order.

The terms “counties” and “cities” are used only as shorthand. The Class includes political subdivisions with other names, such as parishes, villages, towns, townships, etc. The list of Class Members was devised primarily from the U.S. Census Bureau lists of governmental entities that provide services to their residents. Check the Cities and Counties lists posted on the Class website to confirm whether you are a Negotiation Class Member.

10. Are counties and cities with state court-filed actions considered part of the Negotiation Class?

Yes. Counties and cities that sue in state court are Members of this Negotiation Class, with the option to opt out. However, nothing about Membership in the Negotiation Class interferes with the rights of any federal or state court plaintiffs to proceed with their own cases for litigation, trial, or individual settlement. Only if and when a Class settlement has been reached, has been approved by 75% of the voting Class Members as described in FAQ 19, and has been approved by the Court, would Class Members lose their ability to proceed on their own, in exchange for the settlement benefits that they would receive.

11. Will the Negotiation Class end the opioid litigation that my County or City has filed?

Not now and only if a Class settlement is later reached and approved. Your county’s or city’s Membership in the Negotiation Class will not immediately affect any opioid suit it has filed, whether in federal or state court. It also will not stop your county or city from filing or pursuing a lawsuit, and it will not affect any scheduled hearings or trials in any lawsuit. However, if there is a final Class settlement, approved by the required 75% of the voting Class Members and by the Court, the final settlement will likely end all other opioids-related litigation brought by Class Members. In the meantime, you do not need to opt out of the Class to file, continue to prosecute, or settle your own case, and you may keep any settlement or judgment you obtain. If any county or city obtains a judgment or settlement with a Defendant before the Negotiation Class does, however, it will not receive additional compensation through any later Negotiation Class settlement. But by remaining in the Class, your county or city does risk foregoing its own lawsuit (although it would obtain money from a Class settlement) if a Class settlement is reached and approved.

12. How does the Negotiation Class affect other types of opioid plaintiffs that are not counties or cities?

The Negotiation Class does not directly affect the litigation or settlement of the claims of other types of plaintiffs, such as Indian Tribes, third party payors, and others, that are proceeding in federal or state courts. These plaintiffs can organize themselves as groups or propose their own Classes, for trial or settlement purposes.

Questions? Visit www.OpioidsNegotiationClass.info

THE NEGOTIATION CLASS PROCESS

13. Now that the Court has approved this process, what will happen next?

The creation of the Negotiation Class has these next steps:

- On **September 11, 2019**, Judge Polster, the federal judge overseeing all of the national opioids litigation, certified the Negotiation Class to go forward.
- On or before **September 20, 2019**, Class Action Notice will be sent via First-Class mail and posted to the Class website www.OpioidsNegotiationClass.info to all Class Members.
- Class Members have until **November 22, 2019** to decide whether to participate or to opt out of the Class. This is the “opt-out period.” All Class Members are automatically included in the Class. If a Class Member wants to participate, it does not need to do anything at this point. Only Class Members that wish to exclude themselves (“opt out”) and not participate in the Class must act: they must submit a copy of the enclosed Exclusion Request Form on or before **November 22, 2019**, using the instructions in FAQ 26.
- After the close of the opt-out period, the Court will enter an order confirming the Membership of the Class, saying who is in and who is out of the Class.
- After that, the Class will operate if, and only if, one or more of the Defendants wishes to negotiate with the Class as a whole through the Negotiation Class mechanism.
- If a proposed Class settlement is reached, the proposal will be submitted to the entire Class Membership for its approval or rejection in accordance with the voting formula (described in FAQ 18 and 19 below). If no proposed settlement is reached, the Class will not vote and will have no other role.

14. If my County or City chooses to participate in the Negotiation Class, how will it know when there is a proposed Class settlement?

All Negotiation Class Members will be given advance notice of any Class settlement offer, including details on its terms and conditions, and they will have an opportunity to vote on each settlement offer. Class Members will be able to cast their vote securely, through the Class website, which will establish a voting identity and portal for each Class Member. Only Class settlements achieving 75% approval votes, by number, by allocation, and by population, of the litigating and non-litigating Class Members that vote (as described in FAQ 19) will be submitted to the Court, which will make the final determination of whether to approve the settlement.

15. If there is a proposed Class settlement, does the Court still have to approve it?

Yes. If there is a proposed settlement that is approved by 75% of the voting Class Members, as described in FAQ 18 and 19, the Court will review and decide whether to approve it, under the Class action settlement approval process set forth in Federal Rule of Civil Procedure 23(e). Generally, the Court will assess whether any settlement is fair, reasonable, and adequate. All applications for fees and costs also require court approval under Rule 23 procedures. (See https://www.law.cornell.edu/rules/frcp/rule_23.)

16. If there is a proposed settlement and my County or City is included in the Negotiation Class, but it disapproves of the settlement terms, can my County or City object to the settlement?

Yes. As a Negotiation Class Member, you will be entitled under Rule 23(e) to object to any settlement, even if it has received approval from the Class. However, as described in FAQ 27, you

Questions? Visit www.OpioidsNegotiationClass.info

will likely not be able to exclude yourself from the Class at that time. An objection explains your concerns to the Court for its consideration but does not remove you from the Class.

17. How long will the Negotiation Class last?

The Negotiation Class will last for 5 years from the date it is certified by the Court. The Court certified the Class on September 11, 2019 and the Negotiation Class will last until September 11, 2024. After that date, the Class will not exist as an entity with which a Defendant can negotiate. However, the Negotiation Class will continue to exist with regard to: (1) any Class settlements presented to the Negotiation Class for a vote before that date, to carry out the voting and approval process; and (2) any Class settlements reached before that date, to complete settlement administration and enforcement.

VOTING

18. If there is a proposed Class settlement, how will the voting be done?

Each Class Member will vote only once on any particular Class settlement proposal. The vote will simply be yes-or-no, in favor of or against the proposed settlement. Class Members that do not vote will not be counted as either yes or no votes; as with an election for government office in the United States, the only votes that are counted are those of the voters who actually cast votes. Class Members' votes will be tabulated mechanically within each applicable voting pool, to make sure that 75% of each pool is in favor of the proposed settlement before it is presented to the Court. The voting pools are described in FAQ 19. Voting tabulation does not require any effort by the Class Members. The requirement of 75% support of voting Class Members across the different voting pools ensures that no settlement will go forward without a wide cross-section of support from cities and counties of all sizes and interests.

19. If there is a proposed Class settlement, how many votes are needed to approve it?

The agreement to be bound by a supermajority vote means that no settlement can be reached that would bind the Negotiation Class without the approval of 75% of the voting Class Members, defined in several ways. To be binding, 75% of those voting in each of the following six categories must approve a proposed settlement:

- 75% of the total number of voting Class Members that had filed suit as of June 14, 2019 ("litigating entities"). This number is based on all individual Class Members who had suits on file regardless of size, so that each voting entity has one vote;
- 75% of the total number of voting Class Members that had not filed suit as of June 14, 2019 ("non-litigating entities"). This number is based on all individual Class Members who had not filed suit, regardless of size, so that each voting entity has one vote;
- 75% of the total population of all voting Class Members that had filed suit as of June 14, 2019. For this computation, the vote of the county or city is weighted according to its population, with each person in a voting city and each person in a voting county equal to one vote. Thus, by way of example, if a county votes yes and has a population of 20,000, and a city within the county votes yes and has a population of 10,000, the county's vote is weighted as 20,000 votes in favor, and the city's vote is recorded as 10,000 votes in favor. The population for each County or City will be based on current census data. The current data is presented on the Class website, www.OpioidsNegotiationClass.info. Individual residents in this category may be counted twice, once as a resident of a municipality, and once as a resident of a county;

Questions? Visit www.OpioidsNegotiationClass.info

- 75% of the total population of all voting Class Members that had not filed suit as of June 14, 2019. For this computation, the vote of the county or city is weighted according to its population, with each person in a voting city and each person in a voting county equal to one vote. Thus, by way of example, if a county votes and has a population of 20,000, and a city within the county votes yes and has a population of 10,000, the county's vote is weighted as 20,000 votes in favor, and the city's vote is recorded as 10,000 votes in favor. Again, the population for each County or City will be based on current census data. The current data is presented on the Class website, www.OpioidsNegotiationClass.info. Individual residents in this category may be counted twice, once as a resident of a municipality, and once as a resident of a county;
- 75% of the litigating Class Members casting votes, weighted by their settlement fund allocations as shown at the Allocation Map posted at opioidsnegotiationclass.info; and
- 75% of the non-litigating Class Members casting votes, weighted by their settlement fund allocations as shown at the Allocation Map posted at opioidsnegotiationclass.info.

For purposes of counting votes, only votes cast will be considered. In order for a proposed settlement to be binding on the Negotiation Class, 75% of those Class Members who cast votes in **each** of these six categories must be in favor. No settlement will be submitted to the Court for final approval unless 75% of those voting in **each** of the six categories are in favor. No county or city that is not a Class Member as of the deadline for a vote on a proposal will be allowed to vote on that proposal.

ALLOCATION OF CLASS SETTLEMENT FUNDS

20. If there is a Class settlement, how will my County or City's share of the settlement be determined?

Any Class settlement funds will be distributed in three steps:

Step 1: Each county's share of the settlement will be distributed in accordance with an "allocation model." The allocation model uses three factors, based on reliable, detailed, and objective national data, to determine the share of a settlement fund that each county will receive. These factors address the most critical causes and effects of the opioids crisis, and are each weighted equally (1/3-1/3-1/3): (1) the amount of opioids distributed within the county, (2) the number of opioid deaths that occurred in the county; and (3) the number of people who suffer opioid use disorder in the county. This model is designed not to favor either small or large counties based solely on population. Ultimately, the model allocates settlement funds in proportion to where the opioid crisis has caused actual harm.

Step 2: Counties and their constituent cities, towns, and boroughs may distribute the funds allocated to the county among all of the jurisdictions in any manner they choose. If the county and cities cannot agree on how to allocate the funds, the Class website reflects a default allocation that will apply. The default allocation formula uses historical federal data showing how the specific county and the cities within it have made opioids-related expenditures in the past. Any of the affected jurisdictions may ask a Special Master to apply a different formula.

Step 3: If the default allocation is used and a city's share is less than \$500, then that amount will instead be distributed to the county in which the city lies to allow practical application of the abatement remedy. Affected cities could seek recovery through intra-county allocation described in Step 2, or from the Class Members' Special Needs Fund (see FAQ 24). In the rare circumstance that a city with a share of less than \$500 lies in a county that does not have a county government, the amount would instead go to the Class Members' Special Needs Fund, and Class members could seek recovery from that Fund.

Further information about the allocation formulas and their data sources are available at the Class website.

Questions? Visit www.OpioidsNegotiationClass.info

21. What happens if a county and its constituent cities make different decisions about staying in the Class?

- If a county and all of its constituent cities remain in the Class, each entity's share will be determined as explained in FAQ 20.
- If a county remains in the Class, but one or more cities within the County are not in the Class, there are a variety of ways that a Class settlement might address that situation, but it is possible that a Class settlement would require that the County's allocation be reduced.
- If a county is not in the Class, but cities within that county remain in the Class, there are a variety of ways a Class settlement might address that situation. One possibility is that a city would receive no direct monetary allocation because its county has opted out, but that it could seek monetary relief through the Special Needs Fund (see FAQ 24). If a settlement provides a city no possibility of monetary relief because its county has opted out, Class Counsel anticipates the city would not be required to release its claims against the settling Defendant.

22. If there is a settlement between a Defendant and a State or States, what impact will this Negotiation Class have on the division of monies between a State and the cities and counties within the State?

The Negotiation Class process does not interfere with a Defendant's ability to settle directly with one or more States. If a Defendant reaches a settlement directly with a State, nothing about this Negotiation Class process would affect the distribution of those settlement funds between the State and its own cities or counties. The Court has explicitly ordered that the Class's lawyers not involve themselves or the Class in the process of allocating monies secured by States between themselves and their counties and cities.

23. Will Negotiation Class Representatives receive anything more than other Class Members?

Negotiation Class Representatives do not receive preferential treatment under any settlement simply for serving as Class Representatives. Their allocation will be calculated in precisely the same manner as every other Class Member's. However, they can apply to the Court for reimbursement of costs and expenses incurred by reason of serving as Class Representatives. Also, courts often award a modest amount to Class Representatives, called an incentive or service award, so as to encourage Class Representatives to step forward on behalf of others. Any such awards are subject to Class notice and Court approval.

24. What is the Special Needs Fund?

Fifteen percent (15%) of any Class settlement fund will be put into the "Special Needs Fund." Any Class Member may apply for a distribution from the Special Needs Fund: (1) to recover its costs of litigating its own opioids lawsuit, if that case was filed before June 14, 2019; and/or (2) to obtain additional relief for any local impact of the opioids crisis that is not captured by the Class Member's allocation. Applications will be made to and approved by a court-appointed Special Master, on a case-by-case basis. Any unawarded amount remaining in this Special Needs Fund would revert to the Class.

YOUR RIGHTS AND OPTIONS

25. Can my county or city exclude itself from the Negotiation Class?

Yes. You have a **one-time** opportunity to exclude your county or city from the Class and you must do so before November 22, 2019. You must follow the procedure set forth in FAQ 26 below to

Questions? Visit www.OpioidsNegotiationClass.info

exclude your county or city. As explained in FAQ 27, you will likely **not** be given a second opportunity to exclude your county or city from the Class if a settlement is later reached and you should not count on such an opportunity being available at that time.

26. How does my county or city exclude itself from the Negotiation Class?

You may exclude your county or city (“opt out”) by signing and sending, either by email or by first-class U.S. mail, the enclosed Exclusion Request Form.

- If submitted by email, the form must be sent to info@OpioidsNegotiationClass.info on or before **November 22, 2019**.
- If submitted by mail, the form must be postmarked on or before **November 22, 2019** and sent by first-class U.S. mail to:

NPO Litigation
P.O. Box 6727
Portland, OR 97228-6727

The Exclusion Request Form must be signed by an **authorized** official or employee of the county or city itself, under penalty of perjury pursuant to 28 U.S.C. § 1746, and is subject to verification by the Court. If you exclude your county or city from the Negotiation Class, your county or city will not be bound by any Orders or Judgments regarding the Class, and it will have no right to share in any settlement reached by the Class.

27. If my county or city stays in the Negotiation Class, can it exclude itself later if it doesn't like a proposed settlement?

Not under the current Court Order. The Court's Order certifying the Negotiation Class provides only one opportunity for a county or city to exclude itself from the Class. The exclusion deadline ends on November 22, 2019. If a settlement is reached and proposed to the Class for its approval, Class Members who do not support the settlement may (1) vote against it and/or, (2) if the settlement is nonetheless approved by the Class votes, file objections with the Court. Rule 23 permits a court to offer a second opportunity for Class Members to opt out when a settlement is proposed, but the Rule does not require the Court to give Class Members a second opportunity to opt out. In this case, it is anticipated that the Court will not give Class Members a second opportunity to opt out. Therefore, Class Members should not rely on that possibility. Class Members should expect that there will be no opportunity to opt out of the Class after **November 22, 2019**.

THE LAWYERS REPRESENTING THE CLASS

28. Who are the Class Counsel?

The Court has authorized the following six lawyers to jointly represent the Negotiation Class: Jayne Conroy and Christopher A. Seeger are Co-Lead Negotiation Class Counsel and Gerard Stranch, Louise Renne, Mark Flessner, and Zachary Carter are Negotiation Class Counsel. Each of these six lawyers represents only cities or counties in Opioids-related litigation.

29. How do Class Counsel get paid?

Class Counsel will apply to the Court for approval of fees and costs under Rule 23(h). As a Class Member, you will receive notice and have an opportunity to object to any such application. The Court may appoint fee committees to make recommendations of any fee awards, to avoid duplication of payment, and to ensure appropriate compensation of those whose efforts provided a common benefit. The Court will make the final decision about all fees paid out of the Class's recovery to any lawyer.

Questions? Visit www.OpioidsNegotiationClass.info

30. Under this proposal, what happens to my County or City's current fee agreement with outside counsel?

The current fee agreement that a county or city has with its outside counsel remains in effect. Membership in the Negotiation Class does not change that. In the event of any settlement that achieves Class and Court approval, there would be a "Private Attorneys Fund" from which outside counsel for Class Members that had signed retainer agreements for opioid epidemic-related litigation before June 14, 2019 could apply for fees and costs in lieu of any current fee agreement. That would be a voluntary decision between the county or city and its outside counsel. A total of up to 10% (maximum) of any approved Class settlement amount will be held in the Private Attorneys Fund. Any unawarded amount remaining in this Fund would revert to the Class. The Court must approve all payments from this Fund.

GETTING MORE INFORMATION

31. How can my County or City keep up with what's going on in this case?

Pertinent news and information will be posted at the Class website, www.OpioidsNegotiationClass.info on an ongoing basis. As a Class Member, you also will have the opportunity to sign up, through the Class website, for email notices alerting you to the fact that new information has been posted to the Class website.

**DO NOT WRITE OR CALL THE COURT OR THE
CLERK'S OFFICE FOR INFORMATION**

DATE: September 11, 2019.

Questions? Visit www.OpioidsNegotiationClass.info

In Re: National Prescription Opiates Litigation (/)

MDL No. 2804 (N.D. Ohio)

Frequently Asked Questions

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3. Why use a Class mechanism?
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1. Why is a Negotiation Class being formed? What is its purpose?

The purpose of the Negotiation Class is to create a cohesive group of cities and counties to negotiate Classwide settlements, on a voluntary basis, with Defendants who make, distribute, or sell opioids nationwide. Class Representatives and Class Counsel will represent the Negotiation Class. Class Members will vote on any Class settlement proposal. If 75% of those Class

Members who vote (as described in [FAQ 18 and 19](#)) support a proposed Settlement, Class Counsel will ask the Court to approve it. The ultimate purpose of the Negotiation Class is to make settlement easier to obtain.

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2. Is this the first Negotiation Class Action?

Yes. This is a new use of the Class action mechanism under Federal Rule of Civil Procedure 23, reflecting the unique nature of the national opioids litigation.

Unlike any mass litigation before, thousands of cities and counties nationwide are pursuing claims against major defendants. The goal is to recover money to help fight the opioids epidemic, provide prevention and treatment services going forward, and change Defendants' practices.

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3. Why use a Class mechanism?

Joining all cities and counties together as a Negotiation Class gives them maximum negotiating power, makes the negotiation of comprehensive settlements a more practical process, enables Defendants to know the group with which they are negotiating, and enables Class Members to vote on resulting settlement offers.

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4. Who are the Class Representatives?

The Court has authorized the following 49 counties and cities to serve as the Negotiation Class's Class Representatives: (1) County of Albany, New York; (2) City of Atlanta, Georgia; (3) Bergen County, New Jersey; (4) City of Baton Rouge/East Baton Rouge Parish, Louisiana; (5) Broward County, Florida; (6) Camden County, New Jersey; (7) Cass County, North Dakota; (8) City of Chicago, Illinois; (9) Cobb County, Georgia; (10) City of Concord, New Hampshire; (11) Cumberland County, Maine; (12) City of Delray Beach, Florida; (13) Denver, Colorado; (14) Escambia County, Florida; (15) Essex County, New Jersey; (16) County of Fannin, Georgia; (17) Franklin County, Ohio; (18) Galveston County, Texas; (19) County of Gooding, Idaho; (20) City of Grand Forks, North Dakota; (21) County of Hennepin, Minnesota; (22) City of Indianapolis, Indiana; (23) County of Jefferson, Alabama; (24) Jefferson County/City of Louisville, Kentucky; (25) Jersey City, New Jersey; (26) Kanawha County, West Virginia; (27) King County, Washington; (28) City of Lakewood, Ohio; (29) City of Los Angeles, California; (30) City of Lowell, Massachusetts; (31) City of Manchester, New Hampshire; (32) Maricopa County, Arizona; (33) Mecklenburg County, North

Carolina; (34) The Metropolitan Government of Nashville and Davidson County, Tennessee; (35) Milwaukee County, Wisconsin; (36) Monterey County, California; (37) City of Norwalk, Connecticut; (38) County of Palm Beach, Florida; (39) Paterson City, New Jersey; (40) City of Phoenix, Arizona; (41) Prince George's County, Maryland; (42) Riverside County, California; (43) City of Saint Paul, Minnesota; (44) City of Roanoke, Virginia; (45) County of Rockland, New York; (46) City and County of San Francisco, California; (47) County of Smith, Texas; (48) County of Tulsa, Oklahoma; and (49) Wayne County, Michigan.

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5. Who are the Defendants?

The Court has authorized the Negotiation Class to negotiate with 13 Defendants (including their affiliates): (1) Purdue, (2) Cephalon, (3) Endo, (4) Mallinckrodt, (5) Actavis, (6) Janssen, (7) McKesson, (8) Cardinal, (9) AmerisourceBergen, (10) CVS Rx Services, Inc., (11) Rite-Aid Corporation, (12) Walgreens, and (13) Wal-Mart. The Negotiation Class is authorized to negotiate settlements with any of these 13 Defendants, on any of the claims or issues identified below in [FAQ 7](#), or other claims or issues arising out of the same factual predicate. If Class Counsel seek to negotiate for the Class with any other defendants, they can file a motion asking the Court to amend the Class certification order.

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6. Has a Class settlement been reached with Defendants yet?

No. No Class settlement has been reached yet with any Defendant. But the existence of a Negotiation Class makes the possibility of Class settlement more feasible because a Defendant will know the group with which it is negotiating. There is no guarantee, however, that there will be a Class settlement and it is possible that there will be settlements that do not encompass the Class, such as settlements between one or more Class Members and one or more Defendants.

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7. What claims and issues are certified for the Negotiation Class?

In this Negotiation Class, the Court certified two federal Racketeer Influenced and Corrupt Organizations Act ("RICO") claims and two federal Controlled Substances Act ("CSA") issues. The RICO claims and the issues related to the CSA are similar across the country and the Class. The first RICO claim alleges that five Defendants misled physicians and the public about the need for and addictiveness of prescription opioids, all in an effort to increase sales. The second RICO claim alleges that eight Defendants ignored their responsibilities to

report and halt suspicious opioid sales, all in an effort to artificially sustain and increase federally-set limits (quotas) on opioid sales. The CSA issues allege that the CSA required Defendants to create systems to identify, suspend, and report unlawful opioid sales, and that Defendants failed to meet those obligations. As noted in [FAQ 5](#), above, the Negotiation Class is authorized to negotiate Class settlements concerning these claims and issues or other claims or issues arising out of the same factual predicate. However, this Negotiation Class does not involve claims by State governments against the Defendants and no Class settlement will release or otherwise interfere with any State government's current or future litigation. This Negotiation Class concerns claims only of counties and cities. You can read more about these claims and issues in the Court's Memorandum Opinion certifying this Class, which is posted [here](#) (</Content/Documents/Opinion Certifying Negotiation Class.pdf>).

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8. Has the Court decided any claims or issues?

No. The Court has not decided any Classwide claims or defenses on the merits and the Court will not render any Classwide decisions on the merits of any claims asserted by the Class or individual Members of it. By establishing this Negotiation Class and issuing the notice, the Court is not suggesting the Class would win or lose this case. This Class has been certified for negotiation purposes only.

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9. What entities are included in the Negotiation Class?

The Negotiation Class is defined as:

All counties, parishes, and boroughs (collectively, "counties"); and all incorporated places, including without limitation cities, towns, townships, villages, and municipalities (collectively "cities").

A complete current list of Class Members is available [here](#) (</Content/Documents/Cities and Counties.xlsx>). The list may be updated as the Court may order.

The terms "counties" and "cities" are used only as shorthand. The Class includes political subdivisions with other names, such as parishes, villages, towns, townships, etc. The list of Class Members was devised primarily from the U.S. Census Bureau lists of governmental entities that provide services to their

residents. Check the Cities and Counties lists posted [here](#) ([/Content/Documents/Cities and Counties.xlsx](#)) to confirm whether you are a Negotiation Class Member.

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10. Are counties and cities with state court-filed actions considered part of the Negotiation Class?

Yes. Counties and cities that sue in state court are Members of this Negotiation Class, with the option to opt out. However, nothing about Membership in the Negotiation Class interferes with the rights of any federal or state court plaintiffs to proceed with their own cases for litigation, trial, or individual settlement. Only if and when a Class settlement has been reached, has been approved by 75% of the voting Class Members as described in [FAQ 19](#), and has been approved by the Court, would Class Members lose their ability to proceed on their own, in exchange for the settlement benefits that they would receive.

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11. How does the Negotiation Class affect an opioid lawsuit that my County or City has filed or may file?

The Court's certification of the Negotiation Class does not automatically end or immediately affect any opioid suit that a Class Member has filed, whether in federal or state court. Therefore, your county or city does NOT need to opt out of the Class in order to prosecute, try, or settle its own case against one or more Defendants. By remaining in the Class, however, your county or city does risk dismissal of its own lawsuit (or loss of the right to file one if it hasn't already done so) against a settling Defendant if a Class settlement is reached and approved prior to your county or city obtaining any relief (at trial or through a non-class settlement) on its own (although you would obtain money from the Class settlement).

Specifically, under the Court's Order certifying the Negotiation Class (see paragraph 13 of the [Order](#) ([/Content/Documents/Order Certifying Class and Approving Notice.pdf](#))), even if you remain a member of the Negotiation Class, you do NOT give up your right to file or prosecute your individual suit, including taking the case all the way through trial and verdict, or negotiating your own settlement against one or more Defendants. The filing of complaints and motions, pursuit of pretrial discovery, pretrial hearings, trials, and individual settlements prior to the approval of any Class settlement are NOT affected by membership in the Negotiation Class. Again, this applies to cases in both federal and state court.

Importantly, even if your county or city obtains a judgment against one or more of the 13 Defendants or it reaches a settlement with one or more of them, it will *still* remain a Class Member with respect to all of the other Defendants. Therefore, if your county or city accepts and collects on a judgment or a settlement with a particular Defendant before there is a final, approved Class settlement with that Defendant, your county or city will not automatically be entitled to receive *additional* compensation with respect to that Defendant through the Class settlement (but it will be bound by any Class settlement to the extent the Class settlement settles claims against other Defendants). Similarly, if a county or city has a case against a particular Defendant that goes to trial and a verdict is returned in favor of that Defendant, your county or city won't automatically be entitled to share in any Class-approved and Court-approved settlement that the Class may later reach with that same Defendant (but it will be bound by any Class settlement to the extent the Class settlement settles claims against other Defendants).

The underlying presumption is that Class members should not be able to obtain double-recoveries under their own settlements/judgments and under a Class settlement. Thus, while it is possible that a Class settlement could be reached that will allow Class members who have obtained individual settlements or gone to verdict at trial to participate in a Class settlement to some extent (such as by giving up rights under individual settlements or judgments), it also is possible that, once a Class member has obtained an individual settlement with, or gone to verdict in a trial against, one or more Defendants, those Defendants will not agree to allow the Class member to participate in the Class settlement fully or at all.

Because there are many ways that individual settlements/verdicts might interact or overlap with a Class settlement, the Court has reserved authority to determine in the context of actual situations whether Class members with prior judgments or settlements should be precluded from participation in any particular Class settlement. The Court will presume that, once a county or city has collected on an individual settlement or judgment with respect to a Defendant, that county or city cannot also participate in any Class settlement fund with respect to the same Defendant. However, the Court will allow a county or city to make an application (with notice to the Class Representatives, Class Counsel, and relevant Defendant(s)) to overcome the presumption by demonstrating good cause in particular circumstances.

Example 1: County A has a case against Defendant X, an opioids manufacturer, that goes to trial and it obtains a judgment against Defendant X. County A will be allowed to collect on its judgment against Defendant X, but *not* to also share in

any settlement that the Class negotiates with Defendant X (unless County A gives up its judgment). County A, however, will still remain a Class Member and *will* be entitled to share in a settlement that the Class later reaches with Defendant Y, an opioids distributor, or Defendants other than Defendant X.

Example 2: County B has a case Defendant Y, an opioids distributor, that goes to trial and a verdict is returned in favor of Defendant Y. County B will *not* be allowed to share in any settlement that the Class negotiates with Defendant Y. County B, however, will still remain a Class Member and *will* be entitled to share in settlements that the Class later reaches with Defendant Z, a pharmacy, or Defendants other than Defendant Y.

Example 3: County C has a case against Defendant X, an opioids manufacturer, that it settles. The Class later reaches a settlement with Defendant X, as well as with Defendant Y, an opioids distributor, and with Defendant Z, a pharmacy. Unless Defendant X agrees to void the settlement with County C, County C will *not* be allowed to share in the settlement that the Class reaches with Defendant X, but it *will* be allowed to keep what it received under its individual settlement, and it will be allowed to share in the settlement that the Class negotiates with Defendants Y and Z.

- a. **If my county or city participates in the Negotiation Class, does it waive any rights to contest federal jurisdiction over any lawsuit the county or city has filed or may file concerning the Opioid epidemic?**

On October 4, 2019, Judge Polster issued an order specifically confirming that a county or city can participate in the Negotiation Class without giving up any right to contest federal court jurisdiction over that county or city's claims concerning the Opioid epidemic. For example, if your county or city filed a lawsuit in state court and that lawsuit was removed to federal court, your county or city may participate in the Negotiation Class and still argue that its lawsuit should be remanded to state court. As a separate issue, however, if your county or city participates in the Negotiation Class, it will be subject to the jurisdiction of the United States District Court for the Northern District of Ohio (Judge Polster) with respect to matters pertinent to the Negotiation Class itself.

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12. **How does the Negotiation Class affect other types of opioid plaintiffs that are not counties or cities?**

The Negotiation Class does not directly affect the litigation or settlement of the claims of other types of plaintiffs, such as Indian Tribes, third party payors, and others, that are proceeding in federal or state courts. These plaintiffs can organize themselves as groups or propose their own Classes, for trial or settlement purposes.

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13. Now that the Court has approved this process, what will happen next?

The creation of the Negotiation Class has these next steps:

- On September 11, 2019, Judge Polster, the federal judge overseeing all of the national opioids litigation, certified the Negotiation Class to go forward.
- On or before September 20, 2019, Class Action Notice will be sent via First-Class mail and posted to this website to all Class Members.
- Class Members have until November 22, 2019 to decide whether to participate or to opt out of the Class. This is the "opt-out period." All Class Members are automatically included in the Class. If a Class Member wants to participate, it does not need to do anything at this point. Only Class Members that wish to exclude themselves ("opt out") and not participate in the Class must act: they must submit a copy of the Exclusion Request Form available [here \(/Content/Documents/Exclusion Request Form.pdf\)](/Content/Documents/Exclusion Request Form.pdf) on or before **November 22, 2019**, using the instructions in [FAQ 26](#).
- After the close of the opt-out period, the Court will enter an order confirming the Membership of the Class, saying who is in and who is out of the Class.
- After that, the Class will operate if, and only if, one or more of the Defendants wishes to negotiate with the Class as a whole through the Negotiation Class mechanism.
- If a proposed Class settlement is reached, the proposal will be submitted to the entire Class Membership for its approval or rejection in accordance with the voting formula (described in [FAQ 18 and 19](#)). If no proposed settlement is reached, the Class will not vote and will have no other role.

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14. If my County or City chooses to participate in the Negotiation Class, how will it know when there is a proposed Class settlement?

All Negotiation Class Members will be given advance notice of any Class settlement offer, including details on its terms and conditions, and they will have an opportunity to vote on each settlement offer. Class Members will be able to cast their vote securely, through this website, which will establish a voting identity and portal for each Class Member. Only Class settlements achieving 75% approval votes, by number, by allocation, and by population, of the litigating and non-litigating Class Members that vote (as described in [FAQ 19](#)) will be submitted to the Court, which will make the final determination of whether to approve the settlement.

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15. If there is a proposed Class settlement, does the Court still have to approve it?

Yes. If there is a proposed settlement that is approved by 75% of the voting Class Members, as described in [FAQ 18](#) and 19, the Court will review and decide whether to approve it, under the Class action settlement approval process set forth in Federal Rule of Civil Procedure 23(e). Generally, the Court will assess whether any settlement is fair, reasonable, and adequate. All applications for fees and costs also require court approval under Rule 23 procedures. (See https://www.law.cornell.edu/rules/frcp/rule_23 (https://www.law.cornell.edu/rules/frcp/rule_23).)

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16. If there is a proposed settlement and my County or City is included in the Negotiation Class, but it disapproves of the settlement terms, can my County or City object to the settlement?

Yes. As a Negotiation Class Member, you will be entitled under Rule 23(e) to object to any settlement, even if it has received approval from the Class. However, as described in [FAQ 27](#), you will likely not be able to exclude yourself from the Class at that time. An objection explains your concerns to the Court for its consideration but does not remove you from the Class.

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17. How long will the Negotiation Class last?

The Negotiation Class will last for 5 years from the date it is certified by the Court. The Court certified the Class on September 11, 2019 and the Negotiation Class will last until September 11, 2024. After that date, the Class will not exist

as an entity with which a Defendant can negotiate. However, the Negotiation Class will continue to exist with regard to: (1) any Class settlements presented to the Negotiation Class for a vote before that date, to carry out the voting and approval process; and (2) any Class settlements reached before that date, to complete settlement administration and enforcement.

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18. If there is a proposed Class settlement, how will the voting be done?

Each Class Member will vote only once on any particular Class settlement proposal. The vote will simply be yes-or-no, in favor of or against the proposed settlement. Class Members that do not vote will not be counted as either yes or no votes; as with an election for government office in the United States, the only votes that are counted are those of the voters who actually cast votes. Class Members' votes will be tabulated mechanically within each applicable voting pool, to make sure that 75% of each pool is in favor of the proposed settlement before it is presented to the Court. The voting pools are described in [FAQ 19](#). Voting tabulation does not require any effort by the Class Members. The requirement of 75% support of voting Class Members across the different voting pools ensures that no settlement will go forward without a wide cross-section of support from cities and counties of all sizes and interests.

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19. If there is a proposed Class settlement, how many votes are needed to approve it?

The agreement to be bound by a supermajority vote means that no settlement can be reached that would bind the Negotiation Class without the approval of 75% of the voting Class Members, defined in several ways. To be binding, 75% of those voting in each of the following six categories must approve a proposed settlement:

- 75% of the total number of voting Class Members that had filed suit as of June 14, 2019 ("litigating entities"). This number is based on all individual Class Members who had suits on file regardless of size, so that each voting entity has one vote;
- 75% of the total number of voting Class Members that had not filed suit as of June 14, 2019 ("non-litigating entities"). This number is based on all individual Class Members who had not filed suit, regardless of size, so that each voting entity has one vote;

- 75% of the total population of all voting Class Members that had filed suit as of June 14, 2019. For this computation, the vote of the county or city is weighted according to its population, with each person in a voting city and each person in a voting county equal to one vote. Thus, by way of example, if a county votes yes and has a population of 20,000, and a city within the county votes yes and has a population of 10,000, the county's vote is weighted as 20,000 votes in favor, and the city's vote is recorded as 10,000 votes in favor. The population for each County or City will be based on current census data. The current data is presented [here](#) ([/Content/Documents/Cities and Counties.xlsx](#)). Individual residents in this category may be counted twice, once as a resident of a municipality, and once as a resident of a county;
- 75% of the total population of all voting Class Members that had not filed suit as of June 14, 2019. For this computation, the vote of the county or city is weighted according to its population, with each person in a voting city and each person in a voting county equal to one vote. Thus, by way of example, if a county votes and has a population of 20,000, and a city within the county votes yes and has a population of 10,000, the county's vote is weighted as 20,000 votes in favor, and the city's vote is recorded as 10,000 votes in favor. Again, the population for each County or City will be based on current census data. The current data is presented [here](#) ([/Content/Documents/Cities and Counties.xlsx](#)). Individual residents in this category may be counted twice, once as a resident of a municipality, and once as a resident of a county;
- 75% of the litigating Class Members casting votes, weighted by their settlement fund allocations as shown at the Allocation Map posted [here](#) (<https://allocationmap.iclaimsonline.com>); and
- 75% of the non-litigating Class Members casting votes, weighted by their settlement fund allocations as shown at the Allocation Map posted [here](#) (<https://allocationmap.iclaimsonline.com>).

For purposes of counting votes, only votes cast will be considered. In order for a proposed settlement to be binding on the Negotiation Class, 75% of those Class Members who cast votes in each of these six categories must be in favor. No settlement will be submitted to the Court for final approval unless 75% of those voting in each of the six categories are in favor. No county or city that is not a Class Member as of the deadline for a vote on a proposal will be allowed to vote on that proposal.

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21. What happens if a county and its constituent cities make different decisions about staying in the Class?

- If a county and all of its constituent cities remain in the Class, each entity's share will be determined as explained in [FAQ 20](#).
- If a county remains in the Class, but one or more cities within the County are not in the Class, there are a variety of ways that a Class settlement might address that situation, but it is possible that a Class settlement would require that the County's allocation be reduced.
- If a county is not in the Class, but cities within that county remain in the Class, there are a variety of ways a Class settlement might address that situation. One possibility is that a city would receive no direct monetary allocation because its county has opted out, but that it could seek monetary relief through the Special Needs Fund (see [FAQ 24](#)). If a settlement provides a city no possibility of monetary relief because its county has opted out, Class Counsel anticipates the city would not be required to release its claims against the settling Defendant.

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22. If there is a settlement between a Defendant and a State or States, what impact will this Negotiation Class have on the division of monies between a State and the cities and counties within the State?

The Negotiation Class process does not interfere with a Defendant's ability to settle directly with one or more States. If a Defendant reaches a settlement directly with a State, nothing about this Negotiation Class process would affect the distribution of those settlement funds between the State and its own cities or counties. The Court has explicitly ordered that the Class's lawyers not involve themselves or the Class in the process of allocating monies secured by States between themselves and their counties and cities.

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23. Will Negotiation Class Representatives receive anything more than other Class Members?

Negotiation Class Representatives do not receive preferential treatment under any settlement simply for serving as Class Representatives. Their allocation will be calculated in precisely the same manner as every other Class Member's. However, they can apply to the Court for reimbursement of costs and expenses incurred by reason of serving as Class Representatives. Also, courts often award

20. If there is a Class settlement, how will my County or City's share of the settlement be determined?

Any Class settlement funds will be distributed in three steps:

Step 1: Each county's share of the settlement will be distributed in accordance with an "allocation model." The allocation model uses three factors, based on reliable, detailed, and objective national data, to determine the share of a settlement fund that each county will receive. These factors address the most critical causes and effects of the opioid crisis and are weighted equally (1/3-1/3-1/3): (1) the amount of opioids shipped to the county adjusted as described below; (2) the number of opioid deaths that occurred in that county; and (3) the number of people who suffer opioid use disorder in that county. The amount of opioids shipped to a county is adjusted based on opioid use disorder prevalence or the rate of opioid-involved deaths in the county, whichever is worse relative to national averages. The model makes this adjustment because the oversupply of opioids had more deleterious effects in some counties than in others. Thus, the allocation model is designed not to favor either small or large counties based solely on population. Ultimately, the model allocates settlement funds in proportion to where the opioid crisis has caused actual harm.

Step 2: Counties and their constituent cities, towns, and boroughs may distribute the funds allocated to the county among all of the jurisdictions in any manner they choose. If the county and cities cannot agree on how to allocate the funds, the Allocation Map (<https://allocationmap.iclaimsonline.com>) reflects a default allocation that will apply. The default allocation formula uses historical federal data showing how the specific county and the cities within it have made opioids-related expenditures in the past. Any of the affected jurisdictions may ask a Special Master to apply a different formula.

Step 3: If the default allocation is used and a city's share is less than \$500, then that amount will instead be distributed to the county in which the city lies to allow practical application of the abatement remedy. Affected cities could seek recovery through intra-county allocation described in Step 2, or from the Class Members' Special Needs Fund (see FAQ 24). In the rare circumstance that a city with a share of less than \$500 lies in a county that does not have a county government, the amount would instead go to the Class Members' Special Needs Fund, and Class members could seek recovery from that Fund.

Further information about the allocation formulas and their data sources are available [here \(/Home/Documents\)](#).

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NPO Litigation
P.O. Box 6727
Portland, OR 97228-6727

The Exclusion Request Form must be signed by an authorized official or employee of the county or city itself, under penalty of perjury pursuant to 28 U.S.C. § 1746, and is subject to verification by the Court. If you exclude your county or city from the Negotiation Class, your county or city will not be bound by any Orders or Judgments regarding the Class, and it will have no right to share in any settlement reached by the Class.

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27. If my county or city stays in the Negotiation Class, can it exclude itself later if it doesn't like a proposed settlement?

Not under the current Court Order. The Court's Order certifying the Negotiation Class provides only one opportunity for a county or city to exclude itself from the Class. The exclusion deadline ends on **November 22, 2019**. If a settlement is reached and proposed to the Class for its approval, Class Members who do not support the settlement may (1) vote against it and/or, (2) if the settlement is nonetheless approved by the Class votes, file objections with the Court. Rule 23 permits a court to offer a second opportunity for Class Members to opt out when a settlement is proposed, but the Rule does not require the Court to give Class Members a second opportunity to opt out. In this case, it is anticipated that the Court will not give Class Members a second opportunity to opt out. Therefore, Class Members should not rely on that possibility. Class Members should expect that there will be no opportunity to opt out of the Class after November 22, 2019.

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28. Who are the Class Counsel?

The Court has authorized the following six lawyers to jointly represent the Negotiation Class: Jayne Conroy and Christopher A. Seeger are Co-Lead Negotiation Class Counsel and Gerard Stranch, Louise Renne, Mark Flessner, and Zachary Carter are Negotiation Class Counsel. Each of these six lawyers represents only cities or counties in Opioids-related litigation.

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29. How do Class Counsel get paid?

Class Counsel will apply to the Court for approval of fees and costs under Rule 23(h). As a Class Member, you will receive notice and have an opportunity to object to any such application. The Court may appoint fee committees to make

a modest amount to Class Representatives, called an incentive or service award, so as to encourage Class Representatives to step forward on behalf of others. Any such awards are subject to Class notice and Court approval.

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24. What is the Special Needs Fund?

Fifteen percent (15%) of any Class settlement fund will be put into the "Special Needs Fund." Any Class Member may apply for a distribution from the Special Needs Fund: (1) to recover its costs of litigating its own opioids lawsuit, if that case was filed before June 14, 2019; and/or (2) to obtain additional relief for any local impact of the opioids crisis that is not captured by the Class Member's allocation. Applications will be made to and approved by a court-appointed Special Master, on a case-by-case basis. Any unawarded amount remaining in this Special Needs Fund would revert to the Class.

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25. Can my county or city exclude itself from the Negotiation Class?

Yes. You have a one-time opportunity to exclude your county or city from the Class and you must do so before November 22, 2019. You must follow the procedure set forth in [FAQ 26](#) below to exclude your county or city. As explained in [FAQ 27](#), you will likely not be given a second opportunity to exclude your county or city from the Class if a settlement is later reached and you should not count on such an opportunity being available at that time.

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26. How does my county or city exclude itself from the Negotiation Class?

You may exclude your county or city ("opt out") by signing and sending, either by email or by first-class U.S. mail, the [Exclusion Request Form \(/Content/Documents/Exclusion Request Form.pdf\)](#).

- If submitted by email, the form must be sent to info@OpioidsNegotiationClass.info (<mailto:info@OpioidsNegotiationClass.info>) on or before **November 22, 2019**.
- If submitted by mail, the form must be *postmarked* on or before **November 22, 2019** and sent by first-class U.S. mail to:

recommendations of any fee awards, to avoid duplication of payment, and to ensure appropriate compensation of those whose efforts provided a common benefit. The Court will make the final decision about all fees paid out of the Class's recovery to any lawyer.

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30. Under this proposal, what happens to my County or City's current fee agreement with outside counsel?

The current fee agreement that a county or city has with its outside counsel remains in effect. Membership in the Negotiation Class does not change that. In the event of any settlement that achieves Class and Court approval, there would be a "Private Attorneys Fund" from which outside counsel for Class Members that had signed retainer agreements for opioid epidemic-related litigation before June 14, 2019 could apply for fees and costs in lieu of any current fee agreement. That would be a voluntary decision between the county or city and its outside counsel. A total of up to 10% (maximum) of any approved Class settlement amount will be held in the Private Attorneys Fund. Any unawarded amount remaining in this Fund would revert to the Class. The Court must approve all payments from this Fund.

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31. How can my County or City keep up with what's going on in this case?

Pertinent news and information will be posted at this website, on an ongoing basis. As a Class Member, you can also sign up [here \(/Request\)](#) for email notices alerting you to the fact that new information has been posted to this website.

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[Terms of Use \(http://www.epiqglobal.com/terms-of-use\)](http://www.epiqglobal.com/terms-of-use)

Questions? Contact the Administrator at info@OpioidsNegotiationClass.info
(<mailto:info@OpioidsNegotiationClass.info>).

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In Re: National Prescription Opiates Litigation (<http://www.opioidsnegotiationclass.info/>)

MDL No. 2804 (N.D. Ohio)

Allocation Map

Select a State and County, then press Submit. The allocation amount is based on a hypothetical \$1 billion gross settlement for Counties and Cities, of which \$150 million will be reserved for the Class Members' Special Needs Fund⁽ⁱ⁾ and \$100 million will be reserved for a Private Attorneys' Fee Fund⁽ⁱⁱ⁾, which results in \$750 million for the Initial Distribution to Counties & Cities. If you have questions regarding the allocation process, please click [FAQs](#) (<http://www.opioidsnegotiationclass.info/Home/FAQ>) in the menu above.

State*

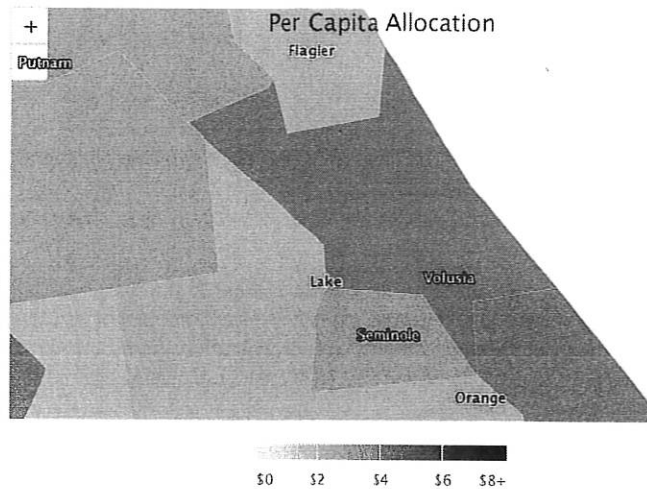
Florida

County*

Volusia County

Submit

Reset



County-level Allocation for Volusia County*

Total Allocation Value: \$1,723,989

Per Capita Value** \$3.47

* This Initial Distribution will be shared between the county and all incorporated municipalities within the county.

** "Per Capita Value" refers to the amount the county would receive per resident based on a hypothetical \$1 billion gross settlement for Counties and Cities. The per capita value was calculated by dividing the allocation to the county by the county's population

The county and the cities within the county will have the opportunity to reach agreement on how the county-level allocation will be shared amongst them. If the county and cities are unable to reach agreement, the funds will be distributed as shown in the table below, according to the default intra-county allocation formula explained in [FAQ 12](#)

(<http://www.opioidsnegotiationclass.info/Home/FAQ#faq12>). Under the default intra-county allocation formula, when a city's share is less than \$500, that amount will instead be distributed to the county in which the city lies to allow practical application of the abatement remedy. Affected cities could seek recovery through intra-county allocation, see [FAQ 12](#) (<http://www.opioidsnegotiationclass.info/Home/FAQ#faq12>), or from the Class Members' Special Needs Fund, see [FAQ 20](#) (<http://www.opioidsnegotiationclass.info/Home/FAQ#faq20>). In the rare circumstance that a city with a share of less than \$500 lies in a county that does not have a county government, the amount would instead go to the Class Members' Special Needs Fund, and Class members could seek recovery from that Fund.

Volusia County	\$940,976
Daytona Beach	\$246,486
Daytona Beach Shores	\$21,888
DeBary	\$19,432
DeLand	\$54,514
Deltona	\$109,778
Edgewater	\$31,966

Flagler Beach***	\$123
Holly Hill	\$17,412
Lake Helen	\$2,709
New Smyrna Beach	\$57,313
Oak Hill	\$2,655
Orange City	\$18,484
Ormond Beach	\$63,139
Pierson	\$1,285
Ponce Inlet	\$13,115
Port Orange	\$97,809
South Daytona	\$24,905

*** This city crosses county borders. To get this city's default allocation for all associated counties, select each associated county in turn from the County list above.

ⁱ Applications may be made to the Special Needs Fund by any Class member. Distributions from the Special Needs Fund to Class members are allowed for: (1) a Class member to recover its own costs of litigating its lawsuit; and (2) to obtain additional relief for any local impact of the opioids crisis that is not captured by the Class member's automatic allocation. Applications will be made to and approved by a court-appointed Special Master, on a case-by-case basis. Any unawarded amount remaining in this Special Needs Fund would revert to the Class.

ⁱⁱ The Private Attorneys' Fee Fund (up to but no more than 10% of any Class settlement) is intended to address county and city private counsels' attorneys' fees obligations in lieu of contingency fee contracts. See [FAQ 10](#) (<http://www.opioidsnegotiationclass.info/Home/FAQ#faq10>) for more information.

[Contact Us \(http://www.opioidsnegotiationclass.info/Home/ContactUs\)](http://www.opioidsnegotiationclass.info/Home/ContactUs)

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Questions? Contact the Administrator at info@OpioidsNegotiationClass.info (<mailto:info@OpioidsNegotiationClass.info>).

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CITY OF DAYTONA BEACH SHORES

"Life Is Better Here"

Office of the City Manager

Phone (386) 763-5373 Fax (386) 763-5360

MEMORANDUM

DATE: November 12, 2019

TO: City Council: Mayor Nancy Miller; Vice Mayor Richard Bryan, Council Member Rick Frizalone; Council Member Mel Lindauer, and Council Member Michael Politis

FROM: Michael T. Booker, City Manager

SUBJECT: City Manager Report – November 12, 2019

Community/Senior Center Activities:

- In order for those who wish to view the activities on line, I have again included the current schedule in the Manager's Report (Attached).

Compensation/Classification Study:

- Evergreen has conducted group meetings with all employees and emailed surveys to everyone. Thus far, Evergreen has reported a very high level of employee engagement and satisfaction with the process.

Gas Tax:

- Over the coming months, the Volusia County Gas Tax will be a topic of conversation. The City Manager's Group is looking at the current formula(s) to come up with a recommendation to our respective elected bodies.

Upcoming Activities:

- **Christmas Parade:**
 - The parade date is December 7, beginning at 4:00 p.m. This year's parade route will be extended to the Shores Community Center where the annual tree lighting and other fun activities will take place. As always, Cherise Wintz has worked very hard, as have our City Volunteers to make our Christmas Parade special.
- **Business Expo:**
 - Our "Showcase the Shores" Business Expo will be held in the Community Center on January 24 (Friday). Stacy and Kim have been canvassing our local business proprietors to encourage their participation. Thus far, they have received an enthusiastic response from those contacted.

cc:

Department Heads
City Attorney

DAY	TIMES	EVENT	COMMUNITY CENTER LOCATION
MONDAY	8:30 a.m. - 9:30 a.m.	Beginning YOGA	Side B
	9:00 a.m. - 9:30 a.m.	Sittercise	Side A
	8:45 a.m. - 10:30 a.m.	Intro to Pickleball	Off Site at Courts
	9:30 a.m. - 10:15 a.m.	Low Impact	Side A
	10:00 a.m. - 11:30 a.m.	YOGA	Side B
	10:30 a.m. - 11:45 a.m.	Zumba Gold	Activity Room
	12 noon - 3:30 p.m.	Hand and Foot	Side B
	1:00 p.m. - 2:00 p.m.	Tai Chi	Activity Room
TUESDAY	8:45 a.m. - 9:30 a.m.	Zumba Gold	Activity Room
	9:00 a.m. - 9:30 a.m.	Sittercise	Side A
	9:30 a.m. - 10:30 a.m.	Silver Sneakers	Side A
	10:00 a.m. - 11:00 a.m.	Active Stretching	Side B
	11:30 a.m. - 3:00 p.m.	Bridge	Side B
	1:00 p.m. - 3:00 p.m.	Dominoes	Activity Room
	5:30 p.m. - 7:00 p.m.	Beginning Photography	Side B
	6:30 p.m. - 7:30 p.m.	Guitar	Either Activity Room, or Breakout Room, Side A
Beginning November	6:00 p.m. - 7:00 p.m.	Gentle YOGA	Side A
WEDNESDAY	9:00 a.m. - 9:30 a.m.	Sittercise	Side A
	9:30 a.m. - 10:30 a.m.	YOGA	Side B
	9:30 a.m. - 10:15 a.m.	Low Impact	Side A
	10:00 a.m. - 11:00 a.m.	Belly dance Class	Side A or B
	10:00 a.m. - 12 noon	Yarn Circle	Activity Room
	11:00 a.m. - 12:30 p.m.	YOGA	Side B
	1:00 p.m. - 3:30 p.m.	BUNCO	Activity Room, until Line Dancing starts in November
Nov-April	12:30 p.m. - 3:00 p.m.	Line Dancing	Activity Room
THURSDAY	8:45 a.m. - 9:30 a.m.	Zumba Gold	Activity Room
	9:00 a.m. - 9:30 a.m.	Sittercise	Side A
	9:30 a.m. - 10:30 a.m.	Silver Sneakers	Side A
	11:00 a.m. - 3:00 p.m.	Bingo	Side A
	12:00 - 3:30 p.m.	Mah Jongg	Activity Room
	1:00 p.m. - 3:00 p.m.	Chair Volleyball	Side B
	5:00 p.m. - 6:00 p.m.	Ukulele	Side B
	5:30 p.m. - 7:45 p.m.	Acoustic Jam	Activity Room
	6:00 p.m. - 7:00 p.m.	Gentle YOGA	Side A
FRIDAY**	8:45 a.m. - 9:30 a.m.	Zumba Gold	Activity Room
	9:00 a.m. - 9:30 a.m.	Sittercise	Side A
	9:30 a.m. - 10:15 a.m.	Low Impact	Side A
	10:30 a.m. - Noon	Backgammon	Activity Room

	11:00 a.m. - 3:00 p.m.	Samba	Activity Room or Side B
**Friday afternoons left free for potential use to set up if rooms are rented or for special event set ups			
FUTURE EVENTS PLANNED			
	Starts in January	Intermediate Photography	Side B
	Starts in January	Drums Alive Program	Side B
	Starts in January	Machine Quilting	Activity Room
Special Presentations	Wednesdays 1-2p.m.		Side A
	Thursdays 10:45-11:45		Side A
January		Pickleball with a Cop	Off Site at Courts
March	2-3 days, 16 hrs/day	Pickleball Tournament	Off Site at Courts



**CITY COUNCIL AGENDA MEMORANDUM
NOVEMBER 12, 2019 AGENDA**

TO: Honorable Mayor and Members of the City Council
FROM:
PREPARED BY: Fred Hiatt, Community Serv Director
SUBJECT: Ordinance Revising 2019-09

SYNOPSIS:

Ordinance 2019-14 revises the City's previously adopted Ordinance 2019-09.

FISCAL IMPACT STATEMENT:

The proposed changes have no fiscal impact.

BACKGROUND:

The previous enhanced Code Enforcement Ordinance 2019-09 was adopted by 2nd reading on September 9, 2019. Shortly after its adoption, the City hired a new city attorney, Mr. Raymond Branch. After reviewing the newly adopted ordinance, attorney Branch felt it needed to be tweaked.

LEGAL REVIEW:

Attorney Branch revised Ordinance 2019-09 to provide additional strength and to make it more challenge resistant. The ordinance was also modified to clean up a few housekeeping issues.

RECOMMENDATION:

Staff recommends the adoption of Ordinance 2019-14

SUGGESTED MOTION:

Move to adopt Ordinance 2019-14 on First Reading.

ATTACHMENT: 1. Enhanced 2019-09 Code Enforcement Enhancement rev 10.28.2019

ORDINANCE 2019-__

AN ORDINANCE TO AMEND ORDINANCE 2019-09 OF THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO A PROGRAM OF ENHANCED CODE ENFORCEMENT; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR THE CONDEMNATION AND DEMOLITION OF DILAPIDATED, UNSANITARY, UNSAFE OR UNINHABITABLE BUILDINGS; PROVIDING FOR A CERTIFICATE OF CODE COMPLIANCE HABITABILITY; PROVIDING FOR ADOPTION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE (AS MODIFIED); PROVIDING FOR AN ARRAY OF IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR REQUIREMENTS AND PROHIBITIONS; AMENDING SECTIONS 14- 61.1 AND 19-1.2. OF THE *CITY CODE*; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Daytona Beach Shores, Florida has the desire to ensure that the City of Daytona Beach Shores and its environs are free from the deleterious effects of vacant buildings and structures, as well as nuisance conditions generally, for the benefit of the citizens of the City of Daytona Beach Shores; and

WHEREAS, the City Council of the City of Daytona Beach Shores, Florida desires to protect the public health, safety and welfare of the citizens of the City and maintain a high quality of life for the citizens of the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores, Florida has implemented a modern system of code enforcement within the City, but desires to further enhance that system as set forth herein for the benefit of the citizens of the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores hereby finds and determines that the provisions of this Ordinance provide for public benefits and serve public purposes; and

In this Ordinance, when text is being amended, ~~strikethrough text~~ represents deletions from the current text of the Code of Ordinances of the City of Daytona Beach Shores while underlined text represents additions.

WHEREAS, this Ordinance is enacted pursuant to the home rule powers of the City of Daytona Beach Shores as set forth at Article VIII, Section 2, of the *Constitution of the State of Florida*; Chapter 162, *Florida Statutes*; Chapter 166, *Florida Statutes*; Section 60.05, *Florida Statutes*; Section 823.01, *Florida Statutes*; Section 823.05, *Florida Statutes*; and other applicable controlling law; and

WHEREAS, the City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

WHEREAS, this Ordinance, although neither creating or amending land development regulations, is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City of Daytona Beach Shores*.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:

PART I. LEGISLATIVE FINDINGS AND INTENT AND CONFORMING AMENDMENTS TO CITY CODE

SECTION ONE: LEGISLATIVE FINDINGS AND INTENT.

(a). The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance, as the legislative findings and intent of this Ordinance, the recitals (whereas clauses) to this Ordinance, the City staff report and City Council agenda memorandum relating this Ordinance.

(b). There is a public need to enhance economic activity in specific targeted areas of the City of Daytona Beach Shores, as identified by the City Council. The economic well-being of the citizens of the City of Daytona Beach Shores and the economic resources of the City of Daytona

In this Ordinance, when text is being amended, ~~strikethrough text~~ represents deletions from the current text of the Code of Ordinances of the City of Daytona Beach Shores while underlined text represents additions.

Beach Shores would be enhanced by the provision and implementation of selected economic development activities.

(c). Section 16-12 of the *City Code* generally defines the prohibition against nuisances as follows: “Any person who shall, upon any real property owned or occupied by him within the limits of the City, conduct or carry on any trade, business or occupation, or keep, maintain or permit any property, building or structure or other matter or thing or course of conduct which shall endanger the public health or materially interfere with the public comfort or convenience, shall be deemed to have created a public nuisance ”¹

(d). Without modifying or reducing the generality of Section 16-12 of the *City Code*, Section 19-4 of the *City Code* prohibits a wide array of public nuisances.

(e). Additionally, Section 19-1.2 of the *City Code* regulates vacant or abandoned buildings located within the City and the City Council hereby ratifies, affirms and adopts the legislative

¹ The text “and shall be guilty of a misdemeanor” is not applicable. Section 775.08, *Florida Statutes*, the Florida Legislature has specifically classified and defined the various types of offenses. That Section, in essence, defines four (4) terms which are: (1). felony; (2). misdemeanor; (3). noncriminal violation; and (4).crime. Subsection (4) of Section 775.08, Florida Statutes, provides that “[t]he term ‘crime’ shall mean a felony or misdemeanor.” Subsection (1) defines “felony” and Subsection (2) defines the term “misdemeanor”. It is clear that violation of City ordinances are not felonies and Subsection (2) states specifically that “[t]he term ‘misdemeanor’ shall not mean a conviction for . . . any municipal or county ordinance.” Subsection (3) defines the term “noncriminal violation” and also provides that a noncriminal violation “... shall not mean any conviction for any violation of any municipal or county ordinance.” Thus, in sum, the violation of a City ordinance is neither a crime nor a noncriminal violation. Violation of a City ordinance is, thus, best classified as precisely what it is - “violation of a City ordinance.” The maximum penalty for violation of a City ordinance (outside of the code enforcement board/special magistrate or hearing officer process or a State law) is confinement for sixty (60) days and a fine of \$500.00.

In this Ordinance, when text is being amended, ~~strikethrough text~~ represents deletions from the current text of the Code of Ordinances of the City of Daytona Beach Shores while underlined text represents additions.

findings and intent set forth in Section 19-1 of the *City Code*.² Further, it is the intent of the City Council that the cited provisions and the provisions of this Ordinance be applied and administered in harmony; provided, however, that, should any conflict arise, the more stringent provision shall be applicable.

(f). Further, Section 19-2 of the *City Code* provides for a Citywide special assessment district and the imposition of special assessments for costs relating to activities by the City to abate nuisances on real property located within the City.

(g). Section 1-8 of the *City Code* provides ~~for the general penalties for relative to code and ordinance violations of~~ with the City Code, which provision relates to the including the provisions of this Ordinance. Further, Section 1-8 authorizes said provision allowing the City to take and assert various remedies against property owners seek relief for alleged violations of this Ordinance in any manner authorized by law, including under Section 2-26 of the City Code (designed to implement the enforcement procedures and remedies such as proceeding under

2 Sec. 19-1. - Legislative findings and intent. (a) The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this ordinance the city staff report and city council agenda memorandum relating to this ordinance. (b) The recitals set forth above in the "whereas clauses" are hereby adopted as legislative findings of the City Council of the City of Daytona Beach Shores. (c) Neglected vacant or abandoned buildings are a major source of blight in the City of Daytona Beach Shores and pose serious threats to the public's health, safety and welfare. They attract children, vagrants, gang members, and criminal activities. They are also vulnerable to fire set by transients or others using the property illegally. The presence of neglected vacant or abandoned buildings can lead to neighborhood decline, create an attractive public nuisance, lower property values, and discourage economic development in the area. (d) It is the responsibility of property owners, lenders, trustees, or others with possessory, equitable, or legal interests in vacant or abandoned buildings to maintain, secure, and prevent these buildings from becoming a burden to the neighborhood and community or a threat to the public health, safety and welfare. The purpose of this ordinance is to provide standards for maintaining vacant and abandoned buildings and to establish a monitoring program for said buildings. (e) It is critical that coastal communities that are subject to the threats of hurricanes and other storm events take every reasonable action to provide for the safety or life and property during such events and ensure that property owners do likewise. (f) The provisions of this ordinance shall be construed, applied and implemented in conjunction with the provisions of the codes and ordinances of the city together with all other applicable controlling laws (as that term is used in its broadest sense). (g) The City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this ordinance. In this Ordinance, when text is being amended, ~~strikethrough text~~ represents deletions from the current text of the Code of Ordinances of the City of Daytona Beach Shores while underlined text represents additions.

the special magistrate/code enforcement board provisions of Chapter 162, Florida Statutes, which provides for fines of up to \$250.00 per day for first time violations, { \$500.00 per day for repeat violations and \$5,000.00 for one time violations which are irreparable or irreversible in nature) or under Section 2-29 of the City Code (providing for an administrative citation process) or ~~to~~ issuing citations and proceeding in County Court for fines of up to \$500.00 and confinement in jail for a period of up to 60 days ~~as well as an array of diverse other remedies...~~³ and/or to seek and/or to seek damages and/or injunctive or other equitable relief as may be otherwise allowed by law.³

3 Sec. 1-8. - General penalty; continuing violations.

(a) Whenever in this Code or in any ordinance of the City any act is prohibited or is made or declared to be prohibited, unlawful or an offense, or whenever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be prohibited and unlawful in whatsoever manner, the violation of any such provision of the Code or any ordinance shall be punished by a fine not exceeding \$500.00. Any condition caused or permitted to exist in violation of any of the provisions of this Code or any ordinance of the City shall be deemed a public nuisance and shall be subject to abatement and code enforcement by the City utilizing any remedy available under law. The City may prosecute violations by any means authorized by controlling law and may seek any legal remedy available under controlling law. Each occurrence (violation of a code or ordinance) shall constitute a separate violation and subject the violator to separate penalties. Any code or ordinance violation may result in the City Attorney, with the consent of the City Manager, bringing suit on behalf of the City against the person or persons, or entity or entities, causing or maintaining the violation. Notwithstanding the foregoing, the City shall not seek imprisonment as a penalty for any violation of the Code.

(b) Notwithstanding the provisions of subsection (a), the City Council may prescribe a different punishment and a tailored enforcement process for any violation of this Code.

(c) As used in this section, the phrase "violation of this Code" means any of the following: (1) Doing an act that is prohibited or made or declared unlawful, an offense or a misdemeanor by ordinance or by rule or regulation authorized by ordinance. (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance. (3) Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.

(d) As used in this section, the phrase "violation of this Code" does not include the failure of a City officer or City employee to perform an official duty unless the context requires otherwise.

(e) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise, the imposition of civil penalties or other administrative actions.

(f) Violations of this Code may be abated by injunctive or other equitable or civil relief, and no bond shall be required, nor proof of intent or scienter. The imposition of a penalty does not prevent equitable relief.

(g) In any litigation commenced by the City to enforce the provisions or to enjoin a violation of this Code, the City shall be entitled to reasonable attorney's fees incurred in such litigation.

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(h). The aforestated purposes and intents of the above-referenced provisions of the *City Code* are hereby ratified and affirmed by the City Council for the public interest and in order to protect the citizens of the City.

SECTION TWO: CODE ENFORCEMENT ENHANCEMENT PROGRAM.__The following provisions of the *Code of Ordinances of the City of Daytona Beach Shores* are amended to read as follows:

Sec. 19-1.2. - Regulation of vacant or abandoned buildings.

(a) *Definitions.* The following definitions shall have the following meanings in this Section unless the context of usage clearly demands otherwise and the definitions otherwise set forth in the *City Code* and the *Florida Statutes* shall apply when the context requires and, further, the term hearing officer shall mean and include the City's special magistrate:

(1) *Abandoned* means a parcel of real property including, but not limited to, a residence, building, structure, or any structural improvement on real property, that is vacant and is (i) under a current notice of default and/or notice of trustee's sale; (ii) subject to foreclosure sale where title was retained by the mortgagee of a mortgage, by whatever name; or (iii) transferred under a deed in-lieu of foreclosure/sale and the term also means buildings or structures that have been inspected by the city and the inspection does not reveal the property owner or anyone claiming under him, her or it is presently occupying or will occupy the building or structure, or that the owner has relinquished all right, title, claim and possession of the property and the building or structure.

(2) *Deed in-lieu of foreclosure/sale* means a recorded document that transfers ownership of real property from the mortgagor to the mortgagee upon consent of the mortgagee.

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- (3) *Default* means the failure to comply or fulfill any contractual obligation under the mortgage, by whatever name.
- (4) *Director* means the director of the city department or office designated by the City Manager to administer this Section.
- (5) *Foreclosure* means the process by which real property, placed as security for a real estate loan, is sold at an auction to satisfy the debt when the mortgagor (borrower) defaults on the real estate loan.
- (6) *Mortgage (by whatever name)* means an instrument by which title to real property is lienied in favor of a mortgagee by a mortgagor as security for a real estate loan. This definition applied to any and all subsequent mortgages.
- (7) *Mortgagee* means any person, partnership, association, company, corporation, or any other person or entity holding a mortgage, by whatever name on a property and, typically, means a lender under a note secured by a mortgage, by whatever name.
- (8) *Mortgagor* means a borrower under a mortgage, by whatever name who gives a mortgage as security for the payment of a debt.
- (9) *Multi-story building* means any building with more than two stories.
- (10) *Notice of default* means a recorded notice that a default had occurred under a mortgage, by whatever name, and the mortgagee intends to proceed with a foreclosure sale of the real property or asserts any of its rights under the mortgage, by whatever name.

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(11) *Owner* means any person, partnership, association, company, corporation, entity, financial institutions, or fiduciary having a legal, possessory, or equitable title or any interest in a parcel of real property.

(12) *Real Property* means any improved real estate, or portion thereof, situated in the City and includes any residence, building, structure or any other improvement located on the real property.

(13) *Unoccupied* means a commercial building, commercial structure, or hotel/motel which has no associated, authorized business operating from the premises as evidenced by lack of a current certificate of use or lack of current utility usage including water, sewer, garbage and power and/or a residential building which has no observable, authorized tenancy.

(14) *Vacant* means any building or structure which has remained unoccupied for a period of more than sixty (60) calendar days or which has been occupied by any unauthorized person for any length of time. A building or structure is not deemed to be vacant for purposes of this Section if demolition, construction, alteration, improvements, rehabilitation, or repair is in progress pursuant to a valid, unexpired building permit.

(b) *Compliance required.*

(1) Every owner of real property shall maintain the property in accordance with the requirements and provisions of this Section and all other applicable requirements of the *City Code*.

(2) Every owner of real property is liable for violation of this Section regardless of any contract or agreement the owner has with any third party.

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(3) Except as otherwise provided herein, the director shall have the authority to enforce the provisions of this Section.

(4) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

(c) *Public nuisance.*

(1) Any real property in violation of this Section shall constitute a public nuisance.

(2) It is prohibited and unlawful for any building or structure to be vacant for more than sixty [60] calendar days unless one of the following conditions exist:

a. The building or structure is subject to an active building permit for demolition, construction, alteration, modification, rehabilitation, or repair and the owner is progressing diligently to complete the demolition, construction, alteration, modification, rehabilitation, or repair within the time frame set forth in the building permit-; or

b. The building or structure, including the real property on which it is located, does not otherwise constitute a public nuisance and is not reasonably likely to become a public nuisance because the real property is actively maintained and monitored. Actively maintained and monitored means that the condition of the real property complies with the minimum standards set forth in this Section and any and all other applicable provisions of the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense) or which is otherwise being maintained in accordance with the terms and conditions of an executed and unexpired maintenance or development agreement between the City and the property owner.

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(3) Unless a vacant or abandoned building or structure meets one of the conditions set forth in subsection ~~(2)~~ (c)(2) a. and b., the owner of any vacant or abandoned building or structure, whether unsecured or secured (i.e. boarded) ~~by~~ as a result of voluntary action of ~~by~~ the owner or following ~~as a result of~~ enforcement activity by City ; shall, within thirty (30) days of receiving a Notice of Violation from the City, or within such time as may be extended by the City , rehabilitate the unsecured or boarded building or structure ~~for occupancy,~~ such that it complies with subsection (c)(2) a. or b. and is otherwise a safe, sanitary and sound structure which complies ~~in accordance~~ with all applicable City code and regulations. ; ~~within 60 calendar days after the building is boarded.~~ Rehabilitation means taking corrective action to meet the minimum standards set forth in this Section and complies with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

(4) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

(d) *Structural and building standards.*

(1) All vacant or abandoned property shall be maintained in structurally sound condition and meet the following minimum building standards:

a. Complies with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

b. All electrical, natural gas, sanitary and plumbing facilities shall be maintained in a condition which does not create a hazard to public health or safety.

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c. All fences, walls, arbors, or other similar structures, whether made of masonry, wood, metal, vinyl or other materials, shall be maintained in a structurally sound condition in accordance with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

d. The City hereby adopts by this reference thereto (a copy of which is attached to this Section and, thus, shall be maintained in the office of the City Clerk) the American Society of Civil Engineers (ASCE)² "Guideline for Structural Condition Assessment of Existing Buildings" (publication "SEI/ASCE 11-99), or the latest version of that document. This publication shall be used by City personnel in making assessments, evaluations and determinations as set forth in this Section.

(2) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

(e) *Fire safety.*

(1) All vacant or abandoned property shall be maintained in a manner which does not create an unreasonable risk of fire and which meets the following minimum fire safety standards:

a. Adherence to and compliance with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

b. Is maintained in a manner where the totality of the property is free of all vegetation, weeds, dry brush, ~~bush~~, garbage, trash, debris, appliances, building materials, rubbish, accumulation of newspapers, circulars, flyers, notices, except those any required by law, which may constitute a safety or fire hazard.

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- c. Is maintained in a manner where the totality of the property is free of any storage of flammable liquids or other materials which would constitute a safety or fire hazard.
- d. Is maintained in a manner where the heating and air conditioning facilities or heating and air conditioning equipment are either removed pursuant to valid permit or maintained in accordance with applicable codes and ordinances. If heating equipment is removed, any fuel supply shall be removed or terminated in accordance with applicable permits, codes and ordinances.
- e. Is maintained in a manner where all existing fire protection systems are kept in operating condition in accordance with applicable codes and ordinances, unless written authorization for removal of those systems has been granted by the City's Fire Marshal.
- f. Is maintained in a manner where no fire hydrants, including private hydrants, that provide water flow, are removed, tampered with, or taken out of service, unless authorized in writing by the City's Fire Marshal.

(2) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

(f) *Security standards.*

(1) All vacant or abandoned property shall be maintained in a manner which secures it from any unauthorized entry and meets the following minimum security standards:

- a. All windows, doors, gates, fences or any other opening of such size that may allow access of persons, animals, or other elements, to the interior of the property, building or structure shall

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be secured, locked, closed, or maintained in such a manner so as to prevent unauthorized entry and from being or becoming create an attractive nuisance.

b. Windows, sliding doors, or similar openings shall provide ~~either~~ intact glazing ~~or~~ and resistance to entry equivalent to or greater than that of a solid sheet of one-quarter-inch ($\frac{1}{4}$ ") plywood, ~~or~~ Otherwise, $\frac{1}{4}$ " plywood, painted to protect it from the elements, cut to fit the opening, and securely nailed using ~~6D galvanized nails spaced not more than six inches on the center,~~ shall be used to cover any opening. Boarding may be utilized as a temporary measure for up to sixty (60) calendar days after which all openings must be re-glazed in accordance with applicable codes and regulations.

c. Doors and service openings with thresholds located ten feet or less above grade, stairway, landing, ramp, porch, roof or similarly accessible area shall provide resistance to entry equivalent to or greater than that of a closed single panel or hollow core door one and three-eighths inches thick equipped with a half-inch throw deadbolt.

d. Exterior doors, other than the operable door to be maintained, may be closed from the interior of the building or structure by toe nailing them to the door frame using 10D or 16D galvanized nails.

e. There shall be at least one operable door into each building or structure to allow access to all portions of the building or structure. If an existing door is operable, it may be used and secured with a suitable lock such as a hasp and padlock or a one-half inch deadbolt or deadlatch.

f. All locks shall be kept locked. When a door cannot be made operable and is not visible from any public right-of-way, including the beach, or neighboring property, a door shall be

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constructed of three-quarter-inch CDX plywood and shall be equipped with a lock as required in this Section.

g. There shall be a sign installed that is no less than 18 inches × 24 inches in size and no greater than 30 inches × 30 inches in size posted on the front of the exterior building or structure so it is legible from the public-right-of-way with the following information:

(i) name and 24-hour contact telephone number and address of the owner, responsible party, or property management company; and

(ii) the statement that "THIS PROPERTY MANAGED BY————" with the appropriate name inserted and "TO REPORT PROBLEMS OR CONCERNS CALL —————" with the 24-hour telephone number listed. The sign shall be constructed and printed with weather resistant materials and shall be removed when the building is no longer vacant.

(2) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

(g) *Debris removal.*

(1) All vacant or abandoned property including, but not limited to, all adjoining yard areas shall be maintained free of debris, combustible materials, litter, garbage, or any other item that gives the appearance the property is vacant or abandoned by maintaining adherence to and compliance with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

(2) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

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(h) *Appearance.*

(1) All vacant or abandoned property must be maintained in a manner which minimizes the appearance of vacancy and meets the following minimum appearance standards:

a. The property shall be maintained free of graffiti, tagging, or similar markings by removal or painting over within 24 hours with similar exterior grade paint to match the color of the exterior of the building or structure.

b. Any demolition, construction, alteration, improvements, or rehabilitation shall be completed during the term of a valid building permit or building permit extension issued by the director, building official, or their designee.

c. All exterior surfaces shall be maintained to prevent entry including, but not limited to, replacement or repair to any broken windows, doors or siding materials and be applied with sufficient paint, siding, stucco or other finish to weatherproof the vacant or abandoned building or structure and to create a sufficient appearance of repair to deter unauthorized occupation.

d. All landscaping including, but not limited to, grass, turf, trees, hedges, shrubs, flowers, and other similar materials, shall be maintained in accordance with codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense) and in such condition as not to create the appearance of a vacant or abandoned building or structure.

e. All pools, spas, or other areas of standing water shall be kept in working order so that the water remains clear and free of pollutants or debris, unless the pools, spas, or other areas are drained and kept dry. All properties with pools, spas, or other areas of standing water must meet

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the minimum fencing requirements as set forth in the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

(2) It is prohibited and unlawful to violate the provisions of this subsection or to fail to adhere to the requirements of this subsection.

(i) *Additional responsibilities relating to multi-story buildings or structures.*

(1) Each owner of a multi-story vacant or abandoned building or structure shall provide to the City Manager, or designee, a structural engineering analysis completed by a certified State of Florida Professional Engineer detailing the existing conditions present with regard to the vacant or abandoned building or structure. The structural engineering analysis shall include details regarding the structural integrity of the building or structure and its components, shall identify all potential life safety threats, and shall address the building or structure's ability to withstand the windload it was originally built to withstand.

(2) The structural engineering analysis shall be provided to the City Manager, or designee, within thirty (30) days of the effective date of this Section and each January 1 of each year during which the vacant or abandoned building or structure remains vacant or abandoned.

(3) The structural engineering analysis shall be provided to the City at the owner's expense and the data provided will form the basis on which the determination will be made regarding whether or not the existing building or structure on the should remain in place pending potential redevelopment.

(4) If the structural engineering analysis demonstrates that the existing building or structure may remain without providing a potential threat to the public health, safety and welfare, it may

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remain in place subject to the owner's continuing obligation to keep the structure secure and the in compliance with the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

(5) If the structural engineering analysis demonstrates that the existing structure represents a potential threat to the public health, safety and welfare, the owner shall expedite and facilitate the removal of said potential threat or existing building or structure.

(6) Expedient removal of said potential threat or existing building or structure shall take place ninety (90) or fewer days from said structural analysis or as prescribed by the building official.

(j) *Regulation of dangerous buildings.*

(1) As used in this Section dangerous building means any building or structure which has one or more of the following defects or conditions and is not subject to an executed and unexpired maintenance or development agreement as provided for in this Section:

a. Any door, aisle, passageway, stairway or other means of exit does not conform to the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

b. Any portion of the building or structure has been damaged by fire, storm, wind, flood, or by any other cause so that its structural strength or stability is appreciably less than it was before such damage and does not meet the minimum requirements of the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense) for a new building or structure, purpose or location.

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- c. Any part of the building or structure is likely to fall or to become detached or dislodged, or to collapse and injure persons or damage property.
- d. Any portion of the building or structure has settled to such an extent that its walls or other structural portions have materially less resistance to wind than is required in the case of new construction by the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).
- e. The building or structure or any part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, or the removal or movement of some portion of the ground necessary for the support or for other reason, is likely to partially or completely collapse or some portion of the foundation or underpinning of the building or structure is likely to fall or give away.
- f. The building structure, or any part of the building or structure is manifestly unsafe for the purpose for which it is used.
- g. The building or structure is damaged by fire, wind, or flood, or is dilapidated or deteriorated and becomes an attractive nuisance to children who might play in the building or structure to their danger, or becomes a harbor for vagrants or criminals, or enables persons to utilize the building or structure for committing a nuisance or an unlawful or immoral act.
- h. A building or structure used or intended to be used for dwelling or commercial, ~~or industrial~~ purposes, including the adjoining grounds, which because of dilapidation, decay, damage, faulty construction or otherwise, is unsanitary or unfit for its intended use or is in a condition that is reasonably determined, using sound and generally accepted public health

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management practices and principles, is likely to cause sickness or disease or is otherwise a dangerous building.

i. When a building or structure is vacant or dilapidated and the interior of the building is exposed to the elements or otherwise accessible for entrance by trespassers.

j. Any multi-story building not kept secure and in compliance with the City's codes and ordinances together with all applicable controlling laws (as that term is used in its broadest sense).

(2) k. Upon request by the City, a property owner shall provide the City with copies of insurance policies relating to property which is the subject of this Section.

~~1.~~

(3) i. Whenever the City Manager, or designee, determines that the whole or any part of any building or structure is a dangerous building or otherwise abandoned, the City Manager, or designee, shall issue a notice that the building or structure is dangerous or abandoned.

a. Such notice shall be served on each owner of or party in interest in the building or structure in whose name the property appears on the most recent Volusia County Property Appraiser records, by certified mail return receipt requested or personal service.

b. The notice shall specify the determination made by the appropriate City official and the action that will be or can be taken by the City in order to remediate the conditions set forth in the notice.

c. Any persons receiving a copy of the notice shall have the right to appeal the determination to a hearing officer appointed by the City Council as provided for and governed by section 2-28 of the *City Code* and request a hearing within thirty (30) days after receiving a copy of the notice.

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i. All costs and fees related to the hearing shall be paid by the party requesting the hearing as established by resolution adopted by the City Council. The hearing officer shall hear all arguments made relating to whether the building or structure is a dangerous building or abandoned. The person to whom the notice is directed shall have the opportunity to show cause why the hearing officer should not order appropriate remediation of the dangerous conditions or order the building or structure to be demolished or otherwise made safe, or properly maintained. The hearing officer shall take testimony of the City staff or any other person requested by the City staff, the owner of the property or any other person requested by the owner, and any interested party as determined by the hearing officer. The hearing officer shall render its final administrative decision as to what action can be taken to order the building or structure to be demolished, otherwise made safe, or properly maintained.

ii. The decision made by the hearing officer shall be final and subject only to judicial review by a court of competent jurisdiction in which case the decision of the hearing officer shall be stayed pending a judicial determination on the matter.

iii. If it is determined by the hearing officer that the building or structure should be demolished or otherwise made safe or properly maintained, the hearing officer shall so order, fixing a time within which the owner or party in interest must comply with the order. The order may require the owner, agent, or person occupying the property to demolish or bring the building and surrounding property into compliance with the terms and conditions of the order and all applicable codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

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iv. If the owner or party in interest fails to appear at the properly scheduled hearing officer hearing, the hearing officer may proceed with the hearing and make all findings it deems necessary to bring the property, buildings and structures into compliance with the terms of applicable codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense).

v. A copy of the findings and determinations of the hearing officer at the hearing shall be served on the owner or party of interest in the manner prescribed in this Section for notices.

vi. In the event that the owner or party in interest does not comply with the decision of the hearing officer, the City Council may in its discretion, contract for the demolition, making safe, or maintaining the exterior of the building or structure or grounds adjoining the building or structure or to otherwise bring the building, structure or premises into compliance with the hearing officer's decision. The costs of the demolition, or making the building safe, or of maintaining the exterior of the building, structure or grounds adjoining the building or structure, incurred by the City Council to bring the property into conformance with this Section shall be reimbursed to the City by the owner or party in interest whose name the property appears. Costs include, but are not limited to, actual costs incurred in bringing the property into compliance with the hearing officer's decision as well as administration fees and actual attorney fees and court costs.

vii. The costs of the City may be assessed by the City as a special assessment, with any and all liens arising as a result thereof, in accordance with the provisions of controlling law.

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ii. viii. The following list is a non-exclusive list of the factors which may be considered by a hearing officer or the City Council, as the case may be, when establishing objective requirements necessary to attain compliance with this Section relative to the condition of a building, structure or premises:

{1} 1- A monitoring program for inspection and maintenance conducted on a periodic basis of no less frequency than ~~at~~ once each 12-month period to be reviewed and approved by a licensed engineer or contractor.

{2} 2- Elimination of access by the general public to the building, structure or premises. Such limitations shall include, but need not be limited to, preventing unauthorized entry or trespass to the building, structure or premises by means such as unsecured doors, windows as well as the fencing of the property. Access to a building, structure or premises shall be provided by at least an operable door with reasonable accommodation made to provide access to public safety officials to address emergency conditions or situations occurring upon or within the building, structure or premises. Signs shall be posted on the exterior of the property stating that trespassing is prohibited which signs shall be of a size and nature and posted in a manner that complies with controlling Florida law and authorized the citation, removal or other appropriate action to prosecute or remove trespassers. The property owner shall provide the City with written authorization to cite trespassers upon the property; provided, however, that the City may exercise its normative police powers relative to the property as it deems warranted and appropriate.

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~~(3)~~ 3- A monitoring program for electrical, natural gas, sanitary sewer, plumbing and other utility services relating to the property.

~~(4)~~ 4- Elimination of the risk of damage caused by airborne objects or materials with the removal of shard risks.

~~(5)~~ 5- Fire safety management and monitoring shall include, but not be limited to, the prohibition of storage of flammable liquids or materials on the property except for certain expressly provided conditions agreed upon by the City. All other fuel or flammable liquid supplies not expressly authorized by the City to be present on the property shall be removed from the property including, but not limited to, debris that could be flammable, combustible materials of every nature and solid waste such as garbage.

~~(6)~~ 6- Wind resistance and collapse prevention shall be reviewed at least every twelve (12) months.

(k) *Registration; duties and responsibilities relating to registration.*

(1) The owner of any vacant or abandoned building or structure other than a single-family residence shall register in the property in the City's "Vacant or Abandoned Building Monitoring Program" pursuant to this Section.

(2) The registration must be ~~accomplished~~ made to the City Building Official by all owners of property that is vacant or abandoned ~~within~~ for more than sixty (60) calendar days ~~of the day that the property becomes vacant or abandoned.~~

(3) The registration information shall, at a minimum, include:

a. The address of the vacant or abandoned building or structure.

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- b. The property appraiser tax parcel identification number of the real property where the vacant or abandoned building or structure is located.
 - c. The name, address, and telephone number of the owner. If a notice of default has been issued, the name, address, and phone number of the mortgagee, by whatever name, shall be included. In the case of a corporation or out of area mortgagee, the local property management company or agent responsible for the security, maintenance, and monitoring of the property shall be included.
 - d. The date the building or structure became vacant.
 - e. Any change in the information provided pursuant to this section including, but not limited to, a change in ownership, shall be filed with the director within fifteen (15) days of the change.
- (4) The owner of any vacant or abandoned building or structure which is subject to the registration requirements of this Section shall designate a responsible agent for the building or structure. Any owner who lives within sixty (60) miles of the vacant or abandoned building or structure may designate himself, herself or itself as the responsible agent.
- (5) The owner of any vacant or abandoned building or structure who lives more than sixty (60) miles from the building or structure shall name a responsible agent who lives within or whose place of business is within sixty (60) miles from the building or structure. In the event an owner is a corporation, association, or other type of entity, the owner shall either have its principal place of business within the City or may designate a responsible agent who has its principal place of business within the City or lives within sixty (60) miles from the building or structure.

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(6) The designation of responsible agent shall constitute an authorization by the owner for the responsible agent to act on behalf of the owner with regard to all requirements under this Section and may accept all notices, including all notices pursuant to this this Section, all notices of proposed abatements or code enforcement actions, of whatever type or nature, relating to the subject property.

(7) The owner's designation of a responsible agent shall not relieve the owner of any obligation to comply with the provisions of this Section.

(8) The owner or responsible agent of a vacant or abandoned building or structure which is required to be registered in the vacant or abandoned building monitoring program shall inspect or cause the inspection of such vacant or abandoned building or structure not less than one time in every two-week period.

(9) Such owner or responsible agent shall keep or cause to be kept a written log of all inspections. The log shall contain, at a minimum, the following information:

- a. The date and time of the inspection;
- b. The name and signature of the person performing the inspection;
- c. A notation of any problems or violation of the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense);
- d. A detailed description of any corrective action performed to address any violation of the codes and ordinances of the City together with all other applicable controlling laws (as that term is used in its broadest sense). A copy of the log shall be provided to the City upon request of the director, or designee.

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(10) The City Manager, upon a finding that conditions exist within the City that warrant registration of single family residences, may issue a proclamation that includes single family residences within the requirements for registration as set forth herein.

(l) *Fees.*

(1) The owner of a vacant or abandoned building or structure subject to registration shall pay a vacant or abandoned building monitoring program annual registration fee as set forth in a resolution adopted by the City Council. Until such fee is adopted by resolution, it shall be in the amount of \$25.00 per quarter of a year based upon a calendar year.

(2) The fee shall be calculated on a quarterly basis and the entire fee shall be due and owing at the time of registration. Registration fees will not be otherwise prorated.

PART II. AMENDMENTS TO *CITY CODE* RELATING TO ENHANCED CODE ENFORCEMENT PROGRAM/CONDEMNATION AND DEMOLITION

SECTION THREE: CODE ENFORCEMENT ENHANCEMENT PROGRAM; CONDEMNATION AND DEMOLITION. The following new provisions are added to *the Code of Ordinances of the City of Daytona Beach Shores* as follows:

DILAPIDATED, UNSANITARY, UNSAFE OR UNINHABITABLE BUILDINGS

Authority To Condemn.

The City Council hereby authorizes and empowers the City's special magistrate to condemn and order to be demolished and removed, or to be put in a sound state of repair, any and all buildings and structures within the City found to be in a dilapidated, unsanitary, unsafe or uninhabitable condition. Additionally, City officials, as designated herein in emergency circumstances, are authorized to demolish and remove, or to be put in a sound state of repair, any and all buildings

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and structures within the City found to be in a dilapidated, unsanitary, unsafe or uninhabitable condition as set forth in the City's codes and ordinances.

Periodic Inspection Of Buildings; Notice Of Condemnation; Hearing.

(a). The persons designated building official, the fire chief, a code enforcement inspector and such other persons designated by the City Manager, are authorized to periodically inspect buildings and structures within the City, and if such official finds any building or structure to be in a dilapidated, unsanitary, unsafe or uninhabitable condition, shall report such fact in writing to the City Manager, specifying in detail the condition of the building or structure. The City shall thereupon determine whether or not a public hearing shall be held to condemn such building or structure. If the City Manager determines such hearing will be held, he or she shall cause to be placed upon such building or structure a notice of condemnation, and simultaneously therewith direct to be delivered to the owner or owners, or any one owner, either in person or by certified or registered mail to the last known address as shown by the tax assessment rolls of the County, a notice to the owner of the property involved, that the building or structure thereon has been found by officials of the City to be in dilapidated, unsanitary, unsafe or uninhabitable condition, and that the City intends to condemn the same. Such notice shall further provide that a hearing will be held before the City's special magistrate at a stated time and at a stated place, and that at such time and place a full determination will be made by the City's special magistrate as to the condition of the building or structure. If the owner cannot be located for personal delivery or receipt of certified or registered mail of the notice, after reasonable inquiry, then the notice shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation

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published within the City and the property posted with a notice, and such service shall be deemed sufficient to show that the notice requirements of this section have been met without regard to whether or not the property owner actually received such notice.

(b). The property owner and the City Manager, or designee, at the hearing, shall be heard and to present such relevant evidence as they desire. The City's special magistrate may accept evidence from the general public as deemed appropriate for the particular case.

(c). In the event that a mortgagee is evidenced in a title search, the mortgagee shall be noticed at the address set forth on the mortgage, if any, as well as at any address indicated on reasonably available records such as the records of the Florida Department of State.

Uninhabitable, Dilapidated, Unsafe Or Unsanitary Buildings Or Structures.

(a). A building or structure shall be uninhabitable, dilapidated, unsafe or unsanitary when:

(1). An order has been issued by the City under its codes or ordinances finding that a public nuisance exists; and

(2). The building or structure is found to have one or more of the following characteristics:

a. It is vacant, unguarded and open at doors or windows;

b. There is a deleterious accumulation of debris;

c. Its condition creates hazards with respect to means of egress and fire protection as provided for the particular occupancy;

d. There is a falling away, hanging loose or loosening of any siding, block, brick, or other building material;

e. There is deterioration of the building or structure or structural parts;

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- f. It is partially destroyed;
- g. There is an unusual sagging or leaning out of plumb of the building or structure or any parts of the building or structure and such effect is caused by deterioration or over-stressing;
- h. The electrical or mechanical installations or systems create a hazardous condition;
- i. An unsanitary condition exists by reason of inadequate or malfunctioning sanitary facilities or waste disposal systems;
- j. Combustible material is located on the property in an unsafe manner;
- ~~k.-j.~~ It is in ~~substantial~~ substantive non-compliance with the *International Property Maintenance Code* as enacted by the City.

l. The certificate of occupancy for one or more buildings on the property has been suspended or revoked by the City's building official.

(b). A building or structure found to be uninhabitable, dilapidated, unsafe or unsanitary as provided in this section shall be subject to demolition.

(c). The City shall implement the provisions of the adopted *International Property Maintenance Code*, as enacted by the City, in conjunction with the provisions of this Ordinance.

(d). The City may sell any material salvaged from any demolished building or structure and any other property contained therein or thereupon and credit the proceeds against the cost of demolition or removal, or where an independent contractor is employed to demolish or remove any such building or structure, to convey such material or property to the contractor as compensation or partial compensation for such demolition or removal. Should the proceeds from the disposition of such materials or property exceed the cost of such demolition or removal, such

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excess shall be used, applied, or paid over in accordance with the written directions of the parties entitled thereto.

(e). The City Manager is authorized to expend such funds as may be necessary to carry out the provision of this Ordinance. Nothing contained herein shall require the City Council to appropriate or the City Manager expend any funds to carry out the purpose of this Ordinance. The authority granted herein is permissive and shall not be construed to impose an obligation on the City to condemn any building or structure.

(f). Nothing herein precludes exercise of emergency powers by the City otherwise available in the face of imminent threat to public safety.

(g). The provisions of this Ordinance shall not be deemed to repeal or modify any provision of a City code or ordinance relating to condemning of buildings and structures but the provisions herein shall be supplemental and in addition to the powers that may be exercised by the City through its City Council or its officers and employees.

Order Of Condemnation; Repair Or Removal.

If the City's special magistrate determines upon hearing as provided in this Ordinance that such building or structure should be condemned, such fact shall be stated in writing to the property owner including reasonable specifications as to the deficiencies justifying such condemnation and the property owner shall be given a reasonable time, according to the size, condition and location of such building or structure, in which to cause the building or structure to be demolished and removed, the illegal conditions abated, or placed in a state of sound repair, and in the event of failure on the part of the property owner within such time period to effect the

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demolition and removal, abatement or repair, then such building or structure may be demolished and removed by the City and the cost of the same specially assessed as a lien against the land. The order of condemnation shall be delivered to the property owner or owners, or any one owner, either in person or by certified or registered mail to the last known address as shown by the tax assessment rolls of the county. The lack of a signed returned receipt shall not constitute a failure to notify owners or interested parties. Service shall be deemed complete upon mailing. The order of condemnation shall be recorded in the public records of the County as a municipal special assessment lien in accordance with the *City Code*. The recordation of such order of condemnation as a municipal special assessment lien as provided in this Section shall constitute notice to any subsequent purchasers, transferees, grantees, mortgagors, mortgagees, lessees, lienors, and all persons having, claiming or acquiring any interest in the property described therein, or affected thereby. No condemned building or structure stating that the same is condemned shall be occupied or used for any purpose during the period of time the same is condemned unless an order of the special magistrate provides to the contrary and, absent, such an order, the continuing status of the building or structure shall be that it is condemned.

Demolition By City; Municipal Special Assessment Lien.

If, within the time stated in the order of condemnation/municipal special assessment lien provided for in this Ordinance, the property owner fails to demolish and remove or repair such condemned building or structure, and has not shown cause before the City's special magistrate which justifies an extension of time, the City's special magistrate shall forthwith order such building or structure to be demolished or removed by the City and the actual costs including

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administrative costs of the same specially assessed as a municipal special assessment lien upon the land as set forth in the *City Code*. The City may enforce its municipal special assessment lien and maintain a personal action against the property owner or owners at the same time to recover such cost and any and all interest accrued thereon. In any suit by the City either at law or in equity for the collection of the amount of the lien, the City shall be entitled to recover its actual costs and attorney's fee for the suit and such costs and attorney's fee shall also become a lien upon the land. Any lien for costs and fees incurred pursuant to the implementation of this Ordinance shall constitute a lien for special assessments, and with the same penalties and rights of collection, foreclosure, sale and forfeiture as obtained for special assessment liens.

Emergency Powers.

The City Manager, or designees, shall have the power to promptly cause a building, structure or portion thereof to be made safe or cause its removal in cases of emergency which have been determined to involve imminent danger to human life or health. For this purpose such building, structure or portion thereof, or land on which such structure stands or abutting land, may be entered by such official with such assistance and at such cost as the official may deem necessary. The official may order the vacation of adjacent structures and may protect the public by appropriate fencing or such other means as may be necessary, and for this purpose may close a public or private way. All costs incurred by the City pursuant to this Section shall be assessed and enforced as stated in this Ordinance and other controlling provisions of the City's codes and ordinances.⁴

⁴ Reference is directed to the provisions of Sections 933.20 through 933.30, Florida Statutes.

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Implementing Administrative Actions.

The City Manager, or designee, is hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions to include, but not be limited to, the adoption of administrative rules, the seeking of administrative inspection warrants, and the imposition of liens; all such actions being taken in concert with the City Attorney.

PART III. AMENDMENTS TO *CITY CODE* RELATING TO CERTIFICATE OF USE, ~~AND CERTIFICATE OF COMPLIANCE FOR VACANT PROPERTY, AND HABITABILITY~~ *INTERNATIONAL PROPERTY MAINTENANCE CODE*⁵ ADOPTION

SECTION FOUR: CODE ENFORCEMENT ENHANCEMENT PROGRAM; ~~HABITABILITY COMPLIANCE~~ REQUIREMENTS. The following provisions of the *Code of Ordinances of the City of Daytona Beach Shores* are amended to read as follows:

Sec. 14-61.1. - Zoning confirmation; certificate of use or certificate of compliance-vacant property. ~~habitability~~.

(a) A zoning confirmation and certificate of use process shall be completed for all commercial and industrial properties to include, but not be limited to, all retail, sales, services and other non-residential uses regardless of the zoning district assigned to the property, prior to a certificate of use being issued by the City and a certificate of use is required for all new occupancies or changes in occupancies relative to all commercial and industrial uses within the City. It is prohibited and

⁵ This model code is published by the International Code Council (ICC) which is a non-profit organization dedicated to developing model codes and standards used in the design, build and compliance process. The International Codes (I-Codes) are the widely accepted, comprehensive set of model codes used in the US and abroad to help ensure the engineering of safe, sustainable, affordable and resilient structures. All 50 states and the District of Columbia have adopted the I-Codes® at the state or jurisdictional level. Internationally, code officials recognize the need for a modern, up-to-date property maintenance. The International Property Maintenance Code® governs the maintenance of existing buildings and is designed to meet this need through model code regulations that contain clear and specific property maintenance requirements with required property improvement provisions. In this Ordinance, when text is being amended, ~~strikethrough text~~ represents deletions from the current text of the Code of Ordinances of the City of Daytona Beach Shores while underlined text represents additions.

unlawful to place commercial ~~or industrial~~ property in use without first obtaining a zoning confirmation and certificate of use from the City.

(b) ~~A~~ An application for a certificate of compliance ~~habitability~~ process shall be submitted to the City Building Official ~~completed~~ for all vacant or abandoned commercial and industrial properties to include, but not be limited to, all retail, sales, services and other non-residential uses regardless of the zoning district assigned to the property, upon a building or structure located on such property being vacant for a period exceeding sixty (60) calendar days. It is prohibited and unlawful ~~to allow~~ for the owner of a building or structure located on a commercial ~~or industrial~~ property to ~~be~~ allow said building or structure to remain vacant for more than sixty (60) calendar days without ~~timely receiving~~ applying for a certificate of compliance for vacant property ~~habitability~~ from the City's Building Official. The application shall be accompanied with an associated a plan of maintenance while the building or structure is vacant to ensure that the building or structure meets all applicable health, safety and welfare requirements of the City Code is and remains habitable and safe to the public while vacant. A certificate of compliance ~~habitability~~ shall be applied for every ~~6~~ twelve (12) months after the initial certificate of compliance ~~habitability~~ application is issued ~~due~~ and it is prohibited and unlawful to ~~maintain~~ allow a ~~vacant~~ building or structure to remain vacant without ~~being granted~~ obtaining a timely certificate of compliance ~~habitability~~ and appropriately displaying the certificate of compliance ~~habitability~~ on the vacant building or structure. A certificate of compliance ~~habitability~~ is required for each vacant building or structure located on a parcel of property.

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(c) An application for a zoning confirmation and certificate of use or a certificate of compliance ~~habitability~~ for a building or structure shall be submitted to the City in such form as the City Manager, or designee, shall prescribe. An applicant for a zoning confirmation and certificate of use or certificate of compliance shall pay an application fee as established in the schedule of fees adopted by the City Council.

(d) The owner or lessee or agent of either shall make application for zoning confirmation and certificate of use prior to commencing the use of property or for a certificate of compliance for vacant property ~~habitability~~ within five (5) calendar days after a building or structure has been vacant for a period of sixty (60) calendar days.

(e) Zoning confirmation and certificate of use ~~or a certificate of habitability~~ shall only be issued by the City when the use on the property is found to be in compliance with all applicable land development regulations of the City or the use is a legal non-conforming use.

(f) Prior to the change in occupancy relative to a parcel of real property, and as part of the zoning confirmation and certificate of use application process, a site plan shall be submitted to the City for review and approval which site plan shall include, but not be limited to, a parking plan depicting the parking lot that will serve the applicant business. Within five (5) days after a building or structure has been vacant for a period of sixty (60) calendar days, the property owner shall file an application with the City's Building Official requesting a certificate of compliance ~~habitability~~ which shall contain a statement identifying a plan of maintenance while the building or structure is vacant.

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(g) Upon acceptance of a completed application, the application shall be forwarded to the City's pertinent staff for approval of proper zoning, and compliance with the pertinent land development regulations and building regulations of the City. The Public Safety Department shall evaluate the property and inspect the property, as necessary, to ensure compliance with the fire codes and applicable safety codes.

(h) The City may engage in inspections⁶ by City inspectors as determined to be necessary and desirable with regard to the property under consideration. If it is determined that the applicant's business location does not comply with the requirements of the City's land development regulations, building codes, fire codes, or safety codes, such application shall be denied by the City and the applicant shall not be permitted to engage in the business at such location or, in the case of a vacant building or structure, administratively ordered to remedy all identified issues.

(i) Upon approval of the zoning confirmation and other matters set forth in this section by the City a certificate of use shall be issued to the applicant and the applicant shall prominently display the certificate of use at the property for which the certificate of use was issued or, in the case of a certificate of compliance for vacant property ~~habitability~~, upon approval of the vacant building or structure maintenance plan, a certificate of compliance ~~habitability~~ shall be issued.

(j) The Building Official/Community Services Director may revoke a certificate, permit or approval issued under the provisions of this section in cases where there has been any false statement or misrepresentation as to a material fact in the application or plans on which the

⁶ Reference is directed to the provisions of Sections 933.20 through 933.30, *Florida Statutes*.

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permit or approval was based or, in the case of a certificate of compliance ~~habitability~~, the vacant building or structure maintenance plan has not been adhered to.

(k) Right of appeal.

(1) If the designee of the City Manager denies a certificate of use or certificate of compliance ~~habitability~~, or the Building Official/Community Services Director revokes a certificate of use or certificate of compliance ~~habitability~~ the aggrieved party ~~applicant~~ therefore shall have the right to appeal such action to the City Manager by filing a notice of appeal with the City Manager within ten (10) days after such action. The City Manager, within fifteen (15) days of such appeal, shall hold an informal hearing to determine if the business location complies with the requirements of all applicable ordinances, codes and regulations. Written notice of the hearing shall be provided by the City Manager to the aggrieved party ~~applicant~~, which notice shall set a date for the hearing giving the applicant an opportunity to be heard on the action. The City Manager, after hearing from all interested parties, shall either sustain or reverse the action. The City Manager shall issue a written decision.

(2) If the ~~applicant desires to appeal~~ the decision of the City Manager is adverse, the ~~applicant~~ aggrieved party shall have the right to bring an appeal ~~the decision of the City Manager~~ to the City's special magistrate by filing a notice of appeal with the City Clerk within ten (10) days after receiving notice of the adverse decision ~~such action~~. The City's special magistrate shall, as soon as practicable, hold a hearing to determine if the business location complies with the requirements of all applicable ordinances, codes and regulations or if the certificate of compliance ~~habitability~~ should have been granted or not revoked. Written notice of the hearing

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shall be provided by the City Clerk to the aggrieved party ~~applicant~~, which notice shall set a date for the hearing ~~giving the applicant an opportunity to be heard on the~~ appeal action. The City's special magistrate, after hearing from all interested parties, shall either sustain or reverse the action of the City Manager and shall issue a written decision which shall be final City action on the matter.

(l) ~~applicant for a zoning confirmation and certificate of use or certificate of compliance habitability shall pay a fee for applying as well as a fee for each appeal as established in the schedule of fees adopted by the City Council.~~ An aggrieved party shall pay the appeal fee established in the schedule of fees adopted by the City Council for appeals to be heard by the Special Magistrate at the time of filing an appeal with the City Clerk.

(m) Fortunetellers, astrologers, pain management clinics and similar enterprises.

(1) No certificate of use will be issued to any person engaged in the business of fortunetelling, astrology, palmistry, spiritualists or mediums or other occupation professing to foresee or predict the future or recall past events by any physical or spiritual means, or involving a pain management clinic until such person shall furnish the following information to the City:

- a. The place or places of residence of the applicant for the five (5) years immediately preceding application.
- b. The address and nature of business engaged in for five (5) years immediately preceding the date of application.
- c. The names and present addresses of all persons, whether adults or minors, connected with or associated with the proposed business or occupation.

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(2) The City shall direct an inquiry to the Volusia County Sheriff and the City's Chief of Police in order that they can accomplish such investigation(s) and issue such report(s) as they deem appropriate in order to evaluate the moral and law abiding character of the applicant.

(3) The applicant for a pain management clinic certificate of use shall provide to the City proof of registration with the Florida Department of Health, pursuant to F.S. § 458.3265 or 459.0137, as amended, prior to the issuance of a certificate of use for the business. If the registration of a pain management clinic is revoked or suspended by the Florida Department of Health, the certificate of use shall be revoked automatically and shall not be appealable.

(4) The application for a certificate of use for a pain management clinic shall include an affidavit by the owner or the physician of record pursuant to F.S. § 458.3265 or 459.0137, as amended, attesting to the fact that no employee, full-time, part-time, contract, independent or volunteer has been convicted of or has pled guilty or nolo contendere at any time to an offense constituting a felony in this State or in any other state involving the prescribing, dispensing, supplying, selling or possession of any controlled substance within a five-year period prior to the date of employment at the pain management clinic.

(5) If at any time the City determines that a pain management clinic is operating in any manner that is inconsistent with, or contrary to, the provisions of this section or any other applicable code or law, the City may revoke the certificate of use through the process outlined in this Code.

(6) The application for a certificate of use for a pain management clinic shall disclose, in detail, the names and addresses of the owners and operators of the pain management clinic and

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shall be updated by the owner/operator annually at the time of renewal of the business tax receipt for the business, or at any time that there is a change of owner or the physician of record pursuant to F.S. § 458.3265 or 459.0137, as amended.

(7) A copy of each fortuneteller, astrologer, pain management clinic and similar enterprise's certificate of use shall be posted in a conspicuous location at or near the entrance to the business in order that it may be easily observed and read at any time.

SECTION FIVE: CODE ENFORCEMENT ENHANCEMENT PROGRAM; HABITABILITY REQUIREMENTS SUPPORT CODES ADOPTED. The following new provisions are added to *the Code of Ordinances of the City of Daytona Beach Shores* as follows:

(a). The City of Daytona Beach Shores hereby adopts the ~~2018 version of the~~ *International Property Maintenance Code*®, 2018 edition, as published by the International Code Council, as it may be amended from time to time, subject to the conditions set forth in this Section and all references to the local jurisdiction shall be to the City of Daytona Beach Shores.

(b). The general purpose of the adoption of the *International Property Maintenance Code*® is to facilitate its application is making determinations of ~~habitability~~ compliance for vacant properties as set forth in Section Four of this Ordinance.

(c). With regard to any conflict between the *International Property Maintenance Code*® and the *City Code* and *Florida Statutes*, the local and State law provisions shall prevail and apply.

(d). When a provision of the *International Property Maintenance Code*® requires the establishment of a regulatory standard or the establishment of a local fee; the standard set forth in the *City Code* or the fee adopted by the City Council shall be applicable. By way of example, Section 302.4 of the *International Property Maintenance Code*® relates to weed growth and, thus,

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the standard set forth in Section 13-5 of the *City Code* relating to and restricting the growth of weeds would be applicable. When a standard is not prescribed in the *City Code* as to a particular matter, the provision shall not be enforced by the City.

(e). With regard to processes and procedures, the processes and procedures set forth in Chapter 162, *Florida Statutes*, and the provisions of the *City Code* shall control and be applicable.

PART IV. TECHNICAL AND ADMINISTRATIVE PROVISIONS

SECTION SIX: IMPLEMENTING ADMINISTRATIVE ACTIONS.

Without in any way limiting the provisions of this Ordinance, the City Manager, City Clerk and City Attorney are hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions to bring into effect the purposes and provisions of this Ordinance as such Charter officials may deem appropriate in their respective roles and functions under the *City*.

SECTION SEVEN: SAVINGS; EFFECT OF ORDINANCE.

The prior actions of the City of Daytona Beach Shores in terms of the matters relating to the code enforcement and nuisance abatement actions of the City of Daytona Beach Shores and any and all actions of the City of Daytona Beach Shores pertaining thereto, as well as any and all related matters and processes and procedures of the City of an associated nature, are hereby ratified and affirmed.

SECTION EIGHT: CODIFICATION; SCRIVENER'S ERRORS.

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(a). The provisions of Sections One through Seven of this Ordinance shall be codified while the remaining Sections shall not be codified; provided, however, that the Code codifier shall take all actions necessary to implement the codification of the provisions of this Ordinance.

(b). Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Manager, or designee, without the need for a public hearing.

SECTION NINE: CONFLICTS.

All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION TEN: SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION ELEVEN: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon enactment.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY J. MILLER, MAYOR

MICHAEL T. BOOKER, CITY MANAGER

CHERI SCHWAB, CITY CLERK

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Approved as to form and legality:

RAYMOND J. BRANCH, CITY ATTORNEY

Passed on first reading this ___ day of _____, 2019.

Adopted on second reading this day of , 2019.

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**CITY COUNCIL AGENDA MEMORANDUM
NOVEMBER 12, 2019 AGENDA**

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Resolution 2019-22 City Manager Evaluation Procedure

SYNOPSIS:

Mayor Nancy Miller requested a Resolution be adopted formalizing the City Manager review process.

FISCAL IMPACT STATEMENT:

N/A

BACKGROUND:

The City Charter states that an evaluation will be completed annually for the City Manager but it did not state any formal procedure to follow. This attached Resolution will formalize the process going forward.

LEGAL REVIEW:

City Attorney Raymond Branch drafted the Resolution.

RECOMMENDATION:

It is recommended to adopt the Resolution and thereby creating a formal procedure to follow.

SUGGESTED MOTION:

I move to adopt Resolution 2019-22 on first reading.

ATTACHMENT: 1. res 2019-22 CM Evaluation Resolution and Worksheet

RESOLUTION 2019-XX

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA ADOPTING A PROCESS FOR THE ANNUAL EVALUATION OF THE OF CITY MANAGER IN THE PERFORMANCE OF CHARTER DUTIES AND RESPONSIBILITIES.

WHEREAS, the City Council seeks to adopt and implement a formal process for the annual evaluation of the performance of the City Manager to comply with its mandate pursuant to Article III, Section 3.03 of the City Charter; and

WHEREAS, City Council has expressed its desire for an evaluation process that is open, transparent and that utilizes objective, measurable criteria; and

WHEREAS, the Mayor has reached out to both the Florida League of Cities and the Florida City County Management Association (FCCMA) for their respective recommendations and suggestions; and

WHEREAS, the Florida League of Cities suggested a two-part evaluation process consisting of separate interviews utilizing a standardized evaluation ratings worksheet and a public hearing following tabulation of the results of the interview worksheets; and

WHEREAS, FCCMA has provided a proposed evaluation ratings worksheet which utilizes just such objective and measurable criteria sought by the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, AS FOLLOWS:

SECTION I Findings.

The foregoing recitals (whereas clauses) are hereby incorporated by reference herein and are adopted as administrative findings in support of the matters set forth in this Resolution and are made a part hereof.

SECTION II Process.

A. The annual performance evaluation of the City Manager shall take place in conjunction with the annual salary review of the City Manager as provided by Article III, Section 3.03 of the City Charter.

B. Each Council Member shall separately schedule an interview of the City Manager to occur not later than two (2) weeks prior to the public meeting at which the annual salary and evaluation review is scheduled.

C. Each Council Member shall complete the standardized evaluation ratings worksheet (attached hereto as Exhibit A, which is adopted and incorporated by reference herein) as part of his/her interview of the City Manager.

D. Following the interview of the City Manager, the Council Member shall sign and submit the completed evaluation worksheet to the City Clerk.

E. Upon receipt of all completed evaluation worksheets, the City Clerk shall tabulate the results for an overall performance score and attach all interview evaluation worksheets and the tabulation results to the agenda for the meeting at which the annual review of the City Manager is scheduled.

F. Following public discussion of the performance evaluations and results, the records associated therewith shall be preserved as part of the City's permanent public records.

SECTION III Conflicts.

All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION IV Severability.

If any section or portions of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION V Effective Date. This Resolution shall take effect immediately upon its passage and adoption by the City Council.

CITY OF DAYTONA BEACH SHORES, FLORIDA

MAYOR, NANCY J. MILLER

Attest:

CITY MANAGER, MICHAEL T. BOOKER

CITY CLERK, CHERI SCHWAB

Approved as to form and legality:

CITY ATTORNEY, RAYMOND J. BRANCH

Adopted this __ day of _____, **2019.**

Posted this __ day of _____, **2019.**



City of Daytona Beach Shores

City Manager Performance Evaluation

City Manager's Name: _____

Council Member Name: _____

Evaluation Period: _____ to _____

Evaluation Date: _____

Evaluation Instructions:

This form shall be completed by each member of the Council to evaluate the City Manager's performance in each of the areas noted below. Each member of the Council shall sign at the end of the form and forward it to the City Clerk. Performance levels can be noted based on the following scale:

- | | |
|----------------------------|--|
| 5 – EXCELLENT: | The incumbent consistently demonstrates performance at a very high standard that significantly surpasses reasonable expectations. |
| 4 – SUPERIOR: | The incumbent consistently demonstrates performance that generally exceeds reasonable expectations. The individual demonstrates no appreciable performance deficiencies. |
| 3 – SATISFACTORY: | The incumbent consistently meets reasonable performance expectations. The individual demonstrates an acceptable degree of competence and performance. |
| 2 – FAIR: | The incumbent achieves the minimum of performance expectations. The individual requires development in specific areas in order to meet reasonable expectations of performance. |
| 1 – UNSATISFACTORY: | The incumbent frequently fails to meet minimum performance expectations. |

Timeline:

- City Manager evaluations are distributed May 1st to City Councilmembers
- By June 1st Councilmembers have completed the form and scheduled individual meetings
- Summary report is placed on Council Agenda in July



Performance Dimensions:

1. Professional Skills and Expertise		Rating:
a. Is knowledgeable of current developments affecting the management field and affecting local governments.	_____	of 5
b. Regularly provides accurate, comprehensive reports concerning matters of importance to the organization.	_____	of 5
c. Anticipates problems and develops effective approaches for solving them.	_____	of 5
d. Offers workable alternatives when changes in the law render the administration of an ordinance or policy impractical.	_____	of 5
e. Sets a professional example by handling the affairs of the organization in a fair and impartial manner.	_____	of 5
Total Rating for this Performance Dimension:		_____ of 25
Comments:		

2. Council Relations		Rating:
a. Carries out directives of the Board as a whole rather than those of any one Board member.	_____	of 5
b. In responding the requests for information, provides complete, accurate, and timely information equally to all Board members.	_____	of 5
c. Assists the Board by resolving problems at the administrative level to avoid unnecessary Board action.	_____	of 5
d. Assists the Board in establishing policy while acknowledging the ultimate authority of the Board.	_____	of 5
e. Is willing to try new ideas proposed by Board members.	_____	of 5
Total Rating for this Performance Dimension:		_____ of 25
Comments:		

3. Citizen and Public Relations		Rating:
a. Effectively conveys to the public that the organization delivers services in a cost-effective manner without sacrificing quality and customer focus.	_____	of 5
b. Is willing to meet with members of the community and is responsive to their concerns.	_____	of 5
c. Demonstrates a dedication to service to the community and its citizens.	_____	of 5
d. Expresses information orally in a clear and concise manner when making public presentations.	_____	of 5
e. Is skillful with the news media, proactively providing information that is important to the public.	_____	of 5
Total Rating for this Performance Dimension:		_____ of 25
Comments:		

4. Policy Execution		Rating:
a. Understands, supports, and enforces the organization's ordinances, policies, and procedures.	_____	of 5
b. Clearly identifies and communicates expectations to the organization regarding the implementation of policies enacted by the Board.	_____	of 5
c. Implements Board actions in accordance with the intent of the Board.	_____	of 5
d. Supports the actions of the Board after a decision has been reached, both inside and outside the organization.	_____	of 5
e. Helps internal and external stakeholders to achieve common objectives within the parameters of established Board policies.	_____	of 5
Total Rating for this Performance Dimension:		_____ of 25
Comments:		

5. Intergovernmental Relations		Rating:
a. Promotes a positive working relationship with other governmental entities.	_____	of 5
b. Engages with other local, regional, state, and federal agencies to accomplish local initiatives.	_____	of 5
c. Positively and effectively represents the organization and its interests when working with other governmental agencies.	_____	of 5
d. Maintains awareness of laws and other issues affecting other governmental agencies which may affect the organization.	_____	of 5
e. Is willing to share resources or information with other governmental agencies as appropriate.	_____	of 5
Total Rating for this Performance Dimension:		_____ of 25
Comments:		

6. Staffing and Management		Rating:
a. Recruits and retains competent personnel for City positions.	_____	of 5
b. Is aware of staff weaknesses and works to improve their performance.	_____	of 5
c. Promotes training and development opportunities for employees at all levels of the organization.	_____	of 5
d. Stays accurately informed and concerned about employee relations.	_____	of 5
e. Is able to discern when it is necessary to assume charge of situations that would normally be handled by a subordinate and when it is necessary to only provide guidance and support.	_____	of 5
Total Rating for this Performance Dimension:		_____ of 25
Comments:		

		Rating:
7. Fiscal Management		
a. Prepares a balanced budget to provide services at a level directed by the Board.		_____ of 5
b. Ensures that the budget meets the operational needs of the organization and makes the best possible use of available funds.		_____ of 5
c. Prepares the budget in an intelligent but readable format.		_____ of 5
d. Submits the proposed budget in a timely manner that allows for an appropriate review period.		_____ of 5
e. Appropriately monitors and manages the fiscal activities of the organization throughout the fiscal year.		_____ of 5
Total Rating for this Performance Dimension:		_____ of 25
Comments:		

8. Planning and Organizational Development		Rating:
a. Works with the Board, community leaders, and other stakeholders to develop a clear vision, mission, values, and objectives for the organization.		_____ of 5
b. Effectively prioritizes goals and objectives in order to ensure that the organization is doing "first things first" in support of its strategic plan.		_____ of 5
c. Maintains a healthy and productive organizational culture focused on customer service and responsible stewardship of the organization's resources.		_____ of 5
d. Has a capacity for and encourages innovation.		_____ of 5
e. Reviews ordinances, policies, and procedures periodically to suggest improvements.		_____ of 5
Total Rating for this Performance Dimension:		_____ of 25
Comments:		

9. Leadership and Decision-Making		Rating:
a. Leads the organization by example in adhering to its established policies, rules, and procedures, and ensures that subordinates do the same.	_____	of 5
b. Acknowledges the efforts of others and gives appropriate credit for their accomplishments.	_____	of 5
c. Is effective at building consensus among stakeholders on new or unpopular policies or initiatives.	_____	of 5
d. Makes logical decisions based on a thorough review of available information and soliciting input from appropriate sources.	_____	of 5
e. Is able to effectively make decisions rapidly in situations where information is limited and the outcome might be uncertain.	_____	of 5
Total Rating for this Performance Dimension:		_____ of 25
Comments:		

10. Individual Characteristics		Rating:
a. Consistently acts with professionalism and courtesy, including prompt attendance at meetings, returning phone calls/messages, and adhering to scheduled appointments.	_____	of 5
b. Ensures that all business conducted by the organization is free of conflicts of interest or practices that might be construed as illegal, unethical, or unprofessional.	_____	of 5
c. Is energetic, cooperative, and willing to spend whatever time is necessary to do a good job.	_____	of 5
d. Has the capacity to listen to others and to recognize their interests.	_____	of 5
e. Avoids political positions, partisanship, and unnecessary controversy.	_____	of 5
Total Rating for this Performance Dimension:		_____ of 25
Comments:		

Summary:

Performance Dimension:	Overall Rating:	
1. Professional Skills and Expertise	_____	<i>of 25</i>
2. Council/Commission Relations	_____	<i>of 25</i>
3. Citizen and Public Relations	_____	<i>of 25</i>
4. Policy Execution	_____	<i>of 25</i>
5. Intergovernmental Relations	_____	<i>of 25</i>
6. Staffing and Management	_____	<i>of 25</i>
7. Fiscal Management	_____	<i>of 25</i>
8. Planning and Organizational Development	_____	<i>of 25</i>
9. Leadership and Decision-Making	_____	<i>of 25</i>
10. Individual Characteristics	_____	<i>of 25</i>

Total Score: _____ of 250

Divide by 50 (total number of metrics)

Total Average Rating: _____ **of 5**

Evaluator's Signature: _____

Date: _____



**CITY COUNCIL AGENDA MEMORANDUM
NOVEMBER 12, 2019 AGENDA**

TO: Honorable Mayor and Members of the City Council
FROM:
PREPARED BY: Cheri Schwab, City Clerk
SUBJECT: Selection of TPO member for year 2020

SYNOPSIS:

Mayor Miller has served for the past year on this board. She wishes to allow another member of council to serve for next year.

FISCAL IMPACT STATEMENT:

There is no fiscal impact for this agenda item.

BACKGROUND:

Every municipality is required to have a member on the board. Mayor Miller has attended the meetings for the past year. She wishes to allow another member of council to attend the meetings for next year.

LEGAL REVIEW:

There is no legal review required.

RECOMMENDATION:

SUGGESTED MOTION:

I nominate XX to serve on the TPO board.

ATTACHMENT: None



**CITY COUNCIL AGENDA MEMORANDUM
NOVEMBER 12, 2019 AGENDA**

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Consideration of Purchase and Sale Agreement for 2900 S. Atlantic Avenue

SYNOPSIS:

This is the initial step in the process of selling the property. As stated in the Purchase and Sale agreement the details of the Development Agreement will still need to be negotiated out. Once completed, the Development Agreement will be brought to the City Council for final approval.

FISCAL IMPACT STATEMENT:

The purchaser has agreed to escrow the full purchase price of the property(\$801.000). Upon closing these proceeds will be paid to the City.

BACKGROUND:

LEGAL REVIEW:

City Attorney Branch prepared the document.

RECOMMENDATION:

SUGGESTED MOTION:

ATTACHMENT: 1. 2900 S. Atlantic PSA.final form

PURCHASE AND SALE AGREEMENT

This **PURCHASE AND SALE AGREEMENT** (the “**Agreement**”) is made and entered into as of November 12, 2019 (the “**Effective Date**”), by and among **CITY OF DAYTONA BEACH SHORES**, a Florida municipal corporation (“**Seller**”), and **FLORIDA LIFESTYLE HOMES & LAND INC.**, a Florida for profit corporation, or permitted assigns (“**Purchaser**”), and Smith Bigman Brock, P.A. (“**Escrow Agent**”). *All capitalized terms used but not immediately thereafter defined shall have the meanings ascribed thereto elsewhere in this Agreement.*

In consideration of the mutual covenants and provisions herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller, Purchaser and Escrow Agent agree as follows:

ARTICLE 1

DESCRIPTION OF PROPERTY

1.1 Purchase and Sale.

Seller hereby agrees to sell, assign, and convey to Purchaser, and Purchaser agrees to purchase from Seller, in accordance with the terms and subject to the conditions contained herein, that certain vacant parcel of real property situated in Volusia County, Florida, commonly known as 2900 South Atlantic Avenue in Daytona Beach Shores, Florida, “AS IS” and having a parcel identification number of 532706040020 and more particularly described on **Exhibit “A”** attached hereto and incorporated by reference herein (the “**Land**”) (the Land together with all appurtenances pertaining thereto, and all rights, title and interest of Seller, as the fee simple owner of the Land, including, but not limited to, any non-governmentally owned or controlled water rights, subsurface and mineral rights, easements, licenses, privileges, adjacent streets, roads, alleys or rights of way in front of the Land and any water, sewer and utility pipes of and facilities in or appurtenant to the Land, if any, and subject to any and all covenants, easements and restrictions of record thereto, are hereinafter collectively referred to as the “**Property**”), together with all of Seller’s right, title and interest, if any, in and to all assignable licenses, permits, certificates of occupancy, development rights, consents, entitlements, subdivision maps and approvals whether governmental, regulatory or otherwise, relating to the use, operation or maintenance of the Property (the “**Permits**”).

ARTICLE 2

PURCHASE PRICE

2.1 Purchase Price.

The total purchase price for the Property which Purchaser agrees to pay to Seller shall be Eight Hundred One Thousand and 00/100 Dollars (\$801,000.00) (the “**Purchase Price**”), subject to adjustments and prorations as provided herein.

2.2 Payment of Purchase Price.

Purchaser shall pay to Seller through escrow with Escrow Agent at Closing the Purchase Price, subject to adjustments and credits as set forth in this Agreement, via a wire transfer.

ARTICLE 3

EARNEST MONEY

3.1 Amount; Terms.

Purchaser shall deliver to the Escrow Agent within three (3) business days after the Effective Date, the full Purchase Price of Eight Hundred and One Thousand and 00/100 Dollars (\$801,000.00) via a wire transfer (the “**Earnest Money**”), to be placed in a non-interest-bearing account. If the sale of the Property is consummated pursuant to the terms of this Agreement, the Earnest Money shall be paid by Escrow Agent to Seller at Closing and applied as a credit to Purchaser’s account for payment of the Purchase Price. Except as provided in Article 9 below the Earnest Money shall become non-refundable to Purchaser upon the expiration of the Inspection Period.

ARTICLE 4

INSPECTION PERIOD

4.1 Duration.

Purchaser shall have the right, subject to the terms herein, during normal business hours upon reasonable notice for a forty (40) day period commencing on the Effective Date and ending at 6:00 p.m. EST forty (40) days after the Effective Date (the “**Inspection Period**”), to enter upon the Property to inspect and investigate the Property to determine whether or not the same is satisfactory to Purchaser, in Purchaser’s sole discretion. Notwithstanding the expiration of the Inspection Period, if Purchaser has not terminated this Agreement pursuant to Section 4.3 hereof, Purchaser shall continue to have the right, subject to the terms herein, during normal business hours upon reasonable notice to Seller to enter upon the Property to inspect and investigate the Property.

4.2 Entry and Inspection.

(a) Seller shall make the Property available for inspection by Purchaser, Purchaser’s employees, agents and contractors, during normal business hours upon twenty-four (24) hours’ notice. Purchaser may, at Purchaser’s sole risk and expense, undertake a complete physical inspection of the Property as Purchaser deems appropriate; provided, however, that any such inspection does not cause any damage to the Property. In addition, Purchaser shall have the right to conduct such investigations, tests, surveys, interviews and other analyses as Purchaser determines is necessary.

(b) All such inspections, investigations and examinations shall be undertaken at Purchaser’s sole cost and expense. Purchaser will coordinate all on-site inspections with Seller

so that Seller shall have the option of having one of Seller's representatives present at any and all such on-site inspections. After completing any such inspections, Purchaser shall restore and repair any damage caused by Purchaser's inspections to substantially the same condition that existed immediately prior to such inspection, and Purchaser hereby agrees to indemnify and hold Seller harmless from any and all claims made or causes of action brought against Seller or the Property resulting from the activities of Purchaser or any of Purchaser's agents or servants in conducting any of such inspections on the Property. Notwithstanding the foregoing, Purchaser's indemnity shall not cover any loss, claim or damage to the Property or to any person directly related (i) to any conditions or environmental issues which existed prior to Purchaser's inspection or to the existence of any hazardous materials or substances which is discovered during Purchaser's inspection or (ii) resulting from Seller's acts, failure to act or negligence.

(c) Purchaser agrees not to disclose to any third party any non-public information contained in books, records, reports, surveys, or any other proprietary information provided to Purchaser by Seller, except as required by law or to Purchaser's agents, contractors, accountants, attorneys, lenders, investors, partners, members, prospective or otherwise (collectively, "**Purchaser's Parties**"), and otherwise as may be necessary or desirable for the purposes of this transaction, without the express prior written consent of Seller, said consent not to be unreasonably withheld.

(d) Seller shall deliver the following items to Purchaser, if within Seller's possession, within five business (5) days after the Effective Date: all information, drawings, permits and reports relating to the Property; copies of all surveys and maps pertaining to the Property; copies of all protective covenants, conditions or restrictions imposed on the Property; copies of all environmental studies, surveys, soil tests, geotechnical reports, audits, reports and other information relating to the Property, including but not limited to information pertaining to jurisdictional wetlands, environmental soil conditions or subsurface conditions of the Property; a schedule of Incentives or Credits (as hereinafter defined); a copy of the most recent ALTA Owner's Policy of Title Insurance, together with copies of all documents listed as exceptions thereon (collectively, the "**Due Diligence Materials**"), to the extent such Due Diligence Materials are in Seller's possession or control or readily available as public records. Seller shall also make available to Purchaser copies of such other documentation as reasonably requested by Purchaser at City Hall. Seller shall cooperate with Purchaser in its due diligence review and investigation of the Property and shall direct its employees and agents to cooperate with Purchaser in such review and investigation.

4.3 Termination of Inspection Period.

The Purchaser shall have the right at any time during the Inspection Period to notify Seller in writing that it has elected to terminate this Agreement and receive a return of the Earnest Money, except as provided in Section 3.1, if Purchaser in its sole discretion for any reason or no reason, including, without limitation, the economic feasibility of the Property, determines that the Property is not satisfactory to Purchaser. If Purchaser terminates this Agreement during the Inspection Period, Purchaser shall return the Due Diligence Materials delivered to Purchaser by Seller as well as providing copies to Seller of any and all plans, reports, studies, audits, surveys or any other documents prepared by, for or at the direction of the Purchaser in connection with the transaction contemplated herein (excluding attorney-client work product).

ARTICLE 5

TITLE POLICY; SURVEY

5.1 Title.

Within fifteen (15) days after the Effective Date, Seller shall obtain a title commitment, together with copies of all title documents listed as exceptions therein (the “**Commitment**”) through a Seller selected title company issuing the Commitment on a national title insurance underwriter (the “**Title Company**”), agreeing to issue to Purchaser an Owner’s ALTA Form B title insurance policy in the total amount of the Purchase Price insuring fee simple title to the Property, subject only to the Permitted Exceptions. Upon receipt of the Commitment, Seller shall provide a copy thereof to Purchaser. Within fifteen (15) days after receipt of the Commitment and Survey by Purchaser, Purchaser shall notify Seller in writing of any defects or objections to the title appearing in the Commitment or Survey (each a “**Title Defect**” and collectively, the “**Title Defects**”). Any failure by Purchaser to provide such notice shall be deemed Purchaser’s approval of the Commitment. Within ten (10) days after receipt of Purchaser’s notice of Title Defects, Seller shall provide written notice to Purchaser of those Title Defects it elects to cure and Seller shall have until Closing to cure said Title Defects. Any failure of Seller to provide such notice shall be deemed Seller’s election to not cure any such Title Defects. Seller agrees to take such actions as necessary to satisfy or cause to be waived all the B-1 requirements in the Commitment within its control and to satisfy, pay or bond-off at Closing from the sales proceeds or otherwise (a) amounts secured by any mortgage lien or security interest encumbering the Property; (b) all real estate taxes and assessments which are due and payable on or prior to the Closing (subject to pro-rata adjustments as provided herein); (c) any liquidated final non-appealable liens or judgments affecting all or any portion of the Property; and (d) any other monetary liens against the Property (collectively, the “**Mandatory Removal Liens**”). If Seller (i) elects not to cure any or all Title Defects, (ii) fails to provide the title response notice as provided above or (iii) fails to remedy or to cause the Title Company to endorse over, on or prior to the Closing, any Title Defects which Seller has agreed to cure (other than Mandatory Removal Liens), Purchaser may in its sole discretion and as its sole remedy on account of such failure either (x) terminate this Agreement and receive return of its Earnest Money or (y) waive such title objections or defects and consummate the Closing.

5.2 Permitted Exceptions.

It is understood and agreed that the Property are being sold by Seller to Purchaser free and clear of all liens, claims and encumbrances, except the Permitted Exceptions, and it is further understood and agreed that the conveyance by General Warranty Deed (the “**Deed**”) to be delivered by Seller at Closing shall be subject only to the following (the “**Permitted Exceptions**”):

- (a) Laws, ordinances and governmental regulations (including but not limited to building, zoning, land use and any subdivision ordinances and regulations) affecting the occupancy, use or enjoyment of the Property which do not materially adversely affect the use of the Property for Purchaser’s intended use;

(b) All matters shown on Schedule B-2 of the Commitment which are not Title Defects or Mandatory Removal Liens;

(c) Real estate taxes and assessments for the year of Closing and subsequent years; and

(d) Those matters disclosed by or depicted on the Survey, which are not a Title Defect.

5.3 Survey.

Purchaser may cause a new survey of the Property to be prepared at its own expense by a registered land surveyor duly licensed in the State of Florida (“**Survey**”). The Survey shall be prepared in such a manner so as to allow the Title Company to delete the standard survey exception from the Commitment and in its place insert the specific survey exceptions based on the Survey. In lieu of obtaining a new Survey, upon Purchaser’s request, Seller agrees to execute a survey “no change” certificate in form reasonably acceptable to the Title Company so long as the Seller is in possession of a prior survey.

5.4 Later Title Exceptions.

If any new matters appear on any updates to the Commitment then all of the provisions of Section 5.1 shall apply thereto except: (a) the time for Purchaser to object shall be five (5) days after it receives said update; (b) the time for Seller to respond shall be five (5) days after it receives Purchaser’s notice of any objection; and (c) the time for Purchaser to exercise its remedies shall be five (5) days after receiving Seller’s written response. Seller must cure any later objection which is a Mandatory Removal Lien and may do so from the closing proceeds. In addition, if any of the time periods provided for in this Section 5.4 extend beyond the Closing Date, then the Closing Date will be extended until a date which is five (5) days after the last applicable date.

ARTICLE 6

REPRESENTATIONS OR WARRANTIES BY SELLER

6.1 Seller’s Representations and Warranties.

Seller hereby represents and warrants to Purchaser the following matters are true and correct as to the best of its knowledge of the Effective Date and as of the Closing Date:

(a) Seller is a Florida municipal corporation duly organized, validly existing and in good standing under the laws of the State of Florida. Seller will keep in full force and effect through the Closing Date its legal existence and all licenses and franchises necessary for the conduct of its business.

(b) Seller owns marketable title to the Property, subject only to the Permitted Exceptions and Mandatory Removal Liens.

(c) The execution, delivery and performance by Seller of this Agreement is within the authority of Seller, has been authorized by all necessary proceedings.

(d) The person signing this Agreement on behalf of Seller is authorized to do so. Upon execution and delivery of the Agreement by Seller, this Agreement will be a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

(e) There are no judgments or violations outstanding against Seller or petitions, suits, claims, causes of actions or moratoria or any other proceedings pending or threatened against Seller or the Property before any court or other governmental, administrative, regulatory, adjudicatory, or arbitrational body of any kind, which if decided adversely to the Seller would adversely affect (i) Seller's ability to perform the obligations of the Agreement or (ii) the Property.

(f) Seller has received no written notice of, and has no knowledge of, any pending or threatened, litigation, condemnation, boundary line dispute, or other legal proceeding affecting the Property or any portion thereof.

(g) There are no presently outstanding and uncured violation of any zoning ordinance or related law and to Seller's knowledge there are no such violations.

(h) Seller is unaware of any leases or other tenancy agreements affecting the Property.

(i) Seller is unaware of any underground storage tanks located on the Property.

(j) Seller has not received any written notice or citation for noncompliance with respect to any Federal State or local laws and regulations governing hazardous materials (as defined by applicable law) relating to the Property.

(k) There is no special assessments for public improvements against the Property, whether pending or threatened, including, without limitation, those for construction of sewer and water lines or mains, street lights, streets, sidewalks and curbs.

(l) Seller has not received any notices by any insurance company which has issued a policy with respect to any portion of the Property, by any board of fire underwriters, or from any governmental authority, of zoning, building, fire or health code violations in respect to the Property.

(m) Seller has not granted to any person or entity any option or other right to purchase the Property, and no person or entity has any option or other right to purchase the Property.

(n) All of the documents and materials delivered by Seller to Purchaser in connection with its due diligence are true, correct and complete copies of such documents and materials.

(o) The Property is not a "plan asset" as defined in the Employee Retirement Income Security Act of 1974, as amended, or the regulations issues thereunder ("**ERISA**") and sale of the Property by Seller is not a "prohibited transaction" under ERISA.

6.2 Survival.

The representations and warranties of Seller contained in Section 6.1 are made as of the Effective Date and shall be deemed to be remade on and as of the date of the Closing, and shall survive the Closing for only a period of six (6) months from and after the Closing Date (the “**Survival Period**”). The representations and warranties of Seller set forth in Section 6.1 shall be true and correct as of the Closing Date as a condition to Purchaser's obligation to consummate the purchase of the Property. If, on or before the expiration of the Inspection Period, Purchaser discovers that any of the representations and/or warranties of Seller set forth in Section 6.1 are not materially true and accurate, Purchaser's sole remedy in such case shall be either to (a) waive the breach and consummate its purchase of the Property, in which case Seller shall have no further liability or obligation whatsoever to Purchaser in respect of such untrue or inaccurate representation or warranty, or (b) terminate this Agreement in which event the Earnest Money shall be immediately returned to Purchaser by the Escrow Agent. If, after expiration of the Inspection Period, Purchaser discovers that any of the representations and/or warranties of Seller set forth in Section 6.1 are not materially true and accurate, such discovery shall be deemed a default by Seller, and Purchaser shall have the remedies that are provided in Section 13.1.

6.3 Later Violations.

Seller shall be required to cure and remove of record any violations noted or issued by any governmental authority prior to the Closing Date.

ARTICLE 7

REPRESENTATIONS, WARRANTIES AND COVENANTS BY PURCHASER

7.1 Purchaser's Representations and Warranties.

Purchaser hereby represents, warrants and covenants to Seller the following matters are true and correct as of the Effective Date and as of the Closing Date:

- (a) Purchaser has the authority and capacity to enter into this Agreement.
- (b) The execution, delivery and performance by Purchaser of this Agreement is within the authority of Purchaser, has been authorized by all necessary proceedings. Upon execution and delivery by Purchaser, this Agreement will be the valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms.
- (c) There are no judgments outstanding against Purchaser or petitions, suits, claims, causes of actions or moratoria or any other proceedings pending or threatened against Purchaser before any court or other governmental, administrative, regulatory, adjudicatory, or arbitrational body of any kind, which if decided adversely to the Purchaser would adversely affect Purchaser's ability to perform the obligations of the Agreement.

7.2 Survival.

All the provisions of ARTICLE 7 shall survive Closing.

ARTICLE 8

SELLER'S INTERIM OPERATIONS COVENANTS

8.1 Interim Operating Covenants.

From the Effective Date to the Closing Date (or earlier termination of this Agreement), Seller shall:

(a) cause the insurance policies covering all or any portion of the Property which are in existence as of the Effective Date, or equivalent coverage, to remain continuously in force through the Closing Date.

(b) not alienate, lien, encumber, assign, pledge or otherwise transfer any part of the Property, or any interest in the Property without the prior written consent of Purchaser, not to be unreasonably withheld or delayed.

(c) use commercially reasonable efforts to preserve in force all existing Permits.

(d) operate, repair, maintain and manage the Property in substantially the same manner as prior to the Effective Date.

(e) not (i) solicit or accept any purchase offers with respect to the Property, (ii) sell, lease, mortgage, pledge or otherwise transfer or dispose of all or any part of the Property or any interest therein except in the event of a refinance of any existing mortgage encumbering all or any part of the Property or (iii) enter into a binding agreement with any third party to sell all or any portion of the Property, except as backup offers.

(f) promptly give written notice to the Purchaser of the occurrence of any material change to any representations or warranties made or to be made by Seller under or pursuant to this Agreement and provide Purchaser with a copy of any written notices or orders received by Seller from any governmental agency with jurisdiction or issued by Seller with respect to the Property.

(g) not, without the prior written consent of Purchaser, grant, permit or otherwise create or consent to the creation, change or modification of any zoning, easement, subdivision plat, restriction, restrictive covenant, lien, assessment, or encumbrance affecting any portion of the Property.

ARTICLE 9

CONDITIONS PRECEDENT TO CLOSE OF ESCROW

9.1 Purchaser's Conditions.

Purchaser's obligation to close hereunder is subject to the satisfaction or waiver (as applicable) by Purchaser in writing, of the conditions precedent set forth below.

(a) Title Insurance. The Title Company shall be unconditionally committed to issue, immediately following the recording of the Deed, a title policy, with liability in the amount of the Purchase Price, with extended coverage, insuring Purchaser's fee estate in the Property subject only to (i) non-delinquent property taxes, (ii) the Permitted Exceptions, and (iii) any item voluntarily imposed by Purchaser at the Closing.

(b) Seller's Representations; No Default. Seller's representations and warranties contained in this Agreement shall be true and correct as of the Closing Date in all material respects and there shall be no default by Seller under this Agreement.

(c) Seller's Deliveries. Seller shall have complied with all of its covenants and obligations hereunder, including the execution and delivery into Escrow of all items required to be executed and delivered by it under Article 10.

(d) Incentive. Seller to provide Purchaser a rebate of ten percent (10%) of the Purchase Price as a Land Purchase Economic Development Program incentive (the "Incentive"). The Incentive shall be placed in escrow with Escrow Agent at Closing. If Purchaser constructs 25 townhomes on the Property within two (2) years from the Closing the Escrow Agent shall disburse the Incentive to Purchaser. If Purchaser fails to construct 25 townhomes on the Property within two (2) years from Closing then Escrow Agent shall disburse the Incentive to Seller.

(e) Governmental Approvals. Purchaser shall have obtained all governmental approvals and permits required to construct twenty-five residential townhomes.

(f) Failure of Conditions Precedent. The conditions precedent set forth in this Section 9.1 are solely for Purchaser's benefit and can be waived only by Purchaser in writing. In the event any of the foregoing conditions precedent are neither satisfied nor waived, as applicable, by Purchaser as of the Closing Date, Purchaser may either (i) extend the time for Closing for a reasonable period to allow sufficient time to satisfy the conditions precedent or (ii) cancel this Agreement by giving written notice to Seller and Escrow Agent at any time prior to the close of escrow, in which event this Agreement shall terminate, Purchaser shall be entitled to have the Earnest Money returned and Purchaser shall have no further obligations or liabilities hereunder except for such obligations or liabilities as are expressly intended to survive cancellation of this Agreement.

9.2 Seller's Conditions.

Seller's obligation to close hereunder is subject to the satisfaction or waiver by Seller, in writing, of the conditions precedent set forth below.

(a) Purchaser's Submission of Development Agreement Application. Purchaser shall, within ten (10) days of the Effective Date of this Agreement submit an application on Seller's approved form to enter into a Development Agreement with the Seller for the Land.

(b) Executed Development Agreement. The terms of a written Development Agreement with Seller must be executed by Purchaser on or before the "Closing Date" (as hereinafter defined).

(c) Purchaser's Representations; No Default. Purchaser's representations and warranties contained in this Agreement shall be true and correct in all material respects as of the Closing Date and there shall be no default by Purchaser under this Agreement.

(d) Purchaser's Deliveries. Purchaser shall have complied with all its covenants and obligations hereunder, including the execution and delivery into Escrow all items as required to be executed and delivered by it under Article 10.

(e) Failure of Conditions Precedent. The conditions precedent set forth in this Section 9.2 are solely for Seller's benefit and can be waived only by Seller in writing. In the event any of the foregoing conditions precedent are neither satisfied nor waived by Seller as of the Closing Date, Seller may cancel this Agreement by giving written notice to Purchaser and Escrow Agent at any time prior to the Closing, in which event this Agreement shall terminate and Seller shall have no further obligations or liabilities hereunder except for such obligations or liabilities as are expressly intended to survive cancellation of this Agreement.

ARTICLE 10

CLOSING

10.1 Closing.

The Closing shall occur through escrow at the office of the Escrow Agent, on or before the date (the "**Closing Date**") which is fifteen (15) days after Purchaser obtains all approvals and permits for the construction of twenty-five townhomes, including but not limited to zoning, and City, County, State or Federal use/ building permits unless the parties mutually agree in writing upon another place, time or date. Purchaser may call for an earlier Closing by providing written notice to Seller at least five (5) days prior to the earlier Closing Date.

10.2 Seller's Obligations at Closing.

At Closing, Seller shall deliver or cause to be delivered to Purchaser through escrow the following documents:

(a) Deed executed by Seller conveying the Property to Purchaser, free and clear of all encumbrances other than the Permitted Exceptions;

(b) a standard Owner's Affidavit executed by Seller sufficient to permit the title company to remove the standard exceptions from the title policy, including the "gap", mechanics liens and parties in possession;

- (c) a Non-Foreign Affidavit executed by Seller stating that Seller is not a foreign person for purposes of the Internal Revenue Code;
- (d) possession of the Property;
- (e) all Permits in Seller's possession or control;
- (f) an estoppel certificate in form reasonably satisfactory to Purchaser from third parties under any reciprocal easement, declaration or similar instrument affecting the Property (if applicable);
- (g) such documents as reasonably requested by the Title Company; and
- (h) such other documents, or instruments, if any, as may reasonably be required in order to effectuate the transaction contemplated by this Agreement.

10.3 Purchaser's Obligations at Closing.

At Closing, Purchaser shall deliver to Seller through Escrow the following:

- (a) the Purchase Price at the time and in accordance with the provisions of Article 2;
- (b) such documents as reasonably requested by the Title Company; and
- (c) such other documents and instruments, if any, as may reasonably be required in order to effectuate the transaction contemplated by this Agreement.

10.4 Mutual Deliveries at Closing.

Purchaser and Seller shall deliver or cause to be delivered through Escrow the following at Closing:

- (a) Closing Statement reflecting adjustments made at Closing.

ARTICLE 11

CLOSING COSTS, PRORATIONS OF TAXES AND MISCELLANEOUS EXPENSES

11.1 Closing Costs.

Purchaser and Seller shall each pay their own attorney's fees. At Closing, Seller shall pay all documentary stamp taxes, recording costs for the Deed and any other document needed to deliver marketable title, the title insurance search fees and premium for an owner's policy of title insurance with coverage in the amount of the Purchase Price, all costs (including recording costs) associated with curing any Title Defects and Survey Defects which Seller has agreed to cure, and all costs (including recording costs) to payoff and release any and all Mandatory Removal Liens. At Closing, Purchaser shall pay the costs of the Survey and any fees associated with financing the

Purchase Price, including lender's title policy, intangible taxes, recording fees for the mortgage, and any other costs related to financing.

11.2 Real Property Taxes.

Real estate taxes and assessments, if any, on the Property for the year of Closing shall be prorated as of the date of Closing. Seller shall be responsible for all real estate taxes and assessments accrued for the period ending on the day immediately preceding the date of Closing and Purchaser shall be responsible for all such taxes and assessments from and after the Closing. If the tax or assessments bills for the year of Closing have not been issued prior to Closing, such taxes or assessments shall be prorated based upon the tax or assessment bills issued for the previous year, with known changes and re-prorated when final bills are issued.

11.3 Expenses.

All remaining bills and expenses of every nature relating to the Property, including those for labor, materials, utilities, services, and capital improvements incurred by Seller for the period ending on the day immediately preceding the Closing shall be paid by Seller, except for any such expenses incurred by or at the direction of Purchaser in connection with Purchaser's inspection of the Property, all of which expenses incurred by or at the direction of Purchaser shall be paid by Purchaser. All expenses or costs arising or incurred on or after the Closing for the Property shall be paid by Purchaser.

11.4 Preliminary Closing Amounts.

Seller agrees to provide preliminary closing prorations and closing figures to Purchaser and Escrow Agent at least three (3) business days prior to Closing Date.

11.5 Survival.

All of the provisions of ARTICLE 11 shall survive Closing and the execution and delivery of the Deed.

ARTICLE 12

RISK OF LOSS

12.1 Casualty.

Seller assumes all risk and liability, damage to or injury occurring to the Property from fire, storm, sinkhole, accident or any other casualty or cause until the Closing has been consummated. If the Property or any part thereof, suffers any damages prior to the Closing from a casualty, Seller shall promptly notify Purchaser of such damage. If such damage is not material and will not take more than three (3) months to remedy from the date of the casualty, then Purchaser shall have the option to either (a) cause Seller to remedy such damage, in which event the time for Closing shall be extended by the length of time reasonably necessary for Seller to complete such repairs but not to exceed three (3) months; or (b) without Seller remedying such damage, consummate the Closing, in which latter event the proceeds of all insurance covering such

damage (if any) shall be assigned by Seller to Purchaser at Closing and the Purchase Price shall be reduced by the amount of any deductible and co-insurance and any insurance proceeds retained by Seller's lender. If such damage is material, or if not material but will take more than three (3) months to remedy, then Purchaser shall have the option to: (x) terminate this Agreement whereupon the Earnest Money shall be returned to Purchaser, in which event the parties shall have no further rights and liabilities hereunder except with respect to those matters specifically surviving termination or Closing; or (y) elect to proceed to Closing without Seller repairing such damage, consummate the Closing, in which latter event the proceeds of all insurance covering such damage shall be assigned by Seller to Purchaser at Closing and the Purchase Price shall be reduced by the amount of any deductible and co-insurance and any insurance proceeds retained by Seller's lender. For purposes hereof, "**material**" shall be deemed to mean a damage of more than three percent (3%) of the square footage of the Land.

12.2 Condemnation.

If, prior to Closing, action is initiated or threatened to take a material part of the Property by eminent domain proceedings or by deed under threat thereof, Purchaser may either (a) terminate this Agreement whereupon the Earnest Money shall be returned to Purchaser, in which event the parties shall have no further rights or obligations hereunder except those matters specifically surviving termination or Closing, or (b) consummate the Closing in which latter event the award of the condemning authority not exceeding the Purchase Price shall be assigned to Purchaser at the Closing and Purchaser shall receive a credit on the amount of any proceeds received by Seller or Seller's lender. For purposes hereof, a "**material part**" shall be deemed to mean a taking of more than three percent (3%) of the square footage of the Land or a taking that materially adversely affects ingress and/or egress to the Property.

ARTICLE 13

DEFAULT

13.1 Default by Seller.

If Seller is in default or breaches the material terms or provisions of this Agreement, then Purchaser shall give Seller written notice specifying the nature of the default. Seller shall have five (5) business days after receipt of Purchaser's notice of default within which to cure the specified default; provided, however, that if such failure is the failure of Seller to timely deliver the documents required for the Closing with Escrow Agent no such notice or cure period shall apply. If Seller does not cure such default within said five (5) business day period, or if such default is not waived in writing by Purchaser, then Purchaser, at its option, may, as its sole remedy hereunder (a) terminate this Agreement and be entitled to the immediate return of the Earnest Money, (b) enforce specific performance of this Agreement, as its sole and exclusive remedy and relief, or (c) waive such default by Seller and close the purchase, notwithstanding such default by Seller. In the event the remedy of specific performance is not available due to the acts or omissions of the Seller, Purchaser shall be entitled to pursue any and all remedies available at law or equity against Seller.

13.2 Breach by Purchaser.

If Purchaser is in default or breaches the material terms or provisions of this Agreement, then Seller shall give Purchaser written notice specifying the nature of the default. Purchaser shall then have five (5) business days after receipt of Seller's notice of default in which to cure the specified default; . If Purchaser does not cure such default within said five (5) business days, or if such default is not waived in writing by Seller, then Seller shall be entitled to retain the Earnest Money, as liquidated damages as Seller's sole remedy and relief. Seller and Purchaser have made these provisions for liquidated damages as it would be difficult to calculate on the date hereof, the amount of actual damages for such breach and agree that these sums represent reasonable compensation to Seller for such breach.

ARTICLE 14

MISCELLANEOUS

14.1 Notices.

All notices, requests, demands, or other communications required or permitted by this Agreement shall be in writing and effective when received or refused, and delivery shall be made personally or by registered or certified mail, return receipt requested, postage prepaid, or overnight courier, or confirmed facsimile transmission (so long as sender retains evidence of transmission) addressed as follows:

If to Seller: City of Daytona Beach Shores
 Attention:
 2990 South Atlantic Avenue
 Daytona Beach Shores, FL 32118
 Facsimile: (____)
 Email:

If to Purchaser: Florida Lifestyle Homes and Land, Inc.
 Attn: Patrick Sullivan
 P.O. Box 227
 Daytona Beach, FL 32115
 Email: psullpsull@yahoo.com

With a copy to Smith Bigman Brock, P.A.
Escrow Agent: Attn: Jeffrey P. Brock, Esq.
 444 Seabreeze Blvd. Suite 900
 Daytona Beach, FL 32118
 Facsimile: (386) 257-1834
 Email: jbrock@daytonalaw.com

Any party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other parties hereto notice in the manner herein set forth. Any party may give any notice, request, demand, claim or other communication hereunder by or through its counsel.

14.2 Broker.

Each party represents to the other party that neither it nor any of its agents, affiliates, shareholders or partners have dealt with any person or entity that might have a claim for sales or brokerage commission or finder's fee with respect to the transaction contemplated by this Agreement. The parties hereto agree that each party will indemnify, hold harmless and defend the other from and against any claim for any such commission or fee by any broker or similar person or entity claiming to have acted through the indemnifying party or its agents, affiliates, shareholders, or partners. The provisions of this Section 14.2 shall survive Closing.

14.3 Escrow Agent.

(a) Escrow Agent agrees to hold, keep and deliver the Earnest Money and all other sums delivered to Escrow Agent in accordance with the terms and provisions of this Agreement. Escrow Agent shall be liable only to hold said sums and deliver the same to the parties named herein in accordance with the provisions of this Agreement, it being expressly understood that by acceptance of this Agreement Escrow Agent is acting in the capacity as a depository only and shall not be liable or responsible to anyone for any damages, losses or expenses unless same shall have been caused by the gross negligence or willful malfeasance of Escrow Agent.

(b) In the event of any disagreement between Purchaser and Seller resulting in any adverse claims and demands being made in connection with or for the monies involved herein or affected hereby, Escrow Agent shall be entitled to refuse to comply with any such claims or demands so long as such disagreement may continue; and in so refusing Escrow Agent shall make no delivery or other disposition of any of the monies then held by it under the terms of this Agreement, and in so doing Escrow Agent shall not become liable to anyone for such refusal; and Escrow Agent shall be entitled to continue to refrain from acting until (a) the rights of the adverse claimants shall have been finally adjudicated in a court of competent jurisdiction of the monies involved herein or affected hereby, or (b) all differences shall have been adjusted by agreement between Seller and Purchaser, and Escrow Agent shall have a period not exceeding three (3) business days after receipt by Escrow Agent of any notice or request to perform any act or disburse any portion of the monies held by Escrow Agent under the terms of this Agreement. Further, Escrow Agent shall have the right at all times to pay all sums held by it (x) to the appropriate party under the terms hereof, provided no dispute exists between the parties hereto, or (y) into any court of competent jurisdiction after a dispute between or among the parties has arisen, whereupon Escrow Agent's obligations hereunder shall terminate.

(c) Notwithstanding anything to the contrary contained in this Agreement, in the event that on or prior to the expiration of the Inspection Period, Purchaser delivers notice to Escrow Agent stating that Purchaser has elected to terminate this Agreement, then Escrow Agent shall refund to Purchaser the Earnest Money after obtaining a Release and Cancellation of Agreement and Deposit signed by all parties.

(d) Seller and Purchaser jointly and severally agree to indemnify and hold harmless Escrow Agent from any and all costs, damages and expenses, including reasonable attorney's fees, that Escrow Agent may incur in its compliance of and in good faith with the terms of this Agreement; provided, however, that this indemnity shall not extend to any acts of gross negligence or willful malfeasance on the part of the Escrow Agent. The provisions of this Section 14.3 shall survive Closing.

14.4 Entire Agreement.

This Agreement and the Exhibits hereto embody the entire agreement between the parties relative to the subject matter, and there are no oral or written agreements between the parties, nor any representations made by either party relative to the subject matter, which are not expressly set forth herein.

14.5 Amendment.

This Agreement may be amended only by a written instrument executed by the party or parties to be bound thereby.

14.6 Headings.

The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.

14.7 Time of the Essence.

Time is of the essence of this Agreement. However, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the law of the United States or the State of Florida, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

14.8 Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida and the laws of the United States pertaining to transactions in Florida with exclusive venue in Volusia County, Florida.

14.9 Successors and Assigns.

This Agreement shall bind and inure to the benefit of Seller, Purchaser and their respective heirs, executors, administrators, personal legal representatives, successors and assigns. Except to Oceans 25, LLC, a Florida limited liability company formed for the sole purpose of holding title to the Property and controlled by Patrick Sullivan, Purchaser shall not assign, sell, convey, encumber or otherwise transfer Purchaser's rights under this Agreement without the prior written consent of Seller, such consent not to be unreasonably withheld. In the event of any such permitted assignment by Purchaser, at Closing Purchaser shall automatically be released from all liabilities and obligations hereunder without any further act of any party.

14.10 Invalid Provision.

If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement.

14.11 Attorneys' Fees.

In the event it becomes necessary for either party hereto to file suit to enforce this Agreement or any provision contained herein, the party prevailing in such suit shall be entitled to recover, in addition to all other remedies or damages as herein provided, reasonable attorneys', paralegals', or expert witnesses' fees and costs incurred in such suit at trial or on appeal or in connection with any bankruptcy or similar proceedings.

14.12 Multiple Counterparts.

This Agreement may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one (1) agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

14.13 Non-Merger.

In addition to the specific language of non-merger found in certain sections of this Agreement, any provision hereof which by its terms would be performed after Closing shall survive the Closing and shall not merge in the Closing or in the Deed, except as specifically provided to the contrary herein.

14.14 Waiver of Jury Trial.

EACH PARTY TO THIS AGREEMENT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED UPON THIS AGREEMENT OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT CONTEMPLATED AND EXECUTED IN CONNECTION HERewith, OR ANY COURSE OF DEALING, COURSE OF CONDUCT, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO.

14.15 Section 1031 Exchange.

Either party may consummate the purchase or sale (as applicable) of the Property as part of a so-called like kind exchange (an "**Exchange**") pursuant to § 1031 of the Code, provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of an Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement, (b) the exchanging party

shall effect its Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary, (c) neither party shall be required to take an assignment of the purchase agreement for the relinquished or replacement property or be required to acquire or hold title to any real property for purposes of consummating an Exchange desired by the other party; and (d) the exchanging party shall pay any additional costs that would not otherwise have been incurred by the non-exchanging party had the exchanging party not consummated the transaction through an Exchange and indemnify the other party from and against all losses or damages sustained as a result of the Exchange. Neither party shall by this Agreement or acquiescence to an Exchange desired by the other party have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted to the exchanging party that its Exchange in fact complies with § 1031 of the Code.

14.16 Impact Fee Credits or other incentives from Seller. Seller shall waive all City impact fees, application fees, and review fees for the development of the Property. The Seller shall expedite all reviews.

14.17 Escrow for Sewer Line At Closing, \$100,000.00 shall be deposited by Seller with Escrow Agent. Escrow Agent shall hold said escrow funds in escrow until the satisfaction by the Purchaser of all conditions of the Development Agreement regarding underground utilities.

14.18 Signage. Following Closing and satisfaction of all conditions of the Development Agreement as to signage, Purchaser shall be allowed to place a sign on the Property advertising the proposed twenty-five townhomes. The signage shall be in conformance with all applicable City regulations.

[Remainder of page intentionally blank; signature page follows.]

IN WITNESS WHEREOF, the Purchaser and Seller have executed this Agreement as of the Effective Date hereof.

Attest:

CITY OF DAYTONA BEACH SHORES,
a Florida municipal corporation, as
SELLER

By:

Cheri Schwab, City Clerk

Nancy J. Miller, Mayor

Michael T. Booker, City Manager

Approved as to form and legality:

Raymond J. Branch, City Attorney

FLORIDA LIFESTYLE HOMES AND LAND, INC.
a Florida Corporation, as
PURCHASER

By: _____
Patrick Sullivan, President

ESCROW AGENT:
Smith Bigman Brock, P.A.

By: _____

Name: _____

Title: _____

EXHIBIT A

LAND

Part of Blocks D and E, MCELROYS BELLEVIEW SUBDIVISION, as recorded in Map Book 11, Page 98, Public Records of Volusia County, Florida, being more particularly described as follows:

From a point of reference, said point being the intersection of the Northerly line of McElroys Belleview with the Easterly line of South Peninsula Drive, an 80 foot Right-of-Way as presently established; thence North 89°33'11" East along the Northerly line of the aforesaid McElroys Belleview a distance of 951.56 feet to the Point of Beginning; thence continue North 89°33'11" East along said Northerly line of McElroys Belleview a distance of 165.72 feet to a point on a curve concave Easterly, said point being on the Westerly Right-of-Way of South Atlantic Avenue, an 80 foot Right-of-Way as presently established; thence along said curve to the left having a radius of 1349.46 feet, and a central angle of 102°6'41", an arc length of 246.00, and a chord distance of 245.66, bearing South 37°35'54" West, to a point of reverse curvature concave Northwesterly; said point being the intersection of the aforesaid Westerly Right-of-Way of South Atlantic Avenue and the Northerly Right-of-Way of Oceans West Blvd., a 70 foot Right-of-Way as shown on plat of Oceans West, a Planned Unit Development; as recorded in Map Book 38, Page 67, Public Records of Volusia County, Florida; thence along said curve and Northerly Right-of-Way to the right having a radius of 25.00 feet, a central angle of 114°53'36", an arc length of 50.13 feet, and a chord distance of 42.14, South 13°42'12" East, to a point of compound curvature concave Northerly; thence along said Northerly Right-of-Way and curve to the right, said curve having a radius of 65.00 feet, a central angle of 182°4'11", an arc length of 20.88 feet, and a chord distance of 20.79 feet, South 80°21'06" West to the point of tangency; thence South 89°33'11" West along aforesaid Northerly Right-of-Way 294.31 feet to a point of curvature concave Southeasterly; thence along said curve and aforesaid Northerly Right-of-Way said curve having a radius of 125.00 feet, a central angle of 63°47'22", an arc length of 139.17 feet to a point on the Easterly line of Oceans West, a Planned Unit Development aforesaid; thence North 27°22' East along said Easterly line of Oceans West 162.05 feet, thence North 49°29'36" East, a distance of 256.83 feet to the Northerly line of McElroys Belleview, aforesaid, and the Point of Beginning.