



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COUNCIL MEETING APRIL 13, 2021

**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 Award - Cheryl Thibault 15 years
- 6. APPROVAL OF MINUTES**
 - A. City Council Economic Workshop Minutes March 23, 2021
 - B. City Council Minutes March 23, 2021

7. CONSENT AGENDA:

8. REPORTS OF THE CITY ATTORNEY:

A. City Attorney Report

9. REPORTS OF THE CITY MANAGER:

A. City Manager Report April 13, 2021

10. OLD BUSINESS:

A. Discussion on Ordinance 2021-02 Micromobility Devices with staff proposals

11. NEW BUSINESS:

A. Consideration to approve the Second Lease Amendment with Halifax Health

B. Discussion on outdoor displays

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 386-7635364, 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 711 or 1 8009558771.

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
March 23, 2021
3000 Bellemead Drive, Daytona Beach Shores, FL 32118

1. CALL TO ORDER BY MAYOR

Present: Mayor Nancy Miller, Vice Mayor Mel Lindauer, Councilmember Richard Bryan, Councilmember Michael Politis, Councilmember Richard Frizalone
Staff: City Clerk Cheri Schwab, City Attorney John Cary, Community Services Director Fred Hiatt, City Planner Stewart Cruz, Recreation Director Nancy Maddox and Finance Director Kurt Swartzlander.

2. ROLL CALL BY CITY CLERK

3. NEW BUSINESS:

A. Economic Development Incentives Workshop

Economic Development Director Nancy Maddox explained there were three issues to discuss. The first was the lease subsidy grant program. She provided an inventory on number and types of current businesses in the city. She inquired if there was any particular type of business that the council did not wish to have. CMBR Politis felt the council should wait to see who applies and not limit their choices. CMBR Frizalone agreed with him. There were no changes proposed to this program.

The second issue was the land purchase program which would allow a grant of up to 10% of the purchase price paid at closing. So far, this has only been utilized one time for the Oceans 25 townhome project. Staff has suggested that if this program remained, it be paid once the project was complete and received a certificate of occupancy. Staff would also like this to be capped at \$100,000. Mayor Miller liked the staff suggestions. Council discussed different options for payment amounts but after a discussion, decided to remove the program entirely from the business incentives.

The third issue was the alternative tax relief program. To date, no one has applied for this incentive. It will be evaluated on a case by case basis. Council will have the discretion to determine the number of years involved and the percent of property tax to refund. This program would only benefit large projects. The council decided to not make any changes to this program.

4. ADJOURNMENT:

The meeting ended at 5:16 pm.

**MAYOR
NANCY MILLER**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB

**MINUTES
CITY COUNCIL MEETING
March 23, 2021
3000 Bellemead Drive, Daytona Beach Shores, FL 32118**

1. CALL TO ORDER BY MAYOR

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

Staff: City Clerk Cheri Schwab, City Attorney John Cary, Community Services Director Fred Hiatt, City Planner Stewart Cruz, Finance Director Kurt Swartzlander, and Public Safety Director Stephan Dembinsky.

2. ROLL CALL BY CITY CLERK

3. PRAYER

4. PLEDGE OF ALLEGIANCE

5. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

6. APPROVAL OF MINUTES

A. City Council Charter Workshop Minutes March 9, 2021

COUNCILMEMBER RICHARD FRIZALONE moved, seconded by VICE MAYOR MEL LINDAUER to Approve the City Council Charter Workshop Minutes of March 9, 2021.

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

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

B. City Council Minutes March 9, 2021

COUNCILMEMBER RICHARD BRYAN moved, seconded by COUNCILMEMBER MICHAEL POLITIS to Approve the City Council Minutes of March 9, 2021.

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

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

7. CONSENT AGENDA:

A. Public Safety monthly report

COUNCILMEMBER MICHAEL POLITIS moved, seconded by COUNCILMEMBER RICHARD FRIZALONE to Approve the consent agenda.

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

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

8. REPORTS OF THE CITY ATTORNEY:

A. City Attorney Report

Attorney Cary reviewed his report to the council. There were no questions or concerns.

9. REPORTS OF THE CITY MANAGER:

A. City Manager Report March 23, 2021

City Manager Booker was not present for the meeting, so Assistant City Manager Kurt Swartzlander read the report for the record. He added the following: the Oceans 25 townhome project is wanting to do one continuous concrete pour beginning at 6:30 am and finishing at 7:30 pm. The Council had no issue with this. There will be a lease amendment for Halifax Health on the next agenda for council to consider. They hope to open on July 1 for full service.

10. OLD BUSINESS:

11. NEW BUSINESS:

A. Discussion on Pedestrian Crosswalks

Engineer Fred Ferrell, owner of TEDS, presented a PowerPoint presentation to the council. He explained that a feasibility study had been done in 2015. They evaluated 19 locations along S. Atlantic Avenue and provided recommendations for pedestrian crosswalks. In 2016, three crosswalk locations were designed and constructed. Both the pros and the cons for crosswalks were explained. Pedestrians have a responsibility to be careful. Mr. Farrell explained the process of getting a new crosswalk installed and felt that if the city wanted one soon, it would probably need to pay for it directly.

Audience remarks - Monica Paris who lives in Daytona Beach would like to see a crosswalk near Sea Spray. There is off-beach parking and a beach access across the street. She turned in a petition signed by businesses, residents and neighbors.

Rick Brown felt that data could be skewed in what ever direction you desire. He would like council to create a task force of citizens to review the matter.

Patty Glaze inquired what the consequences were for a car going through the crosswalk.

Director Dembinsky explained the procedure for pedestrians entering a crosswalk.

B. Micromobility Device Ordinance

City Attorney Cary read the ordinance by title for the record. The ordinance if adopted would initiate a pilot program to rent micromobility devices within the city limits. The council discussed a few items from the ordinance such as the definitions and insurance requirements. Vice Mayor Lindauer would still like a rider to alert pedestrians in some manner when coming up from behind them. The council did appreciate the requirement of a driver's license and training for all rentals as part of the pilot program.

Business Owner Mickey Pederson owns a hotel and currently rents out scooters. He questioned the storage of vehicles indoors versus out of the public view. After a brief discussion, it was determined that he was grandfathered in for this requirement. He also questioned if he was obligated to train riders himself. It was determined that if the parent company had a video on rider safety, that would suffice.

Community Services Director Fred Hiatt wondered if the scooters are just outside and available for rent, who is making them watch a training video. It would need to be a part of the mobile phone app.

COUNCILMEMBER MICHAEL POLITIS moved, seconded by COUNCILMEMBER RICHARD BRYAN to approve the Ordinance on Micromobility Devices on first reading.

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

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

12. COUNCIL COMMENTS:

Mayor Miller reminded the audience that there was a concert on Friday night at the pavilion. She requested an item for the next agenda to discuss outdoor banners and displays. Last year, the codes were relaxed during the pandemic to help attract customers. She has been contacted by business owners who would like to keep the displays. Both CMBRS Frizalone and Lindauer appreciated the residents who attend the meetings and participate in the discussions. CMBR Bryan provided an update on the smoking bills as they go through the

sub-committees. He is optimistic that they would pass.

13. AUDIENCE REMARKS/PUBLIC COMMENTS:

Resident Jeff Marko inquired as to when a vehicle needs to stop for a pedestrian. Director Dembinsky explained you have to step into the crosswalk first. Mr. Marko thought that if scooters had a bell on them, they could alert pedestrians as they approached.

14. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

Discussion on outdoor displays and seating

15. ADJOURNMENT:

The meeting ended at 7:26 pm.

**MAYOR
NANCY MILLER**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB



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
APRIL 13, 2021 AGENDA**

TO: Honorable Mayor and Members of the City Council
COPIES TO: Mike Booker, City Manager
Cheri Schwab, City Clerk
FROM: John Cary, City Attorney
DATE: April 7, 2021
SUBJECT: ***City Attorney Report***

The following is intended as my written report to the City Council for matters arising subsequent to its last meeting of March 23, 2021. Please advise if you have any questions, comments or concerns relative to these matters.

(1) *Halifax Health*

Reviewed and negotiated contract for additional parking for Halifax Health.

(2) *Micromobility Devices*

Finished drafting ordinance based on direction from the city council.

(3) *Code Enforcement*

Reviewed Notice to Appeal and case file for potential appeal of Special Magistrate Code Enforcement final order.

(4) *Police Legal Opinion*

Provided a legal opinion for the public safety director regarding a recent U.S. Supreme Court opinion.

(5) FPL

Reviewed and negotiated an Agreement for electric vehicle charging equipment.

(6) PZB Variance

Drafted Findings of Fact for a variance that was approved by the PZB.

(7) Sewer Assessment Opinion

Drafted a legal opinion for the Finance Director regarding a sewer assessment.

Respectfully, submitted,

/s/ John Cary, City Attorney



CITY OF DAYTONA BEACH SHORES

"Life Is Better Here"

Office of the City Manager

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

MEMORANDUM

DATE: April 7, 2021

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

FROM: Michael T. Booker, City Manager

SUBJECT: City Manager's Report –April 13, 2021

Armed Forces Day:

The keynote speaker for our Armed Forces Day ceremony on Saturday, May 15 will be Ernest "Ernie" Audino, Brigadier General, U.S. Army (Ret). Ernie is working as Congressman Michael Waltz's District Director. A special thanks to Mayor Miller for getting him to speak at our event this year.

City Park Maintenance:

I have discussed the options outlined by City Council regarding current and future county oceanfront park maintenance by the City with the County Manager. The County Manager understands the issues as presented and is considering options.

Bank of America:

Due to Bank of America shutting its doors, I believe it is imperative the City actively pursue acquisition of this property. It is strategically located close to the Shores Pavilion, McElroy Park and the "soon to be open" Halifax Urgent Care facility.

Medical Marijuana:

The City has been approached regarding the possibility of opening a medical marijuana clinic. If it pleases City Council, I will gather more information on this issue. There are several clinics in the surrounding area, and all are run professionally and held to very strong regulation. Most look just like any other clinic, and none have had any negative impact on the areas where they operate.



**CITY COUNCIL AGENDA MEMORANDUM
APRIL 13, 2021 AGENDA**

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Discussion on Ordinance 2021-02 Micromobility Devices with staff proposals

SYNOPSIS:

FISCAL IMPACT STATEMENT:

BACKGROUND:

LEGAL REVIEW:

RECOMMENDATION:

SUGGESTED MOTION:

ATTACHMENT: 1. Ordinance - Micromobility Devices v2-FH-GH-SC-4-6-21

ORDINANCE 2021-02

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO THE REGULATION OF MICROMOBILITY DEVICES WITHIN THE CITY OF DAYTONA BEACH SHORES; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING DEFINITIONS; CREATING A PILOT PROGRAM FOR THE RENTAL OF MICROMOBILITY DEVICES; PROVIDING REQUIREMENTS FOR OBTAINING A PERMIT; PROVIDING REQUIREMENTS FOR EMERGENCY STORAGE; PROVIDING CRITERIA FOR THE CITY TO IMPOUND IMPROPERLY STORED VEHICLES; REQUIRING COMPANIES TO INDEMNIFY THE CITY; PROVIDING INSURANCE REQUIREMENTS FOR COMPANIES ENGAGING IN RENTAL OF MICROMOBILITY DEVICES; REQUIRING RETAILERS TO PROVIDE CERTAIN RECORDS UPON REQUEST OF THE CITY; MAKING FINDINGS; PROVIDING FOR CONFLICTS, SEVERABILITY; CODIFICATION AND EFFECTIVE DATE.

WHEREAS, the City Council of the City of Daytona Beach Shores (“City Council”) is the elected collegial body that is the legislative arm of the City of Daytona Beach Shores (“City”); and

WHEREAS, the City Council of the City of Daytona Beach Shores desires to ensure that the City and its environs are safe for drivers and pedestrians alike, including residents of the city and visitors to the city; and

WHEREAS, the City of Daytona Beach Shores has a significant interest in ensuring the public safety and order and in promoting the free flow of pedestrian traffic in city parks, streets, and sidewalks. *Ayres v. City of Chicago*, 125 F. 3d 1010, 1015 (7th Cir. 1997); and

WHEREAS, bicycles and dockless shared mobility devices left unattended and parked or leaned on walls or left on sidewalks creates a hazard to pedestrians and individuals needing access and maneuverability for ADA mobility devices; and

WHEREAS, the state of Florida, through the Florida Uniform Traffic Control Law, regulates micromobility devices, but does not prevent municipalities from adopting ordinances governing the operation of micromobility devices. Section 316.2128(1); and

WHEREAS, the City of Daytona Beach Shores may regulate the use and rental of micromobility devices to the extent that such regulations do not conflict with the Florida Uniform Traffic Control Law. *Classy Cycles, Inc. v. Panama City Beach*, 301 So.3d 1046 (1st DCA 2019); and

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

WHEREAS, this ordinance is enacted pursuant to the home rule powers of the City as set forth at Article VIII, Section 2, of the *Constitution of the State of Florida*, Chapter 163, *Florida Statutes*, Chapter 166, *Florida Statutes*, and other applicable and 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.

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

SECTION ONE: LEGISLATIVE FINDINGS AND INTENT.

The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance the recitals (whereas clauses) to this Ordinance, and finds that same reflect the legislative intent of this Ordinance, and the same are hereby adopted, ratified, and affirmed.

SECTION TWO: ADOPTION.

The City Council of the City of Daytona Beach Shores hereby amends the *Code of Ordinances of the City of Daytona Beach Shores*, Chapter 16, entitled “Offenses-Miscellaneous,” Article I, entitled “In General,” by creating Section 16-24.2 entitled “Rental or leasing of micromobility devices” as follows:

CHAPTER 16 – OFFENSES-MISCELLANEOUS

ARTICLE I – IN GENERAL

Sec. 16-24.2. – Rental or leasing of micromobility devices.

- (a) Definitions – The following words and phrases, when used in this section shall, for the purpose of this section, have the meanings respectively ascribed to them in this section.
- (1) The definitions in section 316.003 of the Florida Statutes apply to this section and are hereby incorporated by reference.
- (2) Company means a business that owns or operates a fleet of micromobility devices for the purpose of rental to the general public. This may include either a business with a physical location in the city where customers can come to rent micromobility

devices or a business that rents the devices through an app and has no physical presence in the city.

- (3) *Director* means the Director of Community Services or any other employee designated by the City Manager for the purpose of administering this section.
- (4) *Retailer* means any commercial business, ~~including hotels~~, other than a company, that is in the business of renting micromobility devices out of a physical building within the city, wherein such rentals are not a primary purpose of the business, and for which rentals of micromobility devices or other motorized or non-motorized vehicles are less than ten (10) percent of the total revenue of the business, ~~and which has a signed, -active agreement with a company that holds a valid permit from the city under this section. For the purpose of this section, a hotel is a retailer if it has continuously rented micromobility devices as of March 23, 2021.~~ Retailers must be located in a commercial or hotel zoning district, as applicable.
- (b) *Pilot program.* The city hereby establishes a pilot program (the "program") under which companies may operate dock-based or dock-less micromobility device share services by renting in person from a qualified retailer that has a permit from the city. The program will expire on December 31, 2021. During the term of the program, companies shall have a maximum fleet of ~~one hundred (100) twenty (20) one hundred fifty (150)~~ micromobility devices. The Director retains the right to require companies to reduce ~~their fleet or permit companies to increase~~ their fleet size to ~~no more than two hundred fifty (250)~~ or cease operations as required by public safety or welfare considerations or in the event companies violate the terms of this ordinance or the permit issued hereunder. During the term of the program, a company will designate two local operational staff who will be responsible for fielding complaints, addressing technical difficulties, coordinating the rebalancing and removal of micromobility devices parked illegally, and providing public education.
- (c) *Permit required.* Each company ~~or retailer~~ must apply for and receive a permit from the City before commencing micromobility device operations and ~~each retailer must~~ maintain a valid permit during the term of the program. Companies ~~and retailers~~ that already rent micromobility devices within the city as of the effective date of this ordinance have thirty (30) days from the effective date of this ordinance to apply for a permit. Permits may not be assigned or transferred unless approved by the City. Each permit, upon issuance, will be for a maximum of ~~one hundred (100) one hundred fifty (150)~~ micromobility devices for a company, and a maximum of ~~twenty (20) twelve (12)~~ micromobility devices for a retailer. Each permit will be issued to a different company ~~or retailer~~. ~~If one retailer has multiple locations in the city, then a permit is required for each location.~~ The issuance of permits will be processed in the order that complete permit applications are received. ~~Companies shall only deploy and distribute micromobility devices to a retailer subsequent to the issuance of a permit by the City.~~

- (1) Term of permit. Unless otherwise revoked or terminated, each permit is valid upon issuance, and will expire at the end of the pilot program. Within ten days after expiration or termination of a permit, a company will remove all its micromobility devices from within the City, and a retailer will immediately cease the storage or staging of micromobility devices.
- (2) Revocation of permit. The Director may revoke a permit if a company or retailer violates any applicable law or regulation or any condition of the permit. Within seven days of a revocation notice being delivered to a company or retailer, the company or retailer may request a meeting with the Director or assignee. A fair opportunity to be heard shall be provided by the Director or assignee within 21 days of the request for a meeting. After the meeting, the Director may affirm his or her determination, affirm his or her determination with conditions, or rescind his or her determination. The Director's decision shall constitute final agency action.
- (3) Application requirements for a permit. Applications for a permit must be made on a permit form provided by the Director. The form shall provide the material and documents needed to complete the application and must at a minimum request information necessary to confirm that the retailer meets the requirements of this section and other applicable provisions of City ordinance and state law. The form will also include an agreement to indemnify the City of Daytona Beach Shores against any and all claims, damages, and liability arising from operation of the company except to the extent that said liability, losses, or damages arise from the negligence or willful misconduct of the city. All permits shall be conditioned on the accuracy of and continued compliance with all material aspects of the application.
- (4) Conditions of the permit. In addition to the requirements of this Chapter, the Director may approve applications for a permit with special regulations and conditions of operation as he or she deems reasonably appropriate to protect the public health, safety, and welfare.
- (5) Application fee. The initial application for permit for the pilot program must be accompanied by a non-refundable application and licensing fee of \$1000.00 to pay for the City's direct costs of administering the program. Should the City continue the program after the term of the pilot program is complete, the application fee shall be set by resolution of the City Council.
- (6) Renewal. Should the city continue the program after the term of the pilot program, permits may be renewed following the same process, including payment of the application fee, as set by resolution of the City Council.
- (7) Staging. A retailer may stage, or allow to be stage, a maximum of six (6) micromobility devices outdoors on the property of the retailer during the retailer's normal business hours, ~~unless the retailer is a hotel as defined in section 2-2, in~~

~~which case all micromobility devices must be stored indoors. Staging may include one (1) associated, free-standing, instructive sign no larger than 24"x36". In no event shall m~~ If a retailer is closed for 36 consecutive hours, no micromobility devices ~~or an associated, instructive sign shall~~ be stored or otherwise staged outdoors ~~while the retailer is not open for business. Each retailer must monitor and maintain all micromobility devices and associated instructive sign on their property to be upright, orderly, and not encroaching any right-of-way, or required landscape area or other element required by the City's Land Development Code. Companies may not stage or otherwise place micromobility devices inside the city except by providing the micromobility devices to a retailer that holds a valid permit from the city under this section. For the duration of the pilot program, the availability of outdoor staging is allowed as a temporary exception to the prohibition contained in section 14-60.3 of the Land Development Code, provided however, maintenance, cleaning and activities other than staging shall not be visible from public rights-of-way-~~

- (8) *Conditions of rental.* ~~Retailers~~ Companies may not rent micromobility devices to any person ~~that who~~ does not have a valid driver's license. ~~All micromobility devices rented in the City shall have a horn or other sound-making device designed to warn others of the micromobility devices approach or presence. Retailers~~ Companies must ensure that they provide training for all rentals, to include safety training and instructions to ride in a single file line when riding on sidewalks, including training on alerting pedestrians to the rider's presence. ~~Companies shall also disable or otherwise prevent the use and operation of micromobility devices at 9pm. Companies shall inform all users of these requirements during the training and instruction process.~~
- (9) *Waiver/release form.* As part of the permit application process, and prior to issuance of the permit, each retailer and company will submit a waiver/release form to the City for review and approval. The form will provide, in general, that the customer waives any and all claims against the City and releases the City, its elected and appointed officials and employees from any and all liability related to, or arising from, operation of the micromobility device or the program. The retailer or company will require each customer's execution/consent of, and to, the form prior to any customer's use of the retailer or company's micromobility devices. The retailer or company must provide a safety form and training, to include instruction on the requirements of this section, including the prohibition on rental to a person without a valid driver's license. The retailer or company will use ~~of~~ the form as part of every rental of a micromobility device throughout the term of the permit.
- (10) ~~The Director shall not issue a permit to any hotel or similar use, as defined in section 2-2, unless the hotel has been operating as a retailer prior to March 23, 2021. Hotels that have been operating prior to March 23, 2021, as a retailer shall be granted a permit as long as the hotel meets all other applicable criteria to the extent that the hotel continuously operates as a retailer. Companies must provide a~~

complete Daytona Beach Shores retailer list at the time of application and bi-weekly to the Director. This may be provided electronically or in person.

- (11) Drop off and return of micromobility devices shall only occur at retailers under this section.
- ~~(10)~~(12) Penalties. Lease/rental agreements between a company and a retailer shall provide penalty provisions for retailers that do not comply with applicable permit requirements and provisions of this ordinance.
- (d) Emergency storage. If the president, governor, or any other official or governing body with jurisdiction to make such a declaration declares a hurricane watch or warning, the company shall collect all micromobility devices that are outdoors and store them in an indoor facility or otherwise remove such devices from the city limits. Retailers shall secure and bring indoors any micromobility devices that are staged or otherwise stored outdoors for the duration of the emergency declaration. Any micromobility devices that are not properly stored in a timely manner may be impounded by the Director of Public Safety or his or her designee, or by a code enforcement officer of the city, and may be redeemed by the company in accordance with paragraph (e).
- (e) Impoundment. Any micromobility device left unattended on public property, including in parks and rights-of-way of the FDOT, Volusia County, or the City of Daytona Beach Shores, may be impounded by the Director of Public Safety or his or her designee, or by a code enforcement officer of the city. A micromobility device is not considered unattended if it is secured or staged at a retailer in accordance with this section. Upon impoundment by the Director of Public Safety, the company shall pay a \$25 fee to the Public Safety Department to retrieve the device, in order to offset the administrative expense of impounding and storing the device. This fee is in addition to any other fee or penalty that may be applied for any underlying violation of any other laws, ordinances, or rules.
- (f) Indemnification. Companies, bBy submitting an application for a permit, retailers and companies and retailers, by allowing micromobility devices on their properties, agree to indemnify, defend, and hold harmless the city, and its elected and appointed officials, employees, agents, and instrumentalities from any and all liability, losses or damages, including any and all attorneys' fees and costs of defense, which the city and its elected and appointed officials, employees, agents and instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature including, but not limited to, personal injury or wrongful death, property loss or damage, the conditions and features on all streets, sidewalks and sidewalk areas, or other areas within the city on which a micromobility device is operated, to the extent arising out of or in any way connected with the operation of the micromobility device service or use of a micromobility device. Retailers and companies shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the city, where applicable, including

administrative, trial, and appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. Retailers and companies shall expressly understand and agree that any insurance protection required by this section, or otherwise provided or secured by a company, will in no way limit the responsibility to indemnify, defend, and hold harmless the city, its elected and appointed officials, employees, agents and instrumentalities as required by this section. The obligation to indemnify, defend, and hold harmless will survive the revocation, cancellation, or expiration of a permit. The companies will acknowledge on the permit, which will include this indemnification in substantially the language provided by this section, that the issuance of the permit, is, in part, conditioned on the granting of this indemnification which is knowingly and voluntarily given by the company.

(g) *Insurance.* The company will procure and keep in full force and effect no less than the insurance coverage required by this section. The insured provisions of the policy or policies must list the city, as well as its elected and appointed officials and employees as additional insureds, and the coverage provisions must provide coverage for any claim, loss or damage related to property or bodily injury, including death, which may arise to any person or property by reason of the program or its operation, or the company's agents, contractors, employees or micromobility device users, or the operation of a micromobility device. The Certificate of Insurance for any insurance policy required by this section must be on file with the City, in a form acceptable to the Director, or his or her designee, prior to the issuance of a permit under this section. Insurance required under this section must include a cancellation provision in which the insurance company is required to notify both the company and the Director or his or her designee, in writing not fewer than 30 days before cancelling any insurance policy or before making a reduction in coverage. A company, upon receiving said notice, shall file with the Director, or his or her designee, in a form acceptable to the city, a certificate of insurance for any and all replacement insurance policies prior to the cancellation or reduction of same. The company will maintain the following insurance coverages:

- (1) Commercial general liability with limits of \$2,000,000.00 per occurrence, \$5,000,000.00 policy aggregate affording coverage for claims resulting from bodily injury (including death) and property damage as described in subsection 2, above. The policy shall be written on a primary and noncontributory basis, and should insure against premises and operations, personal injury, and contingent and contractual exposures.
- (2) Automobile/motorcycle liability affording coverage on all motor vehicles/scooters, if used in connection with the operations or activities contemplated under this article. The company should furnish the city with a policy affording coverage on all owned autos, scooters, and other micromobility devices, including coverage for hired and non-owned auto exposures, with a combined single limit for bodily injury (including death) and property damage of \$2,000,000.00 per accident.

- (3) Workers compensation subject to the statutory limits of the State of Florida.
- (4) The city retains the right to require additional insurance coverage in connection with the activities performed by the company under this article as may be determined by the city, considering the size of the fleet and other liability insurance related factors. Nothing herein constitutes a waiver of the City's sovereign immunity.
- (h) Records. Upon the written request of the Director, the retailer must provide any requested rental records within three (3) business days.

SECTION THREE: 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 FOUR: CONFLICTS. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION FIVE: CODIFICATION. Section Two of this ordinance shall become and be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* and may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word. The Code codifier is granted liberal authority to codify the provisions of this Ordinance to be consistent with the other sections of the *Code of Ordinances*.

SECTION SIX: EFFECTIVE DATE. This Ordinance shall take effect immediately upon enactment.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY MILLER, MAYOR

MICHAEL T. BOOKER, CITY MANAGER

Approved as to form and legality:

CHERI SCHWAB, CITY CLERK

JOHN CARY, CITY ATTORNEY

Passed on first reading this _____ day of _____, 2021.

Adopted on second reading this _____ day of _____, 2021.



**CITY COUNCIL AGENDA MEMORANDUM
APRIL 13, 2021 AGENDA**

TO: Honorable Mayor and Members of the City Council

FROM: John Cary, City Attorney

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Consideration to approve the Second Lease Amendment with Halifax Health

SYNOPSIS:

This second amendment to the lease includes an increase in the number of parking spaces from 15 to 18, amends the legal description of the Leased Premises, and defines some supplemental terms regarding easements and access rights. This agenda item also includes a ground lessor's waiver, consent and estoppel agreement.

FISCAL IMPACT STATEMENT:

N/A

BACKGROUND:

LEGAL REVIEW:

This amendment has been approved as to form and legality.

RECOMMENDATION:

SUGGESTED MOTION:

- ATTACHMENT:**
1. halifax Lease Memorandum (Clean 3_16_21)
 2. halifax health LEASE ACCESS SHT1 (Exhibit D to 2nd Lease Agreement)
 3. First Horizon- Noon (Daytona Beach) Ground Lessor's Waiver Consent and Estoppel 4834-6800-1496 v1 (003)
 4. SECOND LEASE AMENDMENT - City edit

PREPARED BY AND RETURN TO:

Andrea M. Kurak, Esq.
303 N. Clyde Morris Blvd.
Daytona Beach, Florida 32114

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into this ____ day of _____, 2021 by and between **HN DBS, LLC**, a Florida limited liability company having an address of (“**Lessee**”) and **CITY OF DAYTONA BEACH SHORES**, a Florida municipality (“**Lessor**”).

WHEREAS, Lessee and Lessor are parties to a certain Gross Lease Agreement, effective as of September 9, 2019 (the “**Gross Lease Agreement**”), for the lease of certain real property located in Volusia County, Florida more particularly described in Exhibit A, attached hereto and incorporated herein (the “**Leased Premises**”) (the Gross Lease Agreement, as supplemented by a certain Addendum to Gross Lease Agreement effective as of September 9, 2019, and as assigned to Lessee pursuant to that certain Assignment and Assumption Agreement dated December 8, 2020, and as first amended by that certain Lease Amendment dated December 3, 2020, and as next amended by that certain Second Lease Amendment dated _____, 2021, and as may hereafter be amended, restated and/or supplemented, is referred to herein as the “**Lease**”); and

WHEREAS, the parties wish to give notice of the existence of the Lease and certain provisions thereof.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and adequacy whereof are hereby acknowledged, the parties hereto agree as follows:

1. Lease. Pursuant to the Lease, Lessor has leased to Lessee, and Lessee has leased from Lessor, the Leased Premises.
2. Definitions. For purposes of this Memorandum, capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Lease
3. Term. The initial term of the Lease (the “**Initial Lease Term**”) is for a period of twenty (20) years commencing on the Lease Term Commencement Date (as defined in the Lease).
4. Renewal Options. As more particularly described in, and subject to the terms and conditions set forth in the Lease, the Lessee has the option to renew the Lease for two (2) additional terms of ten (10) years each (the “**Renewal Terms**”). Together, the Initial Lease Term and any Renewal Terms are referred to herein as the “**Lease Term**”.
5. Access and Parking Easements and Rights. Lessee is constructing a medical office building and related improvements on the Leased Premises. The surveyor’s drawing attached hereto as Exhibit B and incorporated herein (the “**Site Drawing**”) shows, among other things, (a) the Leased Premises and (b) adjacent areas owned and controlled by Lessor that are identified on the Site Drawing as the “**HN DBS Easement Area**”. A portion of the Leased Premises is identified on the Site Drawing as the “**Lessor Access Area**”. The HN DBS Easement Area includes three (3) parking spaces that are identified on the Site Drawing as the “**HN DBS Parking Spaces**”. The parties acknowledge and agree that the HN DBS Parking Spaces are in addition to the parking spaces that are part of the Leased Premises as contemplated

in Section 1 of the Lease. Pursuant to the Lease, the parties have agreed as follows with respect to the HN DBS Easement Area, the HN DBS Parking Spaces and the Lessor Access Area:

(a) at all times during the Lease Term, Lessee and its successors and assigns, for their use and benefit and for the use and benefit of their respective agents, employees, customers, invitees, licensees, contractors, vendors and patrons, shall have the right, title and privilege of a non-exclusive easement in, upon, over and across the HN DBS Easement Area for unobstructed vehicular and pedestrian access, ingress and egress;

(b) at all times during the Lease Term, Lessee and its successors and assigns, for their use and benefit and for the use and benefit of their respective agents, employees, customers, invitees, licensees, contractors, vendors and patrons, shall have the right, title and privilege of an exclusive easement over the HN DBS Parking Spaces, for the purpose of vehicle parking. Lessee and its successors and assigns shall have the exclusive right to use and occupy, and to permit others to use and occupy, the HN DBS Parking Spaces. The rights conveyed to Lessee and its successors and assigns pursuant to this section include the rights (i) to cause the HN DBS Parking Spaces to be marked as exclusive to Lessee or Lessee's sub-lessees and (ii) to enforce the foregoing easement and rights in any legal manner, including towing unauthorized vehicles; and

(c) at all times during the Lease Term, Lessor and its successors and assigns, for their use and benefit and for the use and benefit of their respective agents, employees, customers, invitees, licensees, contractors, vendors and patrons, shall have the right, title and privilege of non-exclusive access to, upon, over and across the Lessor Access Area for unobstructed vehicular and pedestrian access, ingress and egress.

6. Miscellaneous. The terms and conditions of the Lease are incorporated by reference into this Memorandum as if such terms were written out at length. Capitalized terms used in this Memorandum without definition shall have the meanings assigned to them in the Lease, unless the context clearly requires otherwise. In the event of a conflict between this Memorandum and the Lease, the terms and conditions of the Lease shall govern. For a complete statement of the rights, privileges and obligations created under and by the Lease, reference is hereby made to the Lease.

[Signatures Pages Follow]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Memorandum of Lease as of the date first above written.

LESSOR:

CITY OF DAYTONA BEACH SHORES,
a Florida municipality

By: _____
Nancy J. Miller, Mayor

ATTEST:

Cheri Schwab, City Clerk

Michael T. Booker, City Manager

Approved as to form:

JOHN CARY, CITY ATTORNEY

LESSEE:

HN DBS, LLC,
a Florida limited liability company

By: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____ by _____, as Vice-President of HN DBS, LLC, a Florida limited liability company, who is personally known to me or has produced _____ as identification.

[Notary Seal]

Notary Public

Name typed, printed or stamped
My Commission Expires: _____

EXHIBIT A

DESCRIPTION OF LEASED PREMISES

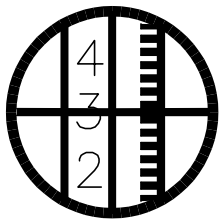
A PORTION OF LOTS 20, 21, 22, & 23, BLOCK C, MCELROY'S BELLEVIEW, AS RECORDED IN MAP BOOK 11, PAGE 98, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, IN SECTION 27, TOWNSHIP 33 SOUTH, RANGE 35 EAST, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS"

COMMENCE AT THE INTERSECTION OF THE WEST RIGHT OF WAY LINE OF SOUTH ATLANTIC AVENUE, SR A-1-A, AN 80.00 FOOT WIDE RIGHT OF WAY, WITH THE NORTH LINE OF THE SOUTH 0.03 FEET OF LOT 18, BLOCK C, SAID MCELROY'S BELLEVIEW; THENCE S24°34'57"E ALONG SAID WEST RIGHT OF WAY LINE, 159.58 FEET; THENCE DEPART SAID RIGHT OF WAY LINE S65°25'03"W, 5.34 FEET TO THE POINT OF BEGINNING; THENCE S11°12'20"W, 57.95 FEET; THENCE N24°33'17"W, 14.13 FEET; THENCE S65°17'35"W, 68.32 FEET; THENCE N04°32'30"E, 16.35 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 2.50 FEET AND A CENTRAL ANGLE OF 119°20'12"; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, 5.21 FEET; THENCE S65°12'18"W, 19.63 FEET TO THE BEGINNING OF A NON TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 15.09 FEET, A CENTRAL ANGLE OF 72°31'22" AND A CHORD BEARING S28°34'37"W; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, 19.10 FEET; THENCE N24°45'19"W, 93.00 FEET; THENCE N64°54'12"E, 28.29 FEET; THENCE N24°34'22"W, 8.78 FEET; THENCE N65°25'49"E, 20.25 FEET; THENCE N18°36'09"E, 5.25 FEET; THENCE N65°25'49"E, 20.31 FEET; THENCE S69°56'12"E, 5.45 FEET; THENCE N65°25'49"E, 24.76 FEET; THENCE S24°34'11"E, 21.79 FEET; THENCE S65°25'49"W, 4.90 FEET; THENCE S24°34'11"E, 15.73 FEET; THENCE N65°12'18"E, 2.19 FEET; THENCE S24°47'42"E, 10.00 FEET; THENCE N65°12'18"E, 5.75 FEET; THENCE S54°22'44"E, 28.86 FEET TO THE BEGINNING OF A NON TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 8.01 FEET, A CENTRAL ANGLE OF 92°46'28" AND A CHORD BEARING N79°11'55"E; THENCE EASTERLY ALONG THE ARC OF SAID CURVE, 12.97 FEET; THENCE S67°10'58"E, 1.27 FEET TO THE POINT OF BEGINNING.
CONTAINING 11,192 SQUARE FEET OR 0.257 ACRES, MORE OR LESS.

EXHIBIT B

SITE DRAWING

[see attached]



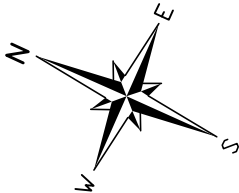
SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

LICENSED BUSINESS CERTIFICATION NO. 3019

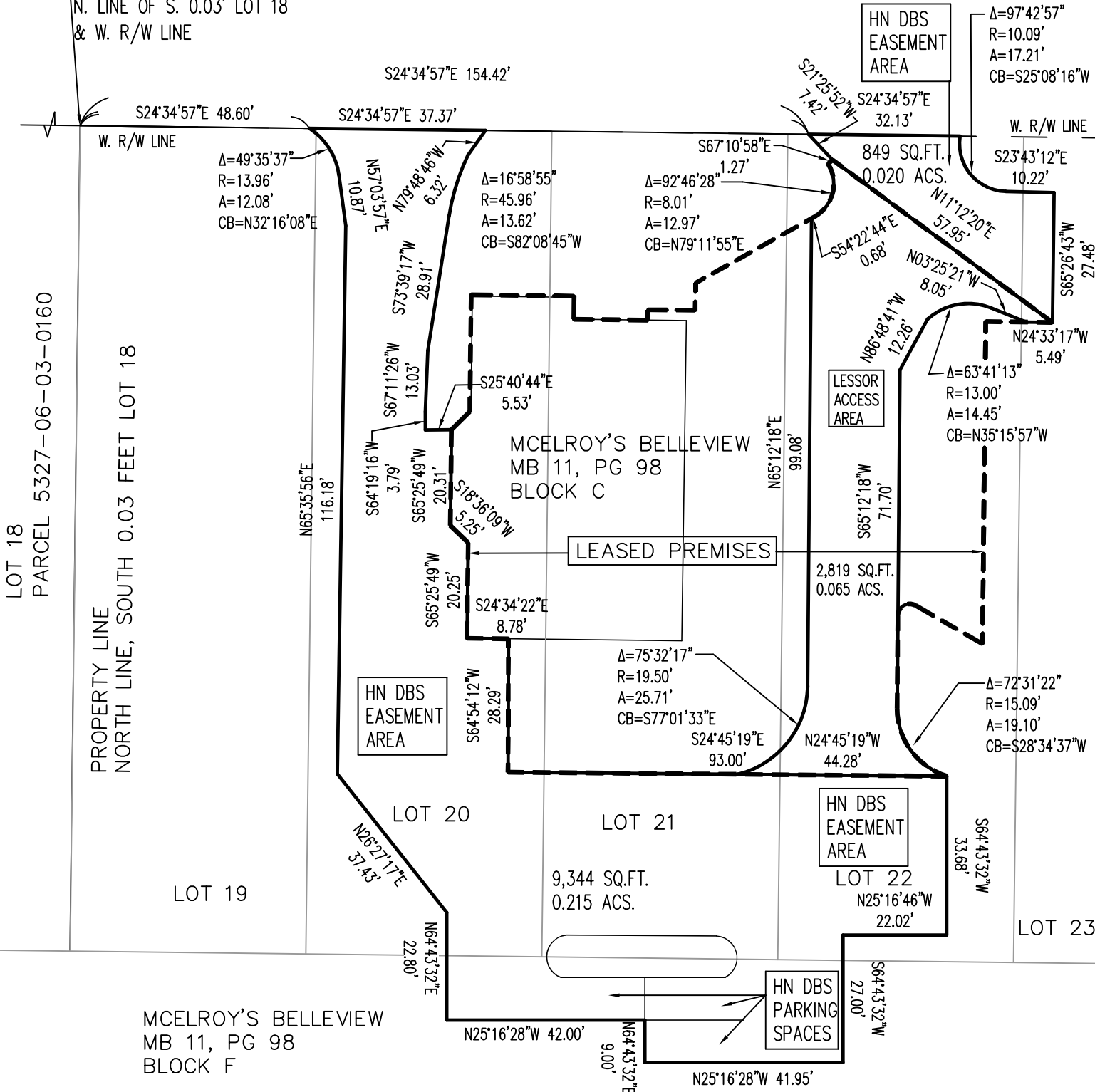
3921 NOVA ROAD
PORT ORANGE, FL. 32127
(386) 761-5385

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www.sligerassociates.com



S. ATLANTIC AVENUE (S.R.A-1-A)
80' PUBLIC R/W

POINT OF COMMENCEMENT
INTERSECTION OF
N. LINE OF S. 0.03' LOT 18
& W. R/W LINE



SKETCH OF DESCRIPTION
NOT A BOUNDARY SURVEY

FOR: NOON DEVELOPMENT
DESCRIPTION: ACCESS EASEMENT TO HN DBS
LLC
SEE SHEET 2 FOR DESCRIPTION

JOB #21-0069 ACCESS EASE

SCALE: 1"=30' FIELD BOOK: PAGE:

ABBREVIATIONS

(P)	PLATTED DIMENSION
(D)	DEEDED DIMENSION
(M)	MEASURED DIMENSION
(C)	CALCULATED DIMENSION
ID	IDENTIFICATION
A/C	AIR CONDITIONER
R/W	RIGHT OF WAY
CL	CENTERLINE
D	CENTRAL ANGLE
R	RADIUS
L	ARC LENGTH
CB	CHORD BEARING
FP&L CO.	FLORIDA POWER & LIGHT COMPANY
N.G.V.D.	NATIONAL GEODETIC VERTICAL DATUM
U.S.C. & G.S.	UNITED STATES COAST AND GEODETIC SURVEY

SHEET 1 OF 2

LEGEND	
●	IRON ROD WITH CAP
○	IRON PIPE
□	CONCRETE MONUMENT
■	PERMANENT REFERENCE MONUMENT
△	PERMANENT CONTROL POINT
(R)	RADIAL LINE
(NR)	NON-RADIAL LINE
○	EXISTING ELEVATION
□	PROPOSED ELEVATION

THIS INSTRUMENT PREPARED BY:
Chambliss, Bahner & Stophel, P.C.
Liberty Tower, Suite 1700
605 Chestnut Street
Chattanooga, TN 37450
Attention: Rachel E. Edwards

GROUND LESSOR'S WAIVER, CONSENT AND ESTOPPEL

THIS WAIVER, CONSENT AND ESTOPPEL ("this Consent") is made this ____ day of _____, 2021, by CITY OF DAYTONA BEACH SHORES, a Florida municipality ("Ground Lessor"), whose address is 2990 South Atlantic Avenue, Daytona Beach Shores, Florida 32118, and HN DBS, LLC (the "Lessee"), a Florida limited liability company whose address is 832 Georgia Avenue, Suite 300, Chattanooga, Tennessee 37402, to FIRST HORIZON BANK ("Lender"), a Tennessee banking corporation whose address is 701 Market Street, Suite 300, Chattanooga, Tennessee 37402.

WITNESSETH:

WHEREAS, Lessee is the lessee of certain real property located in Volusia County, Florida, and more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Premises"), which Lessee is leasing from Ground Lessor pursuant to that certain Gross Lease Agreement between Ground Lessor and Halifax Medical Center as tenant dated September 9, 2019, as assigned to and assumed by Lessee pursuant to the Assignment and Assumption Agreement effective December 8, 2020, and as amended by Lease Amendment dated December 3, 2020 between Ground Lessor and Lessee (collectively, the "Lease"); and

WHEREAS, Lessee, pursuant to a Leasehold Mortgage Security Agreement and Fixture Filing of even date herewith to be recorded in the Volusia County Clerk's Office as amended (the "Mortgage"), granted Lender, as security for a certain loan Lender made to Lessee, a security interest in Lessee's leasehold estate created pursuant to the Lease and in all other rights and interests of Lessee in connection with the Premises (the "Leasehold Collateral"); and

WHEREAS, Ground Lessor agrees to: (i) consent to the security interests granted pursuant to the Mortgage; (ii) subordinate any interest it has in the Premises to the Mortgage; (iii) waive certain claims, demands or rights which Ground Lessor may have or acquire with respect to the Leasehold Collateral; and (iv) make the other covenants set forth herein;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Ground Lessor and Lessee hereby agree as follows:

1. Ground Lessor hereby consents to the Mortgage and to all provisions contained therein. Ground Lessor agrees that upon a Default, as defined in the Mortgage, Lender and/or its assigns shall have the right to exercise any and all of Lender's remedies under the Mortgage, including the power of sale as set forth therein, and in connection therewith, Lender may assume the Lease or assign the Leasehold Collateral to any third party. Ground Lessor agrees that the Mortgage is superior to any interest that Ground Lessor now or hereafter has in the Premises and acknowledges and agrees that, upon any Default under the Mortgage, Lender may exercise any rights under the Lease in the name and on behalf of Lessee.

2. Ground Lessor hereby waives any and all liens, claims, demands or rights, however arising, including without limitation the right to levy, distrain, sue, execute or sell for unpaid rent, which Ground Lessor now has or may hereafter acquire with respect to any or all of the Premises.

3. Ground Lessor agrees that Lender, through its authorized representatives, may enter upon the Premises at any time and from time to time for purposes of exercise of Lender's rights pursuant to Mortgage.

4. Ground Lessor warrants to Lender that:

- (a) the Lease is in full force and effect, and has not been modified, amended or terminated;
- (b) Lessee does not have an option to purchase the Premises pursuant to the Lease; and
- (c) Lessee has complied with all obligations owed Ground Lessor by Lessee including without limitation the payment of rents as and when due.

Ground Lessor agrees to give Lender prompt written notice of the occurrence of any event which, with the giving of notice or passage of time or both, could result in the creation of the right of Ground Lessor to terminate the Lease. Such written notice shall be provided to Lender within seven (7) days after Ground Lessor has knowledge of the occurrence of such event and shall be sent to the offices of Lender at the address set forth above.

Notwithstanding any provisions of the Lease, no notice of termination thereof given by or on behalf of Ground Lessor shall be effective unless Lender has received said notice and has failed within the following applicable sure period (the "Cure Period") to cure Lessee's default: (i) thirty (30) days after notice to cure, any failure to pay, and any monetary payments due under the Lease; and (ii) sixty (60) days after notice to cure any other default; provided that Ground Lessor is diligently pursuing the cure. The Cure Period granted to Lender herein shall be extended by any period of time during which Lender is diligently pursuing the cure of a default which cannot reasonably be expected to be cured within the Cure Period, and the Cure Period shall not be deemed to commence until after any period of time during which Lender is pursuing acquisition of title to Lessee's leasehold interest to the Premises through foreclosure or otherwise, such period to include, without limitation, any period of time (i) during which Lender's acquisition of title to Lessee's leasehold interest to the Premises is stayed by any proceeding in bankruptcy, any injunction or other judicial process, and (ii) after acquisition of title by Lender during which Lessee or any other party is contesting the validity of the acquisition of or Lender's title to Lessee's leasehold interest Ground Lessor acknowledges that certain defaults under the Lease are personal to Lessee (such as the filing of a bankruptcy by Lessee) and are therefore incurable by Lender, and Ground Lessor agrees not to terminate the Lease upon the occurrence of those defaults if Lender cures all other defaults in accordance with the preceding provisions. Ground Lessor further agrees to give such notices of default to any successor or assignee of Lender provided that such successor or assignee shall have given written notice to Ground Lessor of its acquisition of Lender's interest in the Leasehold Collateral and designated the address to which such notices are to be sent. Ground Lessor agrees not to alter or amend the Lease without Lender's prior written consent.

5. Ground Lessor further agrees that if the Lease shall terminate for any reason or be rejected or disaffirmed pursuant to any bankruptcy law or any other law affecting creditors' rights, Lender and its assigns shall have the right, exercised by written notice to Ground Lessor within sixty (60) days after Lender's receipt of notice of such termination, rejection or disaffirmation, to enter into a new lease of the Premises with Ground Lessor. The term of said new lease shall begin on the date of the termination of the Lease and shall continue for the remainder of the term thereof, including all extension and renewals set forth therein. Such new lease shall otherwise contain the same terms, conditions and options (including purchase options) as the Lease, except for requirements that have already expired or been performed. It is the intention of the parties hereto that such new lease shall have the same

priority relative to the other rights and interests to or in the fee estate in the Premises covered by the new lease as the Lease. Ground Lessor agrees that "possession" pursuant to the United States Bankruptcy Code, 11 U.S.C. § 101 et. seq., shall include possession of the Premises by subtenants of Lessee. Ground Lessor acknowledges that Lender is a third party beneficiary of all of Lessee's rights under 11 U.S.C. § 365(h).

6. Notwithstanding any provision of the Lease or any other document or agreement to the contrary, Ground Lessor agrees that Lender may receive all insurance and condemnation proceeds payable with respect to the Premises. If any party breaches its obligations hereunder, then the breaching party shall pay all costs and expenses (including reasonable attorneys' fees) incurred by the non-breaching party in enforcing those obligations or recovering damages for that breach.

7. The laws of Florida shall govern the validity, interpretation and enforcement of this Consent.

8. Ground Lessor acknowledges the loan made to Lessee by Lender to be of benefit to Ground Lessor and that said loans will enable Lessee to construct the improvements upon the Premises which generates income to make the rental payments to Ground Lessor. Ground Lessor further acknowledges the reliance of Lender on the terms hereof in making such loans. Ground Lessor also acknowledges and agrees that nothing contained in the Mortgage or any other document constitutes an agreement by Lender to assume any of the obligations or responsibilities of Lessee under the Lease or otherwise in connection with the Premises.

9. This Consent shall be binding upon the parties hereto and their respective successors and assigns, and shall not be modified by the parties hereto unless any modification is agreed to by Lender in writing. Ground Lessor agrees that this Consent may be enforced by and shall enure to the benefit of Lender's successors and assigns.

(Signature page attached)

IN WITNESS WHEREOF, Ground Lessor and Lessee have caused this Consent to be executed by their duly authorized representatives as of the date first above written.

GROUND LESSOR:

WITNESSES:

CITY OF DAYTONA BEACH SHORES

By: _____
Name: _____
Title: _____

Name: _____

Name: _____

STATE OF FLORIDA :
COUNTY OF VOLUSIA :

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____, 2021 by _____, of CITY OF DAYTONA BEACH SHORES, a Florida municipality, on behalf of the municipality, who is personally known to me or has produced _____ as identification.

(NOTARY SEAL)

NOTARY SIGNATURE

PRINTED NOTARY SIGNATURE
NOTARY PUBLIC, STATE OF _____

Commission Number: _____
My Commission Expires: _____

[Ground Lessor Consent Signature Page]

WITNESSES:

LESSEE:

HN DBS, LLC

Name: _____ By: HN REAL ESTATE LLC, a Florida limited liability company, its sole member

Name: _____ By: _____
Name: _____
Title: _____

STATE OF TENNESSEE :

COUNTY OF HAMILTON :

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____, 2021 by _____, of HN REAL ESTATE LLC, a Florida limited liability company, the sole member of HN DBS, LLC, a Florida limited liability company on behalf of the company, who is personally known to me or has produced _____ as identification.

(NOTARY SEAL)

NOTARY SIGNATURE

PRINTED NOTARY SIGNATURE

NOTARY PUBLIC, STATE OF _____

Commission Number: _____

My Commission Expires: _____

[Lessee Consent Signature Page]

ACCEPTED:

WITNESSES:

LENDER:

FIRST HORIZON BANK

By: _____

Name: _____

Title: _____

Name: _____

Name: _____

[Lender Consent Signature Page]

SECOND LEASE AMENDMENT

This Second Lease Amendment is made and entered into this ____ day of _____, 2021 by and between HN DBS, LLC, a Florida limited liability company (“**Lessee**”), and CITY OF DAYTONA BEACH SHORES, a Florida municipality (“**Lessor**”).

WHEREAS, Lessee and Lessor are parties to that certain Gross Lease Agreement (the “**Lease**”) effective as of September 9, 2019 together with that certain Addendum to Gross Lease Agreement (the “**Addendum**”) of even date therewith and as assigned to Lessee pursuant to that certain Assignment and Assumption Agreement dated December 8, 2020 (the “**Assignment**”) and as first amended by that certain Lease Amendment dated December 3, 2020 (the “**First Amendment**”) (collectively the “**Lease Agreement**”; capitalized terms used herein but not defined herein shall have the meanings ascribed to those terms in the Lease Agreement); and

WHEREAS, Halifax Hospital Medical Center, as predecessor to Lessee agreed in that certain letter dated September 25, 2020 to undertake certain demolition and other construction that Lessor was to perform under the Addendum (the “**Letter Agreement**”); and

WHEREAS, the parties desire to further confirm the terms of the Lease Agreement and to further modify them as contemplated herein.

NOW THEREFORE, in light of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Amendment to Section 1 of the Lease Agreement: Section 1 of the Lease Agreement is hereby amended to reflect that the Leased Premises shall contain eighteen (18) parking spaces when the demolition and parking spaces contemplated in Section 1 of the Addendum are completed by Lessee pursuant to the Letter Agreement.
2. Amendment to Exhibit C of the First Amendment: The text of Exhibit C of the First Amendment is hereby deleted in its entirety and replaced with the following which the parties agree is legal description of the Leased Premises:

A PORTION OF LOTS 20, 21, 22, & 23, BLOCK C, MCELROY'S BELLEVIEW, AS RECORDED IN MAP BOOK 11, PAGE 98, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, IN SECTION 27, TOWNSHIP 33 SOUTH, RANGE 35 EAST, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS"

COMMENCE AT THE INTERSECTION OF THE WEST RIGHT OF WAY LINE OF SOUTH ATLANTIC AVENUE, SR A-1-A, AN 80.00 FOOT WIDE RIGHT OF WAY, WITH THE NORTH LINE OF THE SOUTH 0.03 FEET OF LOT 18, BLOCK C, SAID MCELROY'S BELLEVIEW; THENCE S24°34'57"E ALONG SAID WEST RIGHT OF WAY LINE, 159.58 FEET; THENCE DEPART SAID RIGHT OF WAY LINE S65°25'03"W, 5.34 FEET TO THE POINT OF BEGINNING; THENCE S11°12'20"W, 57.95 FEET; THENCE N24°33'17"W, 14.13 FEET; THENCE S65°17'35"W, 68.32 FEET; THENCE N04°32'30"E, 16.35 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 2.50 FEET AND A CENTRAL ANGLE OF 119°20'12"; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, 5.21 FEET; THENCE S65°12'18"W, 19.63 FEET TO THE BEGINNING OF A NON TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 15.09 FEET, A CENTRAL ANGLE OF 72°31'22" AND A CHORD BEARING S28°34'37"W; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, 19.10 FEET; THENCE N24°45'19"W, 93.00 FEET; THENCE N64°54'12"E, 28.29 FEET; THENCE N24°34'22"W, 8.78 FEET; THENCE N65°25'49"E, 20.25 FEET; THENCE N18°36'09"E, 5.25 FEET; THENCE N65°25'49"E, 20.31 FEET; THENCE S69°56'12"E, 5.45 FEET; THENCE N65°25'49"E, 24.76 FEET; THENCE S24°34'11"E, 21.79 FEET; THENCE S65°25'49"W, 4.90 FEET; THENCE S24°34'11"E, 15.73 FEET; THENCE N65°12'18"E, 2.19 FEET; THENCE S24°47'42"E, 10.00 FEET; THENCE N65°12'18"E, 5.75 FEET; THENCE S54°22'44"E, 28.86 FEET TO THE BEGINNING OF A NON TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 8.01 FEET, A CENTRAL ANGLE OF 92°46'28" AND A CHORD BEARING N79°11'55"E; THENCE EASTERLY ALONG THE ARC OF SAID CURVE, 12.97 FEET; THENCE S67°10'58"E, 1.27 FEET TO THE POINT OF BEGINNING.
CONTAINING 11,192 SQUARE FEET OR 0.257 ACRES, MORE OR LESS.

3. Supplemental Terms Regarding Easements and Access Rights. The Lease Agreement is hereby amended and supplemented by the addition of the following terms and conditions:
- a. Lessee is constructing that certain medical office building and related improvements on the Leased Premises. Such Leased Premises and certain adjacent areas are shown on the surveyor's drawing attached hereto as Exhibit D (the "Site Drawing"), which Site Drawing shows adjacent areas owned and controlled by Lessor and identified thereon as the "HN DBS Easement Area."
 - b. The HN DBS Easement Area includes three (3) parking spaces, as identified on the Site Drawing (hereafter, the "HN DBS Parking Spaces"). The parties acknowledge and agree that the HN DBS Parking Spaces are in addition to the parking spaces that are part of the Leased Premises as contemplated in Section 1 of the Lease Agreement.
 - c. Lessee desires to obtain, and Lessor desires to grant, certain access easement rights over and across the HN DBS Easement Area, and certain parking easement rights over all of the HN DBS Parking Spaces.
 - d. Lessor desires to preserve the non-exclusive right to certain access over and across a portion of the Leased Premises identified on the Site Drawing as the "Lessor Access Area."
 - e. The parties agree that at all times during the Lease Term, Lessee and its successors and assigns, for their use and benefit and for the use and benefit of their respective agents, employees, customers, invitees, licensees, contractors, vendors and patrons, shall have the right, title and privilege of a non-exclusive easement in, upon, over and across the HN DBS Easement Area for unobstructed vehicular and pedestrian access, ingress and egress.
 - f. The parties agree that at all times during the Lease Term, Lessee and its successors and assigns, for their use and benefit and for the use and benefit of their respective agents, employees, customers, invitees, licensees, contractors, vendors and patrons, shall have the right, title and privilege of an exclusive easement over the HN DBS Parking Spaces, for the purpose of vehicle parking. Lessee and its successors and assigns shall have the exclusive right to use and occupy, and to permit others to use and occupy, the HN DBS Parking Spaces. The rights conveyed to Lessee and its successors and assigns pursuant to this section include the rights (a) to cause the HN DBS Parking Spaces to be marked as exclusive to Lessee or Lessee's sub-lessee's and (b) to enforce the foregoing easement and rights in any legal manner, including towing unauthorized vehicles.
 - g. The parties agree that at all times during the Lease Term, Lessor and its successors and assigns, for their use and benefit and for the use and benefit of their respective agents, employees, customers, invitees, licensees, contractors, vendors and patrons, shall have the right, title and privilege of non-exclusive access to, upon, over and across the Lessor Access Area for unobstructed vehicular and pedestrian access, ingress and egress.
 - h. The parties agree that Lessee shall be entitled to file a memorandum of lease in the public records of Volusia County, Florida, which memorandum of lease shall

provide notice of the access and parking easements and rights of both Lessor and Lessee as contemplated in this Section. Lessor covenants and agrees to execute and deliver a reasonable and customary memorandum of lease as contemplated by this section.

- i. The parties agree that all rights set forth in this section 3 of this Amendment shall automatically terminate, lapse, and be of no further effect upon any termination or expiration of the Lease Agreement.
 - j. The parties agree that the Lessor may request the use of Lessee's parking spaces for special events upon notice to HALIFAX at least twenty-one (21) days in advance of said event. The Lessor shall specify in the notice as to how many spaces the Lessor is requesting, as well as any alternate "rain dates" that the Lessor is requesting. Lessee shall respond with approval or a counter-proposal to the Lessor within seven (7) days of the submission of the request. Upon an agreement by the parties, Lessee agrees that it will not tow, or cause to be towed, any vehicles in the agreed-upon spaces. For the purpose of this paragraph, a request and response may be submitted via email to the proper official.
4. Ratification. Except as set forth in this Amendment, the Lease Agreement (and all Exhibits thereto), remain in full force and effect; provided that where the context so requires, the Lease is hereby amended according to the provisions set forth above.
5. Counterpart Execution. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. This Amendment may be signed via electronic, scanned, pdf or facsimile and such signature shall be considered an original.

*(Remainder of page intentionally blank.
Signatures on following page.)*

IN WITNESS WHEREOF, the parties have entered into this Second Lease Amendment as of the date first set forth above.

LESSEE:

LESSOR:

HN DBS, LLC

CITY OF DAYTONA BEACH SHORES

By:_____

Printed Name:_____

Its:_____

By:_____

Printed Name:_____

Its:_____

EXHIBIT D
SITE DRAWING



**CITY COUNCIL AGENDA MEMORANDUM
APRIL 13, 2021 AGENDA**

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Discussion on outdoor displays

SYNOPSIS:

Mayor Miller requested this item be put on the agenda for discussion.

FISCAL IMPACT STATEMENT:

BACKGROUND:

LEGAL REVIEW:

RECOMMENDATION:

SUGGESTED MOTION:

ATTACHMENT: None