

City of South Daytona

Office of the City Manager

Post Office Box 214960 • South Daytona, FL 32121 • 386/322-3010 • FAX 386/322-3008



MEMORANDUM

AGENDA ITEM
C 10 DATE 8/11/20

To: The Honorable Mayor and Members of the City Council

From: James L. Gillis, Jr., City Manager *[Signature]*

Re: Consideration of Allowing the Mayor and City Manager to Execute a Planned Commercial Development (PCD) Master Development Agreement (MDA) that was an Integral Part of Ordinance No. 18-05 Passed and Adopted on July 10, 2018 but Never Recorded.

Date: August 7, 2020

Ordinance No. 18-05, passed and adopted on July 10, 2018, effectively rezoned the property at 2960 South Nova Road from Light Industrial to a Planned Commercial Development (PCD). That Ordinance, which incorrectly listed the subject property address as 3201 South Nova Road, also included a Master Development Agreement (MDA) which was supposed to be recorded with the Clerk of Court.

Upon recent investigation, it was noticed that the MDA associated with this property was never executed or recorded back in 2018. According to the property owner, he signed the MDA and sent the document to our former Community Development Director in 2018 to be signed by the Mayor and our former City Manager. Apparently, the former Community Development Director did not forward it on for signatures nor did anyone track the progression of this document to ensure it had been recorded as required by City Council action. As a result, the MDA was never executed or recorded. Both the City and the property owner share blame in this incident as it is the property owner's responsibility to get the MDA recorded with the Clerk of Court.

The best way to clean this issue up is to request approval from the current City Council to allow the Mayor and myself to execute the MDA so that the property owner can have the document recorded as required. I have made minor amendments to the MDA designed to reflect the changes that have occurred since 2018. I have updated the City Manager's name on the document as well as corrected the property address which was a scrivener's error on the original ordinance. The property owner must submit an updated title opinion before the City can execute the document.

If the City Council approves of the MDA's execution, I will see to it that this error from another administration is corrected. Staff will see to it that a copy of the recorded MDA is submitted by the property owner in a timely manner for the file which will close this matter out.

Attached to this memorandum is the revised MDA presented in Exhibit A and the original ordinance containing the original MDA in Exhibit B.

EXHIBIT A

REVISED 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 _____, 20____, by and between the CITY OF SOUTH DAYTONA, FLORIDA (hereinafter referred as the "City"), and P & L CREECH, INC., located at 2960 South Nova Road, South Daytona, FL 32119 (hereinafter referred to as the "Owner/Developer").

WITNESSETH

WHEREAS, the Owner/Developer warrants that it holds legal title to the property described in Paragraph I 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 1 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. **Ownership.** The Owner/Developer represents that it is the present owner of the property described in Exhibit A attached hereto (hereinafter referred to as the "Subject Property").
2. **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 inalterable 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.
3. **Subordination/Joinder** . Unless otherwise agreed to by the City, all liens, mortgages, and other encumbrances not satisfied or released of record, must be subordinated to the terms of this Agreement, or else the lienholder must join in this Agreement. It shall be the responsibility of the Owner/Developer to promptly obtain any such subordination or joinder, in form and substance acceptable to the City Attorney, prior to the City's execution of the Agreement.
4. **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.

5. 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". Further development or redevelopment of the Property shall be in accordance with the City's Land Development Regulations and this Agreement for the Light Industrial (LI) Zoning District. In addition, the following development standard shall apply:
- a. Construction materials sorted on site may be temporarily stored in the areas designated on the Planned Commercial Development Plan in accordance with the following time limits:
 - I. Metal and Concrete: 3 weeks
 - ii. All Other Materials: 1 week
- Construction materials means discarded materials generally considered to be not water soluble and non-hazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt material, pipe, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, including such debris from construction of structures at a site remote from the construction or demolition project site. The term includes rocks, soils, tree remains, trees, and other vegetative matter which normally results from land clearing or land development operations for a construction project.
- All non-construction materials shall be placed in covered containers and the Owner shall review the Subject Property daily to ensure that the non-recyclable materials on site are properly placed in the covered containers for disposal to meet the time limits in this section.
- b. Hours of operation shall be limited to Monday through Friday 7 AM. to 6 P.M. and Saturday from 7 A.M. to 4 P.M. Hours may be extended during emergencies and disaster relief to seven days a week from 7 A.M. to 7 P.M. Emergencies and disaster relief shall be those events declared by the State to be such events.
 - c. The frontage of the Subject Property shall be landscaped as shown on Planned Commercial Development Plan. The Owner shall provide a tree survey of the 30-foot buffer along all property lines and also ensure that existing trees within the 30-foot buffer around the Subject Property, as identified on Planned Commercial Development Plan, are maintained.
 - d. The existing 6-foot privacy fencing along the south and west property lines of the Subject Property shall be maintained by the Owner and replaced as needed.
6. 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.
7. 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.

8. 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.
9. 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 driveway entrance area and apron up to the gate for the Subject Property, as identified on the Planned Commercial Development Plan, shall be paved. A gravel (57 stone) truck wash area as shown on the Planned Commercial Development Plan shall be placed and maintained inside of and up to the entrance gate on the property. The owner shall be responsible for any costs associated with the cleanup of any materials from this operation that are found in the right-of-way adjacent to this business.
10. Enforcement. In the event that enforcement of this Agreement by either party becomes necessary, the non-prevailing party shall be responsible for all costs and expenses, including attorneys' fees whether or not litigation is necessary, and if necessary, both at trial and on appeal, incurred in enforcing or ensuring compliance with the terms and conditions of this Agreement. Should this Agreement require the payment of any monies to the City, the recording of this Agreement shall constitute a lien upon the property for said monies, until said are paid, in addition to such other obligations as this agreement may impose upon the Subject Property and the Owner/Developer. Interest on unpaid overdue sums shall accrue at the rate of eighteen percent (18%) compounded annually or at the maximum rate allowed by law.
11. Recording and Effective Date. This Development Agreement and all subsequent amendments shall be filed with the Clerk of Court of Volusia County, Florida, and recorded following execution of the document by the City Council, in the Official Records of Volusia County, Florida. One copy of the document, bearing the book and page number of the Official Record in which the document was recorded, shall be submitted to the City of South Daytona. The date of receipt of this document by the City shall constitute the effective date of the Planned Commercial Development zoning, or any amendments thereto. The applicant shall be responsible for and pay all legal and filing costs for recording documents.
12. Compliance. The Owner/Developer agrees that it, and its successors and assigns, will abide by the provisions of this Agreement and the City's Land Development Code, including but not limited to, the site plan regulations of the City existing as of the date of this Agreement, which are incorporated herein by reference. The City may, after forty-five (45) days written notice and commercially reasonable period of time to cure deficiencies without prejudice to any other legal or equitable right or remedy it may have, withhold permits, certificates of occupancy or approvals to the Subject Property should the Owner/Developer fail to comply with the terms of this Agreement. Unless otherwise specifically stated in this Agreement, all current and future ordinances and regulations of the City and other applicable regulatory bodies shall apply to this Agreement.
13. Amendments to this Agreement. 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.

14. Notices. Where notice is herein required to be given, it shall be by certified mail, return receipt requested, addressee only, by hand delivery or courier. Said notice shall be sent to the following, as applicable:

OWNER/DEVELOPER'S REPRESENTATIVE:

Aaron Creech, Vice President
P & L Creech, Inc.
2960 South Nova Road
South Daytona, FL 32119

CITY'S REPRESENTATIVE:

James L. Gillis, Jr., City Manager
City of South Daytona
1672 S. 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.

15. Other City Approvals and Permits. The approval and execution of this Agreement by the City does not exempt the Owner/Developer of the Subject Property from obtaining any and all other approvals and permits necessary to obtain Development Orders and Building Permits for the development of the Subject Property. 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.
16. Captions. The captions used herein are for convenience only and shall not be relied upon in construing this Agreement.
17. 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. The Owner/Developer agrees to pay the cost of recording this document in 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.
18. 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.

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

OWNER / DEVELOPER:

P & L CREECH, INC.

By: _____
Aaron Creech, Vice President

Date: _____

Signed, sealed and delivered in the presence of:

(Signature of First Witness)

(Printed Name)

Date: _____

(Signature of Second Witness)

(Printed Name)

Date: _____

CITY OF SOUTH DAYTONA:

Attest:

James L. Gillis, Jr., City Manager

Date: _____

By: _____
William C. Hall, Mayor

Date: _____

Certified as to form:

Scott E. Simpson

Date: _____

EXHIBIT B

ORIGINAL ORDINANCE AND ORIGINAL MASTER DEVELOPMENT AGREEMENT

ORDINANCE NO. 18-05

AN ORDINANCE OF THE CITY OF SOUTH DAYTONA, FLORIDA, AMENDING THE OFFICIAL ZONING MAP BY CHANGING THE ZONING OF 3201 SOUTH NOVA ROAD, FROM "LIGHT INDUSTRIAL" TO "PLANNED COMMERCIAL DEVELOPMENT" (PCD); PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the owners of 3201 S. Nova Road have requested that the subject property be rezoned to "Planned Commercial Development" (PCD) from "Light Industrial"; and

WHEREAS, the subject property covers an area that is suitable for a wide variety of commercial and light-industrial uses, a number of which are not classified as "permitted uses" under the current zoning; and

WHEREAS, the proposed PCD zoning would allow the property to be used for a wider variety of business uses and would offer opportunities for a wider variety of occupancies, thus facilitating the utilization and productivity of the property, which is in the best interest of both the property-owner and the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, VOLUSIA COUNTY, FLORIDA, THAT:

SECTION 1-Identification of Property Rezoned to Planned Commercial Development (PCD).

The following property is hereby rezoned to Planned Commercial Development (PCD) for the purpose of developing a flex-use business:

- **South Nova Road** (Volusia County tax parcels #6337-01-01-0041 and #6337-01-01-0044).
- **SECTION 2-Legal description of Property Rezoned to Planned Commercial Development (PCD).** The legal description of the subject property is attached hereto as Attachment "A".

SECTION 3-Master Development Agreement. Attachment "B", attached hereto and considered an integral part of this Ordinance, is the Master Development Agreement for the PCD property.

SECTION 4-Repealer. All ordinances made in conflict with this Ordinance are hereby repealed to the extent of such conflict.

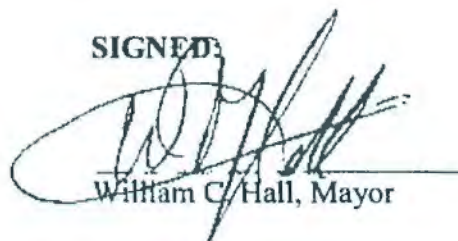
SECTION 5-Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

SECTION 6-Effective date. This Ordinance shall become effective immediately upon adoption by the City Council.

PASSED upon first reading at a regular meeting of the City Council of the City of South Daytona held in the City of South Daytona, Florida, on the 22 day of May, 2018.

PASSED AND ADOPTED on final reading and public hearing at a regular meeting of the City Council of the City of South Daytona held in the City of South Daytona, Florida on the 10 of July, 2018.

SIGNED



William C. Hall, Mayor

ATTEST:



Joseph W. Yarbrough, City Manager

APPROVED AS TO FORM:



SCOTT E. SIMPSON, City Attorney



GLENN D. STORCH, ESQUIRE
glenn@storchlawfirm.com

COREY D. BROWN, ESQUIRE
corey@storchlawfirm.com

A. JOSEPH POSEY, ESQUIRE
joey@storchlawfirm.com

TO: CITY OF SOUTH DAYTONA

FROM: GLENN D. STORCH, ESQUIRE
GLENN D. STORCH, P.A.
420 S. NOVA ROAD
DAYTONA BEACH, FLORIDA 32114

RE: TITLE OPINION

DATE: JULY 31, 2018

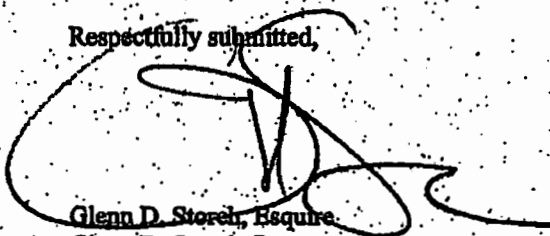
PURSUANT TO A REQUEST by the City of South Daytona, I have examined the title to the premises described on the attached Exhibit "A" and base my opinion solely on the documents examined as follows:

- a. Title Search No. 613503 by Attorneys' Title Fund Services, LLC showing an effective search date of July 10, 2018 at 11:00 P.M.

Based upon my examination of the above-mentioned documents and attachments, it is my opinion that fee simple title to the premises described in Exhibit "A" as of July 10, 2018 is vested in P & L Creech Inc., a Florida corporation a/k/a P and L Creech, Inc., a Florida corporation. Deed evidencing title to the premises described in Exhibit "A", as recorded in the Public Records of Volusia County, Florida, are listed as Exhibit "B". The property described in the attached Exhibit "A" is subject to encumbrances and exceptions of record.

THIS OPINION OF TITLE is tendered to the City of South Daytona solely for the purpose of demonstrating to the City of South Daytona the names of all parties having any interest in the property described in the attached Exhibit "A" so that the City of South Daytona may be assured all real parties in interest to the property have been joined in the rezoning of the described property. This opinion supersedes and revokes all prior opinions by the undersigned and is rendered solely for the use of and reliance by the City of South Daytona in review and approval of rezoning applications and it should not be construed to warrant, either expressly or impliedly, the status of title to any party other than the City of South Daytona in its capacity as a public body with such authority prescribed by Florida law.

Respectfully submitted,


Glenn D. Storch, Esquire
Glenn D. Storch, P.A.

GDS/ajp

**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 _____, 201__, by and between the CITY OF SOUTH DAYTONA, FLORIDA (hereinafter referred as the "City"), and P & L CREECH, INC., located at 3102 South Nova Road, South Daytona, FL 32129 (hereinafter referred to as the "Owner/Developer").

WITNESSETH

WHEREAS, the Owner/Developer warrants that it holds legal title to the property described in Paragraph 1 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 1 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. **Ownership.** The Owner/Developer represents that it is the present owner of the property described in Exhibit A attached hereto (hereinafter referred to as the "Subject Property").
2. **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 inalterable 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.
3. **Subordination/Joinder.** Unless otherwise agreed to by the City, all liens, mortgages, and other encumbrances not satisfied or released of record, must be subordinated to the terms of this Agreement, or else the lienholder must join in this Agreement. It shall be the responsibility of the Owner/Developer to promptly obtain any such subordination or joinder, in form and substance acceptable to the City Attorney, prior to the City's execution of the Agreement.
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5. **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". Further development or redevelopment of the Property shall be in accordance with the City's Land Development Regulations and this Agreement for the Light Industrial (LI) Zoning District. In addition, the following development standard shall apply:
- a. Construction materials sorted on site may be temporarily stored in the areas designated on the Planned Commercial Development Plan in accordance with the following time limits:
 - i. Metal and Concrete: 3 weeks
 - ii. All Other Materials: 1 week

Construction materials means discarded materials generally considered to be not water soluble and non-hazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt material, pipe, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, including such debris from construction of structures at a site remote from the construction or demolition project site. The term includes rocks, soils, tree remains, trees, and other vegetative matter which normally results from land clearing or land development operations for a construction project.

All non-construction materials shall be placed in covered containers and the Owner shall review the Subject Property daily to ensure that the non-recyclable materials on site, are properly placed in the covered containers for disposal to meet the time limits in this section.
 - b. Hours of operation shall be limited to Monday through Friday 7 A.M. to 6 P.M. and Saturday from 7 A.M. to 4 P.M. Hours may be extended during emergencies and disaster relief to seven days a week from 7 A.M. to 7 P.M. Emergencies and disaster relief shall be those events declared by the State to be such events.
 - c. The frontage of the Subject Property shall be landscaped as shown on Planned Commercial Development Plan. The Owner shall provide a tree survey of the 30-foot buffer along all property lines and also ensure that existing trees within the 30-foot buffer around the Subject Property, as identified on Planned Commercial Development Plan, are maintained.
 - d. The existing 6-foot privacy fencing along the south and west property lines of the Subject Property shall be maintained by the Owner and replaced as needed.
6. **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.
7. **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.

8. 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.
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10. Enforcement. In the event that enforcement of this Agreement by either party becomes necessary, the non-prevailing party shall be responsible for all costs and expenses, including attorneys' fees whether or not litigation is necessary, and if necessary, both at trial and on appeal, incurred in enforcing or ensuring compliance with the terms and conditions of this Agreement. Should this Agreement require the payment of any monies to the City, the recording of this Agreement shall constitute a lien upon the property for said monies, until said are paid, in addition to such other obligations as this agreement may impose upon the Subject Property and the Owner/Developer. Interest on unpaid overdue sums shall accrue at the rate of eighteen percent (18%) compounded annually or at the maximum rate allowed by law.
11. Recording and Effective Date. This Development Agreement and all subsequent amendments shall be filed with the Clerk of Court of Volusia County, Florida, and recorded following execution of the document by the City Council, in the Official Records of Volusia County, Florida. One copy of the document, bearing the book and page number of the Official Record in which the document was recorded, shall be submitted to the City of South Daytona. The date of receipt of this document by the City shall constitute the effective date of the Planned Commercial Development zoning, or any amendments thereto. The applicant shall be responsible for and pay all legal and filing costs for recording documents.
12. Compliance. The Owner/Developer agrees that it, and its successors and assigns, will abide by the provisions of this Agreement and the City's Land Development Code, including but not limited to, the site plan regulations of the City existing as of the date of this Agreement, which are incorporated herein by reference. The City may, after forty-five (45) days written notice and commercially reasonable period of time to cure deficiencies without prejudice to any other legal or equitable right or remedy it may have, withhold permits, certificates of occupancy or approvals to the Subject Property should the Owner/Developer fail to comply with the terms of this Agreement. Unless otherwise specifically stated in this Agreement, all current and future ordinances and regulations of the City and other applicable regulatory bodies shall apply to this Agreement.
13. Amendments to this Agreement. 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.

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OWNER/DEVELOPER'S REPRESENTATIVE:

Aaron Creech, Vice President
P & L Creech, Inc.
3102 South Nova Road
South Daytona, FL 32129

CITY'S REPRESENTATIVE:

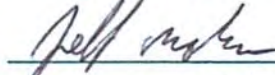
Joseph W. Yarbrough, City Manager
City of South Daytona
1672 S. Ridgewood Avenue
South Daytona, FL 32119


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.

15. Other City Approvals and Permits. The approval and execution of this Agreement by the City does not exempt the Owner/Developer of the Subject Property from obtaining any and all other approvals and permits necessary to obtain Development Orders and Building Permits for the development of the Subject Property. 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.
16. Captions. The captions used herein are for convenience only and shall not be relied upon in construing this Agreement.
17. 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. The Owner/Developer agrees to pay the cost of recording this document in 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.
18. 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.

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

Signed, sealed and delivered
In the presence of:


Print Name: Jeff Molnar


Print Name: Pete Brekender

OWNER/DEVELOPER
P & L CREECH, INC.

By: 
Aaron Creech, Vice President

CITY OF SOUTH DAYTONA:

By: William C. Hall, Mayor

ATTEST:

Joseph W. Yarbrough
City Manager

CERTIFIED AS TO FORM:

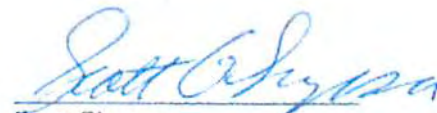

Scott Simpson
City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION

Parcel No. 6337-01-01-0041

**N 220 FT OF LOT 4 BLK 1 DUNLAWTON EXC E 230 FT OF N 200 FT W OF C/L OF
CANAL RD & EXC NEW R/W FOR NOVA RD PER OR 2847 PG 0910**

Parcel No. 6337-01-01-0044

**S 110 FT OF N 330 FT OF W 459.7 FT OF LOT 4 BLK 1 BEING 459.7 FT ON N/L & 456.4
FT ON S/L DUNLAWTON PER OR 3410 PG 0303**

Parcel 1:

That portion of Lot Four (4), Block One (1), Dun-Lawton, as recorded in Deed Book "M", Page 187, Public Records of Volusia County, Florida, described as follows: The Northerly 220 feet of the Westerly 150 feet of the Easterly 380 feet of that portion of said Lot 4 lying Westerly of the center line of Canal Road as now laid out and used, the Southerly 10 feet thereof being subject to an easement for road purposes for owners of land contiguous thereto.

That portion of Lot Four (4), Block One (1), Dun-Lawton, as recorded in Deed Book "M", Page 187, Public Records of Volusia County, Florida, described as follows: All of that portion of the Northerly 220 feet of said Lot 4 lying Westerly of the centerline of Canal Road as now laid out and used excepting the Easterly 380 feet thereof and also excepting the Westerly 90 feet thereof, the Southerly 10 feet thereof being subject to an easement for road purposes for owners of lands contiguous thereto.

TOGETHER with an easement for road purposes over the Southerly 20 feet of the Northerly 220 feet of the Easterly 230 feet of that portion of said Lot Four (4), Block One (1), Dun-Lawton, lying Westerly of the center line of Canal Road as the said Canal Road is now laid out and used.

The Westerly 90 feet of the Northerly 220 feet of Lot Four (4), Block One (1), Dun-Lawton, as per map recorded in Deed Book "M", Page 187, Public Records of Volusia County, Florida.

That portion of Lot Four (4), Block One (1), Dun-Lawton, as recorded in Deed Book "M", Page 187, Public Records of Volusia County, Florida, described as follows: The Southerly twenty (20') feet of the Northerly two hundred twenty (220') feet of the Easterly two hundred thirty (230') feet, being that portion also known as Parcel One (1), lying and situate immediately West of the center line of Canal Road as is presently laid out and being used. The above described portion is to be an egress-ingress for the property contiguous thereto.

Parcel 2:

The South 110 feet of the East 150 feet of the North One Half of Lot 4, excluding County Road, Block 1, Map of Dun-Lawton, according to Deed Book "M", Page 187, of the Public Records of Volusia County, Florida, and Less and Except additional right-of-way per Final Judgment recorded in Official Records Book 4446, Page 1701, and as amended in Official Records Book 4456, Page 1456, Public Records of Volusia County, Florida.

Parcel 3:

Part of Lot 4, Block 1, Dun-Lawton, according to map in Deed Book "M", Page 187, of the Public Records of Volusia County, Florida, described as follows:

Commencing at a concrete monument marking the Northwest corner of said Lot 4; thence Southerly along the Westerly line of said Lot 4 a distance of 220 feet to the place of beginning; thence Easterly and Parallel to the North line of said Lot 4, a distance of about 459.7 feet to a point, said point being 150 feet from the center line of Canal Road pavement, as measured along an extension of the last-mentioned line; thence Southerly and parallel to the pavement of Canal Road, a distance of 110 feet; thence Westerly along the South line of the North 1/2 of Lot 4, a distance of about 456.4 feet to a point in the West line of said Lot 4; thence Northerly along the West line of said Lot 4, a distance of 110 feet to the place of beginning. Together with an Easement for road purposes described as follows: The Southerly 20 feet of the Northerly 220 feet of the Easterly 280 feet of said Lot 4 lying Westerly of the center line of the Canal Road pavement.

EXHIBIT "B"

PERMITTED USES

Construction, Demolition and Vegetative Debris Sorting and Temporary Storage.

Uses Permitted in the "LI - Light Industrial" zoning district as of the adoption of this Agreement, except that Retail Sales, including walk-in customers, shall be prohibited.



1. Personal Representative's Deed from Charles Lee Geiger, as Personal Representative of the Estate of Charles S. Geirge a/k/a Charles Sylvester Geiger, deceased to P and L Creech, Inc., a Florida corporation, recorded July 18, 1986 in O.R. Book 2847, Page 908, Public Records of Volusia County, Florida. (As to Parcel 1 Key # 3677781)
2. Warranty Deed from Helen L. Geiger Musgrove to P & L Creech, Inc., a Florida corporation, d/b/a Godawa Septic Tank Service, recorded July 18, 1986 in O.R. Book 2847, Page 910, Public Records of Volusia County, Florida. (As to Parcel 1 Key # 3677781)
3. Quit Claim Deed from Juanita Geiger Cohick to P and L Creech, Inc., a Florida corporation, recorded July 18, 1986 in O.R. Book 2847, Page 912, Public Records of Volusia County, Florida. (As to Parcel 1 Key # 3677781)
4. Quit Claim Deed from Vendilla G. Wyman to P and L Creech, Inc., a Florida corporation, recorded July 18, 1986 in O.R. Book 2847, Page 914, Public Records of Volusia County, Florida. (As to Parcel 1 Key # 3677781)
5. Quit Claim Deed from Valerie Geiger to P and L Creech, Inc., a Florida corporation, recorded July 18, 1986 in O.R. Book 2847, Page 916, Public Records of Volusia County, Florida. (As to Parcel 1 Key # 3677781)
6. Quit Claim Deed from Belinda Geiger Randall to P and L Creech, Inc., a Florida corporation, recorded July 18, 1986 in O.R. Book 2847, Page 918, Public Records of Volusia County, Florida. (As to Parcel 1 Key # 3677781)
7. Quit Claim Deed from Eria Mae Manning to P and L Creech, Inc., a Florida corporation, recorded July 18, 1986 in O.R. Book 2847, Page 920, Public Records of Volusia County, Florida. (As to Parcel 1 Key # 3677781)
8. Quit Claim Deed from Mary Seckinger to P and L Creech, Inc., a Florida Corporation, recorded July 18, 1986 in O.R. Book 2847, Page 922, Public Records of Volusia County, Florida. (As to Parcel 1 Key # 3677781)
9. Quit Claim Deed from Kathleen Sellers to P & L Creech, Inc., a Florida corporation, recorded July 18, 1986 in O.R. Book 2847, Page 924, Public Records of Volusia County, Florida. (As to Parcel 1 Key # 3677781)
10. Quit Claim Deed from David Geiger to P & L Creech, Inc., a Florida corporation, recorded July 18, 1986 in O.R. Book 2847, Page 926, Public Records of Volusia County, Florida. (As to Parcel 1 Key # 3677781)
11. Quit Claim Deed from Charles Lee Geiger to P & L Creech, Inc., a Florida corporation, recorded July 18, 1986 in O.R. Book 2847, Page 928, Public Records of Volusia County, Florida. (As to Parcel 1 Key # 3677781)
12. Quit Claim Deed from Betty Jean Geiger to P & L Creech, Inc., a Florida corporation, recorded July 18, 1986 in O.R. Book 2847, Page 930, Public Records of Volusia County, Florida. (As to Parcel 1 Key # 3677781)
13. Quit Claim Deed from James Geiger to P & L Creech, Inc., a Florida corporation, recorded July 18, 1986 in O.R. Book 2847, Page 932, Public Records of Volusia County, Florida. (As to Parcel 1 Key # 3677781)
14. Warranty Deed from Kenneth Field, Gary Bruce and Ronald W. Curtis to P & L Creech, Inc., recorded January 5, 1990 in O.R. Book 3410, Page 303, Public Records of Volusia County, Florida. (As to Parcel 3 Key # 3677781)

15. Warranty Deed from Larry F. Conley to P & L Creech, Inc., a Florida corporation, recorded October 5, 1999 in O.R. Book 4481, Page 4839, Public Records of Volusia County, Florida. (As to Parcel 2 Key # 3677803)

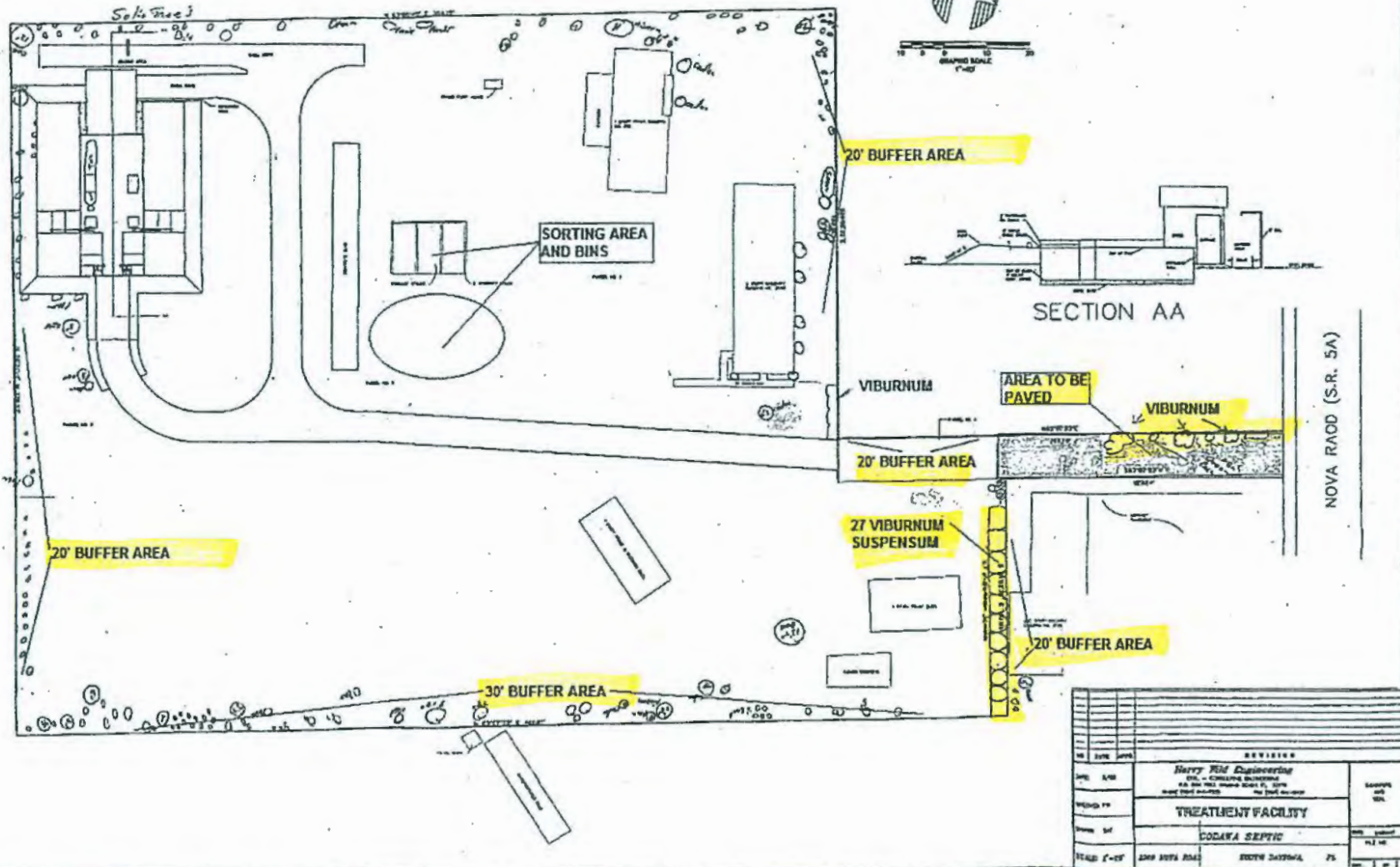
EXHIBIT "C"
PLANNED COMMERCIAL DEVELOPMENT PLAN



EXHIBIT "C"

Note 1. Driveway shall be paved as depicted on Conceptual Plan.

Note 2. Parcels shall be combined into one parcel.



NO.	DATE	APPRO.	REVISION		DRAWING DATE BY
DATE	APPRO.	Harry Mid Engineering INC. - CONSULTING ENGINEERS 840 N. 10TH STREET, SUITE 200 MILWAUKEE, WISCONSIN 53233			
PROJECT NO.			TREATMENT FACILITY		
SHEET NO.			COCANA SEPTIC		
SCALE	DATE	BY	DATE	BY	DATE
1"=10'	10/1/84	DMC	10/1/84	DMC	10/1/84