



**PLANNING AND ZONING BOARD
Council Chambers
3000 Bellemead Drive
Daytona Beach Shores, Florida
Monday, January 14, 2019
8:30 a.m.
AGENDA**

CALL TO ORDER

AUDIENCE REMARKS:

Time for citizens and members of the audience to be heard with regard to items not on the agenda. The audience will be given the opportunity to speak regarding agenda topics prior to each vote before the Planning and Zoning Board.

APPROVAL OF MINUTES: Minutes of Planning and Zoning Board Meeting of
December 10, 2018

PUBLIC HEARING: Development Agreement Application DA 12018033
Daytona Beach Drive-In Christian Church

ACTION/DISCUSSION:

REMARKS OF STAFF

REMARKS OF BOARD MEMBERS

ADJOURNMENT

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



PLANNING AND ZONING BOARD
Minutes
3000 Bellemead Drive Daytona Beach Shores, Florida
Monday, December 10, 2018

Present: Harold Needham, Marianne Bachstein, Rose Ann Tornatore, and John Schmitz.
Staff: Board Attorney Lonnie Groot, City Planner Stewart Cruz and Community Services Director Fred Hiatt.

The Chair called the meeting to order at 8:30 am.

AUDIENCE REMARKS: None.

APPROVAL OF MINUTES: Minutes of Planning and Zoning Board Meeting of
October 8, 2018

Mr. Schmitz moved, seconded by Mr. Needham to approve the minutes of October 8, 2018. The motion passed unanimously by a voice vote.

PUBLIC HEARING:

**1) Proposed Future Land Use Map Amendment -
CPA 12018015**

City Planner Stewart Cruz read from his staff report. It was noted that all due public notice requirements had been met. The property had recently been annexed from the County of Volusia on November 13, 2018. It is a single-family residence and there are no plans in the future to change the density. This step is part of the formal process after a property has been annexed. Staff recommended approval to the City Council.

Mr. Schmitz moved, seconded by Ms. Bachstein to recommend approval of CPA 12018015 to the City Council. The motion passed unanimously by a roll call vote.

**2) Rezoning Application RZ12018016 – 3036 S. Peninsula
Drive**

City Planner Stewart Cruz read from his staff report. It is the same property as the item above. It was noted that all due public notice requirements had been met. The proposed zoning change from the county's R-3 Urban Single-family Residential District to the city's

RSF-2 Urban Single-family Residential Detached District is part of the formal process and is an administrative procedure. Staff recommended approval to the City Council.

Mr. Schmitz moved, seconded by Mr. Needham to recommend approval of Rezoning RZ12018016 to the City Council. The motion passed unanimously by a roll call vote.

ACTION/DISCUSSION: None.

REMARKS OF STAFF: None.

REMARKS OF BOARD MEMBERS: None.

ADJOURNMENT : The meeting ended at 8:35 am.

ATTEST:

CITY OF DAYTONA BEACH SHORES

Cheri Schwab, City Clerk

Rose Ann Tornatore, Chairman



**STAFF REPORT FOR THE
PLANNING AND ZONING BOARD
JANUARY 14, 2019**

ORDINANCE NO:	Ord. 2019-XX
SUBJECT:	Development Agreement Application DA12018033
LOCATION:	3140 S. Atlantic Avenue (Short Parcel ID 5334-00-02-0320)
OWNER/APPLICANT:	Daytona Beach Drive-In Christian Church, Inc.
STAFF CONTACT:	Stewart Cruz, City Planner – (Tel.) 386.763.5377
REQUEST:	Approval of Ordinance 2019-XX, which would approve the proposed Daytona Beach Drive-In Christian Church, Inc. – Daytona Beach Shores Development Agreement permitting the construction of a new fellowship hall/office building on site.
RECOMMENDATION:	Approval

A. BACKGROUND

On December 6, 2018 owner/applicant Daytona Beach Drive-In Christian Church, Inc., submitted development agreement application DA12018033, which is a proposed land use contract between the property owner and the City of Daytona Beach Shores. The agreement would facilitate the construction of a 6,470 square feet fellowship hall/office building and redevelopment of the site in a way that would preserve the unique historic character of the drive-in church. Section 7 of the agreement outlines three (3) deviations from the Daytona Beach Shores Land Development Code (LDC) development standards while Section 4 lists the public benefits provided to the community at large. *If adopted, Ordinance 2019-XX would approve development agreement DA12018033 as described above.*

B. AUTHORIZATION OF DEVELOPMENT AGREEMENT

The City Council, in its sole and exclusive discretion, may enter into development agreements with the legal and equitable owners of real property within, or properties to be annexed to the City limits of the City of Daytona Beach Shores, as authorized in Sections 163.3220 through 163.3243, *Florida Statutes*, as it may be amended from time-to-time. Deviations from the provisions of the City's land development regulations may be granted as part of an approval of a development agreement when the City Council finds that such approval will result in creative planning strategies and the implementation of development approvals that enhance benefits to the public while ensuring that private property rights are protected. The City Council may also determine that vested rights have been established as to a parcel of property in the context of approving a development agreement.

C. DEVELOPMENT AGREEMENT REVIEW REQUIREMENTS

Pursuant to Sec. 15-4 of the LDC entitled “Development Agreement Content,” the proposed development agreement was evaluated to determine content consistency. The table below provides an analysis of the aforementioned.

Development Agreement Content Analysis

ID	Development Agreement Content Requirement	Requirement Met
1	Legal Description and Ownership	Yes-Exhibit A
2	Duration of Agreement	Yes-Sec. 23.b
3	Development Uses Permitted	Yes-Sec. 4.a.1
4	Documents required to comply with criteria cited in LDC	Yes-on file
5	Description of Public Facilities servicing the development; schedule	Yes- Sec. 4.a.3
6	Instrument to secure construction of new public facilities	NA
7	A description of any reservation or dedication of land for public purposes.	NA
8	Conveyance of land to the City in discharge of the obligation of any impact fee or other similar obligation.	NA
9	Description of all development permits approved or needed to be approved for the development of the land, which description shall specifically include, but not be limited to, the following:	Yes-Sec. 4.a.6
	Any required Comprehensive Plan amendments or changes in land use designations or changes in zoning classifications/districts assigned to property.	NA
	Notation of any required submissions to or approvals from any agencies with competent jurisdiction over any aspect of the proposed development.	Yes-Sec. 4.a.6
10	(a) Consistency with the City's Comprehensive Plan and the general purpose and intent of the land development regulations of the City. (b) If amendments are required to the Comprehensive Plan or land development regulations, such amendments shall be specifically identified.	(a) Yes-Sec. 1 (b) NA
11	A statement indicating compliance with law.	Yes-Sec. 15
12	A finding that the terms and conditions of the development agreement benefit the public interest.	Yes-Sec. 1
13	A description of any LDC deviations that have been granted.	Yes-Sec. 4.a.4
14	A description of any vested rights in the property.	NA

As seen in the table above, all applicable standards required in the development agreement are included accordingly.

D. DEVELOPMENT AGREEMENT NOTICE REQUIREMENTS

The development agreement was noticed pursuant to Sec. 15-6 “Noticing Requirements” of the LDC.

E. REVIEW AND COMMENTS

(1) DEVELOPMENT PROPOSAL

The development site is located at 3140 S. Atlantic Avenue (see Figure 1 below). The applicant/owner is seeking to construct a one-story 6,470 square feet fellowship hall/office building at the location in question (see Exhibit B-Development Agreement).

Figure 1: Aerial View Development Site



Source: CONNECTExplorer, 2019

According to the concept plan, the site will maintain access from both S. Atlantic Avenue and S. Peninsula Drive. Fire Department access and handicap parking spaces will be provided as required by controlling law.

(2) VARIANCES

No variances are anticipated to be associated with this project. Inconsistencies with the LDC are being addressed through the deviation process of the subject development agreement. It should be noted if the owner/applicant elected to address the above issues via the variance process, the

public benefits noted in Section 4 of the agreement and seen in the table below may not have been offered to the community.

(3) STAFF AND BOARD REVIEW

COMMUNITY SERVICES – Fred Hiatt, Director / Building Official

The Director has reviewed the development agreement and his comments have been addressed.

PUBLIC WORKS – Brian Edwards, Deputy Director / Facilities Superintendent

The Facilities Superintendent has reviewed the development agreement and did not have any comments.

PUBLIC SAFETY – Terry Griffiths, Commander / Fire Marshal

The Commander has reviewed the development agreement and his comments have been addressed.

ENGINEERING – Burl Reardon, P.E. - Tetra Tech HAI

Engineering review is not required at this time but will be conducted during the site plan process.

BEAUTIFICATION ADVISORY BOARD

Beautification Advisory Board review is not required at this time but will be conducted during the site plan process.

PLANNING AND ZONING BOARD

On January 14, 2019 the Daytona Beach Shores Planning and Zoning Board provided a courtesy review of the subject proposed development agreement pursuant to Sec. 14-63 of the LDC.

(4) PUBLIC PURPOSE/BENEFITS & LAND DEVELOPMENT CODE DEVIATIONS

DA Reference No.	Public Purposes/Benefits Provided by Owner	Deviations from the Land Development Code to allow:
Sec. 4.a.4.A	Significant open space beyond LDC requirements. Note: <i>Green area requirement in the “P” District is 0%; the proposed plan provides for ~95% green area.</i>	
Sec. 4.a.4.B	Significant amount of pervious land. Note: <i>additional pervious land provides open space and environmental and stormwater benefits.</i>	
Sec. 4.a.4.C	Staging drive-in movie nights as part of the City’s culture and entertainment programs. Note: <i>movie nights provide recreational and economic benefits to the community.</i>	

Sec. 4.a.4.D	Construction of commemorative signage on site recognizing the historical value of drive-in theater sites in Florida. Note: <i>Only 10 drive-in movie theater movie sites remain in Florida.</i>	
Sec. 4.a.7.A		Maintain existing grassed off-street parking. Note: <i>Required off-street parking are to be surfaced with impervious treatment (e.g., asphalt, concrete, pavers, etc.) pursuant to Sec. 14-48.1. LDC.</i>
Sec. 4.a.7.B		Exceed the maximum 70% lawn coverage requirement pursuant to Sec. 14-46.4 LDC.
Sec. 4.a.7.C		Non-compliance with landscape design requirements (Sec. 14-46.5 LDC). Note: <i>Among other things, the aforementioned section requires terminal and interior landscape islands at the end of each parking row, reinforced concrete curbing, etc.</i>

As seen in the table above, owner/applicant will provide four (4) additional public benefits to the City and community of Daytona Beach Shores. These contributions are not required by the City’s LDC and would be provided voluntarily by the owner. In addition, as noted in the table above, the conceptual site plan shows a need for three (3) deviations from the City’s LDC. These deviations are not harmful or injurious to the development or surrounding neighborhood and are only required so that the applicant/owner would have the ability to maintain the historic drive-in character of the church.

F. FINDINGS

(1) CONSISTENCY WITH THE COMPREHENSIVE PLAN UPDATE 2030

According to the City’s Adopted Comprehensive Plan (2030) Future Land Use Map, the future land use (FLU) classification of the subject property is Public/Quasi Public and Tourist Oriented Commercial. Said FLU classification allows public/quasi-public uses such as the proposed fellowship hall/office development. Therefore, the proposed development is consistent with the City’s Adopted Comprehensive Plan (2030) and the designated FLU classification.

(2) CONSISTENCY WITH THE LAND DEVELOPMENT CODE

The subject property is zoned “P Public/Quasi Public” District. The proposed fellowship hall/office development serves an established church, which is listed as a permitted use in the “P” District pursuant to Sec. 14-26 of the City’s LDC. While the “P” District does not contain specific dimensional and intensity standards for development, there are parking and landscape regulations that do not meet applicable zoning regulations in the LDC. If the development agreement is approved, it will permit deviations from the aforementioned regulations as permitted under controlling law.

(3) REQUIRED AMENDMENTS TO THE COMPREHENSIVE PLAN AND/OR LAND DEVELOPMENT CODE

There are no required amendments to the City's adopted Comprehensive Plan and/or the City's Land Development Code necessary for the project to be approved.

G. STAFF RECOMMENDATION

Staff recommends approval of Ordinance 2019-XX.

ORDINANCE 2019-XX

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA ENACTING A STATUTORY DEVELOPMENT AGREEMENT RELATING TO THE PROPERTY OWNED BY DAYTONA BEACH DRIVE-IN CHRISTIAN CHURCH, INC. AND GENERALLY LOCATED AT 3140 SOUTH ATLANTIC AVENUE IN ACCORDANCE WITH THE PROVISIONS OF THE “FLORIDA LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT” AS SET FORTH AT SECTIONS 163.3220 - 163.3243, *FLORIDA STATUTES*; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR NON-CODIFICATION AND IMPLEMENTATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, upon application by Daytona Beach Drive-In Christian Church, Inc., the City of Daytona Beach Shores has considered and processed and the City Council of the City of Daytona Beach Shores has approved an enacted a Development Agreement, as set forth in the Exhibit to this Ordinance (which Exhibit is incorporated herein by this reference thereto as if fully set forth herein verbatim), pursuant to the *Florida Local Government Development Agreement Act* as set forth at Sections 163.3220 through 163.3243, *Florida Statutes*; 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, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:

SECTION ONE: FINDINGS.

The findings of the Development Agreement between the City of Daytona Beach Shores and Daytona Beach Drive-In Christian Church, Inc., as set forth in the Exhibit to this Ordinance, are hereby ratified and affirmed.

SECTION TWO: APPROVAL AND ENACTMENT OF DEVELOPMENT AGREEMENT.

The Development Agreement between the City of Daytona Beach Shores and Daytona Beach Drive-In Christian Church, Inc., as set forth in the Exhibit to this Ordinance, is hereby approved and enacted.

SECTION THREE: SAVINGS. The prior actions of the City of Daytona Beach Shores relating to the regulation of lands and development activities within the City including, but not limited to, the property which is the subject of the Development Agreement between the City of Daytona

Beach Shores and Daytona Beach Drive-In Christian Church, Inc., as set forth in the Exhibit to this Ordinance, are hereby ratified and affirmed.

SECTION FOUR: NON-CODIFICATION AND IMPLEMENTATION.

(a). The provisions of this Ordinance shall not be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida*.

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

SECTION FIVE: CONFLICTS. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

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

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

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY J. MILLER, MAYOR

MICHAEL T. BOOKER, CITY MANAGER

CHERI SCHWAB, CITY CLERK

Approved as to form and legality:

LONNIE GROOT, CITY ATTORNEY

Passed on first reading this _____ day of _____, 2019.

Adopted on second reading this _____ day of _____, 2019.

This Instrument Prepared By:

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

Return To:

Ms. Cheri Schwab
City Clerk
2990 South Atlantic Avenue
Daytona Beach Shores, Florida 32118
Tax Parcel Identification Number: 533400020320

**DAYTONA BEACH DRIVE-IN CHRISTIAN CHURCH, INC./CITY OF
DAYTONA BEACH SHORES DEVELOPMENT AGREEMENT PERTAINING TO
RE-DEVELOPMENT OF 3140 SOUTH ATLANTIC AVENUE PROPERTY**

THIS DEVELOPMENT AGREEMENT is made and entered into on the Effective Date described below, between DAYTONA BEACH DRIVE-IN CHRISTIAN CHURCH, INC., a Florida non-profit corporation, registered and authorized to conduct business in the State of Florida, whose address is 3140 South Atlantic Avenue, Daytona Beach Shores, Florida 32118, the legal and equitable owner, hereinafter referred to as the "PROPERTY OWNER", and the City of Daytona Beach Shores, Florida, a municipal corporation of the State of Florida, (the "PROPERTY OWNER"), holding tax exempt status, whose mailing address is 2990 South Atlantic Avenue, Daytona Beach Shores, Florida 32118, hereinafter referred to as "CITY".

WITNESSETH:

WHEREAS, the PROPERTY OWNER is the owner of real property located at 3140 South Atlantic Avenue in Daytona Beach Shores (Exhibit "A") (referred to from time to time as the "premises" in this Development Agreement and which is the subject of the conceptual site plan referenced herein and attached as Exhibit B to this Development Agreement); and

WHEREAS, the PROPERTY OWNER and the CITY have a great interest in developing and re-developing active and vibrant public/quasi public uses on the premises and to benefit the economy and well-being of the CITY as a general matter; and

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, the PROPERTY OWNER and the CITY have complied with all requirements and procedures of Florida law in processing and advertising this Development Agreement; and

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

NOW, THEREFORE, in consideration of the foregoing, and the premises and the promises, covenants and agreements herein contained, and of other good and valuable consideration, the receipt and sufficiency of which 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 OWNER hereby designates, and the CITY hereby accepts, the following described tract of real property as the legal description for the premises for the purposes of this Development Agreement:

(LEGAL DESCRIPTION) – See attached “Exhibit “A” to this Development Agreement.

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

SECTION 3. SITE PLAN FOR DEVELOPMENT.

The attached conceptual site plan for development of the premises (Exhibit “B”) is hereby approved by the terms and conditions of this Development Agreement.

SECTION 4. 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:

(1). The development uses, including off-street parking, driveways and landscaping, as set forth on the conceptual site plan approved in Section 3 of this Development Agreement and attached as an exhibit to this Development Agreement.

(2). The development uses, including off-street parking, driveways and landscaping, as set forth on the conceptual site plan attached as an exhibit to this Development Agreement and approved in Section 3 of this Development Agreement comply with criteria for development approved in this Development Agreement and the applicable provisions cited in the land development regulations of the CITY applicable to the development project on the premises.

(3). The public facilities that will service the development of the premises shall continue as the premises are currently served although sewer service from the City of Daytona Beach Shores may be provided in lieu of the services being provided by the City of Port Orange as determined by the CITY. All necessary public facilities shall be available concurrent with the impacts of the development.

(4). The public purposes and benefits that are derived and provided by the development of the premises as set forth in this Development Agreement include the following:

(A). The PROPERTY OWNER's plan of development provides a significant amount of open space for the benefit of the CITY and its citizens.

(B). The PROPERTY OWNER's plan of development provides a significant amount of pervious land for the benefit of the CITY and its citizens.

(C). The PROPERTY OWNER agrees to collaborate with the CITY for the benefit of the CITY and its citizens with regard to staging drive in movie nights from time-to-time as part of the CITY's culture and entertainment programs.

(D). The PROPERTY OWNER shall construct commemorative signage on the premises, at a location and of a type, style and nature set forth on the on the conceptual site plan attached as an exhibit to this Development Agreement, to recognize the historical value of drive in theater sites in that in Florida only about 10 drive-in theaters remain according to sites such as driveinmovie.com which lists survivor drive in theaters being located in Dade City, Fort Lauderdale, Fort Myers, Jacksonville, Lakeland, Lake Worth, Naples, Ocala, Ruskin and Tampa.

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

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

(7). The following deviations that have been granted by the CITY with regard to the provisions of the CITY's land development regulations:

(A). The PROPERTY OWNER may maintain its existing grassed off-street parking area; provided, however, that the PROPERTY OWNER shall provide **four (4)** paved off-street parking spaces, constructed in accordance with the requirements of the *Americans with Disabilities Act*, as set forth on the on the conceptual site plan attached as an exhibit to this Development Agreement, all of which paved parking spaces shall comply with the requirements of the *Americans With Disabilities Act*.

(B). The PROPERTY OWNER shall not be required to comply with Section 14.46.4., Chapter 14, Appendix "G", *Land Development Code, Code of Ordinances of the City of Daytona Beach Shores*, relating to site development standards pertaining to the maximum 70% lawn coverage and 25% natural plant communities requirement; provided, however, that the PROPERTY OWNER shall provide lawn coverage and natural plant communities as depicted on the conceptual site plan attached as an exhibit to this Development Agreement

(C). The PROPERTY OWNER shall not be required to comply with Section 14.46.5., Chapter 14, Appendix "G", *Land Development Code, Code of Ordinances of the City of Daytona Beach Shores*, relating to landscape design standards; provided, however, that the PROPERTY OWNER shall provide landscaping as depicted on the conceptual site plan attached as an exhibit to this Development Agreement.

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

SECTION 5. REASONABLE APPROVAL.

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

SECTION 6. 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 7. TIME IS OF THE ESSENCE.

Time is of the essence of the lawful performance of the duties and obligations contained in this Development Agreement. The parties covenant and

agree that they shall diligently and expeditiously pursue their respective obligations set forth in this Development Agreement.

SECTION 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.

SECTION 12. PUBLIC RECORDS.

(a). 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.

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

SECTION 13. 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 14. 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 15. 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 16. NOTICES.

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

For the CITY:

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

For the PROPERTY OWNER:

Larry Nichols
Daytona Beach Drive-In Christian Church, Inc.
3140 South Atlantic Avenue
Daytona Beach Shores, Florida 32118

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

SECTION 19. 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 18. CONSTRUCTION OR INTERPRETATION OF THE DEVELOPMENT AGREEMENT.

This Development Agreement is the result of *bona fide* arms length

negotiations between the parties and all parties have contributed substantially and materially to the preparation of the Development Agreement. Accordingly, this Development Agreement shall not be construed or interpreted more strictly against either 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 19. ENTIRE DEVELOPMENT AGREEMENT/MODIFICATION.

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

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

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

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

SECTION 20. 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 21. ATTORNEYS FEES AND COSTS.

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

SECTION 22. 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 23. EFFECTIVE DATE/TERMINATION; PERIODIC REVIEW OF DEVELOPMENT AGREEMENT.

(a). This Development Agreement shall take effect on the date that this

Development Agreement is fully executed by the parties and is recorded in the Official Records (Land Records) of Volusia County, Florida.

(b). This Development Agreement shall be in effect for a period of thirty (30) years, but 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.

(c). Prior to the completion of the project and at the issuance of a certificate of occupancy 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 24. COUNTERPARTS.

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

SIGNATURE PAGES FOLLOW:

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

Attest:

CITY OF DAYTONA BEACH SHORES

Cheri Schwab, City Clerk

Nancy J. Miller, Mayor
Date: _____

Michael T. Booker, City Manager

Approved as to form and legality:

Lonnie Groot, City Attorney

ADDITIONAL SIGNATURE PAGE FOLLOWS:

Witnesses:

**PROPERTY OWNER/DAYTONA
BEACH DRIVE-IN CHRISTIAN
CHURCH, INC.**

Mike Witmer
Vice Chairman

By: _____
Larry Nichols
Chairman

Dawn Butrym
Secretary

Acknowledgment

State of Florida)

County of Volusia)

I Hereby Certify that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared Larry Nichols, Mike Witmer and Dawn Butrym, and they acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily and they are personally known to me or provided _____ as identification.

Witness my hand and official seal in the County and State last aforesaid this ___ day of _____, 2019.

(Affix Notary Seal)

Notary Public; State of Florida
Print name: _____