

STAFF REPORT

City of South Daytona Community Development Department

DATE: March 9, 2022

SUBJECT: 409 Big Tree, All Aboard Storage: PCD Rezoning

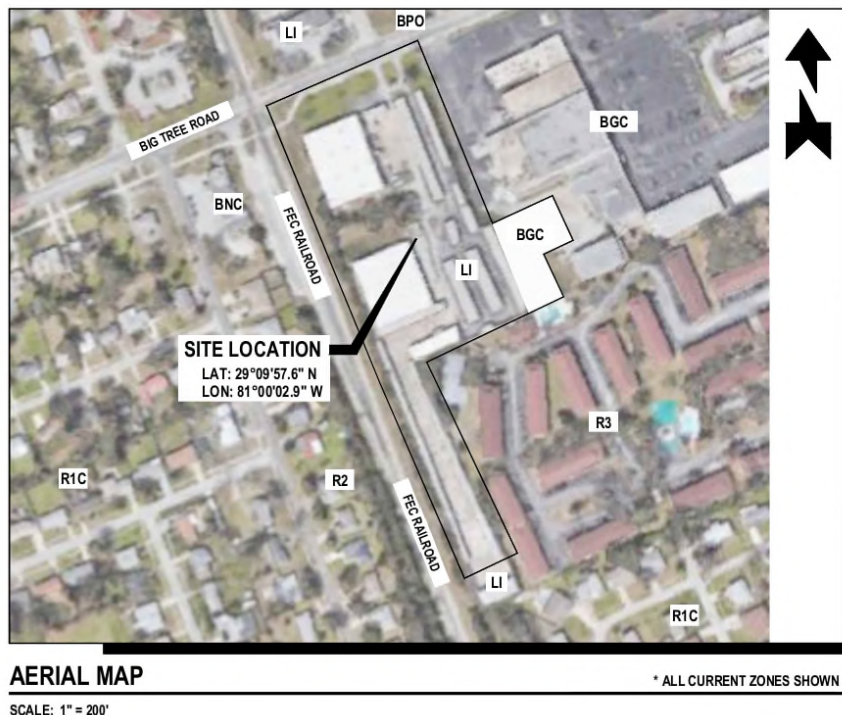
APPLICANT: Joey Posey, Storch Law Firm, authorized agent on behalf of the property owner, 409 Big Tree, LLC

NUMBER: RZ 2021-06

PROJECT PLANNER: S. Laureen Kornel, AICP, Community Development Director

INTRODUCTION: This is a request by Joey Posey, Storch Law Firm, authorized agent on behalf of the property owner, 409 Big Tree, LLC, for a rezoning BGC (Business General Commercial) and LI (Light Industrial) to (PCD) Planned Commercial Development and issuance of a development order at 409 Big Tree Road. The PCD rezoning seeks to allow the development of additional storage and office space including the addition of two buildings with associated site improvements to an already developed site consisting of 6.47 acres. The subject property is located at 409 Big Tree Road within the Community Redevelopment Area (Volusia County tax parcel numbers: 5344-16-00-0534, 5344-16-00-0546, 5344-16-00-0548, 5344-16-00-0532, and 5344-16-00-0547):

EXHIBIT 1: Project location.



BACKGROUND: The subject rezoning request consists of a total of five parcels as summarized in Exhibit 2 below.

EXHIBIT 2: Subject Property land use and zoning summary.

Short Parcel ID #	Land Use	Zoning
5344-16-00-0548	Light Industrial	Light Industrial
5344-16-00-0532	Light Industrial	Light Industrial
5344-16-00-0546	Light Industrial	Light Industrial
5344-16-00-0534	Light Industrial	Light Industrial
5344-16-00-0547	Commercial	Business General Commercial (BGC)

The property was likely integrated with the Big Tree Shopping Center at one time. Records indicate that the primary parcel (short parcel ID #5344-16-00-0532) was later created on December 30, 1981. According to property appraiser data, the site was developed in 1985 with mini warehouses and an office. The applicant has requested to add two buildings with associated site improvements.

As summarized above, the subject property consists of 5 separate parcels and two separate zoning classifications. Prior to any new development the City requires the properties be combined under one tax parcel identification number. In addition, the zoning is required to be consistent throughout the new parcel once aggregated. The rezoning request seeks to combine all five parcels and to rezone the LI and BGC zoning classifications to PCD in accordance with the attached Lot Combination Agreement between the applicant and the City (Attachment 1). Below is a zoning map and summary exhibit of the abutting uses of the subject properties:

EXHIBIT 3: Zoning Map.

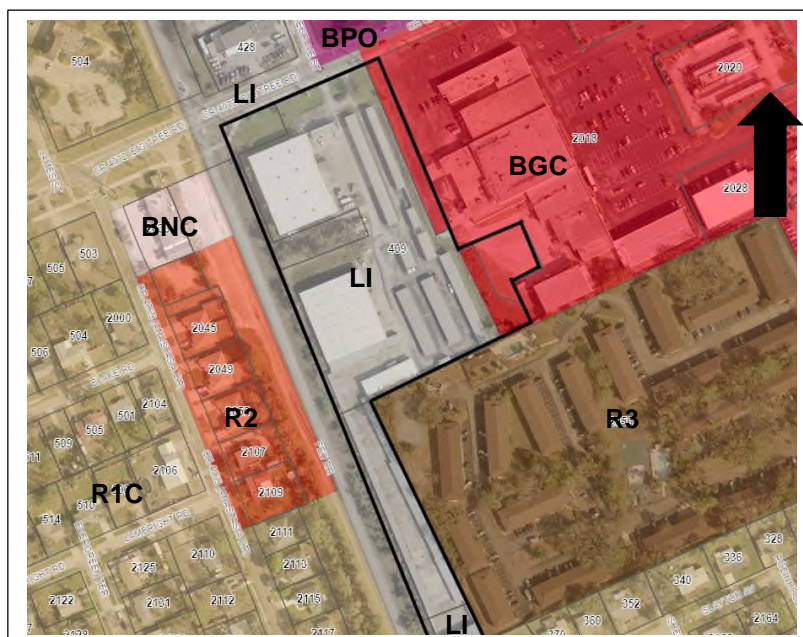


Exhibit 4: Abutting land use and zoning designations.

Land Use and Zoning Designations of Adjacent Properties			
	Current Land Use	Future Land Use Designation	Zoning Classification
North	Automotive Repair	"Light Industrial" and "Commercial"	L-I (Light Industrial) and BPO (Business Professional Office)
South	Multi-family	"Light Industrial" and "Residential Density 3"	LI (Light Industrial) and R-3 (Multiple family residential)
East	Commercial	"Commercial"	BGC (Business General Commercial)
West	Commercial and single-family	"Neighborhood Commercial", "Residential Density 3", and "Residential Density 2"	BNC (Neighborhood Business Commercial) and R-2 (Single Family, two-family residential) R1C (Single family residential)

ANALYSIS:

According to Article V., Section 5.5 of the Land Development Code the purpose and intent of the Planned Commercial Development zoning classification is to:

“provide for the development of integrated commercial projects, such as shopping centers, office parks and industrial parks, where conventional zoning and subdivision regulations are waived to encourage innovative site planning, and orderly and economical development of larger projects. Developments of this type should be encouraged to locate in those areas identified for major commercial or industrial development in the future land use plan...”

Project description: The applicant has provided a list of proposed uses, conceptual site and landscape plans and an elevation rendering as Exhibits to the proposed Master Development Agreement attached as Attachment 2 to this report. Below is a summary of the project:

1. Permitted Uses include only those already existing to the site including Storage and sales, Office and Warehousing (including mini-warehouses) (Exhibit B of the attached Master Development Agreement).
2. The rezoning of the property will include new development standards in accordance with the attached Master Development Agreement based on existing conditions that the newly combined property will comply with for the purpose of the proposed buildings and site improvements. These development standards will also apply in the future. In the event of any conflict between the Agreement and

the Land Development Code, the regulations of the of the Light Industrial (LI) Zoning District of the Land Development Code shall apply.

3. The property is a developed site with mini warehouses. The project proposes two additional warehouses (PR-1 – 3,320 SF and PR-2, 9,600 SF) along with associated site improvements (Exhibit “C” of the attached Master Development Agreement).
4. A landscape buffer shall be provided (Exhibit “C” of the attached Master Development Agreement). The buffer is required to be irrigated.
5. Any new building construction along Big Tree Road will be architecturally treated with non-metal building materials, such as wood, stucco, stone, brick, glass or masonry, and designated consistent with the elevation drawing (Exhibit “C” of the Master Development Agreement).

CRITERIA FOR APPROVAL: There are certain criteria that must be evaluated before a Planned Commercial Development amendment may be approved. According to Section 3.2(J) of the Land Development Code, the Planning and Appeals Board shall consider the following when making its decision:

1. That the use(s) of property is (are) consistent with the land development regulations and comprehensive plan.

The proposed rezoning is consistent with the Land Development Code and the Comprehensive Plan which states that the intent of the PCD is to provide for the integration of commercial and industrial parks. The PCD zoning classification is consistent with the Light Industrial land use designation of the Comprehensive Plan. The Comprehensive Plan directs industrial uses where transportation access is adequate and conflicts with other uses can be minimized (Future Land Use Objective 2). Policy 7.3 of the Future Land Use element requires compatibility with existing development and the provision of adequate buffering which the project proposes.

2. That the use(s) is (are) compatible with the adjacent existing or planned uses.

There are a mix of uses abutting the subject property. The site is already developed with an office and mini warehouses which directly abuts the Florida East Coast Railroad and acts as a buffer between the storage use and other adjoining uses. The additional proposed development of the site includes additional storage and office space and is consistent with the already developed site.

3. That the use provides adequate ingress/egress, parking, open space, and other amenities for the benefit of the users.

The site is already developed and has adequate ingress/egress for possible traffic increase due to additional storage square footage. The additional square footage proposed as part of the rezoning is not anticipated to increase traffic beyond full capacity.

4. That the use does not impair rights of other properties to light, air, sunlight, or other natural phenomena.

The site is already developed. The additional proposed square footage will be regulated through the Master Development Agreement and is considered minimal and is not anticipated to impair the rights of other properties to light, air, sunlight, other natural phenomena.

5. That the project meets or exceeds tests for concurrency management.

The site is already developed with only minimal additional square footage proposed. There are adequate public facilities to serve the development, including but not limited to schools, sewage disposal and potable water, stormwater drainage, fire and police protection, parks and recreation, solid waste. The property lies within a Transportation Concurrency Exception Area.

CONCLUSION:

The project is seeking a PCD to achieve a consistent zoning under one tax parcel identification number with the desire to add additional square footage for storage and an office. The benefits to the public are an enhanced landscaping buffer at the front of the property abutting the Big Tree Road right-of-way which will visually enhance the developed site. In addition, any new building construction facing the Big Tree Road right-of-way will be architecturally treated with non-metal materials. All future development of the subject property will be in accordance with the Light Industrial (LI) Zoning District unless otherwise stated in the Master Development Agreement. The project is expected to be presented to the City Council on April 12, 2022 (first reading) and again May 9, 2022 (final reading).

RECOMMENDATION:

Subject to the combining of all five parcels under one tax parcel identification number in accordance with the Lot Combination Agreement, it is recommended that the Planning and Appeals Board recommend **APPROVAL** of RZ 2021-06 to rezone 409 Big Tree Road from LI and BGC to PCD in accordance with the attached Master Development Agreement to allow the addition of two buildings with associated site improvements including buffering and architectural requirements for buildings fronting Big Tree Road.

Attachments:

Attachment 1: Lot Combination Agreement

Attachment 2: Master Development Agreement

ATTACHMENT 1

Lot Combination Agreement

Prepared by/Return to:
A. Joseph Posey, Esquire
420 S. Nova Road
Daytona Beach, FL 32114

LOT COMBINATION AGREEMENT

THIS LOT COMBINATION AGREEMENT (the "Agreement") is entered into on the date indicated below between 409 Big Tree, LLC, a Florida limited liability company (Owner), and the City of South Daytona, a municipality existing under the laws of the State of Florida (City).

WHEREAS, Owner is the current owner of the following described properties, sketches and descriptions of which are attached hereto as Exhibit A.

WHEREAS, the Owner desires to combine all the above-described properties into a single legal parcel with a sketch and legal description attached hereto as Exhibit B.

WHEREAS, the Owner's properties listed in Exhibit A are not the constitutional homestead of the Owner.

WHEREAS, as of the date of the Agreement none of the Owner's properties listed in Exhibit A have any mortgage or any other liens of record. Owner shall provide letter to the City from an attorney with an active Florida license indicating that a public search was performed, the date of the public search and that no mortgages or other liens of record exist on the properties listed in Exhibit A.

NOW, THEREFORE, in consideration of the premises and other valuable consideration, it is agreed as follows:

1. The recitals set forth above are incorporated herewith and made part hereof by reference thereto.
2. The properties listed in exhibit A are hereby legally combined into a single legal parcel identified in Exhibit B. All existing lot lines for the properties listed in Exhibit A are hereby eliminated and all said properties shall be considered a single parcel for all purposes.
3. This Agreement shall be recorded in Public Records of Volusia County, Florida, by the Owner, shall be considered a covenant running with the land and shall be binding on the Owner and the heirs and assigns of the Owner. The City shall have legally standing and authority to enforce this Agreement. In the event of any litigation related to this Agreement, the prevailing party shall be entitled to be reimbursed reasonable attorney fees and costs and venue shall be in State Court, Volusia County, Florida.
4. By executing below the City hereby approves combining all the separate parcels in Exhibit A into a single parcel identified in Exhibit B.

5. Within 5 days after the recording of this Agreement, Owner shall submit to the Volusia County Property Appraiser an application to combine the parcels specified in Exhibit "A" into the single parcel specified in Exhibit "B", shall diligently prosecute same to completion, and shall provide written notice to the City upon completion of the parcel combination by the Volusia County Property Appraiser.

In witness whereof, the parties have executed this agreement on the ____ day of _____, 2021.

Witnesses:

City of South Daytona

By: _____

Title: _____

(As to City)

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____ 2021, by _____ of the City of South Daytona, a municipality formed and existing under the laws of Florida, by _____, who is personally known to me or who has produced _____ as identification.

Notary Public

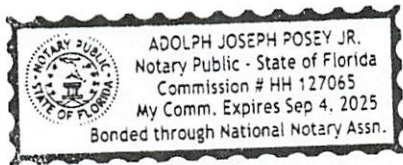
My commission expires:

Michael Polito
Michael Polito
Emma Clark
(As to Owner) Emma Clark

Owner 409 Big Tree, LLC
By: D. Andrew Clark
Title: MANAGER
Date: Nov. 23, 2021

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical
presence or ☐ online notarization, this _____ day of _____ 2021, by,
who is personally known to me or who has produced _____
as identification.



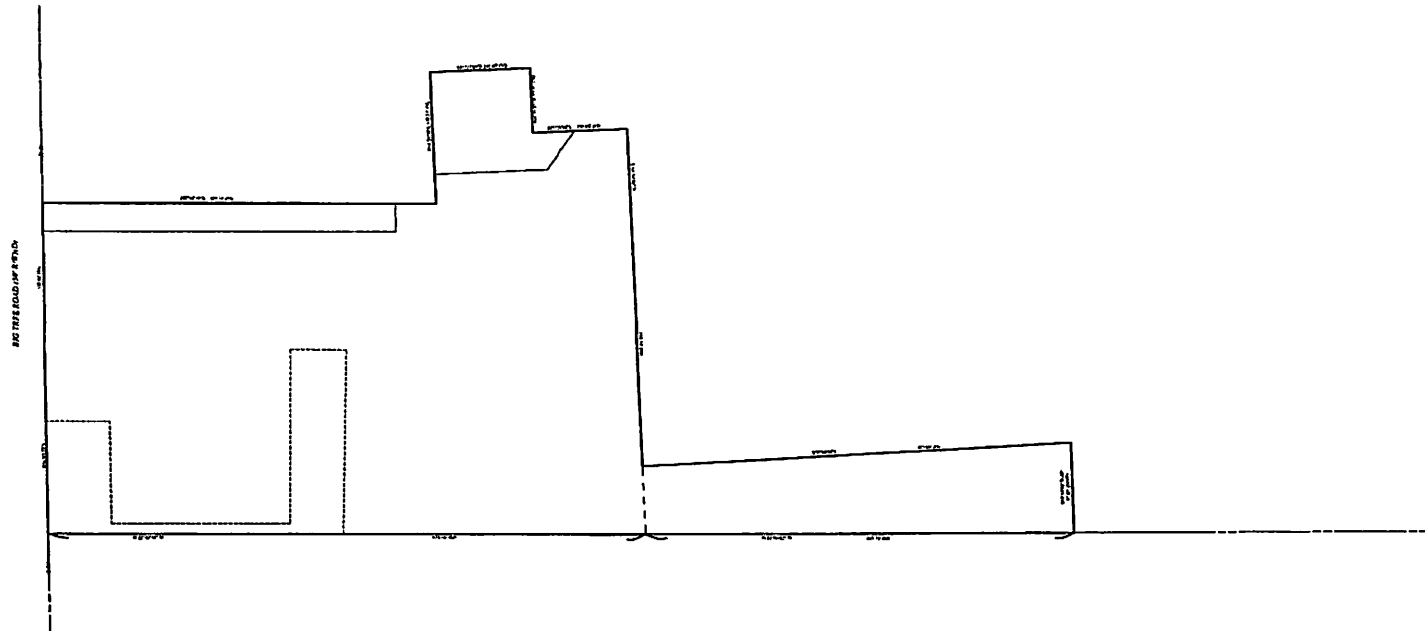
[Signature]
Notary Public

My commission expires:

Exhibit A

Parcel Nos. 5344-16-00-0546, 5344-16-00-0547, 5344-16-00-0548,
5344-16-00-0532, and 5344-16-00-0534

A graphic scale bar is shown below the map. It is a horizontal line with tick marks at 60, 40, 20, 0, 20, 40, and 60. Below the bar, the text reads "GRAPHIC SCALE" and "1"=80'".



BEING A PORTION OF LOTS 53-54, AN UN-OPEN UN-NAMED ABANDONED STREET NW & W, THE HOTEL GROUNDS, BEING IN THE "TOWN OF BLAKE", RECORDED IN DEED BOOK "T", PAGE 154, AND/OR MAP BOOK 1, PAGE 36, PUBLIC RECORDS OF FLORIDA COUNTY, FLORIDA, ALL BEING IN SECTION 44, TOWNSHIP 15 SOUTH, RANGE 33 EAST AND PART OF CONVEYMENT LOTS 3 AND 4, SECTION 28, TOWNSHIP 15 SOUTH, RANGE 33 EAST. PUBLIC LANDS SURVEY OF FLORIDA.

LISTING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

[illegible]

UNLOCATED IN HUNDRETS 90 SOUTHWARD WEST, 30 FEET 34 IN TO A POINT
 TO THE HUNDRETS 90 SOUTHWARD WEST, 30 FEET 34 IN TO A POINT
 15 NORTH, 34 IN JUST ABOVE A BENT OF THE HUNDRETS 90 SOUTHWARD
 BLAKE, AS SHOWN BY HAY BOON, 12 1/2 FEET PUBLIC READERS OF VOLUNTARY
 THE DISTANCE ALONG SAID LINE NORTH 30 DEGREES 42 HUNDRETS 1
 SPINDLING WEST, A DISTANCE OF 12 1/2 FEET PUBLIC READERS OF VOLUNTARY
 80 SOUTHWARD WEST, A DISTANCE OF 80 FEET 34 IN TO A POINT ON SAID EASTERN LINE
 PLAIN, EAST COAST BARRICADE THENCE ALONG SAID EASTERNLY COURSE OF ONLY 1 1/4
 NORTH 30 DEGREES 42 HUNDRETS 1 SPINDLING WEST, A DISTANCE OF 12 1/2 FEET
 TO THE POINT, TO THE WESTERLY COURSE OF SAID CONVEYANCE LOT 4, THENCE
 CONTINUE ALONG SAID EASTERNLY COURSE OF ONLY LINE NORTH 30 DEGREES 42 HUNDRETS 1
 TO THE EAST, A DISTANCE OF 12 1/2 FEET PUBLIC READERS OF VOLUNTARY
 TO THE EASTERNLY COURSE OF ONLY LINE NORTH 30 DEGREES 42 HUNDRETS 1
 A DISTANCE OF 20 1/2 FEET NORTH 30 DEGREES 42 HUNDRETS 1 SOUTHWARD WEST, A
 DISTANCE OF 20 1/2 FEET NORTH 30 DEGREES 42 HUNDRETS 1 SOUTHWARD WEST, A

HAVING AN AREA OF 263,174.3 SQUARE FEET OR 6.8 ACRES MORE OR LESS.

CERTIFIED TO: 	TYPE OF SURVEY: EXHIBIT REVISIONS:	
FIELD WORK BY: 502 Date: 10-20-20 Office WORK BY: 502 Date: 10-20-20 SCALE: 1" = 40'	SITE ADDRESS: 499 BAY TREE ROAD BOULDER DAM CANYON, FL 32612-4	PROJECT #: 30-1624 Phone: 304.613.5770 Professional Commercial Corporation State Of: Georgia License No. 180

EXHIBIT A - 1 OF 1

Exhibit B

BEING A PORTION OF LOTS 55-56, AN UNOPEN UNNAMED ABANDON STREET 140 E. W. "THE MOTEL, GROUND, BEING IN THE "TOWN OF BLAKE", B.F. DEDICED IN DEED BOOK "F", PAGE 158, AND ON MAP BOOK L, PAGE 38, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, ALL BEING IN SECTION 44, TOWNSHIP 15 SOUTH, RANGE 33 EAST AND PART OF GOVERNMENT LOTS 3 AND 4, SECTION 28, TOWNSHIP 15 NORTH, RANGE 33 EAST, PUBLIC LANDS SURVEYS OF FLORIDA.

[illegible]

CERTIFIED TO:	TYPE OF SURVEY: EXISTENT REVISIONS:	
Field Work by: <u>ptd</u> Date: <u>11-21-13</u> Office Work by: <u>ptd</u> Date: <u>11-21-13</u>	STATE ADDRESS: <u>400 EAGLE TRAIL ROAD</u> <u>SOUTHFIELD MICHIGAN, 48034</u>	PROJECT: <u>20-1024</u> Prepared by: <u>11/21/13</u> Phone: <u>313-751-5700</u> <u>555 W. Grosse Pointe, Suite 171, Oakland, Michigan 48234</u>

ATTACHMENT 2

Master Development Agreement

**CITY OF SOUTH DAYTONA
PLANNED COMMERCIAL DEVELOPMENT (PCD)
MASTER DEVELOPMENT AGREEMENT**

THIS PLANNED COMMERCIAL DEVELOPMENT DISTRICT MASTER DEVELOPMENT AGREEMENT (this "Agreement") is entered into and made as of the ____ day of _____, 20____, by and between the CITY OF SOUTH DAYTONA, FLORIDA (hereinafter referred as the "City"), and 409 BIG TREE, LLC, a Florida limited liability company, located at 5111 South Ridgewood Avenue, Suite 201, Port Orange, FL 32127 (hereinafter referred to as the "Owner/Developer").

WITNESSETH

WHEREAS, the Owner/Developer warrants that it holds legal title to the property described in Paragraph 2 below and that the holders of any and all liens and encumbrances affecting such property will subordinate their interests to this Agreement; and

WHEREAS, the Owner/Developer desires to facilitate the orderly use and development of the Subject Property for commercial uses in compliance with the laws and regulations of the City and other pertinent governmental authorities, and the Owner/Developer also desires to ensure that its development is compatible with other properties in the area; and

WHEREAS, the Owner/Developer has sought the approval of the City to permit the use of the property described in Paragraph 2 in a manner consistent with this Agreement; and

WHEREAS, it is the purpose of this Agreement to clearly set forth the understanding and agreement between the parties concerning the matters contained herein; and

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Recitals and Definitions. The recitals herein contained are true and correct and are incorporated herein by reference. All capitalized terms not otherwise defined herein shall be as defined or described in the City's Land Development Code as it may be amended from time to time, unless otherwise indicated.
2. Ownership. The Owner/Developer is the legal and equitable owner of the property described in Exhibit "A" attached hereto (hereinafter referred to as the "Subject Property"). The Owner/Developer will legally combine multiple parcels into one (1) tax parcel for the development of the Subject Property.
3. Non-Statutory Development Agreement. This Agreement is a non-statutory agreement which is not subject to or enacted pursuant to the provisions of Sections 163.3220-163.3243, Florida Statutes.
4. Duration. This Agreement is binding and runs with the land in perpetuity, unless amended.
5. Title Opinion/Certification. The Owner/Developer shall provide to the City, in advance of the City's execution of this Agreement, a title opinion of an attorney licensed in Florida, or a certification by an abstractor or title company authorized to do business in Florida, showing marketable title to the Subject Property to be in the name of the Owner/Developer

and showing all liens, mortgages, and other encumbrances not satisfied or released of record.

6. Subordination/Joinder. Unless otherwise agreed to by the City, all liens, mortgages, and other encumbrances not satisfied or released of record (except for the statutory priority lien for ad valorem real estate taxes), must be subordinated to the terms of this Agreement, or the lienholder join in this Agreement. It shall be the responsibility of the Owner/Developer to promptly obtain such subordination or joinder, in form and substance acceptable to the City Attorney, prior to the City's execution of the Agreement.
7. Permitted Uses. The Subject Property may be used for the purposes set forth on Exhibit "B" attached hereto and incorporated by reference. Uses permitted by this Agreement shall also include customary accessory uses and structures.
8. Development Standards. The Subject Property is currently developed as more particularly shown on the Planned Commercial Development Plan, attached hereto and incorporated by reference as Exhibit "C".

(a) Minimum Building Setbacks

Front (Big Tree Road): 41 feet
Side (West): 10 feet average with wall
Side (East): 10 feet
Rear (South): 25 feet

(b) Minimum Landscape Buffers

Front (Big Tree Road): 30 feet
Side (West): 10 feet average with wall
Side (East): 10 feet; however, no landscape buffer shall be required along
the shared drive aisle adjoining the east property boundary
Rear (South): 10 feet

(c) Minimum Lot Frontage Width: 350 feet

(d) Maximum Building Coverage: 50%

(e) Maximum Impervious Coverage: 75%

(f) Maximum Height: 35 feet (as measured vertically from finished grade)

(g) Parking Requirements

Office: 1 space per 200 square feet
Mini-Warehouse: 1 space per 10 cubicles
All Other uses: Per City's LDC

(h) Buffering Requirements: Landscaping shall be as provided as depicted on the preliminary landscape plan included as part of the Conceptual Site Plan attached as Exhibit "C". A final landscape plan shall be provided as part of site plan approval and shall be prepared by a licensed Landscape Architect; however, no additional planting shall be required beyond those shown on the preliminary landscape plan. In the event this Agreement is silent regarding a particular planting

requirement, then the Type 2 landscape buffer requirements of the Land Development Code shall control.

- (i) Notwithstanding anything to the contrary herein, the property shall be required to brought up to all then-current Light Industrial (LI) Zoning District development standards in the event existing structures and landscaping are damaged in excess of 50% of the assessed value of such structures as determined by the Property Appraiser of Volusia County.
- 9. Impact Fees. The Owner/Developer shall be responsible for payment of all government impact fees incurred by the project.
- 10. Tree Preservation. The Owner/Developer and its heirs, successors and assigns agree that no grading or paving shall be permitted within the drip line of existing trees that are to be retained and preserved on the site.
- 11. Architecture. All new building construction along Big Tree Road shall be required to be architecturally treated with non-metal building materials, including but not limited to wood, stucco, stone, brick glass or masonry, and designed consistent with the elevation attached hereto as Exhibit "D".
- 12. Conflict Provision. Development of the Subject Property shall be in accordance with the City's Land Development Regulations for the Light Industrial (LI) Zoning District unless otherwise stated herein. In the event of a conflict between this Agreement and the LDC or other ordinances, this Agreement shall control.
- 13. Environmental Considerations. The Owner/Developer agrees to comply with all federal, state, county, and city laws, rules and regulations regarding the protection of wetlands and endangered species.
- 14. Sewage Disposal and Potable Water. Provision for sewer disposal and potable water needs of the PCD shall be provided in accordance with the City of South Daytona Comprehensive Plan and Land Development Code, as amended, and the State of Florida Administrative Code, by connection to the City's central water and sewer system. All off site utility lines and easements for the provision of utility services shall be conveyed and dedicated to the City even if the actual utility services may be provided by others.
- 15. Stormwater Drainage. Provision for stormwater retention/detention shall be in accordance with the Land Development Code, as amended, the requirements of the St. Johns River Water Management District, and of the Florida Department of Environmental Protection. Any easements that may be required by the City for stormwater transmission, retention or detention shall be provided by the Owner/Developer in a manner acceptable to the City Attorney at no cost or expense to the City.
- 16. Access and Transportation System Improvements. All access and transportation system improvements shall be provided in accordance with the City of South Daytona Land Development Code, as amended. The subject property shall be developed in substantial compliance with the following access and transportation system requirement:

- (a) Sidewalk access. New construction shall include access to an onsite handicapped sidewalk, which shall connect the front entrance of the project to the existing sidewalk system along Big Tree Road.

17. Compliance; Defaults; Enforcement.

- (a) The Owner/Developer agrees that it, and their successors and assigns, will abide by the provisions of this Agreement, the City's Comprehensive Plan, the City's Land Development Code, and the City's Code of Ordinances, including but not limited to, the site plan regulations of the City as amended from time to time, which are incorporated herein by reference and such subsequent amendments hereto as may be applicable. Further, all required improvements, including landscaping, shall be continuously maintained by the Owner/Developer, or their successors and assigns, in accordance with the City's Code of Ordinances. The City may, without prejudice to any other legal or equitable right or remedy it may have, withhold permits, Certificates of Occupancy, or plan/plat approvals to the Subject Property, should the Owner/Developer fail to comply with the terms of this Agreement. In the event of a conflict between this Agreement and the City's Land Development Code, the more restrictive regulations shall govern the development of the Subject Property, unless specific specifications are set forth herein, in which case the provisions of this Agreement shall prevail.
- (b) Default. Failure by a party to perform any of its obligations hereunder after notice and a reasonable opportunity to cure as provided herein shall constitute a default hereunder, entitling the non-defaulting party to terminate this Agreement, or to pursue the remedies of specific performance, injunctive relief, and/or damages. Prior to termination of this Agreement or any party filing any action as a result of a default by the other party under this Agreement, the non-defaulting party exercising such right shall first provide the defaulting party with written notice specifying such default and the actions needed to cure same, in reasonable detail. Upon receipt of said notice, the defaulting party shall be provided a thirty (30) day opportunity within which to cure such default. If thirty (30) days is not a reasonably sufficient period in which to cure the default, the cure period shall be extended for a reasonable time, provided cure is diligently pursued. Upon termination of the Agreement, the Owner/Developer shall immediately be divested of all rights and privileges granted hereunder.
- (c) Enforcement. In the event of a violation of this Agreement, the City's Land Development Code or Code of Ordinances by the Owner/Developer, the City Commission may after notice and a reasonable opportunity to cure as provided in Subsection B above suspend construction activity and revoke any building permit or development order issued to Owner/Developer and take all actions necessary to halt construction until such time as the provisions herein are brought into compliance. In the event legal action is necessary due to a violation by Owner/Developer, and attorney's fees and costs are incurred by the City enforcing compliance with this Agreement, the Land Development Code or Code of Ordinances, these expenses shall be borne by the Owner/Developer. These methods of enforcement are in addition to any other methods of enforcement provided by law. In the event of a default by the City which is not cured after receipt of notice and expiration of the cure period, then Owner/Developer shall be entitled to recover all reasonable attorney's fees and costs incurred, whether at the

trial or appellate level. The Owner/Developer agrees that it will abide by the provisions of this Agreement, the City's Comprehensive Plan, the City's Land Development Code, and the City's Code of Ordinances, including but not limited to, the site plan regulations of the City as amended from time to time, which are incorporated herein by reference and such subsequent amendments hereto as may be applicable.

18. Development Permits/Fees. The Owner/Developer is responsible for obtaining and paying for all building permits and other required permits and approvals, and for the payment of all fees for facilities and services to ensure compliance with all federal, state, and local requirements for the Subject Property. Any site permits shall be kept current with the respective permitting agency and shall ensure the protection of the public health, safety and welfare of the community and the development. Impact fees as required by the City shall be paid at the time of the issuance of the building permit.
19. Site Plan Approval. Exhibit B. Architectural Plans and Renderings are the Preliminary Plan of the PCD and this Agreement. The Master Development Agreement shall not replace, supersede, or absolve the Owner/Developer from approvals for any site plan and its respective regulations. Where more detailed criteria for City required submittals exceed the criteria required for a Master Development Plan, the more detailed criteria apply.
20. No Guarantee by City. It is specifically understood that the City is not guaranteeing the appropriateness, efficiency, quality or legality of the use or development of the Subject Property, including but not limited to, drainage or water/sewer plans, fire safety, or quality of construction, whether or not inspected, approved, or permitted by the City.
21. Indemnification: The Owner/Developer shall indemnify and hold harmless the City from and against all claims, demands, disputes, damages, costs and expenses (to include attorneys' fees whether or not litigation is necessary and if necessary, both at trial and on appeal), incurred by the City as a result, directly or indirectly, of the use or development of the Subject Property described in Paragraph 2 above, except those claims or liabilities caused by or arising from the gross negligence or intentional acts of the City, or its employees, contractors, or agents.
22. Recordation of Agreement. The parties hereto agree that an executed original of this Agreement shall be recorded by the City, at the Developer's expense, in the Public Records of Volusia County, Florida.
23. Concurrency and Vested Rights. The Owner/Developer acknowledges and agrees that prior to the issuance of any development orders for the Subject Property, the Owner/Developer must have received and be in the possession of a valid unexpired certificate of capacity/concurrency management system approval consistent with the City's Land Development Code. The capacity certificate/approval verifies the availability of infrastructure and service capacity sufficient to permit the proposed development of the Subject Property without causing a reduction in the levels of service adopted in the City's Comprehensive Plan. The certificate of capacity/approval shall be effective for a term, as defined in the City's Code of Ordinances. Neither this Agreement nor the approved Master Development Plan shall create or result in a vested right or rights to develop the Subject Property beyond the rights that already exist as of the date of this Agreement.

24. Amendments to this Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all previous discussions, understandings, and agreements, with respect to the subject matter hereof; provided, however, that it is agreed that this Agreement is supplemental to the City's Comprehensive Plan and does not in any way rescind or modify any provisions of the City's Comprehensive Plan. Amendments to and waivers of the provisions of this Agreement shall be made by the parties only in writing by formal amendment. The City Manager or his designee is authorized to approve minor amendments to this Agreement. Major deviations from this Agreement, as determined by the City Manager, shall require City Council approval as provided in Ordinance 05-24.
25. Periodic Review. The City reserves the right to review the Subject Property in relation to this Agreement periodically to determine if there has been compliance with the terms of this Agreement. If the City finds that on the basis of substantial competent evidence that there has been a failure to comply with the terms of this Agreement, the City may withhold development orders or permits until compliance with this Agreement has been established and Owner/Developer has taken all other actions as provided in this Agreement and under applicable law.
26. Notices. Where notice is herein required to be given, it shall be by certified mail return receipt requested, hand delivery or nationally recognized courier, such as Federal Express or UPS. E-mail delivery of documents shall be followed up with service by one of the other methods. Notices shall be sent to the following, as applicable:

OWNER/DEVELOPER'S REPRESENTATIVE:

Douglas Andrew Clark, Manager
409 Big Tree, LLC
5111 South Ridgewood Avenue, Suite 201
Port Orange, FL 32127

CITY REPRESENTATIVE:

James L. Gillis, Jr., City Manager
City of South Daytona
1672 South Ridgewood Avenue
South Daytona, FL 32119

Should any party identified above change, it shall be said party's obligation to notify the other parties of the change in the manner required for notices herein. It shall be the Owner/Developer's obligation to identify its lender(s) to all parties in the manner required for notices herein.

27. Compliance with the Law. The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Owner/Developer from the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions. The Owner/Developer shall apply and receive approval for a lot combination to combine all tax parcels making up the Subject Property into one tax parcel identification number.

28. Captions. The captions used herein are for convenience only and shall not be relied upon in construing this Agreement.
29. Binding Effect. This Agreement shall run with the land, shall be binding upon and inure to the benefit of the Owner/Developer and its assigns and successors in interest, and the City and its assigns and successors in interest. This Agreement shall become effective upon its execution and recordation with the Public Records of Volusia County, Florida. This Agreement does not, and is not intended to, prevent or impede the City from exercising its legislative authority as the same may affect the Subject Property.
30. Subsequently Enacted State or Federal Law. If either state or federal law is enacted after the effective date of this Agreement that is applicable to and precludes the parties' compliance with the terms of this Agreement, this Agreement and correlating zoning amendment shall be modified or revoked, as is necessary, to comply with the relevant state or federal law.
31. Severability. If any part of this Developer's Agreement is found invalid or unenforceable in any court, such invalidity or unenforceability shall not affect the other parts of this Developer's Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can be affected. To that end, this Developer's Agreement is declared severable.
32. Applicable Law/Venue. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida. Venue for any litigation relating to this Agreement shall lie exclusively with the Circuit Court of the Seventh Judicial Circuit of Florida, in and for Volusia County, Florida.
33. Time of the Essence. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement. The Owner/Developer shall execute this Agreement prior to this Agreement being placed on the agenda for final approval by the City Council of the City of South Daytona.
34. Effective Date. The Effective Date of this Agreement shall be the day this Agreement is recorded in the Public Records of Volusia County, Florida.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Owner/Developer and the City have executed this Agreement as of the day and year first above written.

Owner/Developer
409 BIG TREE, LLC

Signed, sealed and delivered in the presence of

By: _____
Douglas Andrew Clark, Manager

Date: _____

(Signature of First Witness)

(Printed Name)

Date: _____

(Signature of Second Witness)

(Printed Name)

Date: _____

CITY OF SOUTH DAYTONA

By: _____
William C. Hall, Mayor

Date: _____

Attest:

James L. Gillis, Jr., City Manager

Certified as to form:

Wade C. Vose, City Attorney

Date: _____

Exhibit "A"
Subject Property

LEGAL DESCRIPTION:

TRACT IV (409 BIG TREE)

PART OF LOT 54, "THE HOTEL GROUNDS", AND AN UNOPENED AND ABANDONED STREET, ALL AS SHOWN ON THE PLAT OF "TOWN OF BLAKE", RECORDED IN PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, IN DEED BOOK "E", PAGE 150, AND/OR MAP BOOK 1, PAGE 38; AND PART OF GOVERNMENT LOTS 3 AND 4, SECTION 28, TOWNSHIP 15 SOUTH, RANGE 33 EAST, PUBLIC LANDS SURVEYS OF FLORIDA, DESCRIBED AS FOLLOWS, TO- WIT:

BEGINNING AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF BIG TREE ROAD (A 50 FOOT RIGHT-OF-WAY AS NOW OCCUPIED AND ESTABLISHED) WITH THE EAST RIGHT-OF-WAY LINE OF THE FLORIDA EAST COAST RAILROAD (A 150 FOOT RIGHT-OF-WAY AT THIS POINT AS NOW OCCUPIED AND ESTABLISHED); THENCE RUN EASTERLY ON A COURSE NORTH 66°09'30" EAST ALONG THE SAID SOUTH RIGHT-OF-WAY LINE OF SAID BIG TREE ROAD A DISTANCE OF 250 FEET; THENCE RUN SOUTHERLY ON A COURSE SOUTH 22°42'30" EAST (AND PARALLEL WITH THE SAID EASTERLY RIGHT-OF-WAY LINE OF THE FLORIDA EAST COAST RAILROAD) A DISTANCE OF 362.5 FEET; THENCE RUN WESTERLY ON A COURSE SOUTH 66°09'30" WEST AND PARALLEL WITH THE SAID SOUTH LINE OF SAID BIG TREE ROAD RIGHT-OF-WAY A DISTANCE OF 250 FEET TO A POINT IN THE SAID EAST RIGHT-OF-WAY LINE OF THE FLORIDA EAST COAST RAILROAD; THENCE RUN NORTH ON A COURSE NORTH 22°42'30" WEST ALONG THE SAID EAST RIGHT-OF-WAY LINE OF SAID FLORIDA EAST COAST RAILROAD A DISTANCE OF 362.5 FEET TO THE POINT OF BEGINNING. A/K/A PARCEL C

AND

PARCEL A:

PART OF LOTS 53 THRU 58 INCLUSIVE BEING IN THE "TOWN OF BLAKE"- "THE HOTEL GROUNDS", RECORDED IN PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA IN DEED BOOK "E", PAGE 150, AND/OR MAP BOOK 1, PAGE 38, SECTION 44, TOWNSHIP 15 SOUTH, RANGE 33 EAST, AND A PORTION OF SECTION 28, TOWNSHIP 15 SOUTH, RANGE 33 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF BIG TREE ROAD AND THE WESTERLY RIGHT-OF-WAY OF SOUTH RIDGEWOOD AVENUE (US 1) AS NOW LAID OUT AND OCCUPIED; THENCE RUN SOUTH 26°16'10" EAST ALONG SAID WESTERLY RIGHT-OF-WAY A DISTANCE OF 603.50 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY RUN SOUTH 64°36'50" WEST A DISTANCE OF 716.59 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING FOR PARCEL "A"; THENCE CONTINUE SOUTH 64°36'50" WEST 206.00 FEET; THENCE NORTH 22°42'30" WEST 266.43 FEET; THENCE NORTH 66°09'30" EAST 25.00 FEET; THENCE NORTH 22°42'30" WEST 362.50 FEET; THENCE NORTH 66°09'30" EAST 100.00 FEET; THENCE SOUTH 22°42'30" EAST 420.34 FEET; THENCE NORTH 64°36'50" EAST 140.31 FEET; THENCE SOUTH 25°23'10" EAST 105.00 FEET; THENCE SOUTH 64°36'50" WEST 69.00 FEET; THENCE SOUTH 25°23'10" EAST 100.00 FEET TO THE POINT OF BEGINNING.

AND

PARCEL B:

PART OF LOTS 53 THRU 58 INCLUSIVE BEING IN THE "TOWN OF BLAKE"- "THE HOTEL GROUNDS", RECORDED IN PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA IN DEED BOOK "E", PAGE 150, AND/OR MAP BOOK 1, PAGE 38, SECTION 44, TOWNSHIP 15 SOUTH, RANGE 33 EAST, AND A PORTION OF SECTION 28, TOWNSHIP 15 SOUTH, RANGE 33 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF BIG TREE ROAD AND THE WESTERLY RIGHT-OF-WAY OF SOUTH RIDGEWOOD AVENUE (US 1) AS NOW LAID OUT AND OCCUPIED; THENCE RUN SOUTH 26°16'10" EAST ALONG SAID WESTERLY RIGHT-OF-WAY A DISTANCE OF 603.50 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY RUN SOUTH 64°36'50" WEST A DISTANCE OF 922.59 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING FOR PARCEL "B"; THENCE CONTINUE SOUTH 64°36'50" WEST 225.21 FEET; THENCE NORTH 22°42'30" WEST 272.50 FEET; THENCE NORTH 66°09'30" EAST 225.00 FEET; THENCE SOUTH 22°42'30" EAST 266.43 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH

THAT PART OF GOVERNMENT LOT 4, SECTION 28, TOWNSHIP 15 SOUTH, RANGE 33 EAST, LYING EAST OF THE RIGHT-OF-WAY OF THE FLORIDA EAST COAST RAILROAD AND LYING NORTH OF LOTS A AND B, BLOCK Q, OF GANYMEDE, SAID GANYMEDE BEING AS SHOWN BY MAP RECORDED IN MAP BOOK 10, PAGES 168 TO 172 INCLUSIVE, AND LYING SOUTH OF THE SOUTH LINE OF THE NORTH 173 1/2 FEET OF LOT 53 OF THE TOWN OF BLAKE AS SHOWN BY MAP OF SAME FILED IN DEED BOOK "E", PAGE 150, EXTENDED IN A STRAIGHT LINE WESTERLY, TO THE RAILROAD RIGHT-OF-WAY.

LESS AND EXCEPT THAT PART OF GOVERNMENT LOT 4, SECTION 28, TOWNSHIP 15 SOUTH, RANGE 33 EAST, LYING EAST OF THE RIGHT-OF-WAY OF THE FLORIDA EAST COAST RAILROAD AND LYING NORTH OF LOTS A AND B, BLOCK Q, OF GANYMEDE, SAID GANYMEDE BEING AS SHOWN BY MAP RECORDED IN MAP BOOK 10, PAGES 168 TO 172, INCLUSIVE; AND LYING SOUTH OF THE NORTH LINE OF LOT 1, BLOCK 5, GRAHAM SUBDIVISION, EXTENDED IN A STRAIGHT LINE WESTERLY, TO THE RAILROAD RIGHT-OF-WAY.

ALSO LESS AND EXCEPT THE FOLLOWING DESCRIBED PARCEL 4:

PARCEL 4:

A PORTION OF GOVERNMENT LOT 4, SECTION 28, TOWNSHIP 15 SOUTH, RANGE 33 EAST LYING EAST OF THE RIGHT-OF-WAY OF THE FLORIDA EAST COAST RAILROAD AND LYING NORTH OF LOTS A AND B, BLOCK Q, OF GANYMEDE, SAID GANYMEDE BEING AS SHOWN BY MAP RECORDED IN MAP BOOK 10, PAGES 168 TO 172 INCLUSIVE, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF BIG TREE ROAD (A 50 FOOT RIGHT-OF-WAY AS NOW OCCUPIED AND ESTABLISHED) WITH THE EAST RIGHT-OF-WAY LINE OF THE FLORIDA EAST COAST RAILROAD (A 150 FOOT RIGHT-OF-WAY AT THIS POINT AS NOW OCCUPIED AND ESTABLISHED); THENCE RUN SOUTHERLY ON A COURSE S 22°42'30"E, ALONG THE SAID EAST RIGHT-OF-WAY LINE OF SAID FLORIDA EAST COAST RAILROAD, A DISTANCE OF 635.14 FEET; THENCE S 23°06'03"E, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 453.25 FEET TO THE POINT OF BEGINNING; THENCE N 65°13'53"E, 97.03 FEET TO THE WEST LINE OF LOT 51 SAID PLAT OF "TOWN OF BLAKE"; THENCE S 26°09'13"E, ALONG SAID SOUTH LINE, A DISTANCE OF 85.32 FEET; THENCE S 65°16'08"W, A DISTANCE OF 101.58 FEET TO SAID EAST RIGHT-OF-WAY LINE OF SAID FLORIDA EAST COAST RAILROAD; THENCE N 23°06'03"W, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 85.27 FEET TO THE POINT OF BEGINNING.

Exhibit “B”
Uses

Permitted Uses

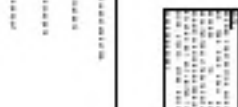
Storage (All storage on the property shall be kept within an enclosed building with no unattended vehicles permitted on the premises unless stored within an enclosed building) and sales (moving supplies customarily associated with a storage facility.)

Office.

Warehousing (including mini-warehouses) with the following limitation: Mini-warehouses are intended exclusively for the storage of personal property and goods by the general public and for incidental storage of goods by small commercial uses. Mini-warehouses shall be limited to storage use only. No business activities, such as sales or service, shall be conducted on the premises except those activities incidental with the mini-warehouse definition described herein. Signs advertising individual businesses shall be prohibited. A mini-warehouse shall not be used as a business address for purposes of obtaining a business tax receipt, except for the mini-warehouse development itself. Manufacture, auto repair or other similar activities are expressly prohibited.

[illegible]

NOTE: FOR THE COMBINATION OF THE TWO



100000

	
文部科学省 教育部 文化庁 スポーツ庁 科学技術庁	文部科学省 教育部 文化庁 スポーツ庁 科学技術庁

PROJECT TEAM

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Boulder, CO 80502
Phone: (303) 440-0333
E-mail: info@bouldercc.com

[illegible][illegible]

FACILITY INFORMATION		FACILITY NAME		FACILITY ADDRESS		FACILITY CITY		FACILITY STATE		FACILITY ZIP	
1	2	3	4	5	6	7	8	9	10	11	12
13	14	15	16	17	18	19	20	21	22	23	24
25	26	27	28	29	30	31	32	33	34	35	36
37	38	39	40	41	42	43	44	45	46	47	48
49	50	51	52	53	54	55	56	57	58	59	60
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409	410	411	412	413	414	415	416	417	418	419	420
421	422	423	424	425	426	427	428	4			

[illegible]

CONCEPT PLAN - REZONING
BIG TREE DEPOT
ON BETHLEHEM ROAD
SOUTHEAST CORNER, BETHLEHEM, PA 18015



A

3. BUILDING ELEVATION - BIG TREE
SOUTH ELEVATION

Architectural rendering of the Big Tree Depot building elevation, showing a long, low structure with a red roof and white walls, surrounded by landscaping including palm trees and flowering bushes.