



City of Daytona Beach Shores

"Life is Better Here"

"A Premier, Friendly Place to Be"

AGENDA CITY COUNCIL MEETING MAY 24, 2022

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

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

- 1. CALL TO ORDER BY MAYOR**
- 2. ROLL CALL BY CITY CLERK**
- 3. PRAYER**
- 4. PLEDGE OF ALLEGIANCE**
- 5. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:**
- 6. APPROVAL OF MINUTES**
 - A. City Council Minutes May 10, 2022
- 7. CONSENT AGENDA:**
 - A. April Public Safety Monthly Report

- B. Approval for Opioid Settlement with Walgreens
- C. Building Division Monthly Report - April 2022
- D. Community Services Department Monthly Report - April 2022
- E. Finance Report - April 2022

8. REPORTS OF THE CITY ATTORNEY:

- A. City Attorney Report

9. REPORTS OF THE CITY MANAGER:

10. OLD BUSINESS:

11. NEW BUSINESS:

- A. Resolution 2022-01: Resolution to Join the American Flood Coalition
- B. Resolution 2022-02 Banking Signatory Update
- C. Item for consideration: Investment Management Opportunities
- D. Economic Development Lease Subsidy Grant Application - Carmine's Pizza, Inc.
- E. Purchase and Sales Agreement for Chase Bank Property
- F. Appointment of Voting Delegate for FLC Annual Conference

12. COUNCIL COMMENTS:

13. AUDIENCE REMARKS/PUBLIC COMMENTS:

14. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

15. ADJOURNMENT:

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

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF DAYTONA BEACH SHORES, 2990 S. ATLANTIC AVENUE, DAYTONA BEACH SHORES, FLORIDA 32118, TELEPHONE NUMBER 386-7635364, CSCHWAB@CITYOFDBS.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 711 or 1 8009558771.

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

**MINUTES
CITY COUNCIL MEETING
May 10, 2022
3000 Bellemead Drive, Daytona Beach Shores, FL 32118**

1. CALL TO ORDER BY MAYOR

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

Staff: City Manager Michael T. Booker, City Clerk Cheri Schwab, City Attorney Becky Vose, Community Services Director Stewart Cruz, Finance Director Kurt Swartzlander, Economic Development and Public Affairs Director Nancy Maddox, and Public Safety Director Stephan Dembinsky.

2. ROLL CALL BY CITY CLERK

3. PRAYER

4. PLEDGE OF ALLEGIANCE

5. CEREMONIAL ITEMS, PRESENTATIONS AND PUBLIC NOTICES:

A. Employee Service Award - Sgt. Vincent Castellano - 10 years

Director Stephan Dembinsky presented SGT. Vincent Castellano with his 10-year service award.

6. APPROVAL OF MINUTES

A. City Council Minutes April 26, 2022

VICE MAYOR MEL LINDAUER moved, seconded by COUNCILMEMBER MICHAEL POLITIS to Approve the City Council Minutes of April 26, 2022.

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

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

7. CONSENT AGENDA:

8. REPORTS OF THE CITY ATTORNEY:

A. City Attorney Report

Attorney Becky Vose reviewed her report to the City Council.

9. REPORTS OF THE CITY MANAGER:

A. City Manager Report May 10, 2022

City Manager Michael Booker reviewed his report to the City Council.

10. QUASI-JUDICIAL HEARING

A. Ordinance 2022-08: Rezoning Application RZ12021040, Colby & Jennifer Caldwell - 6 Carter Terrace, Annexed Property

Attorney Vose read the ordinance by title only. The council stated that there was no ex-parte communication regarding the agenda item. Witnesses were sworn in by the City Clerk. Community Services Director Stewart Cruz explained that this was the second and final reading for the ordinance and that it met all standards in state law and the city codes. Staff recommended adoption.

COUNCILMEMBER RICHARD BRYAN moved, seconded by VICE MAYOR MEL LINDAUER to Adopt Ordinance 2022-08 on second reading.

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

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

B. Ordinance 2022-09: Rezoning Application RZ12021043; Larry & Barbara Pollack - 3102 Liberty Street, Annexed Property

Attorney Vose read the ordinance by title only. The council stated that there was no ex-parte communication regarding the agenda item. Community Services Director Stewart Cruz explained that this was the second and final reading for the ordinance and that it met all standards in state law and the city codes. Staff recommended adoption.

COUNCILMEMBER RICHARD BRYAN moved, seconded by VICE MAYOR MEL LINDAUER to Adopt Ordinance 2022-09 on second reading.

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

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

11. OLD BUSINESS:

- A. Ordinance 2022-06: Future Land Use Map Amendment CPA12021041; Colby & Jennifer Caldwell - 6 Carter Terrace, Annexed Property

Attorney Vose read the ordinance by title. There were no followup questions or comments. Staff recommended adoption.

COUNCILMEMBER MICHAEL POLITIS moved, seconded by COUNCILMEMBER RICHARD BRYAN to Adopt Ordinance 2022-06 on second reading.

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

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

- B. Ordinance 2022-07: Future Land Use Map Amendment CPA12021044; Larry & Barbara Pollack - 3102 Liberty Street, Annexed Property

Attorney Vose read the ordinance by title. There were no followup questions or comments. Staff recommended adoption.

COUNCILMEMBER RICHARD BRYAN moved, seconded by VICE MAYOR MEL LINDAUER to Adopt Ordinance 2022-07 on second reading.

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

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

12. NEW BUSINESS:

- A. 2022 Florida Legislature Final Report

Attorney Vose recommended that the councilmembers read the report provided and she will speak more in depth on bills that could affect the city at a future meeting.

- B. Request to Extend Concession Parking Ancillary Facility Special Exception: WD Plaza, LLC - 2200 S. Atlantic Avenue

Community Services Director Cruz explained that this special exception was strictly for storage use by the beach concessions. This is the 5th and final one-year extension that is

available for the special exception. There have been no issues during the past five years and the quarterly inspections have always passed.

COUNCILMEMBER RICHARD BRYAN moved, seconded by VICE MAYOR MEL LINDAUER to Approve the 5th and final special exception request by WD Plaza, LLC.

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

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

13. COUNCIL COMMENTS:

CMBR Bryan stated that he had been speaking with the Finance Director regarding the purchase of treasury bills to obtain a better ROI. The others agreed it would be a good investment now that the interest rates are being raised. Mayor Miller reviewed the upcoming special events.

14. AUDIENCE REMARKS/PUBLIC COMMENTS:

Audience Member Kahri Kenton spoke. She lives next door to the Westminster by the Sea Church, which recently had the counseling center approved. The church had previously stated that they would install a fence between the center and her home. Ms. Kenton stated that only a small part of the fence had been installed. She contacted the fence company, who stated they were not installing anything else. Ms. Kenton is concerned that because patients arriving for counseling can still view her backyard. There is also a table in the yard that is used for counseling that concerns her. She provided pictures of the fence for the record. Community Services Director Cruz stated that the fence company had applied for a permit for a short length of fence due to the fact that a chain link fence was already on the property.

15. ITEMS RECOMMENDED FOR THE NEXT AGENDA:

Chase Bank property purchase and sale agreement.

16. ADJOURNMENT:

The meeting ended at 6:43 pm.

**MAYOR
NANCY MILLER**

**CITY MANAGER
MICHAEL T. BOOKER**

ATTEST:

CITY CLERK, CHERI SCHWAB



CITY OF DAYTONA BEACH SHORES

DEPARTMENT OF PUBLIC SAFETY

3050 South Atlantic Avenue

Daytona Beach Shores, Florida 32118

Office of Director of Public Safety

Office 386-763-5333 Fax 386-763-5341

MONTHLY REPORT FOR APRIL 2022 *pe 5/2/22*

	Apr-22	22/YTD	Apr-21	21/YTD
<i>Police Related Calls</i>	2,189	8,342	2,345	8,682
<i>Fire Related Calls</i>	37	126	42	178
<i>Rescue Related Calls</i>	117	459	102	402
<i>Fire Related Alarms Sounding</i>	10	160	15	56
<i>Traffic Citations</i>	220	800	206	469
<i>Written Warnings</i>	54	225	26	140
<i>Building Inspections</i>	53	211	47	213
<i>Arrests: Adults</i>	32	113	38	133
<i>Juveniles</i>	0	6	0	2
<i>City Ordinance Charges</i>	1	1	0	0
<i>Florida State Statute Charges</i>	34	181	64	237
<i>Accidents: Total</i>	24	101	14	80
<i>Street/Highway</i>	9	52	3	35
<i>Parking Lot</i>	15	49	11	45

Stephan Dembinsky, Public Safety Director

POLICE CALLS TOTALS BY TYPE

DB SHORES POLICE

DATES: 2022-04-01 through 2022-04-30

LOCATION: ALL | ZONE: ALL | RD: ALL

DESCRIPTION	SIGNAL	TOTAL CALLS	% OF ALL CALLS	DAILY AVG
MISCELLANEOUS LE CALL	MISC	398	18.18 %	13.27
EXTRA PATROL	EP	382	17.45 %	12.73
TRAFFIC STOP	TS	374	17.09 %	12.47
PROPERTY CHECK	PRC	238	10.87 %	7.93
DIRECTED PATROL REQUEST	DPR	50	2.28 %	1.67
SUSP PERSON	SPER	44	2.01 %	1.47
SUSP VEHICLE	SVEH	38	1.74 %	1.27
MEDICAL EMERGENCY	MED1	37	1.69 %	1.23
SUSP INCIDENT	SINC	36	1.64 %	1.20
TELEPHONE HANDLE	THC	36	1.64 %	1.20
RADAR	RADAR	31	1.42 %	1.03
SUSPECT STOP	SS	29	1.32 %	0.97
DISTURBANCE	DIST	28	1.28 %	0.93
TRESPASSERS	TRES	22	1.01 %	0.73
ILLEGAL PARKING	PARK	18	0.82 %	0.60
INVESTIGATION	INV	18	0.82 %	0.60
FOUND PROPERTY	PROPF	17	0.78 %	0.57
MVA	MV	16	0.73 %	0.53
RECKLESS DRIVER	RD	16	0.73 %	0.53
WALKUP	WALKUP	16	0.73 %	0.53
FLAG DOWN	FLAG	14	0.64 %	0.47
911 CK/OPEN LINE	911CK	13	0.59 %	0.43
NARCOTICS	NARC	13	0.59 %	0.43
FRAUD	FRAUD	12	0.55 %	0.40
FIRE ALARM	ALARMF	10	0.46 %	0.33
TOWED VEHICLE	TOW	10	0.46 %	0.33
ATT TO CONTACT	ATC	9	0.41 %	0.30
ELEVATOR CALL	ELEV	9	0.41 %	0.30
FALL- NON EMERGENCY	TRAU3	9	0.41 %	0.30
MENTALLY ILL PER	MIP	9	0.41 %	0.30
TEST LE CALL	TEST	9	0.41 %	0.30
WARRANT	WAR	9	0.41 %	0.30
ZONE ACCOUNTABILITY PATR	ZAP	9	0.41 %	0.30
ASSAULT/BATTERY	ABAT	8	0.37 %	0.27
MEDICAL NON-EMERG	MED2	8	0.37 %	0.27
THEFT	THEFT	8	0.37 %	0.27
TRAFFIC CONTROL	TC	8	0.37 %	0.27
CIVIL COMPLAINT	CIVIL	7	0.32 %	0.23
HIT&RUN MVA	MVHR	7	0.32 %	0.23
DISABLED VEHICLE	DAV	6	0.27 %	0.20
FIGHT	FIGHT	6	0.27 %	0.20
SPECIAL DETAIL	SDL	6	0.27 %	0.20
WELL BEING CHECK	WBC	6	0.27 %	0.20
ANIMAL COMPLAINT	AC	5	0.23 %	0.17
BUSINESS ALARM	ALARMB	5	0.23 %	0.17
ESCORT	ESCORT	5	0.23 %	0.17

POLICE CALLS TOTALS BY TYPE

DB SHORES POLICE

DATES: 2022-04-01 through 2022-04-30

LOCATION: ALL | ZONE: ALL | RD: ALL

DESCRIPTION	SIGNAL	TOTAL CALLS	% OF ALL CALLS	DAILY AVG
INFORMATION GIVEN	INFO	5	0.23 %	0.17
NOISE	NOISE	5	0.23 %	0.17
SHOPLIFTING	SHOP	5	0.23 %	0.17
UNCONSCIOUS	UNC	5	0.23 %	0.17
VANDALISM	VAND	5	0.23 %	0.17
CITY ORDINANCE VIOLATION	COV	4	0.18 %	0.13
DOMESTIC DISTURBANCE	DV	4	0.18 %	0.13
DRUNK PERSON	IP	4	0.18 %	0.13
FLEEING DRIVER	FLEE	4	0.18 %	0.13
JUVENILE	JUV	4	0.18 %	0.13
STOLEN VEHICLE	SV	4	0.18 %	0.13
STROKE / CVA	CVA	4	0.18 %	0.13
TRAUMA NON EMERG	TRAU	4	0.18 %	0.13
DRUNK DRIVER	DUI	3	0.14 %	0.10
MISC FIRE SERVICE CALL	MISCF	3	0.14 %	0.10
MVA W/ INJURIES	MVI	3	0.14 %	0.10
SUICIDAL PERSON	SP	3	0.14 %	0.10
TRAUMA EMERGENCY	TRAU1	3	0.14 %	0.10
CIVIL SERVICE	CIVILS	2	0.09 %	0.07
DANGEROUS COND FD	DCFD	2	0.09 %	0.07
DEAD PERSON	DEAD	2	0.09 %	0.07
FOUND CHILD	CHILDF	2	0.09 %	0.07
HAZARDOUS COND	HZM	2	0.09 %	0.07
PANIC ALARM	ALARM	2	0.09 %	0.07
PROWLER	PROW	2	0.09 %	0.07
RECOVERED SIG 10	SVR	2	0.09 %	0.07
THREATENING CALL	TCALL	2	0.09 %	0.07
TRAUMA CRITICAL	TRAUE	2	0.09 %	0.07
TRAUMA NON-EMERG	TRAU2	2	0.09 %	0.07
WALK & TALK	WT	2	0.09 %	0.07
911 CK/OPN LINE/MED HAZ	911MED	1	0.05 %	0.03
ABANDONED VEH	AV	1	0.05 %	0.03
ABUSE	ABUSE	1	0.05 %	0.03
ALZHEIMERS	ALZ	1	0.05 %	0.03
ASSIST	ASST	1	0.05 %	0.03
ASSIST AGENCY	ASSIST	1	0.05 %	0.03
BURGLARY	BURG	1	0.05 %	0.03
BURGLARY ALARM	ALARM	1	0.05 %	0.03
CARBREAK	CB	1	0.05 %	0.03
DANGEROUS COND PD	DCPD	1	0.05 %	0.03
DRONE	DRONE	1	0.05 %	0.03
DROWNING	DROWN	1	0.05 %	0.03
EYE PROBLEMS	EYE	1	0.05 %	0.03
FAILURE TO PAY	FTP	1	0.05 %	0.03
FALL - NON EMERGENCY	FALN	1	0.05 %	0.03
HAZ COND/MAJOR INC	HZMMI	1	0.05 %	0.03

POLICE CALLS TOTALS BY TYPE

DB SHORES POLICE

DATES: 2022-04-01 through 2022-04-30

LOCATION: ALL | ZONE: ALL | RD: ALL

DESCRIPTION	SIGNAL	TOTAL CALLS	% OF ALL CALLS	DAILY AVG
LASER	LASER	1	0.05 %	0.03
LOST PROPERTY	PROPL	1	0.05 %	0.03
MENTALLY/EMOTIONAL	MIP1	1	0.05 %	0.03
MISSING PERSON	MP	1	0.05 %	0.03
MISSING PERSON RECOVERED	MPR	1	0.05 %	0.03
MVA MAJOR	MVMI	1	0.05 %	0.03
POWER LINES HAZARD	PL	1	0.05 %	0.03
REPOSSESSED VEH	REPO	1	0.05 %	0.03
SEX OFFENSE	SO	1	0.05 %	0.03
SMOKE INVESTIGATION	SMOKE	1	0.05 %	0.03
SOLICITORS	SOL	1	0.05 %	0.03
STRUC FIRE COMM/HIGHRISE	SFCH	1	0.05 %	0.03
STRUCTURE FIRE	SF	1	0.05 %	0.03

TOTAL CALLS: 2,189 100.00% 72.97

NOTE: CAD-generated statistical reports are compiled from a live database of calls for service; this live database requires frequent call updating to ensure real time data is correct and maintained. When compiling and comparing statistics over time, minor discrepancies are inherent and should be expected. For final report information on crime, Uniformed Crime Reporting (UCR) statistics should be utilized.

DAYTONA BEACH SHORES DEPARTMENT OF PUBLIC SAFETY

APRIL 2022 STATISTICS

FIRE CALLS	CURRENT MONTH			YEAR TO DATE			PRIOR YEAR		
ENGINE RESPONSE	CITY	COUNTY	MUTUAL AID	CITY	COUNTY	MUTUAL AID	CITY	COUNTY	MUTUAL AID
STRUCTURE FIRES	0	0	0	1	0	1	1	0	1
HAZARDOUS CONDITIONS	6	0	2	19	2	2	14	2	0
VEHICLE FIRES	0	0	0	0	0	0	1	0	0
BOAT FIRES	0	0	0	0	0	0	0	0	0
OTHER FIRES NOT LISTED	0	0	0	3	1	3	5	1	0
VEHICLE CRASHES W/ENGINE RESPONSE	0	0	0	2	1	1	4	2	1
SERVICE CALLS	16	1	1	56	5	2	101	5	2
FIRE ALARMS	9	1	0	57	2	1	55	2	0
CANCELLED EN ROUTE	4	1	6	17	5	10	19	9	10
TOTALS	35	3	9	155	16	20	200	21	14

CURRENT MONTH ESTIMATED FIRE DAMAGES

CITY: \$0
COUNTY: \$0
MUTUAL AID: \$0

INSPECTIONS	CURRENT MONTH		YEAR TO DATE		PRIOR YEAR	
	INITIAL	FOLLOW-UP	INITIAL	FOLLOW-UP	INITIAL	FOLLOW-UP
HIGH RISE	3	5	11	19	15	28
HOTEL/MOTEL	0	0	16	8	19	7
ASSEMBLY	0	0	0	1	2	0
MERCANTILE	5	0	23	4	19	3
RESTAURANT	3	0	10	3	8	0
BUSINESS	20	0	40	5	51	3
OTHER	1	0	2	0	10	0
CONSTRUCTION	10	2	20	5	22	2
OCCUPATIONAL LICENSES	0	0	0	0	0	0
APARTMENTS/CONDO	4	0	26	3	15	7
TOTALS	46	7	148	48	161	50

PLANS EXAMINATION HOURS: 2 HRS

DAYTONA BEACH SHORES DEPARTMENT OF PUBLIC SAFETY

APRIL 2022 STATISTICS

EMS CALLS

CURRENT MONTH

YEAR TO DATE

PRIOR YEAR

	CITY	COUNTY	MUTUAL AID	CITY	COUNTY	MUTUAL AID	CITY	COUNTY	MUTUAL AID
ALS CALLS	44	8	0	147	20	0	190	26	5
BLS CALLS	57	6	2	157	18	3	150	23	8
TOTALS	101	14	2	304	38	3	340	49	13



CITY OF DAYTONA BEACH SHORES
DEPARTMENT OF PUBLIC SAFETY
3050 South Atlantic Avenue
Daytona Beach Shores, Florida 32118
Office of Director of Public Safety
Office 386-763-5333 Fax 386-763-5341

TRAINING SEMINARS ATTENDED

Month of April 2022

<i>Zachary Rooney</i> <i>Jeff Zephir</i>	<i>4/1</i>	<i>BTO refresher</i> <i>DSC</i>
<i>Vincent Castellano</i>	<i>4/4</i>	<i>Taser Instructor</i> <i>Ocala</i>
<i>Alexander Salas</i>	<i>4/4-8</i>	<i>Speed Measurement</i> <i>DSC</i>
<i>Heather Wooleyhan</i>	<i>4/5-6</i>	<i>De-Escalation Techniques</i> <i>DSC</i>
<i>Ryan Mowen</i>	<i>4/12-15</i>	<i>Less lethal ICP Instructor</i> <i>Naples</i>
<i>Pete Duffy</i>	<i>4/25-29</i>	<i>Fire Prevention Practices</i> <i>POFD</i>
<i>Jack Ransom</i> <i>Brianna Doonan</i> <i>Heather Wooleyhan</i>	<i>4/25-29</i>	<i>Crisis Intervention</i> <i>DSC</i>
<i>Vincent Castellano</i> <i>Ryan Mowen</i>	<i>4/25-5/4</i>	<i>Instructor Techniques</i> <i>Valencia</i>



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DEPARTMENT OF PUBLIC SAFETY
3050 South Atlantic Avenue
Daytona Beach Shores, Florida 32118
Office of Director of Public Safety
Office 386-763-5333 Fax 386-763-5341

MONTHLY REPORT FOR APRIL 2022

Vehicle Maintenance Division: 2 Positions Assigned: Conducted routine, scheduled maintenance checks and repairs on all city vehicles (includes oil changes and tire exchanges). Additional items were:

Replace momentary rocker switch	veh #113
Replace strobe lights	veh #142
Replace front and rear brakes	veh #168
Replace alternator	veh #149
Replace wiper blades	veh #148
Replace ignition coil assembly	veh #149
Replace ignition coil assembly & spark plugs	veh #159

EXHIBIT D

SUBDIVISION SETTLEMENT PARTICIPATION FORM

Governmental Entity:	State:
Authorized Official:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement and Release dated May 4, 2022 (“*Walgreens Settlement*”),¹ and acting through the undersigned authorized official, hereby elects to participate in the Walgreens Settlement, release all Released Claims against all Releasees, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Walgreens Settlement, understands that all terms in this Subdivision Settlement Participation Form have the meanings defined therein, and agrees that by signing this Subdivision Settlement Participation Form, the Governmental Entity elects to participate in the Walgreens Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall immediately cease any and all litigation activities as to the Releasees and Released Claims and, within the later of 7 days following the entry of the Consent Judgment or 7 days of the Execution Date of this Subdivision Settlement Participation Form, voluntarily dismiss with prejudice any Released Claims that it has filed.
3. The Governmental Entity agrees to the terms of the Walgreens Settlement pertaining to Subdivisions as defined therein.
4. By agreeing to the terms of the Walgreens Settlement and expressly agreeing to the Releases provided for therein, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date of the Release.
5. The Governmental Entity agrees to use any monies it receives through the Walgreens Settlement solely for the purposes provided therein.
6. The Governmental Entity submits to the jurisdiction of the Court for purposes limited to the Court’s role as provided in, and for resolving disputes to the extent provided in, the Walgreens Settlement.

¹ The defined terms in the Walgreens Settlement shall have the same meaning in this Subdivision Settlement Participation Form.

7. The Governmental Entity has the right to enforce those rights given to it in the Walgreens Settlement.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Walgreens Settlement, including, but not limited to, all provisions of Section D and E, and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Releasee in any forum whatsoever. The releases provided for in the Walgreens Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Releasees the broadest possible bar against any liability relating in any way to any Released Claims and extend to the full extent of the power of the Governmental Entity to release Claims. The Walgreens Settlement shall be a complete bar to any Released Claim.
9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the Walgreens Settlement.
10. In connection with the releases provided for in the Walgreens Settlement, the Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or released party.

As a Releasor, the Governmental Entity may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date of the Release, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entity's decision to participate in the Walgreens Settlement.

11. Nothing herein is intended to modify in any way the terms of the Walgreens Settlement, to which the Governmental Entity hereby agrees. To the extent this Subdivision

Settlement Participation Form is interpreted differently from the Walgreens Settlement in any respect, the Walgreens Settlement controls.

I have all necessary power and authorization to execute this Subdivision Settlement Participation Form on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____
(the "Execution Date of this Subdivision
Settlement Participation Form")

City of Daytona Beach Shores

Planning & Building Division Statistics

Monthly Report – April, 2022

Planning Division

Site Plans - Submittals and Approvals:

Submitted this Month: 0
 Submitted this Fiscal Year: 7
 Approved by Staff this Month: 0
 Approved by Staff this Fiscal Year: 1
 Approved by City Council this Month: 0
 Approved by City Council this Fiscal Year: 0
 Amendments Approved by Staff this Fiscal Year: 0

Building Division

Specific Large Projects (Over \$10,000) - Submitted This Month:

PROJECT	WORK ADDRESS	DATE	WORK DESCRIPTION	VALUE	REVENUE
Fenters Residence	2555 South Atlantic Avenue, Unit 1905	4/1	Remodel kitchen and 3 bathrooms	\$179,000.00	\$994.33
Tognarelli Residence	3855 South Atlantic Avenue, Unit G5	4/1	Bathroom remodel	\$28,000.00	\$226.94
Eisenhart Residence	3047 South Atlantic Avenue, Unit 1001	4/1	Remodel guest bathroom	\$16,000.00	\$161.50
Jones Residence	3226 South Peninsula Drive	4/1	Remodel kitchen	\$35,000.00	\$266.76
Schwendeman Residence	2626 South Atlantic Avenue, Unit 401	4/5	Remodel kitchen and 2 bathrooms	\$54,500.00	\$380.38
Baue Residence	3703 South Atlantic Avenue, Unit 1107	4/6	Remodel laundry room	\$15,000.00	\$154.75
Califf Residence	3703 South Atlantic Avenue, Unit 306	4/6	Install new fireplace	\$16,800.00	\$166.82
Nelson Residence	3747 South Atlantic Avenue, Unit 101	4/8	Replace 6 windows and 2 sliding glass doors	\$20,470.00	\$188.34
Daytona Beach Shores Hotel	2323 South Atlantic Avenue	4/8	Minor concrete repairs to seawall	\$15,000.00	\$154.75
White Surf Condo	3555 South Atlantic Avenue	4/11	Replace 2 garage doors	\$11,782.00	\$129.10
Seychelles Condo	3855 South Atlantic Avenue	4/11	Replace entry doors to all units	\$22,500.00	\$199.11
Bernheim Residence	2625 South Atlantic Avenue, Unit 17NE	4/13	Remodel kitchen and bathrooms	\$27,000.00	\$221.25

PROJECT	WORK ADDRESS	DATE	WORK DESCRIPTION	VALUE	REVENUE
Wells Residence	2545 South Atlantic Avenue, Unit 705	4/14	Replace kitchen cabinets, tops, retile master shower	\$18,850.00	\$177.58
Ferrell Residence	2625 South Atlantic Avenue, Unit 28SW	4/15	Open kitchen wall, new cabinets and tops, shower	\$34,000.00	\$261.07
Scaccia Residence	2937 South Atlantic Avenue, Unit 602	4/15	Replace sliding glass doors	\$16,300.00	\$166.75
Coggins Residence	2967 South Atlantic Avenue, Unit 506	4/18	Remodel master bathroom	\$15,500.00	\$161.50
Butler Residence	3043 South Atlantic Avenue, Unit 906	4/18	Kitchen remodel	\$24,800.00	\$209.87
Krekorian Residence	3043 South Atlantic Avenue, Unit 2206	4/18	Remodel kitchen and 2 bathrooms	\$33,581.00	\$260.94
Perry's Ocean Edge Resort	2209 South Atlantic Avenue	4/18	Remodel ADA guestrooms, relocate vanity and doors	\$645,000.00	\$5,195.18
Mulvaney Residence	124 Seaway Avenue	4/18	Increase garage door height to 10 feet tall	\$10,000.00	\$112.00
Shores Resort and Spa	2637 South Atlantic Avenue	4/20	Waterproofing, replacing stucco, replace wall	\$70,542.00	\$471.42
Trad LLC	2043 South Atlantic Avenue, Unit 525	4/21	Remodel bathroom and kitchen	\$16,250.00	\$166.82
Barnes/DeAscentiis Residence	3797 South Atlantic Avenue, Unit 202	4/22	Remodel kitchen and bathroom	\$28,980.00	\$232.62
Perry's Oceans Edge Resort	2209 South Atlantic Avenue	4/25	Remove 75 tubs, install shower pans and valves	\$52,000.00	\$597.75
Perry's Ocean Edge Resort	2209 South Atlantic Avenue	4/25	Relocate 75 receptacles, add circuits, move lights	\$52,000.00	\$978.65
Hughes Residence	3145 South Atlantic Avenue, Unit 404	4/26	Install hurricane shutters	\$24,749.00	\$209.87
Stanforth Residence	3145 South Atlantic Avenue, Unit 703	4/26	Remodel kitchen and 3 bathrooms	\$40,000.00	\$295.20
Ocean Villas	3703 South Atlantic Avenue	4/26	Replace fire backflow preventer	\$10,551.00	\$192.50
Marlowe/Pepe Residence	3003 South Atlantic Avenue, Unit 20C6	4/27	Replace tub, vanities, drywall, tile bathroom	\$16,000.00	\$161.50
Oceans West One Condo	1 Oceans West Boulevard	4/27	Waterproof building, misc. concrete restoration	\$200,000.00	\$1,036.28
Ocean Villas	3703 South Atlantic Avenue	4/27	Replace 2 split systems thermostats	\$11,480.00	\$117.10
Moore's Residence	3046 Esperanza Avenue	4/28	Replace 10 windows and 1 door	\$22,985.00	\$199.11
Zanetti Residence	3750 South Atlantic Avenue, Unit 18	4/28	Replace 4 windows and 1 door	\$10,490.00	\$120.55
Oceans Cloverleaf South	3 Oceans West Boulevard	4/29	Resurface pool, replace tile on beam	\$30,000.00	\$238.31
St Croix Condo	3145 South Atlantic Avenue	4/29	Tile re-roof	\$126,999.00	\$744.46
TOTALS	WORK ADDRESS	DATE	WORK DESCRIPTION	\$1,952,109.00	\$15,551.06

Building Division Revenue by Permit Category:

PERMIT TYPE	APRIL 2022	FISCAL YEAR-TO- DATE 2021 TO 2022	APRIL 2021	LAST FISCAL YEAR-TO- DATE 2020 TO 2021
BUILDING	\$16,613.20	\$81,282.98	\$8,225.17	\$129,075.98
ROOF	\$744.46	\$5,443.94	\$656.07	\$14,083.17
DEMOLITION	\$340.00	\$1,655.60	\$0.00	\$563.90
ELECTRICAL	\$3,206.15	\$15,500.26	\$2,635.74	\$18,506.56
MECHANICAL	\$3,245.20	\$23,166.51	\$3,313.55	\$27,065.60
PLUMBING	\$3,321.45	\$19,925.51	\$2,539.48	\$27,271.06
SIGN	\$268.50	\$1,740.06	\$69.25	\$1,748.00
POLITICAL SIGN BONDS	\$0.00	\$0.00	\$0.00	\$220.00
STORMWATER MANAGEMENT	\$0.00	\$0.00	\$0.00	\$0.00
MISCELLANEOUS	\$165.25	\$641.35	\$82.50	\$786.50
DEVELOPMENT FEES	\$245.00	\$12,818.30	\$135.00	\$1,460.00
PROMOTIONAL ACTIVITIES	\$0.00	\$0.00	\$0.00	\$0.00
TOTALS	\$28,149.21	\$162,174.51	\$17,656.76	\$220,780.77

Building Division Activities:

ACTIVITY	APRIL 2022	FISCAL YEAR-TO- DATE 2021 TO 2022	JULY 2021	LAST FISCAL YEAR-TO- DATE 2020 TO 2021
INSPECTIONS	287	2030	307	2187
FINAL CERTIFICATES OF OCCUPANCY ISSUED	25	27	1	1
TEMPORARY CERTIFICATES OF OCCUPANCY ISSUED	0	0	1	2
FINAL INSPECTIONS	196	1346	156	1314
FAILED INSPECTIONS	18	115	22	163

Annual Totals, Large Projects (Over \$10,000):

Projects Begun Current Fiscal Year-to-Date – 2021 to Present: \$21,547,655.00

Projects Begun Last Fiscal Year – 2020 to 2021: \$64,300,811.00

Projects Begun Two Fiscal Years Ago – 2019 to 2020: \$39,968,375.00

COMMUNITY SERVICES DEPARTMENT

MONTHLY REPORT - APRIL 2022

FACILITIES MAINTENANCE DIVISION:

Currently one full time position.

Normal monthly duties:

This division is responsible for the upkeep and maintenance of city buildings. The facilities staff assesses problems reported with the buildings and repairs as needed and within the staff's capabilities. The facilities staff has an HVAC certification therefore related repairs can be performed inhouse. Staff replaces light bulbs, cleans window exterior, paints and performs any other general maintenance needed with the city buildings and city owned properties.

Additionally, this month:

- Public Safety Building/City Hall: Met with contractors and coordinated switching out of the mini-split AC units in the server rooms for City Hall and Public Safety.
- City Hall/Facilities: Cleaned the roofs in preparation of an inspection coming.

PARKS / STREETS DIVISION:

This division typically has eleven maintenance positions and one electrician position. One position routinely assists the facility maintenance position and the electrician when needed.

Normal monthly duties:

This division performs maintenance, upkeep and general appearance of all the parks, streets, sidewalks and medians daily, including, but not limited to, mowing, changing out lights, restocking supplies, replacing

plants as needed, replacing or repairing street signs, checking and clearing storm drains, as well as any other related issue that may arise in the City. Per the City-County Park Maintenance Agreement, this division also is responsible for the cleaning and upkeep of the new county parks. Although there are two units (parks & streets) within the division, all personnel share in the normal monthly duties.

Additionally, this month:

- Started painting tennis center cabanas
- Installed new toilets at a couple city buildings
- Worked on repairing and replacing pickle ball nets and center straps
- Trimmed trees all around the city properties in preparation for the upcoming hurricane season
- Planted new flowers at the community center and veterans park

Electrician:

- Fixed a row of decorative lights intermittently working between Crabby Joe's and Solida Del Sol
- Fixed the rope lighting at the pavilion
- Handled several sewer station and public safety building issues
- Replaced the outlets at Andrinopoulos Park and the sprinkler timer on Oceans West Blvd
- Performed 33 electrical line locates

SEWER DIVISION:

Currently four positions.

Normal monthly duties:

This division maintains and inspect all the sewer stations daily, performs all the general maintenance of the sewer stations, generators and the

station properties, including, but not limited to, mowing and general outside maintenance, cleaning pump areas, wet wells and floats. The division also maintains and inspects city manholes, delivers past due sewer bill notices for finance every month, perform cooling tower readings, and quarterly grease trap inspections. Two (2) employees in the division are animal control officers and these duties are performed as needed.

Additionally, this month:

- Continue line cleaning in the Station 5 area
- Fixed a water leak on the Vac-Tron
- Removed a stump from the station 9 alley way easement
- Cleared and fixed three sewer line backups at different locations in the city
- Performed one (1) pool reading
- Conducted 46 sewer line locates

EXECUTIVE SUMMARY

Fiscal Year-To-Date Financial Report

Month Ending April, 2022

CURRENT YEAR OPERATIONAL PERFORMANCE				
Fund or Fund Segment	YTD Revenue	YTD Expense	Revenue Less Expense	Margin %
General Fund Operations	\$11,539,006	\$7,204,362	\$4,334,644	38%
General Obligation Debt Service	\$0	\$0	\$0	
General Obligation Construction	\$0	\$0	\$0	
General Fund Sub-Total	\$11,539,006	\$7,204,362	\$4,334,644	38%
Sewer Fund Operations	\$1,637,904	\$1,470,704	\$167,200	10%
Sewer Fund Restricted Impact Fee	\$135,448	\$77,436	\$58,012	43%
Sewer Fund Sub-Total	\$1,773,352	\$1,548,140	\$225,212	13%
TOTAL ALL FUNDS FISCAL YTD	\$13,312,359	\$8,752,502	\$4,559,856	34%

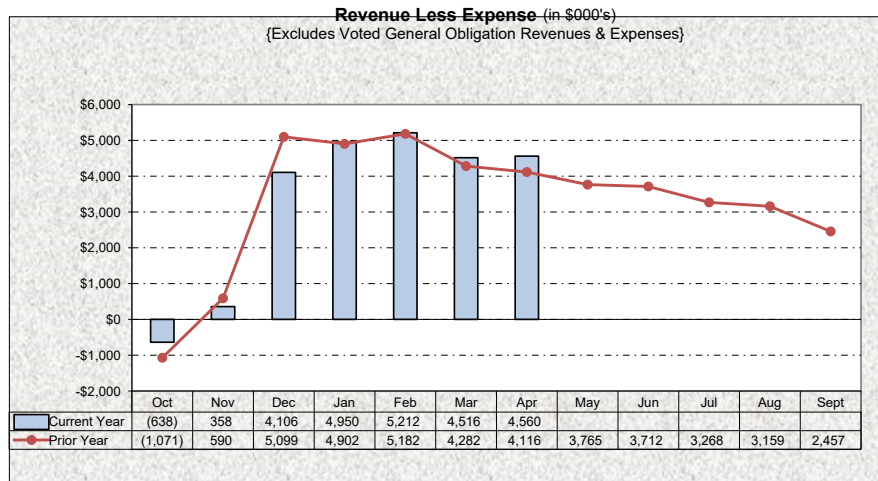
CASH / INVESTMENT POSITIONS PERFORMANCE				
	Current Month Current Year	Current Month Prior Year	12-Month Change	Percent Change
General Fund (excl. G.O. Funds)	\$21,380,918	\$18,014,465	\$3,366,453	19%
Sewer Fund	\$9,771,204	\$8,792,105	\$979,100	11%
Sub-Total Operating Funds	\$31,152,122	\$26,806,570	\$4,345,553	16%
Gen. Obligation [GO] Construction & Debt	\$0	\$0	\$0	#DIV/0!
TOTAL ALL FUNDS	\$31,152,122	\$26,806,570	\$4,345,553	16%

PROJECTED FISCAL YEAR END (FYE) CASH FLOW FROM NORMAL OPERATIONS**			
	General Fund	Sewer Fund	Total
Current Cash vs. Prior Year Ending Cash	\$4,095,901	\$555,836	
Add Back for Current Year CS Construction Expense	N/A	N/A	
Historical Mean Projected Remaining Cash Flow	(\$3,358,487)	\$418,274	
PROJECTED FYE NORMALIZED CASH FLOW	\$737,414	\$974,111	\$1,711,525

All Funds Budget Performance Summary Report (in 000's)

NON-G.O. FUNDS	April, 2022		VERSUS PRIOR YEAR TO DATE		
	Current Budget	Current YTD Actual	Prior YTD Actual	Vs. Prior Yr. Favorable / (Unfavorable)	% vs. Prior Year
Revenues ('000s)					
General Fund	\$14,322	\$11,539	\$11,702	(\$163)	-1%
Utility Fund	\$3,479	\$1,773	\$1,527	\$247	16%
Total Revenues & Appropriations	\$17,801	\$13,312	\$13,229	\$84	1%
Expenses ('000s)					
General Fund Less Capital	\$13,576	\$7,005	\$6,958	(\$47)	-1%
General Fund Capital	\$746	\$199	\$702	\$503	72%
Utility Fund	\$3,479	\$1,548	\$1,453	(\$96)	-7%
Total Expenses & Appropriations	\$17,801	\$8,753	\$9,113	\$361	4%
Revenue Less Expense ('000s)					
General Fund	\$0	\$4,335	\$4,041	\$293	
Utility Fund	\$0	\$225	\$74	\$151	
Revenue Less Expense	\$0	\$4,560	\$4,116	\$444	

VOTED GENERAL OBLIGATION	April, 2022		VERSUS PRIOR YEAR TO DATE		
	Current Budget	Current YTD Actual	Prior YTD Actual	Vs. Prior Yr. Favor / (Unfavor)	% vs. Prior Year
General Obligation Revenue	\$0	\$0	\$2,619	(\$2,619)	-100%
General Obligation Expense	\$0	\$0	\$6,734	\$6,734	100%
Voted Gen. Oblig. Rev. Less Exp.	\$0	\$0	(\$4,115)	\$4,115	



	Current Year	Prior Yr
Prior Year (No G.O.)		
Oct	(638)	(1,071)
Nov	358	590
Dec	4,106	5,099
Jan	4,950	4,902
Feb	5,212	5,182
Mar	4,516	4,282
Apr	4,560	4,116
May		3,765
Jun		3,712
Jul		3,268
Aug		3,159
Sept		2,457

General Fund Detail Budget Report

	April, 2022		VERSUS PRIOR YEAR TO DATE		
	Current Budget	Current YTD Actual	Prior YTD Actual	Vs. Prior Yr. Favorable / (Unfavorable)	% vs. Prior Year
Revenues/Sources					
Ad-Valorem Taxes	8,412,300	8,058,477	8,141,236	(82,759)	-1%
Business Taxes	101,900	100,313	98,252	2,062	2%
Utility Taxes	1,014,500	493,307	495,105	(1,798)	0%
Permits & Franchise Fees	893,200	476,762	485,646	(8,885)	-2%
Intergovernmental	721,500	296,816	307,095	(10,279)	-3%
Donations	0	0	0	0	
Charges for Services	1,631,700	1,178,294	1,042,467	135,827	13%
Fines & Forfeitures	94,800	52,602	59,794	(7,192)	-12%
Non-G.O. Interest	23,000	7,384	15,385	(8,001)	-52%
Unrealized Investment G/(L)	0	0	(289,000)	289,000	100%
Miscellaneous & Fixed Asset Sales	35,500	376,009	876,437	(500,428)	-57%
Internal Services	855,500	499,042	469,583	29,458	6%
Non G.O. Transfer In-Fund Balance	538,200	0	0	0	
Non-G.O. Gen. Fund Revenue	\$14,322,100	\$11,539,006	\$11,702,001	(\$162,994)	-1%

Operating Expenditures

Excluding CAPITAL Expense					
Legislative	212,200	116,898	71,836	(45,063)	-63%
Executive	636,900	345,064	323,581	(21,483)	-7%
Finance	597,200	346,785	339,501	(7,284)	-2%
Legal Counsel	153,400	76,190	64,511	(11,679)	-18%
Comp. Planning	138,300	65,290	68,887	3,597	5%
Other Gov't Services	245,800	190,303	160,028	(30,275)	-19%
Public Safety Operations	5,982,600	3,522,337	3,202,945	(319,393)	-10%
Building Dept.	643,800	390,892	323,726	(67,165)	-21%
Phy. Envir. -- Solid Waste/Recycle	1,472,300	668,790	602,315	(66,475)	-11%
Public Works Operations	1,216,500	708,672	615,743	(92,928)	-15%
Inventory	0	0	0	0	
Benefit Termination Payout	142,000	35,616	(4,878)	(40,494)	-830%
Parks & Rec	440,200	240,133	208,759	(31,374)	-15%
Community Center	536,000	298,021	192,344	(105,678)	-55%
Senior Center	0	0	1	1	100%
Contingency/Transfers	1,159,000	0	788,799	788,799	100%
Long-Term Debt	0	0	0	0	
Non-G.O. Operations Expense	13,576,200	7,004,991	6,958,096	(\$46,895)	-1%
Non-G.O. CAPITAL Expense	745,900	199,371	702,435	\$503,064	
Total Non-G.O. Expense	14,322,100	7,204,362	7,660,531	\$456,169	
Non-G.O. Revenue Less Expense	\$0	\$4,334,644	\$4,041,470	\$293,175	7%

General Obligation (G.O.) Debt Service

Debt Service Ad-Valorem Revenue	0	0	2,616,801
Debt Service Interest Revenue	0	0	2,478
UG Utils- Debt Service Expense	0	0	6,734,243
G.O. Revenue Less Expense	\$0	\$0	(\$4,114,964)

G.O. Construction

Streetscape Prjct.- Fund Bal Rev. Transfer	0	0	0
Streetscape. - Construction Expense	0	0	0
G.O. Construction Rev. Less Exp.	\$0	\$0	\$0

Utility Fund Detail Budget Report

	April, 2022		VERSUS PRIOR YEAR TO DATE		
	Current Budget	Current YTD Actual	Prior YTD Actual	Vs. Prior Yr. Favorable / (Unfavorable)	% vs. Prior Year
Fund 401					
Operations Revenues					
Charges for Services	\$3,447,500	\$1,633,947	\$1,497,723	\$136,224	9%
Interest	15,000	3,958	9,858	(5,900)	-60%
Sale of Fixed Assets / Misc.	0	0	7,178	(7,178)	-100%
Total Operating Revenues	\$3,462,500	\$1,637,904	\$1,514,758	\$123,146	8%
Operations Expenditures					
Sewer Operating Incl. Depreciation	\$3,462,500	\$1,470,704	\$1,452,632	(\$18,072)	-1%
- Less Debt Service Principal [a]		0	0		
- Less Not Offset Capital Expense [b]		0	0		
Total Operating Expense	\$3,462,500	\$1,470,704	\$1,452,632	(\$18,072)	-1%
Operations Margin	\$0	\$167,200	\$62,126		
% Gain/(Loss)		11%			

Fund 402

Impact Fee Revenues					
Sewer Impact Fees	16,000	135,448	\$11,976	\$123,472	1031%
Impact Fee Interest	100	0	3	(3)	-100%
Total IF Revenue	\$16,100	\$135,448	\$11,979	\$123,469	1031%
Impact Fee Expense					
Sewer Impact Fee Exp	16,100	77,436	\$0	(\$77,436)	
Total IF Expense	\$16,100	\$77,436	\$0	(\$77,436)	
Impact Fee Margin	\$0	\$58,012	\$11,979	46,033	384%
% Gain/(Loss)		75%			

TOTAL FUND PERFORMANCE

TOTAL FUND Revenue	\$3,478,600	\$1,773,352	\$1,526,737	\$246,615	
TOTAL FUND Expense	\$3,478,600	\$1,548,140	\$1,452,632	(\$95,508)	
FUND Revenue Less Expense	\$0	\$225,212	\$74,106	\$151,106	

[a] In Enterprise Funds, debt service principal payment expenses are credited against the debt liability on the balance sheet, reducing the debt on the Balance Sheet and eliminating the expense from the Income Statement.

[b] In Enterprise Funds, the expense of Capital is allocated to depreciation, which in this report is included in the listed operating expense.

FISCAL YEAR-TO-DATE CAPITAL BUDGET ACCOUNT REPORT
April, 2022

Department	Description	Budgeted*	Paid
51/10-20 Executive/Legislative		0	0
5130 Finance		0	0
5210 Pub. Safety Admin		0	0
5211 Patrol/Fire/Rescue	Vehicles	287,700	190,527
5240 Building & Codes			
5410 Pub. Works Admin			
5412 Pub. Works Bldg. Maint		0	0
5413 Pub. Works Streets	Vehicles	190,000	0
	Road Improvements Misc.	35,300	0
	Gas Tax Financed		
	Appropriated Road Improvements		0
	Crosswalks	172,900	0
5720 Parks		50,000	0
5751 Community Center		10,000	8,844
5752 Senior Center		0	0
GENERAL FUND TOTAL		745,900	199,371
401-5350 Sewer Operating	IMPROVEMENTS		
	Sewer Engineering and Project Cost	2,575,000	10,889
	EQUIPMENT		
		462,000	21,915
		0	0
		0	0
		0	0
		0	0
	Capital Offset to Depreciation Exp	(3,037,000)	(32,804)
401-5351 Sewer Impact Fee			
UTILITY FUND TOTAL		0	0
Contraband (non-budgeted)			
TOTAL FROM CONTRABAND		0	0
GRAND TOTAL		745,900	199,371

INVESTMENT REPORT

April, 2022

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5/17/2022

Policy Restrictions

Investment	Invest Class	Must	Int.Cap	Policy Class Cap	Current	In Limits
SBA	SBA			None	0.0%	
US Gov't Securities	USGS			50%	0.0%	Yes
Cash & CDs	CASH			None	100.0%	
Money Market Funds	MMF			20%	0.0%	Yes
Fed Instrum. & Agncy	FIA			30%	0.0%	Yes
Collat. Mortg. Obligts.	CMO			20%	0.0%	Yes
Commercial Paper	CP			10%	0.0%	Yes
FMIT	FMIT			None	0.0%	

Performance @Period Ending: April, 2022

Institution	Account	Asset	Invest Class	Restriction	Account Value	Period Int. Rate	% of Portfolio
SBA: Prime	131031	Investment	SBA	General Fund	\$540	0.15%	0%
SBA: Prime	131032	Investment	SBA	Sewer Fund Operating	\$540	0.15%	0%
TOTAL SBA					\$1,079		0.0%
Bank of America	004537065882	Cash	CASH	Working Cash	\$12,045,249	0.01%	39%
Bank of America	898013183744	Cash	CASH	UG Util Building	\$0	0.00%	0%
Bank of America	005562564319	Cash	CASH	Sewer Operating	\$4,539,146	0.01%	15%
Bank of America	005562564351	Cash	CASH	Sewer Impact Fee	\$10,583	0.01%	0%
Seacoast Bank	4810004966	Cash	CASH	Sewer Operating	\$5,220,936	0.15%	17%
Seacoast Bank	4810000706	Cash	CASH	Working Cash	\$9,335,129	0.15%	30%
Seacoast Bank	4810003566	Cash	CASH	Loan Reserve	\$0	0.15%	0%
TOTAL BANKS					\$31,151,043		100.0%

TOTAL CURRENT VALUE @ PERIOD END	\$31,152,122
WEIGHTED AVERAGE TOTAL RETURN FOR CURRENT MONTH	0.00%

CHANGE IN CASH & INVESTMENTS (Incl. interfund transfers)	Current Value	Vs. Last Month	Vs. Prior Year To Date	Vs. Prior Fiscal Yr. End
G.O. Construction & Debt Service Funds	\$0	\$0	\$0	\$0
General Fund (excl. G.O. Funds)	\$21,380,918	\$74,769	\$3,366,453	\$4,758,247
Sewer Fund	\$9,771,204	\$211,542	\$979,100	\$555,836
TOTAL	\$31,152,122	\$286,311	\$4,345,553	\$5,314,084
Percent Change for Current	N/A	0.9%	16.2%	20.6%

Portfolio Report

April, 2022

GENERAL FUND						
Agent	Security Type (Last Digits Account ID)	Cost Basis	Yield to Cost	Market Value	Gain / Loss	Annual Income @ Cur. Int%
SBA	Investment-General (031)	\$540	0.15%	\$540	\$0	\$1
BoA	Cash-Pool Cash Account (5882)	\$13,586,997	0.01%	\$13,586,996.68	\$0	\$1,359
	Contraband Pool Cash in 5882	\$57,997		\$57,997.09	\$0	\$0
	Pool Cash Due to Sewer Fund			(2,755,213.62)		\$0
	Economic Development			636,971.32		\$0
	ARPA			1,155,469.00		\$0
BoA	Cash- UG Utility [Bldg] (3744)	\$0	0.00%	\$0	\$0	\$0
Seacoast	Cash-Pool Cash Account (0706)	\$9,335,129	0.15%	\$9,335,129	\$0	\$14,003
Seacoast	Cash-Loan Reserve (3566)	\$0	0.15%	\$0	\$0	\$0
Chase	Cash-Pool Cash (2110)	\$62,515	0.00%	\$62,515	\$0	\$0
Chase	CD (5936)	\$100,152	0.10%	\$100,152	\$0	\$100
ALL GENERAL FUND			0.07%	\$22,180,556	\$0	\$15,362
			PRIOR MONTH	\$22,103,830		

SEWER OPERATING						
SBA	Investment (032)	\$540	0.15%	\$540	\$0	\$1
BoA	Cash (4319)	\$1,783,932	0.01%	\$1,783,932	\$0	\$178
Seacoast	Cash (4966)	\$5,220,936	0.15%	\$5,220,936	\$0	\$7,831
	Cash-Pool Cash Due From Gen. Fund			\$2,755,214		\$0
ALL SEWER OPERATING FUND			0.08%	\$9,760,621	\$0	\$8,011
			PRIOR MONTH	\$9,549,079		

SEWER IMPACT FEES (Restricted)						
BoA	Cash (4351)	\$10,583	0.01%	\$10,583	\$0	\$1
	Cash-Pool Cash Due From Gen. Fund			\$0		\$0
ALL SEWER IMPACT			0.01%	\$10,583	\$0	\$1
			PRIOR MONTH	\$10,583		

ALL FUNDS			0.07%	\$31,951,760	\$0	\$23,373.87
			PRIOR MONTH	\$31,663,492		
			MONTHLY CHANGE	\$288,268		
			MONTHLY CHANGE %	0.9%		



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

“LIFE IS BETTER HERE.”

**CITY COUNCIL AGENDA MEMORANDUM
MAY 24, 2022 AGENDA**

TO: Honorable Mayor and Members of the City Council
COPIES TO: Mike Booker, City Manager
Cheri Schwab, City Clerk
FROM: John Cary, City Attorney
DATE: May 17, 2022
SUBJECT: ***City Attorney Report***

The following is intended as my written report to the City Council for matters arising subsequent to its last meeting of May 10, 2022. Please advise if you have any questions, comments or concerns relative to these matters.

(1) Code Enforcement

Finalized Stipulated Agreement and reviewed correspondence relating to the same.

(2) Fire Truck Ladder Warranty

Sent info on the fire truck rusting issues to the warranty department. Scheduled a call to discuss/resolve.

(3) FDOT Contract

Reviewed and provided legal interpretation of an FDOT contract for the Public Works Department.

(4) Opioid Lawsuit

Reviewed documents and corresponded with class action counsel for the opioid lawsuit.

(5) *American Flood Coalition Mayor's Summit*

Researched issues relating to the American Flood Coalition Mayor's Summit.

(6) *Chase Bank Sale*

Finalized contract for purchase of the Chase Bank property.

Respectfully, submitted,

/s/ John Cary, City Attorney



**CITY COUNCIL AGENDA MEMORANDUM
MAY 24, 2022 AGENDA**

TO: Honorable Mayor and Members of the City Council
FROM: Stewart Cruz, City Planner
PREPARED BY: Stewart Cruz, City Planner
SUBJECT: Resolution 2022-01: Resolution to Join the American Flood Coalition

SYNOPSIS:

The American Flood Coalition is a 501(c)3 nonprofit organization and nonpartisan coalition advocating for national solutions to flooding and sea level rise. According to the coalition's website, the coalition proactively addresses the growing threat of higher seas, stronger storms, and more frequent floods by advocating for smarter planning and investments that protect the nation's residents, economy, and military installations. Currently, the coalition has 285 members in 21 states. Florida has 99 members, of which, eight (8) are in Volusia County. There are no costs or legal obligations associated with joining and members are free to withdraw at any point. By approving Resolution 2022-01, the City will initiate the process of joining and participating in the coalition.

FISCAL IMPACT STATEMENT:

BACKGROUND:

LEGAL REVIEW:

Approved as to form and legality.

RECOMMENDATION:

Approval of Resolution 2022-01.

SUGGESTED MOTION:

Approval of Resolution 2022-01 as presented.

ATTACHMENT:

1. Res. 2022-01 American Flood Coalition
2. American Flood Coalition Background Information

RESOLUTION NO. 2022-01

A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA PROVIDING FOR THE CITY OF DAYTONA BEACH SHORES TO BECOME A MEMBER OF THE AMERICAN FLOOD COALITION; PROVIDING FOR SAVINGS; PROVIDING FOR CONFLICTS, PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2, *Constitution of the State of Florida*, authorizes the City of Daytona Beach Shores to exercise any power for municipal purposes except as otherwise provided by law; and

WHEREAS, proactively investing to prevent flooding is a wiser use of resources than spending on flooding recovery, as exemplified by FEMA research showing that \$1 spent on disaster prevention saves up to \$7 in recovery costs, and

WHEREAS, national coordination and support are necessary for communities to fully address the challenge of flooding and sea level rise, and the American Flood Coalition provides a platform advocating for national solutions to flooding and sea level rise that invest in and protect our coastal communities, and

WHEREAS, the American Flood Coalition is a no-cost forum for best practices and source of support in developing local and state-level responses to flooding and sea level rise that will enhance Daytona Beach Shores' resilience effort, and

WHEREAS, flooding and sea level rise are important issues that our residents deserve to understand and the American Flood Coalition provides opportunities and tools to communicate with residents on flooding challenges and solutions, and

WHEREAS, joining the American Flood Coalition will aid the City of Daytona Beach Shores' efforts to protect against flooding without requiring any financial support or dues from the City Council of the City of Daytona Beach Shores, and

WHEREAS, the City Council of the City of Daytona Beach Shores finds that joining the American Flood Coalition will promote the welfare of Daytona Beach Shores residents and ensure the prosperity of the Daytona Beach Shores economy by accelerating solutions to sea level rise and flooding, and

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

SECTION ONE. FINDINGS.

The City Council of the City of Daytona Beach Shores recognizes the need to advance national solutions to sea level rise and flooding and will work as a member of the American Flood

Coalition to safeguard the welfare of the Daytona Beach Shores residents.

SECTION TWO. SAVINGS. The prior actions of the City of Daytona Beach Shores relating to the sea level rise and flooding are hereby ratified and affirmed.

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

SECTION FOUR. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Resolution, 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 FIVE. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

CITY OF DAYTONA BEACH SHORES, FLORIDA

By: _____
Mayor, Nancy Miller

ATTEST:

By: _____
Michael T. Booker, City Manager

Cheri Schwab, City Clerk

APPROVED AS TO FORM AND LEGALITY:

By: _____
John Cary, City Attorney

Passed and adopted on first reading this _____ day of _____, 2022.

Posted this _____ day of _____, 2022.



American Flood Coalition

Overview Slides

We are the American Flood Coalition

A 501(c)3 nonprofit organization and nonpartisan coalition advocating for national solutions to flooding and sea level rise



Federal
Champions



Cities, Towns
and Counties



Elected
Officials



Businesses
and Associations



Military
Groups



Civic and
Academic Groups

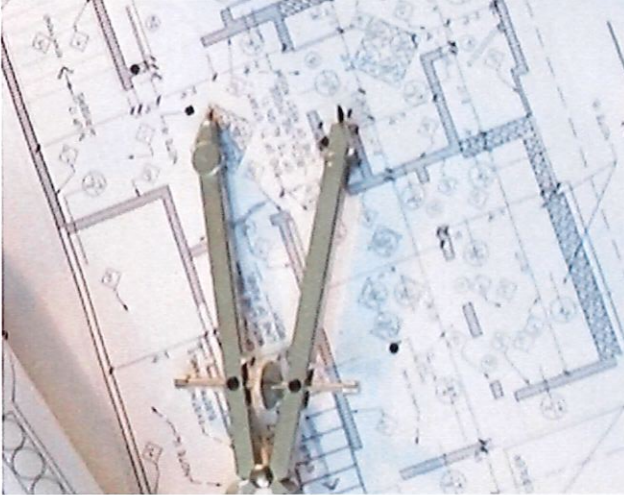


Our mission

Protecting communities that are vulnerable to flooding and sea level rise is a national issue that must be met with **national solutions**—it is vitally important to our well-being, economic strength, and security.

With effective flooding and sea level rise planning our communities can adapt and thrive.
But we must act now.





Our 4 pillars for coastal and inland solutions

Economy

Invest in infrastructure that boosts the economy and protects property values

Communities

Use smart planning to keep communities safe and save taxpayer dollars

Rebuilding

Build back stronger to protect communities from future flooding

Military

Ensure our military installations are ready to deploy 365 days a year



What we offer



Best-in-class educational guides

Scalable educational resources to meet our members' needs



Tools for effective communication

Opportunities and tools for communicating about flooding with stakeholders at all levels



Networks of leaders on flooding

Forum to connect virtually and in-person with other leaders and share learnings



Competitive local resilience pilots

Competitive local pilots that promote deeper engagement on flooding and sea level rise



Platform for advocacy and education

Strong platform that makes local voices and needs heard at the federal level





Examples of recent work

Offered a competitive pilot program

in partnership with Atkins for our municipal members to apply for in-kind engineering services to assess future flood risk and to compare the benefits of different adaptation measures

Organized a briefing on Capitol Hill

through which Coalition members were able to share their perspectives on local flooding and sea level rise challenges and innovations

Launched new resources for members

- Framing and Communicating a Flood Action Strategy
- Guide to the USACE Feasibility Study Process
- Suite of Guides about Vulnerability Assessments

AMERICAN FLOOD COALITION

FloodCoalition.org

So you're thinking about doing a U.S. Army Corps of Engineers feasibility study?

Tips for exploring whether a USACE feasibility study can address your goals on flooding

AMERICAN FLOOD COALITION

FloodCoalition.org

Flood Vulnerability Assessment RFP/Q Creation

Tips and insights for successfully executing a vulnerability assessment for municipal staff

AMERICAN FLOOD COALITION

FloodCoalition.org

Framing & communicating a flood action strategy

A conceptual framework for municipal leaders

1 Strategies to address flooding or sea level rise for a town, city or region can be complex and include many distinct components. This guide provides a set of 6 conceptual categories that both inland and coastal municipal leaders can use to develop, organize, and communicate about these strategies. This conceptual framework can be applied to the following processes:

- Soliciting ideas and feedback gathered through public engagement
- Developing initial flood action strategies and plans
- Identifying gaps in order to develop a more complete set of solutions
- Communicating complex flood action strategies in consistent and simple terms

2 **Improve drainage and absorption.** Improve drainage to reduce flooding caused by stormwater. Sample actions and measures include:

- Install and maintain pumping systems to redirect water away from low-lying areas

Joining the coalition

Free

There is no cost to be a coalition member

Independent

Joining does not create legal ties or obligations

Flexible

Join by your preferred method, such as Council Resolution or Executive Decision

Simple

Let us know if you decide to join, and we'll guide you through the rest



| 6



Contact us

info@floodcoalition.org
floodcoalition.org

Questions?
[See our FAQ Document](#)



Who we are

We're a 501(c)3 nonprofit organization and nonpartisan coalition advocating for national solutions to flooding and sea level rise. We proactively address the growing threat of higher seas, stronger storms, and more frequent floods by advocating for smarter planning and investments that protect our nation's residents, economy, and military installations.



What we do

- ▶ **Unite voices in a powerful nonpartisan coalition** to advocate for federal funding and better policy
- ▶ **Leverage best-in-class communication tools** to engage citizens on flooding and sea level rise challenges and solutions
- ▶ **Share best practices in a national forum** to support local and state-level responses to flooding and sea level rise

The American Flood Coalition is a member-driven nonprofit organization. There are no costs or legal obligations associated with joining and members are free to withdraw at any point.

Our 4 pillars for solutions to flooding and sea level rise



Economy

Invest in infrastructure and natural solutions that boost the economy and protect property values



Rebuilding

Build back stronger to protect communities from future flooding



Communities

Use smart planning to keep communities safe and save taxpayer dollars



Military

Ensure our military installations are ready to deploy 365 days a year

What is the American Flood Coalition?

The American Flood Coalition is a nonpartisan Section 501(c)(3) nonprofit organization that brings together elected officials, cities and counties, military groups, businesses, local leaders, and civic groups to advance national solutions that support flood-affected communities and protect our nation's residents, economy, and military installations.

What is the goal of the American Flood Coalition?

The American Flood Coalition advocates for policy changes and practical national solutions to address the issues posed by rising seas and flooding. We support policies that strengthen our economy, invest in our communities, and safeguard our national security. With effective planning, our flood-affected communities can adapt and thrive. By investing in planning and projects to proactively address flooding and sea level rise, we can protect our ports, highways, runways, businesses, schools, and homes while creating jobs and economic opportunities in our local communities.

Is the American Flood Coalition only focused on flooding and sea level rise?

Yes – flooding and sea level rise are serious and immediate issues that affect our communities and the hundreds of millions of Americans who live there each day.

What is the American Flood Coalition's platform?

We support policies that impact four key areas:

- **Economy:** Investing in infrastructure and natural solutions that boost the economy and protect property values by creating dedicated federal funding and incentives for resilience.
- **Communities:** Using smart planning to keep communities safe and save taxpayer dollars by expanding pre-disaster mitigation programs and adopting resilient standards for federal spending.
- **Rebuilding:** Rebuilding our communities with a clear-eyed view of future risk to protect them from future flooding.
- **Military:** Ensuring readiness 365 days a year by giving the military the authority to assess and address the impact of flooding on- and off-base.

Who is the American Flood Coalition?

Our coalition includes elected officials, military groups, towns, cities and counties, nonprofit organizations, businesses, and local leaders. We have a full list at this [link](#).

Why are flooding and sea level rise urgent issues right now?

Flooding and sea level rise are urgent because 126 million Americansⁱ are at risk. 1 in 8 Americans live within a 100-year floodplain, despite FEMA's flood maps estimating only 1 in 25 Americans are at risk.ⁱⁱ 53 mission-critical basesⁱⁱⁱ and 37 major ports^{iv} across the nation are also directly vulnerable. Here's what we know:

- **Proactive solutions save money:** Every \$1 spent on pre-disaster mitigation saves up to \$7 in disaster relief.^v This not only protects communities, but ensures we are faithful stewards of the taxpayer's money.
- **It's a major economic issue:** Crucial regional and national economic drivers - ports, tourism and hospitality industries, and real estate, among others - are under siege from flooding and sea level rise. These impacts extend far beyond the boundaries of individual flood-impacted communities.

- **It's a national security issue:** 53 mission-critical Navy, Army, and Air Force bases are currently vulnerable to sea level rise, leading to recurrent “sunny-day” flooding and reducing our military readiness.^{vi} For example, flooding in Virginia impacts the access road to Norfolk Naval Base about 10 times a year.^{vii}

What makes the American Flood Coalition unique?

The American Flood Coalition is unique because of its laser-focus on flooding and sea level rise and how its diverse, nonpartisan coalition works together to advocate for solutions and national policies to protect our communities. No other organization brings together this range of different organizations, cities, and individuals who are collectively advocating for solutions that address flooding at the national level.

Are there any costs or legal obligations to joining the American Flood Coalition?

No, there are not. Membership is entirely informal, costs nothing, and does not create any legal ties or obligations. As a result, any member is free to withdraw at any time.

Does the American Flood Coalition hold annual conferences?

Not at this time, but we do arrange events in Washington, D.C. and in multiple regions across the country.

How is the American Flood Coalition funded?

The American Flood Coalition is a nonpartisan Section 501(c)(3) nonprofit organization that is supported by philanthropic funding, including funding from multiple family foundations and institutional funders. The Coalition does not and has not ever received funding from the general public or from corporate sources. We comply with all public financial disclosure and transparency laws governing Section 501(c)(3) organizations.

Do you take on controversial issues/what if I disagree with your policy choices?

Our [policy platform](#) is a broad set of principles and goals that each member agrees to when they join the coalition. This platform is designed to focus on areas of common interest across our diverse membership. Coalition support for a particular policy or unique piece of legislation does not imply the endorsement of the individual members of the Coalition. Likewise, if an individual member of the Coalition voices support for a particular policy or piece of legislation, such support does not imply endorsement of the Coalition.

Who do I contact with additional questions about the American Flood Coalition?

Send an email to info@floodcoalition.org, and a member of our team will be happy to address your question.

i [NOAA](#), 2015
 ii [CityLab](#) and [YaleEnvironment](#), 2018
 iii [U.S. Department of Defense](#), 2019
 iv [JOC Container Shipping and Trade News](#), 2019
 v [Pew Research Center](#), 2019
 vi [U.S Department of Defense](#), 2019
 vii [National Geographic](#), 2017



CITY COUNCIL AGENDA MEMORANDUM MAY 24, 2022 AGENDA

TO: Honorable Mayor and Members of the City Council
FROM: Lory Irwin, Finance Director, Kurt Swartzlander, Finance Director
PREPARED BY: Lory Irwin, Finance Director
SUBJECT: Resolution 2022-02 Banking Signatory Update

SYNOPSIS:

The current City Manager is retiring June 3, 2022 and as main signatory on all City financial accounts new signatories need to be established.

FISCAL IMPACT STATEMENT:

The City would not be able to pay employees or vendors for services.

BACKGROUND:

The current City Manager, Mr. Michael Booker, is retiring on June 3, 2022; he is one of three signatories, including Kurt Swartzlander, current Finance Director and Ms. Cheri Schwab, City Clerk. With Mr. Booker retiring and Mr. Swartzlander assuming the position of City Manager upon his retirement, signatories need to be updated to include a third signatory and to update Mr. Swartzlander's new position as City Manager. The third signatory would be Ms. Lory Irwin who will assume the position of Finance Director upon Mr. Booker's retirement.

LEGAL REVIEW:

RECOMMENDATION:

Staff recommends approval of Resolution 2022-02 designating new signatories to the City financial accounts with an effective date of June 3, 2022.

SUGGESTED MOTION:

Motion to accept Resolution 2022-02 designating new signatories to the City financial accounts with an effective date of June 3, 2022

ATTACHMENT: 1. Resolution 2022-02 Banking Signatory Update

RESOLUTION 2022-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA DESIGNATING SIGNATORIES OF CITY ACCOUNTS AND SUPERSEDING ANY PREVIOUS RESOLUTION SO DESIGNATING; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Daytona Beach Shores constitutes a Florida municipal corporation; and

WHEREAS certain appointed officials resigned from office and the City Council or City Manager has appointed others to fill the vacancies; and

WHEREAS, the City of Daytona Beach Shores (The “City”), Florida has financial accounts located at Bank of America, JP Morgan Chase, Sea Coast Bank, Space Coast Federal Credit Union, and Florida State Board of Administration (SBA); and

WHEREAS, it is necessary for the City of Daytona Beach Shores City Council to approve new signatories due to succession.

NOW THEREFORE, the City Council of the City of Daytona Beach Shores finds and resolves that:

Section 1. Authorized Signers.

The Council authorizes the following positions and employees with the City of Daytona Beach Shores to be authorized signers for all transactions on designated bank accounts:

- | | |
|---------------------|-------------------|
| 1. City Manager | Kurt Swartzlander |
| 2. Finance Director | Lory Irwin |
| 3. City Clerk | Cheri Schwab |

Section 2. Rescission.

The Council hereby rescinds authorization for all previous authorized signers on designated bank accounts as of the effective date of this resolution. This includes previous check signers not listed in Section I above.

Section 3. Financial Institutions.

The City is currently utilizing the following financial institutions with the following bank accounts:

1. Bank of America
 - Pool Cash Account
 - Sewer Operating
 - Sewer Impact

2. Sea Coast Bank
Sewer Fund
Pool Cash
3. JP Morgan Chase, N.A.
Chase Platinum Business Checking
Certificate of Deposit (CD)
4. Space Coast Federal Credit Union
ACH Origination Account for payroll
5. Florida State Board of Administration (SBA)
General Fund Account
Sewer Operating

Section 4. Number of Signatories to withdrawal funds.
For the withdrawal of funds by checks of any denomination dual signatures will be utilized.

Section 5. Effective Date.
The effective date of this resolution will be June 3, 2022.

APPROVED AND ADOPTED BY THE City Council of Daytona Beach Shores this 24th
day of May, 2022.

CITY OF DAYTONA BEACH SHORES, FL

MAYOR NANCY MILLER

Attest:

CITY MANAGER

MICHAEL T. BOOKER

CITY CLERK

CHERI SCHWAB

Approved as to form and legality:

CITY ATTORNEY, GRETCHEN “BECKY” VOSE



CITY COUNCIL AGENDA MEMORANDUM MAY 24, 2022 AGENDA

TO: Honorable Mayor and Members of the City Council
FROM: Kurt Swartzlander, Finance Director, Lory Irwin, Finance Director
PREPARED BY: Lory Irwin, Finance Director
SUBJECT: Item for consideration: Investment Management Opportunities

SYNOPSIS:

It was brought up at the last council meeting, with Council consensus, the City should consider investing in Treasury Securities up to a 2-year maturity as the City has been earning a modest 1 basis point investment yield on its cash reserves with Bank of America.

FISCAL IMPACT STATEMENT:

The financial impact to the City could be an increase in interest revenue from 1 basis point annually to a current weighted yield of approximately 200 basis points depending on the market for Treasury Securities, the investment strategy and the amount of investment.

BACKGROUND:

The City has been earning a modest 1 basis point investment yield on its cash reserves with Bank of America. With current economic uncertainty, this abides with GFOA best practices investment objectives of safety, liquidity and yield. In keeping with sound policy objectives, Treasury Securities would abide by all criteria while also creating more yield if invested in a manner to maintain liquidity as the city needs.

Staff have spoken with representatives from Sea Coast Wealth Management (25 basis points with minimum \$6,000 annual fee and fully managed), J.P. Morgan Wealth Management (5 basis points, no minimum fee and fully managed), and Vanguard (no fees, self-managed); Bank of America has not replied as of yet.

LEGAL REVIEW:

RECOMMENDATION:

Staff recommends approval to utilize J.P. Morgan Wealth Management as its investment advisor to invest in Treasury Securities in a strategic manner to maintain safety, liquidity and yield. Staff will be utilizing a laddered approach to include 6 mos., 12 mos., 18 mos., and 24 mos. investments that may change based on advisory recommendations.

SUGGESTED MOTION:

Motion to approve utilizing J.P. Morgan Wealth Management as the City's investment advisor.

ATTACHMENT: None



**CITY COUNCIL AGENDA MEMORANDUM
MAY 24, 2022 AGENDA**

TO: Honorable Mayor and Members of the City Council
FROM: Nancy Maddox, Recreation Director
PREPARED BY: Nancy Maddox, Recreation Director
SUBJECT: Economic Development Lease Subsidy Grant Application - Carmine's Pizza, Inc.

SYNOPSIS:

The applicant, Carmine's Pizza, Inc., submitted an Economic Development Grant Application on March 23, 2022, requesting a new business lease subsidy grant totaling the amount of \$7200 over the course of three (3) years. The applicant recently opened the restaurant at 2506 South Atlantic Avenue, Suite A&B, Daytona Beach Shores, Florida 32118. Carmine's Pizza serves lunch and dinner.

FISCAL IMPACT STATEMENT:

This is a budgeted expenditure.

BACKGROUND:

In July 2019, The Daytona Beach Shores City Council approved Ordinance 2019-06, which relates to Economic Development within City limits. The ordinance, among other things, created and "Economic Development Lease Subsidy Program," which provides grants to subsidize leases for new businesses over a three (3) year period. The lease subsidy is capped at 30%, 20%, and 10% of the lease rent for the first, second, and third year, respectively, providing the total amount disbursed by the City does not exceed \$20,000.

LEGAL REVIEW:

RECOMMENDATION:

The Economic Development Committee recommended approval of the subject grant application.

SUGGESTED MOTION:

1. "I move to approve the subject grant application and agreement as presented."
2. "I move to approve the subject grant application and agreement with the following

conditions/amendments..."

3. "I move to deny the subject grant application and agreement of the basis of ..."

- ATTACHMENT:**
1. Carmine's lease subsidy grant
 2. Carmine's Lease
 3. Carmine's Business Plan
 4. Carmine's evaluation
 5. Carmine's Pizza-Lease Subsidy Grant Agreement

DAYTONA BEACH SHORES ECONOMIC DEVELOPMENT PROGRAM

GRANT APPLICATION

(There is no entitlement to any reward, but the City encourages applications and the opportunity to work with applicants.)

DATE RECEIVED:

REFERENCE:

(Please Print)

APPLICANT NAME: *Patsy CARMINE TENNACO*
CONTACT PERSON (if an entity):
ADDRESS: *940 VILLAGE TRAIL Apt 7-204*
CITY: *PORT ORANGE* STATE: *FL.* ZIP: *32127*
TELEPHONE: *386-847-4182* FAX:
EMAIL ADDRESS: *P.C.I. MAGNUM @ GMAIL. COM*

APPLICANT BUSINESS STRUCTURE:

(Please check all that apply)

☐ Sole proprietorship/individual

☒ Corporation

☐ Limited Liability Company

☐ Other

GRANT TYPE:

(Check one only)

Lease Subsidy

☒ New Business (Lease Subsidy)

☐ Existing Business Relocation

☐ Existing Business Lease Extension

Other

☐ Land Purchase

☐ Alternative Grant Request

PROJECT SITE INFORMATION:

Address: *2506 South ATLANTIC AVE, Suite A+B*

City: *DAYTONA BEACH SHORES* State: *FLORIDA* Zip: *32118*

Tax Parcel ID: *53 22 01 000 282*

BASE REAL PROPERTY VALUE:

Most recent City Taxable Value \$ Year:

Maximum New Investment Value \$ 80,000

Certified by a licensed Florida Engineer or Architect \$

DAVID LEETE

PROJECT DESCRIPTION: Build out for PIZZERIA

PROJECT BENEFITS TO THE CITY:

REQUIRED PROJECT CHECKLIST:

- ☐ Certification by Applicant
- ☐ Application Authorization or Affidavit of Ownership
- ☐ Site plan, building plans, elevations and a detailed scope of work
- ☐ Business Plan
- ☐ Estimate by a Licensed Engineer or Architect certifying amount of new investment
- ☐ Most recent property tax bill and truth in millage statement

CERTIFICATION BY APPLICANT

The applicant certifies that all information in this application, and all information furnished in support of this application, is given for obtaining funds from the City of Daytona Beach Shores Economic Development Program and is true and complete to the best of the applicant's knowledge and belief.

If the applicant is not the owner of the property, or if the applicant is an organization rather than an individual, the applicant certifies that he/she has the authority to sign and enter into an agreement to perform the improvements on the property. **Evidence of this authority must be attached.**

Verification of any of the information contained in this application may be obtained from any source named herein.

It is further understood that all information obtained will be held in strict confidence and used for no other purposes by the City of Daytona Beach Shores inconsistent with controlling law. I have received and reviewed the program guidelines prior to submitting this application.

SIGNATURE:



DATE:

3-23-22

PRINTED NAME:

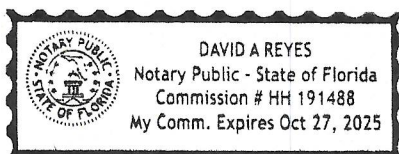
Patsy C IENNACO

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 23rd day of March, 20 22 by Patsy C. Iennaco, who is personally known to me, OR who has produced FL PL as identification and did (did not) take an oath.

My commission expires: 10/25/2025



Printed Name: David Reyes
NOTARY PUBLIC



AFFIDAVIT OF OWNERSHIP*

PROPERTY ADDRESS:

TAX PARCEL ID: 532201000 282

Signed and sealed
in the presence of:

WITNESS #1 (Signature)


PARRAS CHRIS

OWNER (Printed Name)

NAME PRINTED

WITNESS #2 (Signature)


David Reyes
NAME PRINTED

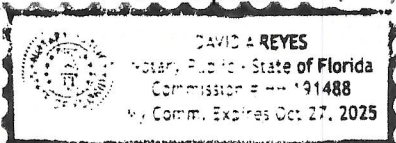
OWNER (Signature)

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 23rd day of March, 2022
by Patsy C. Iannaco, who is personally known to me, OR who has
produced FLDL as identification and did (did not) take an oath.

My commission expires: 10/25/2022



Printed Name: David Reyes
NOTARY PUBLIC

***NOTE: If more than one owner please provide additional affidavit of ownership
for each owner.**

AUTHORIZATION TO APPLY

I, _____, am the owner of the following described property:

PROPERTY ADDRESS:

I do hereby authorize the following named individual or entity to apply for an Economic Development grant and enter into an agreement with the City of Daytona Beach Shores.

AUTHORIZED REPRESENTATIVE:
(IF APPLICABLE)

PROPERTY OWNER (1) (Print Name)

[Signature]

PROPERTY OWNER (2) (Printed Name)

PARSONS CHRY

PROPERTY OWNER (1) (Signature)

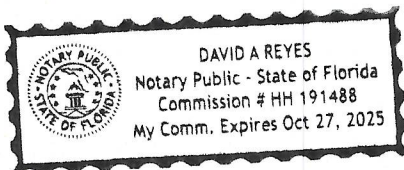
PROPERTY OWNER (2) (Signature)

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this *23rd* day of *March*, 20 *22* by *CHRIS. PARSONS*, who is personally known to me, OR who has produced as identification and did (did not) take an oath. *By means of Physical Presence.*

My commission expires: *10/25/2022*



Printed Name: *David Reyes*
NOTARY PUBLIC

[Signature]

PROGRAM APPLICATION PROCESS

1. Applicant meets with staff to discuss economic development program and potential project eligibility.
2. Applicant submits a complete application for staff eligibility review.
3. Staff conducts eligibility review and prepares City Council report.
4. City Attorney drafts agreement for City Council consideration.
5. City Council evaluates application, staff report and draft agreement and makes a final determination in approval of the grant and associated terms.

GRANT PAYMENTS ELIGIBILITY AND PROCESS

1. The applicant shall provide make a request in writing and provide firm evidence to the Finance Director that all terms and conditions of the agreement approved by the City Council have been satisfied.
2. Upon review of the evidence provided and legal review, the Finance Director shall provide a recommendation to the City Manager who shall determine whether the applicant has met all terms and conditions of the agreement to the satisfaction of the City.

DAYTONA BEACH SHORES ECONOMIC DEVELOPMENT PROGRAM OVERVIEW (See Ordinance Number 2019-06)

A. ECONOMIC DEVELOPMENT LAND PURCHASE PROGRAM (LPP):

To encourage the renovation, development, redevelopment and productive use of lands and buildings within the City, the City Council may enter development agreements, which may relate to either City-owned property (an RFP is currently issued for a parcel) or non-City-owned real property. The City shall impose conditions in each development to prevent a buyer purchasing City-owned real property from holding the real property for investment purposes or implementing a flip of the real property. The City's goal is that the real property shall be expeditiously developed in a high quality manner for the benefit of the citizens of the City.

LPP Benefits:

Purchaser of the land may receive a grant of up to a 10% of the purchase price to allow: (1) the purchaser of a **City owned** real property to use the funds to assist in the development of the real property or (2) the purchaser of a **non-City owned** real property to use the funds to assist in the build out of the real property.

City Considerations (There Is No Entitlement To Approval):

1. Development plans must be of high quality.
2. Development plans must enhance high quality economic development of the City.

B. ECONOMIC DEVELOPMENT COMMERCIAL LEASE SUBSIDY PROGRAM (LSP):

This program will provide a subsidy, under appropriate circumstances, to subsidize leases relating to the following: (a) expansion of existing tenancies; (b) new businesses within the City; (c) existing businesses which desire to relocate to a larger space in the City; and (d) businesses which extend a lease for a longer term of at least three (3) years.

LSP Program Benefits:

Over a three (3) year period in order to assist selected businesses to commence economic activity and remain a going concern, leases may be subsidized up to 30% for the first year of the lease, up to 20% for the second year of the lease, and up to 10% for the third year of the lease. The total amount awarded under the lease subsidy program may not exceed \$20,000.00.

LSP Program Requirements:

1. Only real property that is assigned a commercial, or similar, zoning classification consistent with the City's *Comprehensive Plan* and that will be used for a nonresidential or mixed use purpose (as set forth in a binding development agreement of development order) are eligible under the Program for lease subsidy assistance.
2. Lease subsidies may be made only to, or for the benefit of, a tenant and may only be used for development and renovations to real property or lease payments as determined by the City Council.
3. Normative lease underwriting criteria and documentation must be satisfied as part of the transaction to protect the City's interests, as determined under the authority and guidance of the Finance Director in conjunction with the City Attorney.
4. Should the grantee cease conducting business on the real property during the term of the lease subsidy; the City's subsidy payments shall cease.
5. The City shall not in any way guarantee any underlying loan or the lease relating to real property and the City does not pledge its full faith and credit to any extent by enacting or implementing this Ordinance and shall not be deemed to have done so to any degree or extent or to be a partner or co-venturer in any way.
6. The lease subsidy applicant must submit documentation to the City detailing the proposed development or renovation to be performed on the real property as well as details concerning the proposed lease and business activities. If approved by the City Council, the City will then issue a letter approving the subsidy subject to normal underwriting criteria as determined under the authority and guidance of the Finance Director in conjunction with the City Attorney.
7. Once the lease subsidy is approved, the applicant must submit full details of the proposed transaction to the City. The amount of the subsidy will then be fixed and the funds will be encumbered and appropriately released from time-to-time. Escrow accounts may be established in conjunction within City accounting systems or under the Finance Director with the City Attorney as needed.
8. The lease subsidy documents shall include, but not be limited to, documents to be filed of record which protect the interests of the City and shall provide that the City Manager must be notified should the real property which is the subject of the lease be sold, transferred, assigned or encumbered in any way or if the lease is terminated or sought to be terminated.

City Considerations (There Is No Entitlement To Approval):

1. Expansion of Existing Tenancies: As solely and exclusively determined by the City Council based upon the economic development needs of the City as determined by the City Council.
2. Existing Business Relocation: Relocation to a larger space will result in enhanced business operations or employment.
3. Lease Extension: (1) Lease is extended for a longer term of at least three (3) years; and (2) extension will result in enhanced business operations or employment.

4. All Types: (a) Number of new jobs created; (b) the desirability of the type of business for the City; and (c) capital investment to be made.

Additional City Considerations for LSP & AGP (There Is No Entitlement To Approval):

The City Council shall evaluate applications based on such criteria as it deems appropriate and in the best interest of the City to include, but not be limited to, the following:

1. Businesses that due to their success will attract other businesses to the City.
2. Renovation and development projects that will spur additional development and private investment.
3. Renovation and development projects that will attract desirable new businesses and create an effective merchandise mix.
4. Renovation and development projects that will have a substantial positive visual and aesthetic impact to the City.
5. Renovation and development projects that will result in filling vacant retail space.
6. Renovation and development projects that will increase real property value(s).
7. Renovation and development projects that will increase employment opportunities within the City.
8. Renovation and development projects that work in favorable concert with other development within the City by providing enhanced activities for the City.

C. ALTERNATIVE GRANT PROGRAM (AGP):

In the event that an owner of real property has engaged in or entered a business relationship in a manner which the City determines is not conducive to a lease subsidy being granted by the City, the City may enter grant agreements with such applicants such as, by way of example, facade or beautification grant agreements. Such grants may be awarded under conditions that address the unique nature of the business arrangement within which context the real property is held, or the business operated. The total amount of the grant under an agreement may not exceed \$20,000.00.

City Considerations (There Is No Entitlement To Approval):

1. The City attains substantially or more of the same economic and other benefits that are substantially the same or greater than the City would enjoy under a lease subsidy award.

For additional information, please contact:

Nancy H. Maddox
Recreation & Economic Development Director
City of Daytona Beach Shores, FL 32118
(386)763-7572
nmaddox@cityofdbs.org

Carmine's Pizzeria

Pat Iennaco

IMPACT LETTER TO CITY OF DAYTONA BEACH SHORES

Carmine's Pizzeria is a family friendly tasty treat that will fulfill your Italian cravings. You will not be disappointed once you indulge in our menu that is designed to satisfy your never ending hunger. Whether coming in off of the warm scenic beaches of Daytona Beach Shores for a slice and a thirst quenching beverage or bringing the whole crew from the mainland for dinner here at Carmine's Pizzeria we have it all. We offer a wide variety of authentic Italian cuisine from delectable pizza, mozzarella sticks, and wings. Carmine's Pizzeria will satisfy your sweet tooth with desserts such as Cannoli, and Tiramisu to name a few. Revel in our fabulous comfort foods such as Lasagna, stuffed shells, spaghetti and meatballs. Our menu includes 18" pizza pies, along with more unique dishes such as Bruechetta, Caprese, Veal Marsala, and Chicken Francese. Each meal includes a salad, bread, and dessert for a minimal up charge.

Carmine's Pizzeria will draw travelling family's, seasonal area guests, plus or loyal local customers from Orlando to Deland. Thank you in advance for the joy of bringing this business to Daytona Beach Shores. Having this opportunity is a blessing of a lifetime. To find such a desirable site for our beloved Carmine's Pizzeria will truly be an experience like no other. Qualifying for the Beautification Grant from the accomplished Daytona Beach Shores city planning department is both a pleasure and a privilege. Carmine's Pizzeria will bring a family friendly relaxing atmosphere with all the smells and tastes of your favorite Italian cuisine. Thus drawing out the desired clientele to the city of Daytona Beach Shores. Carmine's Pizzeria will offer curbside pickup for online and call ahead orders. Also we will have an online menu for online orders in exchange to touching physical menus As well as a special catering menu.

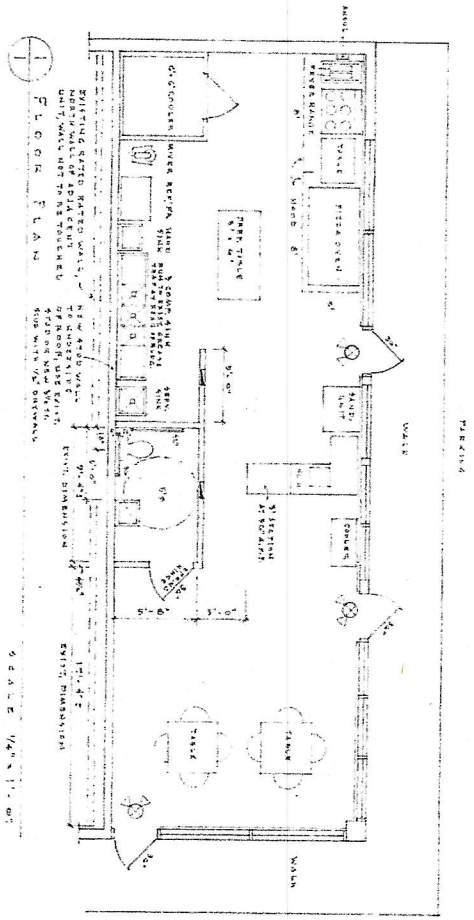
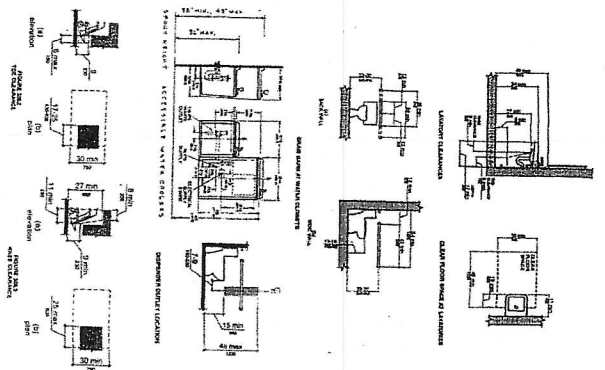
Owner of one of the best pizzas in Florida, by Costal Magazine and Venitian Bay magazine. We will be open 7 days a week, Friday and Saturday hours will be 11am to 9pm. Sunday through Thursday hours will be 11am to 10pm. Carmine's Pizzeria will offer delivery up to 5 miles radius, there will be an added fee for further distances. We intend to bring as much revenue to the city as possible. Carmine's Pizzeria will bring a delightful taste to the city of Daytona Beach Shores. Given that our local will be near a mini golf this seems to be on par with or desire to create ongoing revenue. Thus we will add flavor to an already thriving beachside community.

I will BE EMPLOYING 6-10 EEployeS,

Sinsrly, 

Pat Iannaco

CODES USED
 1000 EXISTING BUILDING CODE
 2000 EXISTING BUILDING CODE, LEVEL 2
 3000 PROPOSED ACCESSIBILITY CODE



Lee & Lee
 5/11/78

Permit No

Tax Parcel Number

532201000282

NOTICE OF COMMENCEMENT

State of Florida County of Volusia

The UNDERSIGNED hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement

1. Description of Property: (Legal description of the property, and street address if available.)

E 200 FT OF LOTS 29 & 30 & E 200 FT OF S 50 FT OF LOT 28 W OF ATLANTIC AVE C N MORRIS SUB PER OR 1983
PG 605 PER OR 5736 PG 2375

2. General description of improvement:

Remodel existing unit for use a pizza restaurant.

3. Owner information or Lessee information if the Lessee contracted for the improvement:

a. Name and address Patsy Iannaco

940 Village Trail, #7204, Port Orange, FL 32127

b. Interest in property Lessee

c. Name and address of fee simple titleholder (if other than owner)

4. a. Contractor: Name and address

Oasis Construction of Florida, Inc.
3125 Yule Tree Drive, Edgewater, FL 32141

b. Contractor's phone number 407.729.4986

5. Surety (If applicable, a copy of the payment bond is attached):

a. Name and address N/A

b. Phone number

c. Amount of bond \$.00

6. a. Lender: Name and address N/A

b. Lender's phone number

7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes:

a. Name and address N/A

b. Phone numbers of designated persons:

8. a. In addition to himself, Owner designates N/A of to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes

b. Phone number

9. Expiration date of Notice of Commencement (the expiration date is 1 year from the date of recording unless a different date is specified)

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

Signature of Owner or Lessee, or Owner's or Lessee's Authorized Officer/Partner/Manager (Section 713.13(1)(d))

Signatory's Title/Office

State of Florida County of Volusia

The foregoing instrument was acknowledged before me this 21st day of Sept 2021 by Patsy Iannaco

(Type of authority ...e.g. officer, trustee, attorney in fact)

Signature of Notary Public - State of Florida

Personally Known

OR

Produced ID

Type of ID Produced A.D.C.



STATE OF FLORIDA, VOLUSIA COUNTY
I HEREBY CERTIFY the foregoing is a true copy
of the original filed in this office. This
September 22, 2021

Clerk of Circuit Court

By: T. S. Leonard Deputy Clerk
e-signed 09/22/2021

FOR CLERK'S OFFICE USE ONLY

2506 ATLANTIC AVE - UNIT A
DAYTONA BEACH SHORES 32118



386-000-0000
CARRY OUT /-DELIVERY

Convenience Charge for Delivery \$2.50

APPETIZERS

Caprese <i>Fresh Mozzarella, tomatoes, basil. Drizzled with Olive Oil & Balsamic</i>	\$12.99
Bruchetta <i>Marinated tomatoes, onions with oil, Fresh Basil on toasted Bread</i>	\$11.99
Calamari <i>Lightly Breaded with Marinara Sauce</i>	\$11.99
Fried Raviloi <i>(8) pieces with side sauce</i>	\$9.99
Jalapeno Popper <i>Stuffed with cream cheese with side of sauce</i>	\$8.95
Fried Shrimp <i>Lightly Breaded with Italian seasoning (6) pieces</i>	\$13.99
Mussels Marinara <i>Prepared in a garlic red sauce</i>	\$12.99
Little Nech Clams <i>Prepared in red or white wine sauce</i>	\$12.99

HOT OR COLD SUBS

Italian Combo <i>Ham, Salami, Capicola, Provolone, lettuce tomato and onions</i>
Procutto <i>Fresh Mozzarella with roasted peppers ham, Provolone, lettuce, tomato and onions</i>
Tuna <i>Lettuce & Tomatoes</i>
Veggie Sub <i>Spinach, peppers, mushrooms, cucumber, tomato Your choice of dressings Mayo, Oil & Vinegar or mustard</i>
Italian Beef- <i>Slow cooked Top round beef served with au jus marinated hot Giardiniera Add Mozzarella \$2.00</i>
Chicken Parmigiana <i>Chicken Cutlet with roasted peppers & fresh Mozzarella,</i>
Egg Plant Parmigiana
Meatball
Sausage

SALADS

Antipasto Salad <i>Romaine Lettuce, red/white onions, Black Olives, cucumber, ham, salami, Provolone, Canicula, & Giardiniera</i>	\$12.99
Greek Salad <i>Romaine Lettuce, red/white onions, tomatoes, ham, cucumber, kalamata olives, pepperoni, salami, & Feta</i>	\$11.99
Cesar - <i>Romaine Lettuce, Parmesan Cesar dressing & croutons</i>	\$8.99
Garden Salad Romaine Lettuce, <i>red/white onions, black olives, cucumber, green peppers</i>	\$9.99
<i>*Add Grilled chicken \$6.99 *Add Shrimp \$7.99</i>	
Tuna Salad <i>Lettuce, tomato, red/white onions & cucumbers</i>	\$10.99
Spinach Salad <i>Tomatoes, cucumbers, peppers, mushrooms, red/white onions</i>	\$9.99
Carmines House Salad <i>(small) lettuce, tomatoes, onions, cucumber</i>	\$4.99

ITALIAN DINNER

\$11.99 Little Neck Clams <i>Served in Red Sauce, Garlic & Basil</i>	\$16.99
Mussels in Red Sauce Garlic & Basil <i>Additional</i>	\$16.99
\$14.99 <i>2 Sausage Links Sausage \$4.99</i>	
\$10.99 <i>2 Meatballs Meatballs \$4.99</i>	
\$11.99 <i>Extra Cheese \$2.00</i>	

CARMINE'S FAMOUS STROMBOLIS

\$14.99 <i>Made with homemade Pizza Dough and your choice of three toppings, Mozzarella Cheese with side of marinara sauce</i>	\$14.95
\$11.99 <i>Made with Ricotta Cheese & Mozerella cheese and your choice of three toppings with side of Marinara sauce.</i>	\$16.95

CALZONE

\$11.99 <i>Made with homemade dough</i>	\$16.95
\$11.99 <i>Made with Ricotta Cheese & Mozerella cheese and your choice of three toppings with side of Marinara sauce.</i>	
\$11.99 <i>Premium Topping \$3.50</i>	
\$10.99 <i>Extra toppings \$2.00</i>	

COMMERCIAL LEASE

Triple Net Lease

THIS LEASE AGREEMENT ("Lease") is made and entered into this 12th day of August, by and between Landlord and Tenant as Specified in Items 1 and 2 of the Definitions appearing in Section 1.1 hereof. Landlord hereby demises and rents unto Tenant, and Tenant hereby leases from Landlord, certain Premises now existing in Landlord's Plaza as described in Item 3 of the Definitions appearing in Section 1.1 hereof, and upon the terms, covenants, and conditions contained herein, together with the nonexclusive license to use the Common Areas subject to such rules and regulations as Landlord shall adopt.

ARTICLE 1

EXHIBITS, PREMISES, USE OF PREMISES, AND TERM

1.1 DEFINITIONS:

The following Items shall be defined or be referred to as indicated below for the purposes of this Lease and the Exhibits attached hereto:

- Item 1 - Landlord: PAPPAS DAUGHTERS, LLC
Chris Pappas, Manager
PO Box 1946
New Smyrna Beach, FL 32170
- Item 2 - Tenant: Pat Carmine Lennaco (individually) and as Guarantor for:
CARMINE PIZZA INC (enter corporate name)
940 Village Trail, Unit 7-204
Port Orange, FL 32127
Federal ID Number #: 86-1730595
- Item 3 - Plaza:
The term "Plaza" means all that certain land and all buildings, improvements, equipment, and facilities now or hereafter erected thereon known as Pappas Plaza, located in the city Daytona Beach Shores, County of Volusia, State of Florida.
- Item 4 - Common Areas:
The term "Common Areas" means those areas, facilities, utilities, improvements, equipment, and installations in the Plaza which are from time to time designated by Landlord for the nonexclusive benefit of Landlord and Tenants of the Plaza, their employees, agents, customers, licensees, and other invitees.
- Item 5 - Premises Physical Address:
2506 S Atlantic Avenue, Units A&B
Daytona Beach Shores, FL 32118
- Item 6 - Use of the Premises: Restaurant
- Item 7 - Lease Term: 5 years

- Item 8 - Lease Commencement: August 1, 2020
Lease Expiration Date: August 31, 2025
- Item 9 - Rent Commencement Date: October 1, 2020
- Item 10- Net Monthly Rent (Section 2.1): \$1,000.00
Common Area Maintenance: \$ 166.67
Additional Rent (Refuse/Waste): \$ 75.00
Applicable Sales Tax 6 %: \$ 74.50
**Total Monthly Rent ("BASE RENT")
due the first day of each month: \$1,316.18**
- Item 11- Rent Increases:
1. August 1, 2021, Net Rent increases to 3% plus CAM, plus Refuse/Waste, plus Tenant's proportionate share of Real Property Taxes & Insurance and plus 6% Sales Tax.
2. January 1 of each year for the remainder of the Lease term and any options at the cumulative percent increase of 3% per year, plus CAM, Refuse/Waste, Tenant's proportionate share of Real Property Taxes & Insurance and 6% Sales Tax.
- Item 12- Money Paid Lease at execution:
First Month's Rent: \$1,316.18
Security Deposit \$2,000.00
Total \$3,316.18
- Item 13- Tenant's Participation in Common Area: 12.64%
- Item 14- Tenant's Participation in Real Property Taxes: 12.64%
- Item 15- Notices:
Tenant (address as described in item 2)
Landlord:(address as described in item 1)
- Item 16- Rental or Other Payments Via US Mail: (address as described in item 1)
- Item 17: Additional Terms: Provided Lessee is not in default hereunder; Lessee is granted one consecutive 5-year option to extend said Triple Net Lease. The option shall be exercised by notice from Lessee in writing to Lessor not less than 3 months (90 days) prior to the expiration of the then current Lease term. The rental amount shall increase from the current amount to a new negotiated amount that will also include Tenant's proportionate share of CAM, Property Taxes, and Insurance as stated in Items 10 & 11.
- Item 18: Guarantor: Pat Carmine Iennaco (individually) and as Guarantor for CARMINE'S PIZZA INC. (enter corporate name)

1.2 PREMISES LEASED BY TENANT:

The Premises Leased by Tenant are located in the Plaza set forth in item 3 of the definitions, which Premises are more particularly described in Item 5 and 6 of the Definitions.

1.3 LEASE TERM:

The term of this Lease shall be for the period specified in Item 7 of the Definitions, commencing and expiring as provided in Item 8 of the Definitions, unless sooner terminated or extended as hereafter provided. Tenant hereby agrees that if it fails to surrender the Premises at the end of the Term, or any renewal thereof, Tenant will be liable to Landlord for any and all damages which Landlord shall suffer by reason thereof, in addition to all increased rental payments as specified in this Lease and Tenant will indemnify Landlord against all claims and demands made by any succeeding Tenants against Landlord in delivering possession of the Premises to each succeeding Tenant. If the commencement date or the Expiration date falls on any day other than the first of the month, Rent for the month of the commencement date or the month of the expiration date or both, as the case may require, shall be prorated such that Tenant shall pay rent for each said month in an amount bearing the same ratio to a full Monthly Base Rent payment as the number of days during the month that Tenant is in occupancy of the Premises bears to the total number of days in such month.

1.4 ACCEPTANCE OF PREMISES:

Tenant acknowledges that it has fully inspected and accepted the Premises in "as is" condition. Any changes and/or improvements to the Premises will be made by the Tenant, at Tenant's expense, with express, written approval by Landlord.

1.5 RENEWAL OPTION:

Tenant shall not be entitled to exercise the Option stated Item 17 unless each of the following conditions shall be fully satisfied at the time of its exercise: (1) the Lease shall be in full force and effect; (2) the Tenant originally named in this Lease shall be in possession of the entire Premises; and (3) Tenant shall not then be in default under any of the material terms, provisions, covenants, or conditions of the Lease. In order to exercise the Option, Tenant must notify Landlord in writing, not less than ninety (90) days prior to the Expiration Date of the Lease Term that it intends to exercise the renewal option. If Tenant fails to timely exercise the Option as provided, Tenant shall be deemed to have waived its right to exercise the Option and to occupy the Premises beyond the original Term of the Lease.

1.6 TENANT'S WORK:

Upon delivery of possession of the Premises by Landlord, Tenant will proceed with due diligence, at its own expense, to perform all work and supply all installations and to fully equip the Premises with all trade fixtures, lighting fixtures, furniture, furnishings, floor and wall coverings, exterior signs and special equipment and other items of construction and personal property necessary for the completion of the Premises and the proper operation of the Tenant's business therein. Tenant accepts the premises "as-is".

Prior to commencing any interior improvements within the Premises, Tenant must submit to Landlord leasehold and improvement plans detailing the build out to be performed within the Premises and such requested improvements shall be subject to Landlord's written approval. Tenant's work shall be performed with materials of good quality and in a proper workmanlike manner and all items installed by Tenant shall be new or of excellent used condition. The approval by Landlord of such plans and

specifications shall not constitute the assumption of any liability on the part of the Landlord for their accuracy or their conformity with requirements of any building code or other municipal governmental regulation or ordinance and Tenant shall be solely responsible for such plans and specifications and compliance of Tenant's Work with all governmental requirements prior to commencement for any work upon the Premises by Tenant, Tenant shall deliver to Landlord a certificate of public liability insurance and property damage insurance meeting the Requirements of Article 6 hereof, naming Landlord as additional insured and evidence of Workman's Compensation and Builder's Risk coverage in such amounts as are required by law and are acceptable to Landlord. From and after the date of delivery of possession of the Premises, Tenant shall observe and perform all its obligations under this Lease, including without limitation, payment of all utility charges, but excluding its obligations to pay Base Rent and Additional Rent, which are payable from and after the Rent Commencement Date.

1.7 TENANT ESTOPPEL CERTIFICATE:

From time to time and within ten (10) days after written request by Landlord, Tenant will execute, acknowledge and deliver to Landlord or to such other party as may be designated by Landlord a certificate in a form as acceptable to the Landlord, stating that this Lease is in full force and effect and has not been modified, supplemented or amended in any way, except as indicate in such certificate; that all conditions and agreements hereunder to be performed by Landlord have been satisfied or performed; that Tenant is not in default in the payment of rent or any of the other obligations required of Tenant hereunder; and that Tenant has paid Base Rent, Additional Rent and any other amounts to be paid by Tenant as set forth hereunder as of the date set forth in the certificate.

ARTICLE 2 RENT

2.1 BASE RENT

a. Commencing on the Rent Commencement Date and continuing through the full Term of this Lease, Tenant shall pay to Landlord, without notice, demand, reduction, setoff or any defense, a Total Monthly Rent ("Base Rent") as specified in Item 10 of the Definitions. No monthly installments, however, will be paid more than one month in advance. In addition, Tenant covenants and agrees to pay Landlord all applicable sales tax, proportionate share of property tax, and any other taxes that may be imposed on the above specified rents, payments, or property.

b. As used herein, "Rent" shall include Monthly Rental, Additional Rent, Advance Rent, all applicable sales tax, Tenant's Share of Operating Costs, Tenant's proportionate share of property tax and any other taxes that may be imposed on the Plaza, and other additional charges or sums payable to Landlord hereunder.

c. "Additional Rent" means all sums of money to be paid by Tenant under the terms of this Lease with the exception of Monthly Rent including without limitation Tenant's proportionate share of Operating Costs, Real Property Taxes, and any other taxes that may be imposed on the Plaza.

2.2 RENT ADJUSTMENTS

The amount of monthly rental installments under Paragraph 2.1 shall be increased January 1 of each year including, if applicable, and 'extension terms', by an amount equal to three percent (3%) of the fixed monthly rent for the preceding year.

2.3 OPERATING COSTS FOR COMMON AREA MAINTENANCE:

a. Tenant shall pay to Landlord, as Additional Rent, Tenant's proportionate share of all costs incurred by Landlord in maintaining, repairing, operating, and insuring the portions of the Plaza which are the responsibility of the Landlord hereunder, hereinafter called "Operating Costs," including, without limitation, the total costs of operating, repairing, lighting, cleaning (including without limitation dumpster rental or purchase and trash removal), maintaining or replacing awnings, painting, resurfacing, striping, sweeping, janitorial services; maintenance and repair of sidewalks curbs and shopping center signs and other markers and bumpers; lawn care, maintenance and pesticide costs; maintenance and repair of lighting systems, storm drainage systems and water retention; maintenance and repair of sprinkler and irrigation systems; securing, managing and insuring the Plaza (including without limitation, liability insurance for personal injury, wrongful arrest or detained, death and property damage; insurance and extended coverage against fire, theft, flood or other casualty; rent insurance; Workman's Compensation; and fidelity bonds for personnel) and all increases in real estate and other taxes, public charges, and assessments of whatsoever nature directly or indirectly assessed or imposed upon the land, buildings, equipment and improvements constituting the Plaza and the rents there from, including but not limited to all real property taxes, rates, duties and assessments, local improvement taxes, import charges or levies, whether general or special, that are levied, charged, or assessed against the Plaza by any lawful taxing authority whether federal, state, county, municipal, school, or otherwise (other than income, inheritance, and franchise taxes thereon); and the cost of seeking a reduction in any utility charges, governmental levies, charges or assessments, or other components of Operating Costs, including but not limited to attorney fees or consultant fees. Landlord agrees to use good faith and due diligence to keep Operating Costs of the Plaza competitive with similar Plazas in the locality of the Plaza.

b. Tenant's proportionate share of Operating Costs shall be charged and prorated to the Tenant based upon the square footage of this Lease proportioned to the total square footage in the Plaza in the Percentage set forth in Item 13 of the Definitions. Tenant shall pay its proportionate share of Operating Costs, together with all applicable sales taxes thereon, in monthly installments, without demand, deduction, or setoff along with monthly payments of Rent in such amounts as are, from time to time, estimated by Landlord. Estimates shall be revised not less than annually on the basis of actual Operating Costs for the preceding year of operations. Should Operating Costs be underestimated, Tenant shall pay any deficiency along with the payment of Monthly Rent next due and thereafter pay its adjusted proportionate share of Operating Costs in equal monthly installments as herein provided.

2.4 MONEY DUE AT LEASE EXECUTION:

Upon the Execution of this Lease, the Tenant shall pay Landlord the first month's rent, inclusive of applicable sales tax and Operating Costs, and the Security Deposit, the same to be held as security for the performance by Tenant of all obligations imposed under this Lease that Tenant is required to perform prior to commencement of the term. If Tenant shall fail to perform such obligations for a period of five (5) days after written notice from Landlord, Landlord shall be entitled to apply this Advance Rent against any damages which it may sustain by reason of Tenant's failure to perform such obligations, but such application shall not preclude Landlord from recovering greater damages if the same can be established. Otherwise, if Tenant shall faithfully perform all such obligations and leave no damage at termination of the lease, then the Advance Rent shall be applied by Landlord against the Base Rent and Additional Rent first becoming due hereunder. No right or remedy available to Landlord as

provided in this paragraph shall preclude or extinguish any other right or remedy to which Landlord may be entitled.

2.5 PENALTY FOR LATE PAYMENTS:

Rent is due on the first day of each month before close of business, or 5:00 p.m. If Tenant fails to pay rent for the month by 5:00 PM on the fifth day of that month, then Tenant shall pay as penalty, in addition to the rent, a sum equal to ten (10%) percent of the monthly installment of rent. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights or remedies available to Landlord under this Lease. Late charges are deemed Additional Rent. Tenant will also pay to Landlord on demand, interest at the rate of eighteen percent (18%) on all overdue installments of Rent and on overdue amounts of any other monetary obligations of Tenant, in each case from the due date thereof until paid in full.

ARTICLE 3 SECURITY DEPOSIT

3.1 PURPOSE OF DEPOSIT

The Security Deposit in the amount as provided for in Item 12 of the Definitions shall be held by Landlord as security for the payment of rent agreed to hereunder, for the reimbursement of and expenses or damages caused by Tenant and as security for the full performance of every provision of this Lease by Tenant. Security deposit shall not be deemed advance rent and the payment of the Security Deposit shall not relieve Tenant of its obligation to pay all Rent and other sums required by this Lease.

3.2 HOLDING DEPOSIT

The Tenant waives irrevocably the benefit of any provision of law that requires the security to be held in escrow or by a third party. The Landlord will hold the security in a non-interest-bearing account.

3.3 APPLICATION OR RETENTION OF DEPOSIT

If the Tenant defaults on any of the terms, conditions or provisions of this Lease, including but not limited to the payment of rent and additional payments, the Landlord may apply or the extent required to pay the delinquent rent or retain all or part of the security deposited to the extent required to pay the delinquent rent or additional payments or to reimburse the Landlord for all sums incurred to expended because of the Tenant's default. Reimbursable sums include but are not limited to any damages or deficiencies that result from re-letting the Leased Premises. Such damages or deficiencies are reimbursable to the Landlord regardless of whether they occur before or after the Landlord's summary proceedings or to other reentry. If the Landlord applies or retains any part of the security deposited, the Tenant shall deposit with the Landlord an equal amount to replace that which has been applied or retained so that the Landlord has a full deposit at all times during the terms of this Lease. The replacement amount is payable on the Landlord's demand.

3.4 RETURN OF DEPOSIT.

If the Tenant complies fully with all the terms, provisions, covenants, and conditions of this Lease, the Landlord must return the security deposit to the Tenant after the date on which the Lease terminates. Tenant must first deliver possession of the Leased Premises and all keys to the Landlord and Landlord must conduct an inspection of the Lease Premises and find that no damage, less reasonable wear and

tear, has been done to the premises. Upon the vacating of the Lease Premises for termination of the lease, if the Landlord does not intend to impose a claim on the security deposit, the Landlord shall have fifteen (15) days to return the security deposit together with interest if otherwise required, or the Landlord shall have thirty (30) days to give the tenant written notice by certified mail to the Tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim.

ARTICLE 4 TENANT AGREEMENTS AND COVENANTS

4.1 USE OF PREMISES:

- a. Tenant shall use, occupy and operate the Premises solely for the purpose as specified in Item 6 of the Definitions and for no other purpose or purposes without the Landlord's prior written consent and under the above Trade Name and no other. Tenant covenants to occupy the premises without delay upon the Commencement Date and shall continuously operate during the entire term of this Lease. Tenant shall operate 100% of the Premises and cause its business to be conducted and operated in good faith, in a lawful manner, and in such as shall assure the transaction of the maximum volume of business in and at the Premises. Tenant shall conduct its business in the Premises during regular customary days and hours for such type of business in the Plaza and will keep the Premises open for business during the same days, nights and hours agreed upon. If Tenant fails to any of the above, Tenant shall be in default of this Lease.
- b. If Tenant receives notice that the Premise are ready for occupancy and thereafter fails to take possession and to open the Premises for business fully fixtured, stocked and staffed within the time herein provided, then Tenant shall be in default of this Lease.
- c. Tenant, at its sole cost and expense, shall comply with and shall cause the Premises to comply with (i) all federal, state, county, municipal and other governmental statutes, laws, rules, orders, or regulations affecting the Premises or any party thereof, or the use thereof, including but not limited to, those which require the making of any structural, unforeseen or extraordinary changes; and (ii) all rules, orders and regulations of the Landlord's fire insurance rating organization or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions which apply to the Premises.
- d. NO PETS are allowed to live or stay on the Premises at any time. Tenants and/or Tenant's employees and/or customers shall not bring pets to keep inside units during or before/after business hours or on any part of the Plaza Premises at any time. Only Service Animals, as specifically defined by the Americans with Disabilities Act, are exempt from this rule.

4.2 PAYMENT OF RENT:

Tenant hereby covenants and agrees to pay each installment of Total Monthly Rent as it shall become due without notice or demand by Landlord.

4.3 MAINTENANCE OF PREMISES:

- a. Tenant will maintain at its own expense the Premises and every part thereof in as good repair as at the time of the execution of this Lease Agreement, reasonable wear and tear excepted including

all interior and exterior signs, equipment listed on a Schedule attached to this lease, windows, doors, locks, water pipes, plumbing fixtures, electrical lines and fixtures, interior painting and other such items; to flatten all boxes and other containers before placing them in the common rubbish bin; the sidewalk and parking area adjacent to Tenant's space to be kept clean and free of Tenant's rubbish and debris and in such condition as may be required by the regulations of any municipal, state, or governmental authority without any abatement of rental.

b. Tenant shall, upon written request from Landlord, provide maintenance information, logs and/or receipts for maintenance performed upon equipment and sign within three (3) days. Should Tenant fail to produce the requested maintenance information, Landlord may schedule an inspection of the equipment and/or sign. Any charges associated with such maintenance inspection and any necessary repairs shall be paid by the Tenant.

c. Tenant will at its own expense: (a) keep the inside and outside of all glass in the doors and windows of the Premises clean; (b) keep all exterior surfaces of the Premises clean; (c) replace promptly any cracked or broken glass of the Premises with glass of like or better grade and quality; (d) maintain the Premises in a clean, orderly, and sanitary condition and free of insects, rodents, vermin, and other pests; (e) keep any garbage, trash, rubbish or other refuse in tamper and rodent-proof containers within the interior of the Premises until removed; (f) have such garbage, trash, rubbish, and refuse removed from the Plaza on a daily basis; (g) keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the Premises or to adjacent units; (h) comply with all laws, ordinances, rules, and regulations of governmental authorities and all recommendations of Landlord's fire insurance rating organization; (i) light the show windows of the Premises and exterior signs and turn the same off to the extent required by Landlord; (j) keep Premises sufficiently heated to prevent freezing in the water pipes; (k) comply with and observe all rules and regulations established by the Landlord from time to time which apply generally to all Tenants in the Plaza; (l) conduct business in all respects in a dignified manner in accordance with high standards of operation.

d. Tenant will not: (i) place or maintain any merchandise, trash, refuse, or other articles in any vestibule or entry of the Premises, on sidewalks or corridors adjacent thereto or elsewhere on the exterior of the Premises so as to obstruct any driveway, corridor, sidewalk, parking area or any other Common Areas; (ii) use or permit the use of objectionable advertising medium such as, without limitation, flashing lights, speakers, or phonographs; (iii) permit undue accumulations or burn garbage trash or refuse within or outside of the Premises; (iv) solicit business in the parking or common areas; (v) permit the parking of vehicles so as to interfere with the driveway, sidewalk, parking area or other Common Areas; (vi) use the Common Area or sidewalk for the sale or display of merchandise or for any other business occupation, or undertaking; (vii) affix, display or inscribe signs, placards, pictures, advertisements, names, or notices to the outside of the Plaza; (viii) allow animals to enter or remain within the Premises or any part of the Plaza.

4.4 PARKING AND OTHER OUTSIDE AND COMMON AREAS:

a. The space leased by the Tenant is part of a larger property containing a common parking area. The Tenant shall have the non-exclusive right to the use of the parking area in common with all other Tenants, said use to be subject to the general rules and regulations as may be established by the Landlord from time to time governing the use of the parking and other outside areas. Landlord will operate and maintain or cause to be operated and maintained the parking lot and common areas in a manner deemed by Landlord to be reasonable and appropriate. Landlord will have the right to (a)

establish, modify, and enforce reasonable rules and regulations with respect to the Parking and Other Outside and Common Areas; (b) enter into, modify and terminate easements and other agreements pertaining to the use and maintenance of the Parking and Other Outside and Common Areas; (c) enforce parking charges; (d) close any portion or all areas of said Parking and Other Outside and Common Areas; (e) to do and perform such improvement or other acts in and to said areas as Landlord determines to be advisable.

b. No other than permitted size of vehicles may be parked in the Common Area without the written permission of the Landlord. Lessee shall not service or store any vehicles in the common area. The common areas are not to be utilized for promotional events without the permission of the Landlord.

c. Tenant and its employees shall park their cars only in such areas designated for that purpose by Landlord. If Tenant or its employees shall fail to park their cars in the designated parking areas, then without limiting any other remedy which Landlord may pursue in the event of Tenant's default, Landlord, after giving notice to Tenant, shall have the right to charge Tenant, as Additional Rent, the sum of Ten Dollars (\$10) per day per car parked in violation of the provisions of this paragraph.

4.5 UTILITIES

a. Payment: Tenant hereby agrees and covenants to pay all charges for water, electricity and gas furnished to the Premises. Tenant also agrees to pay his proportionate share of the trash, sewer, and water service according to Tenants percentage of the entire leasable property. This amount shall be considered Additional Rent and is due with the Total Monthly Rental payments on the first of each month. Tenant shall reimburse Landlord for the cost of repairing any damage caused to any water line, sewer line, electrical or telephone line, conduits or pipes, whether such constitute a part of the Premises or are situated elsewhere within or outside the building which damage is caused by Tenant or Tenant's employees, agents, servants, invitee or contractors.

b. Landlord shall not be liable for any interruptions or the curtailment in utility services due to causes beyond the reasonable control of Landlord or due to Landlord's alteration, repair or improvement of the Premises or the Plaza.

c. Landlord shall have the right to run utility lines, pipes, roof drainage pipes, conduit, wire, duct work or sprinkler systems where necessary, though, in or beneath the Premises and to maintain the same in a manner which does not unduly interfere with the Tenant's use thereof.

4.6 INSPECTION BY LANDLORD:

Tenant hereby covenants and agrees to permit Landlord or his authorized agent to inspect the Premises at any time, to accompany or send prospective Tenants or purchasers through the Premises, to make improvements and during the last month of the term to post and maintain "For Rent" notices thereon. If upon Landlord's written request Tenant does not within two (2) business days make the Premises available for inspection by Landlord during normal business hours, then Landlord may at Tenant's expense have a key made and enter the demised Premises for such purpose.

4.7 POSSESSION

Tenant hereby covenants and agrees to vacate the Premises and to return all keys directly to Landlord upon the expiration of the term without notice, leaving the Premises clean and without leaving furniture, furnishings, or equipment behind. Tenant acknowledges that failure to remove any such

items or to return the keys when Tenant is in default under any clause of this lease may cause Landlord to be uncertain as to whether Tenant has abandoned the same or not. In that event, unless Tenant supplies Landlord with a written statement of his intentions.

Landlord may in his sole discretion and without liability to Tenant determine if there has been an abandonment of the Premises by the Tenant. Tenant understands this is a non- smoking Facility and that smoking of any tobacco or non-tobacco product within any area of the Building, including Tenant's Premises is strictly prohibited.

ARTICLE 5 ALTERATIONS, REPAIRS AND MAINTENANCE

5.1 ALTERATIONS BY TENANT

Tenant shall not make any alterations to the Premises (including but not limited to alterations to the exterior, the storefront, signs, and/or utility lines or systems within or serving the Premises) nor secure any fixture or apparatus without Landlord's prior written approval and at Tenant's own expense. Tenant shall promptly remove upon order from Landlord any decoration or alteration made or installed upon the Premises without Landlord's prior written approval. All alterations, fixtures, betterments and improvements made to or installed upon the Premises shall remain upon the Premises and shall become Landlord's property upon the expiration or earlier termination of this Lease unless Landlord shall require Tenant to restore the Premises to its original condition. Tenant agrees to pay 100% of any increases in real estate taxes resulting from such improvements. Landlord is to approve the weight size, and location of safes or heavy equipment, furniture, or other articles which may be moved in, about, or out of the Building or premises only at such times and in such manner as Landlord shall direct and, in all events, however, at Tenants sole risk and responsibility.

Tenant shall deliver to Landlord a copy of the plans and specifications for all alterations, physical additions or improvements that Tenant proposes to make in or to the Premises. All such improvements or alterations shall be made at Tenant's expense, by a licensed contractor approved by Landlord and in conformity with plans and specifications approved by Landlord. Tenant agrees to make full and prompt payment of all sums necessary to pay for the costs of all repairs and permitted alterations,, improvements, changes, and other work done by Tenant in or to the Premises and further agrees to indemnify, save harmless and defend Landlord from and against any and all expenses incurred by Landlord as a result of any mechanic's, material man's, laborer's or other statutory or common law liens that may be asserted, claimed or charge against all or any part of the Property, arising out of work performed at the direction of the Tenant.

5.2 REPAIRS AND MAINTENANCE BY TENANT:

Landlord shall be responsible for the roof of the Premises and the parking lot, replacement of the exterior walls, water and sewer lines to the Premises and the foundation of the Premise and the Plaza, provided that Tenant shall give Landlord written notice of the necessity for such repair as same affects the Premises.

Tenant shall be responsible for all other janitorial service, repairs and maintenance, including without limitation, to keep the interior of the Premises, together with the storefront and all windows, signs,

equipment, plate glass and doors of the Premises, and all electrical, plumbing; water lines; toilets, sinks and drains; sprinkler systems and any other mechanical installations serving the Premises, whether or not in or under the floor slab or on the roof of the Premises, in good working order and repair, at Tenant's expense. Tenant shall promptly repair, at its expense, any damage to the Premises caused by bringing into the Premises any property for Tenant's use, or by the installation or removal of such property regardless of fault or by whom such damage may be caused. In the event Tenant fails to make such repairs, Landlord may, at its option, but need not, make same and Tenant agrees to pay Landlord as Additional Rent the cost thereof promptly upon demand by Landlord. Tenant shall not overload the floor slab, electric wiring or utilities serving the Premises and shall install at Tenant's sole expense, after first obtaining Landlord's written approval, any additional electric wiring that may be required in connection with Tenant's apparatus, equipment or fixtures. Tenant shall obtain insurance on property. If Tenant is unable to obtain insurance due to the federal pacific electrical panel, Landlord and Tenant must split the cost of replacing the panel equally

5.3 LIENS:

Tenant hereby indemnifies Landlord against and shall keep the Premises and the Plaza free from liens for any work performed, material furnished, or obligations incurred by the Tenant. Should liens or claims be filed against the Premises or the Plaza by reason of Tenant's acts or omissions, Tenant shall cause same to be discharged by bond or otherwise within ten (10) days after filing. In the event such lien is not removed within the time set forth herein, the Landlord, at its sole option, may immediately take all action necessary to release and remove such lien. All sums, costs and expenses, including reasonable attorney's fees and costs incurred by the Landlord in connection with such lien shall be deemed Additional Rent and shall be immediately due and payable. In accordance with the applicable provisions of the Florida Construction Lien Tax and specifically Florida Statutes, Section 713.10, no interest of Landlord whether personally or in the Premises, or in the underlying land or Plaza of which the Premises is a part, or the leasehold interest of aforesaid shall be subject to liens for improvements made by Tenant or caused to be made by Tenant hereunder. Further, Tenant shall have no power or authority to create any lien or permit any lien to attach to the present estate, reversion, or other estate of Landlord in the Premises or in the Plaza, and all mechanics, material men, contractors, artisans and other parties contracting with Tenant or its representatives or privies as to the Premises or any part of the Premises are hereby charged with notice that they must look to the Tenant to secure payment of any bill for work done or material furnished or for any other purpose during this Lease term. The foregoing provisions are made with express reference to Section 713.10 of the Florida Statutes. The Tenant agrees to execute a short form lease embodying this provision for recording in the public records of the county in which the Premises is located.

5.4 SIGNS AND DISPLAYS:

Except for the sign provided by Landlord on the front facade of the building, Tenant shall not place or have placed or maintained on the exterior of or within the Premises, the Common Areas, or at any other location within the boundaries of the Plaza any sign, awning or advertising without the prior written consent of the Landlord. Landlord shall have the exclusive right to use the roof and Tenant shall not affix any sign to the roof of the Premises. Tenant will install and maintain at all times, subject to other provisions of this Section, displays of merchandise in the show windows, (if any) of the Premises. All articles, displays, signs or other similar promotion materials and the arrangement, style, color and general appearance thereof in the interior of the Premises including, without limitation, window displays, advertising matter, signs, merchandise and store fixtures, shall be in keeping with the

character and standards of the improvements within the Plaza, as determined by Landlord. Landlord reserves the right to require Tenant to correct any nonconformity.

5.5 SIDEWALKS:

Tenant agrees that it shall keep the sidewalks immediately abutting the Premises free from obstructions of all nature, properly swept, and debris removed therefrom.

ARTICLE 6
INSURANCE AND INDEMNITY

6.1 LIABILITY INSURANCE:

Tenant shall maintain at its sole expense during the term hereof, commercial liability insurance with broad form contractual liability coverage and with coverage limits of not less than One Million Dollars (\$1,000,000.00) combined single limit, per occurrence, specifically including liquor liability insurance covering the consumption of alcoholic beverages purchased or received from Tenant, if the sale or distribution of alcoholic beverages is permitted in the Premises. Such policy shall ensure Tenant's performance of the indemnity provisions of this Lease, but the amount of such insurance shall not limit Tenant's liability nor relieve Tenant of any obligations hereunder. Tenant shall also keep in force insurance against loss or damage to plate glass in or on the Premises and fire and extended coverage insurance for the full replacement value of Tenant's improvements and Tenant's property, including, but not limited to, inventory, trade fixtures furnishings and other personal property. The Landlord shall be named as an additional insured on any such policy. All such policies shall be written by companies reasonably satisfactory to the Landlord, and Tenant will cause such insurance policies to name Landlord as additional insured and to be written so as to provide that the insurer waives all right of recovery by way of subrogation against Landlord in connection with any loss or damage covered by the policy. In addition, Tenant shall keep in force Workman's Compensation or similar insurance to the extent require by law. Tenant shall deliver said policies or certificates thereof to Landlord within ten (10) days of commencement of the term. Should Tenant fail to affect the insurance called for herein, Landlord may, at its sole option, procure said insurance and pay the requisite premiums, in which event Tenant shall pay all sums so expended to Landlord as Additional Rent promptly upon demand. Each insurer under the policies required hereunder shall agree by endorsement on the policy issued by it or by independent instrument furnished to Landlord that it shall provide to Landlord at least thirty (30) days' prior written notice before the policy or policies in question shall be altered or canceled.

6.2 INCREASE IN INSURANCE PREMIUM:

Tenant will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will violate Landlord's policies of hazard or liability insurance or otherwise violate any other insurance policy(ies) carried by Landlord on the Premises or on the Plaza or which will prevent Landlord from procuring such policies in companies acceptable to Landlord.

If anything done, permitted to be done, or suffered by Tenant to be kept in, upon or about the Premises shall cause the premium or rate of fire or other insurance on the Premises or on other property of Landlord or of others within the Plaza to be increased beyond the Base rate from time to time applicable to the Premises or to any such other property for the use or uses made thereof, Tenant will pay, as Additional Rent, the amount of any such increase promptly upon Landlord's demand.

6.3 INDEMNIFICATION:

Tenant hereby agrees to indemnify and hold Landlord, its partners, trustees, officers, directors, shareholder, beneficiaries, agents, and employees harmless from any and all claims, damages, liabilities or expenses arising out of (a) Tenant's use of the Premises; (b) any and all claims arising from any breach or default in the performance of any obligation of Tenant; and (c) any act, omission or negligence of Tenant, its agents, contractors, licensees, invitees or employees. Tenant further releases Landlord from liability for any damages sustained by Tenant or any other person claiming by, through, or under Tenant due to the Premises, or any part thereof or any appurtenances thereto becoming out of repair, or due to the happening of any accident, including but not limited to any damage caused by water, snow, windstorm, tornado, gas, steam, electrical wiring, sprinkler system, plumbing, from any acts or omission of co-Tenants or other occupants of the Plaza. To the maximum extent permitted by law, Tenant agrees to use and occupy the Premises and to use such other portions of the Plaza as Tenant is herein given the right to use, at Tenants own risk. Landlord shall not be liable for any damage to or loss of Tenant's personal property, inventory, fixtures or improvements, from any cause whatsoever except the willful misconduct or gross negligence of Landlord, and then only to the extent not covered by insurance to be obtained by Tenant in accordance with Section 5.1 hereof.

ARTICLE 7 DAMAGE DESTRUCTION OR CONDEMNATION

7.1 CASUALTY

Except as otherwise provided herein, if the Premises are damaged by fire or other insured casualty and such damage does not equal or exceed forty percent (40%) of the replacement cost thereof, the damages shall be repaired by Landlord within a reasonable amount of time, to the extent of the insurance proceeds available therefore, to the condition of the Premises as originally delivered to Tenant. Tenant at its sole expense shall restore thereto all work and improvements originally installed or performed by Tenant immediately upon the completion of Landlord's work or simultaneously with such work to the extent practicable. If the damage is due to the fault or neglect of Tenant or its employees, agents or invitees, there shall be no abatement of rent. If; (a) Premises is damaged to the extent of more than forty percent (40%) of the replacement cost thereof; or (b) the Plaza is damaged by fire or other insured casualty to the extent of twenty-five percent (25%) or more of the replacement cost thereof; or (c) any damage to the Premises cannot, in Landlord's sole discretion, be repaired within ninety days (90) of the date of such damage; or (d) the Premises is damaged or destroyed during the last thirty percent (30%) of the term of this Lease, then Landlord may at its sole option terminate this Lease by written notice to the Tenant. Landlord shall notify the Tenant of its election to terminate within thirty (30) days following its receipt of notification of the availability of insurance proceeds for such repairs or restoration. If Landlord does not elect to terminate this Lease, it will commence repairs or restoration to completion with due diligence

If Landlord should elect or be obligated pursuant to this Paragraph 6.1 to repair or rebuilt because of damage or destruction, Landlord's obligation shall be limited to the basic building and any other work or improvements which may have been originally performed or installed at Landlord's expense. If the cost of performing Landlord's obligation exceeds the actual proceeds of insurance paid or payable to Landlord on account of such casualty, Landlord may terminate this lease unless Tenant, within fifteen (15) days after demand therefore, deposits with Landlord a sum of money sufficient to pay the difference between the cost of repair and the proceeds of insurance available for such purpose.

Upon the termination of this Lease pursuant to the provisions of this Paragraph 6.1, the parties shall be released thereby without further obligations to the other party coincident with the surrender of possession of the Premise to Landlord, except for items that have theretofore accrued and are unpaid. In the event of such termination, all of Tenant's insurance proceeds covering Tenants leasehold improvements, but excluding proceeds for trade fixtures, merchandise, signs and other personal property, shall be disbursed and paid to Landlord.

ARTICLE 8 DEFAULT

8.1 DEFAULT BY TENANT:

Tenant shall be in default under this lease if any of the following events shall occur:

- (a) Tenant fails to pay all rent when due or without notice within (5) days
- (b) Tenant fails to pay any additional rent due;
- (c) Tenant defaults in fulfilling any of the covenants or obligations of this Lease and such default has not been cured within five (5) days after written notice from Landlord. If the default so specified shall be of a nature that the same cannot be reasonably cured or remedied within said five (5) day period, and if Tenant shall not in good faith have commenced the curing or remedying of such default within the five day period and shall not thereafter diligently proceed therewith to completion, which completion shall in no event be more than thirty (30) days after notice from Landlord;
- (d) Tenant fails to properly maintain or provide proof of regular maintenance of any/all equipment listed on the Schedule attached to this Lease and incorporated herein.
- (e) Tenant refuses and/or fails to cooperate with Landlord's request to inspect the premises.
- (f) Tenant fails to cease all conduct prohibited hereby immediately upon receipt of written notice from Landlord;
- (g) Tenant commits an act in violation of this Lease which Landlord has previously notified
- (h) Tenant to cease more than once in a year;
- (i) Tenant becomes bankrupt, insolvent, or files any debtor proceeding, takes or has taken against Tenant any petition of bankruptcy; takes action or has taken action against Tenant for the appointment of a receiver for all or a substantial portion of Tenant's assets; files a petition for a corporate reorganization makes an assignment for the benefit of creditors, or if in any other manner Tenant's interest hereunder shall pass to another by operation of law (any or all occurrences in this paragraph shall be deemed a default on account of bankruptcy for purposes hereof and such default on account of bankruptcy shall apply to and include any Guarantor of this Lease);
- G) Pre mises; Tenant does, or permits to be done, any act which creates a mechanic's lien or claim therefore against the Premises or Plaza;
- (k) The appointment of a trustee or a receiver to take possession of all or substantially all of Tenant's property, or the attachment, execution or other judicial seizure of all or substantially all, of Tenant' s located at the premises.

8.2 ACCELERATION OF RENTAL OR TERMINATION OF LEASE:

Upon such default as stated in, but not limited to, Paragraph 8.1, Landlord may elect to declare the entire rent for the balance of the term, or any part thereof, due and payable, or at the option of the Landlord, the Landlord may elect to terminate this lease by written notice to Tenant on the date specified in such written notice, whereupon Tenant shall quit and surrender the Premises to Landlord as if the term herein ended by expiration of the time fixed herein but Tenant will remain fully liable as hereinafter provided. Further, upon such default, whether or not Landlord shall elect to terminate this

lease. Landlord shall have the immediate right to re-entry and may remove all persons and property from the Premises and such property may be removed and stored in a public warehouse or elsewhere at the cost to or for the account of Tenant, all without service of notice or resort to legal process, all of which Tenant expressly waives, and Landlord shall not be deemed guilty of trespass, or become liable for any loss or damage which may be occasioned thereby. Landlord shall have a lien for the payment of all sums agreed to be paid by Tenant herein upon all Tenant's property, which is to be in addition to Landlord's lien now or that may hereafter be provided by law.

8.3 LANDLORD'S RIGHTS ON DEFAULT:

If Tenant is in default of this Lease as provided in Paragraph 8.1, and if Landlord does not terminate this Lease as provided in Paragraph 8.2, then Landlord may give Tenant notice of that default. If Tenant fails to cure a default in the payment of rent or additional rent within three (3) days or fails to cure any other default within five (5) days after notice is given, the Landlord may:

- (a) Landlord may retake possession of the Premises for the account of Tenant and may reenter the Premises, by summary proceedings or otherwise, and attempt to re-let the Premises, or any part thereof, as Tenant's agent, in the name of Landlord, or otherwise to any Tenant and upon such terms and conditions and for any use or purpose and for a term shorter or longer than the balance of the term of this Lease, all as Landlord may deem appropriate.
- (b) Landlord may retake possession of the Premises, or any part thereof, on its own behalf, without thereby relieving Tenant from liability for damages accruing prior to or after such retaking.
- (c) Landlord may elect not to seek to re-enter any portion of the Premises, without waiving its right to do so at any future time or its right to collect the rent due hereunder as and when the same shall become due, together with all other expenses incurred by Landlord in regaining possession and to continue to hold Tenant fully liable for all of its obligations hereunder until such time, if any, as Landlord re-lets same and the Premises are occupied by such successor, it being understood that Landlord shall have no obligation to mitigate Tenant's damages by re-letting the Premises. Upon reletting, sums received by Landlord from such new lessee shall first be applied to payment of costs incident to reletting. Any excess or residue shall belong to the Landlord solely, and in no event shall Tenant be entitled to a credit on its indebtedness to Landlord in excess of the aggregate sum owing by Tenant. Landlord may, at any time and from time to time sue for any deficiencies from time to time remaining after the application from the proceeds of any reletting under this paragraph.
- (d) Landlord may treat the default as an anticipatory breach of the Lease and, in addition to retaking possession, may bring an action immediately for all damages resulting therefrom.
- (e) In the event of a breach by Tenant of any of the covenants or provisions hereof, Landlord shall have, in addition to any other remedies which it may have, the right to invoke any remedy allowed at law or in equity including injunction relief, to enforce Landlord's rights or any of them, as if re-entry and other remedies were not herein provided for.

Notwithstanding anything in the Lease to the contrary, Landlord reserves all rights which any state or local laws, rules, regulations or ordinance confer upon a Landlord against a Tenant in default. This article shall apply to any renewals or extensions of this Lease. If the default is of such a nature that it cannot be completely cured within ten days, the Landlord may terminate this Lease only if the Tenant fails to proceed with reasonable diligence and in good faith to cure the default.

8.4 EXPENSES:

If Tenant shall default in the performance of any provision of this Lease on its part to be performed or observed or if Landlord takes any action or institutes any legal proceeding to enforce the terms of this

Lease, to recover possession of the Premises, or to recover any sum due under this Lease, then Landlord shall be entitled to recover all forms of damages, fees, costs and expenses incurred hereby, including without limitation, attorney's fees and expenses incurred including pretrial, trial, and appellate proceedings. Such damages, fees, costs and expenses shall be deemed to be Additional Rent hereunder and shall be paid by Tenant to Landlord upon demand.

8.5 NON-WAIVER PROVISIONS:

The failure of Landlord to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed to be a waiver of any rights or remedies that Landlord may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions, covenants herein contained except as may be expressly waived in writing.

8.6 ACCORD AND SATISFACTION

If the Tenant pays or the Landlord received any amount that is less than the amount stipulated to be paid under any Lease provision, that payment is considered to be made only on account of an earlier payment of that stipulated amount. No endorsement or statement on any check or letter may be deemed an accord and satisfaction. The Landlord may accept any check or payment without prejudice to the Landlord's right to recover the balance due or to pursue any other available remedy.

ARTICLE 9 TRANSFERS, ASSIGNMENTS AND SUBLETTING

9.1 ASSIGNMENT AND SUBLETTING:

Tenant shall not, either voluntarily or by operation of law, sell assign., hypothecate or otherwise transfer, mortgage, pledge, encumber, or permit any lien to attach to this Lease, or sublet the Premises or any part thereof (all the forgoing collectively referred to as "Transfer") without the prior written consent of Landlord, which consent Landlord or withhold in its sole and absolute discretion. Any requests by Tenant to transfer this Lease must be presented in writing to Landlord and must include all terms of the agreement and any payments that the agreement may involve and a financial check of the prospective applicant. Landlord and Tenant acknowledge and agree that the foregoing restriction on Transfer has been freely negotiated by the parties hereto and that Landlord would not have entered into this Lease without Tenant's consent to the terms of this paragraph. Any attempted Transfer shall be void ab initio and Tenant shall remain primarily liable upon this Lease and shall not be release from performing any of the terms, covenants and conditions of this Lease.

9.2 LANDLORD'S RIGHT TO COLLECT RENT FROM ANY OCCUPANT

If the Tenant is in default on any payments under this Lease and any other person is subletting or occupying the Leased Premises, or if the Tenant assigns this Lease, the Landlord may collect rent from the assignee, subtenant, or occupant. The Landlord may apply the net amount collected to the rent required under this Lease. The Landlords' collection of the rent does not waive the covenant against assignment and subletting under Paragraph 9.1. Nor does it constitute the Landlord's acceptance of the assignee, subtenant, or occupant as a tenant, nor the Landlord's waiver of the Tenant's further performance of the covenants contained in this Lease.

ARTICLE 10
SUCCESSION TO LANDLORD'S INTEREST

10.1 ATTORNMENT:

Tenant shall attorn and be bound to any of Landlord's successors under all terms, covenants and conditions of this Lease for the balance of the remaining term.

10.2 SUBORDINATION:

This Lease shall be subordinate to the lien of any mortgages, deeds of trust or security agreements ("Mortgages") or the lien resulting from any other method of financing or refinancing now or hereafter in force against the Plaza, any portion thereof, or upon any buildings hereafter placed upon the land upon which the Premises are a part, and to any and all advances to be made under such mortgages, and all renewals, modifications, extensions, consolidations and replacements thereof.

10.3 INSTRUMENT EVIDENCING SUBORDINATION AND ATTORNMENT:

The aforesaid provisions of Paragraphs 10.1 and 10.2 shall be self-operative and no further instruments evidencing them shall be required. Tenant covenants and agrees, however, to execute and deliver, upon demand, such further instrument or instruments subordinating this Lease on the foregoing basis to the lien of any such mortgages or other such financing as shall be desired by Landlord and any mortgages or proposed mortgagees, and/or attorning to a subsequent Landlord, and hereby irrevocably appoints Landlord the attorney-in-fact of Tenant to execute and deliver such instrument(s) within ten (10) days after written notice to Tenant to do so.

10.4 MORTGAGEE'S APPROVAL:

If any mortgagee or beneficiary under a deed of trust or security agreement ("Mortgagee") of the Plaza requires any modification of the terms and provisions of this Lease as a condition to such financing as Landlord may desire, then Landlord shall have the right to cancel this Lease if Tenant fails or refuses to approve and execute such modification(s) within ten (10) days after Landlord's request therefore, provided said request is made at least ten (10) days prior to delivery of possession. Upon cancellation by Landlord, this Lease shall be null and void and Landlord shall not be liable to Tenant for damages or otherwise by reason of such cancellation.

ARTICLE 11
SURRENDER OF PREMISES

11.1 SURRENDER:

At the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord in "broom clean" condition and in the same condition as when tendered by Landlord, reasonable wear and tear and insured casualty alone excepted. Tenant shall promptly repair any damage to the Premises caused by the removal of any furniture, trade fixtures, walls or other personal property placed in the Premises. All original equipment and fixtures and any other items that were there originally are to be in good repair and clean upon termination of the premises.

11.2 WRITTEN ACCEPTANCE:

No act or thing done by the Landlord, agent or employee of the Landlord, during the Lease term shall be deemed to constitute an acceptance by the Landlord of a surrender of Premises unless such intent is specifically acknowledged in writing signed by Landlord.

11.3 HOLDING OVER:

Tenant shall not occupy the Premises after the Expiration Date without the Landlord's written consent. If, after the Expiration Date, Tenant remains in possession of the Premises with the Landlord's permission (express or implied), Tenant shall become a Tenant from month to month only upon all the provisions of this Lease (except as to term and Base Rent). Monthly installments of Base Rent payable by the Tenant during this period shall increase to One Hundred Twenty Five Percent (125%) of the monthly Base Rent payable by the Tenant in the final month of the Term. Such monthly rent shall be payable as set forth herein.

ARTICLE 12 MISCELLANEOUS

12.1 ATTORNEY FEES:

If at any time, by reason of the failure of Tenant to keep and perform any covenant or agreement which under the terms of this lease said Tenant is bound and obligated to keep and perform, it becomes necessary for Landlord to employ an attorney at law to protect Landlord's rights and interests in the property demised or to enforce the Lease or proceed under it in any particular, then in any such event Tenant shall owe and shall pay unto the Landlord within ten (10) days after written notice thereof, any reasonable fees for attorneys incurred or expended by Landlord in the protection of Landlord's rights and interests and if costs of court are also incurred then Tenant shall also in the same manner pay such costs.

12.2 ENTIRE AGREEMENT OF THE PARTIES:

This Lease Agreement constitutes the entire agreement between the parties hereto and there are no agreements, understandings, restrictions, warranties or representation between the parties other than those as herein provided for.

12.3 OBLIGATIONS OF PERSONS OR PARTIES UNDER THIS LEASE

If more than one person or party signs this Lease, each person is fully and personally obligated to keep all of the promises made in this Lease, including the promise to pay the full amount owed. Any person or party who is a guarantor, surety or endorser of this Lease is also obligated to do these things. Any person or party who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Lease, is also obligated to keep all of the promises made in this Lease. The Landlord may enforce its rights under this Lease against each person individually or against all of us together. This means that any one of the Lease signers may be required to pay all of the amounts owed under this Lease.

12.4 SEVERABILITY

In the event any provision of this Lease to any extent is found to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and the Lease and its provisions shall be valid and enforceable to the full extent permitted by law.

12.5 WAIVER

No waiver by Landlord of any provision on this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Tenant of the same provision. Landlord's consent to or approval of any act by Tenant shall not be deemed to render unnecessary the obtaining of Landlord's

consent to or approval of any subsequent act. No agreements by Landlord to accept Tenants surrender of the Premises shall be valid unless in writing.

12.6 RIGHT OF ENTRY

Landlord shall have free access to the Premises at all reasonable times to inspect same and to make such repairs, additions, improvements, changes or alterations to the Premises or the Plaza as Landlord may elect to make. Tenant agrees that on and after ninety (90) days preceding the expiration date of the term hereof, Landlord or its agent shall have the right to show the Premises to potential Tenants and to place notices offering the Premises for Lease on any part of the Premises.

12.7 SUCCESSORS AND ASSIGNS

Except as otherwise proved herein, this Lease shall be binding and inure to the benefit of the parties hereto and their respective heirs, personal representative, executors, successors and assigns.

12.8 SURVIVAL OF OBLIGATIONS

The provisions of this Lease with respect to any obligation of Tenant to pay any sum owing in order to perform any act after the expiration or other termination of this Lease and any indemnification obligations of Tenant shall survive the expiration or other termination of this Lease.

12.9 LIMITATION ON RIGHT OF RECOVERY AGAINST LANDLORD

Tenant acknowledges and agrees that the liability of Landlord under this Lease shall be limited to its interest in the Plaza and any judgments rendered against Landlord shall be satisfied solely out of the proceeds of sale of its interest in the Plaza. No personal judgment shall lie against Landlord upon extinguishment of its rights in the Plaza and any judgment so rendered shall not give rise to any right of execution or levy against Landlord's assets. For the purposes of this paragraph, the term "Landlord" shall mean and include all partners of Landlord (if Landlord is a partnership) and all members and managers of Landlord (if Landlord is a limited liability company). The provisions hereof shall inure to Landlord's successors and assigns, including any Mortgagee. The foregoing provisions are not intended to relieve Landlord from performance of any obligations under this Lease, but only to limit the personal liability of Landlord in case of recovery of a judgment against Landlord; nor shall the foregoing be deemed to limit Tenant's rights to obtain injunctive relief or specific performance or to avail itself of any other right or remedy which may be awarded to Tenant by law or under this Lease.

12.10 JOINT AND SEVERAL LIABILITY

If two or more individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) shall sign this Lease as a Tenant or in the capacity of Guarantor, the liability of each such individual, corporation, partnership or other business association to pay rent and perform all other obligations hereunder shall be deemed to be joint and several with the other signatories and all notices, payments, and agreements given or made by, with or to all of them. In like manner, if Tenant shall be a partnership or other business association, the members of which are, by virtue or statute or federal law, subject to personal liability, such liability of each such member shall be joint and several. All Guarantors hereby agree to payment and performance of all of the Tenant's obligations hereunder.

12.11 CORPORATE TENANTS

In the event that Tenant is a corporation, that person executing this Lease on behalf of Tenant hereby covenant and warrant that: (a) Tenant is a duly constituted corporation qualified to do business in the

State of Florida; (b) all Tenants franchise and corporate taxes have been paid to date; (c) all future forms, reports, fees, and other documents necessary for Tenant to comply with applicable laws will be file by Tenants when due; (d) such persons are duly authorized by the board of directors of such corporation to execute and deliver this Lease on behalf of the corporation.

12.12 PERSONAL GUARANTEE

In the event that Tenant is a corporation, a limited liability company, or a partnership, a personal guarantee has been executed and attached to this Lease.

12.13 FORCE MAJEURE

In the event either Landlord or Tenant shall be delayed, hindered or prevented from the performance of any act required hereunder, by reason of way, governmental restrictions, civil commotion, shortage of labor materials, strikes, fire, or any other reason beyond their control, the performance of such act shall be excused for the period of delay, and the period for performance of any such act shall be extended as necessary to complete performance after the delayed period. However, the provisions of this paragraph shall in no way be applicable to Tenant's obligations to pay rental or any other sums, monies, costs, charges or expenses require by this Lease.

12.14 JURISDICTION

The laws of the State of Florida shall govern the interpretation, validity, performance, and enforcement of this Lease.

12.15 HAZARDOUS MATERIALS

Tenant shall not cause or permit the use, generation, storage, or disposal in or about the Premises of any substances, materials or wastes subject to regulation under any federal, state, or local law from time to time in effect concerning hazardous, toxic, or radioactive materials unless Tenant shall have received Landlord's express prior written consent, which consent Landlord may withhold or at any time revoke at its sole discretion. If Tenant uses, generates, stores, or disposes of any hazardous materials in or about the Premises, Tenant shall obtain all necessary permits and strictly comply with all statutes, regulations, and rule applicable to such activity. Landlord shall have the right to require that Tenant deliver periodic environmental audits of the Premises evidencing that no violations have occurred. Tenant shall indemnify and hold Landlord harmless from and against all liability, cost, claim, penalty, expense and fees (including court costs and attorney's fees) arising from Tenants use, generation, storage or disposal of hazardous material in or about the Premises. This section shall survive the expiration of earlier termination of this Lease.

12.16 AMERICAS WITH DISABILITY ACT

Landlord and Tenant acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C 12101 et seq.) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the ADA) establish requirements for business operations, accessibility and barrier removal, and that such requirements may or may not apply to the Premises and the Building depending on, among other things: (1) whether Tenants business is deemed a public accommodation or commercial facility, (2) whether such requirements are readily achievable, and (3) whether a given alteration affects a primary function area or triggers path of travel requirements. The parties hereby agree that: (a) Landlord shall be responsible for ADA Title III compliance in the Common Areas, except as provided below, (b) Tenant shall be responsible for ADA Title III compliance in the Premises, including any leasehold improvements or other work to be

performed in the Premises under or in connection with this Lease, and (c) Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of, ADA Title III path of travel requirements triggered by Tenant Alterations in the Premises.

This lease constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior understandings between them concerning the same. This Lease may not be altered, changed, or amended, except by an instrument in writing executed by all parties hereto. The terms and provisions of this lease shall not be construed against or in favor of a party hereto merely because such party is the "landlord" or "tenant" hereunder or such party or its counsel is the draftsman of this lease.

In the event of a breach of the forgoing representations and warranties, the person or persons signing this lease on behalf of the tenant shall be personally responsible for the tenant's obligations under this Lease.

In addition, if the individual(s) executing this Lease in a representative capacity also execute the Lease in an individual capacity, said execution shall render the individual personally responsible for the tenant's obligations hereunder.

IN WITNESS WHEREOF, Landlord and Tenant above duly executed this Lease as of the day and year first above written, each acknowledging receipt of an executed copy hereof.

THREE WITNESSES:

Laura Lewis
Witness Signature

Laura Lewis
Print Witness Name

[Signature]
Witness Signature

MAROSLAW TOSIEK
Print Witness Name

[Signature]
Witness Signature

Soula Pappas
Print Witness Name

LANDLORD:

[Signature]
Chris Pappas, Manager
Pappas Daughters, LLC

TENANT:

[Signature]
Pat Carmine Lennaco (individually) and as
Guarantor for:

PATRY C LENNACO
(enter corporate name)
CARMINES PIZZA INC.

GUARANTEE AGREEMENT

To be attached to and form a part of that certain Lease Agreement ("Lease") dated 1st August, 2020, between Pappas Daughters, LLC, ("Landlord"), and Pat Carmine Lennaco (individually) and as Guarantor for _____ (corporate name), ("Tenant") demising certain space in the PAPPAS PLAZA, city of Daytona Beach Shores, Volusia County Florida.

IN CONSIDERATION OF and as inducement for the execution of the attached Lease by Landlord, the undersigned Lessees (hereinafter referred to as "Guarantors"), intending to be legally bound hereby, unconditionally become the Guarantors for the prompt and faithful performance by Lessee of all terms, covenants and conditions on Lessee's part to perform, observe or comply with under the Lease, including, but not limited to, the payment by Lessee of the rental and all sums to become due thereunder.

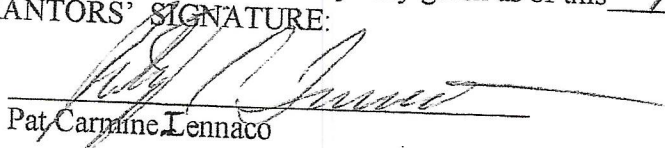
Guarantors agrees that (1) this Agreement shall be binding upon Guarantors, jointly and severally, without any further notice or acceptance hereof, but the same shall be deemed to have been accepted by the execution of the attached Lease; (2) immediately upon each and every default by Lessee, without any notice to or deemed upon Guarantors, Guarantors shall pay to Lessor the sum or sums in default and shall comply with or perform all the terms, covenants and conditions of said Lease, which shall be binding upon the said Lessee as provided in said Lease; (3) no extension, forbearance or leniency extended by Lessor to Lessee shall discharge Guarantors, and Guarantors agree that at all times they shall be jointly and severally liable notwithstanding same and notwithstanding the fact that Guarantors have had no prior notice of any said default or of any said forbearance or extension; (4) Lessor and Lessees without notice to or consent by Guarantors may at any time or times enter into such modifications, extensions, amendment or other covenants respecting the said Lease and Guarantors shall not be released thereby, it being intended that any joinder, waiver, consent or agreement by Lessees by its own operation, shall be deemed to be a joinder, consent, waiver or agreement by Guarantors with respect thereto, and Guarantors shall continue as a Guarantor with respect to the said Lease as so modified, extended, amended or otherwise affected; (5) this obligation of Guarantors shall be primary and that the Lessor shall not be required to proceed first against Lessees or Lessees' property before proceeding against Guarantors, and may sue Guarantors directly on this Guaranty Agreement, and Guarantors hereby waive any rights they may now have or hereafter acquire under the terms of any laws of the State of Florida; and (6) neither the Guarantors' obligation to make payment in accordance with the terms of this Guaranty Agreement nor any remedy for the enforcement thereof shall be impaired, modified, changed, released, or limited in any manner whatsoever by any impairment, its estate in bankruptcy or of any remedy for the enforcement thereof, resulting from the operation of any present or future provision of any federal or state bankruptcy statute, or any other statute, or from the decision of any Court.

Guarantors further agree to be bound, joint and severally, by each and every covenant, obligation, power, and authorization, without limitation, in the said attached Lease, with the same force, and effect as if it were designated in and had executed said Lease as Lessees thereunder. This Guaranty shall apply to the Lease, any extension or renewal thereof and to any holdover term following the term hereby granted or any extension or renewal thereof.

IN WITNESS WHEREOF, the undersigned have caused this Guarantee Agreement to be duly executed and sealed pursuant to the authority duly given as of this 7 day of, 11 2020.

GUARANTORS' SIGNATURE:

By:


Pat Carmine Lennaco

RULES AND REGULATIONS

1. The sidewalks, roadways, and other public portions in the Plaza shall be used by each tenant for the purpose solely of ingress and egress to and from the Premises so demised to the tenants.
2. All waste paper, refuse, and garbage shall be kept be disposed of in the dumpster and not left in the Premises or anywhere on the Property.
3. Each tenant shall keep the exterior and interior portions of its store, all windows, doors, and all other glass or plate fixtures in a clean condition and free of pests.
4. Each tenant shall conduct its business in an orderly manner in the best interest of the Plaza.
5. No tenant shall burn any trash or garbage of any kind in or about the building or grounds of the Plaza.
6. The plumbing facilities shall be used for the purposes for which they have been constructed, and no foreign substance of any kind shall be thrown therein. The expense of any breakage, stoppage, or damage resulting from a violation of this provision caused by any tenant, its employees, agents, or invitees shall be borne by such tenant.
7. The Landlord reserves the right to amend, rescind, or waive any of these rules and regulations as may from time to time seem necessary or desirable and any such other and further rules and regulations shall be binding upon each tenant.
8. The Landlord reserves the right to control and operate the Common Areas of the Plaza in such a manner as the Landlord deems necessary or desirable for the best interests of the Plaza and the tenants and for the protection of the building and other property in the Plaza. The Landlord, however, shall not be liable to any Tenant for any damages arising out of such control and operation.
9. Tenant shall not cause Landlord to be in violation of any City Codes.
10. No pets are allowed to live or stay on the Premises at any time. Tenants shall not bring pets to keep inside units during or before/after business hours or on any part of the Plaza Premises at any time. Only Service Animals, as specifically defined by the Americans with Disabilities Act, are exempt from this rule.
11. All Tenants and their employees shall park their vehicles in the parking lot adjacent to the Plaza. No Tenant or employee of the Tenants may park in the Plaza parking lot.

My idea is to open a pizzeria that truly makes high quality pizza ,dinner,salads,deserts,and homemade bread.

It's a product and a service we offer delivery, pickup , and dine in .Our food is made fresh daily using finest ingredants.

My idea of being different is that I will provide special catering orders based on customers request of any type of Italian food.

My food is made from the finest products made fresh everyday.We bake bread everyday. I will have a friendly staff and great service.

I owned a very successful pizzeria in Port Orange for 10 years I thought I was done but here I am again , a have a large customer base waiting for me to open . People always enjoyed coming to my pizzeria because I always good food and service.

The business name is my middle name Carmine I thought it was a nice name for a pizzeria

My customers will be my local familys and vacationers.I will have food for everyone to enjoy.

I will do menu mail outs in Daytona Beach Shores and advertising .I will deliver with in a 5 mile radus

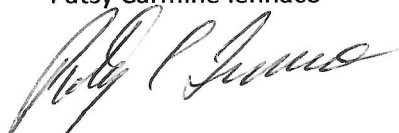
I will get my word out by newspaper, email and on line ordering on www.carminesitalianpizza.com facebook and social media. I will sell food in store.

I will charge a fair market price based on our surrounding pizzerias.

With the price food at this point margins on profit will be less .

Thank You

Patsy Carmine Iennaco



EDP EVALUATION CRITERIA- LEASE SUBSIDY

Business Name:	Carmine's Pizza, Inc.			Proposed Address:	2506 South A1A, Suite A&B		
Business Type:	Restaruant	Vacant Space:	Y/N	Evaluation Date:	4/14/2022	Application No.:	

A	Mandatory Criteria-City Planner	Yes	No	Comment
1	Location in Targeted Area?	X		Located on the west side of A1A
2	Targeted Business?	X		Open for lunch and dinner
3	If no to #2, is Business Substantially Compliant & Desired As Approved by CC?			
4	Is Business A Permitted Use /Non-Residential/Mixed Use?	X		
5	Appropriate Zoning Consistent w/ Comp Plan?	X		
6	Minimum Three (3) Year Lease?	X		

	Supplemental Criteria Met-City Attorney	Yes	No	NA	Comment
1	Current w/ Applicable Taxes, Fees, Etc.?	X			
2	Subject to Related Foreclosure, Bankruptcy or Defaults?		X		
3	Current Related Code or Ordinance Violations?		X		
4	Applicant Willing to Enter into Agreement w/ Conditions?	X			
C	Grant Distribution-Committee	Yes	No		Comment
1	Consistency w/ED Grant Distribution Summary	X			
D	Lease Subsidy Criteria-Committee	Low	Medium	High	Amount/Comment
1	Number of New Jobs Created?	X			6 – 10 employees
2	Desirability of Business?		X		
3	Amount of Capital Investment Made?		X		\$80,000
4	New Business-Ability to Attract Other Targeted Businesses?		X		
5	Business Expansion-Satisfies Economic Development Needs of City?		X		
6	Business Relocation-Enhance Operations ?				n/a
7	Business Relocation-Enhance Employment?				n/a
8	Lease Extension-Enhance Operations?				n/a
9	Lease Extension-Enhance Employment?				n/a
10	Additional City Council Criteria				n/a

CITY OF DAYTONA BEACH SHORES/COMMERCIAL LEASE SUBSIDY GRANT AGREEMENT WITH CARMINE’S PIZZA, INC.

THIS COMMERCIAL LEASE SUBSIDY GRANT AGREEMENT (hereinafter, the “Agreement”) is made and entered into this ____ day of_____, 2022, by and between the City of Daytona Beach Shores, Florida, a Florida municipality, whose mailing address is 2990 South Atlantic Avenue, Daytona Beach Shores, Florida 32118, hereinafter referred to as the “CITY”, and Carmine’s Pizza, Inc., 2506 South Atlantic Avenue, Suite A&B, Daytona Beach Shores, FL 32118, a Florida Limited Liability Company, hereinafter referred to as “GRANTEE”.

WITNESSETH:

WHEREAS, the City Council of the CITY has enacted Ordinance 2019-06 to further its policy objectives of facilitating the establishment of new businesses and the expansion of existing businesses within a targeted geographical area of the CITY, which area consists of underutilized, vacant or abandoned commercial properties; and

WHEREAS, Ordinance 2019-06 authorizes a program of economic incentives designed to attract new businesses, which are presently underrepresented in the CITY, and to locate such businesses in the targeted area of the CITY for the purpose of providing residents and visitors a wider array of goods, services, entertainment and dining options, additional employment opportunities and, at the same time, expand the tax base of the CITY and eradicate vacant, abandoned and underutilized properties; and

WHEREAS, the economic incentives afforded by the ordinance include, but are not limited to, matching grants to new or existing owners of commercial properties and/or

new or existing tenants of commercial businesses in the CITY, subject to specific dollar limits and meeting certain other criteria established by the CITY, which grants may be used for interior buildouts, building façade improvements, structural alterations and/or beautification; and

WHEREAS, an alternative economic incentive in the form of a lease subsidy is also available under the ordinance, subject to specific dollar limits and meeting certain other criteria established by the CITY, to new or existing commercial lease tenants; and

WHEREAS, City Council of the CITY has determined that the investment of public funds in the economic incentive program generally, and in this Agreement in particular, are in the public interest and provide for and accomplish a public purpose; and

WHEREAS, the City Council of the CITY has found and determined that the provisions of this Agreement are consistent with applicable law and implement the provisions of controlling legal authority.

NOW, THEREFORE, in consideration of the terms, provisions and covenants contained herein, the parties hereto do mutually agree as follows:

SECTION 1. RECITALS. The foregoing recitals are true and correct, form a material part of this Agreement upon which the parties have relied and are hereby adopted and incorporated by reference herein.

SECTION 2. PURPOSE AND TERM. Subject to the terms and conditions hereinafter set forth, the CITY shall provide a Lease Subsidy Grant to the GRANTEE and the GRANTEE shall, in consideration for the receipt of said grant, continuously operate:

Name of Business: Carmine's Pizza

Located at: 2506 South Atlantic Avenue, Suite A&B, Daytona Beach Shores, FL 32118

for the term of the of this, being 3 years from the date first stated above.

SECTION 3. TERMS AND CONDITIONS FOR PAYMENT OF LEASE SUBSIDY

(A). The CITY shall pay the Lease Subsidy Grant to the GRANTEE under the terms and conditions of this Agreement as follow:

1. The GRANTEE business must be current in the payment of all taxes, fees, special assessments and charges for services owed to the CITY, the City Of Port Orange, the City of South Daytona, Volusia County, the State of Florida and the US government at the time of application by the GRANTEE for the Lease Subsidy Grant and continuing throughout the term of this Agreement; and

2. The GRANTEE must not be in default of its obligations to any creditor such as would threaten to, or in fact, cause the discontinuance of the business before the end of this Agreement; and

3. The GRANTEE must not be subject to any pending or threatened mortgage or lien foreclosure or bankruptcy proceedings at the time of application by the GRANTEE for the Lease Subsidy Grant and continuing throughout the term of this Agreement; and

4. The GRANTEE must not be in violation of any code or ordinance of the CITY or of any State or Federal law or regulation governing the operation of the business at the time of application by the GRANTEE for the Lease Subsidy Grant and

continuing throughout the term of this Agreement; and

5. The GRANTEE must not engage in any prohibited or nonconforming uses under the code, ordinances or regulations of the CITY or of any law or regulations of the State of Florida and the Federal Government at the time of application by the GRANTEE for the Lease Subsidy Grant and continuing throughout the term of this Agreement; and

6. The GRANTEE must not engage in any business other than the business for which this Lease Subsidy Grant has been approved by the CITY at the time of application by the GRANTEE for the Lease Subsidy Grant and continuing throughout the term of this Agreement, without the prior written approval of the CITY, including any conditions placed on the Grant by the CITY upon approval; and

7. The GRANTEE shall be required to submit such documentation as may be reasonably required by the CITY to verify compliance by the GRANTEE with the terms and conditions of this Agreement prior to payment by the CITY of any Lease Subsidy Grant payment.

8. The GRANTEE shall immediately notify the City Manager if the lease is terminated or if Grantee has received notice of a default from the Landlord.

9. The GRANTEE shall immediately notify the City Manager if the GRANTEE cannot faithfully execute the terms of this agreement or any term or condition of the subject grant approval imposed by the City Council.

(B). The GRANTEE shall be in default of this agreement under any of the following conditions:

1. The GRANTEE fails to operate the business pursuant to the grant application and business plan provided to the City Council for the consideration of this grant agreement; or

2. The GRANTEE fails to operate the business pursuant to any term or condition imposed by the City Council in the approval of this grant agreement; or

3. The GRANTEE is in violation of any term or condition in this Agreement.

(C) If the GRANTEE is in violation of any of the terms and conditions of this Agreement, the CITY shall declare a default and future Lease Subsidy Grant payments suspended pending the cancellation provisions of Section 7 for failure to timely cure the default, if any.

SECTION 4. PAYMENT OF LEASE SUBSIDY GRANT BY CITY TO GRANTEE.

(A). Provided the GRANTEE is in compliance with all terms and conditions of this Agreement, the CITY shall pay to the GRANTEE a monthly Lease Subsidy Grant for not more than 3 years and not exceeding a total of \$20,000.00 based on the following formula:

1. For the first year of the Lease Subsidy Grant: Monthly rent times 30%.

Total year one disbursement shall not exceed \$3600.

2. For the second year of the Lease Subsidy Grant: Monthly rent times 20%.

Total year two disbursement shall not exceed \$2,400.

3. For the third year of the Lease Subsidy Grant: Monthly rent times 10%.

Total year three disbursement shall not exceed \$1,000.

SECTION 5. DISCLAIMER OF THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the formal parties hereto, and no right or case of action shall accrue upon or by reason hereon, to or for the benefit of any third party not a formal party hereto.

SECTION 6. ASSIGNMENT. This Agreement shall be binding on the parties hereto and their representatives and successors. Neither party shall assign this Agreement or the rights and obligations hereof to any other party.

SECTION 7. DEFAULT.

(A). In the event of default by the GRANTEE or the CITY, the aggrieved party shall be entitled to any and all legal remedies available under Florida law.

(B). The aggrieved party shall give the defaulting party written notice of any defaults hereunder and shall allow the defaulting party thirty (30) days from the date of receipt to cure such defaults. Upon the failure to timely cure the default, the aggrieved party may cancel the Agreement by notice as provided below.

SECTION 8. NOTICES. Any notice required or allowed hereunder shall be in writing and either (1) personally served upon a party, with an affidavit of service from the server or (2) sent by a commercial delivery service, restricted delivery, or (3) by US mail, certified delivery, with return receipt requested, to the designated address set forth below for that party or such other address as a party may specify by a prior written notice delivered in accordance herewith. If a party cannot be served in the manner prescribed above after two attempts, delivery may be accomplished by publication, one time, in a newspaper of general circulation.

SECTION 9. THE GRANTEE'S MANDATORY COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES, AND PUBLIC RECORDS REQUESTS.

In order to comply with Section 119.0701, *Florida Statutes*, public records laws, the GRANTEE must:

(A). Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the service.

(B). Provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(C). Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(D). Meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of the GRANTEE upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY.

(E). If the GRANTEE does not comply with a public records request, the CITY shall enforce the contract provisions in accordance with this Agreement.

(F). Failure by the GRANTEE to grant such public access and comply with public records requests shall be grounds for immediate unilateral cancellation of this Agreement by the CITY. The GRANTEE shall promptly provide the CITY with a copy of

any request to inspect or copy public records in possession of the GRANTEE and shall promptly provide the CITY with a copy of the GRANTEE's response to each such request.

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

SECTION 10. SEVERABILITY. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of the Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be affected. To that end, the terms of this Agreement is declared severable.

SECTION 11. TIME OF THE ESSENCE. Time is hereby declared essence to the lawful performance of the duties and obligations contained in this Agreement.

SECTION 12. APPLICABLE LAW/VENUE. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida. Venue for any legal proceeding related to this Agreement

shall be in the Seventh Judicial Circuit Court in and for Volusia County, Florida.

SECTION 13. ATTORNEYS FEES. In the event it becomes necessary to institute legal action to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover all out-of-pocket expenses and costs and all reasonable attorneys fees, paralegal fees and associated fees and costs from the date of filing until the termination of litigation whether incurred at trial, on appeal, or otherwise.

SECTION 14. NONDISCRIMINATION. The GRANTEE agrees that it will not discriminate against any business invitee, employee or applicant for employment because of race, color, religion, sex, age, national origin or disability. The GRANTEE, moreover, shall comply with all the requirements of the *Americans with Disability Act*, the regulations of the Federal government issued thereunder, and any and all requirements of State law related thereto.

SECTION 15. INTERPRETATION. The CITY and the GRANTEE agree that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one heading may be considered to be equally applicable under another in the interpretation of this Agreement.

SECTION 16. MODIFICATION. This 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, approved by the City Council of the CITY and the GRANTEE and executed by all parties to this Agreement.

SECTION 17. ENTIRE AGREEMENT: EFFECT IN PRIOR AGREEMENT.

This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, and agreements between parties relating to the subject matter of this Agreement. Amendments to and waivers of the provisions herein shall be made by the parties in writing by formal amendment.

IN WITNESS WHEREOF, the parties hereto have hereunder executed this Agreement in the date and year first above written.

ATTEST:

CITY OF DAYTONA BEACH SHORES

Cheri Schwab, City Clerk

Nancy J. Miller, Mayor

Michael T. Booker, City Manager

Approved as to form:

JOHN CARY, CITY ATTORNEY

ATTEST:

Carmine's Pizza, Inc.

:



**CITY COUNCIL AGENDA MEMORANDUM
MAY 24, 2022 AGENDA**

TO: Honorable Mayor and Members of the City Council
FROM: Kurt Swartzlander, Finance Director
PREPARED BY: Kurt Swartzlander, Finance Director
SUBJECT: Purchase and Sales Agreement for Chase Bank Property

SYNOPSIS:

In December of 2021 the City Council issued a letter of Intent to Chase Bank to purchase the excess parcel located to the west of the new Chase bank building. That offer was initially accepted and a PSA was negotiated through City staff and Chase Bank representatives. If approved by the City Council the agreement will go through the formal Chase Bank approval process for their signature. This is currently taking 4-8 weeks for official processing and approval.

FISCAL IMPACT STATEMENT:

A budget amendment will be required to include the funds for the purchase of the bank property. It is anticipated to use the proceeds from the sale of the beachcomber property to fund the purchase of this property.

BACKGROUND:

It is City Staff's desire to use this property to expand the existing Community Services building for future use.

LEGAL REVIEW:

Approved as to form and legality.

RECOMMENDATION:

Recommend approval of the PSA

SUGGESTED MOTION:

Motion to authorize the Mayor to execute the PSA.

ATTACHMENT: 1. Daytona Beach Shores Vacant Branch PSA 051022 FINAL

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("**Agreement**") is made and entered into this ____ day of _____, 2022 ("**Effective Date**"), by and between **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, a national banking association ("**Seller**"), and **CITY OF DAYTONA BEACH SHORES**, a Florida municipal corporation ("**Buyer**").

W I T N E S S E T H:

A. Seller currently owns the Property (defined below), which was previously used as a retail bank.

B. Seller has agreed to sell the Property to Buyer based in part on the mutual agreement that the Property shall not be used in the future as a bank or such other financial institution or for such other purposes as are more particularly set forth in the Deed (as hereinafter defined) (collectively, the "**Deed Restrictions**").

C. Seller and Buyer acknowledge that the Deed Restrictions are a material component of the consideration for Seller's disposition and Buyer's acquisition of the Property.

In consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

Article 1 SALE AND PURCHASE

1.01 Property. Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase and accept from Seller, upon the terms and conditions set forth herein, the following property (collectively, the "**Property**"):

(a) **Real Property.** A portion of the real property located at 2970 South Atlantic Avenue, consisting of approximately .347 +/- acres of land (net of all easements and road rights-of-way) ("**Excess Parcel**") located in the State of Florida, County of Volusia, and City of Daytona Beach Shores, as more particularly defined in **Exhibit A** attached hereto ("**Land**"), being a portion of the property assessed under Volusia County tax folio no. 532706040010 ("**Main Parcel**") together, with (1) all improvements located thereon ("**Improvements**"), (2) all and singular the rights, interests, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon or in any way appertaining thereto, and without warranty, all right, title and interest of Seller, if any, in and to all strips and gores and any land laying in the bed of any street, right-of-way, road or alley, open or proposed, adjoining such Land (collectively, the "**Real Property**"). Buyer shall be responsible for all expenses associated with splitting the Excess Parcel from the Main Parcel.

(b) **Fixtures.** All of the fixtures affixed to the Real Property, if any, owned by Seller (collectively, the "**Fixtures**").

All of the Property shall be conveyed, assigned and transferred to Buyer at Closing (as hereinafter defined) free and clear of all liens, claims, easements and encumbrances whatsoever except for the Permitted Encumbrances (as hereinafter defined).

1.02 Utilities. If, on the Effective Date of this Agreement, there are in existence upon, over or under the Property one or more underground, surface or overhead utility lines (including but not limited to water, sewerage, gas, electricity, telephone, cable or fiberoptic lines) that lead to, service or otherwise benefit the Main Parcel, Seller shall reserve at Closing, for the benefit of the Main Parcel, a perpetual easement over the Property for the existence, maintenance, repair and replacement of all such utility lines in their present location, (or at such alternate location to which such utility lines are moved at Buyer's sole expense), including the right to enter upon the Property from time to time for the purpose of maintaining, repairing and replacing any or all of such utility lines.

Article 2

PURCHASE PRICE AND EARNEST MONEY

2.01 Purchase Price. The price (the "**Purchase Price**") of the Property shall be One Hundred Seventy Five Thousand Dollars (\$175,000.00). The Purchase Price is payable in cash or immediately available funds at Closing, subject to closing adjustments.

2.02 Earnest Money. Within three (3) Business Days (as hereinafter defined) of the Effective Date, Buyer shall deliver to Ezell Law Firm, P.A. ("**Escrow Agent**"), an earnest money deposit, in the amount of Nine Thousand and 00/100 Dollars (\$9,000.00) (the "**Earnest Money**"), to be held in accordance with the terms of this Agreement. The Earnest Money shall be in the form of a certified or cashier's check or the wire transfer to the Escrow Agent of immediately available U.S. federal funds. If Buyer fails to timely deposit any portion of the Earnest Money within the time periods required, Seller may terminate this Agreement by written notice to Buyer at any time prior to the actual receipt by the Title Company of such deposit from Buyer, in which event any Earnest Money that has previously been deposited by Buyer with the Escrow Agent shall be immediately delivered to Seller and thereafter the parties hereto shall have no further rights or obligations hereunder, except for rights and obligations which, by their terms, survive the termination hereof.

2.03 Disposition of Earnest Money. The Earnest Money shall be applied as a credit to the Purchase Price at Closing. However, if Buyer elects to terminate this Agreement prior to the expiration of the Inspection Period (as hereinafter defined) as permitted under this Agreement (except as otherwise contemplated in Section 4.02), the Escrow Agent shall pay the entire Earnest Money to Buyer within one (1) Business Day following the termination of this Agreement, and no notice to or approval from Seller shall be required for such payment of the Earnest Money to Buyer and Seller waives any right to dispute or delay the disbursement of the Earnest Money to Buyer in this event. In the event of a termination of this Agreement by Seller, the Escrow Agent is authorized to deliver the Earnest Money to the party hereto entitled to same pursuant to the terms hereof on or before the fifth (5th) Business Day following receipt by the Escrow Agent and Buyer of written notice of such termination from the terminating party, unless the Buyer notifies the Escrow Agent that it disputes in good faith the right of Seller to receive the Earnest Money. In the event of such a dispute, the Escrow Agent may interplead the Earnest Money into a court of competent jurisdiction in the county in which the Earnest Money has been deposited. All

attorneys' fees and costs and the Escrow Agent's costs and expenses incurred in connection with such interpleader shall be assessed against the party that is not awarded the Earnest Money, or if the Earnest Money is distributed in part to both parties, then in the inverse proportion of such distribution.

2.04 Balance of Purchase Price. The balance of the Purchase Price shall be payable in cash or immediately available funds at the time of Closing, subject to closing adjustments.

Article 3

TITLE AND SURVEY

3.01 Title Commitment and Reports. Within ten (10) days following the Effective Date, Seller, at Seller's sole cost and expense, shall deliver or cause to be delivered to Buyer, the following ("**Seller's Deliverables**"):

(a) A commitment for title insurance ("**Commitment**") covering the Property, issued by Fidelity National Title Insurance Company (the "**Title Company**"), setting forth the status of the title to the Property and showing all liens, claims, encumbrances, easements, rights-of-way, encroachments, reservations, restrictions and any other matters affecting the Property;

(b) A true, complete and legible copy of all documents referred to in the Commitment, including, but not limited to, deeds, lien instruments, plats, reservations, restrictions and easements ("**Title Documents**"); and

(c) To the extent in Seller's possession, copies of any plans, specifications, permits, environmental and other studies, and test results, relating to the Property.

3.02 Survey. To the extent a survey of the Property is in Seller's possession, Seller will provide a copy of such existing survey within five (5) days of the Effective Date. Within thirty (30) days after the Effective Date, Buyer, at Buyer's sole cost and expense, will obtain a new survey of the Excess Parcel using ALTA 2016 standards (the "**Survey**"), dated no earlier than the Effective Date and prepared by a licensed surveyor acceptable to the Title Company. The Buyer shall have a period of ten (10) days after Buyer's receipt of the Survey in which to review the Survey, and to deliver to Seller in writing such objections as Buyer may have as to any Survey matter (the "**Survey Review Period**").

3.03 Title Review. Buyer shall have a period of ten (10) days from Buyer's receipt of the Commitment, in which to review the Commitment and Title Documents, and to deliver to Seller in writing such objections as Buyer may have to any of such items (the "**Title Review Period**"). Any items to which Buyer does not object within the Title Review Period or the Survey Review Period shall be deemed to be permitted encumbrances ("**Permitted Encumbrances**"). If Buyer timely objects to any matter contained in the Commitment, Title Documents or Survey ("**Title Objections**") as hereinabove provided, Seller may elect to cure such objections, give Buyer notice thereof ("**Seller's Notice**") and deliver to Buyer a revised Commitment and Survey reflecting such cure within seven (7) Business Days after Seller's receipt of Buyer's notice ("**Title Cure Period**"). If Seller fails to respond to the Title Objections, it will be deemed to have elected not to cure any Title Objections within the Title Cure Period. Within seven (7) Business Days

following receipt of Seller's Notice or the expiration of the Title Cure Period, Buyer shall elect either to (i) terminate this Agreement and be reimbursed the Earnest Money, and neither party shall have any further rights, duties or obligations hereunder, or (ii) purchase the Property subject to the Title Objections not so removed or cured, in which event those Title Objections shall be deemed to be Permitted Encumbrances.

3.04 Updated Commitment. If Buyer elects not to terminate this Agreement in accordance with Section 3.03 above, Seller, upon request of Buyer, shall cause the Title Company to reissue the Commitment prior to Closing. Buyer shall have the right to object to any new exceptions other than the Permitted Encumbrances shown on any updated Commitment. If Seller fails to cure such items, Buyer shall again have the right to terminate this Agreement and be reimbursed the Earnest Money or waive the objection and proceed to Closing. The time periods for objecting to and curing the new exceptions and for terminating this Agreement shall be the same as those set forth in Section 3.03 above, commencing with the date Buyer receives the updated Commitment, and, if necessary, the Closing Date shall be extended for such purposes.

3.05 Title Policy. At Closing, Buyer shall arrange for the Title Company to issue or be irrevocably committed to issue to Buyer an ALTA extended coverage (2006 with Florida modifications) owner's policy of title insurance (the "**Title Policy**"), in the amount of the Purchase Price, insuring fee simple title to the Real Property is vested in Buyer subject only to the Permitted Encumbrances. Buyer shall be entitled to request that the Title Company provide extended coverage and/or such endorsements (or amendments) to the Title Policy as Buyer may reasonably require, provided that such extended coverage and/or endorsements (or amendments) shall be at no cost to, and shall impose no additional liability on, Seller, and the Closing shall not be delayed as a result of Buyer's request.

Article 4 INSPECTION

4.01 Inspection Period. At Buyer's sole cost and expense, Buyer shall have a period of sixty (60) days from the Effective Date ("**Inspection Period**") in which to inspect the Property and to investigate the desirability and utility of the Property for Buyer's intended use.

4.02 Buyer's Option to Terminate. If Buyer determines, in its sole and absolute discretion, that the Property is not suitable for Buyer's intended use within the time periods specified above, Buyer shall have the right either to (A) terminate this Agreement by written notice to Seller on or before 5:00 p.m. Daytona Beach Shores, Florida time on the last day of the Inspection Period, in which event the Earnest Money and all interest earned thereon, if applicable, shall be returned to Buyer and neither party shall have any further rights or obligations to the other hereunder, except Buyer's obligations to promptly repair and restore all damage to the Property and indemnify and hold Seller harmless from and against all losses, claims, costs, damages and liabilities arising out of or in connection with any entry upon the Property by Buyer and its agents, servants, employees and contractors, or (B) waive the requirements and/or contingencies regarding such inspection and proceed with this Agreement, in which event the Closing shall occur on or before thirty (30) days following such waiver, provided Buyer is satisfied as to all other contingencies set forth herein. If Buyer does not timely give a termination notice, this Agreement shall continue in full force and effect, Buyer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 4.02, and Buyer shall be deemed to have acknowledged

that it has received or had access to and conducted all inspections and tests of the Property that it considers important. Upon termination of this Agreement by Buyer, Buyer shall provide to Seller copies of all third party reports or studies, including the Survey, prepared by outside consultants (other than such reports prepared by legal counsel that are subject to an attorney client privilege or any internally prepared reports) ("**Buyer's Reports**") performing any of the due diligence inspections of the Property, or any portion or component thereof or condition affecting the same, for or on behalf of Buyer, without any charge and without representation or warranty as to their completeness or accuracy and subject to any confidentiality provisions contained therein.

4.03 Inspections. Buyer must give Seller two (2) full Business Days' prior telephone or written notice of any inspection. Notwithstanding the foregoing, Buyer is not permitted to conduct any invasive testing, including but not limited to any Phase II environmental site assessments. In conducting any inspections or investigations of the Property, Seller's Deliverables or any Property documents, Buyer and its agents and representatives shall: (a) not interfere with the operation and maintenance of the Property; (b) not damage any part of the Property or any personal property owned or held by any tenant or any third party; (c) not injure or otherwise cause bodily harm to Seller or its agents, guests, invitees, contractors and employees or any tenants or their guests or invitees; (d) comply with all applicable laws; (e) promptly pay when due the costs of all tests, investigations, and examinations done with regard to the Property; (f) not permit any liens to attach to the Real Property by reason of the exercise of its rights hereunder; (g) repair any damage to the Property resulting directly or indirectly from any such inspection or tests; and (h) conduct such inspections or investigations at all reasonable times during normal business hours.

4.04 Indemnification and Insurance. Subject to the provisions of Section 768.28, Florida Statutes, Buyer hereby agrees to indemnify, defend and hold Seller harmless from and against any and all liens, claims, causes of action, damages, liabilities and expenses (including reasonable attorneys' fees) arising out of Buyer's inspections or tests permitted under this Agreement or any violation of the provisions of this Article 4; provided, however, the indemnity shall not extend to protect Seller from any pre-existing liabilities for matters merely discovered by Buyer (i.e., latent environmental contamination) so long as Buyer's actions do not aggravate any pre-existing liability of Seller. In addition, Buyer shall maintain, at Buyer's expense, commercial general liability insurance, with a combined single limit of not less than \$1,000,000.00 general liability, insuring Seller as an additional insured, against injuries or damages to persons or property that may result from or are related to (i) Buyer's and/or Buyer's representatives' entry upon the Property, and (ii) any investigations or other activities conducted thereon, and deliver a copy of such insurance policy to Seller prior to the first entry on the Property. Buyer's indemnification obligations under this Section 4.04 shall survive the termination of this Agreement and shall survive the Closing.

4.05 Future Restrictions. Buyer and Seller shall use commercially reasonable efforts to agree, prior to the expiration of the Inspection Period, to a form of Declaration of Covenants and Restrictions to be entered into between Seller and Buyer which include Deed Restrictions, and provides that the property can be used for municipal use and that any (i) change in the use of the Property from its use as a government facility, (ii) construction of improvements with a visual appearance materially different from Buyer's existing building or height greater than 125% of Buyer's existing building located on the parcel adjacent to the Land, (iii) addition of vehicular access points to the Property or (iv) alteration to signage, shall require Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

4.06 No Representation or Warranty by Seller. Buyer acknowledges that, except as expressly set forth in this Agreement, Seller has not made and does not make any warranty or representation regarding the truth, accuracy or completeness of the Seller's Deliverables or any Property documents or the source(s) thereof. Buyer further acknowledges that some if not all of the Seller's Deliverables and any other Property documents were prepared by third parties other than Seller. Seller expressly disclaims any and all liability for representations or warranties, express or implied, statements of fact and other matters contained in such information, or for omissions from the Seller's Deliverables or any Property documents, or in any other written or oral communications transmitted or made available to Buyer. Buyer shall rely solely upon its own investigation with respect to the Property, including, without limitation, the Property's physical, environmental or economic condition, compliance or lack of compliance with any ordinance, order, permit or regulation or any other attribute or matter relating thereto. Seller has not undertaken any independent investigation as to the truth, accuracy or completeness of the Seller's Deliverables or any Property documents and are providing the Seller's Deliverables and any Property documents solely as an accommodation to Buyer.

Article 5

REPRESENTATIONS, WARRANTIES AND COVENANTS

5.01 Seller's Representations. Seller hereby represents and warrants to Buyer, as of the Effective Date and as of the Closing Date, that:

(a) On the Closing Date, Seller shall convey the Property to Buyer by special warranty deed in accordance with the terms and conditions of this Agreement;

(b) To Seller's knowledge, Seller has received no notice of any condemnation or eminent domain proceedings, nor entered into negotiations for the sale of any of the Property in lieu of condemnation and, to the best of Seller's knowledge, no condemnation or eminent domain proceedings or negotiations have been commenced or threatened in connection with the Property or any part thereof;

(c) Seller has validly executed this Agreement and the same constitutes the binding obligation of Seller; and

(d) Seller has full power, authority and capacity to enter into this Agreement and to carry out Seller's obligations under this Agreement and the consummation by Seller of the sale of the Property is not in violation of, or in conflict with, nor does it constitute a default under, any term or provision of Seller's organizational documents, or any of the terms of any agreement or instrument to which Seller is or may be bound, or of any applicable legal requirement or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

"Seller's Knowledge" means the current and actual knowledge of Joshua Walker, after due inquiry. Seller represents that Joshua Walker is the person most knowledgeable with respect to such matters.

5.02 Buyer's Representations. Buyer hereby represents and warrants to Seller, as of the Effective Date and as of the Closing Date, that:

(a) Buyer is not prohibited from (i) executing or delivering this Agreement, (ii) complying with or performing the terms of this Agreement, or (iii) consummating the transactions contemplated by this Agreement by any applicable law, agreement, instrument, restriction, or by a judgment, order or decree of any applicable governmental authorities having jurisdiction over Buyer;

(b) The individual executing this Agreement on behalf of Buyer is duly authorized to execute this Agreement on behalf of Buyer. The execution and delivery of this Agreement and the performance of all obligations of Buyer hereunder have been duly authorized by required action of Buyer and constitutes the valid and binding obligations of Buyer;

(c) No consent, waiver, approval, or authorization of, or filing, registration, or qualification with, or notice to, any governmental authorities or any other entity or person is required to be made, obtained, or given by Buyer in connection with the execution, delivery, and performance of this Agreement, except such consent, waiver, approval, authorization, filing, registration or qualification which has been made, obtained or given;

(d) There is no bankruptcy, insolvency, rearrangement or similar action or proceeding, whether voluntary or involuntary, pending or, to Buyer's knowledge, threatened against Buyer; and

(e) Buyer is not a "foreign person" but is a "United States person" as such terms are defined in the Foreign Investment in Real Property Tax Act of 1980 and §§ 1445 and 7701 of the Code; that is to say, Buyer is a citizen or resident of the United States, a domestic partnership, a domestic corporation, or an estate or trust which is not a foreign estate or foreign trust within the meaning of § 7701(a)(31) of the Code.

"Buyer's Knowledge" means the current and actual knowledge of [_____]. Buyer represents that [_____] is the party most knowledgeable with respect to such matters.

Article 6

COMMISSIONS

Each party hereby warrants and covenants to the other party that it has not dealt with any real estate broker or salesperson in connection with this sale of the Property and that no real estate commissions, finders' fees or brokers' fees have been or will be incurred in connection with this Agreement or the sale contemplated hereby. Seller hereby agrees to defend, indemnify and hold harmless Buyer, and Buyer hereby agrees to defend, indemnify and hold harmless Seller, from and against any claims by any third parties for brokerage commission, finder's fees, or other fees relative to this Agreement or the sale of the Property, and any court costs, attorneys' fees or other costs or expenses arising therefrom and alleged to be due by authorization of the indemnifying party.

Article 7

CONDEMNATION AND CASUALTY

7.01 Condemnation. In the event of a taking by condemnation or similar proceedings or actions of a portion of the Land, this Agreement shall not terminate, but shall remain in full

force and effect, and Seller shall assign or pay to Buyer at Closing, Seller's interest in and to any condemnation awards or proceeds arising from any such proceedings or actions pertaining to the portion of the Land taken in lieu thereof. Promptly upon Seller obtaining actual knowledge thereof, Seller shall give Buyer notice of any pending or threatened condemnation or similar proceedings or actions in lieu thereof which may arise in connection with all or any part of the Land.

7.02 Casualty. In the event of a casualty event affecting the Property or a portion thereof, this Agreement shall not terminate, but shall remain in full force and effect, and Seller shall either (a) repair or restore the Property affected by such casualty event to the condition it was in prior to such casualty event, or (b) shall pay or credit to Buyer at Closing, the amount necessary to repair or restore the Property affected by such casualty event to the condition it was in prior to such casualty event. Promptly upon Seller obtaining actual knowledge thereof, Seller shall give Buyer notice of any casualty events which may arise in connection with all or any part of the Property.

Article 8

CONTINGENCIES AND CONDITIONS TO CLOSING

8.01 Conditions to Seller's Obligation to Close. Seller's obligation to close is contingent on the satisfaction of the following conditions precedent:

(a) Buyer's representations and warranties contained herein shall be true and correct in all material respects as of the Effective Date and as of the Closing Date and Buyer shall have complied in all material respects with its covenants and obligations hereunder.

(b) As of the Closing Date, Buyer shall have performed all of its material obligations under this Agreement.

(c) As of the Closing Date, Buyer shall have tendered all deliveries to be made by Buyer at Closing pursuant to Section 9.02.

(d) There shall exist no pending actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, against Buyer that would prevent the Buyer from performing its obligations under this Agreement.

8.02 Conditions to Buyer's Obligation to Close. Buyer's obligation to close is contingent on the satisfaction of the following conditions precedent:

(a) Seller's representations and warranties contained herein shall be true and correct in all material respects as of the Effective Date and as of the Closing Date and Seller shall have complied in all material respects with its covenants and obligations hereunder.

(b) As of the Closing Date, Seller shall have tendered all deliveries to be made by Seller at Closing pursuant to Section 9.03.

- (c) Approval of this transaction by the Daytona Beach Shores City Council.
- (d) The Title Company shall have unconditionally agreed to issue the Title Policy, subject to Section 3.05.

Article 9

CLOSING

9.01 Time and Place of Closing. The closing (“**Closing**”) of the sale of the Property by Seller to Buyer shall occur on or before thirty (30) days after the expiration of the Inspection Period (“**Closing Date**”), unless extended by agreement of Buyer and Seller.

9.02 Buyer’s Obligations. At the Closing, Buyer shall deliver or cause to be delivered to Seller or the Escrow Agent, as applicable, the following:

- (a) The Purchase Price, less the Earnest Money and the prorations set forth in Section 9.04 below;
- (b) If required by the Title Company with respect to any title coverage requested by Buyer, evidence satisfactory to the Title Company that the person or persons executing the Closing documents on behalf of Buyer have full right, power and authority to do so;
- (c) A fully executed counterpart of the Seller’s settlement statement, if necessary; and
- (d) Such other instruments as are customarily executed in the county where the Property is located, or are required by the parties to effectuate the conveyance of the Property.

9.03 Seller’s Obligations. At the Closing, Seller, at Seller’s sole cost and expense, shall deliver or cause to be delivered to Buyer or the Title Company, as applicable, the following:

- (a) A Special Warranty Deed (“**Deed**”) in the form attached hereto as Exhibit B, fully executed and acknowledged by Seller, conveying the Property to Buyer, subject only to the Permitted Encumbrances;
- (b) A Foreign Investment in Real Property Tax Act affidavit (“**FIRPTA**”) in the form of Exhibit C hereto and executed by Seller;
- (c) A Seller’s/Title Affidavit in a form reasonably acceptable to the Title Company;
- (d) A fully executed Seller’s settlement statement; and
- (e) Such other instruments as are customarily executed in the county where the Property is located, or are required by the parties to effectuate the conveyance of the Property.

9.04 Adjustments and Prorations. All ad valorem taxes, assessments and other state, county, school, municipal and municipal utility district fees, taxes, charges and assessments (special or otherwise) relating to the Property ("**Taxes**"), if any, for any calendar years prior to closing, including any penalties and/or interest thereon, shall be paid by Seller at Closing. All Taxes for the calendar year during which the Closing occurs shall be prorated as of the Closing Date with all items and costs for the Property being borne by Buyer from and after (but including) the date of Closing and, unless then due and paid at Closing, shall be assumed by Buyer. Proration of Taxes shall be made using the Purchase Price and the tax rate applicable to the Property, including any recently voted millage. If (i) Seller's change in use of the Property at any time prior to Closing, or (ii) the sale of the Property to Buyer, results in the assessment of additional Taxes for periods prior to Closing, such additional Taxes shall be the obligation of Seller. The provisions of this Section 9.04 shall survive the Closing.

9.05 Closing Costs - Seller. Seller shall pay for (i) the costs for the base Title Policy, including premiums and search and exam fees, up to a maximum amount of coverage equal to the Purchase Price, (ii) Seller's portion of the prorated Taxes and other prorated items, (iii) Seller's own attorneys' fees, (iv) one-half of the escrow service fee for the Title Company, (v) the cost of any transfer taxes or documentary stamp taxes attributable to the deed of conveyance for the Property, and (vi) such other incidental expenses as are customarily borne by sellers of property in the county where the Property is located.

9.06 Closing Costs - Buyer. Buyer shall pay for (i) the Survey, (ii) one-half of the escrow service fee for the Title Company, (iii) Buyer's own attorneys' fees, (iv) the recording of the Deed, (v) the additional premium, if any, for any additional endorsements requested by Buyer including but not limited to the costs of deleting the general survey exception, (vi) all costs of Buyer's due diligence in connection with the transaction contemplated hereby, (vii) all costs associated with splitting the Excess Parcel from the Main Parcel, and (viii) such other incidental expenses as are customarily borne by Buyers of property in the county where the Property is located.

Article 10 REMEDIES

10.01 Buyer's Default. If Buyer fails or refuses to consummate the purchase of the Property pursuant to this Agreement for any reason other than (i) termination hereof pursuant to a right granted to Buyer to do so, or (ii) breach by Seller of its representations, warranties or agreements hereunder, then Seller, as Seller's sole and exclusive remedy, Seller hereby waiving all other remedies, shall have the right to retain the Earnest Money as liquidated damages and to terminate this Agreement by giving Buyer written notice thereof, in which event neither party hereto shall have any further rights, duties or obligations hereunder. Seller and Buyer agree that Seller's damages resulting from Buyer's default are difficult, if not impossible, to determine and the Earnest Money is a fair estimate of those damages which has been agreed to in an effort to cause the amount of such damages to be certain. If Closing is consummated, Seller shall have all remedies available at law or in equity in the event Buyer fails to perform any obligation of Buyer under this Agreement.

10.02 Seller's Default. If Seller fails or refuses to consummate the sale of the Property pursuant to this Agreement for any reason other than termination hereof pursuant to a right granted

to Seller to do so, or if any of Seller's representations or warranties made hereunder should be false or misleading in any material respect and has a material and adverse impact on the Property and such default or breach is not cured by the earlier of the third (3rd) Business Day after written notice thereof from Buyer or the Closing Date (Buyer hereby agreeing to give such written notice to Seller within one (1) Business Day after Buyer first learns of any such default or breach by Seller, except no notice or cure period shall apply if Seller fails to consummate the sale of the Property hereunder), Buyer may terminate this Agreement by notifying Seller thereof, in which case the Earnest Money shall be returned to Buyer, which shall be Buyer's sole and exclusive remedy. IN NO EVENT SHALL SELLER'S DIRECT OR INDIRECT PARTNERS, SHAREHOLDERS, OWNERS OR AFFILIATES, ANY OFFICER, DIRECTOR, EMPLOYEE OR AGENT OF THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROPERTY, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY OR OTHERWISE.

10.03 Termination Pursuant to Agreement. If Buyer terminates this Agreement pursuant to a right granted to Buyer hereunder to do so, then the Earnest Money shall be returned to Buyer and neither party hereto shall have any further rights, duties or obligations hereunder except which are herein specifically stated to survive Closing.

10.04 Other Expenses. If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees or charges due to the Escrow Agent for holding the Earnest Money as well as any escrow cancellation fees or charges and any fees or charges due to the Title Company for preparation and/or cancellation of the Commitment.

Article 11

DISCLAIMERS, RELEASE AND INDEMNITY

11.01 Disclaimers By Seller. Except as expressly set forth in this Agreement, it is understood and agreed that Seller and Seller's agents or employees have not at any time made and are not now making, and they specifically disclaim, any warranties, representations or guaranties of any kind or character, express or implied, with respect to the Property, including, but not limited to, warranties, representations or guaranties as to (a) matters of title (other than Seller's special warranty of title to be contained in the Deed), (b) environmental matters relating to the Property or any portion thereof, including, without limitation, the presence of Hazardous Materials (as hereinafter defined) in, on, under or in the vicinity of the Property, (c) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water, and geologic faults and the resulting damage of past and/or future faulting, (d) whether, and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, wetlands, flood prone area, flood plain, floodway or special flood hazard, (e) drainage, (f) soil conditions, including the existence of instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides, or the sufficiency of any undershoring, (g) the presence of endangered species or any environmentally sensitive or protected areas, (h) zoning or building entitlements to which the Property or any portion thereof may be subject, (i) the availability of any utilities to the Property or any portion thereof including, without limitation, water, sewage, gas and electric, (j) usages of adjoining property, (k) access to the Property or any portion thereof, (l) the value,

compliance with the plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title to, or physical or financial condition of the Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Property or any part thereof, (m) the condition or use of the Property or compliance of the Property with any or all past, present or future federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances, codes or other similar laws, (n) the existence or non-existence of underground storage tanks, surface impoundments, or landfills, (o) any other matter affecting the stability and integrity of the Property, (p) the potential for further development of the Property, (q) the merchantability of the Property or fitness of the Property for any particular purpose, (r) the truth, accuracy or completeness of the Property documents, (s) tax consequences, or (t) any other matter or thing with respect to the Property.

11.02 Sale “As Is, Where Is”. Buyer acknowledges and agrees that upon Closing, Seller shall sell and convey to Buyer and Buyer shall accept the Property “**AS IS, WHERE IS, WITH ALL FAULTS,**” except to the extent expressly provided otherwise in this Agreement and any document executed by Seller and delivered to Buyer at Closing. Except as expressly set forth in this Agreement, Buyer has not relied and will not rely on, and Seller has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, Property information packages distributed with respect to the Property) made or furnished by Seller, or any property manager, real estate broker, agent or third party representing or purporting to represent Seller, to whomever made or given, directly or indirectly, orally or in writing. Buyer represents that it is a knowledgeable, experienced and sophisticated Buyer of real estate and that, except as expressly set forth in this Agreement, it is relying solely on its own expertise and that of Buyer’s consultants in purchasing the Property and shall make an independent verification of the accuracy of any documents and information provided by Seller. Buyer will conduct such inspections and investigations of the Property as Buyer deems necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same. By failing to terminate this Agreement prior to the expiration of the Inspection Period, Buyer acknowledges that Seller has afforded Buyer a full opportunity to conduct such investigations of the Property as Buyer deemed necessary to satisfy itself as to the condition of the Property and the existence or non-existence or curative action to be taken with respect to any Hazardous Materials (as hereinafter defined) on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or its agents or employees with respect thereto, other than such representations, warranties and covenants of Seller as are expressly set forth in this Agreement. Upon Closing, Buyer shall assume the risk that adverse matters, including, but not limited to, adverse physical or construction defects or adverse environmental, health or safety conditions, may not have been revealed by Buyer’s inspections and investigations. Buyer hereby represents and warrants to Seller that: (a) Buyer is represented by legal counsel in connection with the transaction contemplated by this Agreement; and (b) Buyer is purchasing the Property for business, commercial, investment or other similar purpose and not for use as Buyer’s residence. Buyer waives any and all rights or remedies it may have or be entitled to, deriving from disparity in size or from any significant disparate bargaining position in relation to Seller.

11.03 Seller Released from Liability. Buyer acknowledges that it will have the opportunity to inspect the Property during the Inspection Period, and during such period, observe its physical characteristics and existing conditions and the opportunity to conduct such investigation and study on and of the Property and adjacent areas as Buyer deems necessary, and Buyer hereby FOREVER

RELEASES AND DISCHARGES Seller from all responsibility and liability, including without limitation, liabilities under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sections 9601 et seq.), as amended (“**CERCLA**”), the Resource Conservation and Recovery Act (42 U.S.C. Section 9601 et seq.), as amended, and the Oil Pollution Act (33 U.S.C. Section 2701 et seq.) regarding the condition, valuation, salability or utility of the Property, or its suitability for any purpose whatsoever (including, but not limited to, with respect to the presence in the soil, air, structures and surface and subsurface waters, of Hazardous Materials or other materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws, regulations or guidelines, and any structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Materials on, under, adjacent to or otherwise affecting the Property). Buyer further hereby WAIVES (and by Closing this transaction will be deemed to have WAIVED) any and all objections and complaints (including, but not limited to, federal, state and local statutory and common law based actions, and any private right of action under any federal, state or local laws, regulations or guidelines to which the Property is or may be subject, including, but not limited to, CERCLA) concerning the physical characteristics and any existing conditions of the Property. Buyer further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental conditions on the Property and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigation.

11.04 “Hazardous Materials” Defined. For purposes hereof, “**Hazardous Materials**” means “Hazardous Material,” “Hazardous Substance,” “Pollutant or Contaminant,” and “Petroleum” and “Natural Gas Liquids,” as those terms are defined or used in Section 101 of CERCLA, and any other substances regulated because of their effect or potential effect on public health and the environment, including, without limitation, PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials.

11.05 Indemnity. Subject to the provisions of Section 768.28, Florida Statutes, Buyer agrees to indemnify, defend and hold Seller harmless of and from any and all liabilities, claims, demands, and expenses of any kind or nature which arise or accrue after Closing and which are in any way related to the ownership, maintenance, or operation of the Property by Buyer and its successors and assigns, including, without limitation, in connection with Hazardous Materials.

11.06 Survival. The terms and conditions of this Article 11 shall expressly survive the Closing, not merge with the provisions of any closing documents and shall be incorporated into the Deed.

Buyer acknowledges and agrees that the disclaimers and other agreements set forth herein are an integral part of this Agreement and that Seller would not have agreed to sell the Property to Buyer for the Purchase Price without the disclaimers and other agreements set forth above.

Article 12

MISCELLANEOUS

12.01 Assigns. This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, successors and assigns. Except upon Seller's review and reasonable approval, Buyer may not assign this Agreement to any person or entity, including any entity controlling, controlled by, or under common control with Buyer. In connection with such permitted assignment, Buyer must provide a copy of the fully executed written assignment and assumption agreement, together with notice to Seller of the Employer Identification Number for the assignee at least ten (10) days prior to Closing. In such event, Buyer shall remain liable under this Agreement.

12.02 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA AND THE OBLIGATIONS OF THE PARTIES HERETO ARE AND SHALL BE PERFORMABLE IN THE COUNTY WHERE THE PROPERTY IS LOCATED. BY EXECUTING THIS AGREEMENT, EACH PARTY HERETO EXPRESSLY (i) CONSENTS AND SUBMITS TO PERSONAL JURISDICTION CONSISTENT WITH THE PREVIOUS SENTENCE, (ii) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CLAIM OR DEFENSE THAT SUCH VENUE IS NOT PROPER OR CONVENIENT, AND (iii) CONSENTS TO THE SERVICE OF PROCESS IN ANY MANNER AUTHORIZED BY FLORIDA LAW. ANY FINAL JUDGMENT ENTERED IN AN ACTION BROUGHT HEREUNDER SHALL BE CONCLUSIVE AND BINDING UPON THE PARTIES HERETO.

12.03 Entire Agreement. This Agreement is the entire agreement between Seller and Buyer concerning the sale of the Property and supersedes any prior agreements relating thereto. No modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by both parties to be bound.

12.04 Survival. Any of the provisions of this Agreement which expressly provide for their survival and any provisions pertaining to a period of time following Closing shall survive Closing and the delivery of the Deed and shall not be merged therein. All indemnity provisions in this Agreement and the provisions of Section 12.10 hereof shall survive the Closing or any termination of this Agreement.

12.05 Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall, for all purposes, be deemed to be an original, and all such counterparts shall together constitute but one and the same agreement.

12.06 Severability. If any provisions of this Agreement applicable to any party or circumstance shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such party or circumstance, other than those as to which it is determined invalid or unenforceable, shall not be affected thereby, and each remaining provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

12.07 Headings. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the scope or content of any of its provisions.

12.08 Waiver of Conditions. Notwithstanding any provision of this Agreement, (i) Seller may, at its sole option, waive any provision that is a condition to Seller's obligation to Close as set forth in Section 8.01 of this Agreement, and (ii) Buyer may, at its sole option, waive any provision that is a condition to Buyer's obligation to Close as set forth in Section 8.02 of this Agreement.

12.09 Time is of the Essence. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

12.10 Attorneys' Fees. In the event of litigation concerning the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys' fees, court costs and expenses, whether at the trial or appellate level.

12.11 Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served (i) by depositing the same in the United States mail or with a reputable nationwide delivery service, addressed to the party to be notified, postage prepaid, and overnight, registered or certified with return receipt requested, or (ii) by delivering the same in person to such party. Notice given in accordance with (i) above shall be effective when mailed. Notice given in accordance with (ii) above shall be effective upon receipt at the address of the addressee or upon refusal to accept delivery (such refusal being evidenced by advice from the courier company or individual used to make delivery). For purposes of notice relating to all matters, the addresses of the parties hereto shall, until changed, be as follows:

Seller: JPMorgan Chase Bank, National Association
1111 Polaris Parkway
Mail Code OH1-0241
Columbus, Ohio 43240-2050
Attn: Property Administration Manager

With Copies to: JPMorgan Chase Bank, National Association
Legal Department
1111 Polaris Parkway, Suite 4P
Mail Code: OH1-0152
Columbus, Ohio 43240-2050
Attn: Real Estate Counsel

Buyer: City of Daytona Beach Shores
2990 S Atlantic Avenue
Daytona Beach Shores, FL 32118
Attn: _____

Escrow Agent: Ezell Law Firm, P.A.
3560 Cardinal Point Dr., Suite 202
Jacksonville, Florida 32257
Attn: Brenda B. Ezell

Either party may change its address by notice to the other party.

12.12 Business Days and Holidays. Whenever any time limit or date provided herein falls on a Saturday, Sunday or holiday observed by national banking associations in the State of Florida or New York ("**Bank Holiday**"), then such date shall be extended to the next day which is not a Saturday, Sunday or Bank Holiday. The term "**Business Day**" means any weekday which is not a Bank Holiday.

12.13 Rule of Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement, and the parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

12.14 Exhibits. All exhibits or addenda referred to in this Agreement are incorporated herein for all purposes.

12.15 1031 Cooperation. Buyer and Seller may consummate the disposition of the Property as part of a so-called like-kind exchange (the "**Exchange**") pursuant to §1031 of the Internal Revenue Code of 1986, as amended. Buyer and Seller hereby agree to cooperate with such Exchange and execute all documents reasonably required by the Exchange Parties in order to facilitate the Exchange.

12.16 Radon Disclosure. Notification pursuant to Florida Statute 404.056(8): "Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit."

Article 13 WAIVER OF JURY TRIAL

BUYER AND SELLER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR PERMISSIVE COUNTERCLAIM INVOLVING ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS PURCHASE AND SALE AGREEMENT.

Article 14 BRIBERY AND CORRUPTION

Reference is made to the JPMorgan Chase & Co. Supplier Code of Conduct ("**Code**"), a current copy of which is located at: <https://about.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/documents/Supplier-Code-of-Conduct.pdf>. The Code states, among other things, that

JPMorgan Chase & Co. and its affiliates do not tolerate bribery or corruption in any form. By executing and delivering a copy of this Agreement, Buyer hereby acknowledges and confirms that it has reviewed the Code, that it has anti-corruption policies and procedures in place, that it will take all measures to ensure compliance with such policies and procedures, and that the provisions relating to anti-corruption set out in the Code shall govern the relations between the parties to this Agreement.

Article 15

OFAC

Buyer and Seller each represents and warrants to the other that neither it nor any of its affiliates or agent(s) acting on behalf of it with respect to this Purchase and Sale Agreement (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (“**OFAC**”) pursuant to Executive Order number 13224, 66 Federal Register 49079 (September 25, 2001) (the “**Order**”); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of the OFAC or any other applicable requirements contained in any enabling legislation or other executive orders in respect of the Order (the Order and such other rules, regulations, legislation or orders are collectively called the “**Orders**”); (iii) is engaged in activities prohibited in the Orders; or (iv) has been convicted, pleaded nolo contendere, indicted, arraigned or detained on charges involving money laundering or predicate crimes to money laundering.

[Signature Pages Contained on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

BUYER:

CITY OF DAYTONA BEACH SHORES,
a Florida municipal corporation

By: _____
Name: _____
Title: _____

SEAL

ATTEST AND COUNTERSIGNED:

By: _____
_____, Corporation Secretary

SELLER:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national banking association

By: _____
Name: Joshua Walker
Title: Vice President

APPROVAL BY ESCROW AGENT

The Escrow Agent hereby acknowledges receipt of a fully executed original of the foregoing Purchase and Sale Agreement on this ____ day of _____, 2022, and agrees to act in accordance with the provisions of the Purchase and Sale Agreement. The Escrow Agent agrees to deliver immediately to Buyer and Seller fully executed copies of this Agreement.

ESCROW AGENT:

EZELL LAW FIRM, P.A., a Florida corporation

By: _____
Name: Brenda B. Ezell
Title: President
Date: _____

ATTACHMENTS:

Exhibit A – Legal Description of the Land
Exhibit B – Special Warranty Deed
Exhibit C – FIRPTA Certificate

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

DESCRIPTION: A portion of Block "E", McElroy's Bellevue, as recorded in Map Book 11, Page 98 in the Public Records of Volusia County, Florida, and being more particularly described as follows:

COMMENCE at the Southwest corner of the Town homes at the Oceans II, as recorded in Map Book 42, Page 80 in the Public Records of Volusia County, Florida, run thence along the South boundary of said Townhomes at the Oceans II, N.65°20'47"E., a distance of 94.60 feet to the Northerly corner of the aforesaid Block "E"; thence along the Easterly boundary of said Block "E", S.24°39'13"E., a distance of 114.70 feet to the POINT OF BEGINNING; thence continue along said Easterly boundary, S.24 °39'13"E., a distance of 120.02 feet; thence S.65°20'47"W., a distance of 125.00 feet to a point on the Easterly Right of Way line of Oceanwest Boulevard; thence along said Right of Way the following two (2) courses: 1) N.24°39'13"W., a distance of 43.00 feet; 2) Northwesterly, 54.89 feet along the arc of a tangent curve to the left having a radius of 150.00 feet and a central angle of 20°57'58" (chord bearing N.35°08'09"W., 54.58 feet); thence Northeasterly, 2.51 feet along the arc of a non-tangent curve to the right having a radius of 12.50 feet and a central angle of 11 °29'00" (chord bearing N.31 °39'03"E., 2.50 feet); thence N.37°23'33"E., a distance of 30.21 feet; thence Northeasterly, 45.86 feet along the arc of a tangent curve to the right having a radius of 94.00 feet and a central angle of 27°57'14" (chord bearing N.51 °22'1 0"E., 45.41 feet); thence N.65°20'47"E., a distance of 48.93 feet; thence Easterly, 13.68 feet along the arc of a tangent curve to the right having a radius of 29.00 feet and a central angle of 27°01'21" (chord bearing N.78°51'27"E., 13.55 feet) to the POINT OF BEGINNING.
Containing 0.347 acres, more or less.

EXHIBIT B
SPECIAL WARRANTY DEED

This Instrument Was Prepared By:

EZELL LAW FIRM, P.A.
Attn: Brenda B. Ezell
3560 Cardinal Point Drive, Suite 202
Jacksonville, FL 32257

Tax Folio No. 532706040010

THIS SPECIAL WARRANTY DEED (this “**Deed**”) is made as of _____, 2022 by JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national banking association (“**Grantor**”), whose address is 1111 Polaris Parkway, Mail Code OH1-0241, Columbus, Ohio 43240-2050, in favor of **CITY OF DAYTONA BEACH SHORES**, a Florida municipal corporation (“**Grantee**”), whose address is 2990 S Atlantic Avenue, Daytona Beach Shores, FL 32118.

W I T N E S S E T H:

That Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor in hand paid by Grantee, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms to Grantee and its successors and assigns forever, the real property, lying and being in Palm Beach County, Florida described as follows (the “**Property**”):

See Exhibit “A” attached hereto and made a part hereof.

TOGETHER WITH all of the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

SUBJECT HOWEVER, to the matters described in **Exhibit “B”** attached hereto and made a part hereof, and all other matters of record (collectively, the “**Permitted Encumbrances**”).

The Property being conveyed under this Deed is expressly subject to the following restrictions (the “**Deed Restrictions**”):

For so long as Grantor, or its successors and/or assign is operating a banking facility on Grantor’s adjacent land, (a) no part of the Property shall be occupied or used by any bank, savings association, credit union, business making loans and/or taking deposits from the public, including any business offering check cashing, title loans or pay day loans, or offering use of an automatic teller machine or similar equipment (individually and collectively, a “**Financial Institution**”), whether state or federally chartered, or any Affiliate of any of them, and no part of the Property shall be used for the operation of any automated teller machine or debit card machine (whether by a Financial Institution or otherwise), (b) the Grantee shall not advertise or cause to be advertised or otherwise make known to the public that any of the Property is to be, or may be, in the future occupied or used by any Financial Institution, whether state or federally chartered, or any Affiliate

of them, or for the operation of an automated teller machine or debit card machine; and (c) no part of the Property shall ever be occupied or used for: (i) any use that emits an obnoxious odor (excluding normal cooking odors associated with a restaurant or residence with proper ventilation), fume, dust, vapor, noise or sound which is not mitigated on-site or properly vented and can be heard or smelled outside of the Property or from another premises; (ii) any noxious, dangerous or offensive trade or business use; (iii) an operation primarily used as a storage warehouse operation, provided, however, this prohibition shall not be applicable to storage of Grantee's equipment, and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation; (iv) any "second hand" store, "surplus" store, or pawn shop; (v) any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance; (vi) any dumping, disposing, incineration, or reduction of garbage; (vii) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation; (viii) any central laundry, dry cleaning plant, or laundromat; (ix) any automobile, truck, trailer, or recreational vehicle sales, leasing, display or body shop repair operation; (x) any veterinary hospital or animal raising or boarding facility; (xi) a blood bank; provided, however, this restriction shall not prohibit periodic blood drives not exceeding three days in duration; (xii) any mortuary or funeral home; (xiii) any establishment selling or exhibiting drug-related paraphernalia; (xiv) any establishment that sells vaping products; (xv) any marijuana dispensary, or any establishment selling or exhibiting marijuana or other cannabis products; (xvi) any bowling alley or skating rink; (xvii) any movie theater or live performance theater; (xviii) any other use that as a matter of course would lead to bothersome queuing outside of the Property; (xix) any embassy, consulate or similar operations; (xx) any establishment selling or exhibiting materials considered to be obscene or erotic; (xxi) any establishment that exhibits, either live or by other means to any degree, nude or partially clothed dancers or wait staff; (xxii) any massage parlor or similar establishment, except when an ancillary service to an otherwise permissible tanning center, spa, or health center; (xxiii) any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall; (xxiv) any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack, keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the occupant. For purposes hereof, "**Affiliate**" means a Person or group of Persons that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another Person; and "**Person**" means any individual, corporation, partnership, limited partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, or similarly chartered Financial Institution, and any fiduciary acting in such capacity on behalf of any of the foregoing. No amendment to the Deed Restrictions shall be valid unless in writing, signed by the Grantor and the Grantee, and recorded in the Official Records. The Grantee shall reimburse the Grantor, upon demand, for all costs and expenses, including without limit court costs, legal fees and reasonable attorneys' fees and paralegal fees (whether in-house or outside counsel or paralegals are used), incurred by the Grantor in enforcing its rights, by way of proceeding (whether at the trial court level or appellate level, in a judicial, bankruptcy, probate, administrative or any other proceeding) or otherwise, hereunder. The Deed Restrictions shall run with the land and be binding upon the Grantee and the Grantee's heirs, personal representatives, successors and assigns. The Grantor and its heirs, personal representatives, successors and assigns shall have the right (but shall not be obligated) to enforce the Deed Restrictions by proceeding at law or in equity, including without limit obtaining specific performance and injunctive

relief. References to the “Grantee” or “Grantor” include their respective heirs, personal representatives, successors and assigns. If any part of the Deed Restrictions is invalid or unenforceable, this shall not affect the validity or enforceability of the remainder of the Deed Restrictions.

Grantee acknowledges that Grantee has independently and personally inspected the Property. The Property is hereby conveyed to and accepted by Grantee in its present condition, “AS IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.” Notwithstanding anything contained herein to the contrary, it is understood and agreed that Grantor and Grantor’s agents or employees have never made and are not now making, and they specifically disclaim, any warranties, representations or guaranties of any kind or character, express or implied, oral or written, with respect to the Property, including, but not limited to, warranties, representations or guaranties as to (a) matters of title (other than Grantor’s warranty of title set forth herein), (b) environmental matters relating to the Property or any portion thereof, including, without limitation, the presence of Hazardous Materials (as defined in the purchase and sale agreement, the “Sale Agreement” between Grantor and Grantee) in, on, under or in the vicinity of the Property, (c) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water, and geologic faults and the resulting damage of past and/or future faulting, (d) whether, and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, wetlands, flood prone area, flood plain, floodway or special flood hazard, (e) drainage, (f) soil conditions, including the existence of instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides, or the sufficiency of any undershoring, (g) the presence of endangered species or any environmentally sensitive or protected areas, (h) zoning or building entitlements to which the Property or any portion thereof including, without limitation, water, sewage, gas and electric, (j) usages of adjoining property, (k) access to the Property or any portion thereof, (l) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title to, or physical or financial condition of the Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Property or any part thereof, (m) the condition or use of the Property or compliance of the Property with any or all Regulation federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances, codes or other similar laws, (n) the existence of non-existence of underground storage tanks, surface impoundments, or landfills, (o) any other matter affecting the stability and integrity of the Property, (p) the potential for further development of the Property, (q) the merchantability of the Property or fitness of the Property for any particular purpose, (r) the truth, accuracy or completeness of the Property documents, (s) tax consequences, or (t) any other matter or thing with respect to the Property. EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN THE SALE AGREEMENT, GRANTOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND TO GRANTEE, INCLUDING, WITHOUT LIMITATION, THE PHYSICAL CONDITION OF THE PROPERTY, OR THEIR SUITABILITY FOR ANY PARTICULAR PURPOSE OR OF MERCHANTABILITY. GRANTEE IS RELYING ON ITS INVESTIGATIONS OF THE PROPERTY IN DETERMINING WHETHER TO ACQUIRE IT. THE PROVISIONS OF THIS PARAGRAPH ARE A MATERIAL PART OF THE CONSIDERATION FOR GRANTOR EXECUTING THIS SPECIAL WARRANTY DEED, AND SHALL SURVIVE CLOSING.

TO HAVE AND TO HOLD the Property, with the appurtenances, unto Grantee, its successors and assigns, in fee simple forever.

AND Grantor hereby covenants with Grantee that Grantor is lawfully seized of the Property in fee simple, that Grantor has good right and lawful authority to convey the Property, and hereby warrants the title to the Property and will defend the same against the lawful claims of all persons claiming by, through or under Grantor but against none other, subject to the Permitted Encumbrances.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed and delivered as of the day and year first above written.

WITNESSES:

GRANTOR:

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national banking
association

Print Name: _____

Print Name: _____

By: _____

Name: Joshua Walker
Title: Vice President

STATE OF _____)
) : ss
COUNTY OF _____)

The foregoing instrument was acknowledged and executed before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 2022, by Joshua Walker, Vice President of JPMorgan Chase Bank, National Association, a national banking association, on behalf of said company, who ☐ is personally known to me or ☐ has produced a _____ driver's license as identification.

(Notary Seal)

Name: _____
Notary Public
State of _____
My commission expires: _____

Exhibit A - Legal Description
Exhibit B - Permitted Encumbrances

EXHIBIT C

FIRPTA CERTIFICATE

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform CITY OF DAYTONA BEACH SHORES, a Florida municipal corporation ("**Transferee**"), that withholding of tax is not required upon the disposition of a U.S. real property interest by JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national banking association ("**Transferor**") (U.S. employer identification number _____), the undersigned on this ____ day of _____ 2022, in his capacity as Vice President of Transferor, hereby certifies to Transferee the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor is not a disregarded entity as defined in Section 1.1445-2(b)(2)(iii) of the Income Tax Regulations.
3. Transferor's U.S. employer identification number is _____; and
4. Transferor's office address is 1111 Polaris Parkway, Mail Code OH1-0241, Columbus, Ohio 43240-2050.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

[Signature on Following Page]

Dated as of the date first written above.

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION, a national banking
association

By: _____
Name: Joshua Walker
Title: Vice President

STATE OF _____)
) : ss
COUNTY OF _____)

The foregoing instrument was acknowledged and executed before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 2022, by Joshua Walker, Vice President of JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national banking association, on behalf of said company, who ☐ is personally known to me or ☐ has produced a _____ driver's license as identification.

(Notary Seal)

Name: _____
Notary Public
State of _____
My commission expires: _____



**CITY COUNCIL AGENDA MEMORANDUM
MAY 24, 2022 AGENDA**

TO: Honorable Mayor and Members of the City Council

FROM:

PREPARED BY: Cheri Schwab, City Clerk

SUBJECT: Appointment of Voting Delegate for FLC Annual Conference

SYNOPSIS:

Each member municipality must choose a delegate to cast a vote during the Annual Business Session. It is up to the councilmembers to choose their delegate.

FISCAL IMPACT STATEMENT:

BACKGROUND:

LEGAL REVIEW:

RECOMMENDATION:

SUGGESTED MOTION:

I nominate XX as voting delegate for the annual conference.

ATTACHMENT: 1. 2022 Voting Delegate Memo



To: Key Official

From: Eryn Russell, Florida League of Cities

Date: May 11, 2022

Subject: 96th Annual Conference Voting Delegate Information

The Florida League of Cities' Annual Conference will be held at the Diplomat Beach Resort in Hollywood, Florida on August 11-13, 2022. This conference will provide valuable educational opportunities to help Florida's municipal officials serve their citizenry more effectively.

It is important that each member municipality sending delegates to the Annual Conference of the Florida League of Cities, designate one of their officials to cast their votes at the Annual Business Session. Election of League leadership and adoption of resolutions are undertaken during the business meeting. One official from each municipality will make decisions that determine the direction of the League.

In accordance with the League's by-laws, each municipality's vote is determined by population, and the League will use the Estimates of Population from the University of Florida.

Conference registration materials were sent to each municipality via the League's e-newsletter and are also available online at flcities.com.

If you have any questions on voting delegates, please email erussell@flcities.com. **Voting delegate forms must be received by the League no later than July 29, 2022.**

Attachments: Form Designating Voting Delegate



96th Annual Conference
Florida League of Cities, Inc.
August 11-13, 2022
Hollywood, Florida

It is important that each member municipality sending delegates to the Annual Conference of the Florida League of Cities, designate one of their officials to cast their votes at the Annual Business Session. League By-Laws requires that each municipality select one person to serve as the municipalities voting delegate. *Municipalities do not need to adopt a resolution to designate a voting delegate.*

Please fill out this form and return it to the League office so that your voting delegate may be properly identified. **Voting delegate forms must be received by the League no later than July 29, 2022.**

Designation of Voting Delegate

Name of Voting Delegate: _____

Title: _____

Delegate Email: _____

Municipality of: _____

AUTHORIZED BY:

Name

Title

Return this form to:
Eryn Russell
Florida League of Cities, Inc.
Post Office Box 1757
Tallahassee, FL 32302-1757
Fax: (850) 222-3806
Email: erussell@flcities.com