

RESOLUTION NO. 2013-11

A RESOLUTION OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA RELATING TO THE REQUEST TO EXTEND THE DATE FOR RELATING TO THE PROPERTY WHICH IS THE SUBJECT OF THE PENDING LITIGATION ASSIGNED CASE NUMBER 2011-32508-CICI, IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA; PROVIDING FOR LEGISLATIVE FINDINGS; PROVIDING FOR AN EXTENSION OF A DATE FOR PERFORMANCE OF CERTAIN ACTIONS BY THE OWNER OF THE PROPERTY WHICH IS THE SUBJECT OF THE LITIGATION; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Daytona Beach Shores initiated nuisance abatement litigation with regard to a matter assigned Case Number 2011-32508-CICI which litigation is pending in the Circuit Court, Seventh Judicial Circuit, in and for Volusia County, Florida, relating to that property that was formerly the Treasure Island resort property (hereinafter the “subject property”); and

WHEREAS, the action by the City Council took place after resolution of a lengthy and complex bankruptcy proceeding in the United States Court System relative to the subject property as well as litigation involving a determination as to what party would be the owner of the subject property; and

WHEREAS, once ownership was established as to the subject property and, after the City-initiated litigation was commenced, the City and the owner of the subject property negotiated, mediated and otherwise communicated, in diverse ways relative to the issues at hand and which are the subject of the litigation; and

WHEREAS, ultimately the City and the owner of the subject property determined to enter an agreement in a good faith attempt to resolve the litigation and the underlying issues relating to the litigation and the subject property; and

WHEREAS, the purpose of the agreement between the City and the owner of the subject property was to settle many of the issues and matters involved in the pending litigation and with regard to the condition of the subject property; and

WHEREAS, the agreement between the City and owner of the subject property provided for applicable time frames for necessary actions to be taken; and

WHEREAS, the owner of the subject property has requested that a time frame for compliance be extended in a process that was anticipated in the terms and conditions of the agreement between the City and owner of the subject property; and

WHEREAS, the City Council has determined that the granting of an extension for a reasonable period would be appropriate subject to the conditions set forth in this Resolution.

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

SECTION ONE. LEGISLATIVE FINDINGS.

- (a). The City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing this Resolution.
- (b). The City staff agenda memorandum relating to this Resolution is adopted herein by this reference thereto as additional findings of the City Council of the City of Daytona Beach Shores.
- (c). The foregoing recitals (whereas clauses) are hereby adopted as the legislative findings of the City Council of the City of Daytona Beach Shores and are incorporated into this Resolution as if set forth *in haec verba*.

SECTION TWO. ACTION OF CITY COUNCIL RELATING TO REQUEST FOR EXTENSION.

- (a). The owner of the subject property has requested a six (6) month extension from the end of the initial “Rehabilitative Compliance Period” as set forth in the agreement between the City and the owner of the subject property. The initial period for compliance terminated on or about May 24, 2013 thereby necessitating action as not all work that was required with regard to the subject property had been completed.
- (b). The City Council has determined that a reasonable extension to the “Rehabilitative Compliance Period” should be granted due to that which appears to be the good faith efforts of the owner of the subject property and the City’s commitment to consider a reasonable extension of up to six (6) months if good faith and bona fide progress was being made with regard to the subject property, but the City Council has also determined that cognizance should be afforded to the fact that the hurricane season is in effect and will continue to have potentially heightening impacts as the Summer months proceed into the Fall season.
- (c). Based upon a holistic evaluation of the circumstances, the City Council has determined to grant, in part, the owner’s of the subject property request and to extend the “Rehabilitative Compliance Period” as set forth in the aforereferenced agreement until July 24, 2013. The owner of the subject property must be in full compliance with its obligations under the agreement between said owner and the City by the extended date or the City Manager and City Attorney are hereby granted full and plenary authority to re-commence the pending litigation to attain the nuisance abatement that is necessary to protect the public health, safety and welfare.
- (d). As an alternative to the re-commencement of the pending litigation to attain the nuisance abatement by the end of the extended “Rehabilitative Compliance Period” (July 24, 2013); the City Manager and City Attorney may negotiate, and bring to the City Council for

consideration of approval or denial, a proposed development agreement that incorporates full mitigation and amelioration of all matters involved in the nuisance abatement action and a firm plan of development for the subject property.

SECTION THREE. IMPLEMENTING ADMINISTRATIVE ACTIONS.

(a). The City Manager and City Attorney are hereby authorized to take any and all necessary administrative and legal actions that they deem necessary and appropriate in order to implement the provisions of this Resolution.

(b). The City Manager may delegate implementing administrative authority to implement the provisions of this Resolution as deemed appropriate.

SECTION FOUR. SAVINGS. The prior actions of the City of Daytona Beach Shores relating to subject property and any and all related actions and activities are hereby ratified and affirmed.

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

SECTION SIX. 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 SEVEN. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

CITY OF DAYTONA BEACH SHORES, FLORIDA

By: _____
Mayor, Harry Jennings

ATTEST:

By: _____
Michael T. Booker, City Manager

Cheri Schwab, City Clerk

APPROVED AS TO FORM AND LEGALITY:

By: _____
Lonnie Groot, City Attorney

Passed and adopted on first reading this _____ day of _____, 2013.

Posted this _____ day of _____, 2013.