



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COUNCIL MEETING AUGUST 17, 2021

**5:00 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. NEW BUSINESS:

A. Treasure Island Stipulated Settlement Agreement

4. 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.



CITY COUNCIL AGENDA MEMORANDUM AUGUST 17, 2021 AGENDA

TO: Honorable Mayor and Members of the City Council
FROM: John Cary, City Attorney
PREPARED BY: John Cary, City Attorney
SUBJECT: Treasure Island Stipulated Settlement Agreement

SYNOPSIS:

This is a settlement agreement with the owners of the Treasure Island property as well as adjoining properties. The Treasure Island property is subject to an existing development agreement and vested rights determination, both of which will expire soon without further action to extend them. The City began a condemnation proceeding on the Treasure Island property on July 1, 2021, with a hearing date of August 18, 2021, due to worsening conditions at the property, as well as continuing code enforcement violations and various trespass situations at the property. Code Enforcement deemed the building and property conditions to be consistent with the definitions within the Condemnation ordinances. This Stipulated Settlement Agreement would eliminate the need for the Condemnation Hearing, as it would provide a path to demolish the existing structure and redevelop the property.

FISCAL IMPACT STATEMENT:

BACKGROUND:

This is a settlement agreement with the owners of the Treasure Island property as well as adjoining properties (collectively, the "subject properties". The Treasure Island property is subject to an existing development agreement and vested rights determination, both of which will expire soon without further action to extend them. The City began a condemnation proceeding on the Treasure Island property on July 1, 2021, with a hearing date of August 18, 2021, due to worsening conditions at the property, as well as continuing code enforcement violations and various trespass situations at the property. Code Enforcement deemed the building and property conditions to be consistent with the definitions within the Condemnation ordinances. Shortly thereafter, the owners of the property contacted the city and informed city staff that they were ready to move forward with demolition of the structure and development of the property, as long as they could make the project work financially, which would require additional density and other concessions.

The City negotiated the attached agreement, which would forestall the condemnation action as long as the owner meets certain benchmarks. Notably, the agreement provides that the city will support an amendment to the city's comprehensive plan to allow increased density through an overlay zone on the subject properties, that would allow up to 300 hotel units and 200 multi-family housing units spread out among the subject properties. The Redevelopment Overlay will allow a density bonus of

25% and will include a transfer of development rights to move some density from the west side to the east side of the Atlantic Avenue. Upon approval of the comp plan amendment, the developer must demolish the existing structure within 120 days. If the city comp plan amendment is not approved, then the developer may keep the existing structure, but must immediately begin and complete concrete restoration work, and the property will only include the number of units currently allowed under the vested rights determination and straight zoning (for the other properties that aren't subject to the existing development agreement and vested rights determination).

Other notable provisions include:

Immediate corrective measures to secure the site for public health and safety;
Overflow parking;
Up to 20,000 square feet of retail/commercial use;
Setbacks as described in the agreement;
Reduction of breezeway;
Pedestrian crosswalk, pending FDOT approval;
Impact fee reductions for vested hotel units (227 units);
Waiver of existing code enforcement fines upon compliance;
Alternative Tax Relief Program benefit as described in the Agreement;

Ultimately, adoption of this Stipulated Agreement will result in certainty that the structure will be demolished upon passage of the Comp Plan amendment, or concrete restoration and redevelopment of the existing structure (without the additional benefits) if the comp plan amendment fails, as well as a revitalization of a blighted property on the north side of the city. The development would also add substantially to the city's tax rolls. Declining to adopt the Stipulated Agreement will result in the city moving forward with the Condemnation hearing before the Special Magistrate on August 25, 2021, and possibly ensuing litigation.

LEGAL REVIEW:

Approved as to form and substance.

RECOMMENDATION:

Approve the Stipulated Settlement Agreement

SUGGESTED MOTION:

"Move to adopt the Stipulated Settlement Agreement."

Or "Move to reject the Stipulated Settlement Agreement."

ATTACHMENT:

1. Treasure Island Stipulated Settlement Agreement Draft with City and Developer Revisions v4
2. 20210804 - Concord Daytona Site Treasure Island Site

**CODE ENFORCEMENT SPECIAL MAGISTRATE OF THE
CITY OF DAYTONA BEACH SHORES, FLORIDA**

CITY OF DAYTONA BEACH SHORES (the “City”)

Petitioner,

vs.

2025 SOUTH ATLANTIC AVENUE, LLC
(and its successors and assigns),

Property Owner.

SUBJECT PROPERTY: 2025 S. Atlantic Avenue
Daytona Beach Shores, FL
PARCEL ID NO.: 5316-18-00-0010

Stipulated Settlement Agreement

WHEREAS, the Subject Property, located generally southeast of the intersection of South Atlantic Avenue and Park Avenue in Daytona Beach Shores, was the site of the former hotel development known as the Treasure Island Resort; and

WHEREAS, the Subject Property has undergone former entitlement processes to allow for the potential of redevelopment, including the entering into of a Statutory Development Agreement, recorded at O.R. Book ___, Page ___ of the Public Records of Volusia County, Florida, and the related Certificate of Vesting for the Property, recorded in O.R. Book 7033, Page 3638 of the Public Records of Volusia County, Florida (the “Entitlement Agreements”); and

WHEREAS, the Subject Property has become the subject of code enforcement actions by the City of Daytona Beach Shores; and

WHEREAS, 2025 South Atlantic Avenue, LLC (the “Property Owner”) purchased the Subject Property in September of 2020, along with three additional parcels of land, identified as Volusia County Parcel Identification Nos. 531618000090 (the “Sunny Shores Parcel”), 531618000270, 531618000250, 531618000240, 531618000230 (collectively, the “West A1A Parcel”), and 531621000090, 531621000080 (collectively, the “Fraile Street Parcel”), with the intent to develop the properties for hotel and residential uses, along with the potential for supporting retail/commercial uses, as illustrated on the conceptual layout included as Exhibit A, attached hereto. The conceptual layout is intended to show property location and potential placement of structures, and is no way intended to bind Property Owner to develop the site in

accordance with the locations shown on the conceptual layout. Property Owner may develop the site in a number of different layouts, so long as the development standards set forth herein are met; and

WHEREAS, the City has entered into that certain Notice of Condemnation and Notice of Condemnation Hearing, dated July 1, 2021, for the Subject Property (“Condemnation Notice”); and

WHEREAS, it is the intent of both the City and the Property Owner that the Subject Property be maintained in a safe manner and redeveloped for appropriate land uses; and

WHEREAS, this Stipulated Settlement Agreement (“Agreement”) is intended to allow for redevelopment of the Subject Property and negate the need for an order of condemnation by setting forth a timeline and process for redevelopment of the Subject Property, along with the Sunny Shores Parcel, West A1A Parcel, and the Fraile Street Parcel; and

WHEREAS, the City Council of the City of Daytona Beach Shores, at a special meeting held on August 17, 2021, adopted and ratified the terms and conditions set forth herein, with the intent to be bound by the same.

NOW, WHEREFORE, in consideration of the mutual covenants contained herein and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the City and Property Owner hereby stipulate as follows:

1. Recitals. The Recitals stated above are true and correct and are incorporated herein by reference as terms of this Agreement.
2. Ruling of Special Magistrate. The Parties request the Special Magistrate enter a final order consistent with the terms of this Agreement and return jurisdiction to the City Council for review and approval of the Entitlement Standards and Incentive Approaches outlined herein.
3. Security of Subject Property. The Property Owner shall take the following corrective actions to ensure security of the Subject Property, which shall occur within ninety (90) days of entering into this Agreement:
 - a. Property Owner shall install video surveillance cameras within the Property, at a number and location adequate to provide full surveillance of the site. Such video surveillance cameras shall be equipped with advanced technology to allow for remote monitoring of the site and automatic notification to the Property Owner and local police department of any unauthorized human activity within the Subject Property. This corrective action shall take place within thirty (30) days of the execution of this agreement.
 - b. Property Owner shall remove all protective railings located above the 3rd level of the existing structure on the Subject Property.

- c. Property Owner shall complete the following, minor repair and maintenance activities, as noted by the City of Daytona Beach Shores Building Official during the site visit held in July of 2021, subject to review by a Structural Engineer: (1) review and resealing of any stairway door openings, as necessary; and (2) addition and replacement of shoring, as necessary, located on the Subject Property.

4. Demolition/Rehabilitation of Structure. It is the intent of both parties to allow for the redevelopment of the Subject Property in a safe and timely manner. In order to ensure this outcome, regardless of whether the Entitlement Standards and Incentives Approaches outlined herein are granted, the following provisions shall apply:

- a. Property Owner shall submit complete plans for concrete restoration work within the existing structure on the Subject Property within thirty (30) days of entering into this Agreement. It is the intent of the parties that the rehabilitation needed to the existing structure is reviewed in full in order to fully review the safety and structural integrity of the existing structure.
- b. Property Owner shall solicit bids for work associated with both (1) demolition of the existing structure on the Subject Property, and (2) concrete restoration work of the existing structure on the Subject Property at least thirty (30) days prior to final approval of the Entitlement Standards and Incentive Approaches outlined herein.
- c. Provided that the Entitlement Standards and Incentive Approaches, as defined herein, are granted, Property Owner shall cause the existing structure on the Subject Property to be demolished within one hundred and twenty (120) days of final approval and execution of any Development Agreement or related approvals needed for the same.
- d. The parties understand that the Entitlement Standards set forth herein are subject to review and approval by various governing bodies, including the Florida State Department of Economic Opportunity (“DEO”) and the Volusia Growth Management Commission (“VGMC”).
 - i. In the event that the Entitlement Standards outlined herein are not approved, or approved with conditions that are not acceptable to the City and the Property Owner, by both DEO and VGMC, the Property Owner retains the right to move forward with restoration of the existing structure on the Subject Property. Such restoration shall commence within forty-five (45) days following denial of the Entitlement Standards by either body, or approval with conditions that are not acceptable to the City and the Property Owner, and such timeline shall be extended by the time frame needed for the City to issue a building permit authorizing completion of the restoration work for the same.
 - 1. Should the Property Owner elect to proceed with restoration of the existing structure on the Subject Property pursuant to Sec. 4.d.i. of this agreement, no new entitlements or incentives will be approved by the City, provided, however, the City shall extend the current Development Agreement and Vesting Certificate entitlements,

should the restoration project comply with the following conditions:

- a. Concrete restoration shall commence within forty-five (45) days of the denial of Entitlement Standards or approval with conditions that are not acceptable to the City and the Property Owner, and such timeline shall be extended by the time frame needed for the City to issue the building permit authorizing completion of the concrete restoration work.
 - b. Concrete restoration shall be active and ongoing with a contracting crew of six (6) or more active workers until the complete shell is restored and final inspections are approved by the engineer and the City.
 - i. Should concrete restoration cease or lapse for more than thirty (30) continuous days, the Certificate of Vesting and Development Agreement entitlements shall terminate.
 - c. Building Permits for the overall project renovation must be issued and work shall commence within twenty-four (24) months of Entitlement Standards denial or approval with conditions that are not acceptable to the City and the Property Owner.
 - d. All work shall be complete with Final Approval by both the project engineer and the City within five (5) years of Entitlement Standards denial or approval with conditions that are not acceptable to the City and the Property Owner.
2. Should the Property Owner elect to demolish the existing structure on the Subject Property within one hundred and twenty (120) days of the VGMC and DEO's rendering, the existing entitlements of the Vesting Agreement and Development Agreement shall continue to inure to the benefit of the Property Owner. Entitlement standards not impacted by the VGMC and DEO's rendering and incentive approaches in this agreement shall inure to the benefit of the Property Owner.
- ii. However, in the event that the Entitlement Standards set forth herein are approved, or approved with conditions acceptable to City and Property Owner, by both DEO and VGMC, this section of the Agreement shall be deemed moot and the Property Owner will move forward with demolition of the existing structure in accordance with Section 4.c. herein.
 - iii. Property Owner shall initiate a Development Agreement application at least thirty (30) days prior to final approval of the Entitlement Standards and Incentive Approaches outlined herein, or within fifteen (15) days of receiving comments from the DEO and VGMC, whichever comes first.
5. Entitlement Standards. In order to facilitate redevelopment of the Subject Property, along with the Sunny Shores Parcel, West A1A Parcel, and the Fraile Street Parcel (collectively,

the "Development"), the City agrees to grant or facilitate the following entitlements for the Development (the "Entitlement Standards"):

- a. The City shall permit a maximum of three hundred (300) hotel units and two hundred (200) multifamily residential units within the Development. It is Property Owner's intent that the Subject Property be developed for a hotel use, and the Sunny Shores Parcel be developed for a multifamily use. However, the City and Property Owner agree that such development rights may be located on either the Subject Property or the Sunny Shores Parcel, or any combination thereof, provided the dimensional standards set forth in this Agreement are met.
- b. The Property Owner shall initiate, process, and the City will support, waive application fees, and ultimately adopt a Large Scale Comprehensive Plan Amendment to create a "Redevelopment Overlay", which is intended to act as a redevelopment based overlay that will provide additional flexibility in the redevelopment of certain properties within the City.
 - i. The purpose of the Redevelopment Overlay shall be to allow for convenient and flexible special character district that authorizes horizontal and vertical mixed-use development within an area of existing development where the comprehensive redevelopment of a blighted parcel of land is envisioned. Development on land designated by the Redevelopment Overlay is intended to feature high quality architecture and well-designed urban form that promotes pedestrian activity, reduces transportation impacts, and creates a balance of land uses.
 - ii. Within the Redevelopment Overlay, development rights associated with a parcel of land may be transferred from the existing parcel to another parcel of land within the Redevelopment Overlay, subject to the requirements set forth herein. In order to transfer development rights associated with a parcel, the owner of the "sending" parcel and the owner of the "receiving" parcel must enter into a written agreement evidencing such transfer, which shall act to restrict development within the sending parcel to the extent of the transfer. Such Agreement shall be approved by resolution of the City Council of the City of Daytona Beach Shores and recorded in the Public Records of Volusia County and will constitute a restriction on future development of the sending parcel.
 - iii. Properties located within the Redevelopment Overlay shall be permitted a density bonus of 25% for redevelopment projects that are enrolled in the City's Alternative Tax Relief program, provided that the total combined density (including residential and hotel density) associated with a redevelopment project does not exceed five hundred (500) units within the Development.
 - iv. Prior to or concurrent with the processing of the Redevelopment Overlay, the City shall adopt a Private Property Rights Element of the Comprehensive Plan, whose form shall be generally in accordance with the proposed language set forth in Exhibit B, attached hereto.

- c. The City shall expedite review of all applicable entitlement applications to facilitate redevelopment of the site under this Agreement. The City also agrees to provide assistance, which will generally include providing documents and technical support as requested, and support any applicable approvals required from adjacent local governments and state or federal agencies with jurisdiction over the property, including but not limited to vesting of impacts from the existing and historic structures on the property.
- d. Development of the property shall be in accordance with the City's Land Development Code, except as modified herein. The following use and dimensional standards shall be memorialized in a statutory development agreement encompassing the Subject Property, Sunny Shores Parcel, West A1A Parcel, and the Fraile Street Parcel:
 - i. Allowable Uses: Hotel, Multifamily Residential, Supporting commercial and retail uses. The Fraile Street Parcel may be used for overflow parking for the above uses through the use of a gravel parking area. In the event the Fraile Street Parcel is used to meet minimum parking standards, such parking area shall meet City standards, to include buffering.
 - ii. Maximum Density/Intensity: Subject Property - 300 hotel units, Sunny Shores Property - 200 multifamily residential dwelling units, and 20,000 square feet of retail/commercial uses.
 - iii. Maximum building height: Subject Property and Sunny Shores Property - 23 stories
 - iv. Minimum setbacks: Front 30; Rear (Oceanfront) 50; Interior Side Setback 20 ft. Subject Property, 25 ft. Sunny Shores Parcel; Exterior Side Setback 20 ft. Subject Property, 15 ft. Sunny Shores Parcel;
 - v. The Development shall not be subject to the standards for installation of a breezeway, as set forth in the LDC.
 - vi. Connectivity: the City shall facilitate installation of a pedestrian crosswalk to promote access between remote parking on the west side of A1A and the Subject Property. This shall be in an amount not to exceed \$150,000. Construction of said crosswalk is dependent upon FDOT approval and/or any other approval authority.
 - vii. Development within the Subject Property may include the redevelopment of the existing pool at its current location as a part of the proposed hotel development.

6. Incentive Approaches. In recognition of the public benefits associated with the proposed redevelopment of the property, the City has agreed to enter into any necessary agreements to provide the following financial incentives and cost offsets for the Development (the "Incentive Approaches"):

- a. The City shall grant impact fee reductions for sewer capacity for the vested 227 hotel units located on the site, and any vested credits that exist by right for the Sunny Shores Parcel, West A1A Parcel, and the Fraile Street Parcel. Any

reductions will only apply to the City's fees, and not any fees required by other jurisdictions.

- b. The City shall coordinate with the Property Owner on installation of a pedestrian cross-walk from the parking area to the proposed development. This shall be in an amount not to exceed \$150,000. Construction of said crosswalk is dependent upon FDOT approval and/or any other approval authority. If FDOT or any other non-City approval authority does not approve said crosswalk, the City's obligation to install the crosswalk is nullified without effecting the remainder of the agreement.
- c. The City agrees to fully waive any existing code enforcement lien(s) or fine(s) (specifically, case numbers CDEF 2019-65 and PCDEF 2019-66) assessed against the property upon the Subject Property coming into compliance with the standards set forth in the Land Development Code. For the purposes of this Agreement, compliance may be met by (1) complete demolition of the existing structure, removal of all foundations and concrete structures within the Subject Property, and returning the site to natural grade, or (2) complete reconstruction of said property and issuance of a certificate of completion if the project is completed prior to expiration. This section does not limit future code enforcement actions in any way and does not apply to code enforcement liens or fines other than for the two cases specifically identified.
- d. The City shall enroll the parcels comprising the Development in the Alternative Tax Relief Program, subject to the following relief standards:
 - i. The Property Owner shall be entitled to 100% of the tax increment created by the redevelopment for an initial term of five years;
 - ii. The Property Owner shall be entitled to 75% of the tax increment created by the redevelopment for the five years following item (i) herein;
 - iii. The Property Owner shall be entitled to 50% of the tax increment created by the redevelopment for the five years following item (ii) herein; and
 - iv. The Property Owner shall be entitled to 25% of the tax increment created by the redevelopment for the final term of five years following item (iii) herein.
 - v. Any parcel or unit sold or conveyed by current property owner is removed from the tax increment calculation during the effective tax year of the conveyance of the parcel or unit.
 - vi. The tax increment is paid only on said portion of the actual City ad valorem taxes paid and is not paid to the property owner until such time as the City is in receipt of the funds from the tax collector.

7. City's Police Power. Nothing contained in this Agreement will be construed as a waiver of, or contract, with respect to the regulatory and permitting authority of the City under applicable laws, rules, and regulations, including with respect to zoning and permitting. Further, nothing contained in this Agreement will be construed as a waiver by the City of its sovereign immunity under the constitution and laws of the State of Florida.

8. Force Majeure Event. In the event that fire, riots or civil commotion, acts of government or government immobility (whether federal, state, or local), war, acts of God, pandemic, or contingencies beyond the reasonable control of a party (hereinafter, "force majeure event")

interfere with or prevent the fulfillment by such party of its obligations hereunder, such obligations will be suspended until such time as such contingency or contingencies have terminated. Each party will promptly notify the other upon becoming aware that any such contingency or contingencies have occurred or are likely to occur and will use its best efforts to minimize any resulting delay in or interference with the performance of its obligations hereunder.

9. Notice. All notices required or permitted under this Agreement will be in writing and hand-delivered or mailed to the following parties.

For Property Owner:

2025 South Atlantic Avenue, LLC
Attn: Guy Milone
865 Merrick Ave
Suite 200 South
Westbury, NY 11590

For City:

John Cary, City Attorney
City of Daytona Beach Shores
2990 S. Atlantic Avenue,
Daytona Beach Shores, FL 32118

With Copy to:

Cobb Cole Law Firm
Attn: Robert Merrell
149 S. Ridgewood Avenue,
Suite 700
Daytona Beach, FL 32114

10. Default. In the event that either party breaches any obligation under this Agreement, and such breach is not cured within thirty (30) days of notice of such breach (the "Cure Period"), either party may without further additional notice terminate this Agreement and pursue all rights such party may have in law or in equity, provided that to the extent that any breach is not susceptible to cure within such 30-day period, then the cure period shall be extended by up to an additional sixty (60) days, provided that the breaching party commences steps to cure such breach within the initial thirty (30) day period and diligently pursues such efforts to the completion thereof.

11. Complete Agreement. This Agreement represents the complete understanding by and between the parties with respect to the subjects set forth herein. Any and all prior agreements between the parties with respect to any subject comprehended by this Agreement are hereby voided and superseded by this Agreement. Both parties have participated equally in the drafting and preparation of this Agreement.

12. Venue and Severability. In the event of any claim, action, litigation, or proceeding under this Agreement, venue will be in Volusia County, Florida, if suit is filed in state court, and the United States District Court for the Middle District of Florida, if suit is filed in federal court. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, such holding will not affect the validity or enforceability of any other provision of this Agreement unless the holding so states.

13. Waiver of Jury Trial. The parties agree that they have knowingly waived the right to trial by jury and have instead agreed that, in the event of any litigation arising out of or connected to this Agreement, to proceed with a trial before the court, unless both parties subsequently agree otherwise in writing.

14. Limitation of Waivers. The waiver of any provision of this Agreement will not be deemed to be a waiver of any other provision of this Agreement. No waiver of any provision of this Agreement will be deemed to constitute a continuing waiver unless expressly provided in writing, nor will a waiver of any default be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Agreement, whether the default is known or not, does not constitute a waiver or estoppel of the right to do so.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have set their hands, this ____ day of _____, 2021.

Signed, sealed and delivered in the presence of:

PETITIONER

**THE CITY OF DAYTONA BEACH
SHORES, a Florida municipal
corporation**

By: _____
Nancy Miller, Mayor

Printed Name of Witness 1

Attest:

By: _____
Cheri Schwab, City Clerk

Printed Name of Witness 2

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2021 by NANCY MILLER and CHERI SCHWAB, Mayor and City Clerk, respectively, of The City of Daytona Beach Shores, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public
Commission

No:

Signed, sealed and delivered in the presence of: PROPERTY OWNER

2025 SOUTH ATLANTIC AVENUE LLC, a
limited liability company

Witness 1

Print Name of Witness 1

By: _____
Name:

Witness 2

Its:

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2021, by _____ as _____ of **2025 SOUTH ATLANTIC AVENUE LLC**, a limited liability company. He or she is ☐ personally known to me or ☐ produced _____ as identification and did not take an oath.

Notary Public
Commission No. _____

Approved as to legal form:

By: _____
John Cary, City Attorney

Exhibit A

Conceptual Plan

Exhibit B

Private Property Rights Element

Article . PROPERTY RIGHTS ELEMENT

GOAL 1: To respect judicially acknowledged and constitutionally protected private property rights.

Objective 1.1: The following policies are to ensure that private property rights shall be considered in local decision making.

Policy 1.1.1: The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

Policy 1.1.2: The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.

Policy 1.1.3: The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

Policy 1.1.4: The right of a property owner to dispose of his or her property through sale or gift.

2025 S. ATLANTIC AVE.
Zoned: T-RMF-1 (Hotel or Residential Multi-Family)

Setbacks: Front 30', Seawall 50', Side 40'

AMENDMENT TO BREEZEWAY LINE

- There shall be a breezeway/visual corridor across the full depth of all oceanfront properties. (14-21)
- 30% of total frontage running full length of the property
 - Rail fences and pool facilities < 48" above finish grade may encroach into breezeway
 - Include 7ft public walkway with 3ft irrigated landscape area along entire length. (may be waived if the developer provides compensation to the city and if there is at least one public beach access within 1000 feet.

2037 + 2041 S. ATLANTIC AVE.
Zoned: T-RMF-1 (Hotel or Residential Multi-Family)

Setbacks: Front 30', Seawall 50', Side 40'

