

2021-321

Document prepared by:

Robert A. Merrell III, Esq.
Cobb Cole
149 S. Ridgewood Ave., Ste. 700
Daytona Beach, FL 32114

Return recorded document to:

City of Daytona Beach Records Clerk
P.O. Box 2451
Daytona Beach, FL 32115-2451

PROJECT ZETA PLANNED DISTRICT AGREEMENT

The **CITY OF DAYTONA BEACH, FLORIDA**, a Florida municipal corporation located in Volusia County, Florida ("City"), and **LAMMS INVESTMENTS LLC**, a Florida limited liability company ("Owner" or "Developer"), hereby agree and covenant, and bind their heirs, successors, and assigns, as follows:

1. PROPERTY DESCRIPTION AND OWNERSHIP.

A. The property subject to this Agreement consists of approximately 23.2+/- acres of real property ("Property") and is described in Exhibit "A", attached hereto and by reference made a part hereof.

B. The Property is under the sole ownership of Owner.

2. EXHIBITS.

The Exhibits listed below are by reference made a part hereof, and copies or reduced size copies are attached hereto. Full-sized copies of the Exhibits shall be retained by the City Clerk and shall be controlling in case of any ambiguity in the Exhibits. In the event of a conflict between the graphic illustrations of any Exhibit and the textual provisions of this Agreement, the textual provisions shall control.

Exhibit A: Legal description and survey of the property, rev. date September 19, 2019, prepared by GeoPoint Surveying, Inc.

Exhibit B: Planned Development Plan, rev. date June 17, 2021, prepared by Zev Cohen & Associates, Inc.

3. DEVELOPMENT PLAN.

A. Owner has designated the Property as "**Project Zeta Planned District**".

B. The Property will be developed as a **Planned Development – General (PD-G)** pursuant to the City's Land Development Code (LDC). Development shall be controlled by the LDC and the terms and provisions of this Agreement. In the event of a conflict between this Agreement and the LDC

or other ordinances, this Agreement shall control.

C. Exhibit B (Planned Development Plan) generally depicts a potential layout of buildings, parking areas, driveways, access points and other potential features or improvements to the Property. To the extent actual buildings, features, improvements and uses are shown on the PD Plan, they are shown only for illustrative purposes. Layout and quantity/scale of improvements may change based on the needs of a particular end user of the Property. Owner shall be permitted to relocate such buildings and uses as the market dictates, or as desired, so long as the relocation is otherwise consistent with this Agreement. **All changes shall be subject to the Architectural and Design standards in Section 8 of this Agreement.**

D. MAXIMUM DEVELOPMENT ENTITLEMENTS.

(1) *Use-Related Maximum.* Subject to the trip-based cap below, the maximum development entitlements for the Property are as follows:

(a) If the Property is developed exclusively with residential uses, these uses shall be limited to a maximum of 300 multifamily units or 100 townhome units.

(b) If the Property is developed exclusively with non-residential uses, these uses shall be limited to a maximum of 95,000 square feet of gross floor area (GFA).

(c) If the Property is developed with a mixture of residential and non-residential uses, the maximum for each type of use shall be the number referenced for that use above, multiplied by a fraction, the numerator of which is the total acreage devoted to such use, and the denominator of which is the total acreage of the Property.

(2) *Trip-Based Cap.* The overall development of the Property shall not result in an increase in external two-way peak-hour vehicular trips over 345 trips. The maximum development entitlements above shall be reduced as necessary to comply with this cap. If development is phased, this cap shall be applied so as to reserve development entitlements allocable to a particular phase, upon approval of the site plan and payment of the proportionate fair share payment.

E. LOT DEVELOPMENT CRITERIA. The following lot development criteria shall apply to the Property, along with the standards for Scenic Thoroughfare Overlay (STO) District landscaping, as set forth in the LDC.

(1) Nonresidential Development:

- (a) Maximum building height: 50 feet ("ft.")
- (b) Maximum nonresidential development: 95,000 square feet ("sq. ft.")
- (c) Minimum lot area: 5,000 sq. ft.
- (d) Minimum lot width: 50 ft.
- (e) Minimum lot depth: 100 ft.
- (f) Minimum perimeter building setbacks:
 - i. Side: 5 ft.

- ii. Front: 10 ft.
- iii. Rear: 10 ft.
- iv. LPGA Boulevard: 50 ft.
- (g) Maximum building coverage: 45 percent (“%”)
- (h) Minimum building separation: 20 ft.
- (i) Minimum open space: 20%
- (j) Maximum impervious surface area: 80%.
- (k) Slopes within any dry retention and wet detention pond(s) shall be 4:1 without a fence.
- (l) Dry retention pond(s) shall count toward open space requirements.
- (m) Landscape requirements shall meet the 50-foot STO District criteria for LPGA Boulevard.
- (n) Minimum living area per dwelling unit (Group Living Uses): at least 200 square feet of living space (450 square feet if the unit includes a kitchen), which shall include a full bathroom (with toilet, sink, and tub) and at least 80 square feet of sleeping space (if designed for single occupancy) or 60 square feet of sleeping space per bed (if designed for multiple occupancy).

(2) Multifamily Residential Development:

- (a) Maximum building height: 65 ft.
- (b) Minimum lot width: 100 ft.
- (c) Minimum lot depth: 200 ft.
- (d) Minimum lot area: 20,000 ft.
- (e) Maximum fence height: front 4 ft; all other sides 6 ft.
- (f) Maximum individual building size: 95,000 sq. ft.
- (g) Minimum living area/dwelling unit:
 - i. One bedroom: 450 sq. ft.
 - ii. Two bedroom: 550 sq. ft.
 - iii. Three bedroom: 700 sq. ft.
- (h) Minimum perimeter building setbacks:
 - i. Side: 15 ft.
 - ii. Front: 10 ft.
 - iii. LPGA Boulevard: 50 ft.
 - iv. Rear: 15 ft.
- (i) Minimum building separation:
 - i. Front-to-front: 40 ft.
 - ii. Front-to-rear: 40 ft.
 - iii. Front-to-side: 40 ft.
 - iv. Side-to-side: 25 ft.
- (j) Maximum building coverage: 35%.
- (k) Minimum open space: 20%.
- (l) Maximum impervious surface area: 80%.
- (m) Slopes within any dry retention pond(s) shall be 4:1 without a fence.
- (n) Dry retention pond(s) shall count toward open space requirements.

- (o) Landscape requirements shall meet the 50-foot STO District criteria for LPGA Boulevard.
- (3) Townhome Development:
 - (a) Minimum lot area: 1,800 sq. ft.
 - (b) Minimum lot width: 18 ft.
 - (c) Minimum lot depth: 100 ft.
 - (d) Minimum individual unit size: 750 sq. ft.
 - (e) Maximum height: 35 ft.
 - (f) Minimum spacing between townhome buildings: 15 ft.
 - (g) Minimum setbacks:
 - i. internal side 0 ft.
 - ii. building side 15 ft.
 - iii. front 20 ft.
 - iv. rear 0 ft.
 - v. street side corner 15 ft.
 - vi. accessory structure 5 ft.*
 - (h) Special setbacks
 - i. Air Conditioning/Heating Units: 1.5 ft.
 - ii. Patio: 5 ft.
 - iii. Swimming Pool Shell: 8 ft.
 - iv. Pool Enclosure: 5 ft.
 - v. Pool Pumps: 1.5 ft.
 - vi. Accessory Structure: 5 ft.*
 - vii. Generators/Other Mech. Equip.: 1.5 ft.
 - viii. Eaves: 3 ft.
 - ix.
 - (i) Maximum building coverage: 35%
 - (j) Minimum open space: 20%
 - (k) Maximum impervious surface area: 80%
 - (l) Maximum density: 100 units
 - (m) Slopes within any dry retention pond(s) shall be 4:1 without a fence.
 - (n) Retention pond(s) shall count toward open space requirements.
 - (o) Landscape requirements shall meet the 50-foot STO District criteria for LPGA Boulevard.

* In case of conflict with a Specialty Setback, the Specialty Setback applies.

F. SUBDIVISION/PLATTING. If required by the LDC, Owner shall cause the Property to be subdivided in accordance with all applicable legal requirements, including the LDC. Irregularly shaped lots shall be permitted and are not subject to the intensity and density standards of the LDC as long as (i) all applicable requirements of Section 3.D. are met; or (ii) the lot is a common area or common facility as described in Section 7. **No curb cuts or driveways are approved to parcels at this time.**

G. **SITE PLAN REVIEW.** All site plans shall be reviewed in accordance with the standards and procedures established by the LDC, and be generally consistent with this Agreement and the PD Plan.

H. **PHASING.** Development of the Property may occur in multiple phases, but it is not required. The order, size and configuration of phases may be modified, and each proposed phase shall be required to install all necessary infrastructure, including all necessary easements and dedications, in order to stand alone, with the support of previously built phases. Each phase shall be built so as to be consistent with applicable City standards and this Agreement. In the event of a conflict between this Agreement and other City standards, this Agreement shall control. Permits for development of phases or sub-phases shall be submitted for approval through the City's Site Plan process. Temporary staging of construction equipment and material shall be permitted on parcels in undeveloped phases during construction.

4. CONFORMANCE WITH COMPREHENSIVE PLAN; CONCURRENCY; PERMITS.

A. The City has determined that the Property is suitable in size, location, and character for the uses proposed, and that the uses proposed are consistent with the City's Comprehensive Plan.

B. Owner shall be responsible for obtaining all development permits required by the LDC and applicable federal and state laws. Owner specifically acknowledges that approval of this Agreement does not constitute a Concurrency Certificate as required by the LDC, and that Owner will be required to separately obtain a Concurrency Certificate or, where applicable, to enter into a proportionate fair share agreement. Approval of this agreement and exhibits is not a permit to begin clearing, to begin site work, or to begin construction without necessary permits.

C. The City agrees to issue the required permits for development of the Property in the manner set forth in this Agreement and the LDC.

5. PERMITTED USES.

The following uses are permitted within the Property, subject to compliance with the Use-Specific Standards set forth in the LDC¹:

A. Principal Uses

Office Uses

- Business services offices
- Contractor's office
- Professional services offices
- Other office facility

¹ Where any of the permitted uses abut an inconsistent use, the Owner shall ensure that a proper buffer is provided, consistent with the requirements of the LDC. Such buffer shall be determined at site plan but may include a wall constructed of Hardie Board if necessary as part of the requirements for establishment of the buffer.

Business Support Service Uses

- Conference or training center
- Employment agency
- Parcel services
- Telephone call center
- Travel agency

Eating and Drinking Establishments

- Bar or lounge
- Brewpub (as accessory use)
- Restaurant with drive-through service
- Restaurant without drive-in or drive-through service
- Specialty eating or drinking establishment
- Craft distillery
- Micro-brewery
- Micro-winery

Health Care Uses

- Blood/tissue collection center
- Medical or dental clinic/office
- Medical or dental lab
- Nursing home facility

Recreation and Entertainment Uses

- Auditorium or theater/amphitheater
- Cinema (including alcohol sales and service)
- Miniature golf course
- Outdoor facility for field sports, swimming, or court games
- Other indoor recreation/entertainment use

Retail Sales and Service Uses

- Antique store
- Art gallery
- Art, crafts, music, dance, photography, or martial arts studio/school
- Bank or financial institution with drive-through service
- Bank or financial institution without drive-through service
- Book or media shop
- Cigar lounge
- Convenience store
- Drug store or pharmacy with drive-through service
- Drug store or pharmacy without drive-through service
- Dry cleaning or laundry drop-off establishment
- Florist shop
- Funeral home or mortuary
- Gift shop or stationary store

- Grocery store
- Home and building supply center
- Jewelry store
- Large retail sales establishment
- Lawn care, pool, or pest control service
- Liquor or package store
- Meat, poultry, or seafood market
- Personal and household goods repair establishment
- Personal services establishment (including massage, general spa services, health club)
- Secondhand retail store
- Shopping center
- Other retail sales establishment

Animal Care Uses

- Veterinary and boarding/animal hospital

Group Living Uses

- Assisted living facility, including all forms of senior living/memory care

Household Living Uses

- Multifamily dwelling
- Multifamily complex
- Townhouse dwelling
- Townhouse subdivision
- Upper story dwelling (above nonresidential use)

Communications Uses

- Telecommunications tower, monopole less than 90 feet high
- Telecommunications tower, monopole less than 180 feet high
- Telecommunications tower, other than above

Utility Uses

Utility use, minor, including compensatory storage as a principal use. This use shall be subject to each of the following standards:

- i. Use of the Property for compensatory storage may be approved as a standalone phase within the development.
- ii. Compensatory storage may be used to benefit off-site properties, subject to a private Agreement with Owner regarding the same. Such use will be subject to City review and approval of a site plan for the off-site location benefitting from the on-site compensatory storage.
- iii. During construction activities, general construction screening shall be utilized to limit view of dirt stockpiles and associated construction activities. Dirt stockpiles associated with the use shall not be higher than 8 feet above existing grade, and shall be screened from the right of way through the use of an

opaque buffer, which may be comprised of existing vegetation, provided the requirements of the LDC are met.

- iv. Once constructed, no buffer is required between the compensatory storage use and adjacent properties. Perimeter landscaping requirements, as set forth in the LDC, still apply. In addition, if the use is located along a major City thoroughfare, the City's Scenic Thoroughfare Overlay District standards shall apply, and may be met using new plantings, existing plants, or a combination thereof.

B. Temporary Uses subject to the standards set forth in the LDC.

Farmer's market

Carnival**

Christmas tree sales**

**Only when approved by special event permit issued in accordance with LDC § 5.4.C.4.

6. INFRASTRUCTURE.

A. **STORMWATER.** An on-site stormwater retention/detention facility will be constructed in conjunction with the development. The stormwater retention/detention facilities will be maintained at a level consistent with the standards of the St. Johns River Water Management District and the City. Collection and transmission facilities shall be located pursuant to an approved site plan, or site plans approved for individual lots or structures.

B. **UTILITIES.** Water and sewer service shall be provided by the City. All utilities shall be constructed underground. Owner will also provide easements and grants for the installation, maintenance and upkeep of the public utilities including water, sewer, reclaim water, electrical and telephone, as well as cable television and fiber, if available. Water, sewer, reclaim water infrastructure must be constructed to current City standards and consistent with this Agreement. Off-site utility infrastructure improvements to support the project will be reviewed at the time of final site plan approval.

C. **ACCESS & CONNECTIVITY.** The general location of access driveways and internal roadways for the development is shown on Exhibit B. However, access and connectivity internal and external to the development shall be determined at site plan, and shall have a minimum connectivity index score of 3.0.

D. **PARKING.** Parking for all uses shall be developed consistent with the requirements of the LDC.

E. **LANDSCAPING.** Landscaping shall be provided consistent with the requirements of the LDC, unless otherwise provided herein. In addition, to the extent that the LDC's Neighborhood Compatibility Standards shall apply to development on the Property, the development plan shall conform to the requirements of the LDC. Owner shall have the right to remove all specimen trees on the Property in accordance with the requirements of the LDC, so long as the LDC's tree preservation requirements

are met, except as modified herein. For every caliper inch of specimen trees removed, 2 caliper inches of replacement trees shall be required. For every caliper inch of existing tree canopy removed (below 15%), 1 caliper inch of replacement trees shall be required. In the event that a utility use is developed on the site, no mitigation shall be required for tree removal associated with that use. The size of replacement trees shall be upsized, along with increased planting material. Clustering of typical landscape requirements shall be permitted so long as the net total landscape material as required herein is still met, including requirements related to interior parking lot and parking lot islands. Coordination of landscaping shall be addressed at Site Plan; however, the following landscape buffers shall be required for the Property's overall periphery:

(1) Minimum perimeter landscape strips:

- | | |
|---------------------------|--------|
| (a) LPGA Boulevard: | 50 ft. |
| (b) All other Perimeters: | 10 ft. |

7. COMMON FACILITY MAINTENANCE.

A. As used in this Section:

(1) "Common facility" refers to any facility intended to be set aside for common ownership, use, or benefit, such as shared landscaping, parking, and signage. Common facilities do not include facilities such as public sidewalks or utilities that are formally accepted for public ownership by the City or other governmental agency. Common facilities do not include facilities that are subjected to a condominium form of ownership.

(2) "Common area" refers to a specific area of the Property where one or more common facilities are located, whether or not identified on Exhibit B.

B. Except as provided in Subsections C or D, prior to final plat approval or prior to issuance of the first certificate of occupancy within the development, whichever is earlier, Developer will:

(1) Form and incorporate a non-profit property owners' association to be responsible for operation, maintenance, and repair of common facilities. The association shall have authority to establish and assess dues and fees upon its members in order to recoup the cost of maintenance, and the power to impose and enforce liens against those members who fail to pay such assessments. All persons purchasing property within the Planned District shall be members of the property owners' association. Developer may from time to time add additional covenants and restrictions or make changes in association by-laws as may be required to guarantee that the project will be developed in accordance with the policies outlined in this Agreement.

(2) Complete construction and installation of all common facilities (or, if the City specifically allows, all common facilities serving the first phase of development for the platted property); provided, that, for those common facilities that may be susceptible to damage due to remaining construction, the City may allow postponement of this requirement subject to Developer's provision of adequate assurances that the work will be done. For example, the City may require Developer to post a

bond sufficient to cover 120% of the cost of such facilities according to certified estimates. Any bond shall be in a form approved by the City Attorney.

(3) Convey ownership or easement interests to all common areas to the property owners' association, sufficient to enable the property owner's association to carry out its responsibilities above with respect to common facilities.

C. The provisions of this Agreement do not apply to any facility that is placed into a condominium form of ownership.

D. With the City's prior approval, Owner may provide for recorded instruments such as restrictive covenants or recorded written agreements among one or more lot owners, to provide for the private maintenance and repair of common facilities. The City may approve such alternate arrangements administratively, without need to amend this Agreement. The City may reject any proposed alternate measure that the City determines is not adequate to ensure that common facilities will be maintained and repaired in a timely manner.

E. Under no circumstances shall the City be responsible for owning, maintaining, or repairing common facilities or common areas.

F. Nothing herein authorizes the location of common facilities on public right-of-way. If the City Commission elects to authorize the encroachment of guest parking spaces into public right-of-way as referenced above, among other conditions the City Commission may require that the encroachments be treated as common facilities under this Agreement.

G. The plat(s) for the Property shall include such conveyances and notes as the City may require to give effect to the requirements of this Section, and to provide notice of these requirements.

8. ARCHITECTURAL AND DESIGN STANDARDS.

A. All buildings and accessory structures constructed within the Property shall be developed in compliance with the requirements of this section, and with the applicable provisions of the LDC relating to architectural standards, where they do not conflict with the provisions of this section. Development of the Property shall comply with the City's Exterior Color and Design Standards for Major City Thoroughfares, as set forth in the LDC.

B. All of the following requirements shall be met within the Property:

(1) All buildings and accessory structures shall be consistent with a common architectural theme. The theme shall be established by harmoniously coordinating the general appearance of all buildings and accessory structures, including but not limited to: exterior wall finishes or materials; roof styles, slopes, and materials; colors; and architectural details and ornamentation.

(2) All structures shall complement one another and shall convey a sense of quality and permanence.

(3) Corporate prototype design and materials shall be permitted provided they comply with the provisions of this section.

(4) False or real windows shall be provided on all elevations visible from the public right of way in sufficient size and number to complement the proportions of the building.

(5) Consistent with the provisions of the LDC, uses requiring loading docks, garage doors, or mini-storage buildings along a Major City Thoroughfare shall be screened using landscaping or architectural features.

(6) Through the LDC site plan review process, the City reserves the right to review the proposed construction of all buildings and structures, to recommend the substitution or inclusion of colors, materials, architectural details, and ornamentation, and to require or prohibit the use of the same to ensure compliance with the requirements of this section.

(7) All buildings and accessory structures shall generally be consistent with this Agreement unless, prior to issuance of the initial building permit, Owner submits and the City approves a different conceptual elevation. The City shall have the right to reject any proposed elevation which does not meet the requirements herein, or which involves the use of fewer architectural details and ornamentation than are set forth in this Agreement.

(8) No permanent outside display or storage shall be permitted unless adequately screened and approved by City staff.

(9) The physical appearance of all parking lot lighting fixtures shall be consistent.

9. ENVIRONMENTAL CONSIDERATIONS.

A. Development of the Property shall comply with the LDC's tree preservation requirements, except as otherwise modified in Section 6.E herein. Owner shall comply with all rules, statutes, and regulations pertaining to protected wildlife species, including but not limited to the rules and permitting requirements of the Florida Game and Freshwater Fish Commission concerning gopher tortoises.

B. To the extent that any wetlands existing on the Property will be impacted, they will only be impacted as permitted by the St. John's River Water Management District and any other agency with jurisdiction over the same. The City shall defer to the determinations made by such agencies regarding wetland impact.

10. SIGNAGE.

The amount and type of signage on the Property shall meet the requirements of the Business District sign scheduled set forth in the LDC for all non-residential uses, and the requirements for multifamily complexes and subdivisions for all residential uses.

11. EFFECTIVE DATE; COMPLETION SCHEDULE.

A. This Agreement shall be effective upon execution by both parties. The restrictions on use and development imposed by this Agreement shall be binding upon all successors in interest in the Property, unless and until the City alters or eliminates such restrictions in the course of its actions as zoning authority.

B. Application shall be submitted for construction permits for the initial development of the Property, within five (5) years of the approval of this Agreement by the City Commission. The filing of an appeal of the land development order by any person shall toll the time for permitting until final resolution of the appeal. If development is phased, application for construction permits for subsequent phases shall be submitted within ten (10) years from the date of initial approval.

C. Construction of initial development shall be substantially complete within eight (8) years of the approval of this Agreement. Construction of any subsequent phase shall be substantially complete within fifteen (15) years of the initial approval of this Agreement.

D. One 12-month extension of the scheduled application dates may be permitted as a minor modification to this Agreement.

E. Failure to comply with the schedule set out above shall cause the development rights granted pursuant to this Agreement to lapse, unless the City Commission extends the deadlines (including as these deadlines may have been previously extended by minor modification above). The City Commission may extend such deadlines by ordinance, without need for formal amendment to this Agreement.

12. MINOR MODIFICATIONS.

A. The following may be administratively authorized as minor modifications to this Agreement:

B. Amendments to an Exhibit that are necessary for compliance with the provisions of this Agreement, the LDC, or extra-jurisdictional permitting requirements, and address technical considerations that could not reasonably be anticipated during the Planned Development approval process;

C. Have no material effect on the character of the approved PD district, the basic concept and terms of the PD Plan/Agreement. These may include, but are not limited to, the following:

(1) Structural alterations that do not significantly affect the basic size, form, style, and appearance of principal structures;

(2) Minor changes in the location and configuration of streets and driveways that do not adversely affect vehicular access and circulation on or off the site;

(3) Minor changes in the location or configuration of buildings, parking areas, landscaping, or other site features;

(4) Minor changes in the location and configuration of public infrastructure facilities that do not have a significant impact on the City's utility and stormwater management systems; and

(5) Increases of five (5) percent or less in the total number of parking spaces.

D. Modifications of up to 20% to any of the dimensional requirements and associated Exhibit revisions, where such modifications are necessary to address minor Exhibit errors or unanticipated conditions that reasonably need to be addressed to ensure the development plan can be implemented, EXCEPT:

(1) Modifications, such as to floor area ratios, that increase intensity or density of the entire project or any phase by more than 2%;

(2) Modifications that increase building height or decrease setbacks, yards, or landscaping along the perimeter of the Property by more than 10%;

(3) Modifications that, when combined with previously approved minor and substantial modifications would result in a cumulative change of more than 20% of the original requirement for the area in question; and

(4) Modifications that would unduly impact City-owned public utilities.

E. Requests for minor modifications shall be submitted in writing on forms provided by the City. Requests shall be reviewed pursuant to the general technical review process described in the LDC.

F. Denial of a requested minor modification shall be issued in writing to the applicant. Upon denial, or if more than 60 days elapses after the submittal of a completed application without a decision by the City, the applicant may apply for an amendment to the agreement.

G. Approved modifications shall be noted on the official plan documents.

13. AMENDMENTS.

A. Any revision to this Agreement other than a minor modification as described above shall require an amendment approved by the City Commission after review and recommendation by the Planning Board.

B. In recognition of the City's general police power authority to rezone and legislate land uses and zoning requirements, all signatories to this Agreement and all individual lot owners, fee titleholders, mortgagees, or lien holders who now or hereafter own property subject to this Agreement, agree as follows:

(1) Proposed amendments will be subject to the review procedures and standards set forth in LDC Section 3.4.F.10.

(2) The City, and the owner of every lot within the Planned District that is directly impacted by the amendment, are necessary parties to the amendment.

(3) The owners of all other lots within the Planned District that are not directly impacted by the amendment, are not necessary parties to the amendment.

(4) If this Agreement requires the creation of a property owners' association or homeowners' association for purposes of owning and operating common areas and common facilities, and the association is in existence at the time of submission of an application to amend this Agreement, the association will be deemed to be an affected party with respect to the amendment as provided in LDC Section 3.4.F.10.

(5) A lot is "directly impacted" for purposes of the provisions above, only when the amendment would revise the listed uses, dimensional requirements, architectural requirements, sign requirements, or other development or use requirements for that lot.

C. No property owner other than one who actually executes an amendment shall be deemed to have waived his or her right to challenge a proposed or executed amendment in the same manner that an affected property owner may challenge zoning or related lot specific changes for property which is not subject to a planned development agreement. Such challenges include: (i) objections to a proposed amendment before the City Planning Board or City Commission, (ii) seeking certiorari review or injunctive action in relation to the adoption of such amendment as provided by law, or (iii) consistency challenges as provided for in Section 163.3215, Fla. Stat., or any successor provision.

14. VARIANCES.

This Agreement shall not be deemed to prohibit any owner of property within the planned development from seeking or obtaining one or more variances from the requirements of this Agreement pursuant to the LDC. In addition to those entitled to notice pursuant to the LDC, notice of any public hearing to consider a proposed variance shall be provided to all persons owning property within the planned development. No such variance shall be deemed to require formal amendment to this Agreement.

15. POLICE POWER AND SOVEREIGN IMMUNITY NOT WAIVED.

Nothing contained in this Agreement shall be construed as a waiver of or contract with respect to the regulatory and permitting authority of the City as it now or hereafter exists under applicable laws, rules, and regulations. Further, nothing contained in this Agreement shall be construed as a waiver of or attempted waiver by the City of its sovereign immunity under the constitution and laws of the State of Florida.

16. COMPLETE AGREEMENT; AGREEMENT TO BE RECORDED.

A. This Agreement represents the complete understanding by and between the parties with respect to the development and use of the Property. Any and all prior agreements between the parties with respect to any subject comprehended by this Agreement is hereby voided and superseded by this Agreement.

B. This Agreement shall be recorded in the Public Records of Volusia County, Florida, at Owner's expense. The restrictions on use and development imposed by this Agreement shall be binding upon all successors in interest in the Property.

17. VENUE AND SEVERABILITY.

A. In the event of any claim, action, litigation, or proceeding under this Agreement, venue shall be in Volusia County, Florida.

B. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, such holding shall not affect the validity or enforceability of any other provision of this Agreement unless the holding so states.

{Remainder of Page Intentionally Left Blank}

IN WITNESS WHEREOF, the parties hereto attached their hands and seals on the dates set forth below.

Signed, sealed and delivered in the presence of:

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

Nahed Iskander
Witness 1
Nahed Iskander
Print Name of Witness 1

By: Derrick L. Henry
Derrick L. Henry, Mayor

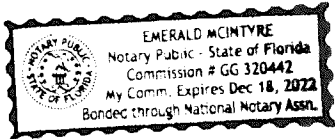
Attest: Letitia LaMagna
Letitia LaMagna, City Clerk

Jennifer Lynch
Witness 2
Jennifer Lynch
Print Name of Witness 2

Date: 10-07-21

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 7 day of October, 2021 by Derrick L. Henry and Letitia LaMagna, Mayor and City Clerk, respectively, of The City of Daytona Beach, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.



Emerald McIntyre
Notary Public
Commission No: _____

Signed, sealed and delivered in the presence of:

LAMMS INVESTMENTS, LLC, a Florida
limited liability companyAnya Colamartino
Witness 1Anya Colamartino
Print Name of Witness 1Nicholas Hammer
Witness 2Nicholas Hammer
Print Name of Witness 2By: [Signature]Printed Name: LAIKHA AzizTitle: PartnerSTATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 18th day of June, 2021, by
Laikha Aziz as Partner of Lamms Investments LLC. He or she is ☐ personally
 known to me or ☒ produced FLDL as identification and did not take an oath.

[Signature]
Notary PublicCommission No. GG 205113

Approved as to legal form:

By: [Signature]

Robert Jagger, City Attorney

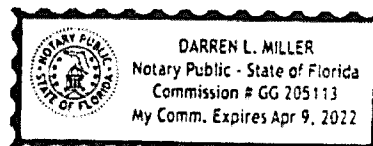


EXHIBIT A

Legal Description and Survey of the Property

AREA-FIVE

A portion of Section 32, Township 15 South, Range 32 East, Volusia County, Florida, being more particularly described as follows:

As a Point of Reference, commence at 4" x 4" concrete monument marking the Northeast corner of said Section 29, being also the Northwest corner of said Section 28; thence run North 89°31'30" East, along the North line of said Section 28, a distance of 670.56 feet to an intersection with the Easterly line of the City of Daytona Beach Sewage Treatment Plant, as described in Official Records Book 1875, Page 1551, of the Public Records of Volusia County, Florida; thence, departing said Section line, run South 00°37'36" East, along the East line of said City of Daytona Beach Sewage Treatment Plant, a distance of 1,719.32 feet to the Southeasterly corner thereof; thence run South 89°33'36" West, along the South line of said City of Daytona Beach Sewage Treatment Plant, a distance of 2,000.46 feet to the Southwesterly corner thereof, said point also lying on the Easterly line of the City of Daytona Beach Municipal Stadium property; as described In Official Records Book 2918, Page 767, of the Public Records of Volusia County, Florida; thence run South 00°38'29" East, along the Easterly line of said City of Daytona Beach Municipal Stadium property, a distance of 1,285.90 feet to the Southeasterly corner thereof; thence run South 89°53'48" West, along the South line of said City of Daytona Beach Municipal Stadium property, a distance of 656.00 feet to a point therein; thence, departing said South line of the City of Daytona Beach Municipal Stadium property, run South 02°24'26" West, a distance of 77.53 feet; thence run South 10°43'12" West, a distance of 85.00 feet; thence run South 77°38'06" West, a distance of 12.85 feet; thence run South 01°44'48" East, a distance of 16.64 feet to an intersection with a non-tangent curve, concave Easterly, the radius point of which bears South 87°50'47" East thence run Southerly and Easterly, along said curved line, having a radius of 3,054.93 feet, an arc distance of 2,048.37 feet, a central angle of 38°25'03", a chord distance of 2,010.21 feet and a chord bearing of South 17°03'19" East to an intersection with a non-tangent curve, concave Easterly, the radius point of which bears North 69°36'01" East; thence run Southerly and Easterly, along said curved line, having a radius of 2,687.93 feet, an arc distance of 838.63 feet, a central angle of 17°52'34", a chord distance of 835.23 feet, and a chord bearing of South 29°18'16" East to a non-tangent point on said curve; thence run South 41°12'10" East, a distance of 375.12 feet to the POINT OF BEGINNING of this description; thence run South 41°12'10" East a distance of 102.19 feet; thence run South 42°57'21" East, a distance of 90.60 feet; thence run South 38°53'10" East, a distance of 849.95 feet; thence run South 50°57'15" West a distance of 747.46 feet to an intersection with the Easterly right-of-way line of the 200-foot wide right-of-way of LPGA Boulevard (formerly the Eleventh Street Extension) as shown on the State of Florida Department of Transportation right-of-way map, Section 79507-2602, revision dated October 29, 1974; thence run North 39°02'45" West along said Easterly right-of-way line, a distance of 836.97 feet; thence, departing said Easterly right-of-way line, run North 19°26'15" East, a distance of 41.66 feet; thence run North 41°54'39" East, a distance of 61.80 feet; thence run North 02°01'34" West, a

distance of 83.30 feet; thence run North 66°57'31" East, a distance of 39.71 feet; thence run North 01°25'10" East, a distance of 83.00 feet; thence run North 30°43'16" West, a distance of 59.45 feet; thence run North 28°34'27" East, a distance of 81.56 feet; thence run South 52°49'14" East, a distance of 64.72 feet; thence run North 32°25'59" East, a distance of 46.64 feet; thence run North 48°47'50" East a distance of 357.67 feet to the POINT OF BEGINNING of this description, said parcel containing 17.07 acres, more or less, said parcel being subject to any other easements or rights-of-way of record.

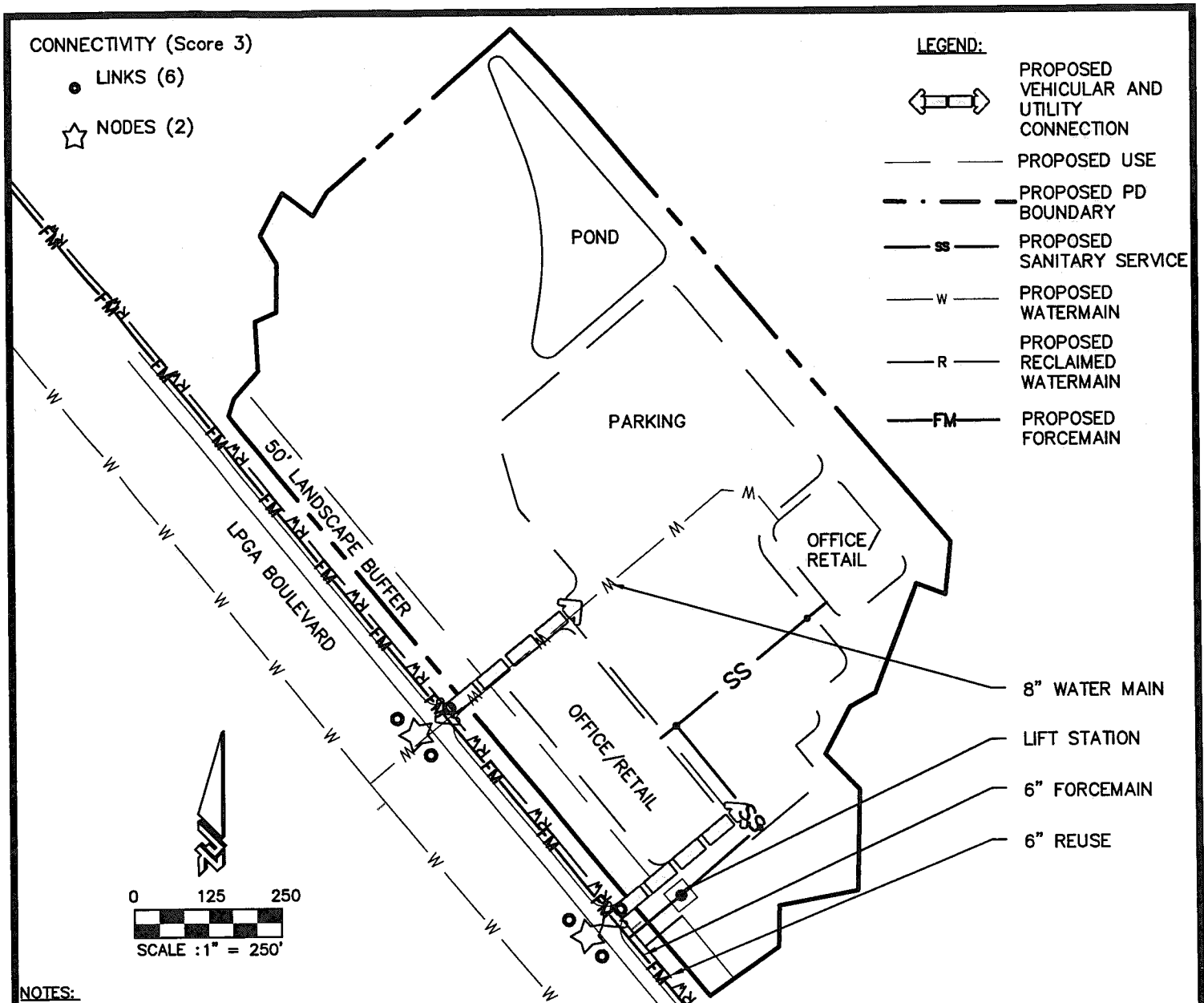
AREA-SIX

A portion of Section 32, Township 15 South, Range 32 East, Volusia County, Florida, being more particularly described as follows: As a Point of Reference, commence at 4" x 4" concrete monument marking the Northeast corner of said Section 29, being also the Northwest corner of said Section 28; thence run North 89°31'30" East, along the North line of said Section 28, a distance of 670.56 feet to an intersection with the Easterly line of the City of Daytona Beach Sewage Treatment Plant as described in Official Records Book 1875, Page 1551, of the Public Records of Volusia County, Florida; thence, departing said Section line, run South 00°37'36" East, along the East line of said City of Daytona Beach Sewage Treatment Plant, a distance of 1,719.32 feet to the Southeasterly corner thereof; thence run South 89°33'36" West, along the South line of said City of Daytona Beach Sewage Treatment Plant, a distance of 2,000.46 feet to the Southwesterly corner thereof, said point also lying on the Easterly line of the City of Daytona Beach Municipal Stadium property, as described in Official Records Book 2918, Page 767, of the Public Records of Volusia County, Florida; thence run South 00°38'29" East, along the Easterly line of said City of Daytona Beach Municipal Stadium property, a distance of 1,285.90 feet to the Southeasterly corner thereof; thence run South 89°53'48" West, along the South line of said City of Daytona Beach Municipal Stadium property, a distance of 656.00 feet to a point therein; thence, departing said South line of the City of Daytona Beach Municipal Stadium property, run South 02°24'26" West, a distance of 77.53 feet; thence run South 10°43'12" West, a distance of 85.00 feet; thence run South 77°38'06" West, a distance of 12.85 feet; thence run South 01°44'48" East, a distance of 16.64 feet to an intersection with a non-tangent curve, concave Easterly, the radius point of which bears South 87°50'47" East; thence run Southerly and Easterly, along said curved line, having a radius of 3,054.93 feet, an arc distance of 2,046.37 feet; a central angle of 38°25'03", a chord distance of 2,010.21 feet and a chord bearing of South 17°03'19" East to an Intersection with a non-tangent curve; concave Easterly, the radius point of which bears North 69°38'01" East; thence run Southerly and Easterly, along said curved line, having a radius of 2,687.93 feet, an arc distance of 838.63 feet, a central angle of 17°52'34", a chord distance of 835.23 feet, and a chord bearing of South 29°18'16" East to a non-tangent point on said curve thence run South 41°12'10" East, a distance of 477.31 feet; thence run South 42°57'21" East, a distance of 90.60 feet; thence run South 38°53'10" East, a distance of 849.95 feet to the POINT OF BEGINNING of this description; thence continue South 38°53'10"

East, a distance of 164.77 feet; thence run South 05°55'19" West a distance of 90.12 feet;
thence run North 68°38'44" West a distance of 52.00 feet; thence run South 20°47'17" West a distance of 195.77 feet; thence run South 61°12'34" West a distance of 48.05 feet; thence run South 27°46'41" West a distance of 90.36 feet thence run South 43°58'56" East a distance of 81.86 feet; thence run South 01°24'56" West a distance of 170.46 feet; thence run South 79°13'28" West a distance of 135.03 feet; thence run South 01°44'14" West a distance of 69.46 feet; thence run South 54°52'56" West a distance of 90.39 feet to an intersection with the Easterly right-of-way line of the 200-foot wide right-of way of LPGA Boulevard (formerly the Eleventh Street Extension) as shown on the State of Florida Department of Transportation right-of-way map, Section 79507-2602, revision dated October 29, 1974; thence run North 39°02'45" West, along said Easterly right-of-way line, a distance of 502.39 feet; thence, departing said Easterly right-of-way line, run North 50°57'15" East, a distance of 747.46 feet to the POINT OF BEGINNING of this description, said parcel containing 6.15 acres, more or less, said parcel being subject to any other easements or rights-of-way of record.

EXHIBIT B

Planned Development Plan



1. EXISTING MUNICIPAL STORMWATER SYSTEMS TO BE MODIFIED IN ACCORDANCE WITH LDC.
2. ALL EXISTING DRAINAGE PATTERNS OF OFF-SITE PROPERTIES SHALL BE MAINTAINED OR ACCOMMODATED WITHIN THE PROPOSED STORMWATER MANAGEMENT SYSTEM.
3. ALL APPLICABLE FEDERAL AND STATE PERMITS SHALL BE OBTAINED.
4. ANY EXISTING OR PROPOSED UTILITIES TO BE PUBLIC SHALL BE LOCATED WITHIN AN EASEMENT OR PUBLIC RIGHT-OF-WAY.
5. STORMWATER AND UTILITY CONNECTIONS POINTS AND SIZES TO BE DETERMINED WITH SITE DESIGN. ACTUAL LOCATIONS AND SIZES SHOWN ARE CONCEPTUAL.
6. WATER AND SEWER SERVICE SHALL BE PROVIDED BY THE CITY OF DAYTONA BEACH. ALL UTILITIES SHALL BE CONSTRUCTED UNDERGROUND BY THE DEVELOPER/PROPERTY OWNER AT NO COST TO THE CITY. THE DEVELOPER/PROPERTY OWNER WILL ALSO PROVIDE EASEMENTS AND GRANTS FOR THE INSTALLATION, MAINTENANCE AND UPKEEP OF THE PUBLIC UTILITIES INCLUDING WATER, SEWER, RECLAIM WATER, ELECTRICAL AND TELEPHONE, AS WELL AS CABLE TELEVISION AND FIBER, IF AVAILABLE. WATER, SEWER RECLAIM WATER INFRASTRUCTURE MUST BE CONSTRUCTED TO CURRENT CITY STANDARDS AND CONSISTENT WITH THIS AGREEMENT. TO THE EXTENT THAT UTILITIES ARE NOT CURRENTLY AVAILABLE ON SITE, THE DEVELOPER/PROPERTY OWNER SHALL EXTEND UTILITIES LINES TO SERVE THE DEVELOPMENT AS REQUIRED BY THE LDC. OFF-SITE UTILITY INFRASTRUCTURE IMPROVEMENTS TO SUPPORT THE PROJECT WILL BE REVIEWED AT THE TIME OF FINAL SITE PLAN APPROVAL.

20041

PROJECT ZETA

PD-G

EXHIBIT

6/17/2021

CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE
ENVIRONMENTAL
PLANNING
TRANSPORTATION

(EB 4516)

(LC 62)

CITY OF DAYTONA BEACH

VOLUSIA COUNTY, FL

ZEV COHEN
& ASSOCIATES, INC.
300 INTERCHANGE BLVD., STE. C
ORMOND BEACH, FL 32174
WWW.ZEVCOHEN.COM