

**613 NORTH HALIFAX - SEABREEZE MARINA CONDOMINIUM PLANNED DISTRICT  
SLIP ALLOCATION AGREEMENT**

**THIS AGREEMENT** is entered into by and between THE CITY OF DAYTONA BEACH, FLORIDA, a Florida municipal corporation located in Volusia County, Florida (the “City”) and Shamrock-Shamrock, Inc. (“Owner”).

**WHEREAS**, by Ordinance No. \_\_\_\_, the City Commission rezoned approximately 1 acre of land located at 613 North Halifax Avenue, Daytona Beach, Florida, and approved the 613 North Halifax – Seabreeze Marina Condominium Planned District Agreement (“PD Agreement”) between the City and Owner, authorizing Owner to develop the land (the “Planned District”) as a 34 unit, multi-family residential condominium (the “Project”); and

**WHEREAS**, the Planned District is located on the shore of the Halifax River, and as part of the Project Owner proposes to construct a marina within the submerged lands located adjacent to the Planned District; and

**WHEREAS**, pursuant to the Volusia County Manatee Protection Plan (“MPP”), approved by City Res. No. 05-233, and provisions of the City’s Comprehensive Plan implementing the MPP, Daytona Beach is limited to a maximum of 4,182 motorized boat slips community-wide; and

**WHEREAS**, this maximum number applies to all boat slips of any kind, including as applicable public boat slips, boat ramps, privately-owned boat slips, wet and dry slips; and

**WHEREAS**, Art. 3 § 3.4.CC. the City’s Land Development Code (“LDC”) establishes standards and procedures for approval of boat slips, consistent with the MPP and the public interest; and

**WHEREAS**, these provisions specify a maximum number of boat slips that may be constructed/operated on shoreline properties based on use type, and these maximum numbers may only be exceeded if the City Commission allocates additional boat slips; and

**WHEREAS**, in accordance with these regulations the City maintains a “Boat Slip Inventory” (e.g., an inventory of the number of boat slips which are undeveloped, unallocated, and unreserved) for purposes of determining the maximum number of boat slips that may be available for allocation; and

**WHEREAS**, as of March 18, 2020, the current Boat Slip Inventory is:

Maximum Slips permitted to Daytona Beach under MPP	4,182
Less Public Boat Ramps	<80>
Less Marina Slips	<1,153>
Less Single-Family Residential Slips	<648>
<u>Less Existing Allocated Slips</u>	<u>&lt;242&gt;</u>
TOTAL Boat Slips Available for Allocation	2,059

**WHEREAS**, LDC Art. 3 § 3.4.CC.3.ii. allows shoreline properties other than single-family properties, 1 boat slip/25 feet of shoreline, unless additional boat slips are allocated; and

**WHEREAS**, pursuant to the provision above Owner is entitled to 5 boat slips, but Owner would like to build a total of 39 boat slips as part of the marina; and

**WHEREAS**, Owner has submitted an application for an allocation of 34 boat slips from the Boat Slip Inventory in association with the Project, and paid the required the application fee; and

**WHEREAS**, in order to induce the City Commission into approving the application, Owner has offered to reserve 9 of the boat slips and 5 of the parking spaces to be developed as part of the Project, and access to and from the slips and parking spaces, for perpetual use by the general public; and

**WHEREAS**, as part of the offer, Owner represents and warrants that the condominium association to be formed for the Project in accordance with Florida law and the provisions of the PD Agreement, will be responsible for the long term maintenance of the Project, including the dock, slips, and parking spaces, and that the condominium association documents will provide for the perpetual reservation of the boat slips and parking space referenced above for public use; and

**WHEREAS**, Owner has submitted documentation stating that estimated construction costs for a single slip is \$27,222, and for the five parking spaces \$35,000; and

**WHEREAS**, pursuant to Resolution No. 20-\_\_\_\_, the City Commission has determined that the reservation offered by Owner above would provide a net public benefit in accordance with Article LDC Art 3 § 3.3, warranting allocation of 34 excess slips from the Boat Slip Inventory for the Project, subject to the conditions below.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by all parties, the parties hereto agree as follows:

**SECTION 1. Recitals.** The Recitals above are true and correct and are fully incorporated into this Agreement.

**SECTION 2. Excess Slip Allocation; Conditions.** The City Commission hereby allocates 34 boat slips from the Boat Slip Inventory for use by Shamrock-Shamrock, Inc. (Owner"), in association with Owner's development of the residential condominium project further described in the Recitals (the "Project") on the property further described in the Recitals (the "Property"), subject to the following conditions:

(a) This allocation is subject to Owner's development of the Project in accordance with the terms and conditions of the PD Agreement, as hereafter amended; and Owner's formation of the condominium association in a manner that is consistent with Owner's offer and representations in the recitals and with the provisions of this Agreement.

(b) The final configuration and layout of the docks and boat slips associated with the Project is subject to site plan review in accordance with the LDC. In addition to complying with requirements of the PD Agreement and applicable LDC requirements not superseded by the PD Agreement, the docks and slips will be designed and constructed to maintain a sufficient clear zone around the subaqueous City water main located ("Water Main") in the vicinity of the Property and the submerged lands on which Owner intends to construct said docks and slips.

(c) Owner acknowledges that the City makes no warranties or representations about the condition or location of the Water Main referenced above, and that the City intends to continue operating the Water Main indefinitely.

(d) Any adjustments to the configuration and layout required by the ACOE, FDEP, or other third parties, will not be a justification to waive the foregoing requirements regarding configuration and layout.

(e) During site plan review on the Project, Owner will identify, subject to City approval, the location of signage to be constructed on the Property and the docks, identifying the Public Reserved Facilities (i.e., 9 boat slips and 5 parking spaces to be reserved for perpetual public use). So long as these signs are designed and constructed in accordance with city requirements for public identification signage, these signs will be constructed by Owner as part of the Project, and will not be counted toward the signs authorized by the PD Agreement.

(f) Prior to the City's issuance of a certificate of occupancy for the Project, Owner must:

(i) Complete construction of the Public Reserved Facilities and the identification signage referenced above;

(ii) Complete formation of the condominium association for the Project, in a manner consistent with the requirements of this Agreement; and

(iii) Record in the public records, easements, deed restrictions, or other instruments in form acceptable to the City Attorney, reserving to the public, the use of Public Reserved Facilities as well as a right of access through the Project as needed to access the Public Reserved Facilities. These instruments will also provide for maintenance and repair of the Public Reserved Facilities, the areas provided for right of access, and the identification signage referenced above, by the condominium association for the Project further described in the recitals.

(g) Owner indemnifies and holds the City, and all City officers, employees, and agents ("City Indemnitees"), harmless from and against, all liabilities, losses, damages, liens, suits, causes of action, costs (including court costs, legal fees and cost of investigation), actions, and other claims of any kind (collectively, "Claims") arising or resulting from injury to or death of any person or damage to or loss of any property, including but not limited to City-owned -owned or -controlled property and Owner's property, occurring in association with the design, construction, installation, presence within the vicinity of the Water Main, maintenance, relocation, or repair, of the marina, docks and slips; provided, however, that the indemnification provided for in this **Section 2(g)** will not apply to any Claims to the extent that they arise from or are attributed to the gross negligence or willful misconduct of any CITY Indemnitee.

(h) Owner will bear all costs of meeting the conditions stated herein, except where expressly provided otherwise.

(i) The allocation approved herein is fully subject to LDC § 3.4.CC.8, including the 3-year deadline for commencement of construction, the authority of City staff to extend this deadline for a period of up to 1 year based on certain conditions, and the expiration of the

allocation of boat slips provided for herein if the deadline (as extended, if applicable) is not met. If the allocation of excess boat slips expires as provided in LDC § 3.4.CC.8., this Agreement shall be void ab initio and without further effect.

(j) The allocation of excess boat slips provided herein will also automatically terminate if this Agreement terminates as provided in **Section 7**.

(k) Owner acknowledges and agrees that if the allocation of excess boat slips provided herein expires as provided for in LDC § 3.4.CC.8, or terminates as provided in **Section 7** of this Agreement, use of the formerly allocated excess boat slips will immediately cease and the formerly allocated excess boat slips will be returned the Boat Slip Inventory.

**SECTION 3. City Not Responsible for Actions of Third Parties.** Owner acknowledges that the City will not be responsible for any alteration in the size, configuration, or layout of the docks, or reduction in the number of boat slips included in the docks, caused by parties other than the City, such as other shoreline property owners (such as in the enforcement of their riparian rights), the ACOE, or FDEP; or for any costs, claims, damages, or losses suffered by Owner in conjunction with such third party actions.

**SECTION 4. Recordation.** This Agreement will be recorded in the Public Records of Volusia County, Florida, at Owners sole expense.

**SECTION 5. Notices.** Unless otherwise expressly agreed herein, all notices, requests, and demands to or upon the Parties will be delivered by hand, delivered by a courier service, provided to a nationally recognized delivery service for overnight delivery, or by U.S. mail, postage prepaid by registered or certified mail, return receipt requested, to the addresses set forth herein:

To the CITY:  
James V. Chisholm  
City Manager  
The City of Daytona Beach  
301 S. Ridgewood Ave.  
Daytona Beach, FL 32114

To Owner:  
Patrick E. Sullivan  
President  
Shamrock-Shamrock, Inc.  
1757 N. Nova Rd #108R  
Holly Hill, FL 32117  
Daytona Beach, Florida 32117

Either party may designate a different person for receipt of notice, or a change of street address for notice, by providing the other Party notice in the manner described above.

**SECTION 6. Independent Contractors.** Owner agrees that nothing herein contained creates or will be construed as creating a partnership or joint venture between the City and Owner, or makes either party an agent of the other. No statement contained in this Agreement will be construed so as to find Owner, or Owner's officers, employees, or agents, to be employees of the City, and neither Owner, nor Owner's officers, employees, or agents, will be entitled to the rights, privileges, or benefits of City employees. Further, persons employed by Owner in the performance of services and functions pursuant to this Agreement will have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the City's officers and employees.

**SECTION 7. Default, Termination and Remedies.**

(a) **Default.** A party hereto will be in default if the party breaches any material obligation of the party herein and such breach continues beyond the Cure Period provided in the non-breaching party's written notice of material breach. The Cure Period will be 30 days, unless the nature of the breach is such that it cannot reasonably be cured within this time, in which instance the Cure Period will be extended by one day for each day that the breaching party is diligently seeking to cure the breach.

(b) **Remedies.**

(1) *In General.* Upon a default by a party, the non-defaulting party will have the right to terminate this Agreement. Termination will be effective upon the non-defaulting party's provision of notice to the defaulting party.

(2) *Termination of Allocation.* Upon termination of this Agreement by either party, the allocation provided for herein will automatically terminate; and in such instance, use of the formerly allocated boat slips will immediately cease, and the formerly allocated excess boat slips will be returned the Boat Slip Inventory.

(3) *Reserved Rights and Authority.* Nothing herein will be deemed to limit the City's the CITY rights in law or in equity due to such default, or the City authority to enforce violations of the LDC.

**SECTION 8. Force Majeure.** In the event that fire, riots, civil commotion, acts of government or government immobility (whether federal, state, or local), war, acts of God, or other contingencies beyond the reasonable control of a Party (hereinafter, "force majeure event") interfere with or prevent the fulfillment by such Party of its obligations hereunder, such obligations will be suspended until such time as such contingency or contingencies have tenanted. Each Party will promptly notify the other upon becoming aware that a force majeure event has occurred or is likely to occur and will use its best efforts to minimize any resulting delay in or interference with the performance of its obligations hereunder.

**SECTION 9. Police Power and Sovereign Immunity Non-Waiver.** Nothing contained in this Agreement will be construed as a waiver of or contract with respect to the regulatory and permitting authority of the City as it now or hereafter exists under applicable laws, rules, and regulations. Further, nothing contained in this Agreement will be construed as a waiver of or attempted waiver by the City of its sovereign immunity under the constitution and laws of the State of Florida.

**SECTION 10. No Third Party Beneficiary.** It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to establish in favor of the public or any member thereof, other than as expressly provided herein or as contemplated in this Agreement, the rights of a third-party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties,

obligations, and responsibilities of the Parties to this Agreement with respect to third parties will remain as imposed by law.

**SECTION 11. Separable Provisions.** Each provision of this Agreement will be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity will not impair the operation of or affect those provisions of this Agreement which are valid.

**SECTION 12. Drafting and Interpretation.** The Parties and their counsel have cooperated in the preparation and drafting of this Agreement and therefore in interpreting this Agreement, the principle of construing language against the drafting Party will not apply.

**SECTION 13. Assignment.** Owner will not assign its rights or obligations under this Agreement without the City Manager's prior written approval.

**SECTION 14. Waiver.** The failure of either party to insist upon a strict performance of any of this Agreement's terms, covenants, or conditions hereof will not be deemed a waiver by that party of any subsequent breach or default in any such agreements, terms, covenants, or conditions.

**SECTION 15. Law Governing; Venue.** This Agreement will be governed by the laws of the state of Florida without regard to any choice of law principles that could result in application of the laws of any other jurisdiction. Jurisdiction for any legal action or proceeding arising out of this Agreement will be exclusively in the courts of the state of Florida in and for Volusia County, if in state court, or the U.S. District Court, Middle District of Florida if in federal court. The Parties hereby waive any right to stay or dismiss any action or proceeding brought under or in connection with the Agreement that is brought before the above-referenced courts on the basis of *forum non-conveniens*.

**SECTION 16. RIGHT TO JURY TRIAL WAIVED.** THE CITY AND OWNER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN AND AMONG THEM RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY DISPUTES BETWEEN THE PARTIES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR FUTURE DEALINGS. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT EACH HAS REVIEWED THEIR RESPECTIVE WAIVER WITH THEIR LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVED ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER WILL APPLY TO ANY SUBSEQUENT AMENDMENTS TO AND RENEWALS OF THIS AGREEMENT, AND TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THIS

AGREEMENT OR DME'S OPERATION, MANAGEMENT, OR USE OF THE STADIUM. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**SECTION 17. Mediation of Disputes.** Both parties agree to submit to non-binding, pre-suit mediation any and all disputes arising under this Agreement prior to commencing litigation regarding such disputes, and each party hereto agrees to participate in good faith in any mediation proceeding initiated by the other party. Mediation may be initiated at any time by a party (the "Noticing Party") by giving written notice to mediate to the other party hereto (the "Noticed Parties"), which notice will state the Noticing Party's election to invoke mediation, a description of the matter or matters to be mediated, and the names of not less than five proposed mediators. The Noticed Party will, within 15 days after receipt of the notice to mediate, select a mediator from the list of mediators set forth in the notice to mediate and notify the Noticing Party of his selection. Thereafter, the Noticing Party or that Party's attorney will coordinate the scheduling of the mediation conference with the Noticed Parties and their attorneys. Both parties hereto will have the right, without regard to the provisions of this Section and without regard to whether the mediation has been concluded, to commence litigation concerning any issues being mediated if a binding agreement resolving such issues is not reached within 90 days after the date of the notice to mediate, unless the inability to resolve the issues within such period of time has resulted from a failure on the part of the party commencing litigation to comply with the provisions of this Section or to exercise good faith, in which case the litigation will be subject to dismissal upon proof to the court of such grounds. The mediation otherwise will be governed by and carried out and concluded in accordance with those provisions of the Florida Rules of Civil Procedure relating to mediation which are then in effect.

*[Remainder of page intentionally left blank. Agreement continues on following page.]*

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

Signed, sealed and delivered in the presence of:

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

\_\_\_\_\_  
Witness 1

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

\_\_\_\_\_  
Print Name of Witness 1

Attest: \_\_\_\_\_  
Letitia LaMagna, City Clerk

\_\_\_\_\_  
Witness 2

Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name of Witness 2

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by Derrick L. Henry and Letitia LaMagna, Mayor and City Clerk, respectively, of The City of Daytona Beach, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

\_\_\_\_\_  
Notary Public  
Commission No: \_\_\_\_\_



Signed, sealed and delivered in the presence of:

Shamrock-Shamrock, Inc., a Florida corporation

[Signature]  
Witness 1  
Robyn Ivey  
Print Name of Witness 1

By: [Signature]  
Printed Name: PE Sullivan  
Title: ITS PRESIDENT

[Signature]  
Witness 2  
Holly M Wallsmith  
Print Name of Witness 2

Date: 17 MAR 20

[Corporate

Seal]

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 17 day of March, 2020, by Patrick Sullivan as president of Shamrock-Shamrock, Inc., a Florida corporation referred to in this Agreement as "Owner" or "Developer". He or she is  personally known to me or  produced as identification and did not take an oath.

[Signature]  
Notary Public  
Commission No. GG 962489



Approved as to legal form:

By: \_\_\_\_\_  
Robert Jagger, City Attorney