

**AGREEMENT RELATED TO DOAH CASE NUMBER 15-004684GM, CITY OF
FLAGLER BEACH V. BOARD OF COUNTY COMMISSIONERS OF FLAGLER
COUNTY AND SEA RAY BOATS, INC., BRUNSWICK CORPORATION, AND
CARTER-FLAGLER ROBERTS ROAD LAND TRUST**

THIS AGREEMENT is entered into on ____ of _____, 2015 by and between the City of Flagler Beach, Florida (hereinafter, the “City”) and Flagler County, Florida (hereinafter, the “County”), and is joined in by Sea Ray Boats, Inc. (hereinafter, “Sea Ray”), Brunswick Corporation (hereinafter, “Brunswick”) and Carter-Flagler Roberts Road Land Trust (hereinafter, “Carter”).

RECITALS

1. Carter owns property located within the County consisting of two parcels with Flagler County Parcel ID numbers 02-12-31-0000-01010-0140 and 02-12-31-0000-01010-0150 (hereinafter collectively, the “Subject Property”).
2. Sea Ray owns property located within the County with Flagler County Parcel ID number 02-12-31-0000-01010-0010 (hereinafter, the “Sea Ray Property”), which lies to the north of and adjacent to the Subject Property.
3. Brunswick is the parent company of Sea Ray.
4. Sea Ray operates a boat manufacturing operation upon the Sea Ray Property.
5. The municipal boundary of the City lies to the east of and adjacent to the Subject Property and the Sea Ray Property.
6. On July 20, 2015, the County adopted a comprehensive plan amendment on application number 2972 through Flagler County Ordinance 2015-07 that amended the County’s Comprehensive Plan Future Land Use Map Designation_ of the Subject Property from Residential Low Density Single Family and Conservation to Commercial High Intensity (hereinafter, the “Amendment”).
7. The City timely filed a Petition with the Florida Department of Administrative Hearings pursuant to Section 163.3184, Florida Statutes, challenging the Amendment (hereinafter, the “DOAH Case”).
8. In part, the City challenges the Amendment based on its allegations that the County failed to comply with the Interlocal Coordination Element of its Comprehensive Plan.
9. In order to resolve the disputes raised in the DOAH Case, the City, the County, Sea Ray, Brunswick and Carter have entered into this Agreement. This Agreement represents a complete resolution of all Parties’ disputes and claims related to the Subject Property and the Sea Ray Property.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

PART I. GENERAL PROVISIONS

10. The foregoing recitals are hereby adopted as a material part of this Agreement.
11. **PURPOSE.** The purpose of this Agreement is to resolve existing disputes among the Parties related to the Subject Property and the Sea Ray Property.
12. **SEA RAY'S AGREEMENT.** Sea Ray agrees as follows:
 - a) Sea Ray shall provide, within thirty (30) days of posting, copies of all semi-annual emissions reports submitted to FDEP to the County and the City.
 - b) Sea Ray shall provide copies of any applications made to FDEP or the County for any increased capacity of an emissions source (stack or other source of actual emissions) or any actual increase in emissions.
13. **THE CITY'S AGREEMENT.** The City agrees to dismiss its Petition in the DOAH Case within two business days of the execution of this Agreement by all Parties and agrees to not challenge the Zoning Amendment also adopted by the County on July 20, 2015 related to the Subject Property.
14. **THE COUNTY'S AGREEMENT.** The County agrees as follows:
 - a) To the extent they become applicable to the Sea Ray Property, the County agrees to apply its Industrial Performance Standards to the Sea Ray Property.
 - b) To establish a joint planning committee consisting of the planning directors of each jurisdiction pursuant to Comprehensive Plan Policy I.1.1.4, so long as the policy exists.
 - c) To provide notice to the City of Flagler Beach of any land development related application, but excluding any building permit application, submitted by Sea Ray for the Sea Ray Property for a period of up to 15 years.
 - d) For County planning department staff to review and consider all comments received by the City in response to any notice provided to the City pursuant to 14.c) and, if requested by the City, to make reasonable accommodations for County planning department staff to discuss such comments with City planning department staff.
15. **CARTER'S AGREEMENT.** As owner of the Subject Property, Carter joins in this agreement and consents to its terms.

16. **ALL PARTIES' AGREEMENT.** All Parties to this Agreement agree as follows:

Subject to the terms and conditions of this Agreement, without releasing any rights created by this Agreement, and as part of the consideration for this Agreement, the parties hereto release each other as follows:

- a) the Parties do hereby acquit, release, exonerate and discharge each other and their shareholders, officers, directors, employees, successors, legal representatives, and assigns, of and from any and all obligation, liability, or responsibility for, from, under or on the account of or growing out of or arising out of any and all known and unknown, foreseen and unforeseen, developed and undeveloped damages, or losses and the consequence thereof, from the beginning of the world through the date of this Agreement, including all damages, losses, costs, attorney's fees, charges and expenses of every kind, nature and character, resulting directly or indirectly, proximately or remotely, from all and any of the matters related to the Subject Property, Sea Ray Property, and things raised or could have been raised in the case of *City of Flagler Beach v. Board of County Commissioners of Flagler County et al.* Case Number 15-004684, pending in the Division of Administrative Hearings concerning or related to the Comprehensive Plan Amendment adopted by Flagler County concerning the Subject Property.
- b) The Parties have voluntarily executed this Agreement and have each read and understand this Agreement.
- c) To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signature of each party, or on behalf of each party, appear on each counterpart. It shall be sufficient that the signature of, or on behalf of each party appears on at least one counterpart. All counterparts shall collectively constitute a single agreement.
- d) The Parties acknowledge that they participated equally in the drafting of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently or liberally for or against either party.
- e) No waiver of any provision hereof shall be effective unless executed in writing by the party claimed to have made the waiver. No waiver of a provision hereof shall constitute a continuing waiver.
- f) In the event that any provision of this Agreement shall be held to be invalid or unenforceable, that provision shall be deleted here from without affecting, in any respect whatsoever, the validity of the remainder of this Agreement.
- g) The Parties acknowledge and agree that no remedy at law exists for the breach of any of the terms of this agreement and, therefore, expressly agree that an action in equity for strict performance may be brought to enforce any provision of this Agreement. A Party who asserts a breach by another Party must give thirty (30) days

notice of breach and opportunity to cure to the allegedly breaching Party prior to filing any action to enforce the terms or performance of this Agreement.

h) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

i) Any action to enforce this Agreement shall be brought in Flagler County, Florida. The Circuit Court for Flagler County Florida has jurisdiction to enforce this Agreement.

j) The Parties hereto agree that they shall execute such other documents and/or take such other steps as may be reasonably necessary to effectuate the resolution contemplated by this Agreement.

k) The Parties hereto acknowledge and agree that language proposed for, deleted from, or otherwise changed in the various drafts of this Agreement and not included herein, shall not be considered in any way in the interpretation and application of this Agreement and shall not in any way affect the rights and obligations of the Parties hereto.

l) There shall be no third party beneficiaries to this Agreement nor may any rights contained herein be enforceable by any person or entity not a party to this Agreement.

m) This Agreement shall only take effect upon acceptance and approval by a majority of the City Commission of the City of Flagler Beach and approval by a majority of the Board of County Commissioners of Flagler County, both at a public meeting, and the execution and approval by Sea Ray, Brunswick and Carter. This Agreement shall be without force and effect unless all Parties execute this Agreement.

n) Nothing herein shall be construed as a waiver of sovereign immunity.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals:

THE CITY OF FLAGLER BEACH

Linda Provencher, Mayor

ATTEST:

Penny Overstreet, City Clerk

FLAGLER COUNTY, FLORIDA

Chairman Frank Meeker

ATTEST:

Approved as to Form:

Gail Wadsworth, Clerk of the Circuit Court
and Comptroller

Al Hadeed, County Attorney

SEA RAY INC.

By:

BRUNSWICK CORPORATION

By:

CARTER-FLAGLER ROBERTS ROAD LAND TRUST

By:

Exhibit "A"

[INSERT LEGAL DESCRIPTION FROM OR 1091, PAGE 1092,
PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA HERE]