

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

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

**AMENDED AND RESTATED TREASURE ISLAND  
DEVELOPMENT AGREEMENT**

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

*WITNESSETH:*

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

**WHEREAS**, a portion of the Property is subject to that certain Statutory Development Agreement, recorded at O.R. Book 7033, Page 3645 of the Public Records of Volusia County, Florida, and the related Certificate of Vesting for the Property, recorded in O.R. Book 7033, Page 3638 of the Public Records of Volusia County, Florida; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **SECTION 1. RECITALS/FINDINGS.**

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

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

#### **SECTION 2. PREMISES.**

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

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

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

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

**SECTION 3. DEVELOPMENT STANDARDS.**

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

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

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

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

- b) Permitted Uses: Permitted uses for the Property shall include the following:
  - a. **Treasure Island/Sunny Shores Parcels:** Hotel, Multi-family Residential, Parking Garage Use, and customary accessory uses for Hotel and Multi-family Residential, including but not limited to restaurants, bars, conference and convention space, pool side structures, spas and health services, and related resort amenities, along with supporting retail or commercial services that do not exceed the intensity limitations set forth above. The Hotel and Multi-family residential uses may be located within a singular building or separate buildings, so long as the standards set forth herein are not exceed. Multi-family Residential uses may include individual residential units owned through a condominium form of ownership and held out for rental on a short-term basis in coordination with the proposed Hotel use.
  - b. **West A1A Parcel:** Parking, Parking Garage Use, and customary accessory uses, along with supporting retail or commercial services that do not exceed the intensity limitations set forth above.
  - c. **Fraile Street Parcel:** Parking, Parking Garage Use, and customary accessory uses.
- c) Parking:
  - a. In the event that structured parking is developed on the property, including the provision of parking levels associated with the hotel/residential development that exceeds two levels, such parking shall not be required to provide additional parking or landscaping beyond standard code requirements, regardless of structure height. This provision shall control over the language set forth in Section 14-21 of the City's Land Development Code.
  - b. Development of the site shall include the provision of a minimum of 582 parking spaces to support the proposed hotel/residential development. This provision shall control over the language set forth in Section 14-48.6 of the City's Land Development Code.
  - c. Any portion of the Property may be used for interim parking during construction of the necessary parking facilities designed to meet the requirements of the LDC, as modified herein. All unpaved and/or improved portions of the property used for interim parking during construction must be restored to a leveled, graded and hydro-seeded or sodded lot before final approval of the construction permits associated therewith will be granted.
  - d. The Fraile Street Parcel may be used for overflow parking for the above uses through the use of a gravel parking area. In the event the Fraile Street Parcel is used to meet minimum parking standards, such parking area shall meet City standards, to include buffering.
- d) Development Footprint: The Property may be developed in multiple phases and buildings, so long as the development standards set forth in Section 3.1 are met. In the event the Property is developed with the multifamily units and hotel units within one building, a lot combination will be required for the Treasure Island Parcel and Sunny

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

- e) Connectivity: The City shall facilitate installation of a pedestrian crosswalk to promote access between remote parking on the west side of A1A and the Treasure Island/Sunny Shores Parcels. This shall be in an amount not to exceed \$150,000. Construction of said crosswalk is dependent upon FDOT approval and/or any other approval authority.
- f) Development within the Treasure Island Parcel may include the redevelopment of the larger existing pool at its current location as a part of the proposed hotel development, unless no major building permits for the significant development of the "Treasure Island Property" and/or the "Sunny Shores Parcel" have been obtained within five (5) years of executed approval of this agreement. In such a case, and/or if pools are not in use associated with approved re-development of said properties within eight (8) years of approval of this agreement, all remaining pool and spa materials must be removed and properly abandoned, and the area must be back-filled, leveled, graded, hydro-seeded or sodded, and maintained. As long as any existing pools or pool openings remain, the area shall be monitored at all times by an automatic video surveillance system utilizing no fewer features and views than the system currently in use on the "Treasure Island Property." Alternatively, pools may be punctured in a manner approved and inspected by a City building inspector, then filled with dirt which shall be leveled, graded, hydro-seeded or sodded, and maintained.

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

- a) The Property Owner shall be entitled to 100% of the tax increment created by the redevelopment for an initial term of five years;
- b) The Property Owner shall be entitled to 75% of the tax increment created by the redevelopment for the five years following item (a) herein;
- c) The Property Owner shall be entitled to 50% of the tax increment created by the redevelopment for the five years following item (b) herein; and
- d) Any parcel or unit sold or conveyed by current property owner shall be removed from the tax increment calculation during the effective and subsequent tax years of the conveyance of the parcel or unit.
- e) The tax increment rebate as set forth in Chapter 10, Article III of the Municipal Code of Ordinances is paid only on said portion of the actual City ad valorem taxes paid and is not paid to the property owner until such time as the City is in receipt of the funds from the tax collector. The calculation and baseline for such tax increment rebate shall be as set forth in the enabling ordinance and memorialized in Chapter 10, Article III of the Municipal Code of Ordinances.

#### **SECTION 4. PUBLIC BENEFITS.**

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

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

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

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

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

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

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

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

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

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

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

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

#### **SECTION 5. IMPACT FEES AND PERMITTING.**

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

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

c) The City shall grant impact fee reductions for sewer capacity for the vested 227 hotel units located on the site, and any vested credits that exist by right for the Sunny Shores Parcel, West A1A Parcel, and the Fraile Street Parcel. Any reductions will only apply to the City's fees, and not any fees required by other jurisdictions, as outlined in that certain Stipulated Settlement Agreement between the parties, dated August 23, 2021.

#### **SECTION 6. REASONABLE APPROVAL.**

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

#### **SECTION 7. REMEDIES.**

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

#### **SECTION 8. HEADINGS/CAPTIONS.**

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

#### **SECTION 9. FORCE MAJEURE.**

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



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

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

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

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

**SECTION 11. EXHIBITS.**

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

Exhibit A: Property Legal Description and Sketch

Exhibit B: Certificate of Vesting

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

**SECTION 12. TERMS AND CONDITIONS RELATIVE TO THE PREMISES.**

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

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

### **SECTION 13. DEVIATIONS GRANTED FROM CODE OF ORDINANCES.**

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

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

### **SECTION 14. PROPERTY PREPARATION AND MAINTENANCE.**

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

- b. The seawall drop-off at the “Sunny Shores Parcel” shall be protected by installing and maintaining a 4-foot-high guard rail as a fall-prevention device along the length of said seawall before removal of aforementioned wooden steps attached to the seawall.
  - c. The seawall drop-off at the “Treasure Island Parcel” shall be protected by installing and maintaining a 4-foot-high guard rail as a fall-prevention device along the length of said seawall concurrent with removal of the east portion of the required demolition fence.
- 2. Post-Demolition Restoration Requirements. Immediately after demolition of the structures listed in subsection 1) Structure Demolition and no later than one hundred fifty days (150) of executed approval of this Development Agreement, the PROPERTY OWNER shall complete the following:
  - a. Remove all building debris from the site through an approved CITY Exclusive or Non-Exclusive Demolition and Recyclable Debris waste-hauler.
  - b. Back-fill, level, and grade all areas of the “Treasure Island Property” and all areas of the “Sunny Shores Parcel” affected by the Structure Demolition to create a smooth, level site that will not cause drainage or erosion issues.
  - c. Hydro-seed or sod all areas of the “Treasure Island Property” and water all areas until established. Repeat such measures as required by the CITY to eliminate all windborne debris emanating from the site.
- 3. Remaining Structure Restoration/Protection.
  - a. PROPERTY OWNER shall, after obtaining all required electrical permits, cause the removal all electrical service components on the “Sunny Shores Parcel” within sixty (60) days of executed approval of this Development Agreement.
  - b. Should the PROPERTY OWNER elect to keep the larger swimming pool and adjacent spa intact, PROPERTY OWNER shall keep the pool and spa openings free of standing water, refuse, and debris and shall keep each opening continuously covered with task-approved covers, installed and strictly maintained to the cover manufacturer’s specifications. Additionally, these openings shall be fenced with a dedicated, in-ground, rubber-coated, six-foot-tall, chain-link fence with a locked gate until such time as physical redevelopment of the “Treasure Island Property” commences. As long as any existing pools or pool openings remain, the area shall be monitored at all times by an automatic video surveillance system utilizing no fewer features and views than the system in use on the “Treasure Island Parcel” at the time of drafting this agreement. Alternatively, pools may be punctured in a manner approved and inspected by a CITY building inspector, then filled with dirt which shall be leveled, graded, hydro-seeded or sodded, and maintained. Measures required by this section shall be fully in place within one hundred eighty (180) days of executed approval of this Development Agreement and before required construction fencing is removed.
  - c. PROPERTY OWNER shall, after obtaining the required fence permit, replace the chain link fence around the “Fraile Street Parcel” with a new rubber-coated,

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

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

4. Ongoing Property Maintenance.

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

**SECTION 15. PUBLIC RECORDS.**

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

**SECTION 16. EQUAL OPPORTUNITY.**

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

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

**SECTION 17. CONFLICT OF INTEREST.**

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

**SECTION 18. COMPLIANCE WITH LAWS AND REGULATIONS.**

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

**SECTION 19. NOTICES.**

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

For the **CITY**:

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

With Copy to:

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

For the **PROPERTY OWNER**:

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

With Copy to:

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

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

**SECTION 20. INTERPRETATION/APPLICABLE LAW/VENUE.**

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

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

**SECTION 21. CONSTRUCTION OR INTERPRETATION OF THE DEVELOPMENT AGREEMENT.**

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

**SECTION 22. ENTIRE DEVELOPMENT AGREEMENT/MODIFICATION.**

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

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

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

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

**SECTION 23. THIRD PARTY BENEFICIARIES/TRANSFERABILITY.**

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

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

**SECTION 24. ATTORNEYS FEES AND COSTS.**

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

**SECTION 25. SEVERABILITY.**

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

**SECTION 26. EFFECTIVE DATE/TERMINATION; PERIODIC REVIEW OF**

**DEVELOPMENT AGREEMENT.**

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

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

- a. Five (5) years to receive a certificate of occupancy for a hotel and multifamily residential development in a singular building on the combined Treasure Island and Sunny Shores parcels; or
- b. Five (5) years to receive a certificate of occupancy for a hotel development on the Treasure Island parcel and fifteen (15) years to receive a certificate of occupancy for a multifamily residential development on the Sunny Shores parcel.

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

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

**SECTION 27. COUNTERPARTS.**

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

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**[SIGNATURE PAGES FOLLOW]**



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

Attest:

**CITY OF DAYTONA BEACH SHORES**

\_\_\_\_\_  
Cheri Schwab, City Clerk

\_\_\_\_\_  
Nancy Miller, Mayor  
Date:\_\_\_\_\_

\_\_\_\_\_  
Michael T. Booker, City Manager

Approved as to form and legality:

\_\_\_\_\_  
John Cary, City Attorney

**[ADDITIONAL SIGNATURE PAGE FOLLOWS]**

Witnesses:

**PROPERTY OWNER/  
2025 South Atlantic Avenue, LLC**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_

Printed name of witness:  
\_\_\_\_\_

By: \_\_\_\_\_  
Managing Member

**Acknowledgment**

**State of** \_\_\_\_\_ )  
**County of** \_\_\_\_\_ )

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

**Witness** my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2022.

(Affix Notary Seal)

\_\_\_\_\_  
Notary Public; State of Florida  
Print name: \_\_\_\_\_

Exhibit A  
Legal Description and Sketch

Exhibit B  
Certificate of Vesting

Exhibit C  
Conceptual Plan