City of Daytona Beach Shores

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

AGENDA
PLANNING & ZONING BOARD MEETING
JANUARY 10, 2022
8:30 AM, Shores Community Center, 3000 Bellemead Drive
Daytona Beach Shores, FL 32118

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

1. OPENING REMARKS

2. MINUTES

A. Planning & Zoning Minutes from November 8, 2021

3. QUASI-JUDICIAL HEARING

A. Sign Variance Application ZV 12021031: Holiday Inn Express - 3301 S. Atlantic Avenue

B. Rezoning Application RZ12021045: 3232 La Paloma Ave - Westminster By The Sea Presbyterian Church

4. ACTION ITEMS

A. Ordinance 2022-04: Treasure Island Development Agreement - 2025 S. Atlantic Avenue, Fraile St/Armstrong Ave, etc.

5. OTHER

6. BOARD COMMENTS

7. ADJOURNMENT

MINUTES
PLANNING & ZONING BOARD MEETING
November 8, 2021
3000 Bellemead Drive Daytona Beach Shores, FL 32118

1. OPENING REMARKS

Present: Member Rose Ann Tornatore, Member Chuck Horion, Chairman John Schmitz, Member Rick Delange, Member James Lilly
Staff: City Clerk Cheri Schwab, Attorney John Cary, Community Services Director Fred Hiatt, City Planner Stewart Cruz.

Board Attorney Cary read the Boardmember oath for Jeni Groot-Begnaud.

2. MINUTES

A. Planning & Zoning Minutes October 12, 2021

MEMBER RICK DELANGE moved, seconded by MEMBER CHUCK HORION to Approve the Planning & Zoning Minutes of October 12, 2021.
Vote: Motion carried by unanimous roll call vote (**summary**: Yes = 5 No = 0).
Yes: Member Rick Delange, Member Chuck Horion, Member James Lilly, Chairman John Schmitz, Member Rose ann Tornatore

3. QUASI-JUDICIAL HEARING

4. ACTION ITEMS

A. Ordinance 2021-15: Comprehensive Plan Future Land Use Map amendment for recently annexed single-family residential property located at 104 Broad Avenue

The Board Attorney read the ordinance by title only. City Planner Stewart Cruz explained that this was part of the legal process and a formality after a property is annexed into the city. It will update the future land use map that is part of the City's Comprehensive Plan. The property is entitled to have one single family residence and does not impact the current service level for the area. City staff recommended approval. There were no questions or discussion by the board.
MEMBER CHUCK HORION moved, seconded by MEMBER ROSE ANN TORNATORE to recommend approval of Ordinance 2021-15 to the City Council.
Vote: Motion carried by unanimous roll call vote (**summary**: Yes = 5 No = 0).
Yes: Member Rick Delange, Member Chuck Horion, Member James Lilly, Chairman John

Schmitz, Member Rose Ann Tornatore

B. Ordinance 2021-16: Comprehensive Plan Future Land Use Map Amendment-131 Glen Myra Avenue

City Planner Stewart Cruz explained that the property had been annexed back in 2004, but the future land use map was not updated and assigned. It was rezoned to a city classification, but that can not take effect until this process is complete. The classification assigned was Tourist Oriented Commercial district from the county's Urban Low Intensity designation. This property abuts commercial property already owned by Dr. Dennison. City staff recommended approval.

MEMBER ROSE ANN TORNATORE moved, seconded by MEMBER CHUCK HORION to recommend approval of Ordinance 2021-16 to the City Council.

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

Yes: Member Rick Delange, Member Chuck Horion, Member James Lilly, Chairman John Schmitz, Member Rose Ann Tornatore

C. Ordinance 2021-17: Rezoning application for recently annexed property located at 104 Broad Avenue

The Board Attorney read the Ordinance by title only. City Planner Stewart Cruz explained that the property located at 104 Broad Avenue was recently annexed. The zoning proposed is equivalent to the county's designation with no impact on city services. City staff recommended approval. There were no comments or questions from the board.

MEMBER CHUCK HORION moved, seconded by MEMBER RICK DELANGE to recommend approval of Ordinance 2021-17 to the City Council.

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

Yes: Member Rick Delange, Member Chuck Horion, Member James Lilly, Chairman John Schmitz, Member Rose Ann Tornatore

5. OTHER

6. BOARD COMMENTS

7. ADJOURNMENT

The meeting ended at 8:50 am .

Cheri Schwab, Recording Secretary

John Schmitz, Chairman

PLANNING & ZONING BOARD AGENDA MEMORANDUM
JANUARY 10, 2022 AGENDA

TO: The Members of the Planning & Zoning Board
FROM: Stewart Cruz, City Planner
PREPARED BY: Stewart Cruz, City Planner
SUBJECT: Sign Variance Application ZV 12021031: Holiday Inn Express - 3301 S. Atlantic Avenue

SYNOPSIS:

NOTE: Due to an advertising error by the applicant, this item will be continued.

On October 25, 2021, Ray Webb with Kenko Signs, Inc, submitted sign variance ZV12021031 for and on behalf of Holiday Inn Express DBS Hospitality, LLC, owner of the property located at 3301 S. Altantic Avenue. The application, if approved, would permit a monument style sign 25% larger and 25% wider than permitted on site.

FISCAL IMPACT STATEMENT:

BACKGROUND:

The property owner is requesting a sign variance that would permit a sign 12'6" in height and 10' wide in lieu of the maximum permitted 10' and 8', respectively.

The subject application (Exhibit A) and staff's analysis of the application (Exhibit B) are attached .

LEGAL REVIEW:

Approve if the Board finds that the application meets the ordinance criteria for a variance.

RECOMMENDATION:

Based on the staff analysis (Exhibit B) provided, staff recommends XXX of Variance ZV12021031 as presented.

SUGGESTED MOTION:

A Board member may motion one of the following:

1) "I move to approve Variance ZV12021031 as presented."
OR
2) "I move to approve Variance ZV12021031, on the condition of the following..."
OR
3) "I move to deny Variance ZV12021031, on the basis of..."

ATTACHMENT: 1. Exhibit A-Holiday Inn Sign Variance Application

220.00 CK # 8145
Y 220.00

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

20210031 236709

RECEIVED
OCT 05 2021
COMMUNITY SERVICES DIVISION
CITY OF DAYTONA BEACH SHORES

SIGN VARIANCE APPLICATION

The Undersigned Applicant requests the Building Official or Planning and Zoning Board to hear and decide upon this application in accordance with Sec. 6-10 and Sec. 14-63 of the Daytona Beach Shores Land Development Code as applicable.

Date Submitted: 9/28/21 Applicable Section of Code: _____

Fees must be paid at the time the application is submitted

Applicant's Name: HOLIDAY INN Email: _____

Address: 3301 S. ATLANTIC AVE, D.B. SHORES, FLA. Phone #: _____

Property Address: _____

Representing ~~Attorney~~ (if any): RAYMOND WEBB Email: ledpartners1@gmail.com

Address: 1539 GARDEN AVE, HOLLY HILL, FLA. Phone #: 386 527 6506

NOTE: Notarized letter of authorization from owner MUST be submitted if application is filed by anyone other than the owner. In addition, all new exhibits introduced at a scheduled hearing must be submitted to the City Clerk to be included as part of the record.

Legal description of the property: (SEE ATTACHED)

Description of your request: HEIGHT REQUEST TO ALLOW 12'6" IN HEIGHT IN LIEU OF 10' OVERALL BECAUSE OF VEHICLES BLOCKING SIGN OVERALL

NOTE: ALSO WIDTH BECOMES ISSUE BASED ON HOLIDAY INN STANDARDS

AFFIDAVIT OF COMPLIANCE WITH THE PUBLIC NOTICE
REQUIREMENTS OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA

I, the undersigned, hereby certify that I have mailed or caused to be mailed by First Class, Certified Mail, to the named property owners listed below whose property is abutting the property which is the subject of an application and public hearing pursuant to the City of Daytona Beach Shores Code of Ordinances, a notice containing the time, date and purpose of the public hearing and address of the subject property. The notices were sent at least thirty (30) days prior to the meeting date. A copy of the notice and signed certified mail return cards are attached. The subject property was also posted with a placard on _____. A legal advertisement of the type and size required by the Daytona Beach Shores Code of Ordinances was placed in the Daytona News-Journal on _____. A proof of publication affidavit is attached.

The names and addresses of the following property owners were obtained from the Volusia County Property Appraiser's Office and mailed to said property owners on 10.31.21

Name	Address
FORNARI DARK	3259 S. ATLANTIC AVE. DAYTONA SHORES, FLA. 32118
LE MER CONDOMINIUMS	3255 S. ATLANTIC AVE, DAYTONA BEACH SHORES, FLA. 32118

Hearing Date:
Printed Name: RAYMOND WEBB
Address: 1539 CARDEA AVE, HOLLY HILL, FLA. 32117

Signature: Raymond Webb 10-4-21

STATE OF FLORIDA
COUNTY OF VOLUSIA
The foregoing instrument was acknowledged before me this October 4 2021, by Raymond Webb, who is personally known to me or who has produced _____ as identification.

Kelly Minott
Signature

Printed or Typed Name: Kelly Minott
Commission #: GG 967561
My Commission Expires: 7/4/2024

KELLY MINOTT
Notary Public-State of Florida
Commission # GG 967561
My Commission Expires
July 04, 2024

1. Please explain how your application meets the following variance criteria (Sec. 6-10):

   (a) Exceptional narrowness, shallowness, or shape of the premises on which the sign is located:
   LOCATION OF SIGN IS UNIQUE BASED ON LOCATION BEING IN MIDDLE OF PARKING AREA EASILY BLOCKED BY TRUCKS AT 10' OVERALL MAKING 120' NECESSARY FOR VISUAL IMPACT OF BEING SEEN NORTH & SOUTH

   Or

   (b) Exceptional topographic conditions or physical features uniquely affecting the premises on which the sign is located:
   SEE (A)

   Or

   (c) Exceptional conditions or features of the existing built environment uniquely affecting the premises on which the sign is located:
   SEE (A)

   The applicant must agree that:

2. In granting any variance, the Building Official or Planning and Zoning Board may prescribe appropriate conditions and safeguards in conformity with this ordinance and any regulations enacted under its authority. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and regulations promulgated hereunder.

   Agree (X) Disagree ( )

   Explanation: _____

3. The Building Official or Planning and Zoning Board may prescribe a reasonable time limit within which the action for which the variance is required shall be begun, or completed, or both.

Agree (X) Disagree ( )

Explanation: A REASONABLE AMOUNT OF TIME

4. No conforming use of neighboring lands, structures, or buildings in the same zoning classification and no permitted use of lands, structures or buildings in other zoning classifications shall be considered grounds for the authorization of a variance.

Agree (X) Disagree ( )

Explanation: _____

5. Concerning ex-parte communications, the applicant shall not speak to the Building Official or Planning and Zoning Board members upon their visiting the site and prior to the Public Hearing relating to said variance request in order that said board member shall not prejudice themselves prior to said variance request coming before the Building Official or Planning and Zoning Board in an open proceeding where the Building Official or Board's decision-making process and determination will be in full view of the public, thereby providing due process involving a fair opportunity for the presentation of both sides of the case in an open proceeding where a record of the proceedings may be kept.

Agree (X) Disagree ( )

Explanation: _____

Raymond Blum
Applicant's Signature

9.28.21
Date

VOLUSIA COUNTY PROPERTY APPRAISER
LARRY BARTLETT, JD, CFA
WE VALUE VOLUSIA
(386) 736-5901

RECEIVED
OCT 05 2021
236709
BUILDING AND CODES DIVISION
CITY OF DAYTONA BEACH SHORES

Home / Parcel Summary for 3463455

Summary | TRIM Notice | Permits | Map | Pictometry | Print

Alternate Key:	3463455
Parcel ID:	533503010010
Township-Range-Section:	15 - 33 - 35
Subdivision-Block-Lot:	03 - 01 - 0010
Business Name:	HOLIDAY INN EXPRESS
Owner(s):	DBS HOSPITALITY LLC - FS - Fee Simple - 100
Mailing Address On File:	730 S ATLANTIC AVE STE 102 ORMOND BEACH FL 32176 *Update Mailing Address*
Physical Address:	3301 S ATLANTIC AVE, DAYTONA BEACH SHORES 32118
Building Count:	1
Living Units:	100
Neighborhood:	7021 - OCEANFRONT HOTELS-MIDSCALE *Neighborhood Sales*
Subdivision Name:	
Property Use:	3900 - HOTELS/MOTELS
Tax District:	403-DAYTONA BEACH SHORES
2021 Proposed Millage Rate:	18.5812
Homestead Property:	No - *Apply for Homestead Online*
Agriculture Classification:	No - *Additional Information*
Legal 1:	LOTS 1 TO 3 INC BLK A PORT ORANGE BEACH MB 4 PG 130 PER OR 2
Legal 2:	859 PG 1875 PER OR 5646 PG 4480 PER OR 6380 PGS 4850-4852 IN
Legal 3:	C PER OR 6502 PGS 0514-0521 INC

Values & Exemptions | Land & Buildings | Sales | Legal

Property Tax Bill

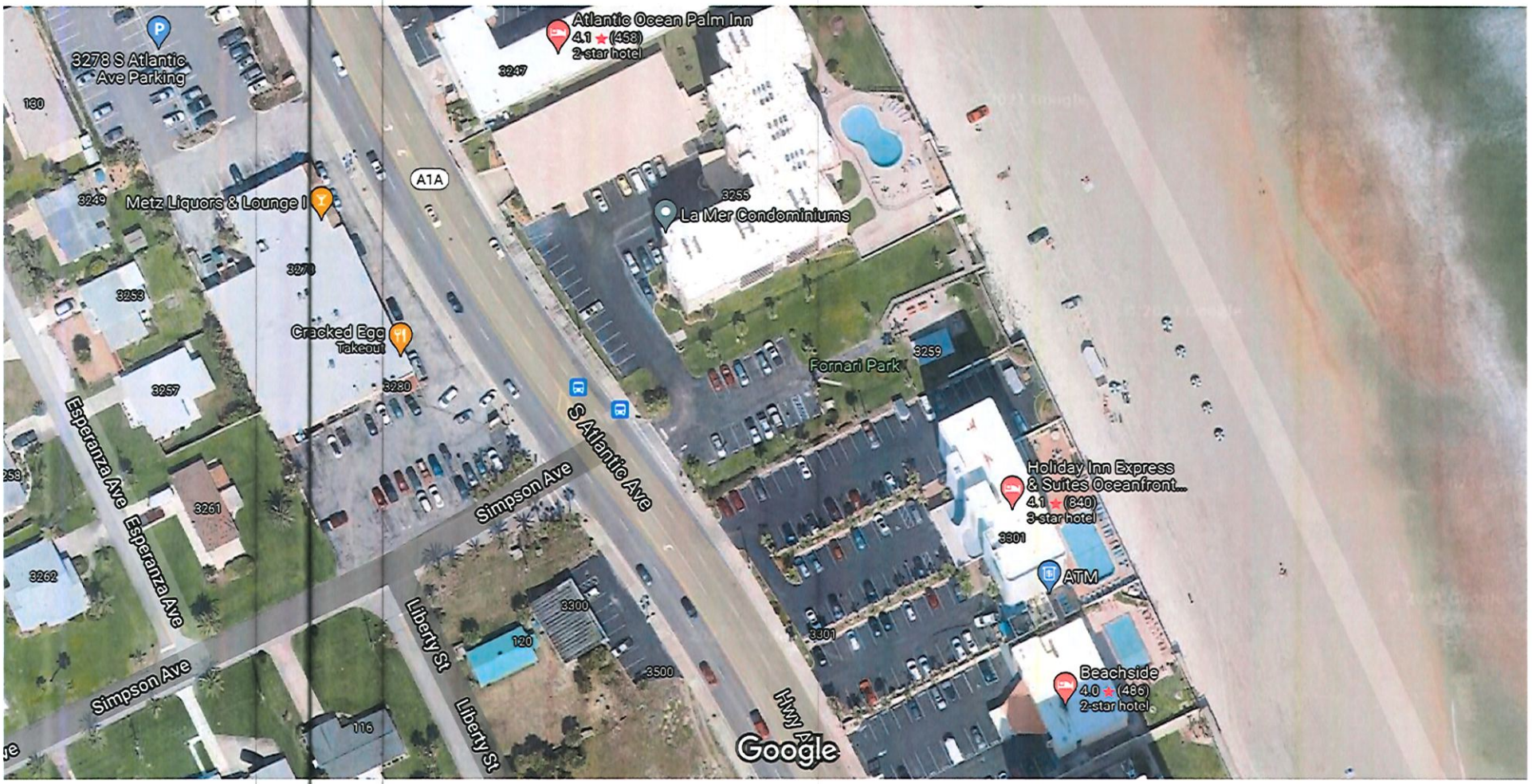
Property Values

Tax Year:	2021 Working	2020 Final	2019 Final
Valuation Method:	1-Market Oriented	1-Market Oriented	1-Market Oriented
Improvement	Cost	Cost	Cost
Value:	$2,782,762	$3,134,547	$3,001,381
Land Value:	$1,672,800	$1,672,800	$1,672,800
Just/Market Value:	$4,455,562	$4,807,347	$4,674,181

Back to Top

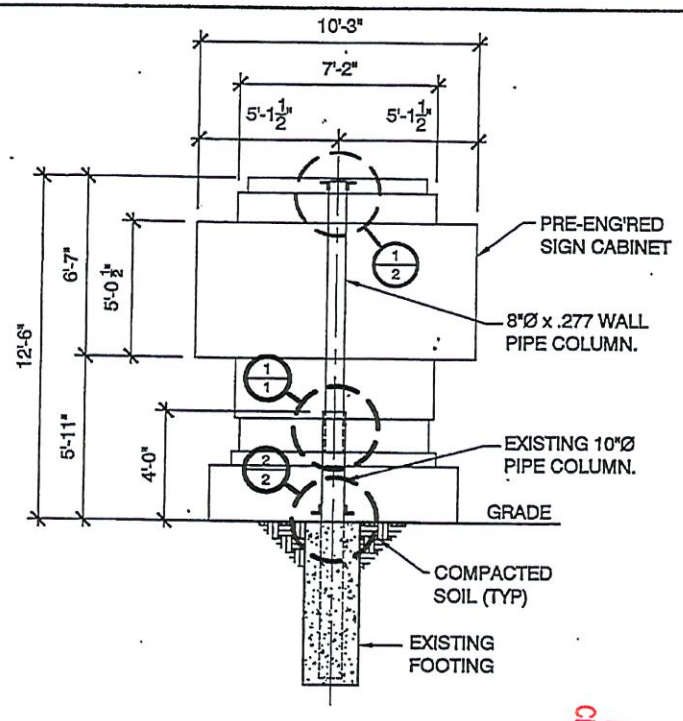
Working Tax Roll Values by Taxing Authority

Google Maps



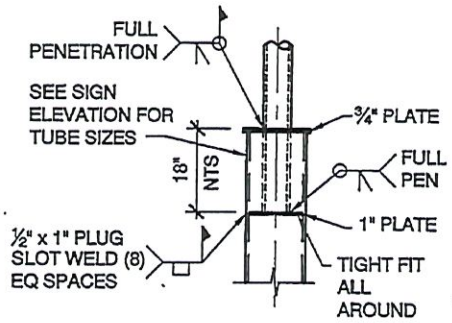
Imagery ©2021 Maxar Technologies, U.S. Geological Survey, Map data ©2021 50 ft

Holiday Inn
Express
& Suites
DAYTONA
BEACH
SHORES
"Life is
better here"



SIGN ELEVATION

SCALE: 1/4" = 1'-0"



DETAIL

SCALE: ¼" = 1'-0"

NOTES:

1. DESIGN WIND PRESSURE IN CONFORMANCE w/ FBC 2020, 7 th EDITION, REFERENCING ASCE 7-16. SEE CHART FOR DESIGN CRITERIA
2. ~~PRE-ENGINEERED SIGN FACE BY OTHERS.~~ DELEGATE ENGINEER SHALL PROVIDE DESIGN DRAWINGS TO RICHARDSON ENGINEERING FOR APPROVAL PRIOR TO FABRICATION OR ERECTION
3. CONTRACTOR SHALL BE RESPONSIBLE FOR WATERPROOFING
4. SOIL SHALL BE CLEAN SAND w/ A MINIMUM ALLOWABLE BEARING PRESSURE OF 2000 psf AND A MINIMUM ALLOWABLE LATERAL PASSIVE PRESSURE (FOR ISOLATED POLE) OF 300 pcf/ft
5. CONCRETE: SHALL BE 3000 psi @ 28 DAYS
6. STEEL: PIPE: ASTM A53 GRADE B
7. ALL WELDING SHALL BE IN CONFORMANCE w/ AWS D1.1 (LATEST EDITION) USING E70XX ELECTRODES. ALL WELDS SHALL BE FULL PENETRATION WELDS AT ALL POINTS OF CONTACT UNLESS NOTED OTHERWISE.

WIND DESIGN CRITERIA CHART	
RISK CATEGORY	II
WIND VELOCITY (Vult) (mph)	140
WIND VELOCITY (Vasd) (mph)	109
EXPOSURE CATEGORY (MMRF)	B
GC pi	+-.18, -.18
DESIGN WIND PRESSURES (ASD) (psf)	27.4

Does not B

PROJECT IDENTIFICATION

THIS PLAN IS FOR CONSTRUCTION ON PROPERTY AT
3301 S. ATLANTIC AVE.
DAYTONA BEACH SHORES, FL. 32118

NO RESPONSIBILITY IS ACCEPTED BY RICHARDSON ENGINEERING FOR ANY OTHER LOCATION. LOCATION OF PROJECT IS REQUIRED PER DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION RULE 61G1-18.004 REQUIRING PROJECT IDENTIFICATION

SEAL:

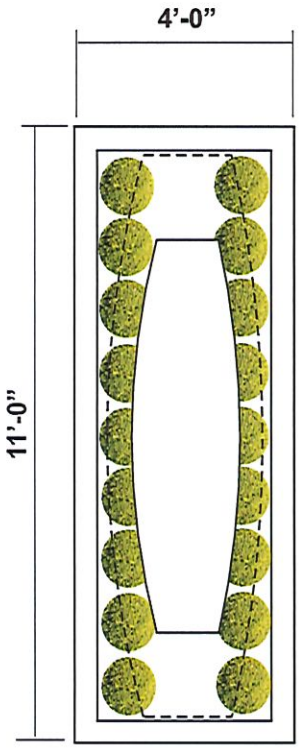
RICHARD B RICHARDSON LICENSE No. 12366 STATE OF FLORIDA PROFESSIONAL ENGINEER

Digitally signed by Richard B Richardson
Reason: This item has been electronically sealed using a SHA256 authentication code. Printed copies of this document are not considered signed and sealed and the SHA256 authentication code must be verified on electronic copies
Date: 2021.07.26 16:17:09 -04'00'

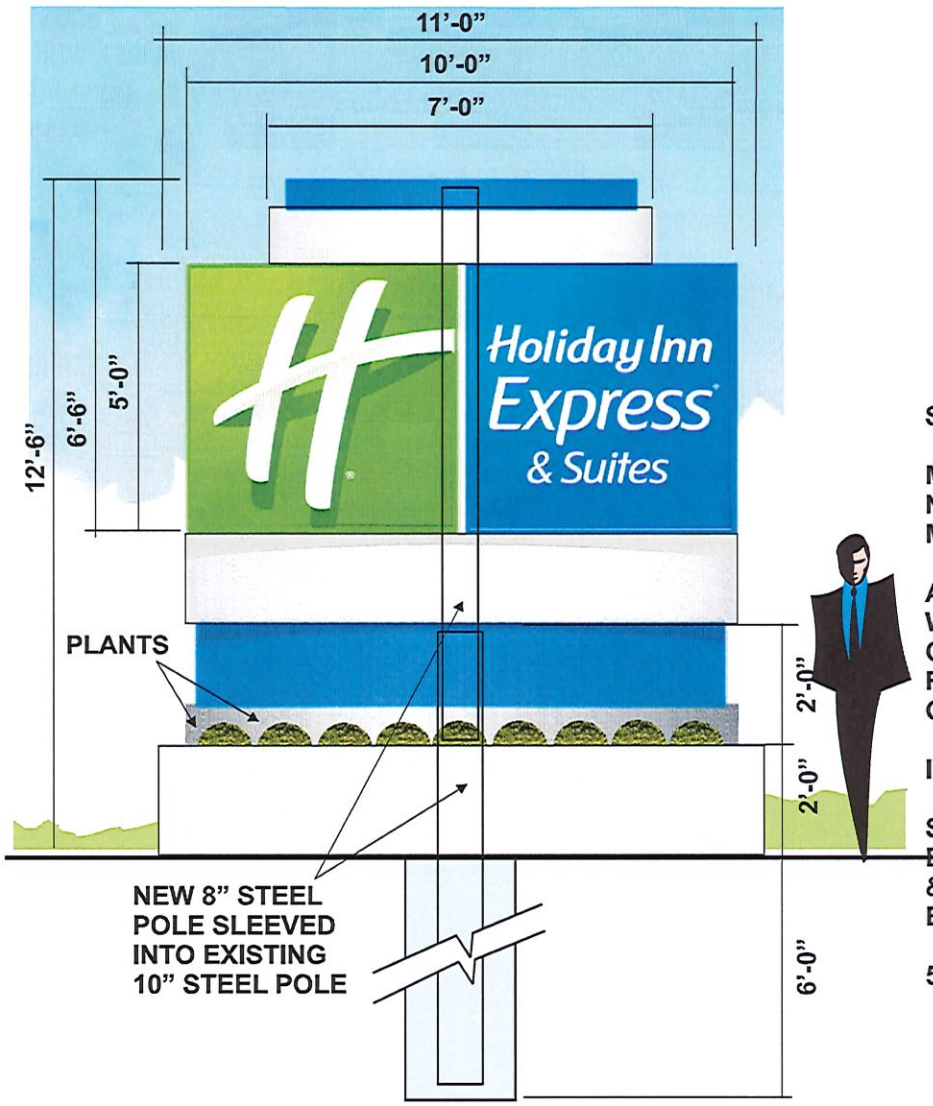
DO NOT MASTER FILE THIS DRAWING
RICHARDSON ENGINEERING
SEALED BY RICHARD B. RICHARDSON, P.E.
131 ZELMA STREET
ORLANDO, FLORIDA 32803
(407) 425-4002
LIC#: 00012366 ID#: EB26251
COPYRIGHT © 2021 RICHARDSON ENGINEERING
ALL RIGHTS RESERVED

PROJECT: HOLIDAY INN EXPRESS SIGN	
CLIENT: KENCO SIGNS	
JOB#: 210661	DATE: JULY 21, 2021
SHEET: 1 OF 2	DRAWN BY: BER

RECEIVED
SEP 16 2021
BUILDING AND CODES DIVISION
CITY OF DAYTONA BEACH SHORES
236615



PLANTER TOP VIEW SHOWING PLANTS



REMOVE EXISTING SIGN

SPECIFICATIONS:

MANUFACTURE & INSTALL (1) NEW DOUBLE FACE ILLUMINATED MONUMENT SIGN.

ALL ALUMINUM CONSTRUCTION W/ (4) LIGHTED CABINETS. CABINETS TO HAVE ACRYLIC FACES W/ PRINTED VINYL GRAPHICS & COPY.

INTERNAL LED ILLUMINATION.

SIGN TO BE INSTALL INTO EXISTING PLANTER BOX & INTO EXISTING 10" STEEL BASE POLE.

50 SQUARE FEET

- CONTRACTOR- KENCO SIGNS
- 2020 FBC 7th EDITION
- 160 MPH WIND SPEED (ASCE 7-10)
- CF=1.2 CLASS D RISK CATEGORY 2

ETL LISTED

Signs are intended to be installed in accordance with the installation instructions provided with the sign sections and the NEC. Authorities having jurisdiction are responsible for the ultimate decision to approve an installation.

This sign is intended to be installed in accordance with the requirements of Article 600 of the National Electrical Code and/or other applicable local codes. This includes proper grounding and bonding of the sign.

www.kenco2000inc.com

DATE: 07/07/21

DESIGNER: RICK Z

REVISIONS / DATE:

1) 10/28/21 REDUCE CABINET TO 5'X10'

2)

3)

SHEET 1 OF 1

HOLIDAY INN EXPRESS & SUITES

8789

RAYMOND WEBB

This design (except registered or existing trademarks is the property of KENCO 2000, INC. And shall not be reproduced or copied in whole or in part without the permission of the above named owner.

KENCO
SIGNS - STATEWIDE
LED PARTNERS FLORIDA
DIGITAL DISPLAYS
1539 GARDEN AVENUE
HOLLY HILL, FL 32117
386-672-1590
800-526-3291
FAX 386-677-2910

PLANNING & ZONING BOARD AGENDA MEMORANDUM
JANUARY 10, 2022 AGENDA

TO: The Members of the Planning & Zoning Board
FROM: Stewart Cruz, City Planner
PREPARED BY: Stewart Cruz, City Planner
SUBJECT: Rezoning Application RZ12021045: 3232 La Paloma Ave - Westminster By The Sea Presbyterian Church

SYNOPSIS:

Rezoning Application RZ12021045, if approved, would amend the City's Official Zoning Map by assigning the "P Publc/Quasi Public" District to the property located at 3232 La Paloma Avenue (**Exhibit A**). The application (**Exhibit B**) was submitted on November 19, 2021 by Rev. Jeffery Sumner, Pastor and Registered Agent of the Westminster By The Sea Presbyterian Church, Inc, owner of the subject property. The property is 0.15 of an acre and is occupied by a 725 square foot residential structure currently being used as a counseling center. Counseling is permitted as an accessory use to a Church in the "P" District. At the time of the counseling center application approval, the City's zoning map incorrectly indicated the property was zoned "P" District. At a later date, the City discovered that the property was zoned "RSF-2" District. Hence, the proposed rezoning application, if approved, would allow the Church to keep the existing counseling center on the property.

FISCAL IMPACT STATEMENT:

BACKGROUND:

A. BACKGROUND

The subject property, located at 3232 La Paloma Avenue, was annexed into the corporate limits of the City of Daytona Beach Shores and assigned the City's "RSF-2 Urban Single-Family Residential Detached District" zoning classification on April 23, 1997 and August 18, 1997, respectively, pursuant to Section 171.062, *Florida Statutes*. At that time, the property was owned by a single-family residential homeowner. On June 4, 2007, property ownership was transferred to the Westminster By the Presbyterian Church, who used it as a parsonage up until recently.

On April 9, 2003 the City Council of the City of Daytona Beach Shores adopted Ordinance 2003-07, which replaced the previously held Official Zoning Map with a new digitally produced Official Zoning Map. The new digitally produced Official Zoning Map accepted on April 9, 2003, which was created by a third party city contractor, incorrectly indicated that the real property at 3232 La Paloma Avenue

had a zoning district classification of “P” Public/Quasi Public. Based on this information, the City granted the church authorization to operate a counseling center at the property. Therefore, the owner of the real property has operated the property consistent with the Daytona Beach Shores Land Development Code under the assumption that the property had a zoning district classification of “P” Public/Quasi Public, which includes the operation of a counseling center consistent with Ordinance 2021-07. City staff recently discovered that the Official Zoning Map accepted on April 9, 2003 incorrectly indicated the zoning district classification of the real property at 3232 La Paloma Avenue, hence the subject rezoning application.

B. PLANNING ANALYSIS

See Exhibit C for planning analysis.

LEGAL REVIEW:

Approved as to form and legality.

RECOMMENDATION:

Staff recommends approval of Rezoning Application RZ12021045 as presented.

SUGGESTED MOTION:

A Planning and Zoning Board member may motion as follows:

1. "I move to recommend approval of Rezoning Application RZ12021045 as presented."
OR
2. "I move to recommend approval of Rezoning Application RZ12021045, with the following amendments..."
OR
3. "I move to recommend denial of Rezoning Application RZ12021045, on the basis of the following..."

ATTACHMENT:

1. EXHIBIT A-Location Map
2. Exhibit B-3232 La Paloma RZ Application
3. Exhibit C-RZ212021045 Westminster BTS Presbyterian Rezoning - 3232 La Paloma (P&Z Staff Report)
4. Ord. 2022-01-3232 La Paloma RZ

EXHIBIT A

1: Aerial View: 3232 La Paloma Ave

Source: Volusia County Property Appraiser Website, 2021

2: Street View: 3232 La Paloma Ave

Source: GoogleMaps, 2014

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

RECEIVED
NOV 19 2021
BUILDING AND CODES DIVISION
CITY OF DAYTONA BEACH SHORES
1202145

APPLICATION TO AMEND ZONING MAP

The Undersigned Applicant requests the Planning and Zoning Board and City Council to decide upon this application in accordance with Section 14-66 and 14-67 of the Land Development Code.

FEES MUST BE PAID AT THE TIME THE APPLICATION IS SUBMITTED

Date Submitted: 11/19/2021 Current Zoning: RSF-2

Requested Zoning: P

Applicant's Name: Westminster By The Sea Presbyterian

Address: 3221 S. Peninsula Dr. Phone #: 386-767-8342

Representative: Pastor Jeffrey Sumner

Address: 1385 Hyde Park Dr., P.O. Phone #: 386-846-3200

Property Address & Parcel ID: 3232 La Paloma Ave. Parcel ID: 533501090110

Property Owner: Westminster By The Sea Presbyterian

NOTE: If applicant is not property owner, attach a notarized statement of authorization

Legal Description of Property:

LOTS 11 & 12 BLK 1 RIDGAR BCHES PER OR 5048 PG 2204 PER D/C 16035 PG 1222 PER OR 16071 PG 2897

Applicant's Signature

November 19, 2021
Date

THE PLANNING & ZONING BOARD WILL APPLY THE CRITERIA IN SECTION 14-66(4) OF THE LAND DEVELOPMENT CODE WHEN CONSIDERING ZONING MAP AMENDMENTS. PLEASE EXPLAIN HOW YOUR REQUEST MEETS THE FOLLOWING CRITERIA: (YOU MAY ATTACH ADDITIONAL SHEETS)

1. The proposed zoning will have a favorable or unfavorable impact on the environment and natural resources of the area affected.

The proposed zoning will not have any effect/impact on the environment and natural resources. because there will be any increase in intensity of use.

2. The proposed zoning will have a favorable or unfavorable impact on the economy of the area affected.

No impact. Use is ancillary to the church as an office.

3. The proposed zoning will efficiently use or unduly burden water, sewer, solid waste disposal or other necessary public facilities, including schools.

No change. There will be no new water or sewer fixtures and no increase of intensity of use.

4. The proposed zoning will efficiently use or unduly burden transportation facilities.

No impact. There will be about 4 (?) visits per day. Parking will be on church property next door. Intensity of use will be no more than for a single family in and out.

5. The proposed zoning will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.

No impact. The building has been ~~used~~ used as office/manse for the church. This very low intensity of use will continue.

6. The proposed zoning is basically consistent with the comprehensive land use plan.

The use will continue as it has for the last 10 years - office ancillary to the church.

7. Have conditions relative to the property in question and the surrounding area so changed as to require zoning classification boundaries be amended to reflect new conditions?

This parcel was purchased by the church (X) years ago and requires rezoning as part of the unity of title process

8. Was there a mistake in the original zoning of the property so that such zoning does not properly reflect the actual or developing conditions of the area?

No. See #7 above.

9. Will the proposed change promulgate or encourage a physical benefit or have a stabilizing effect on the surrounding areas?

No change. The property will continue to be well maintained. The use will remain as it has been.

10. Would the proposed changes constitute "spot zoning"?

No. It will be assimilated into the church property.

11. Is the proposed change a singling out of a small parcel of land, allowing a use totally different from that of the surrounding area, and would such use violate the integrity of the zoning classification?

No. See #10 above.

12. Is the change solely for the benefit of the owner and to the detriment of the community?

No. It is to bring the parcel into conformity with the church property.

13. Will the proposed change especially suit the applicant's own special purpose rather than serve the community?

No. The adjacent church serves the community. This parcel is being united with the church parcel.

14. Would the requested change materially diminish the value of surrounding properties or substantially alter the characteristics of the neighborhood?

No change at all. The property will continue ~~maintain~~ its current look and will continue to be well maintained.

EXHIBIT C
PLANNING ANALYSIS: RZ12021045

A. INTRODUCTION

The proposed application/ordinance if approved would change the zoning district classification of the church owned property located at 3232 la Paloma Avenue from *"RSF-2" Urban Single-Family Residential Detached District* to "*P" Public/Quasi Public District.* Although the Westminster By the Sea Presbyterian Church has owned and utilized the property since 2007, the subject application was submitted on November 19, 2021 subsequent to the discovery of a zoning map error.

B. EXISTING ZONING AND CURRENT LAND USE

Table 1 below provides a narrative description of the zoning district classifications and current land uses (i.e., existing development) for the subject property and surrounding area while **Figure 1** provides an aerial view of the subject property and surrounding land uses. **Figure 2** is a zoning map of the aforementioned. **Figure 3** provides a street view of the property in question.

Table 1: Zoning and Land Use Area Description

Location	Zoning	Current Land Use
Subject Property	RSF-2	Counseling Center
North	P	Church Property
South	RSF-2	Single Family Residence
East	R-9	Volusia County Single Family Residence
West	P	Church Property

Notes: *R-9 = Volusia County *Urban Single-Family Residential District*

Figure 1: Aerial View-3232 La Paloma Avenue and Surrounding Neighborhood

Source: Volusia County Property Appraiser, 2021

Figure 2: 3232 La Paloma – Zoning Map Of Surrounding Neighborhood

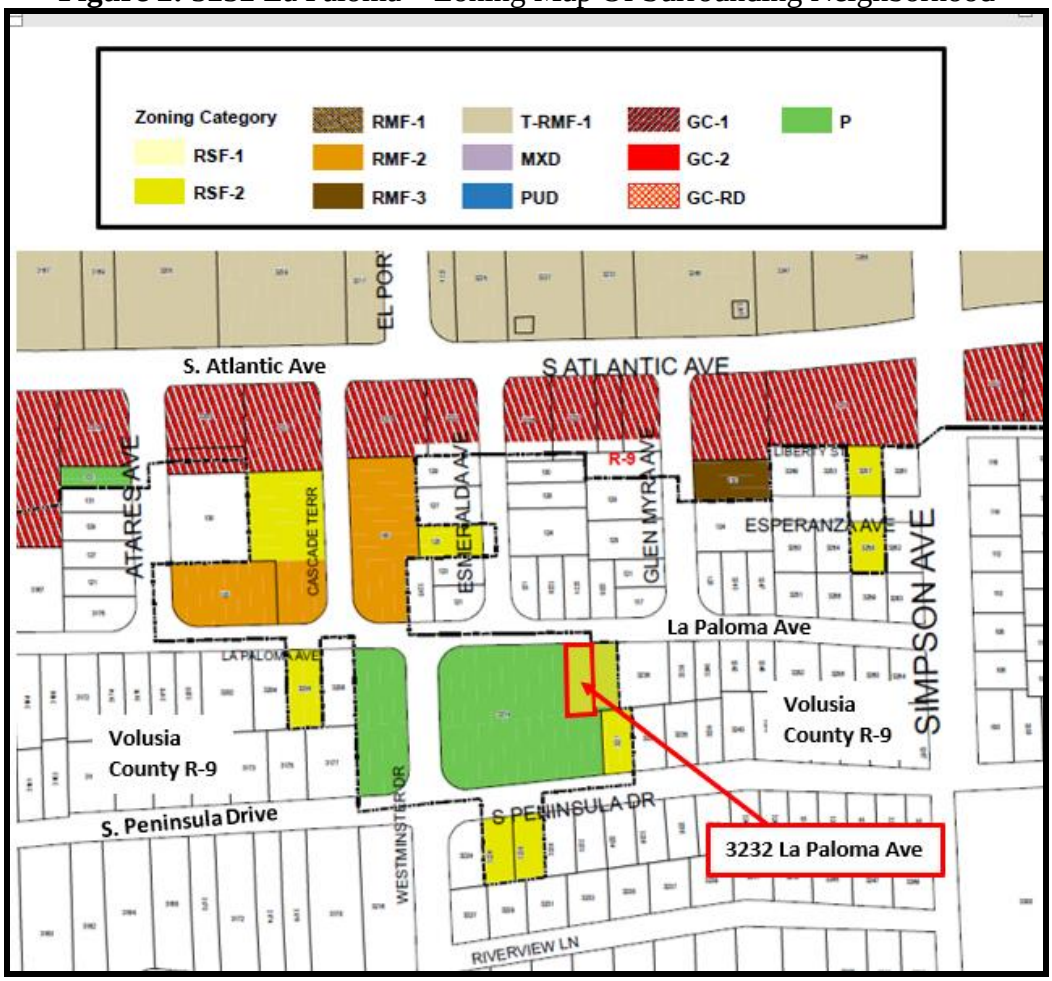


Figure 3: 3232 La Paloma Ave – Street View

Source: GoogleMaps, 2014

As noted in **Table 1** above, the subject property is currently zoned Volusia County *RSF-2 Urban Single-Family Residential Detached District*. The purpose, intent and permitted uses of the existing zoning district is as follows:

"RSF-2 Urban Single-Family Residential Detached District":

Purpose and Intent: The purpose and intent of the RSF-2 Urban Single-Family Residential Detached District is to provide medium residential density for the purpose of preserving the character of existing residential neighborhoods and generally implementing the city's land use plan within, but not necessarily limited to, those areas shown for single-family use.

14-17.2. Permitted Principal Uses and Structures:
Single-family dwelling.
Telecommunication towers and antennas, subject to compliance with section 14-60.1 et seq.
14-17.3. Permitted Accessory Uses and Structures.

Home occupations regulated by section 14-45 and other accessory uses or structures customarily incidental to the permitted principal use or structure.

C. PROPOSED ZONING

The proposed zoning for the subject property is *P Public/Quasi Public District*. According to the Daytona Beach Shores Land Development Code, the purpose, intent and permitted uses of the proposed zoning district is as follows:

Sec. 14-26. - P Public/Quasi Public.

14-26.1. Purpose and Intent.
The purpose and intent of the Public/Quasi Public District is to best satisfy the internal, recreational and governmental service needs of the entire community. This district has been developed for implementing the City's land use plan within, but not necessarily limited to, those areas shown for Public/Quasi Public.

14-26.2. Permitted Principal Uses and Structures.
Principal uses permitted in the P Public/Quasi Public District include parks, churches and government offices, telecommunication towers and antennas, subject to compliance with section 14-60.1 et seq., etc.

14-26.2.1 Permitted Accessory Uses.
In the P Public/Quasi Public District counseling services shall be permitted as an accessory use to a church. All other permitted accessory uses shall be consistent with the definition of accessory uses pursuant to Sec. 2-2 of this code.

D. COMPREHENSIVE PLAN

According to the City's Adopted Comprehensive Plan (2030) Future Land Use Map the subject property has a *Low Density Residential* future land use (FLU) classification. This FLU classification allows up to twelve (12) residential units per acre. In addition, Policy 1-1.4.2 of the plan provides that public/quasi public land uses are permitted within all land uses. Therefore, both residential and public/quasi public land uses are permitted on the subject property.

In addition, Objective 1-1.4 of the Comprehensive Plan states that land uses which are inconsistent with the character and overall Future Land Use Plan of the City shall be discouraged through the prohibition of objectionable uses such as industries and warehousing. The proposed zoning is not objectionable or inconsistent with the future land use map and surrounding neighborhood per Objective 1-1.4 of the plan. Therefore, the proposed zoning classification is consistent with the City's Adopted Comprehensive Plan (2030).

E. REVIEW AND COMMENTS

The subject application was initiated by the property owner, Westminster By The Sea Presbyterian Church, Inc. The subject property is located at 3232 La Paloma Avenue and has an acreage of 0.15+/- and a 725sf structure on site. The property has vehicular and pedestrian access to the abutting La Paloma Avenue which connects to S. Peninsula Drive and S. Atlantic Avenue via Westminster Avenue and Glen Myra Avenue, respectively.

As seen in Table 1 above, the proposed zoning change will be consistent with remainder of the church property adjacent to the north and west. According to the property owner, the rezoning is being sought to continue the counseling services offered at the site, which was approved by the City on August 31, 2021. The City was unaware at the time of the error in the zoning map.

Due to the intensity of the use associated with the application in question, the property is exempt from the City's Concurrency Review Process as it does not substantially impact any of the City's public facilities or infrastructure. However, adequate potable water, sewer, solid waste, recreation, and transportation facility capacities are currently available and serve the subject property.

Finally, pursuant to Sec. 559.955, *Florida Statutes* (Exhibit C.1) the prohibition of home-based businesses on a residential zoned properties are precluded by the state, provided certain requirements are met. If the rezoning application was not made by the church but instead by a single-family resident living at the property, said single-family resident would be able to offer counseling services from the property without prohibition or regulation by the City, providing certain requirements are met.

F. FINDING OF FACTS

When considering a request to change zoning, the Planning and Zoning Board shall consider the following criteria pursuant to Section 14-66 of the Land Development Code. Below are staff's

findings considering each criterion outlined in the aforementioned section of the Code. The applicant's responses to the criteria are attached in the **Exhibit B** (owner's application).

1. The proposed zoning will have a favorable or unfavorable impact on the environment and natural resources of the area affected.

The proposed zoning change will not provide an unfavorable impact on the environment or natural resources of the area. The property in question is currently developed with a primary structure. If redeveloped, consistency with the City's Land Development Code will be required. Further, the proposed zoning change would not permit hazardous uses such as industry, which could have an unfavorable impact on the environment and natural resources of the area.

2. The proposed zoning will have a favorable or unfavorable impact on the economy of the area affected.

The proposed zoning will generally have a neutral impact on the economy of the area as the property is currently developed and no redevelopment or change to commercial or retail use is sought. In addition, the proposed counseling office use is accessory to the principal use of the existing church. Further, the proposed zoning change is density neutral.

3. The proposed zoning will efficiently use or unduly burden water, sewer, solid waste disposal or other necessary public facilities, including schools.

The subject property is currently zoned as a single-family residence. The proposed "P" Public/Quasi Public (office) use will not unduly burden public facilities. The subject property is currently being served with or has access to transportation, public schools, water, sewer, and solid waste disposal services. All existing public facilities have adequate capacity and the proposed rezoning will not create more impact than the current public facilities can accommodate (see **Table 2** below). In fact, the only increase in public facility demand is in peak hour trips and such increase is considered di minimis.

Table 2: Impact Analysis (Theoretical Max.)

Development Variable	Current Zoning-RSF-2 (0.2-4 units/acre)	Proposed Zoning-P (0.2-4 units/acre)	Change
Residential Units Allowed	1	NA	-1
Population[1]	1.75	NA	-1.75
AM / PM Peak Hour Trips[2]	1.5/2.02	2.5/3.2	+1/1.18
Sanitary Sewer (gallons/day)[3]	250	72.5	-177.5
Potable Water (gallons/day)[4]	192.5	72.5	-120
Solid Waste (lbs./person)[5]	17.5	7.25	-10.25
Stormwater Drainage[6]	NA	NA	NA
Recreation/Open Space	Varies	NA	Varies
Public School Student(s)	0.396	NA	-0.396

Notes:

1. Population: 1.75 persons per single-family dwelling

2.	Transportation:	Rates are for peak hour of adjacent street traffic Single-family residential unit = 0.75 AM trips, 1.01 PM trips Medical Office Building (per 1000sf gfa) = 3.5 AM trips, 4.27 PM trips
3.	Sanitary Sewer:	Single family: 250 gallons per dwelling unit per day Commercial: 1/10 gallons per sf per day (Port Orange LOS Std)
4.	Potable Water:	Residential: 110 gallons per capita per day Commercial: 1/10 gallons per sf per day (Port Orange LOS Std)
5.	Solid Waste:	Residential: 10 pounds per capita per day Commercial: 10 pounds/1000 square feet (Port Orange LOS Std)
6.	Stormwater Drainage:	LOS standard = 25 year, 24 hour event. If property is redeveloped, drainage system will be designed to meet the requirements of the Land Development Code.
7.	Public School:	Generation rates = 0.396 per single-family unit.

Sources:
2010 US Census
ITE Trip Generation Manual, 9th Edition
Policy 9-1.3 Daytona Beach Shores Comprehensive Plan Update (2030)
Port Orange Land Development Code

4. The proposed zoning will efficiently use or unduly burden transportation facilities.

The proposed zoning will not unduly burden transportation facilities (see Table 2). There is already adequate vehicular access from the abutting S. Peninsula Drive road and the existing system of local, collector and arterial road network. The transportation network within the City currently operates above the adopted level of services. In addition, the owner has indicated in the zoning application that there will be about four (4) visits per day and parking will be on in the church parking lot to the north.

5. The proposed zoning will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.

The proposed zoning change involves a single-family residential property being rezoned to a "P" Public/Quasi Public zoning district classification. Although rezoning will remove a single-family residence from the perceived housing pool within the City, the property is owned by and has been used by the Church since 2007. Hence, this property has not been a part of the existing housing pool within the City for many years. Therefore, the rezoning will not impact the ability of people to find adequate housing since the change will neither create new housing nor eliminate existing housing stock.

6. The proposed zoning is basically consistent with the comprehensive land use plan.

The zoning is consistent with the Daytona Beach Shores Comprehensive Plan as noted in Sec. D of this planning analysis.

7. Have conditions relative to the property in question and the surrounding area so changed as to require zoning classification boundaries be amended to reflect new conditions?

The physical, economic or environmental conditions relative to the property in question and the surrounding area have not changed so as to require a zoning change. The proposed zoning change was made to ensure the Church property's consistency with the larger parent parcel adjacent to the north and west. The Church officially took control of the property in 2007. However, due to a mapping error in 2003, both the Church and the City were under the impression the subject property was always zoned "P", therefore no action was taken by the church at that time as it assumed the land use entitlements were legitimate. Further, the parcel will be combined with the larger parent parcel as part of the unity of title process.

8. Was there a mistake in the original zoning of the property so that such zoning does not properly reflect the actual or developing conditions of the area?

The proposed zoning change was made to ensure the Church property's consistency with the larger parent parcel adjacent to the north and west. The Church officially took control of the property in 2007. However, due to a mapping error in 2003, both the Church and the City were under the impression the subject property was always zoned "P", therefore no action was taken by the church at that time as it assumed the land use entitlements were legitimate. Further, the parcel will be combined with the larger parent parcel as part of the unity of title process.

9. Will the proposed change promulgate or encourage a physical benefit or have a stabilizing effect on the surrounding areas?

Due to the minimal impact of the proposed use noted in these finding of facts, the proposed zoning change should maintain a stabilizing effect on the surrounding areas.

10. Would the proposed changes constitute "spot zoning"?

Spot zoning generally occurs when an individual parcel is assigned a zoning classification that is incompatible with the surrounding area. However, the proposed zoning change is consistent with the existing zoning of the parent property adjacent to the north and west. In addition, the amendment is density neutral and part of the owner's lot combination and unity of title process. Therefore, the proposed change does not constitute spot zoning.

11. Is the proposed change a singling out of a small parcel of land, allowing a use totally different from that of the surrounding area, and would such use violate the integrity of the zoning classification?

The proposed zoning change is consistent with the existing zoning of the parent property to the north and west. In addition, the amendment is part of the owner's lot combination and unity of title process. Therefore, the proposed change to the "P" District is not a singling out of a small parcel of land, allowing a use totally different from that of the surrounding area, such that the use would violate the integrity of the zoning classification.

12. Is the change solely for the benefit of the owner and to the detriment of the community?

The proposed change is to rezone the subject property to “P” Public/Quasi Public District, which purpose and intent as seen in Section C of this staff report is to provide uses that serve the entire community.

13. Will the proposed change especially suit the applicant's own special purpose rather than serve the community?

The proposed change is to rezone the subject property to “P” Public/Quasi Public District, which purpose and intent as seen in Section C of this staff report is to provide uses that serve the entire community.

14. Would the requested change materially diminish the value of surrounding properties or substantially alter the characteristics of the neighborhood?

The rezoning will not substantially alter the characteristics of the neighborhood, particularly if the original repurposed single-family structure remains and is adequately maintained. In addition, the rezoning should not materially diminish the value of the surrounding properties due to nature of the office use in question. Further, based on a Zillow.com value analysis of properties in the area (Exhibit C.2), the subject properties have all increased in value.

EHIXIBT C.1
Sec. 559.955, Florida Statutes

The 2021 Florida Statutes

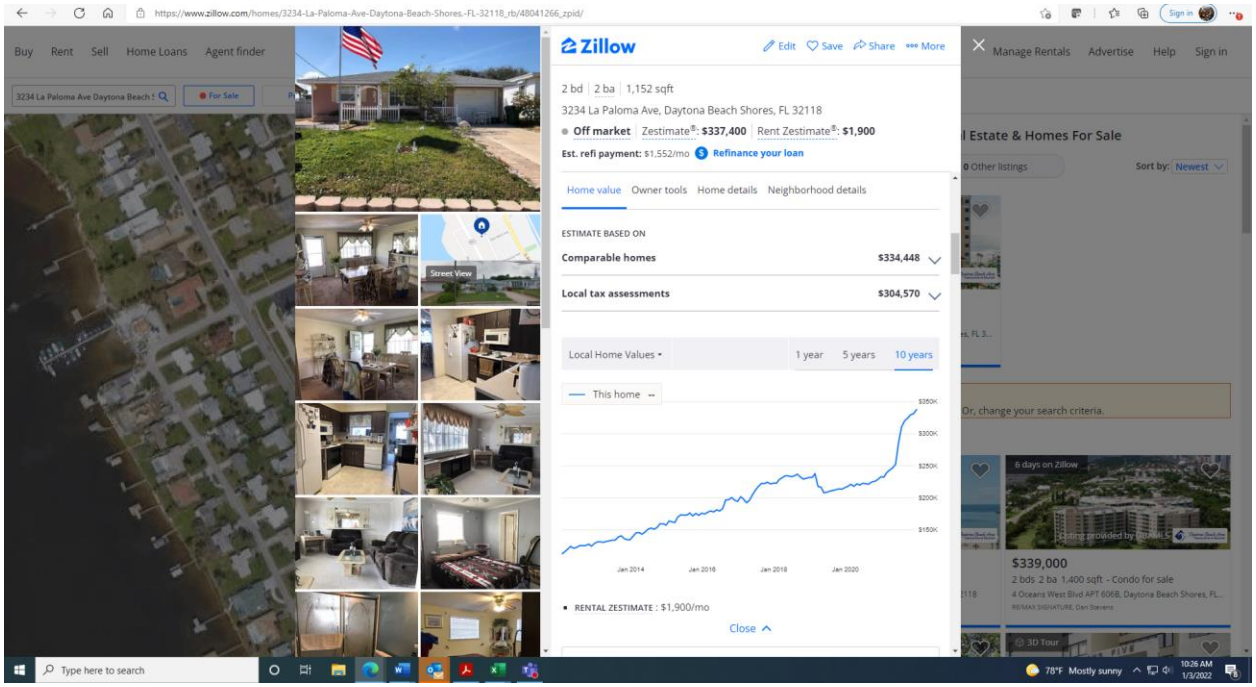
Title XXXIII
REGULATION OF TRADE, COMMERCE, INVESTMENTS, AND SOLICITATIONS
Chapter 559
REGULATION OF TRADE, COMMERCE, AND INVESTMENTS, GENERALLY
View Entire Chapter
559.955 Home-based businesses; local government restrictions.—
(1) Local governments may not enact or enforce any ordinance, regulation, or policy or take any action to license or otherwise regulate a home-based business in violation of this section.
(2) A home-based business that operates from a residential property as provided in subsection (3):
(a) May operate in an area zoned for residential use.
(b) May not be prohibited, restricted, regulated, or licensed in a manner that is different from other businesses in a local government's jurisdiction, except as otherwise provided in this section.
(c) Is only subject to applicable business taxes under chapter 205 in the county and municipality in which the home-based business is located.
(3) For purposes of this section, a business is considered a home-based business if it operates, in whole or in part, from a residential property and meets the following criteria:
(a) The employees of the business who work at the residential dwelling must also reside in the residential dwelling, except that up to a total of two employees or independent contractors who do not reside at the residential dwelling may work at the business. The business may have additional remote employees that do not work at the residential dwelling.
(b) Parking related to the business activities of the home-based business complies with local zoning requirements and the need for parking generated by the business may not be greater in volume than would normally be expected at a similar residence where no business is conducted. Local governments may regulate the use of vehicles or trailers operated or parked at the business or on a street right-of-way, provided that such regulations are not more stringent than those for a residence where no business is conducted. Vehicles and trailers used in connection with the business must be parked in legal parking spaces that are not located within the right-of-way, on or over a sidewalk, or on any unimproved surfaces at the residence. Local governments may regulate the parking or storage of heavy equipment at the business which is visible from the street or neighboring property. For purposes of this paragraph, the term "heavy equipment" means commercial, industrial, or agricultural vehicles, equipment, or machinery.
(c) As viewed from the street, the use of the residential property is consistent with the uses of the residential areas that surround the property. External modifications made to a residential dwelling to accommodate a home-based business must conform to the residential character and architectural aesthetics of the neighborhood. The home-based business may not conduct retail transactions at a structure other than the residential dwelling; however, incidental business uses and activities may be conducted at the residential property.

(d) The activities of the home-based business are secondary to the property's use as a residential dwelling.
(e) The business activities comply with any relevant local or state regulations with respect to signage and equipment or processes that create noise, vibration, heat, smoke, dust, glare, fumes, or noxious odors. Any local regulations on a business with respect to noise, vibration, heat, smoke, dust, glare, fumes, or noxious odors may not be more stringent than those that apply to a residence where no business is conducted.
(f) All business activities comply with any relevant local, state, and federal regulations with respect to the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids. Any local regulations on a business with respect to the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids may not be more stringent than those that apply to a residence where no business is conducted.
(4) Any adversely affected current or prospective home-based business owner may challenge any local government action in violation of this section. The prevailing party in a challenge may recover reasonable attorney fees and costs incurred in challenging or defending the action, including reasonable appellate attorney fees and costs.
(5) The application of this section does not supersede:
(a) Any current or future declaration or declaration of condominium adopted pursuant to chapter 718, cooperative document adopted pursuant to chapter 719, or declaration or declaration of covenant adopted pursuant to chapter 720.
(b) Local laws, ordinances, or regulations related to transient public lodging establishments, as defined in s. 509.013(4)(a)1., that are not otherwise preempted under chapter 509.
History.—s. 1, ch. 2021-202.

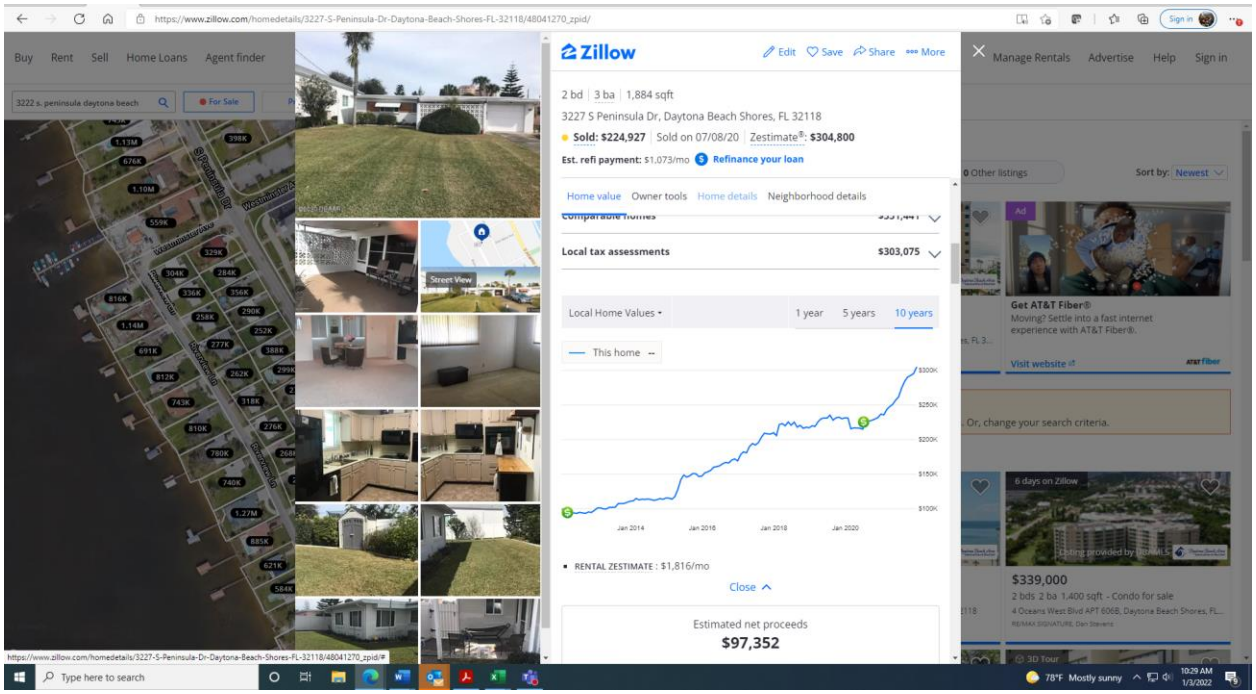
EXHIBIT C.2

Survey of Property Values Abutting 3232 La Paloma Ave
Conducted 1-3-21

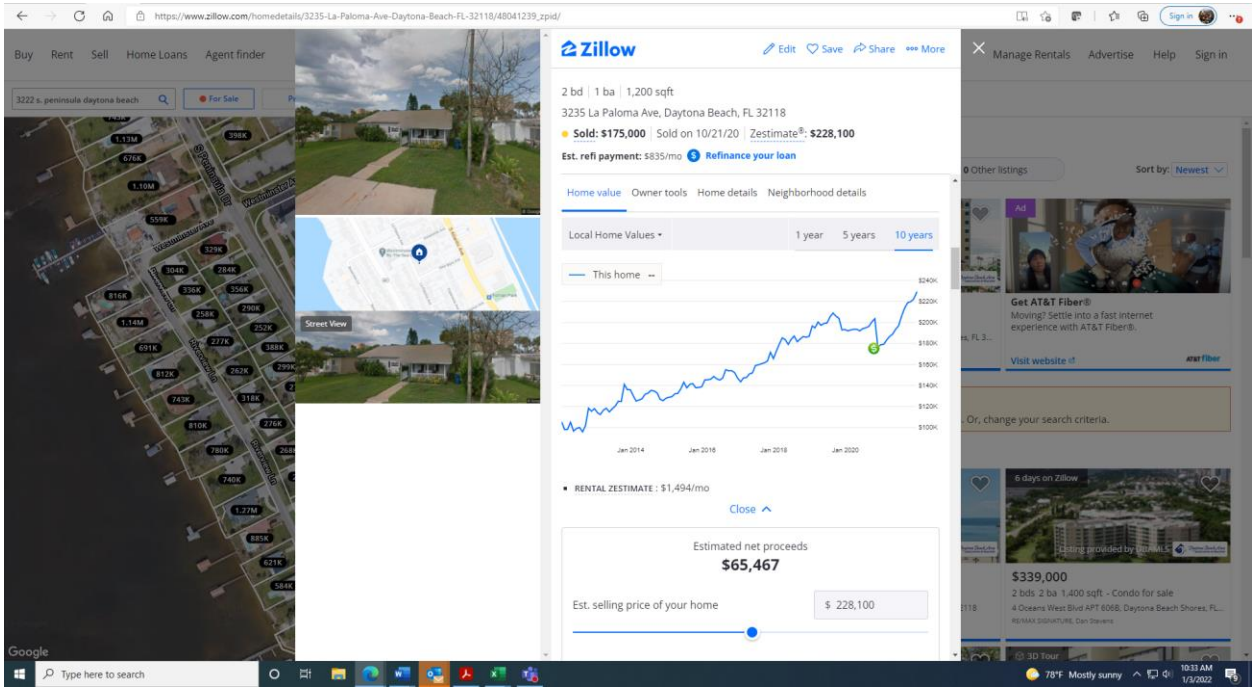
1. 3234 La Paloma



2. 3227 S Peninsula



3. 3235 La Paloma



ORDINANCE NO. 2022-01

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA, ASSIGNING THE P PUBLIC/QUASI PUBLIC DISTRICT ZONING CLASSIFICATION TO PROPERTY GENERALLY LOCATED AT 3232 LA PALOMOA AVENUE, SHORT TAX PARCEL ID 5335-01-09-0110; PROVIDING MODIFICATION OF THE OFFICIAL ZONING MAP; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR NON-CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Daytona Beach Shores is committed to planning and managing the future growth of the City; and

WHEREAS, the property described in Section One herein was annexed into the City of Daytona Beach Shores on April 23, 1997 in accordance with the requirements of controlling law; and

WHEREAS, the property described in Section One herein was assigned the "RSF-2" Urban Single-Family Residential Detached District zoning classification on August 18, 1997 in accordance with the requirements of controlling law; and

WHEREAS, on April 9, 2003 the City Council of the City of Daytona Beach Shores adopted Ordinance 2003-07, which replaced the previous Official Zoning Map with a new digitally produced Official Zoning Map; and

WHEREAS, the new digitally produced Official Zoning Map accepted on April 9, 2003, which was created by a third party city contractor, incorrectly indicated that the real property at 3232 La Paloma Avenue had a zoning district classification of "P" Public/Quasi Public; and

WHEREAS, the owner of the real property at 3232 La Paloma Avenue, Westminster By the Presbyterian Church, has operated the property consistent with the Daytona Beach Shores Land Development Code under the assumption that the property had a zoning district classification of "P" Public/Quasi Public, which includes the operation of a counseling center consistent with Ordinance 2021-07; and

WHEREAS, the City staff recently discovered that the Official Zoning Map accepted on April 9, 2003 incorrectly indicated the zoning district classification of the real property at 3232 La Paloma Avenue; and

WHEREAS, the City received a rezoning application from the property owner of real property at 3232 La Paloma Avenue requesting the City amend the Official Zoning Map to assign the "P" Public/Quasi Public District zoning classification to the property in question; and

WHEREAS, the City Council of the City of Daytona Beach Shores has received recommendations from staff and the Planning and Zoning Board for the assignment of zoning classification to said property and has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds such rezoning consistent with the *City of Daytona Beach Shores Comprehensive Plan* and deems it in the best interest of the inhabitants of said City to amend the Official Zoning Map as hereinafter set forth,

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

SECTION ONE: REZONING OF REAL PROPERTY. The property described hereinafter is hereby rezoned and assigned the Daytona Beach Shores zoning classification as follows:

> Short Tax Parcel ID # 5335-01-09-0110, as described in Exhibit "A" as attached, is assigned the P, Public/Quasi Public District Zoning Classification.

SECTION TWO: AMENDMENT OF OFFICIAL ZONING MAP. The Official City Zoning Map is hereby amended to conform with the rezoning assigned herein.

SECTION THREE. IMPLEMENTING ADMINISTRATIVE ACTIONS. The City Manager, or designee, is authorized to take any and all required administrative actions to implement the provisions of this Ordinance including, but not limited to, providing notice of this rezoning to the Volusia County Council in accordance with applicable law.

SECTION FOUR. NON-CODIFICATION. This Ordinance shall be not be codified in the *City Code of the City of Daytona Beach Shores* or the *Land Development Code of the City of Daytona Beach Shores*; provided, however, that the actions taken herein shall be depicted on the Official Zoning Map of the City of Daytona Beach Shores by the City Manager, or designee.

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

CITY OF DAYTONA BEACH SHORES, FLORIDA

_____
NANCY MILLER, MAYOR

_____ _____
MICHAEL T. BOOKER, CITY MANAGER **CHERI SCHWAB, CITY CLERK**

Approved as to form and legality:

_____

JOHN CARY, CITY ATTORNEY

Passed on first reading this _____ day of _____, 2022.
Adopted on second reading this _____ day of _____, 2022.

EXHIBIT A

LOTS 11 & 12 BLK 1 RIOMAR BCHES PER OR 5048 PG 2204 PER D/C 6035 PG 1222 PER OR 6071 PG 2897

PLANNING & ZONING BOARD AGENDA MEMORANDUM
JANUARY 10, 2022 AGENDA

TO: The Members of the Planning & Zoning Board
FROM: Stewart Cruz, City Planner
PREPARED BY: Stewart Cruz, City Planner
SUBJECT: Ordinance 2022-04: Treasure Island Development Agreement - 2025 S. Atlantic Avenue, Fraile St/Armstrong Ave, etc.

SYNOPSIS:

Ordinance 2022-04, if adopted, would approve a Development Agreement ("Agreement") between the City of Daytona Beach Shores and 2025 South Atlantic Avenue, LLC to permit the redevelopment of the Treasure Island properties (Exhibit A) and the demolition of the existing structure at the 2025 S. Atlantic Avenue property pursuant to the 2025 South Atlantic Avenue, LLC – City of Daytona Beach Shores Stipulated Settlement Agreement approved by the City Council on August 17, 2021 (Exhibit B).

The Agreement is a land use contract that would, among other things, effectuate Treasure Island Redevelopment Comprehensive Plan policies and the Stipulated Agreement land use entitlements and incentives providing for the land use and development flexibility that would foster the redevelopment of the Treasure Island properties. The existing Development Agreement approved in 2014 (Exhibit C) would be replaced and superseded by the proposed Agreement if approved.

The proposed Agreement provides two timeline scenarios for redevelopment, i.e. duration of the Agreement: (a) five (5) years to acquire a certificate of occupancy for a singular hotel/multifamily residential development on the combined Treasure Island and Sunny Shores parcels OR (b) five (5) years to acquire a certificate of occupancy for a hotel development on the Treasure Island parcel AND fifteen (15) years to acquire a certificate of occupancy for a multifamily residential development on the Sunny Shores parcel. In addition, the Agreement proposes restoration and maintenance standards to ensure the property is safe and aesthetic subsequent to demolition.

As of the writing of this synopsis, the owner of the property has NOT agreed to either the proposed duration or restoration/maintenance provisions of the proposed Agreement. Staff has agendized this item in an effort to initiate the 120 day demolition clock, which will start subsequent to the approval of the Agreement. If the owner and City fail to agree to the terms of an approved Agreement, then the matter of the unsafe building at 2025 S. Atlantic Avenue will return before the Special Magistrate.

The Agreement provides for a development containing 300 hotel units and 200 multifamily residential

units. However, the development criteria in the Agreement provides a general development framework and as such, the final development product may vary from the development concepts attached in the Agreement. If the ordinance is adopted and Agreement approved, the applicant will subsequently submit detailed site development plans to the City for review. These site development plans will require public hearings for a recommendation and approval by the Planning and Zoning Board and the City Council, respectively.

FISCAL IMPACT STATEMENT:

BACKGROUND:

I. SUMMARY BACKGROUND

Ordinance 2022-04, if adopted, would approve a Development Agreement ("Agreement") between the City of Daytona Beach Shores and 2025 South Atlantic Avenue, LLC to permit the redevelopment of the Treasure Island properties (Exhibit A) and the demolition of the existing structure at the 2025 S. Atlantic Avenue property pursuant to the 2025 South Atlantic Avenue, LLC – City of Daytona Beach Shores Stipulated Settlement Agreement approved by the City Council on August 17, 2021 (Exhibit B). This will enable the owner/developer to redevelop the Treasure Island and Sunny Shores parcels with a development containing 300 hotel units and 200 residential units.

II. PROPERTY DESCRIPTION

The Treasure Island properties contain nine (9) parcels located on the east and west sides of the 2000 block of S. Atlantic Avenue and the corners of Fraile and Armstrong streets. The 2025 S. Atlantic Avenue parcel is currently occupied by an 11-storey abandoned shell structure, which formerly hosted the Treasure Island Hotel. All other properties are vacant but were once developed with tourism-related structures. Combined, the Treasure Island properties total approximately 4.89 upland acres and 1.58 acres east of the bulkheadline.

III. PROPOSED AMMENDMENT

The highlights of the proposed Agreement (Exhibit D) are:

1. Agreement Duration: Two scenario options: (a) five (5) years to acquire a certificate of occupancy for a singular hotel/multifamily residential development on the combined Treasure Island and Sunny Shores parcels OR (b) five (5) years to acquire a certificate of occupancy for a hotel development on the Treasure Island parcel AND fifteen (15) years to acquire a certificate of occupancy for a multifamily residential development on the Sunny Shores parcel.
2. Property Preparation and Maintenance: The site will have to be adequately restored and maintained subsequent to demolition in order to ensure the property is safe and aesthetic.
3. Effective Date of Entitlements and Incentives: Entitlements and incentives articulated in the Agreement will inure to the benefit of the owner subsequent to demolition and restoration of the site.
4. Development Permitted: the Agreement provides a general development framework that would facilitate the redevelopment of the east side parcels with 300 hotel units and 200 multifamily residential units. The final site plan and development may vary provided they remain in substantial compliance with the framework. Any substantial changes will require City Council approval.
5. Deviations Granted: To realize number 4 above, several deviations from the City's Land Development Code are granted.

IV. DUE PUBLIC NOTICE

Evidence of due public notice has been submitted to the City Clerk.

LEGAL REVIEW:

For review and recommendation.

RECOMMENDATION:

Staff recommends approval of Ordinance 2022-04 as presented.

SUGGESTED MOTION:

A Planning and Zoning Board member may motion as follows:

1. "I move to recommend approval of Ordinance 2022-04 as presented."
OR
2. "I move to recommend approval of Ordinance 2022-04, with the following amendments..."
OR
3. "I move to recommend denial of Ordinance 2022-04 on the basis of the following..."

ATTACHMENT:

1. Ordinance 2022-04 TI DA
2. EXHIBIT A-Location Map
3. EXHIBIT B-Stipulated Agreement
4. EXHIBIT C-Existing Development Agreement
5. Exhibit D-Amended and Restated Development Agreement - Treasure Island- JC 1-5 -SC-1-5-22 Clean
6. EXHIBIT D-Proposed Develpoment Agreement Exhibits

ORDINANCE 2022-04

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO APPROVAL OF A DEVELOPMENT AGREEMENT PERTAINING TO PROPERTIES OWNED BY 2025 SOUTH ATLANTIC AVENUE, LLC IN ACCORDANCE WITH THE PROVISIONS OF THE "FLORIDA LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT" AS SET FORTH AT SECTIONS 163.3220 - 163.3243, *FLORIDA STATUTES*; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR CONFLICTS, PROVIDING FOR A SAVINGS PROVISION AND THE EFFECT OF THE ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AS WELL AS THE CORRECTION OF SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, 2025 South Atlantic Avenue, LLC and the City of Daytona Beach Shores have considered and processed and the City Council of the City of Daytona Beach Shores hereby approves and enacts the Development Agreement, as set forth in the Exhibit to this Ordinance (which Exhibit is incorporated herein by this reference thereto as if fully set forth herein verbatim), all of said actions occurring pursuant to the *Florida Local Government Development Agreement Act* as set forth at Sections 163.3220 through 163.3243, *Florida Statutes*; and

WHEREAS, 2025 South Atlantic Avenue, LLC is the owner of the properties that are subject to this Development Agreement set forth in the Exhibit to this Ordinance; and

WHEREAS, the City of Daytona Beach Shores and 2025 South Atlantic Avenue, LLC have complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

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

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

SECTION ONE: LEGISLATIVE FINDINGS AND INTENT.

(a). The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance the City staff report and City Council agenda memorandum relating to the application relating to the proposed land use approvals and authorization of zoning entitlements pertaining to the property referenced in the Development Agreement as well as the recitals (whereas clauses) to this Ordinance.

(b). The findings of the provisions of the subject Development Agreement between the City of Daytona Beach Shores and 2025 South Atlantic Avenue, LLC are hereby adopted, ratified and affirmed.

SECTION TWO: APPROVAL AND ENACTMENT OF DEVELOPMENT AGREEMENT.

The Development Agreement between the City of Daytona Beach Shores and 2025 South Atlantic Avenue, LLC as set forth in the Exhibit to this Ordinance is hereby approved and enacted. The said Exhibit attached to this Ordinance is hereby ratified and affirmed and incorporated into this Ordinance as a substantive part of this Ordinance

SECTION THREE: SAVINGS; EFFECT OF ORDINANCE.

The prior actions of the City of Daytona Beach Shores relating to the regulation of lands and development activities within the City including, but not limited to, the property which is the subject of the Development Agreement between the City of Daytona Beach Shores and 2025 South Atlantic Avenue, LLC as set forth in the Exhibit to this Ordinance, and involving the subject property, are hereby ratified and affirmed.

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

(a). The provisions of this Ordinance shall be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida*.

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

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

(d). The sections, divisions and provisions of this Ordinance may be renumbered or re-lettered as deemed appropriate by the Code codifier.

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

SECTION FIVE: CONFLICTS.

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

SECTION SIX: SEVERABILITY.

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

SECTION SEVEN: EFFECTIVE DATE.

This Ordinance shall take effect immediately as provided by law.

CITY OF DAYTONA BEACH SHORES, FLORIDA

_____
NANCY J. MILLER, MAYOR

_____ _____
MICHAEL T. BOOKER, CITY MANAGER **CHERI SCHWAB, CITY CLERK**

Approved as to form:

_____
BECKY VOSE, CITY ATTORNEY

Passed on first reading this __ day of _____, 2022.

Enacted on second reading this __ day of _____, 2022.

DEVELOPER SIGNATURE BLOCK FOLLOWS:

PLENARY CONCURRENCE OF DEVELOPER

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

2025 South Atlantic LLC, a Florida limited liability company.

_____
Mark Fogel, Member CEO
Date:_____, 2022

WITNESSES:

_____ _____
Signature of Witness Signature of Witness

_____ _____
Printed Name of Witness Printed Name of Witness

STATE OF FLORIDA)

COUNTY OF VOLUSIA)

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

Witness my hand and official seal in the County and State last aforesaid this ___ day of _____, 2022.

(Affix Notary Seal)

_____
Notary Public; State of Florida
Print Name: _____

EXHIBIT B

FIGURE1: Treasure Island Properties - Aerial Location Map

Source: GoogleMaps 2021

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 7033, Page 3645 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 and 531618000110 (collectively 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 meet the standards for installation of a breezeway, as set forth in the LDC, except as modified herein. The development shall meet 60% of the breezeway/visual corridor length required under 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. 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.
    v. 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, 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 if 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 23 day of August, 2021.

Signed, sealed and delivered in the presence of:

Kurt D. Swartzlander
Printed Name of Witness 1

Michael L. Booker
Printed Name of Witness 2

PETITIONER

THE CITY OF DAYTONA BEACH SHORES, a Florida municipal corporation

By: Nancy Miller
Nancy Miller, Mayor

Attest:

By: Cheri Schwab
Cheri Schwab, City Clerk

Date: 8/23/2021

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.

CHERYL LEE THIBAULT MY COMMISSION EXPIRES APRIL 24, 2022 #GG 205439 Bonded thru Notary Public Underwriters NOTARY PUBLIC, STATE OF FLORIDA

Cheryl Lee Thibault
Notary Public
Commission No: 4-24-2022

Signed, sealed and delivered in the presence of:

Witness 1

James Reiser
Print Name of Witness 1

Witness 2

KUNAL KATARIA
Print Name of Witness 2

PROPERTY OWNER

2025 SOUTH ATLANTIC AVENUE LLC, a limited liability company

By:
Name: Mark Fogel
Its: Member CEO

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☑ physical presence or ☐ online notarization, this 18 day of August, 2021, by Mark Fogel as Member CEO 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. _____

GUY R. MILONE, JR.
NOTARY PUBLIC-STATE OF NEW YORK
No. 02MI6376609
Qualified in Nasau County
My Commission Expires 06-18-2022

Approved as to legal form:

By: _____
John Cary, City Attorney

Exhibit A

Conceptual Plan

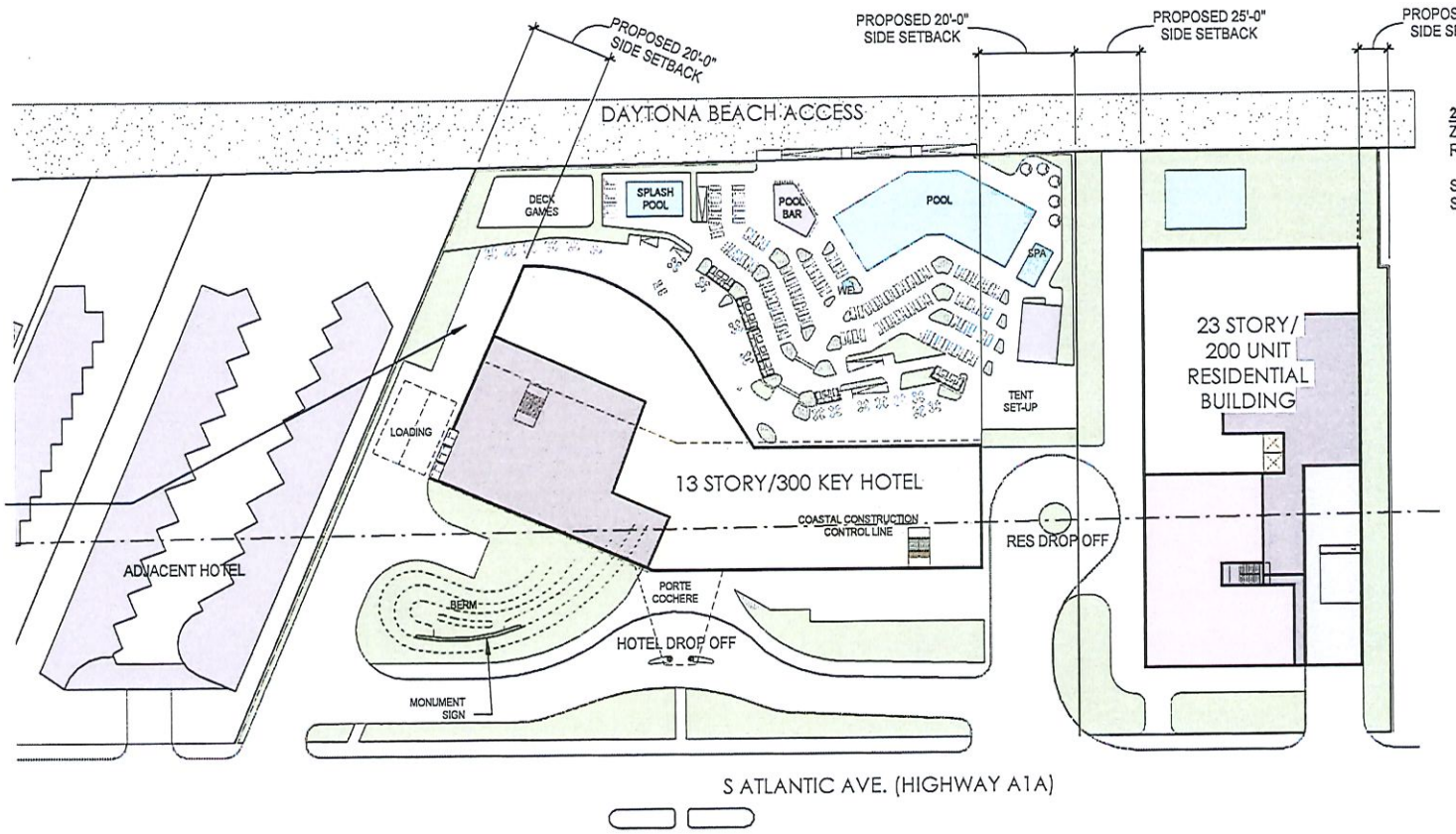
2025 S. ATLANTIC AVE.
Zoned: T-RMF-1 (Hotel or Residential Multi-Family)

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'

NORTH

DLR Group | CONCORD HOSPITALITY

SCALE: 1" = 60'

TEST FIT - DAYTONA, FL

SITE PLAN

2021.08.04

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.

09/18/2014 01:57 PM
Instrument# 2014-169004 # 1
Book: 7033
Page: 3645

This Instrument Prepared By:
Lonnie N. Groot, Esquire
Stenstrom, McIntosh, Colbert,
& Whigham, P.A.
1001 Heathrow Park Lane, Suite 4001
Lake Mary, Florida 32746

Return To:
Ms. Cheri Schwab
City Clerk
2990 South Atlantic Avenue
Daytona Beach Shores, Florida 32118

TREASURE ISLAND RESORT FLORIDA, LLC./CITY OF DAYTONA BEACH SHORES DEVELOPMENT AGREEMENT PERTAINING TO RE-DEVELOPMENT OF TREASURE ISLAND PROPERTY

THIS DEVELOPMENT AGREEMENT is made and entered into on the Effective Date described below, between **TREASURE ISLAND RESORT FLORIDA, LLC**, a Delaware Limited Liability Company, whose address is C/O Mark Watts; Cobb & Cole; 351 East New York Avenue; Suite 200; DeLand, Florida 32724, the legal and equitable owner, hereinafter referred to as the "PROPERTY OWNER", and the **CITY OF DAYTONA BEACH SHORES, FLORIDA**, a municipal corporation of the State of Florida, (the "Landlord"), holding tax exempt status, whose mailing address is 2990 South Atlantic Avenue, Daytona Beach Shores, Florida 32118, hereinafter referred to as "CITY".

WITNESSETH:

WHEREAS, the PROPERTY OWNER is the owner of real property located in Daytona Beach Shores (Exhibit A) (referred to from time to time as the "premises" in this Development Agreement and which is the subject of the site plan and architectural plans referenced herein); and

WHEREAS, the PROPERTY OWNER and the CITY have a great interest in developing and re-developing an active and vibrant site, specifically, and to

benefit economy and well-being of the CITY as a general matter; and

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

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

WHEREAS, pursuant to the Florida Local Government Development Agreement Act as set forth at Sections 163.3220 through 163.3243, *Florida Statutes*, local governments are authorized to adopt, by ordinance, procedures and requirements whereby a local government may consider and enter into a development agreement with any person having a legal or equitable interest in real property located within the local government's jurisdiction and the CITY enacted Ordinance 2013-10 to implement the provisions of the referenced statutory provisions; and

WHEREAS, the lack of certainty in the approval of development can result in a waste of economic and land resources; discourage sound capital improvement planning and financing; escalate the cost of housing and development; and discourage commitment to comprehensive planning and the CITY and the PROPERTY OWNER desire to engage in sound and long range planning with regard to the premises in a manner that protects the investment backed expectations and rights of the PROPERTY OWNER while providing for

an array of benefits to the citizens of the CITY; and

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

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

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

land use requirements; and

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

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

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

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

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

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

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

SECTION 1. RECITALS/FINDINGS.

(a). The recitals, set forth above, are true and correct and form a material part of this Development Agreement upon which the parties have relied.

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

SECTION 2. PREMISES.

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

(LEGAL DESCRIPTION) – See attached " Exhibit "B" to this Development Agreement.

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

SECTION 3. TERMS AND CONDITIONS RELATIVE TO THE PREMISES.

(a). PROPERTY OWNER has provided the CITY with a structural engineering analysis of the existing conditions present on the premises and shall provide a visual inspection update to said report in writing annually on or before the 1st of April of each year which report shall include an inspection by the structural engineer referenced herein. The provided analysis demonstrates that the existing structure is of such condition that it may remain in place, with the implementation and completion of ongoing efforts as detailed herein or as additionally deemed necessary by the PROPERTY OWNER or the CITY, pending redevelopment. The PROPERTY OWNER shall have a continuing obligation to maintain the premises and shall continually put forth its best efforts in doing so.

(b). In order to assist the redevelopment of the premises, to the extent consistent with its jurisdictional authority as a local governing body of a municipality, the CITY agrees to consider public private partnerships or other possible economic development incentives to encourage redevelopment of the premises. The specific nature and scope of any such incentives will be determined through potential subsequent discussion and agreements between the PROPERTY OWNER, CITY and potential third party development partners as may be enacted by the City Council or otherwise approved by the City Council in the course of its actions as the governing body of the City of Daytona Beach Shores. The PROPERTY OWNER agrees to cooperate with the CITY with

regard to the promotion of the CITY as a tourist destination and to benefit the CITY economically.

(c). PROPERTY OWNER agrees that it will diligently pursue and ensure, insofar as possible, that all potential windborne debris within the existing structure or located upon the premises will be removed. The PROPERTY OWNER agrees that such items include all loose materials and materials that could be wind borne in the event of a storm event as well as any systems that are not structurally sound when other systems of the building are removed as determined by a licensed and qualified engineer, and specifically includes those items as described in a memorandum of understanding between the PROPERTY OWNER and the CITY by Fred Hiatt, Senior Building Official, as attached hereto as Exhibit C, with the goal of bringing the building to a concrete shell status. The PROPERTY OWNER shall apply for a demolition permit relating to such work within seven (7) days of the Effective Date of this Agreement and such debris shall be removed within ninety (90) calendar days from the date of the issuance of a demolition permit from the City the application for which permit is attached hereto as an exhibit.

(d). Contingent upon the PROPERTY OWNER's compliance with the terms of this Agreement, as approved by the CITY, the CITY agrees to waive all permit fees associated with demolition permits (but not redevelopment or renovation fees) required for removal of windborne debris or other permits associated with paragraph c. above.

(e.) The PROPERTY OWNER agrees that the PROPERTY OWNER shall exercise diligent efforts to maintain and keep the premises secure and has a continuing obligation to maintain the premises and to keep the premises secure by installing and maintaining perimeter fencing around the premises and securing the first two floors of the premises pending redevelopment, including the removal of the stairs to the znd floor near the main building entrance on the west side of the building and block-in filling of both openings to the remaining stairs located at the north and south ends of the building. Further, the PROPERTY OWNER agrees to cover and secure the existing pools and spas and remove, within ninety (90) calendar days from the Effective Date or the issuance of a demolition permit from the CITY, whichever is later, all ancillary and accessory structures on premises not previously removed.

(f). The parties agree that, pending redevelopment, if the premises is defaced with graffiti or otherwise, either the PROPERTY OWNER or the CITY may remedy same at the cost of the PROPERTY OWNER of the Property. The CITY shall give notice to legal counsel for the PROPERTY OWNER if the premises are defaced with graffiti or otherwise, and of the CITY's intent to rectify the issue, prior to conducting any related work thereon. The parties agree that if the PROPERTY OWNER does not rectify such issue(s) within fifteen (15) calendar days of the CITY's notice thereof, the CITY may remedy same at the cost of the PROPERTY OWNER of the premises.

(g). The parties agree that the PROPERTY OWNER shall provide the CITY with monthly written updates as to the progress of work completed upon

the premises. The parties agree that the PROPERTY OWNER shall update the CITY as to progress by emailing an update to the Building Official of the City, Mr. Fred Hiatt, as requested by the CITY, but no more than once per month. The PROPERTY OWNER, further, agrees to provide the CITY with monthly updates as to potential development and redevelopment negotiations and opportunities pertaining to the premises subject, however, to confidentiality, and similar, agreements to which the PROPERTY OWNER may be bound.

(h). The PROPERTY OWNER currently holds title to adjacent property known as the "Sunny Shores" Parcel and another parcel located on the west side of State Road A1A. In order to encourage the development of a unified plan to redevelop the properties, the CITY and the PROPERTY OWNER agree as follows: In addition to the vested hotel density for the existing Treasure Island and Sunny Shore's parcels, additional hotel density may be developed at a rate of 70 units per acre, and 60 units per acre for residential condominium development, for the area included in an extension of the parcels identified by Volusia County Parcel Identification numbers 5316-18-00-0010, 5316-18-00-0090 and 5316-18-00-0110, due east from the seawall or bulkhead line to the mean high water line of the Atlantic Ocean.

(i). Impact fees and other funding requirements for the project on the premises are as established by controlling law and shall be met in the normative course and processes of development.

(j). All development permits normatively needed to be approved for the development of the premises shall be subject to the review and approval

processes during the course of the development of the premises; provided, however, that, it is noted that no Comprehensive Plan amendments or changes in land use designations or changes in zoning classifications/districts assigned to property are necessitated by the development approved for the premises nor any required submissions to or approvals from Volusia County; the State of Florida, Departments of Economic Opportunity, Environmental Protection, Transportation, or such other department or agency of the State as may be applicable; the United States Army Corps of Engineers; the St. Johns River Water Management District; the United States Environmental Protection Agency or any other federal departments or agencies with competent jurisdiction over any aspect of the approved development, but such requirements are not precluded by this Development Agreement.

(k). The failure of this Development Agreement to address a particular permit, condition, term or restriction shall not relieve the PROPERTY OWNER of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restrictions.

SECTION 4. REASONABLE APPROVAL.

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

SECTION 5. REMEDIES.

(a). Each party shall have any and all remedies as permitted by law;

provided, however, that the parties agree to provide for positive dialogue and communications if disputes or disagreements arise as to the interpretation or implementation of this Development Agreement.

(b). The PROPERTY OWNER acknowledges and agrees that the CITY retains its rights and privileges of its police power, code enforcement actions, and proceedings and, without limiting the generality of the foregoing, actions pursuant to CITY Ordinance Number 2014-02.

SECTION 6. TIME IS OF THE ESSENCE.

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

SECTION 7. HEADINGS/CAPTIONS.

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

SECTION 8. FORCE MAJEURE.

No party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, terrorism, hurricane, explosion, any law, proclamation, regulation, or ordinance or other act of government, or any act of God or any cause whether of

the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

SECTION 9. DEVELOPMENT AGREEMENT BINDING; RUNS WITH THE LAND.

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

(b). This Development Agreement touches and concerns the premises and shall run with the land and shall be binding upon and inure to the benefit and burden of the parties hereto and their respective successors and assigns.

SECTION 10. EXHIBITS.

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

SECTION 11. PUBLIC RECORDS.

The PROPERTY OWNER shall allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, Florida Statutes, and other controlling law and which have been made or received by the

PROPERTY OWNER in conjunction with this Development Agreement and shall adhere to the controlling provisions of State law relating to public records.

SECTION 12. EQUAL OPPORTUNITY.

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

SECTION 13. CONFLICT OF INTEREST.

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

SECTION 14. COMPLIANCE WITH LAWS AND REGULATIONS.

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

regulations shall constitute a material breach of this Development Agreement.

SECTION 15. NOTICES.

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

For the CITY:

Mr. Michael T. Booker
City Manager
City of Daytona Beach Shores
2990 South Atlantic Avenue
Daytona Beach Shores, Florida 32118

For the PROPERTY OWNER:

Mark Watts, Esquire
Cobb & Cole
351 East New York Avenue, Suite 200
DeLand, Florida 32724

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

SECTION 16. INTERPRETATION/APPLICABLE LAW/VENUE.

The laws of the State of Florida shall govern this Development Agreement. Any legal action necessary arising out of the Development Agreement will have its venue in Volusia County and the Development Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other further exercise thereof. Waiver of a default shall not be deemed a waiver of any subsequent defaults. In any action

brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs. The specific provisions of this Development Agreement shall prevail over the generality of the foregoing. In any action or proceeding required to enforce or interpret the terms of this Development Agreement, venue shall be in the Seventh Judicial Circuit Court in and for Volusia County, Florida.

SECTION 17. CONSTRUCTION OR INTERPRETATION OF THE DEVELOPMENT AGREEMENT.

This Development Agreement is the result of bona fide arms length negotiations between the parties and all parties have contributed substantially and materially to the preparation of the Development Agreement. Accordingly, this Development Agreement shall not be construed or interpreted more strictly against any one (1) party than against any other party both parties having participated in the drafting of this Development Agreement. Whenever a decision is provided for herein which is to be made by the CITY, such decision must be in writing in order to be binding upon the CITY.

SECTION 18. ENTIRE DEVELOPMENT AGREEMENT/MODIFICATION.

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

parties to this Development Agreement.

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

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

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

SECTION 19. THIRD PARTY BENEFICIARIES/TRANSFERABILITY.

(a). The CITY shall not be liable to any person, firm or corporation who

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

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

SECTION 20. ATTORNEYS FEES AND COSTS.

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

SECTION 21. SEVERABILITY.

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

SECTION 22. EFFECTIVE DATE/TERMINATION: PERIODIC REVIEW OF DEVELOPMENT AGREEMENT.

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

(b). This Development Agreement shall be in effect for a period of ten (10) years, but may be extended by mutual consent of the CITY and the PROPERTY OWNER in accordance with the controlling provisions of law. Any request for an extension shall be subject to the public hearing process necessary

for the initial approval of said Development Agreement; provided, however, that the City has concluded that the vested rights of the PROPERTY OWNER and the investment backed expectations of the PROPERTY OWNER warrant a renewal and continuation of the development approved for the premises herein consistent with the agreements between the parties and contingent upon the condition of the Subject Property.

(c). Prior to the completion of the project and at the issuance of a certificate of completion by the City, the City shall review this Development Agreement as well as at least once every twelve (12) months to determine if there has been demonstrated good faith compliance with the terms of the Development Agreement.

SECTION 23. COUNTERPARTS.

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

SIGNATURE PAGES FOLLOW

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

ATTEST:

Cheri Schwab, City Clerk

Michael T. Booker, City Manager

Approved as to form and legality:

Lonnie Groot, City Attorney

CITY OF DAYTONA BEACH SHORES

Harry Jennings, Mayor
Date: 8/12/14

PROPERTY OWNER'S CONSENT AND COVENANT

COMES NOW, _____, on behalf of Treasure Island Resort Florida, LLC and its heirs, successors, assigns or transferees of any nature whatsoever, and acknowledges that the City and the Developer desire to set forth certain terms, conditions, and agreements with respect to the development of the Project. Accordingly, the Applicant consents to, agrees with and covenants to perform and fully abide by the provisions, terms, conditions and commitments set forth in this document.

WITNESSES:

_____

_____

_____

PROPERTY OWNER:

TREASURE ISLAND RESORT FLORIDA, LLC, a Delaware limited liability company

_____

Kenneth R. Trappier
Executive Vice President

STATE OF PENNSYLVANIA)

COUNTY OF Phila)

The foregoing instrument was acknowledged before me this Aug day of 27, 2014 by Kenneth Trappier who are personally known to me or who have produced _____ as identification(s).

_____

NOTARIAL SEAL
RENEE D FOSTER
Notary Public
PHILADELPHIA CITY, PHILADELPHIA CNTY
My Commission Expires Jan 20, 2018

NOTARY PUBLIC, STATE OF ~~FLORIDA~~ PA
Name: Renee D. Foster
Commission No.: _____
My Commission Expires: 1/20/18

EXHIBIT A

Exhibit A

Volusia County Appraisers Office

The Volusia County Property Appraiser makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The values shown in the Total Values section at the end of the Property Record Card are "Working Tax Roll" values, as our valuations proceed during the year. These Working Values are subject to change until the Notice of Proposed Taxes (TRIM) are mailed in mid-August. For Official Tax Roll Values, see the History of Values section within the property record card below.

Instrument# 2014-169004 # 24
Book: 7033
Page: 3668

Volusia County Property Appraiser's Office

Last Updated: 07-29-2014
Today's Date: 8-4-2014

Property Record Card (PRC)
Morgan B. Gilreath Jr., M.A., A.S.A., C.F.A.
Property Appraiser

Volusia County FLORIDA

Full Parcel ID	16-15-33-18-00-0010	**Mill Group**	403 Daytona Beach Shores
Short Parcel ID	5316-18-00-0010		
Alternate Key	3414055	**2013 Final Millage Rate**	25.01260
Parcel Status	Active Parcel	**PC Code**	39
Date Created	29 DEC 1981		
Owner Name	TREASURE ISLAND RESORT FL LLC		[GO TO ADD'L OWNERS]
Owner Name/Address 1	C/O RAIT FIN TRST CIRA CENTRE		
Owner Address 2	2929 ARCH ST 17TH FLOOR		
Owner Address 3	PHILADELPHIA PA		
Owner Zip Code	19104		
Location Address	2025 S ATLANTIC AV DAYTONA BEACH SHORES 32118		

LEGAL DESCRIPTION **[GO TO ADD'L LEGAL]**

LOTS 1 TO 8 INC & LAND LYING E OF SAME & SHORE RTS SCHULTE P ARK PER OR 4419 PG 1485 PER OR 6652 PG 2150 PER OR 6674 PG 0

SALES HISTORY **[GO TO ADD'L SALES]**

#	BOOK	PAGE	DATE	INSTRUMENT	QUALIFICATION	IMPROVED?	SALE PRICE
1	6674	0598	1/2012	Quit Claim Deed	Unqualified Sale	Yes	100
2	6652	2150	11/2011	Warranty Deed	Unqualified Sale	Yes	100
3	4419	1485	3/1999	Trustee's Deed	Multi parcel sale	Yes	10

HISTORY OF VALUES

[GO TO ADD'L H

YEAR	LAND	BLDG(S)	MISC	JUST	ASD	SCH ASD	NS ASD	EXEMPT	TXBL	SCH TXBL	ADD'L EX
2013	478,915	552,267	63,826	1,095,008	1,095,008	1,095,008	1,095,008	0	1,095,008	1,095,008	0
2012	520,560	511,870	61,432	1,093,862	1,093,862	1,093,862	1,093,862	0	1,093,862	1,093,862	0

LAND DATA

CODE	TYPE OF LAND USE	FRONTAGE	DEPTH	# OF UNITS	UNIT TYPE	RATE	DPH	LOC	SHP	PHY	J V
3930	OCEAN FRT HOTEL/MOTL	No Data	No Data	108450.00	SQUARE FEET	24.00	100	100	80	23	47

NEIGHBORHOOD CODE C5564 DBS- OCEANFRONT

TOTAL LAND CLASSIFIED 0
TOTAL LAND JUST 478,915

BUILDING CHARACTERISTICS

BUILDING 1 OF 2 [GO TO BLDG SKETCH]

Physical Depreciation %	22	**Next Review**	**Obsolescence**	**Functional**	95%
		Year Built 1974		**Locational**	0%
Quality Grade	350			**Base Perimeter**	2352

BUILDING CHARACTERISTICS

PROPERTY TYPE	**Hotel or Motel**	**EXTERIOR WALL TYPE**	**%**
STRUCTURE TYPE	**Reinforced Concrete**	**CONCRETE BLOCK, STUCCO**	**100**

BUILDING REFINEMENTS

Description	# of Units	Unit Type
Elevator Shaft	3	UB
Elevator Landing	33	UB
RES. UNIT	232	UB
Baths, 3-Fixture	232	UB
Extra Fixture	59	UB

Section #	Wall Height	# Of Stories	Year Built	Bsmt %	Ground Floor Area	Interior Finish(es)	%	Sprinkler	AC?
1	9.00	1	1974	0.00	470	Hotel	100.00	No	Yes
2	9.00	11	1974	0.00	11051	Hotel	89.00	No	Yes
						Hotel	11.00	Yes	Yes
3	9.00	1	1974	0.00	1740	Hotel	100.00	No	Yes

4	9.00	2	1974	0.00	10537		Hotel	50.00	No	Yes
							Hotel	50.00	Yes	Yes

BUILDING 2 OF 2 [GO TO BLDG SKETCH]

Physical Depreciation %	28	**Next Review**		**Obsolescence**	**Functional** 95%
		Year Built	1977		**Locational** 0%
Quality Grade	350				**Base Perimeter** 206

BUILDING CHARACTERISTICS

PROPERTY TYPE	**Hotel or Motel**	**EXTERIOR WALL TYPE**	**%**
STRUCTURE TYPE	**Concrete / Masonry Walls**	**CONCRETE BLOCK, STUCCO**	**100**

BUILDING REFINEMENTS

Description	# of Units	Unit Type
Baths, 2-Fixture	1	UB
Baths, 3-Fixture	1	UB

Section #	Wall Height	# Of Stories	Year Built	Bsmt %	Ground Floor Area	Interior Finish(es)	%	Sprinkler	AC?
5	9.00	1	1977	0.00	1870	Restaurant, drive-in, fast food	100.00	No	Yes

MISCELLANEOUS IMPROVEMENTS

TYPE	NUMBER UNITS	UNIT TYPE	LIFE	YEAR IN	GRADE	LENGTH	WIDTH	DEPR. VALUE
SEAWALL	336	LF	45	1974	5	0	0	9,152
CANOPY	2337	SF	45	1974	5	0	0	8,380
PAVING CONCRET	2620	SF	15	1974	5	0	0	6,162
PAVING ASPHALT	46798	SF	6	1974	1	0	0	16,473
SWM POOL CHLDN	144	SF	30	1974	3	0	0	364
SWM POOL ADULT	1594	SF	30	1974	1	0	0	8,193
SWM POOL ADULT	726	SF	30	1985	2	0	0	3,957
SAUNA	1	UT	10	1985	3	0	0	340
GAZEBO	36	SF	25	1985	3	0	0	58
LIGHT PK LOT	18	UT	20	1985	2	0	0	1,425
WHIRLPOOL BATH	72	SF	30	1987	3	0	0	799
DECK WOOD	3600	SF	25	1987	4	0	0	7,387
FENCE WOOD	36	LF	10	2001	2	0	0	85
FENCE CHAIN LK	632	LF	15	2011	2	0	0	1,734

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PLANNING AND BUILDING

[GO TO ADD'L PERMITS]

PERMIT NUMBER	PERMIT AMOUNT	DATE ISSUED	DATE COMPLETED	DESCRIPTION	OCCUPANCY NBR	OCCUPANCY BLDG
0965	53,379.00	10-1-1983	12-1-1984	ADD TO LOBBY	0	
0973	746,621.00	11-1-1983	12-1-1984	2ND STORY ADDS	0	

TOTAL VALUES

The values shown in the Total Values section at the end of the Property Record Card are "Working Tax Roll" values, as our valuations proceed during the year. These Working Values are subject to change until the Notice of Proposed Taxes (TRIM) are mailed in mid-August. For Official Tax Roll Values, see the History of Values section above.

The Volusia County Property Appraiser makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation.

Land Value	478,915	**New Construction Value**	0
Building Value	486,603	**City Econ Dev/Historic Taxable**	0
Miscellaneous	64,509		
Total Just Value	1,030,027	**Previous Total Just Value**	1,095,008
School Assessed Value	1,030,027	**Previous School Assessed**	1,095,008
Non-School Assessed Value	1,030,027	**Previous Non-School Assessed**	1,095,008
Exemption Value	0	**Previous Exemption Value**	0
Additional Exemption Value	0	**Previous Add'l Exempt Value**	0
School Taxable Value	1,030,027	**Previous School Taxable**	1,095,008
Non-School Taxable Value	1,030,027	**Previous Non-School Taxable**	1,095,008

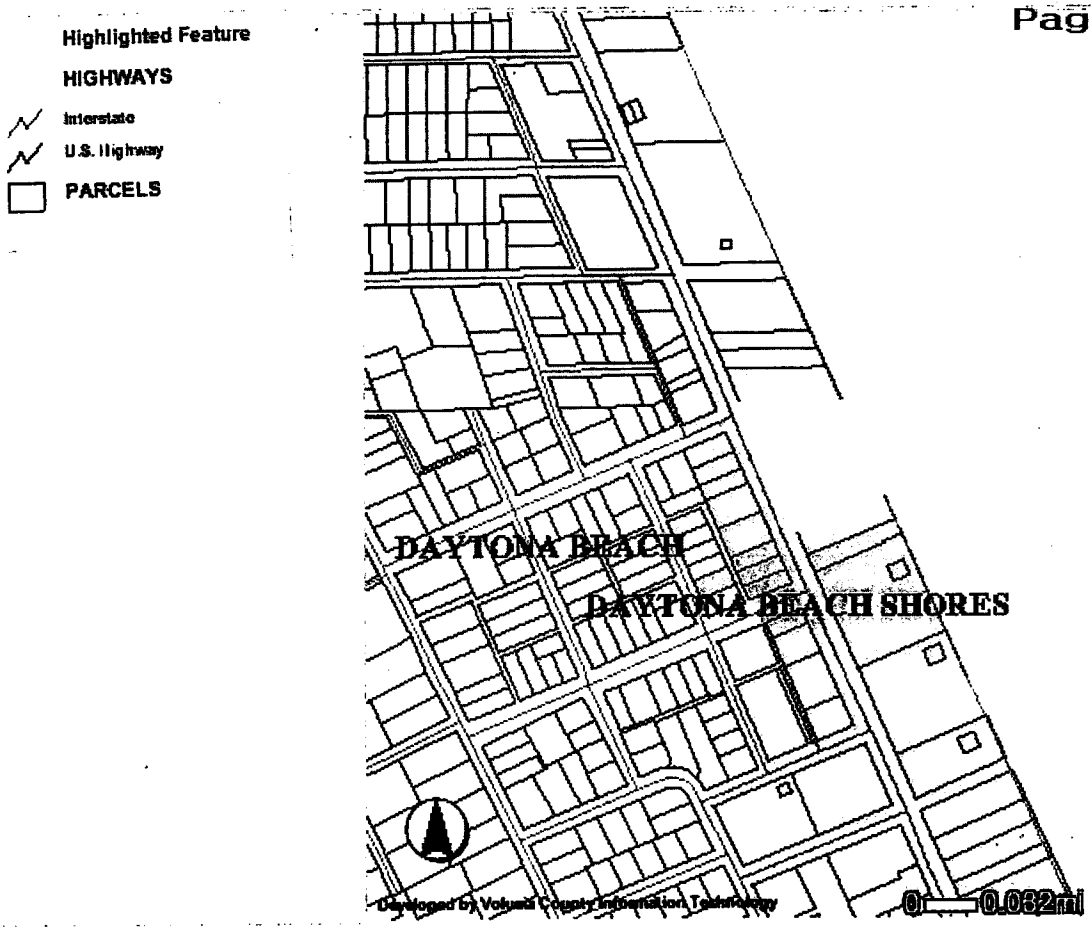
[MapIT][PALMS][Map Kiosk]

[Parcel Notes]

MapIT: Your basic parcel record search including sales.

PALMS: Basic parcel record searches with enhanced features.

Map Kiosk: More advanced tools for custom searches on several layers including parcels.



Volusia County Property Appraiser
123 W. Indiana Ave.
DeLand, Florida 32720
www.volusia.org/property/

EXHIBIT B

LEGAL DESCRIPTION

Instrument# 2014-169004 # 30
Book: 7033
Page: 3674

2025 S. Atlantic Avenue
Parcel: 5316-18-00-0010

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the County of Volusia, State of Florida described as follows:

PARCEL A:

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 24, 25 AND 26, SCHULTE PARK, H.B. SCHULTE'S SUBDIVISION, IN LOT 3 OF SECTION 16, TOWNSHIP 15 SOUTH, RANGE 33 EAST, AS PER MAP RECORDED IN MAP BOOK 5, PAGE 108, MAP BOOK 5, PAGE 117, AND MAP BOOK 5, PAGE 138, ALL OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, LESS THAT PORTION OF THE AFOREDESCRIBED PROPERTY TAKEN UNDER CONDEMNATION PROCEEDINGS FOR THE WIDENING OF SOUTH ATLANTIC AVENUE AND SUBJECT TO A 15 FOOT EASEMENT OVER THE NORTH LINE OF LOT 3 OF SECTION 16, TOWNSHIP 15 SOUTH, RANGE 33 EAST, RUNNING THROUGH LOTS 1 AND 2 OF THE AFOREMENTIONED PROPERTY FROM ATLANTIC AVENUE TO THE OCEAN FOR THE BENEFIT OF THE PUBLIC.

PARCEL B:

LOTS 27 AND 28, SCHULTE PARK, H.B. SCHULTE'S SUBDIVISION, IN LOT 3, SECTION 16, TOWNSHIP 15 SOUTH, RANGE 33 EAST, AS PER MAP IN MAP BOOK 5, PAGE 117 AND/OR 138, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, EXCEPTING THAT PORTION OF THE EASTERLY 30 FEET RELEASED FOR HIGHWAY PURPOSES.

PARCEL C:

LOT 23, SCHULTE PARK, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN MAP BOOK 5, PAGE 117 AND/OR 138, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, LESS THAT PORTION OF THE AFOREDESCRIBED PROPERTY TAKEN UNDER CONDEMNATION PROCEEDINGS FOR THE WIDENING OF SOUTH ATLANTIC AVENUE.

PARCEL D:

LOTS 8, 9 AND 10, ARMSTRONG SUBDIVISION, OF THE RECORD IN PLAT BOOK 9, PAGE 280 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

Exhibit B

2037 and 2041 S. Atlantic Avenue
Parcels: 5316-18-00-0090
5316-18-00-0110

Legal Description

Real property in the City of , County of Volusia, State of Florida, described as follows:

PARCEL 1:

LOT ELEVEN (11), SCHULTE PARK BEING A SUBDIVISION OF LOT THREE (3), SECTION SIXTEEN (16), TOWNSHIP FIFTEEN (15), SOUTH RANGE THIRTY-THREE (33) EAST, ACCORDING TO MAP IN MAP BOOK 5, PAGE 108, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; ALSO, THE NORTH 38.4 FEET LOT TWELVE (12), BLOCK ONE (1), COOK SUBDIVISION, IN MAP BOOK 1, PAGE 93, SECTION 15, TOWNSHIP 15 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA.

TOGETHER WITH:

THAT PORTION OF LOT 3, SECTION 16, TOWNSHIP 15 SOUTH, RANGE 33 EAST AND SECTION 15, TOWNSHIP 15 SOUTH, RANGE 33 EAST, BOUNDED ON THE WEST BY THE EAST LINE OF SCHULTE PARK SUBDIVISION, OF RECORD IN MAP BOOK 5, PAGE 138, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA AND THE EAST LINE OF COOK SUBDIVISION, OF RECORD IN MAP BOOK 1, PAGE 93, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, BOUNDED ON THE NORTH BY THE EASTERLY EXTENSION OF THE NORTH LINE OF LOT 11, OF SAID SCHULTE PARK SUBDIVISION, BOUNDED ON THE SOUTH BY THE EASTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 11 AND BOUNDED ON THE EAST BY THE EASTERLY EDGE OF A CONCRETE SEAWALL; ALL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS; BEGIN AT THE NORTHEAST CORNER OF SAID LOT 11, BEING THE EASTERLY COMMON CORNER OF LOTS 10 AND 11, SAID SCHULTE PARK SUBDIVISION; THENCE NORTH 66° 18' 56" EAST, ALONG SAID EASTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 11, 43.11 FEET TO THE EASTERLY EDGE OF A CONCRETE SEAWALL; THENCE SOUTH 24° 20' 02" EAST, ALONG SAID EASTERLY EDGE, 49.77 FEET, TO THE INTERSECTION WITH SAID EASTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 11; THENCE SOUTH 66° 20' 16" WEST, ALONG SAID EASTERLY EXTENSION, 43.64 FEET, TO SAID EAST LINE OF COOK SUBDIVISION, THENCE NORTH 23° 43' 08" WEST ALONG SAID EAST LINE OF COOK SUBDIVISION AND SAID EAST LINE OF SCHULTE PARK SUBDIVISION, 49.75 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

LOTS NINE (9) AND TEN (10), SCHULTE PARK, IN LOT THREE (3), SECTION 16, TOWNSHIP 15 SOUTH, RANGE 33 EAST, AND ACCORDING TO PLAT OF RECORD IN MAP BOOK 5, PAGE 138, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

TOGETHER WITH:

THAT PORTION OF LOT 3, SECTION 16, TOWNSHIP 15 SOUTH, RANGE 33 EAST AND SECTION 15, TOWNSHIP 15 SOUTH, RANGE 33 EAST, BOUNDED ON THE WEST BY THE EAST LINE OF SCHULTE PARK SUBDIVISION, OF RECORD IN MAP BOOK 5, PAGE 108, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, BOUNDED ON THE NORTH BY THE EASTERLY EXTENSION OF THE NORTH LINE OF LOT 9, OF SAID SCHULTE PARK SUBDIVISION, BOUNDED ON THE SOUTH BY THE EASTERLY EXTENSION OF THE SOUTH LINE OF LOT 10, SAID SCHULTE PARK SUBDIVISION AND BOUNDED ON THE EAST BY THE EASTERLY EDGE OF A CONCRETE SEAWALL; ALL BEING PARTICULARLY DESCRIBED AS FOLLOWS; BEGIN AT THE SOUTHEAST CORNER OF SAID LOT 10, BEING THE EASTERLY COMMON CORNER OF LOTS 10 AND 11, SAID SCHULTE PARK SUBDIVISION; THENCE NORTH 23° 43' 08" WEST ALONG SAID EAST LINE OF SCHULTE PARK SUBDIVISION, 100.35 FEET TO THE NORTHEAST CORNER OF SAID LOT 9; THENCE NORTH 66° 18' 56" EAST, ALONG SAID EASTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 9, 42.03 FEET TO THE EASTERLY EDGE OF A CONCRETE SEAWALL; THENCE SOUTH 24° 20' 02" EAST, ALONG SAID EASTERLY EDGE, 100.35 FEET, TO THE INTERSECTION WITH SAID EASTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 10; THENCE SOUTH 66° 18' 56" WEST, ALONG SAID EASTERLY EXTENSION, 43.11 FEET, TO THE POINT OF BEGINNING.

EXHIBIT C

Exhibit C

Instrument# 2014-169004 # 33
Book: 7033
Page: 3677

IMPLEMENTING MEMORANDUM OF UNDERSTANDING

SUBJECT: Memorandum Of Understanding: Implementation Of Development Agreement

The purpose of this Memorandum Of Understanding is to ensure that Section 3(c) of the Development Agreement between TREASURE ISLAND RESORT FLORIDA, LLC and the CITY OF DAYTONA BEACH SHORES, FLORIDA is implemented in accordance with the provisions of that Development Agreement.

ACCORDINGLY, it is understood and agreed by the parties as follows:

(a). The following building components shall be removed from the structure and grounds of the property known as Treasure Island:

(1). All drop ceiling components

(2). All glass, broken or intact

(3). All door and window frames

(4). All electrical components including wires, conduit, circuit breakers, switch gear, panels, junction boxes, outlets, switches, transformers, generators, fuel tanks, light fixtures, etc.

(5). All plumbing components including pipes, fixtures, toilets, sinks, tubs, etc.

(6). All mechanical system components including ductwork, compressors, air handlers, exhaust fans, associated pipes, etc.

(7). All roofing systems including bar joists, metal decking, tar, gravel, IsoBoard, modified bitumen components, shingles, plywood, underlayment, etc.

(8). All sprinkler system components including fire pumps, pipes, fuel tanks, etc.

(9). All elevator equipment

(10). All alarm system components

(11). All kitchen equipment and associated pipes including walk-in coolers and freezers

(12). All paneling, wall coverings, drywall, plywood, carpet, tile doors, wood and metal studs.

(13). All nails, screws, staples, and any other attachment devices

(14). All large and small equipment, shelving, racking, wood, signs, decoration, etc. either attached to the wall, floor, or ceiling or not attached

(15). The stairway to the 2nd floor near the main building entrance on the west side of the building

(16). All materials including concrete block associated with the bridge and fountain area on the central west side of the property

(17). All concrete block associated with the pool equipment structures on the central and east sides of the pool deck

(18). All floor tiles on the pool deck

(19). All loose concrete will be chipped out and removed

(b). With the intent of the foregoing being that anything in or on the building other than the concrete structure and the associated rebar and structural steel shall be removed; the following exceptions to that generalized statement are recognized:

(1). Elevator shaft openings shall be protected by pin-shot-attached chain link fencing in a method approved by a Florida P. E.

(2). Existing aluminum railings, where present and where verified that they are able to resist a 200 pounds per square foot load.

Instrument# 2014-169004 # 35
Book: 7033
Page: 3679
Diane M. Matousek
Volusia County, Clerk of Court

(3). Additional, temporary, screw-on handrails - provided that they are verified to be able to resist a 200 pounds per square foot load.

(4). Where conduit, wires, etc. are encased in concrete, they may be removed flush to the concrete edge.

(5). Pools and spas may remain, but shall be covered with Deck-Lock pool barriers and regularly inspected.

(6). Curbing and planters may remain in the parking areas.

(c). Additionally, it is agreed that easy access to the 2nd floor shall be permanently removed by block-in filling both openings to the remaining stairs located at the north and south ends of the building.

(d). Once the prescribed components have been removed from the building, the exposed edges and surfaces shall be painted to match the other recently painted areas.

CITY OF DAYTONA BEACH SHORES, FLORIDA

By: _____
Fred Hiatt
Senior Building Official

TREASURE ISLAND RESORT FLORIDA, LLC

By: _____
Printed Name: _____
Title: _____

Kenneth R. Frappier
Executive Vice President

This Instrument Prepared By:
Robert A. Merrell III, Esq.
Cobb Cole
149 S. Ridgewood Ave, St. 700
Daytona Beach, Florida 32114

Return To:
Ms. Cheri Schwab
City Clerk
2990 South Atlantic Avenue
Daytona Beach Shores, Florida 32118

AMENDED AND RESTATED TREASURE ISLAND DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into on the Effective Date described below, between 2025 SOUTH ATLANTIC AVENUE, LLC, a Delaware limited partnership, registered and authorized to conduct business in the State of Florida, hereinafter referred to as the "PROPERTY OWNER", and the CITY OF DAYTONA BEACH SHORES, FLORIDA, a municipal corporation of the State of Florida, holding tax exempt status, hereinafter referred to as "CITY".

W I T N E S S E T H:

WHEREAS, the PROPERTY OWNER is the owner of real property located at and in close proximity to 2025 South Atlantic Avenue, identified as Volusia County Tax Parcel Identification Numbers: 531618000010 (the "Treasure Island Parcel") 531618000090 and 531618000110 (collectively the "Sunny Shores Parcel"), 531618000270, 531618000250, 531618000240, 531618000230 (collectively, the "West A1A Parcel"), and 531621000090, 531621000080 (collectively, the "Fraile Street Parcel"), in Daytona Beach Shores, as further described on Exhibit "A" attached hereto (referred to from time to time as the "Property" in this Development Agreement and which is the subject of the exhibits referenced herein); and

WHEREAS, a portion of the Property is subject to that certain Statutory Development Agreement, recorded at O.R. Book 7033, Page 3645 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; and

WHEREAS, the CITY has established an alternative tax relief program pursuant to the authority granted in Chapter 10, Article III of the Municipal Code of Ordinances that applies to the Property; and

WHEREAS, the PROPERTY OWNER and the CITY wish to amend and restate said Development Agreement to incorporate additional property and clarify allowable development for the Property; and

WHEREAS, the PROPERTY OWNER and the CITY have a great interest in the development of the property in accordance with the CITY's comprehensive plan, official zoning map and *Land Development Code* to allow for a resort-focused development; and

WHEREAS, the CITY desires to provide for the orderly development of land within the

CITY in order to maintain a high quality of life for residents and businesses; and

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

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

WHEREAS, the lack of certainty in the approval of development can result in a waste of economic and land resources; discourage sound capital improvement planning and financing; escalate the cost of housing and development; and discourage commitment to comprehensive planning and the CITY and the PROPERTY OWNER desire to engage in sound and long range planning with regard to the Property in a manner that protects the investment backed expectations and rights of the PROPERTY OWNER while providing for an array of benefits to the citizens of the CITY; and

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

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

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

WHEREAS, development agreements are, essentially, a planning tool that allows public agencies greater latitude to advance local planning policies, sometimes in new and creative ways and, as such, development agreements may be viewed as an alternative to the traditional

development approval process which, in practice, it is commonly used in conjunction with; and

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

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

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

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

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

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

SECTION 1. RECITALS/FINDINGS.

a) The recitals, set forth above, are true and correct and form a material part of this Development Agreement upon which the parties have relied.

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

SECTION 2. PREMISES.

a) The property subject to this Agreement consists of approximately 5 +/- acres of real property and is described in Exhibit "A", attached hereto and by reference made a part hereof.

b) The CITY and PROPERTY OWNER have entered into that certain Stipulated Settlement Agreement between the parties, dated August 23, 2021, relating to the redevelopment of the Property, which forms the basis of this Agreement.

c) The Certificate of Vesting applicable to the property is included as Exhibit "B", attached hereto and by reference made a part hereof.

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

SECTION 3. DEVELOPMENT STANDARDS.

1. Development Criteria. The Property shall be developed in accordance with the City's Land Development Code (LDC), the Certificate of Vesting, and the terms and provisions set forth in this Agreement. In the event of a conflict between this Agreement and the LDC or other ordinances, this Agreement shall control. If this Agreement fails to address a particular subject or requirement, the applicable requirements of the Certificate of Vesting, LDC or other City ordinance shall control. In the event of a conflict between the Certificate of Vesting and the LDC or other ordinances, the Certificate of Vesting shall control.

a) The overall Property shall be developed in accordance with the following standards:

Density	Treasure Island /Sunny Shores Parcels: 300 hotel units, 200 multifamily units. Lot area shall be calculated from the mean high-water mark.
Retail/Commercial Intensity	West A1A/Treasure Island/Sunny Shores Parcels: 20,000 square feet
Building Height	Treasure Island /Sunny Shores Parcels**:** 23 stories West A1A Parcel: 45 feet
Loading Zone	Minimum of 1 stall per building
Breezeway/North South Building Width	Development shall meet 60% of the breezeway/visual corridor length required under the LDC; the requirement for a maximum North South Building Width shall be waived pursuant to this Agreement.
Lot Coverage	Treasure Island /Sunny Shores Parcels/West A1A Parcel: Maximum of 78%
Minimum Setbacks	**Treasure Island/Sunny Shores Parcels:** Front: 30 ft Rear (Oceanfront): Primary Structure 50 ft., Accessory Structure 10 ft Interior Side: Treasure Island Parcel 20 ft; Sunny Shores Parcel 25 ft Exterior Side: Treasure Island Parcel 20 ft; Sunny Shores Parcel 15 ft **West A1A Parcel:** Front: 12 ft. Rear: 10 ft. Side: 10 ft.
Parking	Off-site parking shall be allowed to meet the requirements of the LDC so long as the off-site parking lot is located within 280 feet of the Property.

*Lot area to be measured to the mean high-water line on the Property.

b) Permitted Uses: Permitted uses for the Property shall include the following:
    a. **Treasure Island/Sunny Shores Parcels:** Hotel, Multi-family Residential, Parking Garage Use, and customary accessory uses for Hotel and Multi-family Residential, including but not limited to restaurants, bars, conference and convention space, pool side structures, spas and health services, and related resort amenities, along with supporting retail or commercial services that do not exceed the intensity limitations set forth above. The Hotel and Multi-family residential uses may be located within a singular building or separate buildings, so long as the standards set forth herein are not exceed. Multi-family Residential uses may include individual residential units owned through a condominium form of ownership and held out for rental on a short-term basis in coordination with the proposed Hotel use.
    b. **West A1A Parcel:** Parking, Parking Garage Use, and customary accessory uses, along with supporting retail or commercial services that do not exceed the intensity limitations set forth above.
    c. **Fraile Street Parcel:** Parking, Parking Garage Use, and customary accessory uses.
c) Parking:
    a. In the event that structured parking is developed on the property, including the provision of parking levels associated with the hotel/residential development that exceeds two levels, such parking shall not be required to provide additional parking or landscaping beyond standard code requirements, regardless of structure height. This provision shall control over the language set forth in Section 14-21 of the City's Land Development Code.
    b. Development of the site shall include the provision of a minimum of 582 parking spaces to support the proposed hotel/residential development. This provision shall control over the language set forth in Section 14-48.6 of the City's Land Development Code.
    c. Any portion of the Property may be used for interim parking during construction of the necessary parking facilities designed to meet the requirements of the LDC, as modified herein. All unpaved and/or improved portions of the property used for interim parking during construction must be restored to a leveled, graded and hydro-seeded or sodded lot before final approval of the construction permits associated therewith will be granted.
    d. 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.

d) Development Footprint: The Property may be developed in multiple phases and buildings, so long as the development standards set forth in Section 3.1 are met. In the event the Property is developed with the multifamily units and hotel units within one building, a lot combination will be required for the Treasure Island Parcel and Sunny

Shores Parcel. Such lot combination shall occur prior to issuance of a construction permit for the Treasure Island Parcel and Sunny Shores Parcel.

e) Connectivity: The City shall facilitate installation of a pedestrian crosswalk to promote access between remote parking on the west side of A1A and the Treasure Island/Sunny Shores Parcels. 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.

f) Development within the Treasure Island Parcel may include the redevelopment of the larger existing pool at its current location as a part of the proposed hotel development, unless no major building permits for the significant development of the "Treasure Island Property" and/or the "Sunny Shores Parcel" have been obtained within five (5) years of executed approval of this agreement. In such a case, and/or if pools are not in use associated with approved re-development of said properties within eight (8) years of approval of this agreement, all remaining pool and spa materials must be removed and properly abandoned, and the area must be back-filled, leveled, graded, hydro-seeded or sodded, and maintained. As long as any existing pools or pool openings remain, the area shall be monitored at all times by an automatic video surveillance system utilizing no fewer features and views than the system currently in use on the "Treasure Island Property." Alternatively, pools may be punctured in a manner approved and inspected by a City building inspector, then filled with dirt which shall be leveled, graded, hydro-seeded or sodded, and maintained.

2. Alternative Tax Relief Program. The Subject Property is enrolled within the Alternative Tax Relief Program, subject to the following relief standards:

a) The Property Owner shall be entitled to 100% of the tax increment created by the redevelopment for an initial term of five years;
b) The Property Owner shall be entitled to 75% of the tax increment created by the redevelopment for the five years following item (a) herein;
c) The Property Owner shall be entitled to 50% of the tax increment created by the redevelopment for the five years following item (b) herein; and
d) Any parcel or unit sold or conveyed by current property owner shall be removed from the tax increment calculation during the effective and subsequent tax years of the conveyance of the parcel or unit.
e) The tax increment rebate as set forth in Chapter 10, Article III of the Municipal Code of Ordinances 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. The calculation and baseline for such tax increment rebate shall be as set forth in the enabling ordinance and memorialized in Chapter 10, Article III of the Municipal Code of Ordinances.

SECTION 4. PUBLIC BENEFITS.

Numerous public benefits derive from the terms and conditions of this Development Agreement, to include:

a) The development of the Property as set forth in this Development Agreement shall provide for additional recreational opportunities for visitors to Daytona Beach Shores that will result in greater tax revenue to the City. The development will allow for the redevelopment and beautification of a currently unused property and will create a new destination center for dining, entertainment, and lodging within the City.

b) The development allows for the demolition and redevelopment of an outmoded and inefficient existing hotel on the property, which meets Objective 1-1.2 of the CITY's Comprehensive Plan. The new development will allow for a hotel that allows for commercial opportunities through the use of interior dining and entertainment facilities.

c) In addition, the proposed redevelopment of the Property is consistent with several of the Goals, Policies and Objectives of the Comprehensive Plan, as outlined below. This amendment will allow development of the property to allow for additional residential and lodging uses within a growing sector of the City.

GOAL 1-1: Effectively manage future development by designating appropriate areas for new growth that does not compromise environmental integrity, is responsive to market needs and is consistent with sound land planning practices.

Finding: The proposed overlay allows for flexibility in development for properties located in appropriate areas for urban development. The proposed overlay will direct additional growth to areas that have already faced development and will lessen impacts on environmentally sensitive areas.

Objective 1-1.2: Future redevelopment activities shall take the form of replacing the outmoded and inefficient existing hotels and motels that were built in the 1950s and early 1960s. These uses are found primarily on the east side of S.R. A1A, north of Florida Shores Boulevard to the City limits at the north end, and south of Van Avenue to the south City limits ending at the Wilbur-by-the-Sea area. These redevelopment activities shall be consistent with the goals, objectives, and policies set forth in this Element

Finding: The proposed overlay is connected with the potential redevelopment of the Treasure Island Resort, a historic hotel that has been vacant for an extended time and additional surrounding areas that have remained underutilized.

Policy 1-2.1.1: The City shall encourage an urban design pattern in redevelopment areas, where appropriate, that will minimize travel requirements among living, working, shopping and recreation areas.

Finding: The proposed overlay is connected with the potential redevelopment of a hotel and multifamily development that will allow for both tourists and residents to be located within close proximity to existing retail and commercial areas.

GOAL 3-1: Provide a variety of adequate housing for all present and future residents of the City of Daytona Beach Shores through cost efficient objectives, while promoting individual self-sufficiency.

Finding: The proposed overlay is connected with the potential development of a multifamily development that will allow for additional residential opportunities within this sector of the City.

SECTION 5. IMPACT FEES AND PERMITTING.

a) Impact fees and other funding requirements for the project on the Property are as established by controlling law and shall be met in the normative course and processes of development.

b) All development permits normatively needed to be approved for the development of the Property shall be subject to the review and approval processes during the course of the development of the premises; provided, however, that, it is noted that no changes in land use designations or changes in zoning classifications/districts assigned to property are necessitated by the development approved for the Property.

c) 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, as outlined in that certain Stipulated Settlement Agreement between the parties, dated August 23, 2021.

SECTION 6. REASONABLE APPROVAL.

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

SECTION 7. REMEDIES.

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

SECTION 8. HEADINGS/CAPTIONS.

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

SECTION 9. *FORCE MAJEURE*.

No party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by *Force*

Majeure. *Force Majeure* shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, terrorism, hurricane, explosion, any law, proclamation, regulation, or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.

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

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

b) This Development Agreement touches and concerns the premises and shall run with the land and shall be binding upon and inure to the benefit and burden of the parties hereto and their respective successors and assigns.

SECTION 11. EXHIBITS.

All exhibits to this Development Agreement are hereby incorporated into this Development Agreement by this reference thereto. The exhibits included herein are hereby approved by the terms and conditions of this Development Agreement. Any changes to the exhibits shall be approved by the City Council. A comprehensive list of the exhibits is included below:

Exhibit A: Property Legal Description and Sketch

Exhibit B: Certificate of Vesting

Exhibit C: Conceptual Plan, rev. date. , prepared by The Performance Group.

SECTION 12. TERMS AND CONDITIONS RELATIVE TO THE PREMISES.

a) In addition to all other covenants, obligations, duties, and responsibilities set forth herein, the PROPERTY OWNER is approved for the following development on the premises in accordance with the conceptual site plan for the development of the premises (Exhibit "C").

b) The development uses, including parking, and landscaping, as set forth on the conceptual site plan approved in Section 11 and attached as Exhibit "C" comply with the criteria for development in the applicable provision in the land development regulations of the CITY applicable to this development project on the premises as modified in this Development Agreement.

SECTION 13. DEVIATIONS GRANTED FROM CODE OF ORDINANCES.

This Development Agreement is intended to comply with the applicable provision in the land development regulations of the CITY as modified in this Development Agreement. The CITY has approved the following deviations from the standard land development regulations in association with this Development Agreement:

1. LDC Section 14-21: The LDC generally requires that certain oceanfront properties provide a breezeway/visual corridor and maximum north/south building coverage standard. The CITY is granting a deviation to this requirement to waive the maximum north/south building coverage and provide that the development will meet 60% of the breezeway/visual corridor length required under the LDC.
2. LDC Section 14-21: The LDC generally requires that based on the proposed building height, an additional 20% parking and an additional 10% of landscaping would be required within the development. The CITY is granting a deviation from this requirement. Based on the operational needs of similar development, conceptual layout and development standards set forth herein, adequate parking and landscaping will be provided.
3. LDC Section 14-48.6: The CITY is providing a deviation from the standard requirements for parking for the development. The PROPERTY OWNER shall provide parking in accordance with Section 3.1.C. herein.
4. LDC Section 14-31.1.8: The CITY is providing a deviation from the maximum permitted lot coverage for the Property. The conceptual layout and development standards set forth herein provide assurance that the Property will be developed in an orderly manner that preserves open spaces and view corridors.
5. LDC Section 14-31.1.8: The CITY is providing a deviation from the front and rear setbacks applicable to the Property to allow for compact development within the Property and to preserve view corridors along the sides of the Property.

SECTION 14. PROPERTY PREPARATION AND MAINTENANCE.

1. Structure Demolition. PROPERTY OWNER shall, after obtaining all required demolition and fence permits, cause the high-rise building and all exposed concrete and asphalt on the "Treasure Island Parcel" including all decking, the pool equipment room(s) along the south property line, the smaller swimming pool and two adjacent spa pools, the planter beds near the west property line, and the two sets of concrete steps attached to the seawall on the "Treasure Island Parcel", along with the wooden steps attached to the seawall on the "Sunny Shores Parcel" and the retaining wall separating the "Treasure Island Property" and the "Sunny Shores Parcel" to be demolished within one hundred twenty (120) days of executed approval of this Development Agreement.
    a. Any and all concrete remaining on the "Treasure Island Parcel" must be eighteen (18) inches or more below current (pre-demolition) and finished (post-demolition) grade with the only exception being that the larger swimming pool and the adjacent spa may remain.

b. The seawall drop-off at the "Sunny Shores Parcel" shall be protected by installing and maintaining a 4-foot-high guard rail as a fall-prevention device along the length of said seawall before removal of aforementioned wooden steps attached to the seawall.
c. The seawall drop-off at the "Treasure Island Parcel" shall be protected by installing and maintaining a 4-foot-high guard rail as a fall-prevention device along the length of said seawall concurrent with removal of the east portion of the required demolition fence.

2. Post-Demolition Restoration Requirements. Immediately after demolition of the structures listed in subsection 1) Structure Demolition and no later than one hundred fifty days (150) of executed approval of this Development Agreement, the PROPERTY OWNER shall complete the following:
   a. Remove all building debris from the site through an approved CITY Exclusive or Non-Exclusive Demolition and Recyclable Debris waste-hauler.
   b. Back-fill, level, and grade all areas of the "Treasure Island Property" and all areas of the "Sunny Shores Parcel" affected by the Structure Demolition to create a smooth, level site that will not cause drainage or erosion issues.
   c. Hydro-seed or sod all areas of the "Treasure Island Property" and water all areas until established. Repeat such measures as required by the CITY to eliminate all windborne debris emanating from the site.

3. Remaining Structure Restoration/Protection.
   a. PROPERTY OWNER shall, after obtaining all required electrical permits, cause the removal all electrical service components on the "Sunny Shores Parcel" within sixty (60) days of executed approval of this Development Agreement.
   b. Should the PROPERTY OWNER elect to keep the larger swimming pool and adjacent spa intact, PROPERTY OWNER shall keep the pool and spa openings free of standing water, refuse, and debris and shall keep each opening continuously covered with task-approved covers, installed and strictly maintained to the cover manufacturer's specifications. Additionally, these openings shall be fenced with a dedicated, in-ground, rubber-coated, six-foot-tall, chain-link fence with a locked gate until such time as physical redevelopment of the "Treasure Island Property" commences. As long as any existing pools or pool openings remain, the area shall be monitored at all times by an automatic video surveillance system utilizing no fewer features and views than the system in use on the "Treasure Island Parcel" at the time of drafting this agreement. Alternatively, pools may be punctured in a manner approved and inspected by a CITY building inspector, then filled with dirt which shall be leveled, graded, hydro-seeded or sodded, and maintained. Measures required by this section shall be fully in place within one hundred eighty (180) days of executed approval of this Development Agreement and before required construction fencing is removed.
   c. PROPERTY OWNER shall, after obtaining the required fence permit, replace the chain link fence around the "Fraile Street Parcel" with a new rubber-coated,

six-foot-tall, chain-link fence or remove all sections of existing fence within one hundred eighty (180) days of executed approval of this Development Agreement.

d. PROPERTY OWNER shall, after obtaining the required fence permit, install a four-foot-tall, split-rail fence around the "West A1A Parcel" within two hundred forty (240) days of executed approval of this Development Agreement.
e. PROPERTY OWNER shall, after obtaining all required building permits and approvals for this work, cause the full and complete repair of the seawalls on the east side of the "Treasure Island Parcel" and the "Sunny Shores Parcel" within seven hundred thirty (730) days of executed approval of this Development Agreement. Until full repair of these seawalls is achieved, PROPERTY OWNER shall maintain the safety of the seawalls and the surrounding areas as needed, after obtaining all required permits and approvals.

4. Ongoing Property Maintenance.
   a. PROPERTY OWNER agrees to maintain the "Property" to the CITY's standards as listed in the Daytona Beach Shores Code of Ordinances and Appendices, and all Codes adopted therein.
   b. PROPERTY OWNER specifically agrees to keep all grass and weeds trimmed to below twelve (12) inches high and to promptly remove any and all debris from all undeveloped portions of the "Property" in accordance with all CITY Ordinances and Appendices.
   c. PROPERTY OWNER agrees to repaint all seawalls, fences, and structures on the "Property" within fourteen (14) days of being notified of graffiti or other defacing markings.
   d. PROPERTY OWNER agrees to fully repaint all seawalls associated with the "Property" at least once every three (3) years.
   e. PROPERTY OWNER acknowledges and agrees that the CITY retains all rights and privileges of its police power and code enforcement actions and proceedings relative to all portions of the "Property."

SECTION 15. PUBLIC RECORDS.

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

SECTION 16. EQUAL OPPORTUNITY.

The PROPERTY OWNER agrees that it will not discriminate against any employee or applicant for employment for work relating to the services provided under this Development Agreement because of race, color, religion, sex, age, national origin or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This

provision shall include, but not be limited to, the following: employment, upgrading, demoting or transfer; recruitment advertising; layoff or termination; rates of pay or their forms of compensation; and selection for training, including apprenticeship.

SECTION 17. CONFLICT OF INTEREST.

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

SECTION 18. COMPLIANCE WITH LAWS AND REGULATIONS.

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

SECTION 19. NOTICES.

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

For the **CITY**:

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

With Copy to:

John Cary
City Attorney
City of Daytona Beach Shores
2990 South Atlantic Avenue
Daytona Beach Shores, Florida 32771

For the **PROPERTY OWNER**:

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

With Copy to:

Robert A. Merrell, III
Cobb Cole
149 S. Ridgewood Ave., St. 700
Daytona Beach, Florida 32114

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

SECTION 20. INTERPRETATION/APPLICABLE LAW/VENUE.

The laws of the State of Florida shall govern this Development Agreement. Any legal action necessary arising out of the Development Agreement will have its venue in Volusia County and the Development Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise.

No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other further exercise thereof. Waiver of a default shall not be deemed a waiver of any subsequent defaults. In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs. The specific provisions of this Development Agreement shall prevail over the generality of the foregoing. In any action or proceeding required to enforce or interpret the terms of this Development Agreement, venue shall be in the Seventh Judicial Circuit Court in and for Volusia County, Florida.

SECTION 21. CONSTRUCTION OR INTERPRETATION OF THE DEVELOPMENT AGREEMENT.

This Development Agreement is the result of *bona fide* arm's length negotiations between the parties and all parties have contributed substantially and materially to the preparation of the Development Agreement. Accordingly, this Development Agreement shall not be construed or interpreted more strictly against any one (1) party than against any other party both parties having participated in the drafting of this Development Agreement. Whenever a decision is provided for herein which is to be made by the CITY, such decision must be in writing in order to be binding upon the CITY.

SECTION 22. ENTIRE DEVELOPMENT AGREEMENT/MODIFICATION.

a) This Development Agreement constitutes the complete, integrated and entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements, arrangements, contracts or understandings, whether oral or written, between the parties relating thereto, all of which have been integrated herein, except as provided in this subsection a. This Development Agreement may not be amended, changed, or modified and material provisions hereunder may not be waived, except by a written document, of equal dignity herewith and signed by all parties to this Development Agreement. This Development Agreement shall not supersede that certain Stipulated Settlement Agreement between the parties, dated August 23, 2021. In the event of a conflict between the Stipulated Settlement Agreement and this Development Agreement, the terms of this Development Agreement shall control. All other provisions of the Stipulated Settlement Agreement shall remain in full force and effect.

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

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

Chapter 15, *Land Development Code*.

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

SECTION 23. THIRD PARTY BENEFICIARIES/TRANSFERABILITY.

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

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

SECTION 24. ATTORNEYS FEES AND COSTS.

In any action or proceeding to enforce or interpret any provision of this Development Agreement, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs, and expenses.

SECTION 25. SEVERABILITY.

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

SECTION 26. EFFECTIVE DATE/TERMINATION; PERIODIC REVIEW OF

DEVELOPMENT AGREEMENT.

a) This Development Agreement shall take effect on the date that this Development Agreement is fully executed by the parties and is recorded in the Official Records (Land Records) of Volusia County, Florida, provided however, the effective date of the development criteria and alternative tax relief entitlements and incentives contained in Section 3 of this Agreement shall become effective one (1) day after the terms and conditions contained in Section 14, subsections 1, 2 and 3, of this agreement, relating to the Treasure Island Parcel and Sunny Shores parcels, are completed and satisfied.

b) This Development Agreement shall be in effect for one of the following periods:

a. Five (5) years to receive a certificate of occupancy for a hotel and multifamily residential development in a singular building on the combined Treasure Island and Sunny Shores parcels; or

b. Five (5) years to receive a certificate of occupancy for a hotel development on the Treasure Island parcel and fifteen (15) years to receive a certificate of occupancy for a multifamily residential development on the Sunny Shores parcel.

c) Such effective dates may be extended by mutual consent of the CITY and the PROPERTY OWNER. Any request for an extension shall be subject to the public hearing process necessary for the initial approval of said Development Agreement; provided, however, that the City has concluded that the vested rights of the PROPERTY OWNER and the investment backed expectations of the PROPERTY OWNER warrant a renewal and continuation of the development approved for the premises herein.

d) Prior to the completion of the project and at the issuance of a certificate of completion by the City, the City shall review this Development Agreement as well as at least once every twelve (12) months to determine if there has been demonstrated good faith compliance with the terms of the Development Agreement.

SECTION 27. COUNTERPARTS.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES FOLLOW]

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

Attest:

CITY OF DAYTONA BEACH SHORES

_____
Cheri Schwab, City Clerk

_____
Nancy Miller, Mayor
Date:_____

_____
Michael T. Booker, City Manager

Approved as to form and legality:

_____
John Cary, City Attorney

[**ADDITIONAL SIGNATURE PAGE FOLLOWS]**

Witnesses:

PROPERTY OWNER/
2025 South Atlantic Avenue, LLC

_____
Signature of Witness

_____

Printed name of witness:
_____

By:_____
Managing Member

Acknowledgment

State of _____)
County of _____)

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

Witness my hand and official seal in the County and State last aforesaid this ___ day of _____, 2022.

(Affix Notary Seal)

_____
Notary Public; State of Florida
Print name:_____

Exhibit A

Legal Description and Sketch

Exhibit B

Certificate of Vesting

Exhibit C

Conceptual Plan

Exhibit A

Legal Description and Sketch

ALTA/NSPS Land Title Survey

The Surveyor has reviewed all survey related items contained in Schedule B-II of that certain Commitment for Title Insurance issued by First American Title Insurance Company with an Effective Date of December 27, 2017 at 8:00 A.M. and has the following comments:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the Effective Date but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment. Not applicable for Surveyor's review.
2. Any rights, interests, or claims of parties in possession of the land not shown by the public records. Not applicable for Surveyor's review.
3. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the land. Not applicable for Surveyor's review.
4. Any lien, for services, labor, or materials in connection with improvements, repairs or renovations provided before, on, or after Date of Policy, not shown by the public records. Not applicable for Surveyor's review.
5. Any dispute as to the boundaries caused by a change in the location of any water body within or adjacent to the land prior to Date of Policy, and any adverse claim to all or part of the land that is, at Date of Policy, or was previously under water. Not applicable for Surveyor's review.
6. Taxes or special assessments not shown as liens in the public records or in the records of the local tax collecting authority, at Date of Policy. Not applicable for Surveyor's review.
7. Any minerals or mineral rights leased, granted or retained by current or prior owners. Not applicable for Surveyor's review.
8. Taxes and assessments for the year 2018 and subsequent years, which are not yet due and payable. Not applicable for Surveyor's review.
9. NOTES FOR STANDARD EXCEPTIONS: Standard Exceptions for parties in possession, for mechanics liens, and for taxes or special assessments not shown as liens in the public records shall be deleted upon receipt of an acceptable Non-Lien and Possession Affidavit establishing who is in possession of the lands, that there are no liens or encumbrances upon the lands other than as set forth in the Commitment, that no improvements to the lands have been made within the past 90 days or are contemplated to be made before closing that will not be paid in full, and that there are no unrecorded taxes or assessments that are not shown as existing liens in the public records. Any Policies issued hereunder may be subject to a Special Exception for matters disclosed by said affidavit.

   Standard Exception(s) for questions of survey may be deleted upon receipt and review of a properly certified Survey meeting the Florida Minimum Technical Standards for all land surveys dated no more than 90 days prior to closing or such other proof as may be acceptable to the Company. Any Policies issued hereunder may be subject to a Special Exception for matters disclosed by said survey or proof. Not applicable for Surveyor's review.
10. The Standard Exception for any minerals or mineral rights leased, granted or retained by current or prior owners is hereby deleted. Not applicable for Surveyor's review.
11. Terms and conditions for right to use in common with other property owners to 10 foot right of way contained in Warranty Deed recorded July 27, 1920 in Deed Book 93, Page 449, as shown on that survey made by Joseph E. Williamson, PLS of Vision Land Service, dated as of April 28, 2017, last revised on May 30, 2017 (the "Survey"). (Parcels A, B, C, E, and F) Subject to right-of-way as contained therein and is plotted hereon.
12. Terms and conditions for 15 foot right of way contained in Warranty Deed recorded June 3, 1963 in Book 538, Page 145, as shown on the Survey. (Parcel A) Subject to right-of-way as contained therein and is plotted hereon.
13. Easement Deed granted to the City of Daytona Beach Shores for sanitary sewage system recorded August 14, 1967 in Book 957, Page 605, as shown on the Survey. (Parcel A) Subject to easement contained therein and is plotted hereon.
14. Easement Deed granted to the City of Daytona Beach Shores for sanitary sewage system recorded August 14, 1967 in Book 957, Page 606, as shown on the Survey. (Parcel A) Subject to easement contained therein and is plotted hereon.
15. Easement Deed granted to the City of Daytona Beach Shores recorded November 5, 1967 in Book 975, Page 96, as shown on the Survey. (Parcel C) Subject to easement contained therein and is plotted hereon.
16. Easement granted to Florida Power & Light Company recorded January 23, 1974 in Book 1706, Page 1642, as shown on the Survey. (Parcel A) Subject to easement contained therein. Approximate location of said easement has been scaled from record document and is shown hereon.
17. Terms and conditions for Ordinance 85-27 for annexation of real property into the City of Daytona Beach Shores recorded July 19, 1985 in Book 2707, Page 308. (Parcel D) Not applicable for Surveyor's review.
18. Permanent Underground Utility Easement granted to the City of Daytona Beach Shores recorded March 15, 2007 in Book 6025, Page 2686, as shown on the Survey. (Parcels A, B, and C) Subject to easements contained therein. Permanent Underground Utility Easement is plotted hereon however Temporary Construction Easement is blanket to said parcel and is not plotted hereon.
19. Permanent Underground Utility Easement granted to the City of Daytona Beach Shores recorded March 15, 2007 in Book 6025, Page 2720 as re-recorded April 9, 2007 in Book 6038, Page 671, as shown on the Survey. (Parcel A) Subject to easements contained therein. Permanent Underground Utility Easement is plotted hereon however Temporary Construction Easement is blanket to said parcel and is not plotted hereon.
20. Permanent Underground Utility Easement granted to the City of Daytona Beach Shores recorded March 15, 2007 in Book 6025, Page 2724 as re-recorded April 9, 2007 in Book 6038, Page 665, as shown on the Survey. (Parcels E and F) Easements lies adjacent to Subject Property and is plotted hereon.
21. Treasure Island Resort Florida, LLC/City of Daytona Beach Shores Development Agreement Pertaining to Re-Development of Treasure Island Property recorded September 18, 2014 in Book 7033, Page 3645, as affected by: Revised 6-9-14 Treasure Island Resort Florida, LLC Certificate of Vesting recorded September 18, 2014 in Book 7033, Page 3638. (Parcels A through F) Not applicable for Surveyor's review.
22. The Coastal Construction Control Line established pursuant to Section 161.052 and Section 161.053, Florida Statutes, recorded August 21, 1973 in Map Book 30, Page 19 and Map Book 30, Page 50, as established by instrument recorded January 24, 1991 in Book 3579, Page 1550, together with the statutory restrictions and requirements imposed in connection therewith, including the Disclosure and Survey requirements pursuant to Section 161.57, Florida Statutes, as shown on the Survey. (Parcels A, E and F) The most current Coastal Construction Control Line known to Surveyor is plotted hereon.
23. Rights of the United States Government to that part of the Land, if any, being artificially filled in land in what was formerly navigable waters arising by reason of the United States Government control over navigable waters in the interest of navigation and commerce. (Parcels A, E and F) Not applicable for Surveyor's review.
24. The right, title or interest, if any, of the public to use as a public beach or recreation area any part of the Land lying between the water abutting the Land and the most inland of any of the following: (a) the natural line of vegetation; (b) the most extreme high water mark; (c) the bulkhead line, or (d) any other line which has been or which hereafter may be legally established as relating to such public use. (Parcels A, E and F) Not applicable for Surveyor's review.
25. Any adverse ownership claim by the State of Florida by right of sovereignty to any part of the Land that is, as of the Date of Policy or was at any time previously, under water (submerged). (Parcels A, E and F) Not applicable for Surveyor's review.
26. Riparian and/or littoral rights are not insured. (Parcels A, E and F) Not applicable for Surveyor's review.

Legal Description (as provided)

The land referred to herein below is situated in the County of Volusia, State of Florida, and is described as follows:

Parcel A

Lots 1, 2, 3, 4, 5, 6, 7, 8, 24, 25 and 26, Schulte Park, H.B. Schulte's Subdivision, in Lot 3 of Section 16, Township 15 South, Range 33 East, as per map recorded in Map Book 5, Page 108, and Map Book 5, Pages 117 and 138, all of the Public Records of Volusia County, Florida, less that portion of the aforedescribed property taken under condemnation proceedings for the widening of South Atlantic Avenue and subject to a 15 foot easement over the North line of Lot 3 of Section 16, Township 15 South, Range 33 East, running through Lots 1 and 2 of the aforementioned property from Atlantic Avenue to the Ocean for the benefit of the public.

Parcel B

Lots 27 and 28, Schulte Park, H.B. Schulte's Subdivision, In Lot 3, Section 16, Township 15 South, Range 33 East, as per map in Map Book 5, Pages 117 and 138, of the Public Records of Volusia County, Florida, excepting that portion of the Easterly 30 feet released for highway purposes

Parcel C

Lot 23, Schulte Park, according to the map or plat thereof, as recorded in Map Book 5, Pages 117 and 138, of the Public Records of Volusia County, Florida, less that portion of the aforedescribed property taken under condemnation proceedings for the widening of South Atlantic Avenue.

Parcel D

Lots 8, 9 and 10, Armstrong Subdivision, according to the plat thereof, as recorded in Map Book 9, Page 280 of the Public Records of Volusia County, Florida.

JOB #: VLSR17-19429 / 18-28229	
CLIENT #: Jaymor Holdings	
FIELD DATE: 02-26-17/ 07-18-18	CREW: JW
DRAFTER: BT	
APPROVED: JEW	
SCALE: 1" = 30'	

COPYRIGHT 2011

X ______ Borrower's Acknowledgment and Acceptance

X ______ Borrower's Acknowledgment and Acceptance

SURVEYOR'S CERTIFICATION

I HEREBY CERTIFY in favor of TREASURE ISLAND RESORT FLORIDA, LLC, a Delaware limited liability company; SUNNY SHORES RESORT FLORIDA, LLC, a Delaware limited liability company; TI DAYTONA LIMITED PARTNERSHIP, a Florida limited partnership; SUNNY SHORE DAYTONA LIMITED PARTNERSHIP, a Florida limited partnership; ZIMMERMAN KISER & SUTCLIFFE, P.A.; FIRST AMERICAN TITLE INSURANCE COMPANY; LOAN FUNDER, LLC, SERIES 1728, a Delaware Series limited liability company; RAIT PARTNERSHIP, L.P., a Delaware limited partnership, its successors and assigns; ROC Capital Holdings, LLC, and ACRES LOAN ORIGINATION, LLC, a Delaware limited liability company that (a) this survey (i) was made on the ground and is a correct representation of the subject property as of February 26, 2017; (ii) meets or exceeds the standards of practice set forth by the Standards of Practice for Land Surveying (Chapter 5J-17.051 and 5J-17.052, F.A.C.); (iii) shows the location and recording reference of all easements and any and all other matters of record affecting the subject property that have been furnished to the Surveyor, including all those items set forth in Schedule B-II of that certain First American Title Insurance Company Commitment for Title Insurance dated effective December 27, 2017 at 8:00 A.M.; (iv) shows the lines of all streets abutting the land and the widths thereof if known; (v) shows all applicable building setback lines established by applicable zoning and/or other governmental ordinances, statutes, or regulations that have been furnished to the Surveyor; and (vi) shows any other visible matters on the ground which may adversely affect title to the subject property; (b) that there are no visible encroachments either way across the boundary lines of the subject property except as shown; (c) that no adjoining private property visibly serves the subject property for drainage, stormwater retention or detention purposes, except as shown; (d) that ingress and egress to the subject property is provided by South Atlantic Avenue, the same being a paved, dedicated public right of way maintained by the State of Florida or Armstrong Street and/or Fraile Street, the same being paved, dedicated public rights of way maintained by the City of Daytona Beach Shores; and (e) that the subject property does not visibly serve any adjoining property for drainage, ingress or egress or any other purpose, except as shown.

The Surveyor has reviewed all survey related items contained in Schedule B-II of that certain Commitment for Title Insurance issued by First American Title Insurance Company with File Number: Jaymor Holdings, Inc-Sunny Shores Resort and an Effective Date of February 20, 2017 at 8:00 A.M. and has the following comments:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment. Not applicable for Surveyor's review.
2. Any rights, interests, or claims of parties in possession of the land not shown by the public records. Not applicable for Surveyor's review.
3. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the land. Not applicable for Surveyor's review.
4. Any lien, for services, labor, or materials in connection with improvements, repairs or renovations provided before, on, or after Date of Policy, not shown by the public records. Not applicable for Surveyor's review.
5. Any dispute as to the boundaries caused by a change in the location of any water body within or adjacent to the land prior to Date of Policy, and any adverse claim to all or part of the land that is, at Date of Policy, or was previously under water. Not applicable for Surveyor's review.
6. Taxes or special assessments not shown as liens in the public records or in the records of the local tax collecting authority, at Date of Policy. Not applicable for Surveyor's review.
7. Any minerals or mineral rights leased, granted or retained by current or prior owners. Not applicable for Surveyor's review.
8. Taxes and assessments for the year 2017 and subsequent years, which are not yet due and payable. Not applicable for Surveyor's review.
9. NOTES FOR STANDARD EXCEPTIONS: Standard Exceptions for parties in possession, for mechanics liens, and for taxes or special assessments not shown as liens in the public records shall be deleted upon receipt of an acceptable Non-Lien and Possession Affidavit establishing who is in possession of the lands, that there are no liens or encumbrances upon the lands other than as set forth in the Commitment, that no improvements to the lands have been made within the past 90 days or are contemplated to be made before closing that will not be paid in full, and that there are no unrecorded taxes or assessments that are not shown as existing liens in the public records. Any Policies issued hereunder may be subject to a Special Exception for matters disclosed by said affidavit.

   Standard Exception(s) for questions of survey may be deleted upon receipt and review of a properly certified Survey meeting the Florida Minimum Technical Standards for all land surveys dated no more than 90 days prior to closing or such other proof as may be acceptable to the Company. Any Policies issued hereunder may be subject to a Special Exception for matters disclosed by said survey or proof. Not applicable for Surveyor's review.
10. Easement Deed granted to the City of Daytona Beach Shores recorded July 19, 1967 in Book 953, Page 97. Subject to easement contained therein and is plotted hereon.
11. Permanent Underground Utility Easement granted to the City of Daytona Beach Shores recorded March 15, 2007 in Book 6025, Page 2680. Subject to easements contained therein. Permanent Underground Utility Easement is plotted hereon however Temporary Construction Easement is blanket to said parcel and is not plotted hereon.

Legal Description (as provided)

The land referred to herein below is situated in the County of Volusia, State of Florida, and is described as follows:

Lot 22, H.B. Schulte's 2nd Subdivision of Schulte Park, according to the plat thereof, recorded in Map Book 5, Page 117 and H.B. Schulte Third Subdivision of Schulte Park, according to plat thereof, recorded in Map Book 5, Page 138, of the Public Records of Volusia County, Florida, less and except East 30 feet for road right of way.

LEGEND

- □ = Concrete Monument (CM)
- O = Iron Pipe & Cap (IP)
- O = Iron Rod & Cap (IR)
- ⊚ = Nail & Disk (N&D)
- OR Book = Official Record Book
- PB = Plat Book
- Pg = Page
- CONC. = Concrete
- FND = Found
- ID = Identification
- LB = Licensed Business
- LS = Licensed Surveyor
- PVC = Polyvinyl Chloride
- = Backflow Preventor
- = Cable TV Riser
- = Catch Basin/Inlet
- = Drainage Manhole
- = Electric Box
- = Fire Hydrant
- = Gas Valve
- = Light Pole
- = Monitoring Well
- = Sanitary Cleanout
- = Sanitary Manhole
- = Sign
- = Telephone Riser
- = Transformer
- = Power Pole
- ohu = Overhead Utilities
- = Water Meter
- = Water Valve
- (C) = Calculated Distance
- (D) = Deed Dimension
- (F) = Field Measurement
- (R/W) = Right of Way Map
- (P) = Plat Measurement
- on/off = On Site/Off Site
- SO = Stubout
- BCM = Buried Cable Marker
- BGM = Buried Gas Marker
- = Telephone Manhole
- = Grade Shot
- INV = Invert
- CMP = Corrugated Metal Pipe
- RCP = Reinforced Concrete Pipe
- FFE = Finished Floor Elevation
- NAVD = North American Vertical Datum

Painted Utility Markers were located by Others

- = Blue Paint Marker
- = Green Paint Marker
- = Yellow Paint Marker
- = Red Paint Marker
- = Orange Paint Marker
- = White Paint Marker

NOTE:
ELEVATIONS SHOWN HEREON ARE BASED ON NGS BENCHMARK# AQ1380, ELEVATION 12.18 (NAVD88) AND VERIFIED USING NGS BENCHMARK# AQ1853, ELEVATION 13.17 (NAVD88)

VICINITY MAP: NOT TO SCALE

NOTES:

- ONLY ABOVE GROUND VISIBLE UTILITIES HAVE BEEN LOCATED AND SHOWN PER CLIENT'S REQUEST.
- ADJOINING OWNER INFORMATION SHOWN HEREON WAS TAKEN FROM VOLUSIA COUNTY PROPERTY APPRAISER INTERACTIVE WEBPAGE ON 04-28-17.
- THE SITE THE STRUCTURE IS LOCATED ON IS CURRENTLY UNDERGOING DEMOLITION SO THERE IS NO EVIDENCE OF RECENT EARTH MOVING WORK. ALL OTHER SITES HAVE NOT EVIDENCE OF RECENT EARTH MOVING WORK.
- THE SURVEYOR IS UNAWARE OF ANY PROPOSED CHANGES IN STREET RIGHT OF WAY LINES OR RECENT STREET/SIDEWALK CONSTRUCTION OR REPAIRS.
- THE SURVEYOR DID NOT SEE ANY EVIDENCE OF WETLAND DELINEATION WHILE CONDUCTING THE SURVEY.
- THE SUBJECT PROPERTY IS 168,733± sqft (3.87± acres)
[Parcel A – 126,411± sqft (2.90± acres); Parcel B – 14,498± sqft (0.33± acres);
Parcel C – 7,249± sqft (0.17± acres); Parcel D – 20,575± sqft (0.47± acres)]

Lot 22 – 10,149± sqft (0.23± acres)
- THE SUBJECT PROPERTY HAS 117 REGULAR MARKED PARKING SPACES
- THE IMPROVED PARCEL ALONG THE ATLANTIC OCEAN IS CURRENTLY UNDERGOING DEMOLITION. LOCATION OF CONCRETE, ASPHALT AND OTHER IMPROVEMENTS BASED ON VISUAL OBSERVATION ON 02-28-17 AND ARE APPROXIMATE
- THE MEAN HIGH WATER ELEVATION AS SHOWN HEREON WAS ESTABLISHED BY EXTENDING THE ELEVATION SHOWN AT MEAN HIGH WATER INTERPOLATION POINT 100908.
- THE SEASONAL HIGH WATER LINE ELEVATION SHOWN HEREON IS CALCULATED AS 150% OF THE MEAN HIGH WATER ELEVATION

TABLE OF DRAINAGE AND SANITARY STRUCTURES

Point	Description	Elevation	Inverts
56	Sanitary Manhole	RIM 13.54	WSW Inv 9.35 (4"Clay) | NE Inv 10.38 (4"PVC) | SE Inv 11.67 (4"PVC)
73	Drainage Manhole	RIM 12.80	W Inv 8.56 (18"RCP)
145	Drainage Manhole	RIM 12.29	N Inv 8.26 (18"RCP)
148	Sanitary Manhole	RIM 12.57	N Inv 6.77 (6"PVC) | S Inv 7.32 (8"PVC-plugged) | E Inv 6.77 (8"PVC)
149	Drainage Manhole	RIM 12.15	W Inv 7.89 (18"RCP) | S Inv 8.14 (18"RCP)
190	Drainage Manhole	RIM 12.17	N Inv 6.57 (30"RCP) | S Inv 7.05 (18"RCP) | E Inv 7.00 (18"RCP)
191	Sanitary Manhole	RIM 12.32	E Inv 6.30 (6"Clay) | NW Inv 6.24 (6"Clay)
192	Sanitary Manhole	RIM 12.43	W Inv 6.26 (12"PVC) | SE Inv 6.33 (12"PVC)
217	Drainage Manhole	RIM 12.86	N Inv 8.54 (18"RCP) | E Inv 8.36 (18"RCP)
227	Drainage Inlet	TOP 9.23	S Inv 6.39 (12"CMP)
235	Sanitary Manhole	RIM 9.83	NE Inv 0.84 (12"PVC) | S Inv 0.83 (12"PVC)
236	Sanitary Manhole	RIM 9.81	N Inv 0.81 (12"PVC) | SW Inv 0.78 (12"PVC)
238	Drainage Inlet	TOP 11.36	N Inv 8.46 (12"CMP)
239	Sanitary Manhole	RIM 12.00	S Inv 1.01 (12"PVC) | NNE Inv 1.07 (10"Clay) | E Inv 8.02 (8"PVC)
240	Sanitary Manhole	RIM 12.06	W Inv 5.76 (8"PVC)
241	Drainage Inlet	TOP 11.85	N Inv 7.07 (15"CMP) | S Inv 8.13 (15"CMP) | E Inv 10.05 (4"Clay)
242	Sanitary Manhole	RIM 11.95	N Inv 1.18 (10"Clay) | SSW Inv 1.18 (10"Clay) | 15"CMP possibly through opening Inv 6.30
708	Sanitary Manhole	RIM 10.19	Full of Dirt
715	Drainage Inlet	TOP 8.70	N Inv 6.15 (15"CMP) | S Inv 5.80 (12"CMP)
1021	Drainage Inlet	TOP 11.56	N Inv 6.78 (15"CMP) | S Inv 6.75 (15"CMP)
1026	Sanitary Manhole	RIM 11.51	N Inv 1.72 (10"Clay) | S Inv 1.82 (10"Clay)
1614	Sanitary Manhole	RIM 13.28	SE Inv 8.77 (6"Clay) | S Inv 8.48 (6"Clay) | Full of Dirt
1981	Sanitary Manhole	RIM 16.07	W Inv 13.48 (4"PVC, capped) | E Inv 13.66 (4"PVC, capped) | Bottom Full of Dirt
*2102	Sanitary Manhole	RIM 15.05	N Inv 12.84 (4"PVC) | Bottom 8.90
*2103	Sanitary Manhole	RIM 14.89	no pipes – Bottom 8.70
*2104	Sanitary Manhole	RIM 14.92	S Inv 12.70 (4"PVC) | Bottom 8.77
2367	Sanitary Manhole	RIM 13.86	W Inv 12.30 (4"PVC) | Bottom Full of Dirt
30	Sanitary Manhole	RIM 13.46	unable to access for inverts
55	Sanitary Manhole	RIM 12.57	unable to access for inverts
147	Sanitary Manhole	RIM 11.87	unable to access for inverts
1025	Sanitary Manhole	RIM 11.46	unable to access for inverts
2105	Sanitary Manhole	–	Possible Sanitary Manhole (destroyed)

* Manhole are all 1 Large Container, may be Grease Traps with Sanitary Manhole Lids

The Surveyor has reviewed all survey related items contained in Schedule B-II of that certain Commitment for Title Insurance issued by First American Title Insurance Company with an Effective Date of April 26, 2017 at 8:00 A.M. and has the following comments:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the effective date but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment. Not applicable for Surveyor's review.
2. Any rights, interests, or claims of parties in possession of the land not shown by the public records. Not applicable for Surveyor's review.
3. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the land. Not applicable for Surveyor's review.
4. Any lien, for services, labor, or materials in connection with improvements, repairs or renovations provided before, on, or after Date of Policy, not shown by the public records. Not applicable for Surveyor's review.
5. Any dispute as to the boundaries caused by a change in the location of any water body within or adjacent to the land prior to Date of Policy, and any adverse claim to all or part of the land that is, at Date of Policy, or was previously under water. Not applicable for Surveyor's review.
6. Taxes or special assessments not shown as liens in the public records or in the records of the local tax collecting authority, at Date of Policy. Not applicable for Surveyor's review.
7. Any minerals or mineral rights leased, granted or retained by current or prior owners. Not applicable for Surveyor's review.
8. Taxes and assessments for the year 2017 and subsequent years, which are not yet due and payable. Not applicable for Surveyor's review.
9. NOTES FOR STANDARD EXCEPTIONS: Standard Exceptions for parties in possession, for mechanics liens, and for taxes or special assessments not shown as liens in the public records shall be deleted upon receipt of an acceptable Non-Lien and Possession Affidavit establishing who is in possession of the lands, that there are no liens or encumbrances upon the lands other than as set forth in the Commitment, that no improvements to the lands have been made within the past 90 days or are contemplated to be made before closing that will not be paid in full, and that there are no unrecorded taxes or assessments that are not shown as existing liens in the public records. Any Policies issued hereunder may be subject to a Special Exception for matters disclosed by said affidavit.

   Standard Exception(s) for questions of survey may be deleted upon receipt and review of a properly certified Survey meeting the Florida Minimum Technical Standards for all land surveys dated no more than 90 days prior to closing or such other proof as may be acceptable to the Company. Any Policies issued hereunder may be subject to a Special Exception for matters disclosed by said survey or proof. Not applicable for Surveyor's review.
10. The Standard Exception for any minerals or mineral rights leased, granted or retained by current or prior owners is hereby deleted. Not applicable for Surveyor's Review.
11. Terms and conditions for right to use in common with other property owners to 10 foot right of way contained in Warranty Deed recorded July 27, 1920 in Deed Book 93, Page 449, as shown on that survey mady by Joseph E. Williamson, PLS of Vision Land Service, dated April 28, 2017, last revised on May 30, 2017 (the "Survey"). (Parcels A, B, C, E, and F) Does not affect the subject property.
12. Terms and conditions for 15 foot right of way contained in Warranty Deed recorded June 3, 1963 in Book 538, Page 145, as shown on the Survey. (Parcel A) Does not affect the subject property.
13. Easement Deed granted to the City of Daytona Beach Shores for sanitary sewage system recorded August 14, 1967 in Book 957, Page 605, as shown on the Survey. (Parcel A) Does not affect the subject property.
14. Easement Deed granted to the City of Daytona Beach Shores for sanitary sewage system recorded August 14, 1967 in Book 957, Page 606, as shown on the Survey. (Parcel A) Does not affect the subject property.
15. Easement Deed granted to the City of Daytona Beach Shores recorded November 5, 1967 in Book 975, Page 96, as shown on the Survey. (Parcel C) Does not affect the subject property.
16. Easement granted to Florida Power & Light Company recorded January 23, 1974 in Book 1706, Page 1642, as shown on the Survey. (Parcel A) Does not affect the subject property.
17. Terms and conditions for Ordinance 85-27 for annexation of real property into the City of Daytona Beach Shores recorded July 19, 1985 in Book 2707, Page 308, as shown on the Survey. (Parcel D) Does not affect the subject property.
18. Permanent Underground Utility Easement granted to the City of Daytona Beach Shores recorded March 15, 2007 in Book 6025, Page 2686, as shown on the Survey. (Parcels A, B, and C) Does not affect the subject property.
19. Permanent Underground Utility Easement granted to the City of Daytona Beach Shores recorded March 15, 2007 in Book 6025, Page 2720 as re-recorded April 9, 2007 in Book 6038, Page 671, as shown on the Survey. (Parcel A) Does not affect the subject property.
20. Permanent Underground Utility Easement granted to the City of Daytona Beach Shores recorded March 15, 2007 in Book 6025, Page 2724 as re-recorded April 9, 2007 in Book 6038, Page 665, as shown on the Survey. (Parcels E and F) Subject to easements contained therein. Permanent Underground Utility Easement is plotted hereon however Temporary Construction Easement is blanket to said parcel and is not plotted hereon.
21. Treasure Island Resort Florida, LLC/City of Daytona Beach Shores Development Agreement Pertaining to Re-Development of Treasure Island Property recorded September 18, 2014 in Book 7033, Page 3645, as affected by: Revised 6-9-14 Treasure Island Resort Florida, LLC Certificate of Vesting recorded September 18, 2014 in Book 7033, Page 3638. (Parcels A through F) Not applicable for Surveyor's review.
22. The Coastal Construction Control Line established pursuant to Section 161.052 and Section 161.053, Florida Statutes, recorded August 21, 1973 in Map Book 30, Page 19 and Map Book 30, Page 50, as established by instrument recorded January 24, 1991 in Book 3579, Page 1550, together with the statutory restrictions and requirements imposed in connection therewith, including the Disclosure and Survey requirements pursuant to Section 161.57, Florida Statutes, as shown on the Survey. (Parcels A, E and F) The most current Coastal Construction Control Line known to Surveyor is plotted hereon.
23. Rights of the United States Government to that part of the Land, if any, being artificially filled in land in what was formerly navigable waters arising by reason of the United States Government control over navigable waters in the interest of navigation and commerce. (Parcels A, E and F) Not applicable for Surveyor's review.
24. The right, title or interest, if any, of the public to use as a public beach or recreation area any part of the Land lying between the water abutting the Land and the most inland of any of the following: (a) the natural line of vegetation; (b) the most extreme high water mark; (c) the bulkhead line, or (d) any other line which has been or which hereafter may be legally established as relating to such public use. (Parcels A, E and F) Not applicable for Surveyor's review.
25. Any adverse ownership claim by the State of Florida by right of sovereignty to any part of the Land that is, as of the Date of Policy or was at any time previously, under water (submerged). (Parcels A, E and F) Not applicable for Surveyor's review.
26. Riparian and/or littoral rights are not insured. (Parcels A, E and F) Not applicable for Surveyor's review.

Legal Description (as provided)

Parcel E:

Lot Eleven (11), Schulte Park being a subdivision of Lot Three (3), Section Sixteen (16), Township Fifteen (15), South Range Thirty-Three (33) East, according to map in Map Book 5, Page 108, Public Records of Volusia County, Florida; also, the North 38.4 feet Lot Twelve (12), Block One (1), Cook Subdivision, in Map Book 1, Page 93, Section 15, Township 15 South, Range 33 East, Volusia County, Florida.

Together With:

That portion of Lot 3, Section 16, Township 15 South, Range 33 East and Section 15, Township 15 South, Range 33 East, bounded on the West by the East line of Schulte Park Subdivision, of record in Map Book 5, Page 138, Public Records of Volusia County, Florida and the East line of Cook Subdivision, of record in Map Book 1, Page 93, Public Records of Volusia County, Florida, bounded on the North by the Easterly extension of the North line of Lot 11, of said Schulte Park Subdivision, bounded on the South by the Easterly extension of the South line of said Lot 11 and bounded on the East by the Easterly edge of a concrete seawall; all being more particularly described as follows; begin at the Northeast corner of said Lot 11, being the Easterly common corner of Lots 10 and 11, said Schulte Park Subdivision; thence North 66° 18' 56" East, along said Easterly extension of the North line of said Lot 11, 43.11 feet to the Easterly edge of a concrete seawall; thence South 24° 20' 02" East, along said Easterly edge, 49.77 feet, to the intersection with said Easterly extension of the South line of said Lot 11; thence South 66° 20' 16" West, along said Easterly extension, 43.64 feet, to said East line of Cook Subdivision, thence North 23° 43' 08" West along said East line of Cook Subdivision and said East line of Schulte Park Subdivision, 49.75 feet to the Point of Beginning.

Parcel F:

Lots Nine (9) and Ten (10), Schulte Park, In Lot Three (3), Section 16, Township 15 South, Range 33 East, and according to plat of record in Map Book 5, Page 138, of the Public Records of Volusia County, Florida.

Together With:

That portion of Lot 3, Section 16, Township 15 South, Range 33 East and Section 15, Township 15 South, Range 33 East, bounded on the West by the East line of Schulte Park Subdivision, of record in Map Book 5, Page 108, Public Records of Volusia County, Florida, bounded on the North by the Easterly extension of the North line of Lot 9, of said Schulte Park Subdivision, bounded on the South by the Easterly extension of the South line of Lot 10, said Schulte Park Subdivision and bounded on the East by the Easterly edge of a concrete seawall; all being particularly described as follows: begin at the Southeast corner of said Lot 10, being the Easterly common corner of Lots 10 and 11, said Schulte Park Subdivision; thence North 23° 43' 08" West along said East line of Schulte Park Subdivision, 100.35 feet to the Northeast corner of said Lot 9; thence North 66° 18' 56" East, along said Easterly extension of the North line of said Lot 9, 42.03 feet to the Easterly edge of a concrete seawall; thence South 24° 20' 02" East, along said Easterly edge, 100.35 feet, to the intersection with said Easterly extension of the South line of said Lot 10; thence South 66° 18' 56" West, along said Easterly extension, 43.11 feet, to the Point of Beginning.

Survey Certification Form

To: Treasure Island Resort Florida, LLC, a Delaware limited liability company; Sunny Shores Resort Florida, LLC, a Delaware limited liability company; TI Daytona Limited Partnership, a Florida limited partnership; Sunny Shore Daytona Limited Partnership, a Florida limited partnership; Zimmerman Kiser & Sutcliffe, P.A.; First American Title Insurance Company; Loan Funder, LLC, Series 1728, a Delaware Series limited liability company; RAIT Partnership, L.P., a Delaware limited partnership, its successors and assigns; ROC Capital Holdings, LLC; and ACRES LOAN ORIGINATION, LLC, a Delaware limited liability company:

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 2, 3, 4, 6(a), 6(b), 7(a), 7(b1), 7(c), 8, 9, 10(a), 11, 13, 14, 16, 17, 18, 19 and 20 of Table A thereof. The field work was completed on February 26, 2017.

Joseph E. Williamson, PLS
Florida Registration 6573
Date of Plat or Map: 03-01-2017

PAGE 1 OF 4
NOT VALID WITHOUT PAGES 2, 3 & 4

ADDITIONAL NOTES:
3. Additions or deletions to this survey by anyone other than the signing party or parties is prohibited without the written consent of the signing party or parties.
4. The property shown hereon is subject to all easements, restrictions and reservations which may be shown or noted on the record plat and within the public records of the county the subject property is located. This survey only depicts survey related information such as easements and setbacks that are shown on a record plat or have been furnished to the Surveyor.
5. Building ties and dimensions for improvements should not be used to reconstruct boundary lines.

SURVEYOR'S CERTIFICATE

VISIONLAND

LB 7780

ALTA/NSPS Land Title Survey

ADDRESS
0 Armstrong Street
Daytona Beach Shores, FL 32118
Pid:5316-21-00-0090 & Pid:5316-21-00-0050
(Parcel D)

LEGEND

- □ = Concrete Monument (CM)
- ○ = Iron Pipe & Cap (IP)
- ○ = Iron Rod & Cap (IR)
- ⊖ = Nail & Disk (N&D)
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- = Light Pole
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- = Telephone Riser
- = Transformer
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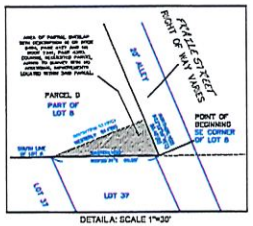
- = Green Paint Marker
- = Yellow Paint Marker
- = Red Paint Marker
- = Orange Paint Marker
- = White Paint Marker

BOUNDARY STATE PLANE COORDINATES FLORIDA EAST – NORTH AMERICAN DATUM 1983 (1990 ADJUSTMENT)

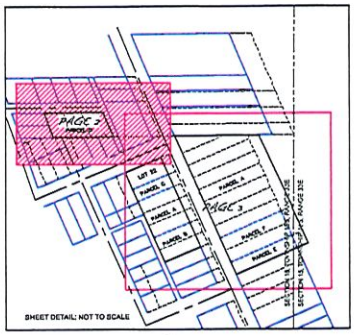
Point	Northing	Easting	Description
19	1769880.479	657122.610	2"ip
24	1769825.516	657214.736	1"ip w/nail
25	1769825.719	657214.849	1/2"ip
47	1769730.711	657142.203	1"ip
49	1769729.102	657061.742	1"ip
56	1769750.031	657246.202	5/8ir
57	1769596.849	657207.966	5/8ir 2103
60	1769539.645	657326.186	5/8ir 2103
67	1769443.453	657366.356	4x4 cm
70	1769415.725	657336.813	nail 2642
73	1769258.143	657446.776	2"ip
74	1769212.215	657466.731	5/8ir 2108
75	1769165.855	657487.133	1/2ir
102	1769589.149	657491.416	5/8ir
103	1769553.188	657431.317	nail
126	1769728.780	657028.960	nail 7788
127	1769634.302	657980.740	1/2ir 7788
190	1769733.097	657483.885	5/8ir 3612
247	1769677.546	657296.354	nail 6803
350	1769328.025	657854.427	scribe
393	1769736.382	657707.661	nail 7788
408	1769210.940	657713.440	nail 7788
426	1769722.077	657401.231	nail 6803
1029	1769864.632	657200.951	nail 3754

NOTE: STATE PLANE COORDINATES SHOWN HEREON BASED ON NGS CONTROL POINTS IDENTIFICATION NUMBERS AD1831 AND AG1833.

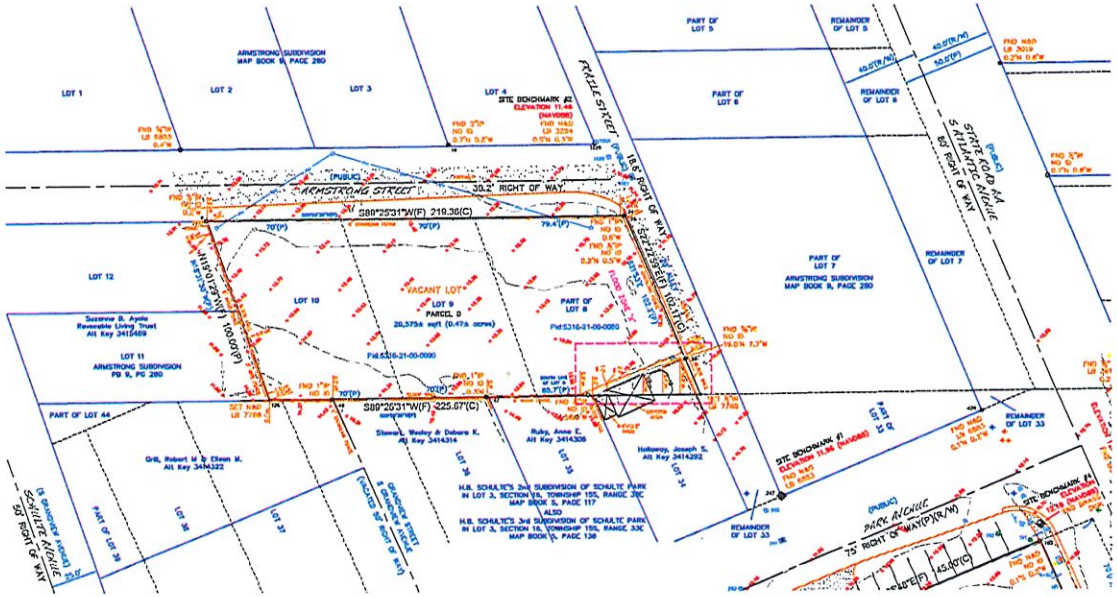


DETAIL A: SCALE 1"=30'

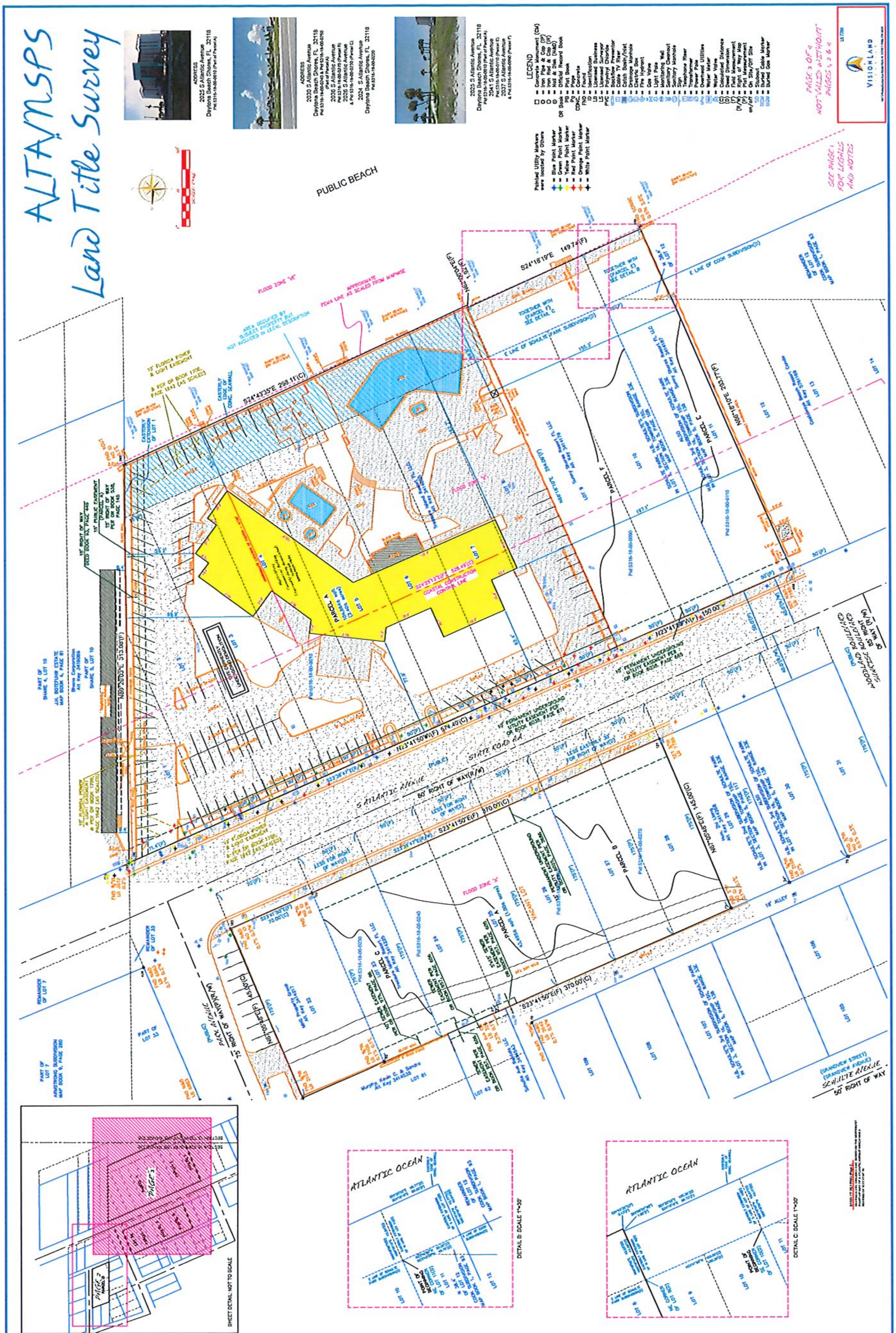
VICINITY MAP, NOT TO SCALE



SHEET DETAIL: NOT TO SCALE



SEE PAGE 1 FOR LEGALS AND NOTES


ALTA/NSPS
Land Title Survey
ADDRESS
2025 S Atlantic Avenue
Daytona Beach Shores, FL 32118
ADDRESS
2030 S Atlantic Avenue
Daytona Beach Shores, FL 32118
2036 S Atlantic Avenue
2026 S Atlantic Avenue
2024 S Atlantic Avenue
Daytona Beach Shores, FL 32118
2025 S Atlantic Avenue
Daytona Beach Shores, FL 32118
2041 S Atlantic Avenue
2037 S Atlantic Avenue
PUBLIC BEACH
Painted Utility Markers were located by Others
Blue Paint Marker
Green Paint Marker
Yellow Paint Marker
Red Paint Marker
Orange Paint Marker
White Paint Marker
LEGEND
Concrete Monument (CM)
Iron Pipe & Cap (IP)
Iron Rod & Cap (IR)
Nail & Disk (N&D)
OR Book = Official Record Book
PB = Plat Book
Pg = Page
CONC. = Concrete
FND = Found
ID = Identification
LB = Licensed Business
LS = Licensed Surveyor
PVC = Polyvinyl Chloride
Backflow Preventor
Cable TV Riser
Catch Basin/Inlet
Drainage Manhole
Electric Box
Fire Hydrant
Gas Valve
Light Pole
Monitoring Well
Sanitary Cleanout
Sanitary Manhole
Sign
Telephone Riser
Transformer
Power Pole
Overhead Utilities
Water Meter
Water Valve
(C) = Calculated Distance
(D) = Deed Dimension
(F) = Field Measurement
(R/W) = Right of Way Map
(P) = Plat Measurement
on/off = On Site/Off Site
SO = Stubout
Buried Cable Marker
Buried Gas Marker
PAGE 3 OF 4
NOT VALID WITHOUT PAGES 1, 2 & 4
SEE PAGE 1 FOR LEGALS AND NOTES
VISIONLAND
FLOOD ZONE "X"
APPROXIMATE FEMA LINE AS SCALED FROM MAPWISE
AREA OCCUPIED BY SUBJECT PROPERTY BUT NOT INCLUDED IN LEGAL DESCRIPTION
10' FLORIDA POWER & LIGHT EASEMENT & PER OR BOOK 1708, PAGE 1642 (AS SCALED)
EASTERLY EDGE OF CONC. SEAWALL
EASTERLY EXTENSION OF LOT 1
S24°43'35"E 298.11'(C)
S24°18'19"E 149.74'(F)
TOGETHER WITH (PARCEL F) SEE DETAIL C
TOGETHER WITH (PARCEL E) SEE DETAIL B
E LINE OF SCHULTE PARK SUBDIVISION(D)
E LINE OF COOK SUBDIVISION(D)
N66°18'10"E 294.06'(F)
N66°18'10"E 293.77'(F)
PARCEL F
PARCEL E
LOT 9
LOT 10
LOT 11
LOT 12
LOT 13
LOT 14
10' RIGHT OF WAY DEED BOOK 93, PAGE 449
15' PUBLIC EASEMENT (PARCEL A) 15' RIGHT OF WAY PER OR BOOK 538, PAGE 146
PART OF SHARE 4, LOT 10
J.H. BOTEFUHR ESTATE MAP BOOK 4, PAGE 81
PART OF SHARE 3, LOT 10
N66°20'03"E 313.08'(F)
SITE CURRENTLY UNDERGOING DEMOLITION
PARCEL A
LOT 1
LOT 2
LOT 3
LOT 4
LOT 5
LOT 6
LOT 7
LOT 8
S24°25'13"E(F) 528.49'(C)
COASTAL CONSTRUCTION CONTROL LINE
N23°41'50"W(F) 574.40'(C)
N23°41'50"W(F) 150.00'
S23°38'47"E(R/W)
S ATLANTIC AVENUE
(PUBLIC)
STATE ROAD A1A
80' RIGHT OF WAY(R/W)
LESS FOR RIGHT OF WAY(D)
LESS EASTERLY 30' FOR RIGHT OF WAY(D)
10' FLORIDA POWER & LIGHT EASEMENT & PER OR BOOK 1708, PAGE 1642 (AS SCALED)
15' PERMANENT UNDERGROUND UTILITY EASEMENT PER OR BOOK 6038, PAGE 671
10' PERMANENT UNDERGROUND UTILITY EASEMENT PER OR BOOK 6038, PAGE 665
S23°41'50"E(F) 370.00'(C)
N67°05'46"E(F) 145.00'(C)
PARCEL B
LOT 26
LOT 27
LOT 28
LOT 29
LOT 30
LOT 31
FLOOD ZONE "X"
VACANT LOT
PARCEL A
LOT 25
PARCEL C
LOT 22
LOT 23
LOT 24
18' ALLEY
(PUBLIC)
WOODLAND BOULEVARD
SUNRISE BOULEVARD
85' RIGHT OF WAY (R/W)
S23°41'50"E(F) 70.00'(C)
N67°05'46"E(F) 145.00'(C)
(PUBLIC)
PARK AVENUE
75' RIGHT OF WAY(P)(R/W)
REMAINDER OF LOT 33
REMAINDER OF LOT 7
PART OF LOT 33
PART OF LOT 7
ARMSTRONG SUBDIVISION MAP BOOK 9, PAGE 280
Murphy Kevin C. & Sandra
LOT 81
LOT 82
LOT 105
LOT 106
LOT 107
LOT 108
LOT 109
(GRANDVIEW STREET)
(GRANDVIEW AVENUE)
SCHULTE AVENUE
50' RIGHT OF WAY
SHEET DETAIL: NOT TO SCALE
PAGE 3
PAGE 2
ATLANTIC OCEAN
POINT OF BEGINNING
DETAIL B: SCALE 1"=30'
ATLANTIC OCEAN
POINT OF BEGINNING
DETAIL C: SCALE 1"=30'

Mean High Water Line Survey

NOTE:
- THIS MEAN HIGH WATER LINE SURVEY COMPLIES WITH CHAPTER 177, PART II, FLORIDA STATUTES.

ADDRESS
2025 S Atlantic Avenue
Daytona Beach Shores, FL 32118
Pid:5316-18-00-0010 (Part of Parcel A)

ADDRESS
2030 S Atlantic Avenue
Daytona Beach Shores, FL 32118
Pid:5316-18-00-0140 & Pid:5316-18-00-0250
(Part of Parcel A)
2035 S Atlantic Avenue
Pid:5316-18-00-0270 (Parcel B)
2025 S Atlantic Avenue
& Pid:5316-18-00-0130 (Parcel C)

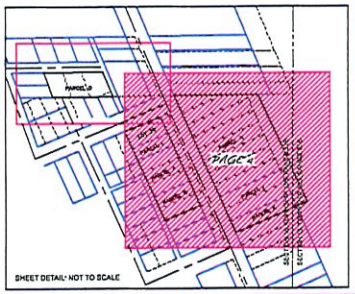
LEGEND

- □ = Concrete Monument (CM)
- ○ = Iron Pipe & Cap (IP)
- ○ = Iron Rod & Cap (IR)
- ⊙ = Nail & Disk (N&D)
- OR Book = Official Record Book
- PB = Plat Book
- Pg = Page
- CONC. = Concrete
- FND = Found
- ID = Identification
- LB = Licensed Business
- LS = Licensed Surveyor
- PVC = Polyvinyl Chloride
- = Backflow Preventor
- = Cable TV Riser
- = Catch Basin/Inlet
- = Drainage Manhole
- = Electric Box
- = Fire Hydrant
- = Gas Valve
- = Light Pole
- = Monitoring Well
- = Sanitary Cleanout
- = Sanitary Manhole
- = Sign
- = Telephone Riser
- = Transformer
- = Power Pole
- = Overhead Utilities
- = Water Meter
- = Water Valve
- (C) = Calculated Distance
- (D) = Deed Dimension
- (F) = Field Measurement
- (R/W) = Right of Way Map
- (P) = Plat Measurement
- on/off = On Site/Off Site
- SO = Stubout
- BCM = Buried Cable Marker
- BGM = Buried Gas Marker
- = Grade Shot
- INV = Invert
- CMP = Corrugated Metal Pipe
- RCP = Reinforced Concrete Pipe
- FFE = Finished Floor Elevation
- NAVD = North American Vertical Datum

Painted Utility Markers were located by Others

- = Blue Paint Marker
- = Green Paint Marker
- = Yellow Paint Marker
- = Red Paint Marker
- = Orange Paint Marker
- = White Paint Marker

SEE PAGE 1 FOR LEGALS AND NOTES



PAGE 4 OF 4
NOT VALID WITHOUT PAGES 1, 2 & 3

VISION LAND SURVEYING
LB 7288

Exhibit B

Certificate of Vesting

09/18/2014 01:57 PM
Instrument# 2014-169003 # 1
Book: 7033
Page: 3638

REVISED 6-9-14

TREASURE ISLAND RESORT FLORIDA, LLC CERTIFICATE OF VESTING

A. INTRODUCTION:

Mark A. Watts, Esquire, requested, on behalf of Treasure Island Resort Florida, LLC (RAIT), a certificate of vesting to the City of Daytona Beach Shores which request was heard by and before the City of Daytona Beach Shores City Council in Daytona Beach Shores, Florida, on Aug 12, 2014. Said request relates to the matters set forth below and requested determinations, findings and adjudication relative to the matters set forth below.

The decision set forth herein may be appealed pursuant to the controlling provisions of Florida law within the time limits established therein.

B. FINDINGS OF FACT:

The legal description of the land subject to this Certificate of Vesting, herein referred to as the "Subject Property", is attached hereto and incorporated herein as Exhibit "A", which has street addresses of 2025 S. Atlantic Avenue, Daytona Beach Shores, Florida and 2038 S. Atlantic Avenue, Daytona Beach Shores, Florida.

C. CONCLUSIONS OF LAW:

(1). RAIT requests that certain matters relating to the development of the Subject Property be considered vested with regard to the Subject Property. RAIT has asserted that it has a preexisting vested right to commence, maintain, and complete a specific level, type, nature, density, intensity or other form of development. RAIT asserts that is has investment-backed expectations that would be inequitably lost if a vested rights determination was not made in the affirmative relative to its application which is addressed herein. That is, RAIT has asserted that it has expended substantial

sums of money which cannot be recovered by RAIT, or that RAIT engaged in an irreversible and substantial change of position that would impose on RAIT an obligation to expend sums of money in the future. RAIT contends that these results would be inequitable and unjust.

(2). In the course of determining whether to approve vested status with regard to the Project, the factors required by controlling law have been considered.

(3). It was RAIT's burden, in seeking a vested rights determination, to demonstrate an entitlement to a vested right status as to any matter.

(4). The fact that the Subject Property has been assigned or is assigned in a particular zoning district under the land development regulations or *Comprehensive Plan* land use classification or any prior City Comprehensive Plan or zoning ordinance of the City, shall not, in and of itself, establish that RAIT's right to commence, maintain, and complete construction of a specific level, type, nature, density, intensity or other form of development has been vested.

(5). In essence the question presented relative to the request under review is whether it would be inequitable and unjust to destroy the right of RAIT to commence, maintain, and complete a specific level, type, nature, density, intensity, or other form of development upon all or a portion of the Subject Property.

(6). RAIT has expressly agreed to be bound by and subject to the development conditions and commitments stated herein and has covenanted and agreed to have such conditions and commitments to run with, follow and perpetually burden the aforedescribed Subject Property.

D. CONDITIONS IMPOSED:

(1). In order to have the benefits of this Certificate continue to inure to the

benefit of RAIT, RAIT must attain approval of a building permit for over fifty percent (50%) of the development approved for the Subject Property within seven (7) years from the date this Certificate is issued.

(2). In order to have the benefits of this Certificate continue to inure to the benefit of RAIT, RAIT must attain approval of a certificate of occupancy for over fifty percent for over fifty percent (50%) of the development approved for the Subject Property within ten (10) years from the date this Certificate is issued.

(3). The burdens of this Certificate shall be binding upon, and the benefits of this Certificate shall inure to, all successors in interest to RAIT.

E. ORDER:

NOW, THEREFORE, IT IS ORDERED THAT:

A. The request for a certificate of vesting determination is hereby **GRANTED** to the extent set forth herein and no further vesting has been found to be warranted as to the Subject Property.

B. All existing non-conformities, including specifically the hereinafter, are hereby recognized as vested by the City.

C. *Permitted Principal and Accessory Structures and Uses:* Nothing provided by this Certificate shall modify the uses permitted on the Subject Property, which shall include hotel, multifamily residential and customary accessory uses including but not be limited to, restaurants, bars, conference and convention space, pool side structures and related resort amenities. The underlying zoning regulations shall govern the uses permitted by right.

D. *Overall Density:* The existing structure contains 227 hotel units on

approximately 2.49 acres, a density of approximately 91 units per acre. RAIT may modify the size and layout of the existing units within the existing structure, but shall not exceed the total number of 227 hotel units previously operated on the Subject Property.

E. *Parking:* All parties recognize that the Subject Property's prior parking was insufficient under the City's current standards. RAIT shall provide additional surface parking within the Subject Property, but shall not be required to provide covered parking or a new parking structure to accommodate the number of parking spaces required by the City's current standards for hotel occupancy. A total of 228 surface parking spaces shall be provided and may be provided by off-site parking located within 200 feet of the Subject Property.

F. *Setbacks:* The City acknowledges that the existing setbacks conform to City standards.

G. *Green space:* Given the constrained conditions of the Subject Property, landscaping shall be provided to the extent feasible within the existing front yard setback. The Subject Property cannot achieve the 20% green area required by the underlying zoning, but shall instead maintain the current green space provided as a minimum standard.

H. *Maximum Lot Coverage by Building:* The current lot coverage shall not be increased.

I. *Maximum Building Height:* The current building height may remain at the same height as a vested right; or a higher height as RAIT may apply for as may be allowed by law.

J. *Maximum North/South Width:* The City acknowledges that the locations of existing structures meet the minimum standards for north/south width.

K. *Visual Corridor/Breezeway:* A minimum visual corridor/breezeway equal to 20% (in lieu of the required 30%) of the Subject Property's length along State Road A1A shall be provided.

L. *Nonconforming Status:* The redevelopment and/or renovation of the existing structure are authorized by this Certificate and the fifty percent (50%) requirements of Section 14-11.3 of the Land Development Code are deemed satisfied or waived.

M. No Loss of Vested Non-conformities. By redeveloping the subject and the adjacent Sunny Shores sites as part of a unified plan, the Subject Property may maintain the existing vested non-conformities. The addition of additional adjacent property shall not require that the non-conformities of the Subject Property mitigated or resolved, if possible, on the adjacent property. Rather, the vested non-conformities shall be maintained.

SIGNATURE PAGES FOLLOW

DONE AND ORDERED on the date set forth below; provided, however, that this Certificate shall be effective upon the completion of the work described in Section 3, Paragraph (c) of the Development Agreement by and between Treasure Island, Rait and the City concerning the development of the property that is the subject of this Certificate.

ATTEST:

Cheri Schwab, City Clerk

Michael T. Booker, City Manager

Approved as to form and legality:

Lonnie Groot, City Attorney

CITY OF DAYTONA BEACH SHORES

Harry Jennings, Mayor
Date: 8/12/14

Instrument# 2014-169003 # 7
Book: 7033
Page: 3644
Diane M. Matousek
Volusia County, Clerk of Court

RAIT'S CONSENT AND COVENANT

COMES NOW, _____, on behalf of Treasure Island Resort Florida, LLC and its heirs, successors, assigns or transferees of any nature whatsoever, and acknowledges that the City and the Developer desire to set forth certain terms, conditions, and agreements with respect to the development of the Project. Accordingly, RAIT consents to, agrees with and covenants to perform and fully abide by the provisions, terms, conditions and commitments set forth in this document.

WITNESSES:

Greg Toles

Courtney Buchanan

OWNER - RAIT:

TREASURE ISLAND RESORT FLORIDA, LLC, a Delaware limited liability company

Kenneth R. Frappier
Executive Vice President

STATE OF PENNSYLVANIA)

COUNTY OF Phila)

The foregoing instrument was acknowledged before me this 27 day of Aug, 2014 by Kenneth Frappier who are personally known to me or who have produced _____ as identification(s).

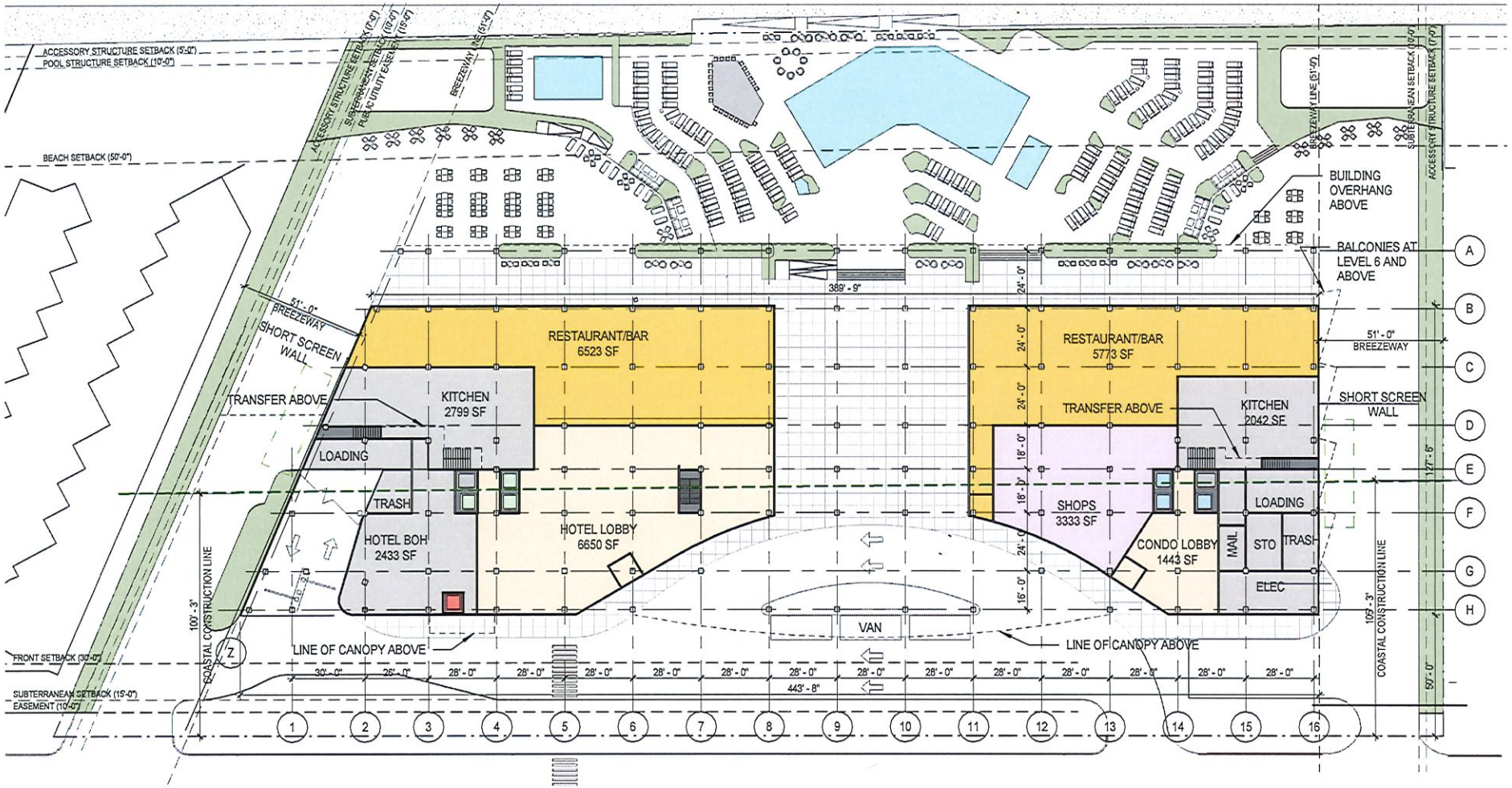
COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
RENEE D FOSTER
Notary Public
PHILADELPHIA CITY, PHILADELPHIA CNTY
My Commission Expires Jan 20, 2018

Renee D. Foster
NOTARY PUBLIC, STATE OF ~~FLORIDA~~ PA
Type or Print Name: Renee D Foster
Commission No.: _____
My Commission Expires: 1/20/2018

Exhibit C

Conceptual Plan

Exhibit C
Singular Combined Development (Scenario 1)



OVERALL FLOOR PLAN, LEVEL 1

SCALE: 1" = 40'-0"

0 20 40 80

SCALE: 1" = 40'

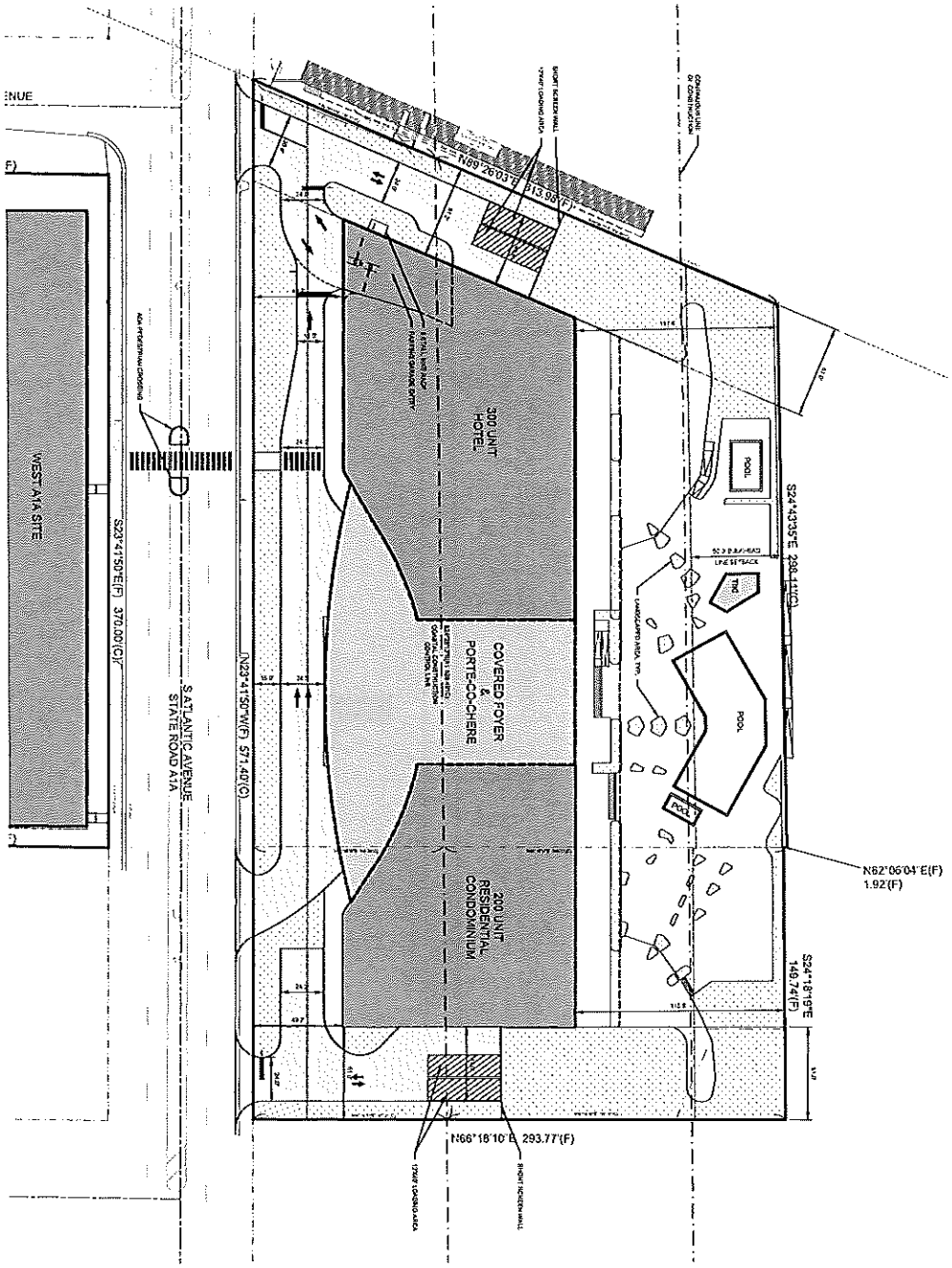
DLR Group | CONCORD HOSPITALITY | ACRES

DLR Group | CONCORD HOSPITALITY | ACRES

MARRIOTT TRIBUTE HOTEL + BRANDED RESIDENCES - DAYTONA BEACH SHORES, FL RENDERING 2021.11.18

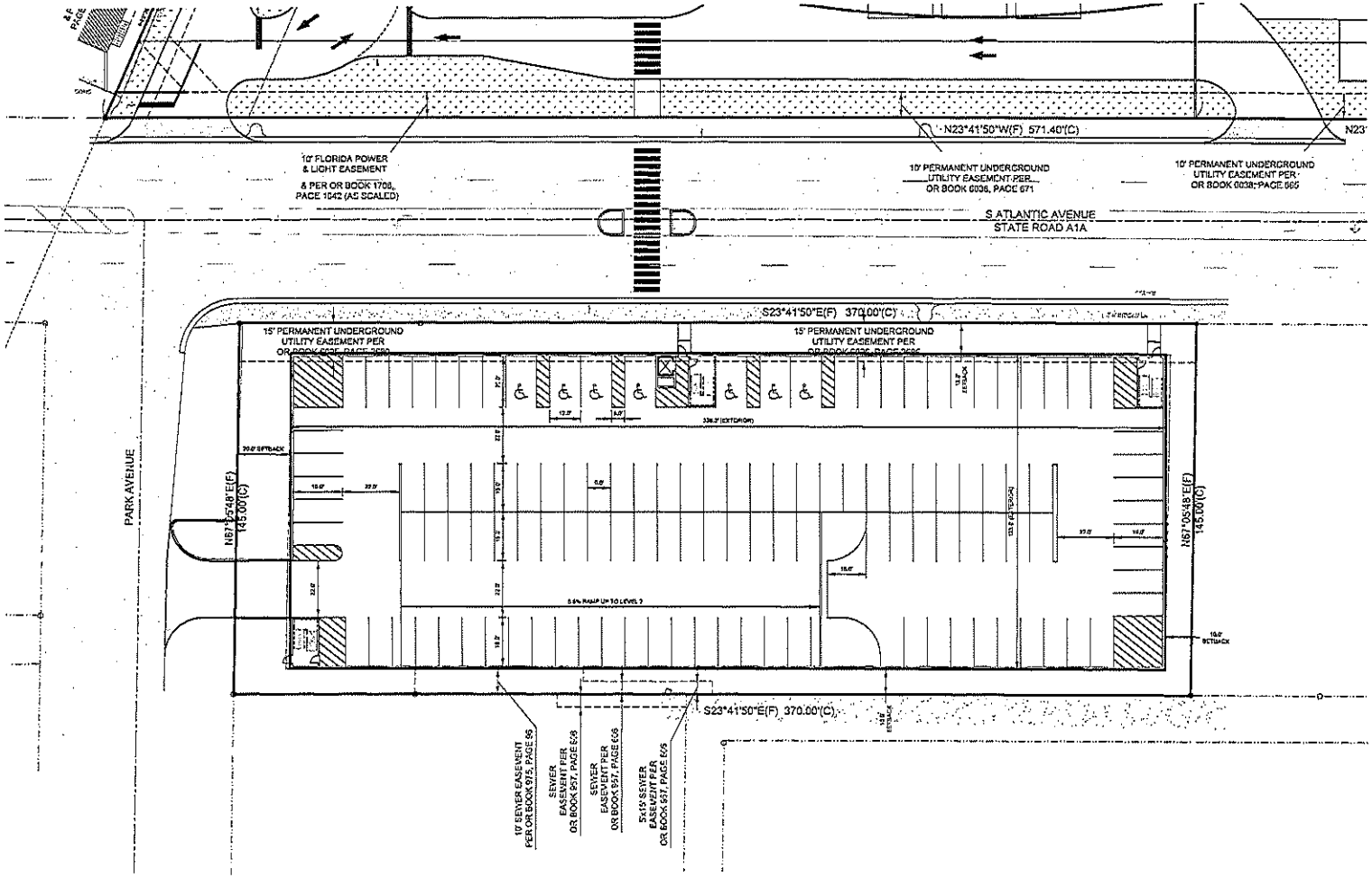
DLR Group | CONCORD HOSPITALITY | ACRES

MARRIOTT TRIBUTE HOTEL + BRANDED RESIDENCES - DAYTONA BEACH SHORES, FL RENDERING 2021.11.18



PARENT TRACT SITE PLAN	THE PERFORMANCE GROUP	NO	DATE / APPR / REVISION
TREASURE ISLAND			
NOT RELEASED FOR CONSTRUCTION			

SHEET C1 OF 4 — 827 — SITE PLANS



GRAPHIC SCALE: 1" = 20'

LOT SUMMARY:

GROSS LOT AREA	BUILDING AREA	PAVEMENT AREA	TOTAL IMPERVIOUS AREA	TOTAL GREEN SPACE	# PARKING STALLS
53,624.79 S.F. (1.23 Ac.)	41,604.41 S.F. (0.95 Ac.) 77.6%	876.08 S.F. (0.02 Ac.) 1.3%	42,280.49 S.F. (0.97 Ac.) 78.8%	11,354.30 S.F. (0.26 Ac.) 21.2%	125 GROUND FLR 99 LEVEL 2 TOTAL: 224 (7 HC)

THE PERFORMANCE GROUP

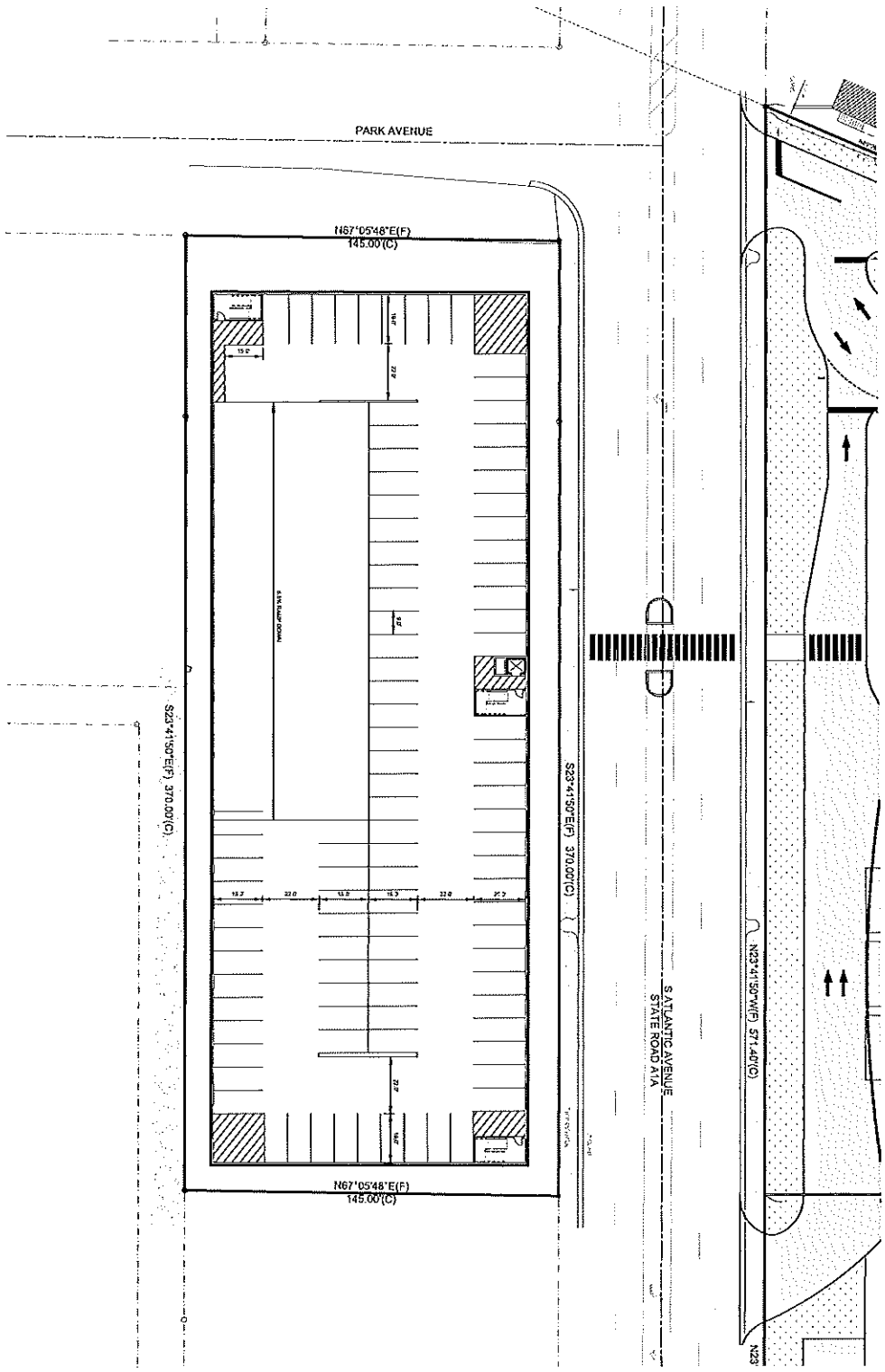
WEST A1A PARCEL GROUND FLOOR

TREASURE ISLAND

NOT RELEASED FOR CONSTRUCTION

P.E. LIC. #####
CERT. OF AUTH. LIC. ####

SCALE: 1"=20'
DESIGNED: JMH
DRAWN: KMP
DATE: 11/8/21
PROJECT NO.
827
ASP-SITE PLAN 2
SHEET C2 OF 4



GARAGE LEVEL 2: 99 STALLS

WEST A1A PARCEL FLOOR 2

TREASURE ISLAND

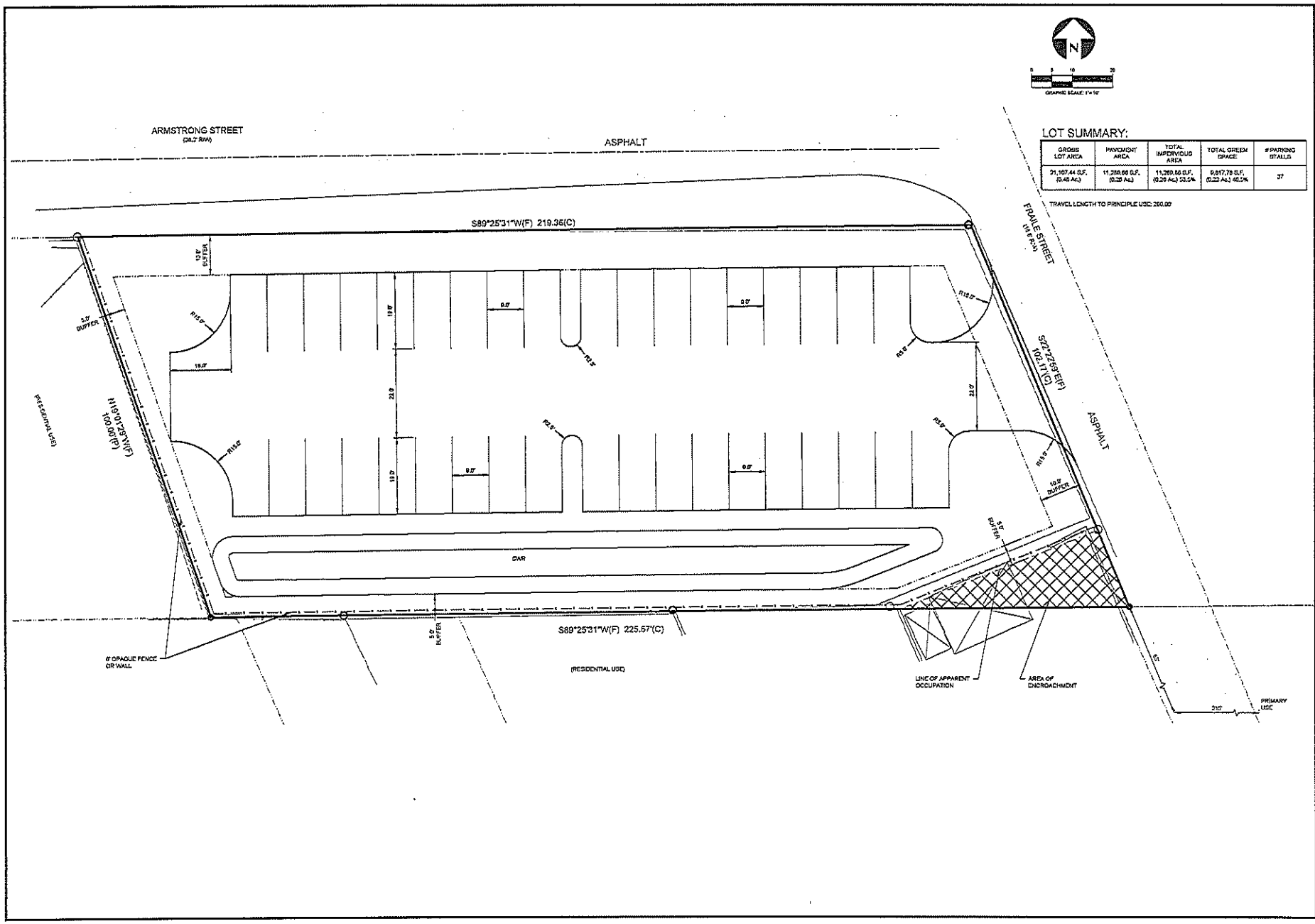
NOT RELEASED FOR CONSTRUCTION

THE PERFORMANCE GROUP
CIVIL ENGINEERING / PLANNING / DEVELOPMENT

NO	DATE	APP	REVISION

P.E. LIC. #0000
REAL ESTATE BROKER LIC. #0000

SCALE:
DESIGNED: JRH
DRAWN:
CHKD:
DATE:
PROJECT NO: 827
BENCHMARK:
SHT: C3 OF 4



LOT SUMMARY:

GROSS LOT AREA	PAVEMENT AREA	TOTAL IMPERVIOUS AREA	TOTAL GREEN SPACE	# PARKING STALLS
21,107.44 S.F. (0.48 Ac.)	11,289.66 S.F. (0.26 Ac.)	11,289.66 S.F. (0.26 Ac.) 53.5%	9,817.78 S.F. (0.23 Ac.) 46.5%	37

TRAVEL LENGTH TO PRINCIPLE USE: 280.00

REVISION

NO	DATE	APP.

THE PERFORMANCE GROUP
CIVIL ENGINEERING & LAND DEVELOPMENT

FRAILE STREET PARCEL

TREASURE ISLAND

NOT RELEASED FOR CONSTRUCTION

P.E. LIC. #0053
RLS, CEAT, LC, 7175

SCALE:	1"=10'
DESIGNED:	JRH
DRAWN:	KMP
DATE:	11/8/21
PROJECT NO.	827
SZ7-SITE PLAN 2	
SHEET	4 OF 4

Exhibit C
Separate Development (Scenario 2)

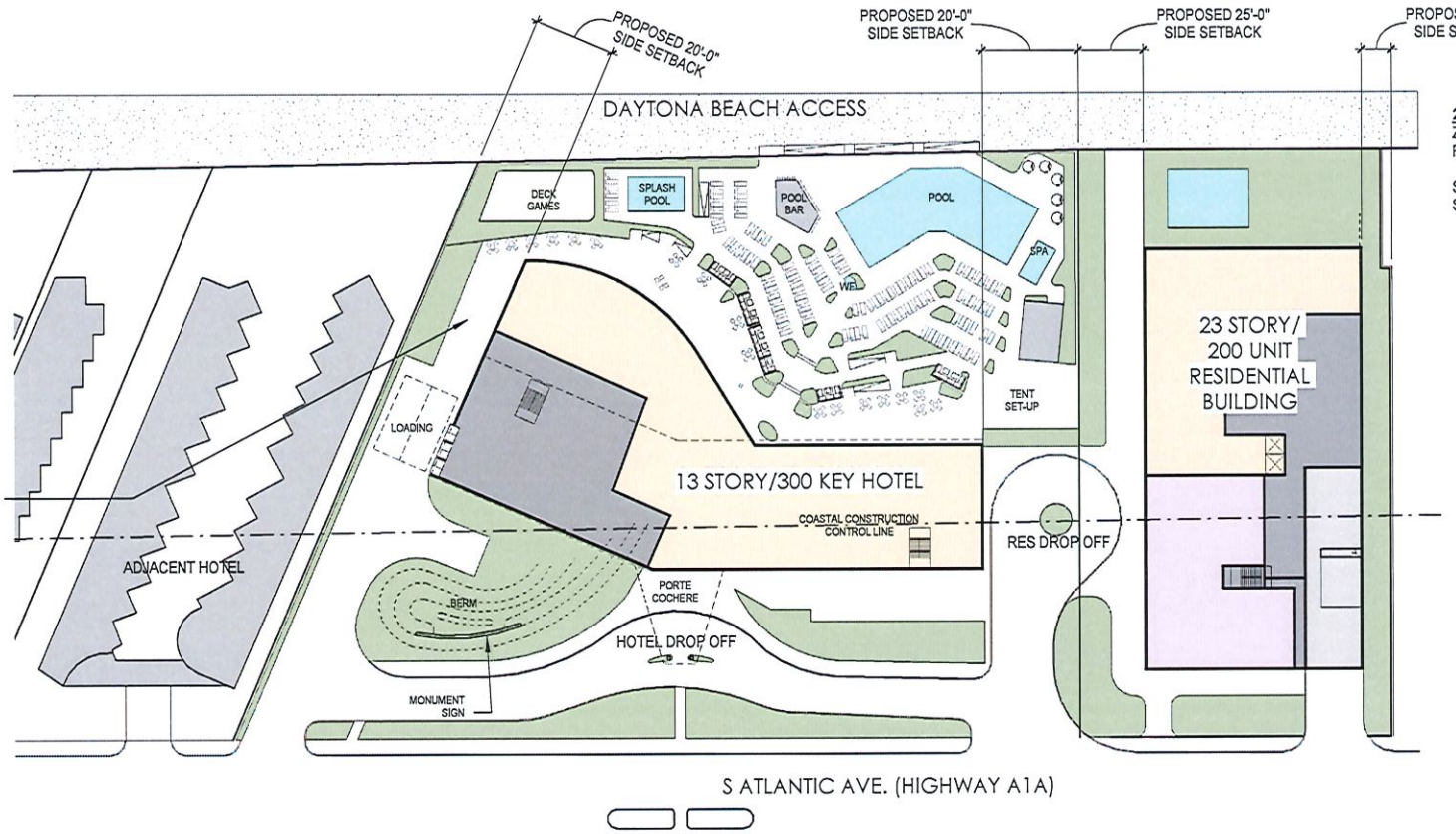
2025 S. ATLANTIC AVE.
Zoned: T-RMF-1 (Hotel or Residential Multi-Family)

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'

NORTH

DLR Group | CONCORD HOSPITALITY

SCALE: 1" = 60'

TEST FIT - DAYTONA, FL

SITE PLAN

2021.08.04