

Document prepared by:
Joseph H. Hopkins, P.E.
The Performance Group, Inc.
100 Marina Point Drive
Daytona Beach, FL 32114

Return recorded document to:
City of Daytona Beach Records Clerk
P.O. Box 2451
Daytona Beach, FL 32115-2451

TIKI SUPREME PLANNED DISTRICT AGREEMENT

The CITY OF DAYTONA BEACH, FLORIDA, a Florida municipal corporation located in Volusia County, Florida ("City"), and Tiki Supreme, Inc., a Florida Corporation, the record title property owner ("Owner"), hereby agree and covenant, and bind their heirs, successors, and assigns, as follows.

The property is part of an expired Planned Commercial Development Agreement (O.R. Book 6038, Page 1366). This agreement revokes and supersedes the previous agreement.

1. PROPERTY DESCRIPTION AND OWNERSHIP.

A. The property subject to this Agreement consists of approximately 12.4± acres of real property ("Property") and is described in Exhibit "A", attached hereto and by reference made a part hereof.

B. The Property is under the sole ownership of Owner.

2. EXHIBITS.

The Exhibits listed below are by reference made a part hereof, and copies or reduced size copies are attached hereto. Full-sized copies of the Exhibits shall be retained by the City Clerk and shall be controlling in case of any ambiguity in the Exhibits. In the event of a conflict between the graphic illustrations of any Exhibit and the textual provisions of this Agreement, the textual provisions shall control.

Exhibit A: Property legal description

Exhibit B: PD Plan, rev. date October 2018, prepared by The Performance Group, Inc.,

3. DEVELOPMENT PLAN.

A. Owner has designated the Property as "Tiki Supreme Planned District".

B. The Property will be developed as a **Planned Development – General (PD-G)** pursuant to the City's Land Development Code (LDC). Development shall be controlled by the LDC and the terms and provisions of this Agreement. In the event of a conflict between this Agreement and the LDC or other ordinances, this Agreement shall control. If this Agreement fails to address a particular subject or requirement, the applicable requirements of the LDC or other City ordinance shall control.

C. Development of the Property shall be consistent with Exhibit B (PD Plan). Exhibit B generally depicts the planned layout of buildings, parking areas, driveways, common areas, and other planned features or improvements to the Property. To the extent actual buildings, features, improvements and uses are shown on the PD Plan, they are shown only for illustrative purposes. Layout, quantity and scale of the improvements may change based on the needs of a particular end user of the Property as long as it remains consistent with this Agreement and the LDC.

D. **ADDITIONAL LOT DEVELOPMENT CRITERIA.** The following lot development criteria shall apply to the Property:

- (1) Maximum building height of 35 feet;
- (2) Maximum FAR 0.40.
- (3) Setbacks: interior side(north/south) minimum 10 ft.; front (west) minimum 50 ft.; rear (east) minimum 10 ft.
- (4) 40% Maximum building coverage;
- (5) 20% Minimum open space;
- (6) 80% Maximum impervious surface area;
- (7) Slopes within any dry retention pond(s) shall be 4:1 without a fence;
- (8) Dry retention pond(s) shall count toward open space requirements; and
- (9) Landscape requirements shall meet the 25 foot Scenic Thoroughfare Overlay ("STO") along Mason Avenue..

4. CONFORMANCE WITH COMPREHENSIVE PLAN; CONCURRENCY; PERMITS.

A. The City has determined that the Property is suitable in size, location, and character for the uses proposed, and that the uses proposed are consistent with the City's comprehensive plan.

B. Owner shall be responsible for obtaining all development permits required by the LDC and applicable federal and state laws. Owner specifically acknowledges that approval of this Agreement does not constitute a Concurrency Certificate as required by the LDC, and that Developer will be required to separately obtain a Concurrency Certificate or, where applicable, to enter into proportionate fair share agreement. Approval of this agreement and exhibits is not a permit to begin clearing, to begin site work, or to begin construction without necessary permits.

C. The City agrees to issue the required permits for development of the Property in the manner set forth in this Agreement and the LDC.

5. PERMITTED USES.

The following uses are permitted within the Property, subject to compliance with the Use-Specific Standards set forth in Article 5, LDC:

Bakeries

Bottling Plants

Brewery, Winery or Craft Distillery

Building, Heating, Plumbing or Electrical Contractors Storage Yard

Warehouse, Storage and Distribution

Retail Sales (as accessory to manufacturing uses, per LDC)

Manufacturing, Assembly or Fabrication (Light and Heavy)

Educational, Scientific or Industrial Research and Development

Professional Service Offices

Other Office Facilities

General Industrial Services

6. INFRASTRUCTURE.

A. **STORMWATER:** On-site stormwater retention facilities will be constructed in conjunction with the development and will include the expansion of the adjacent lake/ treatment facility. The stormwater retention facility will be maintained at a level consistent with the standards of the St. Johns River Water Management District and The City of Daytona Beach. Collection and transmission facilities shall be located pursuant to the approved site plan, or site plans approved for individual lots or structures.

B. **UTILITIES:** Water and sewer service shall be provided by The City of Daytona Beach. All utilities shall be constructed underground. Owner will also provide easements and grants for the installation, maintenance and upkeep of the public utilities including water, sewer, reclaim water, electrical and telephone, as well as cable television and fiber, if available. Water, sewer, reclaim water infrastructure must be constructed to current City standards and consistent with this Agreement. Owner will provide offsite extensions for water, sewer and reuse as required and determined by the City at the time of site plan.

Owner acknowledges that flows of sewer from the Property into the City's public sewer system will be limited based on the capacity of City Lift Station 105 and the 6" sewer force main (the "Force Main Segment") that connects the Lift Station to another sewer force main on Williamson Boulevard. Collectively, Lift Station 105 and the Force Main Segment are referred to as the "Regional City Sewer Facilities". Whenever the City determines that a proposed development of a lot or parcel within the Planned Development may cause the existing capacity of the Regional City Sewer Facilities to be

exceeded, the City may require the owner to do either of the following as a condition of site plan approval:

(i) Provide the required upgrades to the Regional City Sewer Facilities, at the Owner's sole cost;
(ii) Where the City determines that the nature of the impact from the proposed development project is such that it would not otherwise be feasible (from a cost or technical standpoint) to construct an upgrade, the City may instead require the Owner to pay the City a sum sufficient to pay for a portion of the cost of the smallest upgrade in capacity that would, in the City's determination, be feasible. The portion to be paid will be the proposed development's pro rata share of the excess capacity created by the upgrade determined by the City to be feasible. For example, where the proposed development would cause existing flows to exceed capacity of Lift Station 105 by 10%, and the City determines that an upgrade would need to increase the capacity of the Lift Station by 50% in order to be feasible, the City will require the owner or developer to pay 20% of the projected cost of such upgrade. In such instance, the City will retain the payment made and apply it toward the cost of the upgrade when it is made. In either instance, the term, "cost," includes permitting, design, and construction; and the upgrade will be made to City standards.

C. PARKING: The Owner shall have the option to construct only the minimum number of off-street parking space required for the proposed use based on a parking demand study prepared by the Owner that estimates parking demand based on the recommendations of the Institute of Traffic Engineers (ITE) or other acceptable source of parking demand data, and that includes relevant data collected from uses or combinations of uses that are the same or comparable to the proposed use in terms of density, scale, bulk, area, type of activity, employment and location. In the absence of a parking demand study, parking shall be calculated consistent with the requirements of the LDC.

D. LANDSCAPING: Approximately 3.6 acres of the site is encumbered by a utility easement dedicated to Florida Power and Light (OR Book 170, Page 347 & OR Book 551, Page 86). The easement area will not be used in the overall site area calculations for trees, perimeter plantings and buffers. The remaining 8.8 acres of the site will be landscaped in accordance with the LDC unless otherwise provided herein. Clustering of the landscape material shall be permitted as long as the total required landscape material count is provided. Mason Avenue is considered a Scenic Thoroughfare Overlay (STO). A minimum scenic buffer of 25 ft. is being provided. Landscaping of the STO shall be in accordance with the LDC by providing the equivalent buffer plantings to comply with the typical 50-buffer landscape yard requirements. All landscaping requirements shall be addressed during site plan review.

7. ARCHITECTURAL AND DESIGN STANDARDS.

A. All buildings and accessory structures constructed within the Property shall be developed in compliance with the requirements of this section, and with the applicable provisions of the LDC relating to architectural standards where they do not conflict with the provisions of this section.

B. All of the following requirements shall be met within the Property:

(1) All buildings and accessory structures shall be consistent with a common architectural theme. The theme shall be established by harmoniously coordinating the general appearance of all buildings and accessory structures, including but not limited to: exterior wall finishes or materials; roof styles, slopes, and materials; colors; and architectural details and ornamentation.

(2) All structures shall complement one another and shall convey a sense of quality and permanence. Lower grade materials, such as unfinished concrete and pre-fabricated metal, shall be prohibited.

(3) Corporate prototype design and materials shall be permitted provided they comply with the provisions of this section.

(4) False or real windows shall be provided on all elevations visible from public right of way in sufficient size and number to complement the proportions of the building.

(5) The architectural building design provisions of the LDC, Section 6.12 shall apply.

(6) No outside display shall be permitted.

(7) Outside storage of materials shall be permitted as an accessory use and comply with the provisions of Section 5.3.C.18 of the LDC.

(8) Dumpster enclosures, loading docks and utility access shall be screened from public view using landscaping or architectural features.

(9) No vending machines shall be permitted on outside walkways or other outdoor pedestrian areas.

(10) The physical appearance of all parking lot lighting fixtures shall be consistent.

8. ENVIRONMENTAL CONSIDERATIONS.

A. Development of the Property shall comply with the LDC tree preservation requirements. Developer shall comply with all rules, statutes, and regulations pertaining to protected wildlife species, including but not limited to the rules and permitting requirements of the Florida Game and Freshwater Fish Commission concerning gopher tortoises.

B. The City shall defer to the determinations and permitting authorization of the St. Johns River Water Management District as it relates to any proposed onsite activities, environmental impacts and stormwater management.

9. SIGNAGE.

Signage within the Property shall be permitted as outlined below and meet the applicable provisions of the LDC, Section 6.10.k.3 for the Industrial District to the extent of the provisions not addressed herein:

- A.* Ground Signage (Monument): One (1) monument sign shall be permitted for each individual use on the Property, up to a maximum of 4 uses, with a maximum total sign area of 120 square feet for the Property.
- B.* Wall Signage: One (1) wall sign shall be permitted for each individual use on the Property, up to a maximum of 4 uses, with a total maximum total sign area of 300 square feet for the Property and a maximum of 200 square feet of signage for any one use
- C.* Wall Graphics and Architectural Embellishments: Wall graphics and architectural embellishments shall be permitted on the Property, provided they are in accordance with the LDC.

10. EFFECTIVE DATE; COMPLETION SCHEDULE.

A. This Agreement shall be effective upon execution by all parties. The restrictions on use and development imposed by this Agreement shall be binding upon all successors in interest in the Property, unless and until the City alters or eliminates such restrictions in the course of its actions as zoning authority.

Application shall be submitted for all construction permits for the development, or for the first phase of a phased development, within five (5) years of the approval of this Agreement by the City Commission. The filing of an appeal of the land development order by any person shall toll the time for permitting until final resolution of the appeal. If development is phased, application for construction permits for subsequent phases shall be submitted within ten (10) years from the date of initial approval.

B. Construction of phase one shall be substantially complete within eight (8) years of the approval of this Agreement. Construction of any other phase must be substantially complete within fifteen (15) years of the initial approval of this Agreement.

C. One 12-month extension of the scheduled application or completion dates may be permitted as a minor modification to this Agreement.

D. Failure to comply with the schedule set out above shall cause the development rights granted pursuant to this Agreement to lapse.

11. MINOR MODIFICATIONS.

A. The following may be administratively authorized as minor modifications to this Agreement:

(1) Amendments to an Exhibit that are necessary for compliance with the provisions of this Agreement, the LDC, or extra-jurisdictional permitting requirements, and address technical considerations that could not reasonably be anticipated during the Planned Development approval process;

(2) Have no material effect on the character of the approved PD district, the basic concept and terms of the PD Plan/Agreement. These may include, but are not limited to, the following:

- a) Structural alterations that do not significantly affect the basic size, form, style, and appearance of principal structures;
- b) Minor changes in the location and configuration of streets and driveways that do not adversely affect vehicular access and circulation on or off the site;
- c) Minor changes in the location or configuration of buildings, parking areas, landscaping, or other site features;
- d) Minor changes in the location and configuration of public infrastructure facilities that do not have a significant impact on the City's utility and stormwater management systems;
- e) Increases of five percent or less in the total number of parking spaces.

(3) Modifications of up to 20% to any of the lot dimensional requirements and associated Exhibit revisions, where such modifications are necessary to address minor Exhibit errors or unanticipated conditions that reasonably need to be addressed to ensure the development plan can be implemented, EXCEPT:

- a) Modifications, such as to floor area ratios, that increase intensity or density of the entire project or any phase by more than 2%;
- b) Modifications that increase building height or decrease setbacks, yards, or landscaping along the perimeter of the Property by more than 10%;

- c) Modifications that, when combined with previously approved minor and substantial modifications, would result in a cumulative change of more than 20% of the original requirement for the area in question; and
- d) Modifications that would unduly impact City-owned public utilities.

B. Requests for minor modifications shall be submitted in writing on forms provided by the City. Requests shall be reviewed pursuant to the general technical review process described in the LDC.

C. Denial of a requested minor modification shall be issued in writing to the applicant. Upon denial, or if more than 60 days elapses after the submittal of a completed application without a decision by the City, the applicant may apply for an amendment to the agreement.

D. Approved modifications shall be noted on the official plan documents.

12. AMENDMENTS.

A. Any revision to this Agreement other than a minor modification as described above shall require an amendment approved by the City Commission after review and recommendation by the Planning Board. Requests for an amendment must be submitted in writing and, except as otherwise provided herein, shall be processed in accordance with the LDC. Notice of public hearings shall be provided as if the application is one to rezone property.

13. VARIANCES.

This Agreement shall not be deemed to prohibit any owner of property within the planned development from seeking or obtaining one or more variances from the requirements of this Agreement pursuant to the LDC. In addition to those entitled to notice pursuant to the LDC, notice of any public hearing to consider a proposed variance shall be provided to all persons owning property within the planned development. No such variance shall be deemed to require formal amendment to this Agreement.

14. POLICE POWER AND SOVEREIGN IMMUNITY NOT WAIVED.

Nothing contained in this Agreement shall 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 shall 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.

15. COMPLETE AGREEMENT; AGREEMENT TO BE RECORDED.

A. This Agreement represents the complete understanding by and between the parties with respect to the development and use of the Property. Any and all prior agreements between the parties with respect to any subject comprehended by this Agreement is hereby voided and superseded by this Agreement.

B. This Agreement shall be recorded in the Public Records of Volusia County, Florida, at Developer's expense. The restrictions on use and development imposed by this Agreement shall be binding upon all successors in interest in the Property.

16. VENUE AND SEVERABILITY.

A. In the event of any claim, action, litigation, or proceeding under this Agreement, venue shall be in Volusia County, Florida.

B. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, such holding shall not affect the validity or enforceability of any other provision of this Agreement unless the holding so states.

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

[Signature pages following]

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:

Witness 2

By: _____

Letitia LaMagna, City Clerk

Print Name of Witness 2

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 201_ by _____ and _____, 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: [OWNER]

Witness 1

Tracy A. Nypaver

Print Name of Witness 1

Witness 2

Mary K Kelly

Print Name of Witness 2

By: [Signature]

Name: Renee L Versaw

Title: PRESIDENT

Date: 1-11-19

[Corporate Seal]

Pennsylvania
STATE OF ~~FLORIDA~~
COUNTY OF ~~VOLUSIA~~
Butler

The foregoing instrument was acknowledged before me this 11th day of January, 2019, by Renee L Versaw as President of Tiki Supreme Inc., referred to in this agreement as "Owner." He or she is personally known to me or produced as identification and did not take an oath.

Commonwealth of Pennsylvania - Notary Seal
Nicholas Fisher Nypaver, Notary Public
Butler County
My commission expires July 31, 2022
Commission number 1284914

Member, Pennsylvania Association of Notaries

[Signature]

Notary Public

Commission No. 1284914

Approved as to legal form:

By: _____

Robert Jagger, City Attorney

EXHIBIT A

Legal Description of the Property

EXHIBIT B

PD Plan

LEGAL DESCRIPTION:

A PORTION OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 15 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AS A POINT OF REFERENCE, COMMENCE AT A 4"X4" CONCRETE MONUMENT MARKING THE NORTHWEST CORNER OF SAID SECTION 15; THENCE RUN N89°40'56"E, ALONG THE NORTH LINE OF SAID SECTION 12, A DISTANCE OF 368.90 FEET TO AN INTERSECTION WITH THE WESTERLY RIGHT-OF-WAY LINE OF THE MASON AVENUE EXTENSION, AS DESCRIBED IN WARRANTY DEED FROM CONSOLIDATED-TOMOKA LAND COMPANY TO THE CITY OF DAYTONA BEACH AND RECORDED IN OFFICIAL RECORDS BOOK 5410, PAGE 130, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, SAID POINT LYING ON A CURVE, CONCAVE EASTERLY; THENCE DEPARTING SAID NORTH LINE OF SECTION 15, RUN SOUTHERLY AND EASTERLY, ALONG THE CURVED WESTERLY RIGHT-OF-WAY LINE OF MASON AVENUE EXTENSION, HAVING A RADIUS OF 1568.00 FEET, AN ARC DISTANCE OF 70.85 FEET, A CENTRAL ANGLE OF 2°35'20", SUBTENDED BY A CHORD OF 70.85 FEET BEARING S16°28'18"E, TO THE SOUTHWESTERLY CORNER OF MASON AVENUE EXTENSION; THENCE, DEPARTING SAID WESTERLY RIGHT-OF-WAY LINE, RUN N72°14'04"E, ALONG THE RADIAL SOUTHERLY LINE OF SAID MASON AVENUE EXTENSION, A DISTANCE OF 80.00 FEET TO THE SOUTHEASTERLY CORNER OF SAID MASON AVENUE EXTENSION, SAID POINT LYING ON A CURVE, CONCAVE EASTERLY; THENCE, DEPARTING THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID DESCRIBED MASON AVENUE EXTENSION, RUN SOUTHERLY AND EASTERLY, ALONG A CURVED LINE, HAVING A RADIUS OF 1488.00 FEET, AN ARC DISTANCE OF 536.41 FEET, A CENTRAL ANGLE OF 20°39'16", SUBTENDED BY A CHORD OF 533.51 FEET BEARING S28°05'34"E, TO THE POINT OF TANGENCY THEREOF; THENCE RUN S38°25'12"E A DISTANCE OF 162.25 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING SAID CURVED LINE RUN N62°25'05"E 585.35 FEET; THENCE RUN S32°06'34"E 465.00 FEET TO AN INTERSECTION WITH THE NORTHERLY LINE OF A 305 FEET WIDE FLORIDA POWER AND LIGHT COMPANY EASEMENT, RECORDED IN OFFICIAL RECORDS BOOK 170, PAGES 347 THROUGH 349 AND OFFICIAL RECORDS BOOK 511, PAGES 86 THROUGH 88, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE CONTINUE S32°06'34"E 326.70 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF THE 305 FEET WIDE FLORIDA POWER AND LIGHT COMPANY EASEMENT, AFORESAID, AND LYING S36°53'36"W 400.00 FEET FROM AN INTERSECTION WITH WILLIAMSON BOULEVARD A 140 FEET RIGHT-OF-WAY AS RECORDED IN OFFICIAL RECORDS BOOK 1866, PAGE 992, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE RUN S36°53'36"W 400.00 FEET ALONG THE SOUTHERLY LINE, AFORESAID; THENCE DEPARTING SAID SOUTHERLY LINE RUN S71°02'40"W 336.01 FEET TO AN INTERSECTION WITH THE CURVED EASTERLY LINE OF THE OF THE PROPOSED SOUTHERLY EXTENSION OF MASON AVENUE (A PROPOSED 80 FEET RIGHT-OF-WAY); THENCE NORTHERLY AND WESTERLY ALONG SAID CURVED RIGHT-OF-WAY, SAID CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 1568.00 FEET, A CENTRAL ANGLE OF 30°25'12", A CHORD LENGTH AND DIRECTION OF 822.75 FEET, N23°12'38"W, FOR A DISTANCE OF 832.50 FEET TO A POINT OF TANGENCY; THENCE RUN N38°25'12"W A DISTANCE OF 92.50 FEET TO THE POINT OF BEGINNING. CONTAINING 12.43 ACRES, MORE OR LESS. THE BEARING BASIS IS ASSUMED N89°40'56"E ALONG THE NORTHERLY LINE OF SECTION 15, TOWNSHIP 15 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY, FLORIDA.

DEV2018-120
SHEET 1 OF 1

EXHIBIT A - LEGAL DESCRIPTION

THE PERFORMANCE GROUP

CIVIL ENGINEERING / PLANNING / DEVELOPMENT



JOSEPH H. HOPKINS, P.E. NO. 48059
100 MARINA POINT DR., DAYTONA BEACH, FL. 32114
TELEPHONE: (386) 239-7166 FAX: (386) 239-7120

PROJECT: 642 TIKI SUPREME

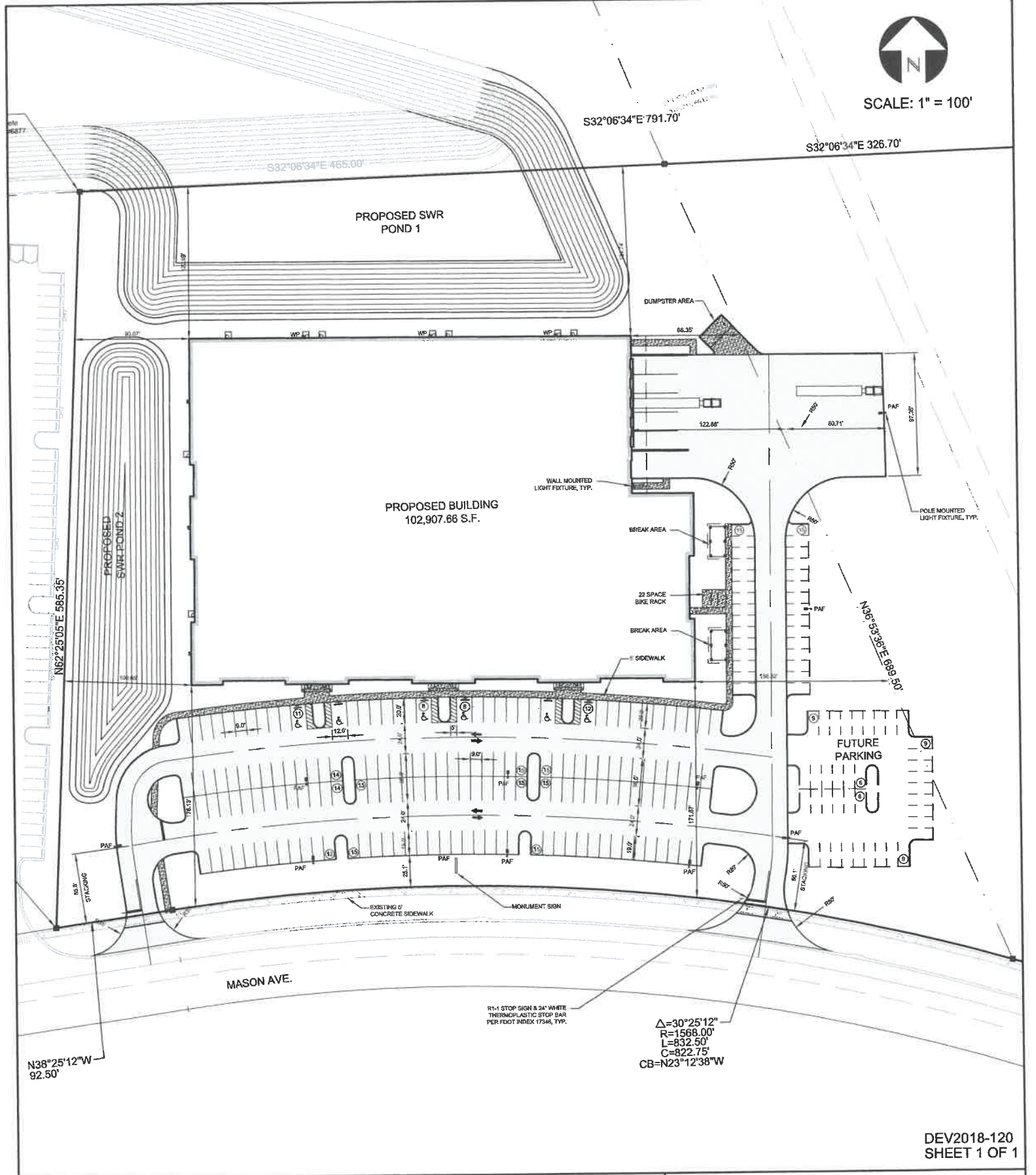
SCALE: NONE

FILE: 642-SITE PLAN 5

DATE: 7/1/18; 10/8/18



SCALE: 1" = 100'



DEV2018-120
SHEET 1 OF 1

EXHIBIT B - SITE PLAN

THE PERFORMANCE GROUP

CIVIL ENGINEERING / PLANNING / DEVELOPMENT



JOSEPH H. HOPKINS, P.E. NO. 48059
100 MARINA POINT DR., DAYTONA BEACH, FL. 32114
TELEPHONE: (386) 239-7166 FAX: (386) 239-7120

PROJECT: 642 TIKI SUPREME

SCALE: 1"=100'

FILE: 642-SITE PLAN 5

DATE: 7/1/18; 10/8/18