City of Daytona Beach Shores

"Life is Better Here"
"A Premier, Friendly Place to Be"

AGENDA
PLANNING & ZONING BOARD MEETING
AUGUST 10, 2020
8:30 AM, Shores Community Center, 3000 Bellemead Drive
Daytona Beach Shores, FL 32118

Notice is hereby given to all interested parties that if any person should decide to appeal any decision made at the aforementioned meeting of the P&Z Board, such person will need a recording of the proceedings conducted at such meeting, and for such purpose he or she may need to ensure that a verbatim record of the proceedings was made; such record to include testimony and evidence upon which any appeal shall be based. Individuals covered by the Americans with Disabilities Act of 1990 in need of accommodations for this public meeting should contact the City Clerk, City of Daytona Beach Shores, at least five working days prior to the meeting.

1. OPENING REMARKS

2. MINUTES

A. Planning & Zoning Minutes July 13, 2020

3. QUASI-JUDICIAL HEARING

4. DISCUSSION ITEMS

5. OTHER

A. Ordinance 2020-08: Amendment to Shores 109, LLC - City of Daytona Beach Shores Development Agreement

6. BOARD COMMENTS

7. ADJOURNMENT

MINUTES
PLANNING & ZONING BOARD MEETING
July 13, 2020
3000 Bellemead Drive Daytona Beach Shores, FL 32118

1. OPENING REMARKS

Present: Member Rose Ann Tornatore, Member Van Alder, Member James Lilly, Chairman John Schmitz, Member Chuck Horion, Member Rick Delange
Staff: City Clerk Cheri Schwab, Board Attorney John Cary, City Planner Stewart Cruz.

2. MINUTES

A. Planning & Zoning Minutes March 9, 2020

Chairman Schmitz noted that the meeting ended at 8:54 AM not PM.
MEMBER ROSE ANN TORNATORE moved, seconded by MEMBER CHUCK HORION to Approve the minutes of March 9, 2020.
Vote: Motion carried by unanimous roll call vote (**summary**: Yes = 6 No = 0).
Yes: Member Rick Delange, Member Chuck Horion, Member James Lilly, Chairman John Schmitz, Member Rose Ann Tornatore, Member Van Alder

3. QUASI-JUDICIAL HEARING

A. Regular Site Plan RSP12020018 Oceans 25 Townhomes, 2900 S. Atlantic Avenue

The public hearing began at 8:40 am.
City Planner Stewart Cruz presented the case to the board as a ppt. He noted that all due public notice was provided. It was explained that the City owns the subject property currently, but it is under a purchase contract. The developer plans to construct 25 townhomes as provided in a Development Agreement approved by the City Council earlier this year. There would be no commercial development on the property even though the current zoning is for mixed use. The site plan meets all set back requirements and includes 57 outdoor parking spaces. There will be two access points onto Oceans West Blvd and the DA does provide for a sewer easement as a force main runs through the property. Mr. Cruz explained that there were a few missing issues. They are: a sea turtle acknowledgement form, proposed sewer force main easement, proposed stormwater maintenance agreement, public school concurrency pending and DBS concurrency pending. City staff has reviewed and signed off on the proposed site plan with no concerns. Aerial views of the property were shown to the board. Renderings of the proposed three buildings were also displayed. If the board recommended approval, the project would go to the City Council for approval on August 11th. The developer anticipates that construction would be completed within nine months but the DA authorizes two years. Staff recommended approval with the five contingent items noted.

The board members questioned Mr. Cruz regarding the wall buffer on S. Atlantic Avenue and the lack of designated handicap parking spaces. The wall will be a 42-inch stacked wall that can be easily moved or repaired. There are no designated handicap parking spaces because these are classed as single family homes. Traffic trying to get onto S. Atlantic Avenue was also a concern, but the project meets all FDOT regulations. Engineer Joe Hopkins also provided details on traffic, construction timelines, and the wall buffer. It was explained that the construction vehicles would access the property from Ridge Road and be parked onsite during the build.

There was no one who wished to speak in favor of the project.
Those opposed to the project: Judy Weimer was concerned about the entrances onto Oceans West Blvd. She inquired if they could be relocated onto Ridge Road. Chelsey Bennet inquired where all the construction workers would park. Tony Rembiszewski had many concerns with the project. He felt nine months was an aggressive time schedule and wondered if construction would occur seven days a week. He felt it was currently hard to get across S. Atlantic Avenue and the increase in traffic would make it worse. He inquired the cost of the townhomes and if they were allowed to be rented out. Pat Sutherland felt it would be an investment property since there were few amenities offered.

The public hearing closed at 9:37 am.

MEMBER VAN ALDER moved, seconded by MEMBER CHUCK HORION to recommend approval of the Oceans 25 Townhome project site plan, RSP12020018 with the conditions outlined in the Planning Analysis Report.
Vote: Motion carried by unanimous roll call vote (**summary**: Yes = 6 No = 0).
Yes: Member Rick Delange, Member Chuck Horion, Member James Lilly, Chairman John Schmitz, Member Rose Ann Tornatore, Member Van Alder

4. BOARD COMMENTS

Board Attorney Cary stated he was glad to be working with the city. He reminded all the board members of the Sunshine Law and that it included emails and texts between board members. He encouraged the members to only respond back to staff when an email is sent and not reply all. He explained that he would be holding a board training session in the coming months.

5. ADJOURNMENT

The meeting ended at 9:41 am.

Cheri Schwab, Recording Secretary **John Schmitz, Chairman**

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PLANNING & ZONING BOARD AGENDA MEMORANDUM
AUGUST 10, 2020 AGENDA

TO: The Members of the Planning & Zoning Board
FROM: Stewart Cruz, City Planner
PREPARED BY: Cruz Cruz, City Planner
SUBJECT: Ordinance 2020-08: Amendment to Shores 109, LLC - City of Daytona Beach Shores Development Agreement

SYNOPSIS:

On October 9, 2019 the Daytona Beach Shores City Council approved the Shores 109, LLC - City of Daytona Beach Shores Development Agreement regarding the redevelopment of the property located at 109 Dunlawton Boulevard. The redevelopment includes site improvements and renovation of the structure, which together would facilitate the establishment of a restaurant at the location in question. On July 23, 2020 owner/developer submitted to the City a Development Agreement amendment application. According to the owner/developer, the amendment has become necessary due to budgetary constraints relative to the size and scope of the project. As such, the owner/developer is seeking to amend the Development Agreement to reduce the size and scope of certain components of the project, including the external restroom and covered outdoor dining patio, to stay within the project's budget. In addition, the owner/developer is requesting usage of the adjacent City alley for placement of a freestanding sign, stormwater retention, among other things. The overall site development, building renovation and establishment of a quality restaurant would remain targeted goals. If approved, Ordinance 2020-08 would effectuate the aforementioned.

FISCAL IMPACT STATEMENT:

The amendment will not impact the City's financial obligation ($57,500) under the existing Development Agreement.

BACKGROUND:

OVERVIEW OF PROPOSED AMENDMENTS

Applicant/developer Shores 109, LLC is applying to amend the current Shores 109, LLC - City of Daytona Beach Shores Development Agreement regarding the redevelopment of the commercial property located at 109 Dunlawton Boulevard. As seen in the cover letter provided in the Development Agreement application, the owner/developer has had to scale down the project to fit the development budget primarily due to construction costs. The proposed substantive changes to the project, and hence the Development Agreement, are as follows:

1. Elimination of the 748sf outdoor covered patio. **NOTE:** *The design now calls for 358sf open patio with 16/4 outdoor dining seats/tables with umbrellas.*
2. Elimination of the outdoor restroom. **NOTE**: *Patrons dining inside and outside will utilize the restrooms inside the building.*
3. Elimination of the underground stormwater retention system. **NOTE:** *The replacement stormwater system will be surface retention.*
4. Reduction/shifting of parking closer to the building and corresponding realignment of the public cross access easement. **NOTE:** *These changes do not adversely impact the City or public's ability to access the sewer lift station or alleyway system to the north, respectively.*
5. Addition of a freestanding identification sign and ancillary features in east adjacent City alley. **NOTE:** *The City has already approved utilizing the alley for other purposes associated with this project while the developer will be giving the City a public access easement through its property for City and residential access.*

All other components of the development agreement remain the substantially the same.

OVERVIEW OF EXISTING DEVELOPMENT AGREEMENT

The subject property was last occupied by a business in 2004. The existing Development Agreement was executed by the City to foster the redevelopment of this property, which is at the City's Dunlawton Boulevard Gateway. Highlights of the existing Development Agreement include: (a) seven (7) benefits to the public, including, but not limited to, needed sewer and public access easements; (b) permitting of five (5) deviations from the City's Land Development Code; (c) providing that the applicant can utilize that portion of the public alley that is adjacent to Dunlawton Boulevard as part of the site's redevelopment; and (d) providing payment to the developer for sewer and public access easements in the amount of $57,500.

AUTHORIZATION OF DEVELOPMENT AGREEMENT

The City Council, in its sole and exclusive discretion, may enter into development agreements with the legal and equitable owners of real property within, or properties to be annexed to the City limits of the City of Daytona Beach Shores, as authorized in Sections 163.3220 through 163.3243, Florida Statutes, as it may be amended from time-to-time and Chapter 15 of the LDC. Deviations from the provisions of the City’s land development regulations may be granted as part of an approval of a development agreement when the City Council finds that such approval will result in creative

planning strategies and the implementation of development approvals that enhance benefits to the public while ensuring that private property rights are protected. The City Council may also determine that vested rights have been established as to a parcel of property in the context of approving a development agreement.

DEVELOPMENT AGREEMENT CONTENT REQUIREMENTS

All applicable standards required in the development agreement are included accordingly pursuant to Sec. 15-4 of the LDC entitled "Development Agreement Content."

DEVELOPMENT AGREEMENT NOTICE REQUIREMENTS

The development agreement shall be noticed pursuant to Sec. 15-6 “Noticing Requirements” of the LDC. Evidence of the aforementioned has been provided to the City Clerk.

PLANING ANALYSIS

See attached.

LEGAL REVIEW:

City Attorney has reviewed and approved the ordinance. This ordinance is legally permissible and may be approved by the PZB.

RECOMMENDATION:

Staff recommends **approval** of Ordinance 2020-08 as presented.

SUGGESTED MOTION:

A Planning and Zoning Board member may motion as follow:

1. “I move to recommend **approval** of Ordinance 2020-08 as presented;”

OR

2. “I move to recommend approval of Ordinance 2020-08 with the following conditions...”

OR

3. "I move to recommend denial Ordinance 2020-08on the basis of..."

ATTACHMENT:

1. REV-Ordinance 2020-08-Amendment to Shores 109 LLC DA-SC-7-30-20
2. Shores 109 LLC Development Agreement-7-31-20-SC
3. Shores 109 DA Amendment-Application-Cover Letter
4. DA12019025-Amendment-PLANNING ANALYSIS-7-31-20

ORDINANCE 2020-08

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO APPROVAL OF AMENDMENT TO THE SHORES 109, LLC – CITY OF DAYTONA BEACH SHORES DEVELOPMENT AGREEMENT PERTAINING TO PROPERTY LOCATED AT 109 DUNLAWTON BOULEVARD IN ACCORDANCE WITH THE PROVISIONS OF THE "FLORIDA LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT" AS SET FORTH AT SECTIONS 163.3220 - 163.3243, *FLORIDA STATUTES*; ; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR CONFLICTS, PROVIDING FOR A SAVINGS PROVISION AND THE EFFECT OF THE ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR NONCODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on October 9, 2019 the City Council of the City of Daytona Beach Shores approved the Shores 109, LLC and the City of Daytona Beach Shores Development Agreement pertaining to the development of the property located at 109 Dunlawton Boulevard; and

WHEREAS, Shores 109, LLC has requested an amendment to the subject Development Agreement to change certain components of the development consistent with increasing construction costs and reasonable investment return expectation; and

WHEREAS, Shores 109, LLC and the City of Daytona Beach Shores have considered and processed and the City Council of the City of Daytona Beach Shores hereby approves and enacts the amended Development Agreement, as set forth in the Exhibit to this Ordinance (which Exhibit is incorporated herein by this reference thereto as if fully set forth herein verbatim), all of said actions occurring pursuant to the *Florida Local Government Development Agreement Act* as set forth at Sections 163.3220 through 163.3243, *Florida Statutes*; and

WHEREAS, Brendan R. Galbreath and Shannon M. Galbreath are the members of Shores 109, LLC; 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 is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City Daytona Beach Shores*.

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

SECTION ONE: 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 the application relating to the proposed land use approvals and authorization of zoning entitlements pertaining to the property referenced in the Development Agreement as well as the recitals (whereas clauses) to this Ordinance.

(b). The findings of the provisions of the subject Development Agreement between the City of Daytona Beach Shores and Shores 109, LLC are hereby adopted, ratified and affirmed.

SECTION TWO: APPROVAL OF AMENDMENT AND ENACTMENT OF DEVELOPMENT AGREEMENT.

The amended Development Agreement between the City of Daytona Beach Shores and Shores 109, LLC, as set forth in the Exhibit to this Ordinance is hereby approved and enacted. The said Exhibit attached to this Ordinance is hereby ratified and affirmed and incorporated into this Ordinance as a substantive part of this Ordinance

SECTION THREE: SAVINGS; EFFECT OF ORDINANCE.

The prior actions of the City of Daytona Beach Shores relating to the regulation of lands and development activities within the City including, but not limited to, the property which is the subject of the Development Agreement between the City of Daytona Beach Shores and Shores

109, LLC, as set forth in the Exhibit to this Ordinance, and involving the subject property, are hereby ratified and affirmed.

SECTION FOUR: NONCODIFICATION AND IMPLEMENTATION; SCRIVENER'S ERRORS.

(a). The provisions of this Ordinance shall not be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida*.

(b). The City Manager, or designee(s), is hereby authorized to take any and all actions necessary to implement the provisions of this Ordinance.

(c). The City Attorney shall assist the City Manager in the implementation of this Ordinance as may be necessary and required.

(d). 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 FIVE: CONFLICTS.

All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed.

SECTION SIX: 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 SEVEN: 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**

Approved as to form and legality:

_____
GRETCHEN R. H. "BECKY" VOSE, CITY ATTORNEY

Passed on first reading this __ day of _____, 2020.

Enacted on second reading this __ day of _____, 2020.

DEVELOPER SIGNATURE BLOCK FOLLOWS:

PLENARY CONCURRENCE OF DEVELOPER

The undersigned developer concurs in each and every respect to the provisions of the subject amendments to the subject Development Agreement and the provisions of this Ordinance.

SHORES 109, LLC, a Florida limited liability company.

_____
Brendan R. Galbreath
Date:_____ __, 2020

_____
Shannon M. Galbreath
Date:_____ __, 2020

WITNESSES:

_____ _____
Signature of Witness Signature of Witness

_____ _____
Printed Name of Witness Printed Name of Witness

STATE OF FLORIDA)

COUNTY OF VOLUSIA)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared Brendan R. Galbreath and Shannon M. Galbreath, and they acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily and they are personally known to me or provided _____ as identification.

Witness my hand and official seal in the County and State last aforesaid this ___ day of _____, 2020.

(Affix Notary Seal)

_____
Notary Public; State of Florida
Print Name: _____

This Instrument Prepared By:
Brendan Galbreath
Shores 109, LLC
4190 Halifax Drive
Port Orange, Florida 32127

Return To:
Ms. Cheri Schwab
City Clerk
2990 South Atlantic Avenue
Daytona Beach Shores, Florida 32118
Tax Parcel Identification Number: 533503070260

SHORES 109 LLC/CITY OF DAYTONA BEACH SHORES DEVELOPMENT AGREEMENT PERTAINING TO RE-DEVELOPMENT OF 109 DUNLAWTON AVENUE PROPERTY

THIS DEVELOPMENT AGREEMENT is made and entered into on the Effective Date described below, between Shores 109, LLC, a Florida Limited Liability Company, registered and authorized to conduct business in the State of Florida, whose address is 4190 Halifax Drive, Port Orange, Florida 32127, the legal and equitable owner, hereinafter referred to as the "PROPERTY OWNER", and the City of Daytona Beach Shores, Florida, a municipal corporation of the State of Florida, holding tax exempt status, whose mailing address is 2990 South Atlantic Avenue, Daytona Beach Shores, Florida 32118, hereinafter referred to as "CITY".

W I T N E S S E T H:

WHEREAS, the PROPERTY OWNER is the owner of real property located at 109 Dunlawton Avenue in Daytona Beach Shores (Exhibit "A") (referred to from time-to-time as the "premises" in this Development Agreement and which is the subject of the conceptual site plan referenced herein and attached as Exhibit "B" to this Development Agreement); and

WHEREAS, the PROPERTY OWNER and the CITY have a great interest in developing and re-developing an active and vibrant commercial business on the premises and to benefit the economy and well-being of the CITY as a general matter; and

WHEREAS, the CITY desires to provide economic and other benefits to the citizens and visitors of the CITY in order that they may enjoy a high quality of life with convenient services; and

WHEREAS, Section 163.3202, *Florida Statutes*, provides that the CITY shall adopt and enforce land development regulations for the purpose of implementing its *Comprehensive Plan* and protecting the public health, safety, and general welfare; and

WHEREAS, pursuant to the *Florida Local Government Development*

Agreement Act, as set forth at Sections 163.3220 through 163.3243, *Florida Statutes*, local governments are authorized to adopt, by ordinance, procedures and requirements whereby a local government may consider and enter into a development agreement with any person having a legal or equitable interest in real property located within the local government's jurisdiction and the CITY enacted Ordinance 2013-10 (now codified at Chapter 15, Appendix "G", *Land Development Code*, *Code of Ordinances of the City of Daytona Beach Shores*) to implement the provisions of the referenced statutory provisions; and

WHEREAS, the CITY and the PROPERTY OWNER desire to engage in sound and long range planning with regard to the premises in a manner that protects the investment backed expectations and rights of the PROPERTY OWNER while providing for an array of benefits to the citizens of the CITY; and

WHEREAS, development agreements entered into pursuant to the *Florida Local Government Development Agreement Act*, strengthen the public planning process, encourage sound capital improvement, planning and financing; assist in assuring that there are adequate capital facilities to support development; encourage private participation in comprehensive planning; and reduce the economic cost of a development by providing assurances to a developer that, upon receipt of a development permit, the developer may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement; and

WHEREAS, development agreements are contracts negotiated between project proponents and public agencies that govern the land uses that may be allowed in a particular project and, although subject to negotiation, allowable land uses must be consistent with the local planning policies formulated by the legislative body (the CITY's City Council) through its *Comprehensive Plan*, and consistent with any applicable specific plan; and

WHEREAS, neither the PROPERTY OWNER nor the CITY, as the local government with land use regulatory authority over lands located within the CITY, is required to enter into a development agreement and, when entered, the allowable land uses and other terms and conditions of approval are negotiated between the parties, subject to the CITY's ultimate approval by the City Council, but while a development agreement must advance the CITY's local planning policies, it may also contain provisions that vary from otherwise applicable zoning standards and land use requirements; and

WHEREAS, development agreements are, essentially, a planning tool that allows public agencies greater latitude to advance local planning policies, sometimes in new and creative ways and, as such, development agreements may be viewed as an alternative to the traditional development approval process with which, in practice, it is commonly used in conjunction; and

WHEREAS, the enactment of development agreements by ordinance results in the enactment of the development agreement effectuating and memorializing the zoning and land use entitlements of the property which is the subject of each development agreement; and

WHEREAS, the enactment of development agreements does not offer relief from the CITY's *Land Development Code* and *Code of Ordinances* for items not specifically addressed in a development agreement; and

WHEREAS, the City staff must conclude and advise the City Council of the CITY that any proposed economic incentives are compliant with the ordinances that the City Council has enacted after due and required vetting and analysis; and

WHEREAS, the City Council of the CITY finds it is in the best interest and welfare of the citizens of the CITY to approve this Development Agreement with the terms and conditions set forth herein; and

WHEREAS, the City Council of the CITY has determined that the terms and conditions of this Development Agreement are in the best interests of the public health, safety and welfare of the citizens of the CITY and provide for specific public benefits; and

WHEREAS, the City Council of the CITY hereby finds and concludes that the provisions of this Development Agreement are consistent with the CITY's *Comprehensive Plan* and will result in the provision of enhanced economic development within the CITY and is consistent with the general purpose and intent of the land development regulations of the CITY and no amendments are required to the CITY's *Comprehensive Plan* or land development regulations in order to approve the development set forth in this Development Agreement; and

WHEREAS, the PROPERTY OWNER and the CITY have complied with all requirements and procedures of Florida law in processing and advertising this Development Agreement; and

WHEREAS, this Development Agreement is consistent with the goals, objectives and policies of the *Comprehensive Plan* of the City Daytona Beach Shores.

NOW, THEREFORE, in consideration of the foregoing, and the premises and the promises, covenants and agreements herein contained, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties the PROPERTY OWNER and CITY agree as follows:

SECTION 1. RECITALS/FINDINGS.

(a). The recitals, set forth above, are true and correct and form a material

part of this Development Agreement upon which the parties have relied.

(b). The findings, set forth above, are, and constitute, the legislative, administrative and quasi-judicial findings of the City Council of the CITY and form a material part of this Development Agreement upon which the parties have relied.

SECTION 2. PREMISES.

(a). The PROPERTY OWNER hereby designates, and the CITY hereby accepts, the following described tract of real property as the legal description for the premises for the purposes of this Development Agreement:

(LEGAL DESCRIPTION) – See attached Exhibit "A".

(b). The legal entity having legal or equitable ownership of the premises is the PROPERTY OWNER.

SECTION 3. SITE PLAN FOR DEVELOPMENT.

The attached conceptual site plan for development of the premises (Exhibit "B") is hereby approved by the terms and conditions of this Development Agreement.

SECTION 4. TERMS AND CONDITIONS RELATIVE TO THE PREMISES.

(a). In addition to all other covenants, obligations, duties and responsibilities set forth herein, the PROPERTY OWNER is approved for the following development on the premises:

(1). The development uses, including off-street parking, driveways and landscaping, as set forth on the conceptual site plan approved in Section 3 and attached as Exhibit "B".

(2). The development uses, including off-street parking, driveways and landscaping, as set forth on the conceptual site plan attached as Exhibit "B" and approved in Section 3 comply with criteria for development approved in this Development Agreement and the applicable provisions cited in the land development regulations of the CITY applicable to the development project on the premises.

(3). The public facilities that will service the development of the premises shall continue as the premises are currently served. All necessary public facilities shall be available concurrent with the impacts of the development.

(4). The public purposes and benefits that are derived and

provided by the development of the premises as set forth in this Development Agreement include the following:

(A). The PROPERTY OWNER shall grant a permanent Sewer Utility and Access Easement to the CITY for that portion of the premises where the existing CITY sanitary sewer pump station currently sits for the benefit of the CITY and its citizens as depicted on Exhibit "C1" attached and approved in Section 3.

(B). The PROPERTY OWNER shall grant a permanent cross access and a grant of easement to the CITY for the provision of public access to adjoining rights-of-way through the premises for the benefit of the CITY and its citizens as depicted on Exhibit "C2" attached and approved in Section 3 above.

(C). The PROPERTY OWNER's plan of development provides a significant amount of additional green area for the benefit of the CITY and its citizens as depicted in Exhibit "D".

(D). The PROPERTY OWNER shall incorporate Commemorative Signage on the premises, at a location and of a type, style and nature set forth in the sign plan attached as Exhibit "E" to this Development Agreement, identifying the CITY and its established/incorporated date for the benefit of the CITY and its citizens. This portion of signage located on the premises shall not count towards the allowable square footage of signage allowed for the premises by *City Code*.

(E). The PROPERTY OWNER shall provide architectural enhancements to the building located on the premises for the benefit of the CITY and its citizens as depicted on Exhibit "E" attached and approved in Section 3.

(F). The development of the premises as set forth in this Development Agreement provides for an additional commercial opportunity for the benefit of CITY and its citizens by creating a new destination for dining and entertainment within the CITY, which will further enhance the economic and tourism development of the CITY.

(G). The development of the premises as set forth in this Development Agreement provides for and encourages the redevelopment and beautification of an abandoned, outmoded and unsightly commercial property at the CITY's Dunlawton Boulevard gateway for the benefit of the CITY and its citizens.

(H). All easements to be granted, and agreements to be entered, pursuant to this Section and the Development Agreement as a whole shall be in a form approved by the City Attorney.

(5). All development permits normatively needed to be approved for the development of the premises shall be subject to the review and approval processes during the course of the development of the premises; provided, however, that, it is noted that no *Comprehensive Plan* amendments or changes in land use designations or changes in zoning classifications/districts assigned to property are necessitated by the development approved for the premises nor any required submissions to or approvals from Volusia County; the State of Florida (departments of Economic Opportunity, Environmental Protection, Transportation, or such other department or agency of the State as may be applicable); the United States Army Corps of Engineers; the St. Johns River Water Management District; the United States Environmental Protection Agency or any other Federal departments or agencies with competent jurisdiction over any aspect of the approved development, but such requirements are not precluded by this Development Agreement and the parties recognize and agree that the CITY is adhering to the provisions of Section 166.033, *Florida Statutes*.

(6). The following deviations have been granted by the CITY with regard to the provisions of the CITY's land development regulations:

(A). The PROPERTY OWNER shall be permitted to have ~~up to~~ ~~40~~ dining seats in ~~a 748-square feet~~ the outdoor dining patio area as depicted in Exhibit "B" and Exhibit "F".

(B). The PROPERTY OWNER shall be permitted to exceed the allowable square footage for signage by the exact amount of square feet of the Commemorative Signage on the premises.

(C). The PROPERTY OWNER shall not be required to provide landscape buffers on the site and terminal landscape island adjacent to vehicular use areas as depicted in Exhibit "B".

(D). The PROPERTY OWNER shall not be required to provide the minimum 15 feet wide and a turning radius of fifteen (15) feet in back up areas as depicted in Exhibit "B".

(E). The PROPERTY OWNER shall be permitted to have awnings and outdoor dining in the ~~a~~ front yard setback ~~of 2 feet for the construction of an outdoor dining patio~~ as depicted in Exhibit "B," Exhibit "E" and Exhibit "F".

(F). The PROPERTY OWNER shall be permitted to have a monument sign located in the city alley way as depicted in Exhibit "B".

(b) The City agrees to the following relative to the development of the premises associated with the plan of development set forth in this Development Agreement:

(1). The CITY shall enter into a right-of-way use agreement with the PROPERTY OWNER to permit the desired mix of private and public use within the adjoining alleyways as depicted in Exhibit "B" attached and approved in Section 3.

(2). The CITY shall not assess the CITY's portion impact fees that would otherwise be assessed upon the PROPERTY OWNER, but has no control over impact fees that may be subject to payment to other entities of government.

(3). The CITY shall waive site plan and development agreement fees.

(4). The PROPERTY OWNER shall receive a $57,500 payment for the ~~sanitary sewer and public access easements depicted on Exhibit "C"~~ Sewer Utility and Access Easement and the Public Cross Access Easement as depicted in Exhibit "C1" and Exhibit "C2", respectively, at the issuance of a certificate of occupancy for the plan of development set forth in this Development Agreement.

(5). The CITY and PROPERTY OWNER acknowledges that the future tenant is eligible under the plan of development set forth in this Development Agreement for a 3-year lease subsidy per the CITY's 30%/20%/10% lease subsidy program subject to the program's requirements and limitations.

SECTION 5. REASONABLE APPROVAL.

In those instances in this Development Agreement in which a party's approval, consent or satisfaction is required, then it shall be implied that such action shall be exercised in a reasonable manner and within a reasonable time frame.

SECTION 6. REMEDIES.

Each party shall have any and all remedies as permitted by law; provided, however, that the parties agree to provide for positive dialogue and communications if disputes or disagreements arise as to the interpretation or implementation of this Development Agreement.

SECTION 7. TIME IS OF THE ESSENCE.

Time is of the essence of the lawful performance of the duties and obligations contained in this Development Agreement. The parties covenant and agree that they shall diligently and expeditiously pursue their respective obligations set forth in this Development Agreement.

SECTION 8. HEADINGS/CAPTIONS.

All sections and descriptive headings in this Development Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

SECTION 9. *FORCE MAJEURE*.

No party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, terrorism, hurricane, explosion, any law, proclamation, regulation, or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

SECTION 10. DEVELOPMENT AGREEMENT BINDING; RUNS WITH THE LAND.

(a). This Development Agreement shall be binding upon and inure to the benefit and burden of the successors in interest, transferees and assigns of the parties. Each party hereto represents to the other that it has undertaken all necessary actions to execute this Development Agreement, and that it has the legal authority to enter into this Development Agreement and to undertake all obligations imposed on it. The signatories hereof represent that they have the requisite and legal authority to execute this Development Agreement and bind the respective parties herein.

(b). This Development Agreement touches and concerns the premises

and shall run with the land and shall be binding upon and inure to the benefit and burden of the parties hereto and their respective successors and assigns.

SECTION 11. EXHIBITS.

All exhibits to this Development Agreement are hereby incorporated into this Development Agreement by this reference thereto.

SECTION 12. PUBLIC RECORDS.

(a). The PROPERTY OWNER shall allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, Florida Statutes, and other controlling law and which have been made or received by the PROPERTY OWNER in conjunction with this Development Agreement and shall adhere to the controlling provisions of State law relating to public records.

(b). **IF THE PROPERTY OWNER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE PROPERTY OWNER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS; CHERI SCHWAB, CITY CLERK, (386) 763-5353, CSCHWAB@CITYOFDBS.ORG, 2990 SOUTH ATLANTIC AVENUE, DAYTONA BEACH SHORES, FLORIDA 32118.**

SECTION 13. EQUAL OPPORTUNITY.

The PROPERTY OWNER agrees that it will not discriminate against any employee or applicant for employment for work relating to the services provided under this Development Agreement because of race, color, religion, sex, age, national origin or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demoting or transfer; recruitment advertising; layoff or termination; rates of pay or their forms of compensation; and selection for training, including apprenticeship.

SECTION 14. CONFLICT OF INTEREST.

The PROPERTY OWNER agrees that it will not commit any act that would cause or create a conflict of interest as defined by Chapter 112, Florida Statutes, to exist or occur in the performance of its obligations pursuant to this Development Agreement with the CITY.

SECTION 15. COMPLIANCE WITH LAWS AND REGULATIONS.

In performing pursuant to this Development Agreement, the PROPERTY OWNER shall abide by all statutes, ordinances, rules, and regulations pertaining to, regulating the acts contemplated to be performed herein, including those now in effect and hereafter adopted. This provision shall include, but not be limited to, the provisions of the CITY's land development regulations and the codes and ordinances of the CITY. Any violation of said statutes, ordinances, rules or regulations shall constitute a material breach of this Development Agreement.

SECTION 16. NOTICES.

(a). Whenever either party desires to give notice unto the other, notice may be sent to:

For the CITY:

Mr. Mike Booker
City Manager
City of Daytona Beach Shores
2990 South Atlantic Avenue
Daytona Beach Shores, Florida 32771

For the PROPERTY OWNER:

Brendan Galbreath

Shores 109, LLC
4190 Halifax Drive
Port Orange, Florida 32127

(b). Either party may change the address for notification by providing notice of such change to the other party.

SECTION 17. INTERPRETATION; APPLICABLE LAW; VENUE.

The laws of the State of Florida shall govern this Development Agreement. Any legal action necessary arising out of the Development Agreement will have its venue in Volusia County and the Development Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other further exercise thereof. Waiver of a default shall not be deemed a waiver of any subsequent defaults. In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs. The specific provisions of this Development Agreement shall prevail over the generality of the foregoing. In any action or proceeding required to enforce or interpret the terms of this Development Agreement, venue shall be in the Seventh Judicial Circuit Court in and for Volusia County, Florida.

SECTION 18. CONSTRUCTION OR INTERPRETATION OF THE DEVELOPMENT AGREEMENT.

This Development Agreement is the result of bona fide arms-length negotiations between the parties and all parties have contributed substantially and materially to the preparation of the Development Agreement. Accordingly, this Development Agreement shall not be construed or interpreted more strictly against either party than against any other party both parties having participated in the drafting of this Development Agreement. Whenever a decision is provided for herein which is to be made by the CITY, such decision must be in writing in order to be binding upon the CITY.

SECTION 19. ENTIRE DEVELOPMENT AGREEMENT/MODIFICATION.

(a) This Development Agreement constitutes the complete, integrated and entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements, arrangements, contracts or understandings, whether oral or written, between the parties relating thereto, all of which have been integrated herein. This Development Agreement may not be amended, changed, or modified and material provisions hereunder may not be waived, except by a written document,

of equal dignity herewith and signed by all parties to this Development Agreement.

(b) If the City Council of the CITY finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of this Development Agreement, this Development Agreement may be revoked or modified by the City Council upon affording the PROPERTY OWNER administrative due process rights in accordance with controlling law.

(c) A substantial modification of this Development Agreement shall, in the CITY's sole discretion, require approval by the City Council in accordance with the procedures set forth in Chapter 15, Appendix "G", Land Development Code, Code of Ordinances of the City of Daytona Beach Shores. This Development Agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest; provided, however, that a substantial modification of this Development Agreement shall, in the CITY's sole discretion, require approval by the City Council in accordance with the procedures set forth in Chapter 15, Appendix "G", Land Development Code, Code of Ordinances of the City of Daytona Beach Shores.

(d) If State or Federal laws are enacted after the execution of this Development Agreement, which are applicable to and preclude the parties' compliance with the terms of this Development Agreement, this Development Agreement shall be modified or revoked as is necessary to comply with the relevant State or Federal laws.

SECTION 20. <u>THIRD PARTY BENEFICIARIES/TRANSFERABILITY.</u>

(a) The CITY shall not be liable to any person, firm or corporation who contracts with or provides goods or services to the PROPERTY OWNER in connection with services provided by the PROPERTY OWNER to the CITY; and there is no contractual relationship, either expressed or implied, between the CITY and any other person, firm, or corporation supplying any work, labor, services, goods or materials to the PROPERTY OWNER as a result of its services to the CITY hereunder. This Development Agreement is solely for the benefit of the formal parties to this Development Agreement, and no right or cause of action shall accrue by reason hereof to or for the benefit of any other third party not a formal party hereto. Nothing in this Development Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy or claim under or by reason of this Development Agreement or any provisions or conditions hereof, other than the parties hereto and their respective representatives, successors and assigns as set forth herein.

(b) This Development Agreement is transferable. However, so long as the land or structure or any portion thereof covered under the development agreement continues to be used for the purposes for which it was issued, then no person (including successors and assigns of the person(s) or entity(ies) who obtained the development agreement) may make use of the land except in accordance with the conditions and requirements of this Development Agreement. The provisions of this Development Agreement run with and burden the real property to which it relates until release or amended in accordance with formal action of the CITY.

SECTION 21. ATTORNEYS FEES AND COSTS.

In the event of any action to enforce the terms of this Development Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in pre-litigation negotiation, litigation at the trial level, or upon appeal.

SECTION 22. SEVERABILITY.

If any one or more of the covenants or provisions of this Development Agreement shall be held to be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall, for any reason whatsoever, be held invalid, then such covenants or provisions shall be null and void, shall be deemed separable form the remaining covenants or provisions of this Development Agreement, and shall, in no way, affect the validity of the remaining covenants or provisions of this Development Agreement.

SECTION 23. EFFECTIVE DATE/TERMINATION; PERIODIC REVIEW OF DEVELOPMENT AGREEMENT.

(a) This Development Agreement shall take effect on the date that this Development Agreement is fully executed by the parties and is recorded in the Official Records (Land Records) of Volusia County, Florida.

(b) This Development Agreement shall be in effect for a period of five (5) years, but may be extended by mutual consent of the CITY and the PROPERTY OWNER. Any request for an extension shall be subject to the public hearing process necessary for the initial approval of said Development Agreement; provided, however, that the CITY has concluded that the vested rights of the PROPERTY OWNER and the investment backed expectations of the PROPERTY OWNER warrant a renewal and continuation of the development approved for the premises herein.

(c) Prior to the completion of the project and at the issuance of a certificate

of occupancy by the CITY, the CITY shall review this Development Agreement as well as at least once every twelve (12) months to determine if there has been demonstrated good faith compliance with the terms of the Development Agreement.

SECTION 24. COUNTERPARTS.

This Development Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

SIGNATURE PAGES FOLLOW:

IN WITNESS WHEREOF, the parties have executed this Development Agreement on the date stated below their signature.

Attest:

CITY OF DAYTONA BEACH SHORES

_____
Cheri Schwab, City Clerk

_____
Nancy J. Miller, Mayor
Date: _____

_____
Michael T. Booker, City Manager

Approved as to form and legality:

_____
Gretchen R.H. Vose, City Attorney

ADDITIONAL SIGNATURE PAGE FOLLOWS:

Witnesses:

PROPERTY OWNER/SHORES 109 LLC

_____

By: _____
Brendan Galbreath
Managing Member

_____
Printed Name

_____

_____
Printed Name

Acknowledgment

State of Florida)

County of Volusia)

I Hereby Certify that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared Brendan Galbreath, acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily and they are personally known to me or provided _____ as identification.

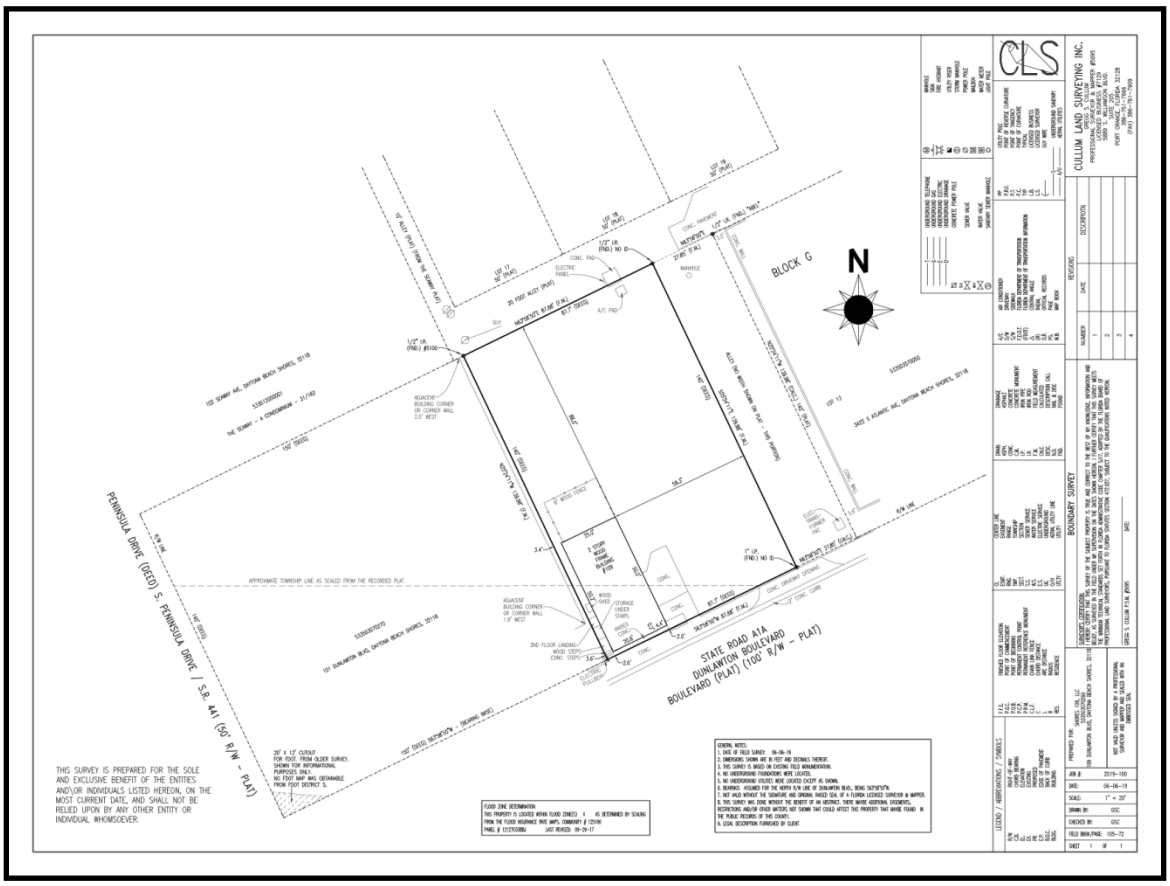
Witness my hand and official seal in the County and State last aforesaid this ___ day of _____, 2020.

(Affix Notary Seal)

_____
Notary Public; State of Florida
Print name: _____

Exhibit “A”

LEGAL DESCRIPTION



THE SOUTH 140 FEET OF THE EAST 87.7 FEET OF THE WEST 237.7 FEET OF BLOCK G, EAST OF PENINSULA DRIVE AND INCLUDING LAND ADJOINING SOUTH OF TOWNSHIP LINE, MAP OF VAN VALZAH SUBDIVISION, PORT ORANGE BEACH, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 4, PAGE 130, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

Exhibit “B”

CONCEPT SITE PLAN

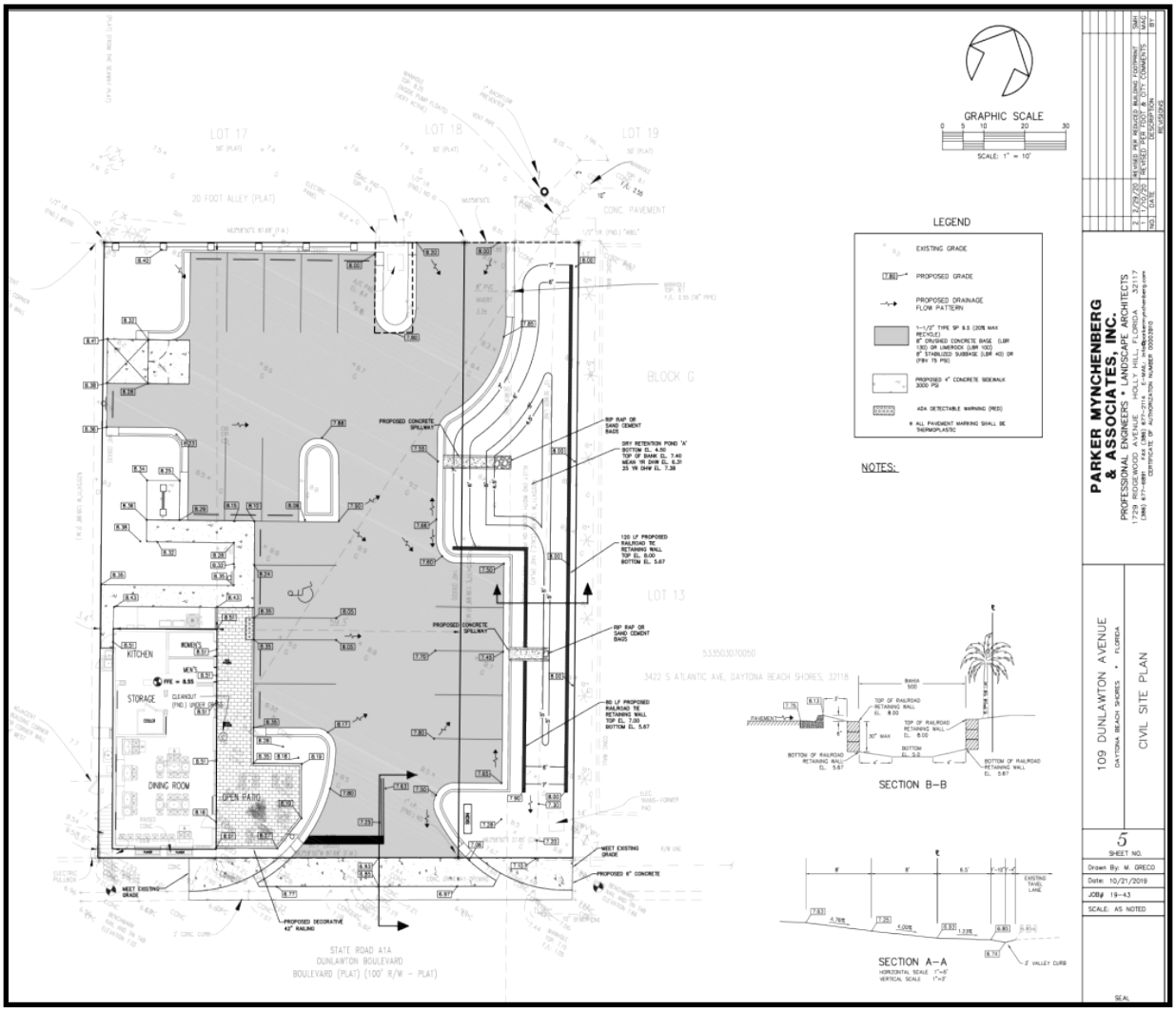


Exhibit “C1”

Sewer Utility and Access Easement

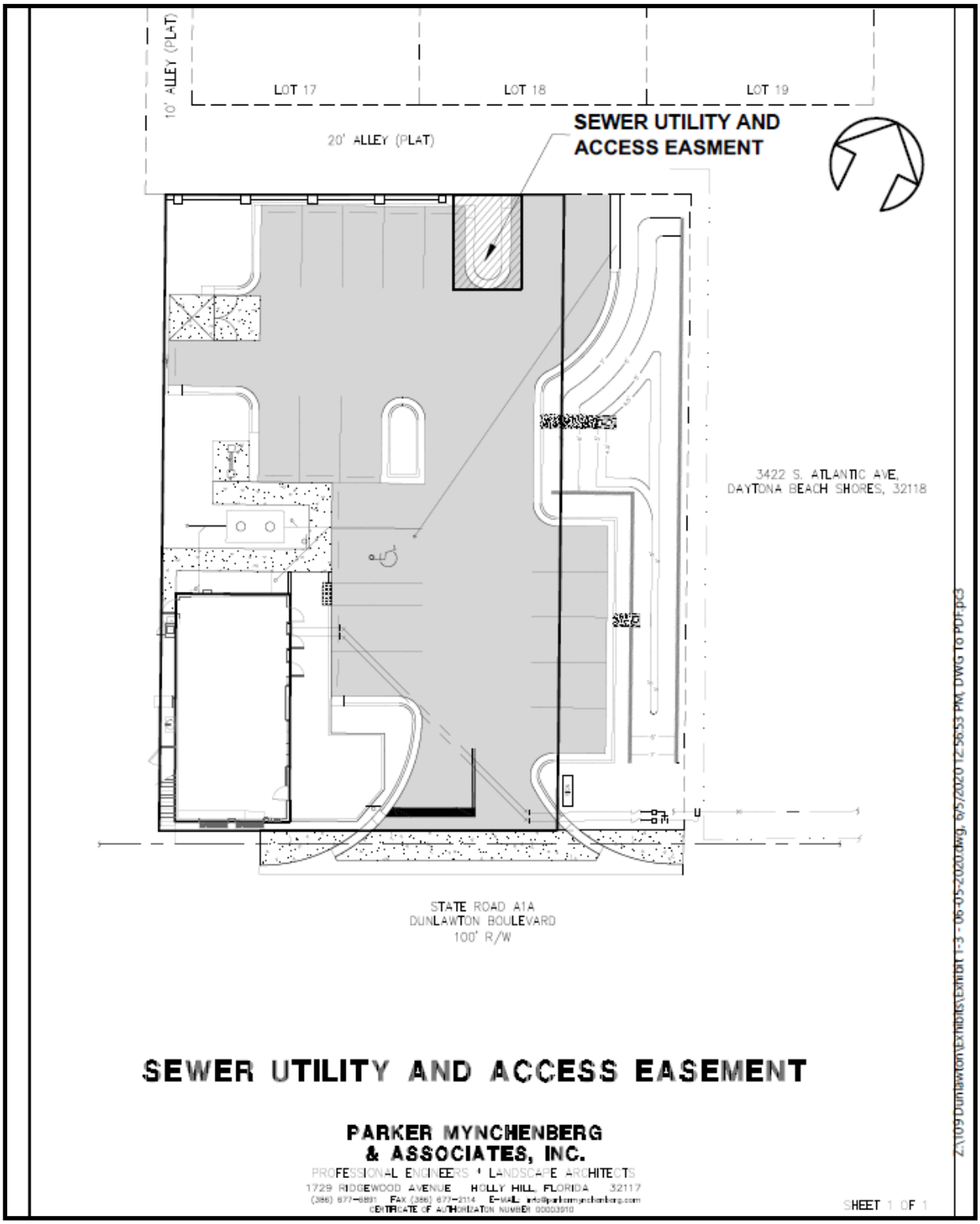


Exhibit “C2”

PUBLIC CROSS ACCESS EASEMENT

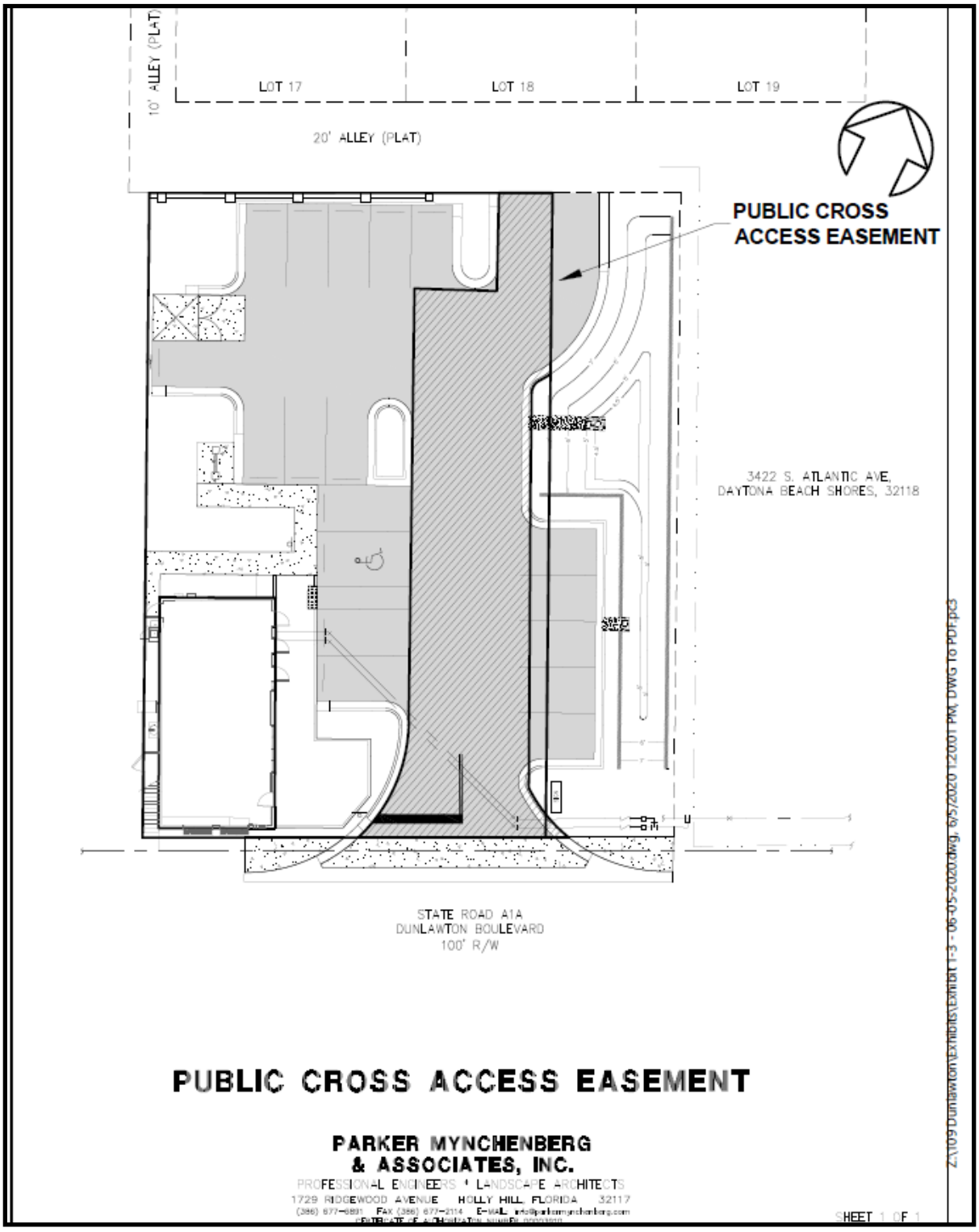


Exhibit “D”

LANDSCAPE PLAN

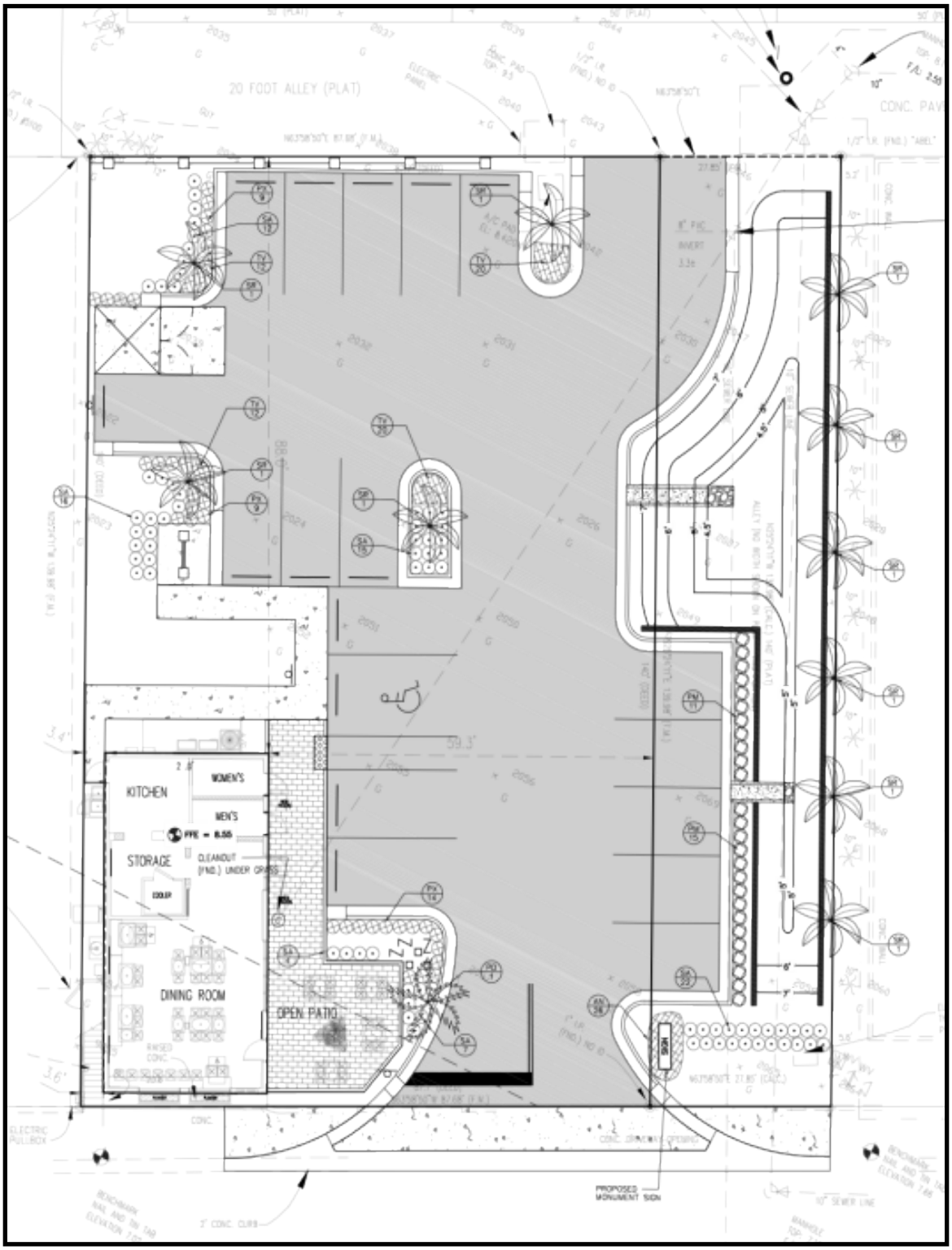
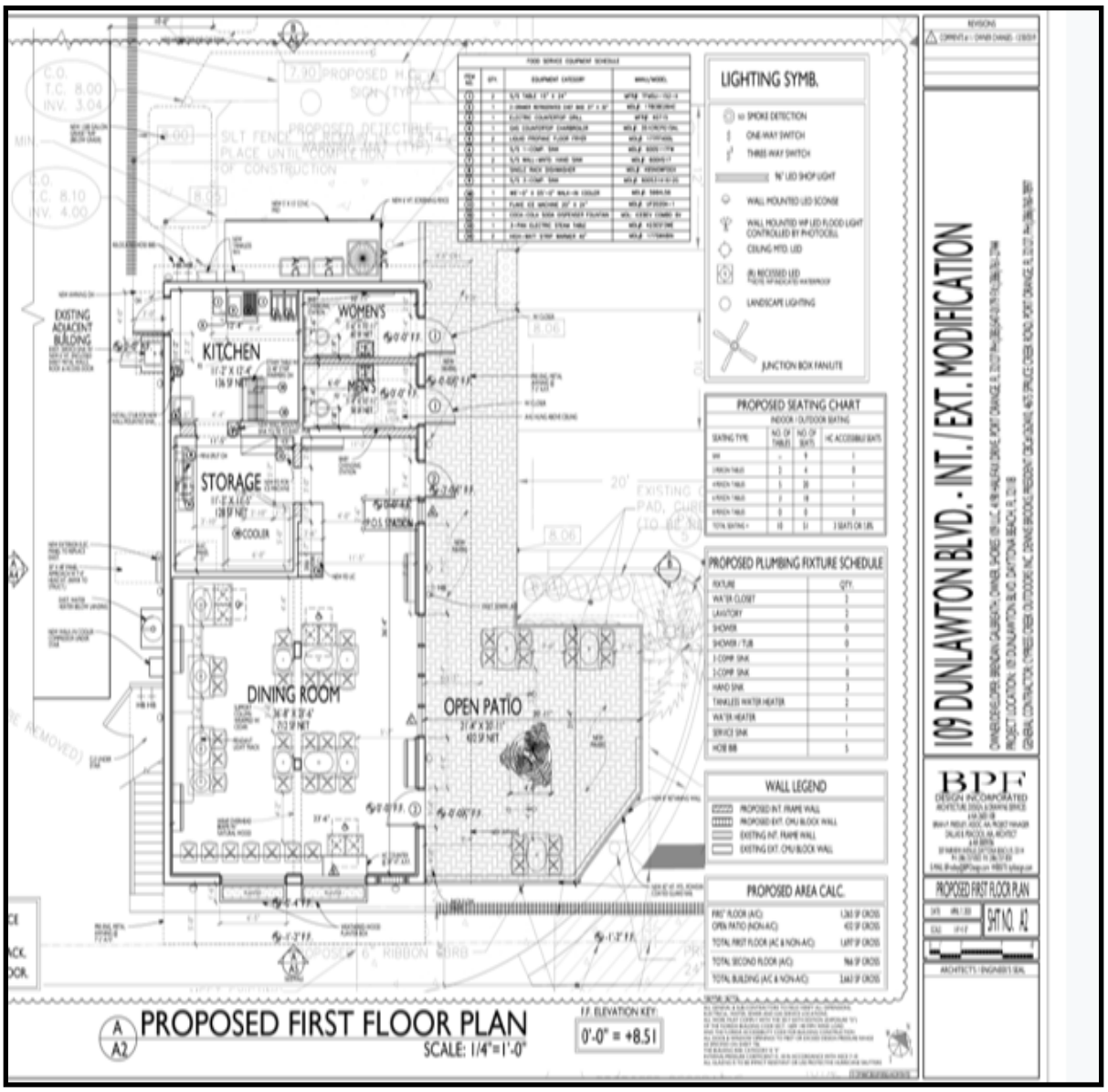


Exhibit “E”

COLOR RENDERING
NOTE: Signage are indicative of style and placeholders only

Exhibit “F”

FLOOR PLAN


LIGHTING SYMB.
SMOKE DETECTION
ONE WAY SWITCH
THREE WAY SWITCH
4' LED SHOP LIGHT
WALL MOUNTED LED SCONCE
WALL MOUNTED HP LED FLOOD LIGHT CONTROLLED BY PHOTOCELL
CEILING MTD. LED
RECESSED LED
LANDSCAPE LIGHTING
JUNCTION BOX FAN/LITE
PROPOSED SEATING CHART
PROPOSED PLUMBING FIXTURE SCHEDULE
WALL LEGEND
PROPOSED AREA CALC.
KITCHEN
WOMEN'S
MEN'S
STORAGE
COOLER
DINING ROOM
OPEN PATIO
EXISTING ADJACENT BUILDING
109 DUNLAWTON BLVD. - INT. / EXT. MODIFICATION
BPF
DESIGN INCORPORATED
PROPOSED FIRST FLOOR PLAN
SHT NO. A2
PROPOSED FIRST FLOOR PLAN
SCALE: 1/4"=1'-0"
F.F. ELEVATION KEY:
0'-0" = +8.51

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

120220022

521887

RECEIVED

JUL 23 2020

BUILDING AND CODES DIVISION
CITY OF DAYTONA BEACH SHORES

APPLICATION TO ENTER INTO/AMMEND A NON-PUD DEVELOPMENT AGREEMENT

The Undersigned Applicant requests the City Council to decide upon this application in accordance with Daytona Beach Shores Ordinance 2013-10.

FEES MUST BE PAID AT THE TIME THE APPLICATION IS SUBMITTED

Date Submitted: 7/20/2020 Current Zoning: _____

Applicant's Name: Shores 109 LLC

Address: 109 Dunlawton Blvd. Phone #: 386-547-0179

Representative: Brendan Galbreath

Address: 4190 Halifax Dr. Port Orange, FL 32127 Phone #: 386-547-0179

Email: auntcatfish1@aol.com

Property Address & Parcel ID: 109 Dunlawton Blvd / 533503070260

Property Owner: Shores 109 LLC

Legal Description of Property:

The South 140 Ft of the East 82.7 Ft of the West 237.7 Ft of Block G, East of Peninsula Dr and Including Land Adjoining South of Township Line, Map of Van Valzah Subdivision, Port Orange Beach, According to the Map or Plat Thereof as Recorded in Plat Book 4, Page 130, Public Records of Volusia County, FL

Brendan Z

Applicant's Signature

7-20-2020

Date

7-20-2020

Re: 109 Dunlawton Blvd Development Agreement Amendment

For the 109 Dunlawton Blvd. project, we have had to pull back and redesigned the project to fit into the appropriate budget. The prior plan and approved Development Agreement proved to be to costly to construct. Specifically, the underground retention, the addition of the new restroom building and the large outdoor patio roof structure proved to be significantly more costly than expected.

We have redesigned the parking layout/site plan to include surface retention, pulled the bathrooms back into their existing location and removed the patio roof structure, while leaving outdoor patio dining with tables and umbrellas. The functioning elements of the property will still be the same, only in a reduced form. Parking spaces were reduced to coincide with the reduction of outdoor seats and the restrooms will be the same 2 as proposed while being located within the existing structure. In addition, the redesigned parking layout has the monument sign located within the city alley way.

A snap shot of the proposed changes to the current Development Agreement are...

...redesigned parking layout/site plan reducing the number of parking spaces, locating the surface retention within the existing city alley way and locating the monument sign within the same city alley way.

...redesigned floor plan to include restrooms under existing roof area

...a reduced outdoor patio dining area without a roof structure

I am available anytime to discuss the project and answer any questions. I hope staff as well as the Planning and Zoning Board and City Council will support the redesigned project in the same manner as they support the prior design.

Sincerely,

Brendan Galbreath

Member, Shores 109 LLC

Summary
Land & Agriculture
Bldg(s) - Residential
Bldg(s) - Commercial
Misc Improvements
Bldg(s) - Sketch
Values
Permits
Map
Pictometry

Altkey: 3464176
SHORES 109 LLC

Parcel ID: 533503070260
109 DUNLAWTON BLVD , DAYTONA BEACH SHORES

Parcel

Short Parcel Id	533503070260
Property Location	109 DUNLAWTON BLVD, DAYTONA BEACH SHORES, 32118
PC Code	2100 - RESTAURANT
Total Bldgs	1
Neighborhood	7360 - PORT ORANGE/DBS- DUNLAWTON
Business Name	
Homestead Property	No

Primary Owner

Owner	SHORES 109 LLC
In Care Of	
Mailing Address	4190 HALIFAX DR
	PORT ORANGE FL 32127
	Change Mailing Address Online

All Owners

#	Owner 1	Owner 2	Owner %	Owner Type(s)
0	SHORES 109 LLC		100	FS - Fee Simple

Legal

Millage Group	403-DAYTONA BEACH SHORES
Legal Description	S 140 FT OF E 87.7 FT OF W 237.7 FT OF BLK G E OF PEN DR & INC LAND ADJ S OF TWP LINE PORT ORANGE BEACH MB 4 PG 130 PER OR 4276 PG 5000 PER OR 5622 PG 4196 PER OR 6142 PG 2428 PER OR 6154 PG 2912 PER OR 6865 PG 3355 PER OR 7573 PG 3658-3659 PER OR 7694 PG 563
Map TWP-RNG-SEC	15 - 33 - 35
Subdivision-Block-Lot	03 - 07 - 0260
Date Created	29-DEC-81
Year Annexed	

Sales

Book/Page	Instr Type	Inst #	Sale Date	V/I	Sale Price
7694 / 0563	WD-WARRANTY DEED	2019094830	05/13/2019	I	$375,000
7573 / 3659	WD-WARRANTY DEED	2018146064	07/19/2018	I	$165,300
7573 / 3658	QC-QUIT CLAIM DEED	2018146063	05/31/2018	I	$100
6865 / 3355	QC-QUIT CLAIM DEED	2013107568	05/22/2013	I	$100
6154 / 2912	QC-QUIT CLAIM DEED	2007255555	10/30/2007	I	$100
6142 / 2428	WD-WARRANTY DEED	2007236244	10/10/2007	I	$490,000
5622 / 4196	WD-WARRANTY DEED	2005217066	08/03/2005	V	$326,000
4276 / 5000	WD-WARRANTY DEED	1998025594	01/15/1998	I	$160,000
4074 / 2150	WD-WARRANTY DEED	1996017277	01/15/1996	I	$100
4074 / 2148	WD-WARRANTY DEED	1996017276	01/15/1996	I	$100
4074 / 2146	WD-WARRANTY DEED	1996017275	01/15/1996	I	$100

County Links

Property Tax Bill	CLICK HERE
Link to Permits	CLICK HERE

Other Links

Google Street Address	CLICK HERE
Bing Maps	CLICK HERE

1 of 2
Return to Search Results

Actions
Neighborhood Sales
Printable Summary
Printable Version

Reports
Export to Excel - Real Prope
Mailing List

Go

Links

Search Help

Data Copyright Volusia County Florida
Last Updated: 13/Jul/2020
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DA12019025 PLANNING ANALYSIS

(1) DEVELOPMENT PROPOSAL

The development site is 88' (frontage) x 140' (depth) or 0.28acres and located at 109 Dunlawton Boulevard (**Figure 1** below). The applicant/owner is seeking to redevelop the site by remodeling the existing two-story building on site. The existing grandfathered residential apartment on the second story will remain and has already been remodeled while the first floor will be used as a restaurant. An open outdoor patio is proposed in conjunction with the restaurant. In addition, the building façade will be upgraded and the parking lot will be repaved and combined with a portion of the eastern city alley, which connects to Dunlawton Boulevard. The alley in question will also be used for stormwater retention and housing an offsite monument sign, among other things.

Figure 1: Aerial View Development Site

Source: CONNECTExplorer, 2019

According to the development agreement concept plan, the site will maintain access from Dunlawton Boulevard. Eighteen parking spaces will be provided, of which one (1) will be ADA accessible as required. At present, the entrance to the public alley from Dunlawton Boulevard is closed with concrete curbing and blocked by an electric transformer and decorative lamp pole (**Figure 2**). Therefore, residents on the north side of the alley

currently utilize the owner's property for vehicular access. To address this issue, the owner is proposing a cross access easement to the public through the property for continued vehicular access and requesting usage of adjacent eastern alley for parking and landscaping (**Exhibit B**).

Figure 2: Street View of Dunlawton Boulevard Alley

Source: GoogleMaps 2019

(2) VARIANCES

Staff has reviewed a detailed site plan for the property development. No variances have been granted. Inconsistencies with the LDC are being addressed through the deviation process of the subject development agreement. It should be noted if the owner/applicant elected to address the above issues via the variance process, the public benefits noted in Section 4 of the agreement may not have been offered to the community.

(3) STAFF AND BOARD REVIEW

COMMUNITY SERVICES – Fred Hiatt, Director / Building Official

The Director has reviewed the development agreement and his comments have been addressed.

PUBLIC WORKS – Brian Edwards, Deputy Director / Facilities Superintendent

The Facilities Superintendent has reviewed the development agreement and has no comments.

PUBLIC SAFETY – Fire Division

The Fire Division has reviewed the development agreement has no comments.

ENGINEERING – Burl Reardon, P.E. - Tetra Tech HAI

Engineering review is not required for this process. However, the City Engineer has reviewed the detailed site plan and his comments have been addressed.

PLANNING AND ZONING BOARD

Pending….

(4) PUBLIC PURPOSE/BENEFITS & LAND DEVELOPMENT CODE DEVIATIONS

As seen in Sec. 4(a)(4) the Development Agreement, the owner/developer will provide eight (8) additional public benefits to the City and community of Daytona Beach Shores. These contributions are not required by the City's LDC and are being provided voluntarily by the owner. In addition, the conceptual site plan shows a need for six (6) deviations from the City's LDC. These deviations are not anticipated to be harmful or injurious to the development or surrounding neighborhood and are only required so that the applicant/developer would have the ability to develop the site into a successful commercial establishment consistent with the City's economic development program goals and objectives.

(5) FINDINGS

(a) CONSISTENCY WITH THE COMPREHENSIVE PLAN UPDATE 2030

According to the City's Adopted Comprehensive Plan (2030) Future Land Use Map, the future land use (FLU) classification of the subject property is Retail/Service Commercial. Said FLU classification allows commercial uses such as the proposed fellowship restaurant development. The proposed use and plan also meet all relevant comprehensive plan policies. Therefore, the proposed development is consistent with the City's Adopted Comprehensive Plan (2030) and the designated FLU classification.

(b) CONSISTENCY WITH THE LAND DEVELOPMENT CODE

The subject property is zoned "GC-2 Retail/Service Commercial" District. The proposed restaurant development is listed as a permitted principal use in the "GC-2" District pursuant to Sec. 14-23 of the City's LDC. Save the proposed deviations listed in the

development agreement, the proposed conceptual site plan substantially meets the development standards contained in the GC-2 District and LDC. Further, a formal site plan review of the development has occurred to demonstrate consistency with stormwater and other site plan development standards.

(c) REQUIRED AMENDMENTS TO THE COMPREHENSIVE PLAN AND/OR LAND DEVELOPMENT CODE

There are no required amendments to the City's adopted Comprehensive Plan and/or the City's Land Development Code necessary for the project to be approved.

(6) CITY CONTRIBUTION

In order to facilitate and incentivize the redevelopment of the site and in exchange for the sanitary sewer pump station easement and public cross access easement, the owner/developer is proposing that the City make contributions outlined in Sec. 4(b) of the Development Agreement. By way of the City contributions, the City will be gaining easement access to the pump station, which encroaches on the owner's property, as well as a cross access easement for usage by the City sewer staff and City residents who currently traverse the owner's property to access the City sewer lift station and the rear of their Seaway Avenue properties, respectively.

The City's contributions include: (1) permitting the owner/applicant to utilize the City's alley by means of a right-of-way use agreement for, among other things, stormwater retention, establishment of a freestanding identification sign, parking and landscaping; (2) not assessing City impact fees; (3) waiver of site plan and development agreement fees; (4) payment for Sewer & Public Cross Access easements in the amount of $57,500; (5) City and Property owner acknowledging that the future tenant is eligible for lease subsidies subject to the limitations of the City's Economic Development Program.