

**IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT,  
IN AND FOR FLAGLER COUNTY, FLORIDA**

PALM COAST INTRACOASTAL, LLC,  
a Florida limited liability company,

Plaintiff,

Case No.: 2023 CA 000093

v.

PRESERVE FLAGLER BEACH & BULOW  
CREEK, INC., a Florida not for profit  
corporation, and STEPHEN NOBLE, an  
individual, and JOHN TANNER, an individual

Defendants.

\_\_\_\_\_ /

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, Palm Coast Intracoastal, LLC, (“PCI”), through undersigned counsel, hereby sues Preserve Flagler Beach & Bulow Creek, Inc. (“Preserve”), Stephen Noble (“Noble”), and John Tanner (“Tanner”) (collectively, “Defendants”), and alleges as follows:

**THE PARTIES, JURISDICTION & VENUE**

1. PCI is a Florida limited liability company doing business in Flagler County, Florida.
2. Preserve is a Florida not for profit corporation, consisting of several residents of Flagler County, Florida, whose principal place of business is in Flagler County, Florida.
3. Stephen Noble is an individual residing in Flagler County, Florida, and upon information and belief, is a member of Preserve.
4. John Tanner is an individual residing in Flagler County, Florida, is a member of the Preserve, and upon information and belief, served as registered agent to Preserve at all times material hereto.

5. Jurisdiction is proper in this Court because the amount in controversy exceeds fifty thousand dollars (\$50,000) exclusive of attorney's fees, interest, and costs.

6. Venue is proper in this Court pursuant to section 47.011, Florida Statutes because the Defendants reside in Flagler County, Florida, and the majority of events giving rise to this cause of action, as more particularly described below, occurred in Flagler County, Florida.

#### **FACTUAL ALLEGATIONS**

7. PCI brings this action to recover the substantial damages Defendants caused through their improper and frivolous use of quasi-judicial and judicial proceedings for nearly two years to attempt to prevent or delay PCI from developing its private property in accordance with approvals provided by, and development agreements with, Flagler County. Defendants acted with malice and without probable cause in bringing and maintaining challenges to PCI's rights and plans to develop its private property for the sole purpose of obstruction and delay, and to cause financial harm to PCI.

8. The quasi-judicial and judicial bodies forced to hear and decide Defendants' baseless and unreasonable allegations against PCI have now repeatedly confirmed that Defendants' challenges never had any merit and never should have been brought. As such, there has now been a bona fide termination of the Defendants' challenges in favor of PCI and PCI is proceeding to develop its private property. Defendants should now have to account for their unreasonable and harmful efforts and malicious use of quasi-judicial and judicial proceedings and compensate PCI for the damages Defendants caused, including but not limited to attorneys' fees and costs, increased costs of development, and other damages Defendants' delay tactics caused.

*Preserve, Stephen Noble and John Tanner*

9. Preserve is an organization comprised of residents of Flagler County, including Noble and Tanner. For years, it has been Preserve's only mission to stop the development of approximately 2,000 acres of land located on the south side of State Road 100, on the east and west sides of John Anderson Highway, now owned by PCI (the "Property").

10. Since Preserve's creation, Tanner has acted as its registered agent and has been intimately involved in devising the Preserve's operations and strategy, including the filing and continuation of the frivolous legal challenges underlying this complaint.

11. Preserve and its members, including Noble and Tanner, acted with malice and used improper means to prevent or delay the development of the Property. Indeed, members of the Preserve went so far as to make slanderous comments about development entities affiliated with PCI during public meetings organized by Preserve to prevent development of the Property, including allegations that PCI's affiliates "clear-cut" entire portions of other, unrelated properties in the middle of the night, implying not only that they left the property barren, but also that they did so without permission or approval from St. Johns County, neither of which were remotely accurate.

12. The slanderous statements made by members of the Preserve outside the judicial process to stop and delay the development of the Property are the subject of a separate lawsuit currently pending.

13. In that separate lawsuit—in which Tanner is appearing as counsel for Preserve—Tanner has utilized many of the same delay tactics he used to oppose PCI's development, including but not limited to, asserting arguments on behalf of Preserve lacking any basis in law or fact. It has

also come to light that Tanner was the chief organizer and catalyst behind the malicious prosecution of the unfounded claims described herein.

14. This action concerns the Defendants' improper and malicious use of quasi-judicial and judicial proceedings to realize the Preserve's goal of stopping or delaying PCI's development of its private property in accordance with approvals and development agreements obtained by the prior owner of the Property and PCI over the course of nearly two decades.

*The 2005 PUD Approval Granted to the Former Owner of the Property*

15. In 2005, the former owner of the Property applied to the Flagler County Board of County Commissioners ("BOCC") to rezone the Property as a "Planned Unit Development." The primary intent of the rezoning effort was to increase the already allotted density and cluster the proposed 453 residential units – which had been approved under prior zoning regulations – on the east and west side of the John Anderson Highway and to allow for over 1,100 acres to be set aside for preservation or conservation.

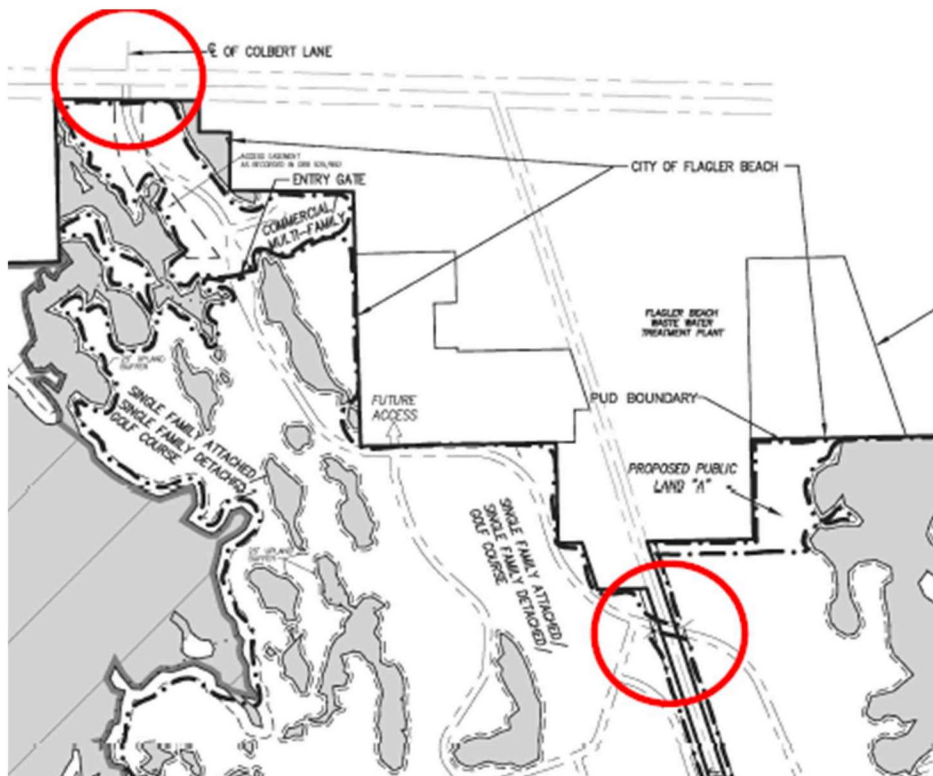
16. On November 7, 2005, the BOCC approved Ordinance 2005-22, which rezoned the Property to Planned Unit Development.

17. By adopting Ordinance 2005-22, the BOCC approved the PUD Development Agreement incorporated therein (the "PUD Agreement"), which outlines the substantive rights and restrictions on development of the Property for the owner thereof and all successors in interest. A true and correct copy of the PUD Agreement is attached hereto as **Exhibit A**.

18. Importantly, the PUD Agreement expressly provides that "flexibility" was built into the PUD Agreement to "allow for the unified development of the Property using more creative and flexible concepts in site development."

19. Attached as Exhibit 2 to the PUD Agreement is the October 25, 2005, Conceptual Site Development Plan (the “2005 Conceptual Site Plan”).

20. The 2005 Conceptual Site Plan contemplates: (i) development of 453 residential units on the east and west sides of Johnson Anderson Highway, with “**Proposed** Public Land A” on the east side thereof; (ii) a County-run utility facility onsite; and, (iii) a signalized intersection at State Road 100 and Colbert Lane providing road access to the community, as well as an access crossing of John Anderson Highway for the residents living on the eastern portion of the PUD, as generally depicted below:



21. Importantly, however, aside from the 2005 Conceptual Site Plan being expressly “*conceptual,*” it: (i) identifies the Public Land A as “**Proposed** Public Land A”; (ii) contemplates “Access Points for County Facilities *will be* from John Anderson Highway; and, (iii) makes clear

“the location of county sites is subject to change and will be finalized during platting of the Project.”

22. Further, aside from the PUD Agreement calling for flexibility in site planning, the PUD Agreement also states:

- a. The “location and gross area of public lands *may change* with the *mutual consent*” of the Property owner and Flagler County;
- b. The “location of roadways and other improvements depicted in the [2005] Conceptual Site Plan attached as Exhibit ‘2’ *may change* at the *discretion of the Developer* and as may be appropriate during the development review, design, and permitting processes”;
- c. That “[m]odification of the [2005] Conceptual Site Plan that comply with the general land uses and applicable development criteria contained herein *do not require* amendment of this [PUD] Agreement or the PUD zoning approval where no conflicting provisions exist”; and
- d. “in the event of a conflict between the terms of this [PUD] Agreement and the [2005] Conceptual Site Plan, the provisions of this [PUD] Agreement shall govern.”

23. In June of 2006, prior to commencement of the development project, the then-owner of the Property submitted a revised Site Development Plan (the “2006 Site Development Plan”). The 2006 Site Development Plan contained slight modifications to the 2005 Conceptual Site Plan including, among other things, a notation regarding an overpass/underpass at the John Anderson Highway entrance.

24. The 2006 Site Development Plan was included in the application for plat approval filed by the then-owner of the Property, which was granted in September of 2006 (the “2006 Plat”).

25. After the economic downturn in late 2007, development on the Property stalled.

26. In April 2012, the BOCC partially vacated the 2006 Plat via Resolution 2012-05. Resolution 2012-05 makes clear that the BOCC’s actions did not revise the PUD Agreement, and

that any subsequent plat approval would need to be consistent with the PUD Agreement previously adopted.

***The PCI Development – The Gardens***

27. In May 2018, PCI closed on the purchase of all rights and obligations under the PUD Agreement from the former owner of the Property. Thereafter, PCI renamed the proposed development “The Gardens” and began the process of obtaining plat approval for development.

28. Members of the Preserve, including Noble and Tanner, immediately began hostile efforts to prevent and delay PCI’s development of The Gardens.

29. In December 2019, after almost a year of negotiations with the County and incessant opposition—often premised on false pretense from members of Preserve—PCI filed Application for Modification to Site Plan No. 3209 and Application for Preliminary Plat No. 3210 (the “Applications”).

30. The only distinctions between the plans proposed in the Applications and the previously approved 2006 Site Development Plan were:

- a. 114 residential units previously approved to be constructed on the west side of John Anderson Highway were moved to the east side, still within the proposed densities approved under the PUD Agreement;
- b. The County water treatment facility was removed from the plans, as the City of Flagler Beach agreed with the County to provide water treatment and utilities to the entire Property; and
- c. An at-grade intersection was proposed for the intersection with John Anderson Highway.

31. The Flagler County Planning and Development Board recommended the Applications be approved by the BOCC, finding them to be “significantly similar to the original 2005 [plan] in both the number of homes and the impact on the community.”

***Defendants Untenably Challenged PCI's Applications  
During the September 2020 BOCC Quasi-Judicial Review Proceedings***

32. In approving PUD site plans and preliminary plat applications such as the Applications at issue, the BOCC sits in a quasi-judicial capacity, tasked with determining whether the Applications meet the criteria outlined in Flagler County Land Development Code §§ 3.04.02 and 3.04.04, the Flagler County Comprehensive Plan, and the PUD Agreement.

33. On September 21, 2020, the BOCC held a public hearing on the Applications.

34. Prior to the public hearing, Preserve—through Tanner—filed letters with the BOCC challenging approval of the Applications and demanding recognition as a “party” in the BOCC approval proceedings.

35. At the time Preserve challenged approval of the Applications, Preserve knew that its claims lacked probable cause and were untenable.

36. Indeed, as primary support in opposition of the Gardens, Preserve relied on an October 2019 letter from Flagler County’s Growth Management Director, Adam Mengel, which had since been withdrawn and modified significantly to support approval of The Gardens before submission of the Applications at issue.

37. While the BOCC denied Preserve “party status” because of its failure to provide evidence of any special impacts or injuries to its members as a result of the Applications, the BOCC nonetheless allowed Preserve to present evidence, call its own witnesses, and present argument in opposition to the Applications.

38. PCI called County Growth Management Director Mengel—the same person who authored the long-outdated letter that Preserve utilized as support for its opposition to the Applications—to not only point out the mootness of the objections to the withdrawn applications raised in his prior letter, but also to testify to the current Applications’ consistency with the Flagler



County Comprehensive Plan, the Flagler County Land Development Code and the terms of the PUD Agreement.

39. PCI also called Sans Lassiter, a civil engineer and expert in traffic analysis, to present his 95-page study on the potential effects of the proposed at-grade intersection proposed for the John Anderson Highway entrance, finding the proposal to be sufficient to quell any traffic concerns raised by Preserve, as well as Parker Mynchenberg, a civil engineer and expert in stormwater design, who confirmed that the project had been reviewed by SJRWMD and that all precautions had been taken in the design to prevent flooding or unnecessary discharge onto property belonging to others.

40. Ultimately, after 6 hours of expert testimony, the BOCC voted to table consideration of the Applications to the November BOCC meeting.

***Defendants Untenably Challenged PIC's Applications  
During the November 2020 BOCC Quasi-Judicial Review Proceedings***

41. On November 16, 2020, the BOCC held its second public hearing to approve the Applications.

42. Once again, Preserve—through Tanner—requested “party status” and was provided ten (10) minutes to present evidence as to its position.

43. Preserve called no witnesses in support of its position that it should be deemed a party, instead “proffering” evidence that Preserve intended to submit to show why the Applications should be substantively denied.

44. Preserve’s chief request was the ability to call expert witnesses.

45. Preserve never requested to cross-examine witnesses at any point during either the September 2020 or the November 2020 BOCC hearings.

46. Again, the BOCC denied Preserve’s request for “party” status, but elected to afford Preserve thirty (30) minutes (the same amount of time allotted for PCI) to present its case and call expert witnesses.

47. In addition to more testimony from County Growth Management Director Mengel and Mr. Lassiter, PCI also submitted into evidence an amended County Staff Report, which individually addressed each concern raised by Preserve in opposition to the Applications, refuted them with verifiable data, and ultimately recommended approval of the Applications.

48. In opposition, Preserve called three witnesses to present flawed testimony aimed at repealing the decades-old PUD Agreement and ultimately called for renegotiation of the PUD Agreement for no reason other than to “come back with the best deal you can for the county and yourselves.”

49. At the conclusion of Preserve’s presentation, Preserve did not request additional time, nor did it request to cross examine any of PCI’s witnesses.

50. Following public comment, including comments from Noble, the BOCC concluded argument on the Applications. Noble did not request additional time to speak, to call his own witnesses, nor the ability to cross-examine PCI’s expert witnesses.

51. At the conclusion of the November 2020 BOCC meeting, the BOCC approved the Applications, finding the Applications were consistent with the Flagler County Comprehensive Plan, the Flagler County Land Development Code, and the PUD Agreement.

***Defendants Continued Their Untenable Challenge By Appealing  
the BOCC’s Approval to the Flagler County Circuit Court: Case No. 20-CA-565***

52. On December 16, 2020, Preserve and Noble filed a bare-bones Petition for Writ of Certiorari to the Flagler County Circuit Court (the “Circuit Court Writ”), and followed it with

“Motion for Leave to Serve an Amended Petition for Writ of Certiorari and an Amended Appendix”.

53. The initial Circuit Court Writ only provided the applicable standard of review for municipal board decisions by a Circuit Court, and the initial appendix thereto contained only the BOCC order approving the Applications.

54. Two (2) months later, Preserve and Noble filed their amended Circuit Court Writ, arguing:

- a. Preserve and Noble were denied due process because they were not granted “party” status;
- b. The BOCC departed from the essential requirements of the law by allowing access to The Gardens from John Anderson Highway, approving the modification to the Applications without an onsite utility facility, and by approving the Applications in contravention of the 2005 Conceptual Site Plan; and
- c. The BOCC’s approval was not supported by competent substantial evidence.

55. At the time they were presented, the Defendants knew these claims lacked all factual and legal merit.

56. Indeed, the Defendants asserted these arguments in the Circuit Court Writ proceedings, despite:

- a. The BOCC providing them the same amount of time to present evidence as PCI at both BOCC hearings, calling their own expert witnesses, and never requesting to cross-examine any of PCI’s witnesses;
- b. The terms of the 2005 Conceptual Site Plan and the PUD Agreement expressly allowing for the modifications provided for in the Applications, some even *without* BOCC approval; and
- c. The mountain of expert testimony, staff reports, and verifiable data submitted by PCI in support of approval of the Applications.

57. On September 15, 2021, the Flagler County Circuit Court entered an order denying the Circuit Court Writ of Certiorari, finding Preserve and Noble clearly lacked standing to challenge the BOCC's decision, but further that such a finding "did not affect the Court's determination of whether [Defendants] presented a sufficient basis for certiorari relief, and [Defendants] have not carried their burden to show entitlement to certiorari relief irrespective of standing." A true and correct copy of the Court's order denying the Circuit Court Writ is attached hereto as **Exhibit B**.

***Defendants Continued Their Untenable Challenge By Appealing the Circuit Court's Rejection of their Appeal to the Fifth District Court of Appeals: Case No. 5D21-2548***

58. Despite the clear and unequivocal determinations by both the BOCC and the Flagler County Circuit Court that Preserve and Noble not only lacked standing to challenge approval of the Applications, but also that such approval was supported by competent substantial evidence, Defendants were determined to continue their frivolous claims.

59. On August 14, 2021, Preserve and Noble again served a bare-bones Petition for Writ of Certiorari, this time to the Fifth District Court of Appeals (the "5th DCA Writ"), and, like they had in the Circuit Court below, followed it with a "Motion for Leave to Serve an Amended Petition for Writ of Certiorari and an Amended Appendix".

60. More than two (2) months later, Preserve and Noble filed their amended Petition, along with an amended appendix. In their 5<sup>th</sup> DCA Writ Petition, Defendants solely argued that the Circuit Court incorrectly applied the terms of Ordinance 2005-22, the PUD Agreement and the Flagler County Land Development Code when it determined that the BOCC did not depart from the essential requirements of the law in approving the proposed at-grade intersection at the John Anderson Highway entrance.

61. At the time they were presented in the 5th DCA Writ, the Defendants knew these claims were untenable and that there was neither probable cause nor a reasonable basis to assert them.

62. Indeed, to substantiate these arguments, the Defendants manufactured claims contrary to the plain language of the PUD Agreement. Defendants argued PCI was somehow precluded from making modifications to the 2005 *Conceptual* Site Plan, despite the fact that the PUD Agreement:

- a. calls for flexibility;
- b. enumerates the “conceptual” nature of the 2005 Conceptual Site Plan;
- c. identifies the intersection of State Road 100 and John Anderson Highway as “public access points”;
- d. notes that the specific location of structures and roadways are not subject to approval until preliminary plat review; and,
- e. provides– that the “location of the roadways and other improvements depicted on the [2005] Conceptual Site Plan... *may change at the discretion of the Developer* and as may be appropriate during the development review, design and permitting process. (Emphasis supplied).

63. Further, the Defendants wholly failed to mention, address, or discuss whatsoever, the conflict provision of the PUD Agreement, which provides that the PUD Agreement governs in the event of conflict between the PUD Agreement and the 2005 Conceptual Site Plan.

64. On May 5, 2022, the Fifth District Court of Appeals entered an order denying Defendants 5th DCA Writ “on the merits.” A true and correct copy of the 5th DCA’s order is attached hereto as **Exhibit C**.

***Defendants Continued Their Untenable Challenge By Seeking Rehearing/Clarification of the Fifth District Court's of Appeals Denial of Their Petition.***

65. Still unwilling to concede after being informed at every level their challenges lacked merit, Defendants employed one last maneuver to at least further delay PCI from developing its private property: they filed on May 20, 2022, a Motion for Rehearing/Clarification with the Fifth District Court of Appeals.

66. By their Motion, Defendants primarily argued the 5th DCA failed in its order to provide a specific legal basis for the court's determination the Defendants lacked standing to challenge BOCC's approval of the Applications.

67. Defendants' argument was frivolous and without reasonable basis when made. First, there is no requirement for the 5th DCA to identify in its order a specific legal basis for concluding Preserve and Noble lacked standing. Regardless, the standing issue was clearly not relevant to the 5th DCA's decision to deny the 5th DCA Writ "on the merits."

68. Defendants made the arguments nonetheless, for the purpose of creating further delay and harm to PCI.

69. On June 6, 2022, the 5th DCA denied Preserve and Noble's Motion for Rehearing/Clarification. A true and correct copy of the 5th DCA's order denying Defendants' Motion for Rehearing/Clarification is attached hereto as **Exhibit D**.

70. All conditions precedent to bringing this lawsuit have occurred, been waived, and/or have been satisfied.

**COUNT I**  
**MALICIOUS PROSECUTION**

71. PCI realleges and incorporates paragraphs 1 through 70, above.

72. This is an action for damages in excess of \$50,000, exclusive of attorney's fees, interest, and costs.

73. The Defendants maliciously and without probable cause instituted legal proceedings against PCI and continued those proceedings against PCI for improper purposes, including to delay development of The Gardens.

74. No reasonable lawyer would have regarded the Defendants' claims as tenable. Indeed, to support their position the Defendants relied on outdated and withdrawn statements by government officials (who subsequently recommended the Applications for approval) based on facts and circumstances that had obviously and openly changed, and wholly failed to address the clear and unambiguous language of the PUD Agreement that provided for and expressly permitted the modifications to the site plan at issue.

75. The litigation initiated by the Defendants was ultimately terminated on the merits, in favor of PCI.

76. As a direct result of the Defendants conduct described above, PCI has been substantially damaged by, among other things and without limitation, increased costs of construction, including labor and material costs, that would not have been incurred without the approximately two-year delay caused by Defendants, as well as incurring substantial attorneys' fees defending itself against the Defendants' frivolous claims in the BOCC proceedings, the Circuit Court Writ proceedings, and the 5th DCA Writ proceedings.

**WHEREFORE**, PCI demands entry of judgment against the Defendants for damages, including but not limited to, special damages in the form of PCI's attorneys' fees and costs incurred in defending against Defendants' frivolous actions, costs, pre-and-post judgment interest, with

leave to seek punitive damages upon a proper showing, and for such further relief that is appropriate and just under the circumstances.

**PCI demands a trial by jury of all issues so triable as a matter of right**

Dated this 7<sup>th</sup> day of March, 2023

*/s/ Ethan J. Loeb*

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**PLANNED UNIT DEVELOPMENT AGREEMENT  
HAMMOCK BEACH RIVER CLUB**

**TABLE OF CONTENTS**

<b>1.0</b>	<b>Introduction</b>	<b>Page 4</b>
<b>2.0</b>	<b>General Project Description</b>	<b>Page 5</b>
<b>3.0</b>	<b>Comprehensive Plan Future Land Use and Zoning</b>	<b>Page 5</b>
<b>3.1</b>	<b>Comprehensive Plan Future Land Use</b>	<b>Page 5</b>
<b>3.2</b>	<b>Zoning</b>	<b>Page 6</b>
<b>4.0</b>	<b>Conceptual Site Development Plan</b>	<b>Page 7</b>
<b>4.1</b>	<b>Plan Overview</b>	<b>Page 7</b>
<b>4.2</b>	<b>Residential/Golf Community</b>	<b>Page 7</b>
<b>4.3</b>	<b>Commercial Area</b>	<b>Page 8</b>
<b>4.4</b>	<b>Public Lands</b>	<b>Page 8</b>
<b>4.4.1</b>	<b>Public Lands "A"</b>	<b>Page 8</b>
<b>4.4.2</b>	<b>Public Lands "B"</b>	<b>Page 9</b>
<b>4.4.3</b>	<b>Public Lands "C"</b>	<b>Page 9</b>
<b>4.4.4</b>	<b>Public Lands "D"</b>	<b>Page 9</b>
<b>4.5</b>	<b>Preservation Areas</b>	<b>Page 9</b>
<b>4.6</b>	<b>Dedication of Public Lands</b>	<b>Page 10</b>
<b>4.6.1</b>	<b>Dedication of Public Lands "A", "B", and "C"</b>	<b>Page 10</b>
<b>4.6.2</b>	<b>Dedication of Public Lands "D"</b>	<b>Page 10</b>
<b>4.7</b>	<b>Modifications to the Conceptual Site Plan</b>	<b>Page 11</b>
<b>4.8</b>	<b>Conflicts between PUD Agreement, Conceptual Site Plan</b>	<b>Page 11</b>
<b>4.9</b>	<b>Conceptual Site Plan Approval, Dev. Review Process, Preliminary Site Work for Golf Course Development</b>	<b>Page 11</b>
<b>4.9.1</b>	<b>Conceptual Site Plan Approval</b>	<b>Page 11</b>
<b>4.9.2</b>	<b>Golf Course Area</b>	<b>Page 12</b>
<b>4.9.3</b>	<b>Preliminary Golf Course Site Work</b>	<b>Page 12</b>
<b>5.0</b>	<b>Project Infrastructure</b>	<b>Page 12</b>
<b>5.1</b>	<b>Water/Wastewater</b>	<b>Page 12</b>
<b>5.1.1</b>	<b>Utility Facilities</b>	<b>Page 12</b>
<b>5.1.2</b>	<b>Temporary Support Facilities</b>	<b>Page 12</b>
<b>5.1.3</b>	<b>Irrigation and Other Consumptive Uses</b>	<b>Page 13</b>
<b>5.2</b>	<b>Internal Roads; Restricted Access</b>	<b>Page 13</b>
<b>5.2.1</b>	<b>Control of Project Access</b>	<b>Page 13</b>
<b>5.2.2</b>	<b>Private Road Rights-of-Way or Access Easements</b>	<b>Page 14</b>
<b>5.3</b>	<b>Fire Protection</b>	<b>Page 15</b>
<b>5.4</b>	<b>Drainage</b>	<b>Page 15</b>

5.5	Access.	Page 16
5.6	Landscaping	Page 16
5.6.1.	Preservation of Native Vegetation; Index Trees	Page 16
5.6.2.	Landscape Installation	Page 18
5.6.3	John Anderson Buffer	Page 18
5.7	Signage	Page 18
6.0	General Building Criteria	Page 19
6.1	Lot Standards; Building Setbacks; Nonresidential Intensity Standards	Page 20
6.2	Building Height	Page 22
6.3	Parking	Page 23
6.4	Finished Floor Elevations	Page 23
7.0	Resource Protection	Page 23
7.1	Wetlands	Page 23
7.2	Bulow Creek & Graham Swamp Buffer	Page 24
8.0	Phasing, Temporary Support Facilities.	Page 25
8.1	Phasing	Page 25
8.2	Temporary Support Facilities and Model Homes	Page 25
8.2.1	Temporary Support Facilities and Model Homes Authorized	Page 25
8.2.2	Permits for Temporary Support Facilities	Page 25
9.0	Property Owners' Association; Community Development District	Page 26
10.0	Land Development Code Applicability	Page 27
11.0	Permits and Certificates of Occupancy	Page 27
12.0	Posting and Release of Performance Guarantees	Page 27
13.0	Binding Effect; Initiation of Development Actions; Submission of Final Plat	Page 28
13.1	Binding Effect	Page 28
13.2	Initiation of Development Actions	Page 28
13.3	Submission of Final Plat	Page 28
14.0	City of Flagler Beach Tracts	Page 29
15.0	Applicable Law; Venue; Attorney's Fees	Page 29
16.0	Construction of Agreement	Page 29
17.0	Severability	Page 30
18.0	Exhibits	Page 30
19.0	Effective Date	Page 30
	Signature Pages	Page 31

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**PLANNED UNIT DEVELOPMENT AGREEMENT  
HAMMOCK BEACH RIVER CLUB**

This Planned Unit Development Agreement ("PUD Agreement") is entered into by and between Hammock Beach River Club, LLC, a Georgia corporation, One Hammock Beach Parkway, Palm Coast, Florida 32137 (the "Developer"), and Flagler County, Florida, 1200 East Moody Boulevard, Bunnell, Florida 32110 (the "County"), collectively referred to herein as the "Parties."

**1.0 Introduction.**

**1.1** This is a PUD Agreement for a rezoning to Planned Unit Development ("PUD") of a 1,999 +/- acre tract of land in Flagler County, Florida, located south of State Road 100, east of Old Kings Road, on the east and west sides of John Anderson Highway, and west of and adjacent to the Intracoastal Waterway, as more particularly described in the legal description attached as Exhibit "1" (the "Property"). The purpose of the rezoning is to facilitate development of the Property as specifically set forth herein and as depicted on the Conceptual Site Development Plan attached as Exhibit "2" (the "Conceptual Site Plan") and incorporated herein.

**1.2** The Property is currently undeveloped. A preliminary plat was previously approved by Flagler County in the area of the Property east of John Anderson Highway. The approval authorized fifty-seven (57) single-family residential units and four (4) common parcels on 5-acre lots, including supporting amenities, within an approximately 340-acre gated residential subdivision. Each lot was planned to be developed using individual potable water wells and on-site sewage disposal systems.

**1.3** This PUD Agreement allows for the unified development of the Property using more creative and flexible concepts in site planning than would otherwise be

possible through the strict application of the requirements of the County's conventional zoning districts. The PUD provides for uses and structures substantially related to the character of the entire development and is in harmony with the purposes of the zoning district regulations and the Flagler County Comprehensive Plan (the "Comp Plan").

## **2.0 General Project Description.**

The Project as depicted on the Conceptual Site Plan includes the following approved uses: a maximum of 453 residential units (a maximum of 150 of the 453 units may be multi-family residential units) with accessory and recreational uses, ancillary amenities and facilities; an 18-hole golf course (including a golf clubhouse, social clubhouse, driving range, maintenance facilities, cart barn, comfort stations and related golf course facilities and uses); a dedicated utility site which may include potable water treatment facilities, raw water wells, wastewater treatment facilities, and reclaimed ("irrigation quality") water facilities; commercial that may include any one or more of the following uses: retail, office, hotel, and/or multifamily residential uses (entitled to 230,694 gross square feet of retail/office area); a dedicated public boat ramp site; a dedicated fire station site; and a dedicated parcel of land measuring approximately 1,000 +/- acres that includes Future Land Use designated conservation lands and other wetland and upland areas (herein the "Project").

## **3.0 Comprehensive Plan Future Land Use and Zoning.**

### **3.1 Comprehensive Plan Future Land Use.**

The Future Land Use Map ("FLUM") and Comp Plan designate the following land uses within the Property:

- 694 acres ± of Conservation,

- 33 acres ± of Mixed Use High Intensity, Medium/High Density; and
- 1,272 acres ± of Agriculture.

The above FLUM designations provide for an entitled density of 453 dwelling units, 199 of the 453 units may be multi-family units, and 230,679 square feet of commercial space. The Developer has voluntarily elected to limit multifamily to 150 units.

In addition, approximately 1,968 acres of the Property designated Agriculture and Conservation on the FLUM are also designated under the Comp Plan Future Land Use Map series (Map 23) as Low Intensity Urban Area ("LIUA"). The LIUA designation operates as an overlay and is applied to areas where urban densities will be allowed in order to provide a transition between urban and rural land uses. The densities described in this section are based on the FLUM designations and do not reflect densities that would be permitted by the LIUA Overlay.

Land uses (including residential density) may be distributed throughout the Property as depicted on the Conceptual Site Plan. Development of the Property as provided in this Agreement is consistent with the uses, densities and intensities allowed under the Comp Plan.

### **3.2 Zoning.**

The portion of the Property adjacent to State Road 100 and designated MU High on the FLUM (33 acres +/-) is zoned C-2 General Commercial under the County's Land Development Code ("LDC"). The remaining 1,966 acres +/- of the Property, including acreage in the Conservation FLUM category, are zoned AC Agriculture. The

PUD ordinance to which this Agreement is attached modifies the zoning on the Property to Planned Unit Development ("PUD").

#### **4.0 Conceptual Site Development Plan.**

##### **4.1 Plan Overview.**

The Conceptual Site Plan attached as Exhibit "2" is incorporated herein by reference. The Conceptual Site Plan is intended to generally characterize and illustrate the Property and permitted land uses, but is not intended to limit uses to specific areas within the Property. The Conceptual Site Plan includes three (3) general areas of the Project: the Residential/Golf Community, Commercial Area, and Public Lands. Each general area is further described in Sections 4.2, 4.3, and 4.4 respectively.

##### **4.2 Residential/Golf Community.**

The Residential/Golf Community may be developed with a maximum of 453 residential units with supporting recreational facilities and other ancillary amenities that include, golf course and associated uses and facilities, docking facilities, social clubhouses, meeting facilities, gatehouses, gazebos, playgrounds, fitness centers, health spas, restaurants and lounges/bars, specialty retail, swimming facilities, tennis facilities, equestrian facilities, maintenance facilities, builder program design centers, model homes and studios, parks, viewing platforms, sidewalks, nature walks/paths/bridges, Intracoastal Waterway access/facilities/uses, and other similar uses. Residential (single-family attached, single-family detached, and multi-family units) may include customary accessory uses such as gazebos, individual swimming pools, storage/maintenance facilities, viewing platforms, and docks. In accordance with Ordinance 03-04, docks are not permitted on Bulow Creek. Golf course, common, and clubhouse areas may include multiple and mixed use facilities and buildings. Private ancillary amenity buildings are

not classified as commercial facilities, will not count against the entitled Project commercial and retail intensity, or limit golf course associated amenity building square footage. The Developer will voluntarily limit private ancillary amenity buildings intended for use as meeting facilities, fitness centers, health spas, restaurants and lounges/bars, and specialty retail to 100,000 gross square feet unless otherwise approved by Flagler County.

**4.3 Commercial Area.**

The Commercial Area may be developed with a maximum of 230,694 square feet of commercial and/or retail uses, multi-family residential units, and ancillary amenities. Structured, private ancillary or accessory amenities as listed in Section 4.2 will not count against the entitled commercial/retail area. The Commercial Area may include any one or more of the uses allowed in the C-2 zoning district, except that the following uses listed within the C-2 zoning district are expressly prohibited: adult congregate living facility, auction parlors, automobile service stations, automobile driving schools, automobile rental agencies, automotive repair, funeral homes, auto sales, pawn shops, pest exterminators, trade shops, vet clinics, car washes, hospitals, medical/dental clinics, and mini-warehouses.

**4.4 Public Lands.**

**4.4.1 Public Land "A"**

Public Land "A" is generally depicted on the Conceptual Site Plan and reserved for a proposed Utility System Area to be developed for potable water treatment facilities, including raw water supply facilities, wastewater treatment facilities, and irrigation quality water and/or reclaimed water facilities. The location of the lands is depicted on the Conceptual Site Plan.

#### **4.4.2 Public Land "B"**

Public Land "B" is generally depicted on the Conceptual Site Plan and reserved for a proposed Fire Station.

#### **4.4.3 Public Land "C"**

Public Land "C" is generally depicted on the Conceptual Site Plan and reserved for a proposed Boat Ramp.

#### **4.4.4 Public Land "D"**

Public Land "D" is generally depicted on the Conceptual Site Plan and consists of approximately 1,000 ± acres of wetlands, water bodies, and uplands within the Bulow Creek and Graham Swamp Area. Approximately 694 Acres ± of these lands are designated as Conservation on the FLUM (the "Conservation Area") and the remainder is composed of uplands and jurisdictional wetlands as delineated on the Conceptual Site Plan. Areas of Public Land "D" located outside of the Conservation Area are reserved for public purposes including conservation, recreational, and other governmental uses, pursuant to LDC Sections 3.06.05(A), (B), (D), (E) [but excluding subsections (C) and (F)], and such public purpose governmental uses shall not be incompatible with the Conceptual Site Plan.

#### **4.5 Preservation Areas.**

The Project includes wetlands and associated upland buffer areas that are located outside of Public Lands "C" and "D" discussed in Section 4.4, and generally depicted on the Conceptual Site Plan. These wetlands and upland buffers are hereby referred to as Preservation Areas and are generally identified on the Conceptual Site Plan as wetlands with 25-foot upland buffers. Preservation Areas may be used in whole or in part as mitigation related to SJRWMD and/or USACOE permits. The Developer shall



protect the Preservation Areas by recordation of a conservation easement or conditions, covenants, and restrictions for the preservation and protection of the Preservation Area in its natural, vegetative, hydrologic, scenic, open, agricultural or wooded condition and to retain such areas as suitable habitat for fish, plants, or wildlife as required by the SJRWMD. Conveyance of, or creation of an easement over, all or any portion of the Preservation Areas shall not operate to prevent the Developer from using any portion of the Preservation Areas as mitigation related to SJRWMD and/or USACOE permits. Nature and walking trails may be permitted within the upland provided the trails are consistent with applicable regulations.

#### **4.6 Dedication of Public Lands.**

##### **4.6.1 Dedication of Public Lands "A", "B", and "C".**

No later than the time of filing the first preliminary plat, the Developer shall convey to the County Public Land "A" containing approximately twelve (12) acres for a utility site, Public Land "B" containing approximately three (3) acres of Project land for a public boat ramp, and Public Land "C" containing approximately three (3) acres of Project land for a County Fire Station. The locations of these Public Lands are generally depicted on the Conceptual Site Plan. The locations and gross area of the Public Lands may change with the mutual consent of the Parties. The Developer has no obligation for development of Public Lands "B" and "C" nor responsibility for designing, permitting and constructing a public boat ramp, fire station, or other uses on these Public Lands.

##### **4.6.2 Dedication of Public Land "D"**

The Developer shall convey Public Land "D", as depicted on the

Conceptual Site Plan and generally described in Section 4.4, to the Flagler County Board of County Commissioners within 30 months of preliminary plat approval for the Project. Any portion of the Conservation Area within Public Land "D" may be used in whole or in part as mitigation for the Project, as required by the St. Johns River Water Management District ("SJRWMD") and/or U. S. Army Corps of Engineers ("USACOE") permits and Flagler County pursuant to a wetlands variance or similarly required approvals.

**4.7 Modifications to the Conceptual Site Plan.**

The locations of roadways and other improvements depicted on the Conceptual Site Plan attached as Exhibit "2" may change at the discretion of the Developer and as may be appropriate during the development review, design, and permitting processes. Modifications to the Conceptual Site Plan that comply with the general land uses and applicable development criteria contained herein do not require amendment of this Agreement or the PUD zoning approval where no conflicting provisions exist. The specific location of structures, roadways, and other improvements shall be approved in the Flagler County development review process.

**4.8 Conflicts between the PUD Agreement and the Conceptual Site Plan.**

In the event of a conflict between the terms of this Agreement and the Conceptual Site Plan, the provisions of this Agreement shall prevail.

**4.9 Conceptual Site Plan Approval, Development Review Process, and Preliminary Site Work for Golf Course Development.**

**4.9.1 Conceptual Site Plan Approval.**

Execution of this Agreement shall constitute Conceptual Site Plan approval for the Project.

**4.9.2 Golf Course Area.**

Preliminary and final plats are not required for the golf course prior to commencement of preliminary golf course work as described in Section 4.10.3. Golf course improvements will not require performance and maintenance bonds.

**4.9.3 Preliminary Golf Course Site Work.**

Upon Flagler County site development plan approval for the Project or any phase thereof, the following preliminary site work shall be permitted: golf course site development, pond excavation, earthwork, and other activities authorized by Flagler County. The Developer must obtain the necessary permits from all other applicable regulatory entities prior to conducting the identified preliminary site work and provide copies of such permits to the County.

**5.0 Project Infrastructure.**

The Project will include infrastructure to support the proposed uses, including potable water, fire protection, reclaimed water/"irrigation quality water", and wastewater service, drainage, roads, access, and transportation to meet concurrency requirements.

**5.1 Water/Wastewater.**

**5.1.1 Utility Facilities.**

The Project is located wholly within the County limits and is within the Bulow Service Area. All proposed permanent uses within the Project will be served by central water and wastewater services, except as otherwise provided herein.

**5.1.2 Temporary Support Facilities.**

Temporary private potable wells for any service areas, or for temporary support facilities as defined in Section 8.2 of this Agreement, shall be

permitted until a reasonable time period after central water service is made available to such areas or facilities of the Project. Temporary on-site sewage treatment and disposal systems ("OSTDS") for any Project area or temporary support facilities shall be permitted until a reasonable time period after central wastewater service is made available to such areas or facilities of the Project. The Developer, POA, and/or CDD shall obtain applicable permits from the Florida Department of Health, SJRWMD, and/or Florida Department of Environmental Protection for wells and OSTDS.

### **5.1.3 Irrigation and Other Consumptive Uses.**

The Project will incorporate reclaimed water as the primary irrigation source but may include supplemental, private irrigation wells for golf course irrigation, residential and common area irrigation, and other appropriate consumptive uses, which will be permitted through the SJRWMD. The Project may include a master irrigation system(s) for residential and common area landscape irrigation and golf course uses.

## **5.2 Internal Roads; Restricted Access.**

### **5.2.1 Control of Project Access.**

The Residential/Golf Community will be a private, gated community, with internal Project roads that may be privately owned, with restricted access controlled at the sole discretion of the Developer. In addition, access to the Commercial Area of the Project, or any portion thereof, may be gated and controlled at the discretion of the Developer. Notwithstanding any such access controls, emergency and other service vehicles shall be permitted access into the Project as provided herein.

### 5.2.2 Private Road Rights-of-Way or Access Easements.

Private road rights-of-way and/or access easements and associated easements shall be provided to include the entire road construction and appurtenances, including drainage facilities, ditches, slopes, sight distance and traffic control devices related to the private roadways. Private roadways shall have the following design characteristics: minimum road right-of-way width shall be thirty (30) feet; minimum utility easement width shall be ten (10) feet; minimum travel lane width shall be ten (10) feet; using curb and gutter having a minimum width of 1.5 feet. Road rights-of-way that are thirty (30) feet in width shall have a minimum right-of-way including utility easements for a total of fifty (50) feet. Cul-de-sacs shall not be limited in length. However, cul-de-sacs with a total length of more than 1,320 feet shall provide a turn-around with a maximum spacing of 1,320 feet apart. Sidewalks will be limited to one-side of internal roadways and will be designed or placed in a coordinated pattern and may share routings with golf course pathways. Shared routings will include appropriate widths and designated separations that will be reviewed during the County's development review process. Sidewalks will not be provided on any cul-de-sac roadways or lightly traveled roads having fewer than 50 homes abutting the street. Access into the Project from public ways will be granted to emergency service providers and Flagler County, and may be granted to other service providers through agreements with the Developer. Access privileges may also be granted to others by reservation on the plat(s) or by other appropriate separate instrument.

### **5.3 Fire Protection**

The County shall provide fire protection service to the Project. The Developer will install fire hydrants and other appropriate infrastructure as required by the National Fire Protection Association.

### **5.4 Drainage.**

The Project includes a Management and Storage of Surface Waters System ("MSSW System") for stormwater collection, treatment, and control and surface water management, including flood protection. The MSSW System will be planned, designed, permitted (through the SJRWMD), constructed, and maintained by the Developer. The System will be maintained by the Developer, POA, or CDD, or combination thereof, at the discretion of the Developer. The MSSW System will include management of stormwater runoff lakes, structures, piping, and facilities. Oversized on-site wet detention ponds may be provided to meet Outstanding Florida Water ("OFW") requirements. Best Management Practices to treat, control, attenuate, and convey stormwater and surface waters may include, but are not limited to, vegetated natural buffers, swales, dry retention and wet detention systems. Portions of the MSSW system may be permitted to provide stormwater treatment and attenuation while being designed with provisions to store the required volume of reclaimed ("irrigation quality") water that may include a blend of stormwater, reclaimed water, concentrate reject water, well water, and other provisions as reviewed and approved by the Florida Department of Environmental Protection ("FDEP") and the SJRWMD. The Developer shall reserve unto itself and its respective successors and assigns drainage easements for MSSW System access, construction, operation, repair, maintenance, and replacement.

## **5.5 Access.**

Access to the Project shall be provided from the following public ways as generally depicted on the Conceptual Site Plan: State Road 100 and John Anderson Highway. Signalization and access management plans consistent with the requirements of Flagler County or the Florida Department of Transportation ("FDOT") shall be permitted at these public access points. The precise location of these connections will be determined during preliminary plat and development review, as applicable. The Developer may also provide below grade or aerial crossings over John Anderson Highway for internalization and circulation of traffic and services, including roadways, drainage, utilities, golf carts, emergency vehicles, member vehicles, and/or pedestrians without an amendment to this Agreement or the Conceptual Site Plan.

The Developer will voluntarily widen the existing John Anderson Highway pavement width to two (2) 12-foot travel lanes along the project boundary limits that coincide with the John Anderson right-of-way.

## **5.6 Landscaping.**

The Project will comply with the landscape development standards in Article V of the LDC except as otherwise provided herein.

### **5.6.1 Preservation of Native Vegetation; Index Trees.**

**5.6.1.1** Preservation of desirable native vegetation within the Project for credits towards required landscaping will be reviewed during the design of the development. In cases where desirable native vegetation is located within an area of the project that can be protected through tree wells, stem walls, etc. or is within an area exempted by the LDC, the developer may relocate said vegetation to a location within the project where it can be protected. Such vegetation must be of good health and sound

structure to be credited and must persist in perpetuity as required by the LDC, but shall not be subjected to evaluation in conformance to standards as published by the State of Florida for grading nursery grown plant material. The applicable measurement of any installed, preserved or relocated index tree greater than the minimum size required under the LDC may be credited toward the aggregate requirements of the LDC for buffering and screening.

**5.6.1.2** As required by the LDC at least forty (40) percent of the total pre-development caliper inches of index trees existing on any platted lot and not otherwise exempted in the LDC must be preserved unless site requirements preclude preservation. In such an instance, the developer will provide mitigation as prescribed in this agreement through tree relocation and/or the provisions established in the LDC.

**5.6.1.3** Aggregation of replacement and or relocated index trees from areas of development to common open space is permitted so long as the development parcels within the Project meet the minimum tree requirements in Article V of the LDC.

**5.6.1.4** If, in the course of the development of the Project, conditions are discovered that preclude the preservation and/or relocation of index trees, or if the density of index trees required for installation, relocation or preservation becomes too restrictive for the intended use of the Property, the Developer may submit to Flagler County for approval alternative mitigation plans, including but not limited to off-site mitigation or payments in kind to a County-maintained tree fund based on mutually accepted valuations of worth.



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**5.6.2 Landscape Installation.**

Florida Grade No. 1 or better landscape material will be utilized within single-family lots, streetscapes, vehicular use areas, and other areas as deemed appropriate by the Developer. Within areas of the Project where a more naturalistic landscape character is desirable, the use of character landscape material, not specifically Florida Grade No. 1, will be permitted, and will be credited similarly, provided that the material meets all other requirements of the LDC.

**5.6.3 John Anderson Buffer.**

The Developer will voluntarily provide a 25-foot minimum and 50-foot average buffer along the limits of the Project boundary that coincide with the John Anderson Highway right of way.

The Developer will voluntarily provide an eight (8) foot wide pathway along the westerly right-of-way, as depicted on the Conceptual Site Plan.

**5.7 Signage.**

Signs shall comply with LDC Article VII unless otherwise provided herein. The Project may include a maximum of three (3) ground or wall signs at each entrance on public rights-of-way. Signs may be part of a signage wall, columns, fences, and/or a combination of these elements at each entrance. Each signage wall shall be a maximum of six (6) feet tall, excluding decorative architectural column elements (caps, spheres, light fixtures, etc.), with an aggregate message area no greater than seventy (70) square feet in size. The Project entrance sign on State Road 100 may be located within the Commercial Area of the Project. The Project may also include signage elements at the entrances to individual parcel/neighborhood areas and recreational areas, and directional/way-finding signage. Signage located along internal roads shall be no larger

than six (6) feet in height and thirty-two (32) square feet of message area. All signage elements will be of a consistent and uniform design, and may contain aesthetic light fixtures as part of these elements or may be lighted from adjacent landscape areas to provide accent and visibility.

**6.0 General Building Criteria.**

The general building criteria specified below includes minimum setback distances from principal buildings to the property lines, maximum building height limitations, minimum property widths, off street parking requirements, maximum lot coverage and pervious area, and procedures for deviations from the criteria contained herein.

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6.1 Lot Standards; Building Setbacks; Nonresidential Intensity Standards.

Development	Min. Lot Area	Max. Lot Cover	Min. Pervious Area	Max. Floor Area Ratio	Min. Lot Width	Front Setback	Side Setback	Rear Setback
Single Family Residential Detached	6,000 s.f.	70%, or in accordance with the SJRWMD Environmental Resource Permit (ERP)	N/A	N/A	50 feet	20 feet from right-of-way line or sidewalk, whichever is greater.	Interior Lots, 5 feet each side or 3 feet and 7 feet; abutting any street, 15 feet from internal property line.	10 feet
Single Family Residential Attached Dwellings	2,500 s.f.	70%, or in accordance with the SJRWMD ERP	N/A	N/A	25 feet	20 feet from right-of-way line or sidewalk, whichever is greater.	10 feet between non-attached structures; 0 feet between attached structures.	10 feet
Pools and open mesh screened pool enclosures	N/A	N/A	N/A	N/A	N/A	N/A	Interior lots, 5 feet each side or 3 feet and 7 feet; abutting any street, 15 feet from internal property line.	5 feet
Multi-family Residential	N/A	N/A	30%	N/A	N/A	200 feet from John Anderson, Bulow Creek, and Graham Swamp; 100 feet from the easterly Property line that abuts the ICW; 100 feet from Property Boundary, and 40 feet from internal property lines.	200 feet from John Anderson, Bulow Creek, and Graham Swamp; 100 feet from the easterly Property line that abuts the ICW; 100 feet from Property Boundary, and 40 feet from internal property lines.	200 feet from John Anderson, Bulow Creek, and Graham Swamp; 100 feet from the easterly Property line that abuts the ICW; 100 feet from Property Boundary, and 20 feet from internal property lines.

Development	Min. Lot Area	Max. Lot Cover	Min. Pervious Area	Max. Floor Area Ratio	Min. Lot Width	Front Setback	Side Setback	Rear Setback
Clubhouses	N/A	N/A	30%	N/A	N/A	200 feet from John Anderson; 100 feet from the easterly Property line that abouts the ICW; 100 feet from Property Boundary; and 20 feet from internal property lines.	200 feet from John Anderson; 100 feet from the easterly Property line that abouts the ICW; 100 feet from Property Boundary; and 20 feet from internal property lines.	200 feet from John Anderson; 100 feet from the easterly Property line that abouts the ICW; 100 feet from Property Boundary; and 20 feet from internal property lines.
Commercial	N/A	N/A	30	.40	N/A	100 feet from SR; 100; 0 feet from back of sidewalk on internal streets.	25 feet for 3-Story Structures with an additional 10 feet for each additional story up to a maximum of 50 feet.	25 feet for 3-Story Structures with an additional 10 feet for each additional story up to a maximum of 50 feet.
Recreational Facility	N/A	N/A	30%	N/A	N/A	200 feet from John Anderson; 100 feet from the easterly Property line that abouts the ICW; 100 feet from Property Boundary; and 20 feet from internal property lines.	200 feet from John Anderson; 100 feet from the easterly Property line that abouts the ICW; 100 feet from Property Boundary; and 20 feet from internal property lines.	200 feet from John Anderson; 100 feet from the easterly Property line that abouts the ICW; 100 feet from Property Boundary; and 20 feet from internal property lines.

NOTE 1: Setbacks on this table are measured to the exterior wall of the structure. Parking, access, sidewalks, screened enclosures, structured retaining walls, water features, and other similar improvements may be placed within the setback.

NOTE 2: Maximum lot coverage is for principal and accessory buildings.

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Adjacent lots may be combined by an individual property owner. Nothing herein shall prohibit the combining of adjacent lots and waiver of setbacks between adjacent lots.

## 6.2 Building Height.

Development Type	Maximum Vertical Height
Single Family Residential,	Three (3) stories
Maintenance Facilities	Three (3) stories
Clubhouses and Recreational Facilities	Six (6) stories
Multi-family Residential	Six (6) stories
Commercial Area	Six (6) stories

NOTE: 1. A story is defined as the vertical height between each horizontal building level. Generally a story has a height of 12 feet, however the first occupied story of a structure may be up to 16 feet in height.

2. Number of stories for each development type is total stories inclusive of parking.

Building height restrictions do not include architectural features such as towers, cupolas, belfries, spires, domes, steeples, apses, chimneys, and roof parapets. Architectural features shall be limited to 33% of the building footprint/area; the height of an architectural feature is restricted to 20 feet measured from the top point of the building to the highest vertical point of the architectural feature.

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**6.3 Parking.**

<b>Development Type</b>	<b>Off-street Parking</b>
Single Family Residential	2 spaces per unit (exterior and attached garage).
Multi-family Residential	1 space per 1-bedroom unit; 1.50 spaces per 2-bedroom unit; 2.0 spaces per 3-bedroom unit.
<i>Commercial Area; Golf Course; and Recreational Facilities</i>	Developer shall determine parking requirements based on use characteristics in accordance with Section 3.06.04 of the LDC. Developer may account for mixed or multiple uses, access limitations, and private nature of uses. Shared parking is permitted where private ancillary/amenity uses are combined within the Project. The parking requirements shall be subject to the approval during construction document review, but in no case shall the parking be required to exceed the minimum parking standards in the LDC.

**6.4 Finished Floor Elevations.**

All building construction, including finished floor elevations, shall comply with Federal Emergency Management Administration ("FEMA") regulations and the Flagler County LDC requirements. Minimum finished floor elevations for living areas, excluding unoccupied areas tied to the building, shall be one (1) foot above the FEMA-published 100-year flood elevation. The County Engineer shall consider exceptions as provided in LDC Section 4.06.06.E., which shall not constitute or require an amendment to this Agreement or the Conceptual Site Plan.

**7.0 Resource Protection.****7.1 Wetlands.**

The Project includes jurisdictional wetlands which may be eligible to be used as mitigation. Use of any wetlands or upland buffers for preservation/mitigation, or their dedication/conveyance for conservation purposes, shall not result in a reduction of density permitted for the Project pursuant Section 3.1. Permissible wetland and buffer

impacts include exempted activities listed in Section 6.02.03 of the LDC. Mitigation for wetland impacts shall be as approved by the SJRWMD or ACOE, as applicable. Activities and improvements, including nature and walking trails, may be permitted within the upland buffers provided the uses/activities do not cause secondary impacts to adjacent wetland systems and are consistent with applicable regulations. Wetland areas and associated upland buffers are generally depicted in Exhibit "2" attached hereto. In order to implement the Project as proposed on the Conceptual Site Plan, minimal wetland impacts (approximately 5 acres) are anticipated by the Parties. The Developer agrees to submit application(s) pursuant to LDC 6.02.05 to authorize these minimal wetland impacts and the County agrees to expeditiously process such application(s).

#### **7.2 Bulow Creek & Graham Swamp Buffer.**

The Developer will voluntarily provide a minimum seventy-five (75) foot upland buffer from the jurisdictional line of Bulow Creek as delineated on the Conceptual Site Plan, and verified by the SJRWMD. The limits of the Bulow Creek and Graham Swamp demarcation are generally defined in Exhibit "2" and were specifically delineated as part of State Resolution No. 70-9 recorded in Book 33 Page 135 through 138 of the Official Records. Activities are permitted in the upland buffer in accordance with the LDC and State Regulations including isolated instances along Graham Swamp where stormwater outfalls require encroachment into the buffer. The Developer will provide an upland buffer along Graham Swamp with an average buffer width of 75 feet and minimum of 25 feet.

**8.0 Phasing; Temporary Support Facilities.**

**8.1 Phasing.**

The Project may be developed in a single phase or multiple phases, at the discretion of the Developer. The Developer will notify the County of proposed phasing at the time of preliminary plat and construction plan review submittal(s). Infrastructure necessary to support each phase of the Project shall be constructed concurrently with that phase as a condition of platting.

**8.2 Temporary Support Facilities and Model Homes.**

**8.2.1 Temporary Support Facilities and Model Homes Authorized.**

The Project may include temporary support facilities (including but not limited to sales, construction, maintenance, development, model homes, and real estate offices) which will be removed upon completion of work in the Project. Temporary support facilities, including required parking for such facilities, may be located within the Residential/Golf Community or the Commercial Area, including unplatted areas and platted lots, parcels, and tracts. Temporary support facilities and model homes may utilize and receive permits for private wells and on-site sewage treatment and disposal systems or holding tanks for water and wastewater service, as referenced in Section 5.1.2 of this Agreement. Model homes will be serviced by central water and sewer when available.

**8.2.2 Permits for Temporary Support Facilities.**

Temporary support facilities shall be permitted for a period of three (3) years. This time period may be extended for successive periods of three (3) years by the Planning Director. Temporary support facility approval and extension shall



be processed and considered by the Planning Director. The initial application for temporary support facilities will be reviewed by the Technical Review Committee ("TRC") as a site plan application and will not require Planning Board review. Following TRC review and comment, a building permit application with applicable revisions in accordance with TRC review will be submitted to the Building Department for review and approval.

**9.0 Property Owners' Association; Community Development District.**

The Developer intends to establish one or more POAs and/or CDDs for the Project. The County agrees that POAs and CDDs are a reasonable and appropriate method of providing infrastructure and services to the Project. The County acknowledges that the creation of one or more CDDs is an appropriate means for providing, or financing, owning and maintaining infrastructure and services consistent with Chapter 190, Florida Statutes. The County agrees to cooperate and timely process any petitions to form CDDs consistent with the provisions of Chapter 190, Florida Statutes. The Developer may assign responsibility for maintenance of internal roadways, lighting, common landscape improvements, fencing, signage, pedestrian easements, conservation areas, the MSSW System components, and any common property or facilities within the Project, including a water/wastewater treatment plant to serve the Project to a POA, CDD, or combination thereof. The POA, CDD and/or Developer shall convey the water and wastewater treatment facilities to the County, located within Public Land "A", pursuant to a separate agreement between the Parties and shall have the right to transfer the maintenance obligation and/or title to any of the Project's common property or facilities, excluding the treatment facilities and Public Lands listed in Section

4.0, to any successor(s)-in-interest, CDD, POA, the County, utility provider, or other applicable governmental entity providing said services.

**10.0 Land Development Code Applicability.**

Development of the Project shall proceed in accordance with the terms of this Agreement. In the event of an inconsistency between the terms of this Agreement and the LDC, the terms of this Agreement shall prevail. Where specific requirements are not contained in this Agreement, the County's LDC in effect on the date of this Agreement shall apply to the extent that it does not conflict with the provisions of this Agreement.

**11.0 Permits and Certificates of Occupancy.**

Prior to completion of the infrastructure improvements and provided Developer has received final plat approval, the County may issue building permits to the Developer or to builders approved in writing by the Developer for vertical development of the Project if sufficient infrastructure improvements to serve the specific building, residence or facility to be constructed has been completed by the Developer and approved by the County. If the Project is developed in phases, only the infrastructure improvements necessary to serve the specific building, residence or facility in the applicable phase shall be required to be completed and approved prior to issuance of certificates of occupancy. The provisions of this section do not apply to temporary support facilities.

**12.0 Posting and Release of Performance Guarantees.**

Prior to completion of subdivision improvements, the Developer may request release of all or part of any performance bond that may be required by the County. The County shall approve such request provided: (1) the Developer provides information to support the extent and cost of improvements constructed, (2) the Developer provides an

estimate of probable cost or a valid contract indicating the extent of improvements which have not been constructed and remain to be completed, and (3) the Developer provides a guarantee for the improvements that remain to be completed by a separate performance bond for those improvements.

**13.0 Binding Effect; Initiation of Development Actions; Submission of Final Plat.**

**13.1 Binding Effect.**

This Agreement shall be binding on the County, the Developer, and their respective successors and assigns.

**13.2 Initiation of Development Actions.**

Development actions required by this Agreement shall be initiated within one (1) year after the date of enactment of the PUD Ordinance to which this Agreement is attached. "Development actions" include the filing of any site plan, plat review, or permit application with the County or other governmental or regulatory entity.

**13.3 Submission of Final Plat.**

Approval of the PUD development shall remain in effect for fifteen (15) years, or as long as the Project is ongoing, whichever is longer. The final plat for the Project shall be submitted to the County within fifteen (15) years of the Effective Date of this Agreement. The Project shall be considered ongoing as long as substantial and good faith progress has been shown by the Developer, or its successors and assigns, conducting construction activities in a regular continuing and orderly manner designed to meet the approved development schedule dates.

**14.0 City of Flagler Beach Tracts.**

The Parties recognize that the Developer owns approximately 54 +/- acres located within the City of Flagler Beach (the "Flagler Beach Tracts") and contiguous to the Property. In the event that the Flagler Beach Tracts are de-annexed from the City of Flagler Beach to the County, the County shall expeditiously process the Developer's request to amend the PUD Ordinance, this Agreement and the Comp Plan to expand the boundary of the PUD to incorporate the Flagler Beach Tracts.

**15.0 Applicable Law; Venue; Attorney's Fees.**

**15.1** This Agreement shall be construed, controlled and interpreted according to the laws of the State of Florida.

**15.2** Venue for any proceeding arising under this Agreement shall be in Flagler County, Florida.

**16.0 Construction of Agreement.**

**16.1** This Agreement shall not be construed against either Party on the basis of it being the drafter of the Agreement. The Parties agree that both herein played an equal part in drafting this Agreement.

**16.2** Capitalized terms contained herein shall have no more force or effect than uncapitalized terms.

**16.3** Captions and section headings in this Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify or aid in the interpretation or construction of meaning of this Agreement.

**17.0 Severability.**

If any provision of this Agreement, or its application to any person, entity or circumstances, is specifically held to be invalid or unenforceable by a Court of competent jurisdiction, the remainder of this Agreement and the application of the provisions hereof to other persons, entities or circumstances shall not be affected thereby and, to that end, this Agreement shall continue to be enforced to the greatest extent possible consistent with law and the public interest. This Agreement shall be modified as necessary to maintain the original intent of the Agreement.

**18.0 Exhibits.**

Exhibits to this Agreement are incorporated herein and are a part of the Agreement upon which the Parties have relied.

**19.0 Effective Date.**

This Agreement shall have full force and become effective concurrently with the effective date, including the expiration of any appeal periods, of the PUD Ordinance to which it is attached. In the event that the PUD Ordinance is ever invalidated or repealed for any reason, this Agreement shall terminate, as shall the obligations of the Parties contained herein.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this PUD Agreement on the dates set forth below.

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS

JANUARY 17, 2006

By: James A. Darby  
JAMES A. DARBY, CHAIRMAN

ATTEST:

Gail Wadsworth  
GAIL WADSWORTH, CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

NOVEMBER 7, 2005

Carl E. Kern  
CARL E. KERN, COUNTY ATTORNEY

HAMMOCK BEACH RIVER CLUB, LLC  
a Georgia corporation

Dec. 16, 2005  
Date

By: Robert F. Masters  
Robert F. Masters  
Title: E.U.P.

STATE OF FLORIDA  
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of Dec., 2005, by Robert F. Masters, the E.U.P. of Hammock Beach River Club, LLC, a Georgia corporation, on behalf of said corporation. He/she is personally known to me OR has produced identification as identification, and did/did not take an oath.

Eileen P. Coleman  
Notary Public, State of Florida, At Large  
Eileen P. Coleman  
Name (typed, printed or stamped)  
Commission No. DD202478  
My commission expires: Apr. 10, 2007

EILEEN P. COLEMAN  
Notary Public, State of Florida  
My comm. exp. Apr. 10, 2007  
Comm. No. DD 202478

**ATTACHMENTS TO  
HAMMOCK BEACH RIVER CLUB PUD AGREEMENT**

1. Exhibit "1" – Legal Description
2. Exhibit "2" – Conceptual Site Development Plan

FCC RD

Exhibit "1" - Legal Description

Inet No: 2003071389 Date: 12/31/2003  
Doc Stamp-Deed: 86328.98  
GAIL WADSWORTH, FLAGLER Co. Time: 12:40  
Book: 1826 Page: 419 Total Pgs: 13

Prepared By and Return To:  
Bruce A. Wobeck, Esquire  
Morris, Manning & Martin, L.L.P.  
1600 Atlanta Financial Center  
3343 Peachtree Road, NE  
Atlanta, GA 30326

RETURN TO  
FIRST AMERICAN TITLE  
CORPORATION  
22331 LAW FOSTER #101  
WINTER PARK, FL 32789

Parcel #'s 10-12-31-0000-0010-0010 (portion) 30-12-31-0009-01010-0020  
10-12-31-0000-0020-0010 (portion) 10-12-31-0009-04070-0020  
11-12-31-0650-00000-0011 11-12-31-0650-00000-0011 13-12-31-0000-01010-0010

12-24-03  
SPECIAL WARRANTY DEED

THIS DEED is made the 31<sup>st</sup> day of December, 2003, between Bulow Creek, L.C., a Florida limited liability company, whose mailing address is 800 N Highland Avenue, Orlando, Florida 32803, joined by Mary L. Demestre, a single person and Lee Chira, a single person, collectively as grantor ("Grantor"), and Hammock Beach River Club, LLC, a Georgia limited liability company, whose mailing address is 215 Celebration Place, Celebration, Florida 34747, as grantee ("Grantee") (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH that Grantor, for and in consideration of Ten and No/100 (\$10.00) Dollars in hand paid at and before the sealing and delivery of these presents, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto Grantee to wit:

Those certain parcels of land lying and being in Flagler County, Florida more particularly described in Exhibit "A" attached hereto;

TOGETHER with any and all easements, rights-of-way, appurtenances, or rights appertaining or in anywise belonging thereto including, without limitation, any portion of the property lying within the right-of-way of any publicly dedicated street, roadway or alleyway; and TOGETHER with any and all improvements, structures or fixtures located therein or thereon (collectively, the "Property").

The Property is not now nor has it ever been the homestead of the Grantor.

TO HAVE AND TO HOLD the Property with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of Grantee subject only to those matters set forth in Exhibit "B" attached hereto and by this reference incorporated herein, forever in FEE SIMPLE.

AND Grantor will only warrant and forever defend the right and title in the Property unto Grantee against the claims of those persons claiming by, through or under Grantor.

#1011861 v2 - Special Warranty Deed.doc



BOOK: 1026 PAGE: 0420

IN WITNESS WHEREOF, Grantor has caused this Deed to be executed and delivered under seal by its general partners as of the date first written above.

WITNESS: in the presence of all three grantors

Brenda J. Carlson  
Witness  
Print Name: BRENDA J. CARLSON

Deidra L. McGowan  
Witness  
Print Name: Deidra L. McGowan

WARREN E. Williams  
Witness  
Print Name: WARREN E. Williams

GRANTOR:

Bulow Creek, L.C., a Florida limited liability company

By: Lee China (SEAL)  
Printed Name: Lee China  
Title: Manager

Mary L. Demetree  
Mary L. Demetree

Lee China  
Lee China

STATE OF FLORIDA  
COUNTY OF ORANGE

BEFORE ME, the subscriber, duly commissioned and acting as Notary Public in and for said County and State, personally appeared Lee China, the Manager of Bulow Creek, L.C., a Florida limited liability company, who acknowledged and signed his/her name to the foregoing instrument as his act and deed, who [ X ] is personally known to me or [ ] was produced \_\_\_\_\_ as identification.

Given under my hand and official seal, this 30<sup>th</sup> day of December, 2003.

(Notary Seal must be affixed)

Brenda J. Carlson  
Notary Public  
My Commission Expires \_\_\_\_\_



STATE OF FLORIDA

BOOK: 1026 PAGE: 0421

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of December 2003 by Mary L. Demetree and Lee Chira, individuals, who are personally known to me or who have produced as identification.

Given under my hand and official seal, this 30<sup>th</sup> day of December, 2003.

(Notary Seal must be affixed)

*Brenda J. Carlson*  
Notary Public  
My Commission Expires:



FCC COPY

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL "A"

A PARCEL OF LAND LYING IN SECTIONS 10, 11, 14, 15, 38, AND 39, TOWNSHIP 12 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, AND BEING A PORTION OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 26, PAGE 558 OF THE PUBLIC RECORDS OF SAID FLAGLER COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE, COMMENCE AT A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF STATE ROAD 100, (ALSO KNOWN AS MOODY BOULEVARD), BEING THE NORTHEAST CORNER OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 22, PAGE 128 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA; THENCE S02°11'10"E, DEPARTING SAID RIGHT OF WAY LINE, A DISTANCE OF 1200.23 FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING, THENCE N87°21'40"E, A DISTANCE OF 4304.57 FEET; THENCE N88°32'23"E, A DISTANCE OF 330.58 FEET; THENCE N88°28'36"E, A DISTANCE OF 2641.30 FEET; THENCE S01°24'50"E, A DISTANCE OF 345.10 FEET; THENCE S88°36'24"W, A DISTANCE OF 150.00 FEET; THENCE S01°28'15"E, A DISTANCE OF 300.30 FEET; THENCE N88°36'24"E, A DISTANCE OF 150.00 FEET; THENCE S01°08'43"E, A DISTANCE OF 24.77 FEET; THENCE N88°54'22"E, A DISTANCE OF 749.54 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF STATE ROAD 201, (ALSO KNOWN AS JOHN ANDERSON HIGHWAY); THENCE S18°11'55"E ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 401.46 FEET; THENCE S77°14'08"W, DEPARTING SAID RIGHT OF WAY LINE, A DISTANCE OF 99.57 FEET; THENCE S01°16'02"E, A DISTANCE OF 216.94 FEET; THENCE S88°50'35"W, A DISTANCE OF 126.47 FEET; THENCE S01°10'25"E, A DISTANCE OF 660.84 FEET; THENCE N88°37'24"E, A DISTANCE OF 158.75 FEET; THENCE S18°14'33"E, A DISTANCE OF 330.09 FEET; THENCE N88°50'18"E, A DISTANCE OF 330.04 FEET TO A POINT ON THE AFOREMENTIONED WEST RIGHT OF WAY LINE OF STATE ROAD 201; THENCE S18°14'52"E ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 1793.42 FEET; THENCE S18°10'03"E CONTINUING ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 3179.91 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 1196.28 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AND CONTINUING ALONG SAID RIGHT OF WAY LINE, THROUGH A CENTRAL ANGLE OF 22°09'31", AN ARC DISTANCE OF 462.65 FEET TO THE POINT OF TANGENCY, SAID CURVE BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF S29°14'49"E, 459.77 FEET; THENCE S40°19'34"E CONTINUING ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 775.72 FEET TO THE

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## BOOK 1026 PAGE 0423

SOUTHEAST CORNER OF THE MONUMENTED SOUTHERLY LINE OF 16056 LANDS AS DESCRIBED IN DEED BOOK 26, PAGE 558 OF SAID PUBLIC RECORDS; THENCE S89°18'54"W ALONG SAID SOUTHERLY LINE, A DISTANCE OF 8705.99 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF STATE ROAD 3A, (ALSO KNOWN AS OLD KINGS ROAD); THENCE N26°39'29"W ALONG SAID EASTERLY RIGHT OF WAY LINE, A DISTANCE OF 4.52 FEET; THENCE N26°28'14"W A DISTANCE OF 126.15 FEET; THENCE N69°18'54"E DEPARTING SAID RIGHT OF WAY A DISTANCE OF 1415.84 FEET TO THE WESTERLY EXTENDED LINE OF OFFICIAL RECORDS BOOK 397, PAGE 332 AND OFFICIAL RECORDS BOOK 402, PAGE 101; THENCE N20°40'59"W A DISTANCE OF 881.67 FEET; THENCE N76°49'01"E A DISTANCE OF 181.51 FEET; THENCE N13°10'59"W A DISTANCE OF 1877.17 FEET; THENCE S76°49'01"W TO A POINT ON A LINE AS RECORDED IN OFFICIAL RECORD BOOK 274, PAGE 894 A DISTANCE OF 205.26 FEET; THENCE CONTINUING ALONG SAID BOOK AND PAGE THE FOLLOWING FOUR CALLS; N30°41'26"W A DISTANCE OF 142.28 FEET; THENCE N13°04'14"W A DISTANCE OF 254.18 FEET; THENCE N21°33'19"W A DISTANCE OF 481.89 FEET; THENCE N11°45'17"W A DISTANCE OF 442.18 FEET; THENCE N30°05'11"W DEPARTING THE EASTERLY LINE OF SAID BOOK AND PAGE A DISTANCE OF 1151.29 FEET TO THE NORTHEAST CORNER OF OFFICIAL RECORDS BOOK 274, PAGE 894 AND OFFICIAL RECORDS BOOK 277, PAGE 100; THENCE N21°11'01"W A DISTANCE OF 2727.00 FEET; THENCE N19°04'21"W, A DISTANCE OF 458.74 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 300.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 57°12'26", AN ARC DISTANCE OF 299.53 FEET TO THE POINT OF TANGENCY, SAID CURVE BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N47°35'58"W, 287.25 FEET; THENCE N76°12'18"W, A DISTANCE OF 101.30 FEET; THENCE N50°40'00"W, A DISTANCE OF 263.61 FEET; THENCE N07°54'38"W, A DISTANCE OF 962.35 FEET; THENCE N02°30'05"W, A DISTANCE OF 229.54 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 300.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 43°58'32", AN ARC DISTANCE OF 230.26 FEET TO THE POINT OF TANGENCY, SAID CURVE BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N24°26'47"W, 224.64 FEET; THENCE N46°25'30"W, A DISTANCE OF 324.38 FEET; THENCE N36°12'00"W, A DISTANCE OF 251.06 FEET; THENCE N02°32'28"W, A DISTANCE OF 69.67 FEET; THENCE N87°48'42"E, A DISTANCE OF 58.22 FEET TO THE POINT OF BEGINNING.

CONTAINING: 68,041.746 SQUARE FEET OR 1,562.02 ACRES, MORE OR LESS AS SHOWN ON THAT CERTAIN BOUNDARY SURVEY PREPARED BY ALBERT D. BRADSHAW (NO. 5257) OF PRIVETT-NILES AND ASSOCIATES, INC., DATED DECEMBER 31, 2003, PROJECT NO. 658-001.

**LESS AND EXCEPT**

**PARCEL "A-1"**

A PARCEL OF LAND LOCATED IN SECTION 38, TOWNSHIP 12 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A POINT OF BEGINNING BEING THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF OLD KINGS ROAD (STATE ROAD 5A, A 100 FOOT WIDE RIGHT-OF-WAY) WITH THE SOUTHERLY LINE OF LANDS AS DESCRIBED IN DEED BOOK 26, PAGES 558 THROUGH 569 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA; THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE N26°39'29"W FOR A DISTANCE OF 4.52 FEET; THENCE CONTINUING ALONG SAID EASTERLY RIGHT-OF-WAY LINE N26°28'14"W FOR A DISTANCE OF 126.15 FEET; THENCE DEPARTING SAID EASTERLY RIGHT-OF-WAY LINE N69°18'54"E FOR A DISTANCE OF 1415.84 FEET; THENCE S20°40'59"E FOR A DISTANCE OF 130.00 FEET TO THE SAID SOUTHERLY LINE OF LANDS AS DESCRIBED IN DEED BOOK 26, PAGES 558 THROUGH 569; THENCE ALONG SAID SOUTHERLY LINE S69°18'54"W FOR A DISTANCE OF 1402.65 FEET TO THE AFOREMENTIONED POINT OF BEGINNING OF THIS DESCRIPTION.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 4.21 ACRES, MORE OR LESS AS SHOWN ON THAT CERTAIN BOUNDARY SURVEY PREPARED BY ALBERT D. BRADSHAW (NO. 5257) OF PRIVATE FILES AND ASSOCIATES, INC., DATED DECEMBER 31, 2003, PROJECT NO. 658-001.

**TOGETHER WITH**

**PARCEL "B"**

A PARCEL OF LAND IN THE SOUTH 1/2 OF SECTION 11, TOWNSHIP 12 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA MORE PARTICULARLY DESCRIBED AS FOLLOWS;

A POINT OF REFERENCE BEING THE SOUTHEAST CORNER OF GOVERNMENT SECTION 10, TOWNSHIP 12 SOUTH, RANGE 31 EAST AS MONUMENTED BY A 4" x 4" CONCRETE MONUMENT INSCRIBED WITH A "T"; THENCE NORTH 01 DEGREES 28 MINUTES 02 SECONDS WEST, ALONG THE WEST LINE OF SECTION 11, A DISTANCE OF 1263.34 FEET TO A POINT ON

## BOOK 1026 PAGE 0425

THE SOUTHERLY LINE OF LANDS KNOWN AS THE LANDS VESTED BY THE AGREEMENT BETWEEN ITT COMMUNITY DEVELOPMENT CORPORATION AND THE DIVISION OF STATE PLANNING OF THE DEPARTMENT OF ADMINISTRATION, STATE OF FLORIDA AS RECORDED IN OFFICIAL RECORDS BOOK 352, PAGES 75 THROUGH 768, INCLUSIVE; THENCE NORTH 87 DEGREES 21 MINUTES 29 SECONDS EAST ALONG SAID SOUTHERLY LINE, A DISTANCE OF 225.57 FEET; THENCE NORTH 87 DEGREES 21 MINUTES 29 SECONDS EAST, A DISTANCE OF 104.57 FEET; THENCE ALONG SAID SOUTHERLY LINE NORTH 88 DEGREES 32 MINUTES 12 SECONDS EAST A DISTANCE OF 330.58 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 01 DEGREES 27 MINUTES 01 SECONDS WEST, A DISTANCE OF 1088.02 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF STATE ROAD 100 (A 200 FOOT RIGHT OF WAY AS NOW ESTABLISHED); THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE, SOUTH 89 DEGREES 28 MINUTES 56 SECONDS EAST, A DISTANCE OF 959.84 FEET; THENCE, DEPARTING SAID SOUTHERLY RIGHT OF WAY LINE, SOUTH 00 DEGREES 31 MINUTES 04 SECONDS WEST, A DISTANCE OF 210.00 FEET; THENCE SOUTH 89 DEGREES 28 MINUTES 56 SECONDS EAST, A DISTANCE OF 210.00 FEET; THENCE SOUTH 00 DEGREES 31 MINUTES 04 SECONDS WEST, A DISTANCE 390.00 FEET; THENCE SOUTH 89 DEGREES 28 MINUTES 56 SECONDS EAST, A DISTANCE OF 822.42 FEET; THENCE SOUTH 00 DEGREES 06 MINUTES 52 SECONDS EAST, A DISTANCE OF 417.46 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID VESTED LANDS; THENCE SOUTH 88 DEGREES 28 MINUTES 25 SECONDS WEST ALONG SAID SOUTHERLY LINE, A DISTANCE OF 560.75 FEET; THENCE SOUTH 88 DEGREES 28 MINUTES 25 SECONDS WEST, ALONG SAID SOUTHERLY LINE A DISTANCE OF 1,400.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 35.38 ACRES MORE OR LESS AS SHOWN ON THAT CERTAIN BOUNDARY SURVEY PREPARED BY ALBERT D. BRADSHAW (NO. 5257) OF PRIVETT-NILES AND ASSOCIATES, INC., DATED DECEMBER 31, 2003, PROJECT NO. 658-001.

**TOGETHER WITH****PARCEL "C"**

A PARCEL OF LAND LYING IN SECTION 12, TOWNSHIP 12 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT 4 INCH BY 4 INCH CONCRETE MONUMENT MARKED WITH A "+" ON TOP, SAID POINT BEING THE SOUTHWEST CORNER OF SAID SECTION 12; THENCE NORTH 01°30'23" WEST, DEPARTING SAID SOUTHERLY LINE AND ALONG THE WESTERLY LINE OF SAID SECTION, A DISTANCE OF 1,203.23 FEET; THENCE NORTH 88°52'15" EAST, DEPARTING SAID WESTERLY

BOOK 1026 PAGE 0426

SECTION LINE, A DISTANCE OF 649.96 FEET; THENCE SOUTH 19°00'52" EAST, A DISTANCE OF 1,265.64 FEET TO THE SOUTHERLY LINE OF SAID SECTION; THENCE SOUTH 88°56'31" WEST, ALONG SAID SECTION LINE, A DISTANCE OF 1,030.73 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,011,514 SQUARE FEET OR 23.22 ACRES, MORE OR LESS AS SHOWN ON THAT CERTAIN BOUNDARY SURVEY PREPARED BY ALBERT D. BRADSHAW (NO. 5257) OF PRIVETT-NILES AND ASSOCIATES, INC., DATED DECEMBER 31, 2003, PROJECT NO. 658-001.

TOGETHER WITH

PARCEL "D"

A PARCEL OF LAND IN SECTION 10, 11 AND 39, TOWNSHIP 12 SOUTH RANGE 31 EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A POINT OF REFERENCE BEING THE SOUTHEAST CORNER OF GOVERNMENT SECTION 10, TOWNSHIP 12 SOUTH, RANGE 31 EAST AS MONUMENTED BY A 4" X 4" CONCRETE MONUMENT INSCRIBED WITH A "T"; THENCE SOUTH 87 DEGREES 22 MINUTES 23 SECONDS WEST, ALONG THE SOUTH LINE OF SECTION 10, A DISTANCE OF 244.44 FEET TO A POINT ON THE EASTERLY LINE OF SECTION 39, TOWNSHIP 12 SOUTH, RANGE 31 EAST, SAID POINT BEING THE SOUTHWEST CORNER OF SAID SECTION 10 AS MONUMENTED BY A 4" X 4" CONCRETE MONUMENT INSCRIBED WITH A "T"; THENCE NORTH 20 DEGREES 42 MINUTES 23 SECONDS WEST ALONG THE EASTERLY LINE OF SAID SECTION 39, A DISTANCE OF 1328.49 FEET TO A POINT ON THE SOUTHERLY LINE OF LANDS KNOWN AS THE LANDS VESTED BY THE AGREEMENT BETWEEN ITT COMMUNITY DEVELOPMENT CORPORATION AND THE DIVISION OF STATE PLANNING OF THE DEPARTMENT OF ADMINISTRATION, STATE OF FLORIDA AS RECORDED IN OFFICIAL RECORDS BOOK 352, PAGES 759 THROUGH 768, INCLUSIVE, SAID POINT BEING THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 87 DEGREES 21 MINUTES 40 SECONDS WEST ALONG SAID SOUTHERLY LINE, A DISTANCE OF 3291.89 FEET; THENCE, DEPARTING SAID SOUTHERLY LINE, NORTH 02 DEGREES 11 MINUTES 10 SECONDS WEST, A DISTANCE OF 1200.23 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF STATE ROAD 104 (A 200 FOOT RIGHT OF WAY AS NOW ESTABLISHED); THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE NORTH 87 DEGREES 48 MINUTES 42 SECONDS EAST, A DISTANCE OF 514.27 FEET TO THE NORTHWEST CORNER OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) WATER RETENTION AREA NUMBER 2 AS RECORDED IN OFFICIAL RECORDS BOOK 497, PAGES 1771 THROUGH 1773, INCLUSIVE; THENCE, DEPARTING SAID RIGHT OF WAY LINE, SOUTH 02 DEGREES 11 MINUTES 10 SECONDS EAST ALONG THE WESTERLY LINE OF SAID FDOT LANDS, A DISTANCE OF 415.00 FEET; THENCE ALONG THE

## BOOK 1026 PAGE 0427

SOUTHERLY LINE OF SAID FDOT LANDS NORTH 87 DEGREES 48 MINUTES 42 SECONDS EAST, A DISTANCE OF 300.87 FEET; THENCE ALONG THE EASTERLY LINE OF SAID FDOT LANDS NORTH 02 DEGREES 11 MINUTES 18 SECONDS WEST, A DISTANCE OF 415.00 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF SAID STATE ROAD 100; THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE NORTH 87 DEGREES 48 MINUTES 42 SECONDS EAST, A DISTANCE OF 384.95 FEET; THENCE CONTINUE ALONG SAID RIGHT OF WAY LINE NORTH 87 DEGREES 48 MINUTES 42 SECONDS EAST A DISTANCE OF 1155.17 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE SOUTHERLY HAVING A CENTRAL ANGLE OF 01 DEGREE 22 MINUTES 12 SECONDS, A RADIUS OF 22818.31 FEET, A CHORD BEARING OF NORTH 88 DEGREES 28 MINUTES 21 SECONDS EAST; THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 545.65 FEET TO THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY OF STATE ROAD 100 AND THE EASTERLY LINE OF SAID SECTION 39 AS PRESENTLY MONUMENTED, BEING A POINT OF CURVATURE OF A CURVE CONCAVE SOUTHERLY HAVING A CENTRAL ANGLE OF 01 DEGREE 20 MINUTES 10 SECONDS, A RADIUS OF 22818.31 FEET, A CHORD BEARING OF NORTH 89 DEGREES 49 MINUTES 32 SECONDS EAST; THENCE ALONG THE ARC OF SAID CURVE AND SOUTHERLY RIGHT OF WAY, A DISTANCE OF 532.07 FEET; THENCE SOUTH 89 DEGREES 28 MINUTES 56 SECONDS EAST, A DISTANCE OF 231.02 FEET TO THE NORTHWEST CORNER OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) WATER RETENTION AREA NUMBER 3 AS RECORDED IN OFFICIAL RECORDS BOOK 497, PAGES 1771 THROUGH 1773, INCLUSIVE; THENCE, DEPARTING SAID SOUTHERLY RIGHT OF WAY LINE, ALONG THE WESTERLY LINE OF SAID FDOT LANDS SOUTH 01 DEGREE 27 MINUTES 45 SECONDS EAST, A DISTANCE OF 500.15 FEET; THENCE ALONG THE SOUTHERLY LINE OF SAID FDOT LANDS SOUTH 89 DEGREES 28 MINUTES 11 SECONDS EAST, A DISTANCE OF 325.06 FEET; THENCE ALONG THE EASTERLY LINE OF SAID FDOT LANDS NORTH 01 DEGREES 27 MINUTES 45 SECONDS WEST, A DISTANCE OF 500.22 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF SAID STATE ROAD 100; THENCE ALONG THE SAID SOUTHERLY RIGHT OF WAY LINE SOUTH 89 DEGREES 28 MINUTES 58 SECONDS EAST, A DISTANCE OF 330.90 FEET; THENCE, DEPARTING SAID SOUTHERLY RIGHT OF WAY LINE, SOUTH 01 DEGREE 26 MINUTES 54 SECONDS EAST, A DISTANCE OF 1099.15 FEET TO A POINT ON THE AFOREMENTIONED SOUTHERLY LINE OF THE VESTED LANDS; THENCE ALONG THE SAID SOUTHERLY LINE SOUTH 87 DEGREES 21 MINUTES 40 SECONDS WEST, A DISTANCE OF 1012.74 FEET TO THE POINT OF BEGINNING.

CONTAINING 109.40 ACRES MORE OR LESS AS SHOWN ON THAT CERTAIN BOUNDARY SURVEY PREPARED BY ALBERT D. BRADSHAW (NO. 5257) OF PRIVETT-NILES AND ASSOCIATES, INC., DATED DECEMBER 31, 2003, PROJECT NO. 658-001.



BOOK: 1026 PAGE: 0428

LESS AND EXCEPT

PARCEL D-1"

A PARCEL OF LAND LOCATED IN GOVERNMENT SECTION 10, TOWNSHIP 12 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AS A POINT OF REFERENCE, COMMENCE AT THE SOUTHEAST CORNER OF SECTION 10, TOWNSHIP 12 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA; THENCE ALONG THE EAST LINE OF SAID SECTION 10, N01°27'45"W FOR A DISTANCE OF 1263.77 FEET TO THE SOUTHERLY LINE OF LANDS KNOWN AS THE LANDS VESTED BY THE AGREEMENT BETWEEN ITT COMMUNITY DEVELOPMENT CORPORATION AND THE DIVISION OF STATE PLANNING OF THE DEPARTMENT OF ADMINISTRATION, STATE OF FLORIDA, AS RECORDED IN OFFICIAL RECORDS BOOK 352, PAGES 759 THROUGH 768, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE DEPARTING SAID EAST LINE ALONG SAID SOUTHERLY LINE S87°21'40"W FOR A DISTANCE OF 324.98 FEET; THENCE DEPARTING SAID SOUTHERLY LINE N01°27'45"W FOR A DISTANCE OF 635.13 FEET TO THE SOUTHERLY LINE OF LANDS KNOWN AS WATER RETENTION AREA 3; THENCE ALONG SAID SOUTHERLY LINE S89°28'14"E FOR A DISTANCE OF 325.06 FEET; THENCE DEPARTING SAID SOUTHERLY LINE S01°27'45"E FOR A DISTANCE OF 617.15 FEET TO THE AFOREMENTIONED POINT OF BEGINNING OF THIS DESCRIPTION.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 4.67 ACRES, MORE OR LESS AS SHOWN ON THAT CERTAIN BOUNDARY SURVEY PREPARED BY ALBERT D. BRADSHAW (NO. 5257) OF PRIVETT-NILES AND ASSOCIATES, INC., DATED DECEMBER 31, 2003, PROJECT NO. 658-001.

AND LESS AND EXCEPT

PARCEL D-2"

A PARCEL OF LAND LOCATED IN GOVERNMENT SECTION 11, TOWNSHIP 12 SOUTH, RANGE 31 EAST, FLAGLER COUNTY,

BOOK: 1026 PAGE: 0429

FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AS A POINT OF REFERENCE, COMMENCE AT THE SOUTHEAST CORNER OF SECTION 10 (ALSO BEING THE SOUTHWEST CORNER OF SAID SECTION 11), TOWNSHIP 12 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA; THENCE ALONG THE EAST LINE OF SAID SECTION 10, N01°27'45"W FOR A DISTANCE OF 1263.77 FEET TO THE SOUTHERLY LINE OF LANDS KNOWN AS THE LANDS VESTED BY THE AGREEMENT BETWEEN THE COMMUNITY DEVELOPMENT CORPORATION AND THE DIVISION OF STATE PLANNING OF THE DEPARTMENT OF ADMINISTRATION, STATE OF FLORIDA, AS RECORDED IN OFFICIAL RECORDS BOOK 352, PAGES 759 THROUGH 768, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUE ALONG SAID EAST LINE (AND ALONG THE EAST LINE OF LANDS KNOWN AS WATER RETENTION AREA 3), N01°27'45"W FOR A DISTANCE OF 1117.37 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE ROAD 100 (A 200 FOOT WIDE RIGHT-OF-WAY); THENCE DEPARTING SAID EAST LINE ALONG SAID SOUTHERLY LINE S89°28'56"E FOR A DISTANCE OF 330.90 FEET; THENCE DEPARTING SAID SOUTHERLY LINE S01°26'59"E FOR A DISTANCE OF 1099.15 FEET; THENCE S87°21'49"W FOR A DISTANCE OF 330.53 FEET TO THE AFOREMENTIONED POINT OF BEGINNING OF THIS DESCRIPTION.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 6.41 ACRES, MORE OR LESS AS SHOWN ON THAT CERTAIN BOUNDARY SURVEY PREPARED BY ALBERT D. BRADSHAW (NO. 5257) OF PRIVETT-NILES AND ASSOCIATES, INC., DATED DECEMBER 31, 2005, PROJECT NO. 658-001.

TOGETHER WITH

Parcel "E" (on survey by Tomoka Engineering)

A PARCEL OF LAND LOCATED IN GOVERNMENT SECTIONS 13, 14 AND 38, TOWNSHIP 12 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA, BEING A PORTION OF LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 104, PAGES 131 THROUGH 133 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BOOK: 1026 PAGE 0430

BEGINNING AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF JOHN ANDERSON HIGHWAY (STATE ROAD 201, A 100 FOOT WIDE RIGHT-OF-WAY) WITH THE NORTH LINE OF SECTION 38, TOWNSHIP 12 SOUTH, RANGE 31 EAST; THENCE ALONG SAID EAST RIGHT-OF-WAY LINE OF JOHN ANDERSON HIGHWAY N 8°14'59"W FOR A DISTANCE OF 2087.53 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE N88°47'53"E FOR A DISTANCE OF 710.35 FEET TO A POINT ON THE WEST LINE OF SECTION 13, TOWNSHIP 12 SOUTH, RANGE 31 EAST; THENCE ALONG SAID WEST LINE N01°13'39"W FOR A DISTANCE OF 661.23 FEET TO THE NORTHWEST CORNER OF SAID SECTION 13; THENCE DEPARTING SAID WEST LINE ALONG THE NORTH LINE OF SAID SECTION 13 (A PORTION OF WHICH BEING THE SOUTH LINE OF CLUSTER'S PALM HARBOR SUBDIVISION AS RECORDED IN MAP BOOK 27, PAGE 10 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA) N88°56'19"E FOR A DISTANCE OF 1890.40 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF THE FLORIDA INTRACOASTAL WATERWAY (A 500 FOOT WIDE RIGHT-OF-WAY); THENCE DEPARTING SAID NORTH LINE ALONG SAID WESTERLY LINE S13°59'24"E FOR A DISTANCE OF 2750.14 FEET; THENCE CONTINUING ALONG SAID WESTERLY LINE S21°17'54"E FOR A DISTANCE OF 2767.63 FEET TO THE SOUTHERLY LINE OF LANDS AS DESCRIBED IN DEED BOOK 26, PAGES 558 THROUGH 569, PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA; THENCE DEPARTING SAID WESTERLY LINE ALONG SAID SOUTHERLY LINE S69°10'09"W FOR A DISTANCE OF 2520.12 FEET TO A POINT ON SAID EAST RIGHT-OF-WAY LINE OF JOHN ANDERSON HIGHWAY; THENCE DEPARTING SAID SOUTHERLY LINE ALONG SAID EASTERLY LINE N40°21'40"W FOR A DISTANCE OF 74.31 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE TO THE RIGHT (CONCAVE NORTHEASTERLY) 423.92 FEET, SAID CURVE HAVING A RADIUS OF 1096.28 FEET, A CENTRAL ANGLE OF 22°09'21", A CHORD BEARING N29°14'00"W AND A CHORD DISTANCE OF 421.29 FEET; THENCE DEPARTING SAID CURVE, CONTINUING ALONG SAID EASTERLY LINE N18°10'26"W FOR A DISTANCE OF 3184.44 FEET TO THE AFOREMENTIONED POINT OF BEGINNING OF THIS DESCRIPTION.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 340.368 ACRES (14,826,430 SQUARE FEET), MORE OR LESS AS SHOWN ON THAT CERTAIN BOUNDARY SURVEY OF A PORTION OF GOVERNMENT SECTIONS 13, 14 AND 38, TOWNSHIP 12 SOUTH, RANGE 31 EAST, FLAGLER COUNTY, FLORIDA PREPARED BY KENNETH J. KUJAR (NO. 6105) OF TOMOKA ENGINEERING, DATED DECEMBER 24, 2003, PROJECT NO. T1008GINN-A.

BOOK: 1026 PAGE: 0431

**EXHIBIT "B"**

**Permitted Exceptions**

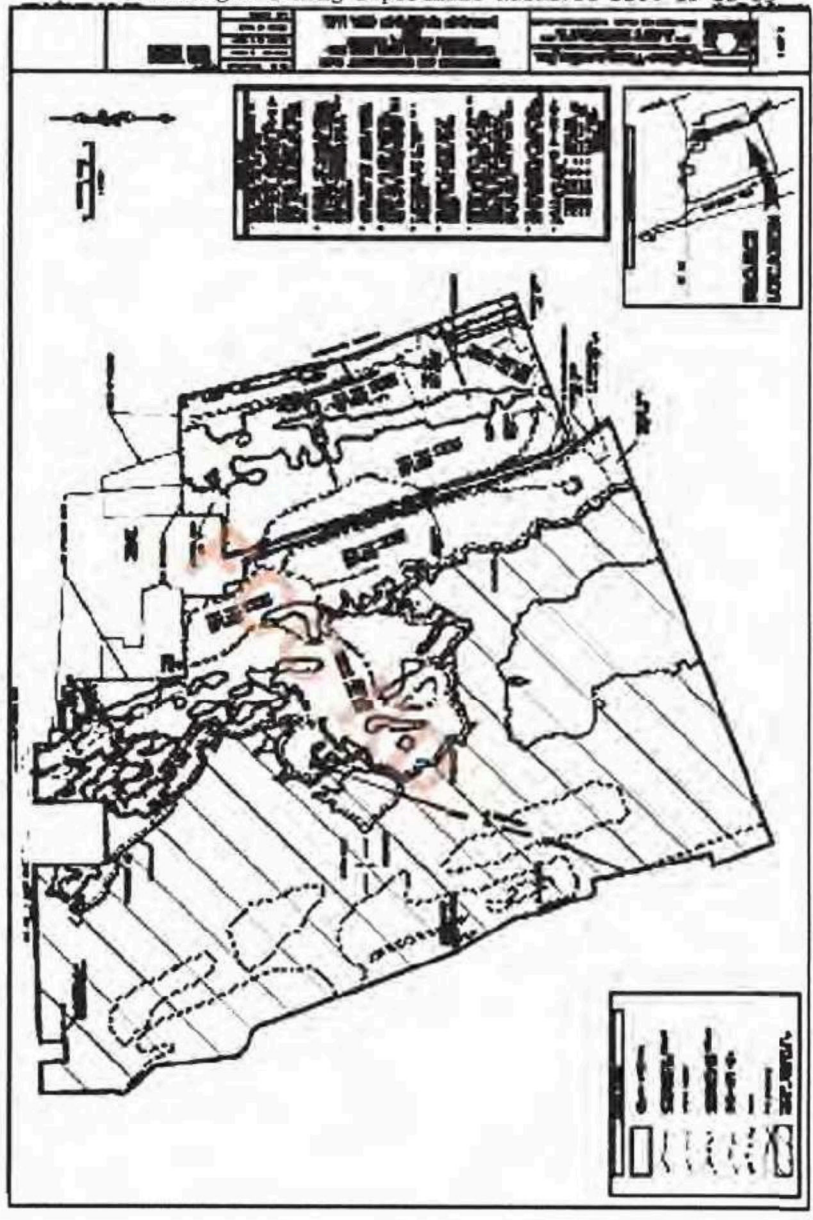
1. Taxes and assessments for the year 2004 and subsequent years, a lien not yet due and payable.
2. Easement in favor of East Flagler Mosquito Control District recorded June 15, 1955 in Deed Book 48, Page 98, Public Records of Flagler County, Florida as shown on that certain Boundary Survey of a portion of Government Sections 13, 14 and 38, Township 12 South, Range 31 East, Flagler County, Florida prepared by Kenneth J. Kuhar (No. 6105) of Tomoka Engineering, dated December 24, 2003, Project No. 1008GJNN-A.
3. Perpetual Easement to State of Florida Department of Transportation as recorded in Official Records Book 493, Page 1007, Public Records of Flagler County, Florida, as to parcels A and D only as shown on that certain Boundary Survey prepared by Albert D. Bradshaw (No. 5257) of Privett-Niles and Associates, Inc., dated December 30, 2003, Project No. 658-001.
4. Riparian and littoral rights, if any, and the title to any portion of land lying below the natural ordinary high water line of The Intercoastal Waterway & Bulow Creek.
5. Rights of the United States Government and/or the State of Florida arising under the United States Government control over navigable waters and the inalienable rights of the State of Florida in the lands on waters of similar character as to any part of the premises herein described in Schedule "A" which are submerged beneath navigable waters or may be artificially filled in lands in what was formerly navigable waters, and any accretions.

COPIES

1104023 v1 - Ex B Permitted Exceptions Dulo.doc

**Exhibit "2" – Conceptual Site Development Plan**

Also see full size copy attached bearing Flagler County Planning & Zoning Department Received Date 10-26-05



IN THE CIRCUIT COURT  
OF THE SEVENTH JUDICIAL CIRCUIT  
IN AND FOR FLAGLER COUNTY, FLORIDA

PRESERVE FLAGLER BEACH AND  
BULOW CREEK, INC., a Florida not  
for profit corporation, and STEPHEN  
NOBLE,

Petitioners,

Case No. 2020-CA-000565

v.

FLAGLER COUNTY, FLORIDA, a  
political subdivision of the State of  
Florida, and PALM COAST  
INTRACOASTAL, LLC, a Florida  
limited liability company,

Respondents.

\_\_\_\_\_ /

**ORDER DENYING AMENDED PETITION FOR WRIT OF CERTIORARI**

**THIS CAUSE** came before the Court for oral arguments, held via Zoom videoconferencing, on August 31, 2021, upon consideration of petitioners' Amended Petition for Writ of Certiorari. Before the oral arguments, the Court reviewed the Amended Petition, respondents' written responses to the Amended Petition, and petitioners' combined reply. The Court has also reviewed the case law cited to and relied upon by the parties, as well as the record and documents submitted via the filed appendices. Having reviewed

the same, and being otherwise advised as to the premises of this cause, the Court finds:

1. Petitioners challenge the decisions of the Flagler County Board of County Commissioners (“Board”) reached at the November 16, 2020 quasi-judicial Board hearing, which approved respondent Palm Coast Intracoastal, LLC’s Application for Review, and its Application for Preliminary Plat.

2. Petitioners argue: a) the Board failed to accord procedural due process to them at the quasi-judicial Board hearings held on September 21, 2020 and November 16, 2020 which concerned the applications; b) the Board failed to observe the essential requirements of the law in approving the applications on November 16, 2020; and c) the Board’s November 16, 2020 decisions to approve the applications were not supported by competent substantial evidence.

3. Respondents each filed responses in opposition to petitioners’ arguments as presented in the Amended Petition, and in their responses asserted petitioners lack standing to seek certiorari review of the Board’s November 16, 2020 decisions to approve the applications. Petitioners filed a combined reply which addressed the responses, and addressed the standing arguments asserted by respondents.

4. On August 27, 2021, respondent Flagler County filed a Motion to Strike Petitioners' Supplemental Appendix. On August 28, 2021, petitioners filed a Response in Opposition to the motion.

### **The Court's Ruling**

5. Upon first-tier certiorari review, and as explained on the record of the August 31, 2021 oral arguments, the Court finds:

- a. the Board provided the Petitioners procedural due process at the quasi-judicial Board hearings held on September 21, 2020 and November 16, 2020;
- b. the Board observed the essential requirements of the law in approving the applications on November 16, 2020; and
- c. the Board's November 16, 2020 decisions to approve the applications were supported by competent substantial evidence.

6. The Court has further determined, for the reasons explained on the record of the August 31, 2021 oral arguments, that the petitioners lack standing to seek certiorari review to challenge the Board's decisions. However, as the Court stated on the record, this finding did not affect the Court's determination of whether petitioners presented a sufficient basis for



certiorari relief, and petitioners have not carried their burden to show entitlement to certiorari relief irrespective of standing.

**Therefore, the Court ORDERS AND ADJUDGES:**

**A. Petitioners' Amended Petition for Writ of Certiorari is DENIED.**

**B. The County's Motion to Strike is DENIED AS MOOT.**

DONE AND ORDERED in Chambers in Bunnell, Flagler County, Florida, on this \_\_\_\_ day of September, 2021.

9/15/2021 10:49 AM 2020 CA  
  
000565 

e-Signed 9/15/2021 10:49 AM 2020 CA 000565

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TERENCE R. PERKINS  
CIRCUIT COURT JUDGE

Copies furnished to:  
David A. Theriaque, Esq.  
S. Brent Spain, Esq.  
John W. Tanner, Esq.  
Michael D. Chiumento, III, Esq.  
Nick Dancaescu, Esq.  
Dale A. Scott, Esq.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

PRESERVE FLAGLER BEACH AND  
BULOW CREEK, INC., A FLORIDA  
NOT FOR PROFIT CORPORATION,  
AND STEPHEN NOBLE,  
Petitioners,

v.

CASE NO. 5D21-2548  
LT CASE NO. 20-CA-565

FLAGLER COUNTY, FLORIDA, A POLITICAL  
SUBDIVISION OF THE STATE OF FLORIDA,  
AND PALM COAST INTRACOASTAL, LLC, A  
FLORIDA LIMITED LIABILITY COMPANY,  
Respondents.

\_\_\_\_\_  
DATE: May 05, 2022

**BY ORDER OF THE COURT:**

ORDERED that "Petitioners' Motion for Reconsideration of Sua Sponte Order Dispensing with Oral Argument," filed January 20, 2022, is denied. It is also

ORDERED that the Petition for Writ of Certiorari, filed October 14, 2021, and the Amended Petition for Writ of Certiorari, filed November 15, 2021, are denied on the merits.

*I hereby certify that the foregoing is  
(a true copy of) the original Court order.*

*Sandra B. Williams*



SANDRA B. WILLIAMS, CLERK

Panel: Judges Evander, Cohen and Wozniak

cc:

Albert J. Hadeed

John W. Tanner

V. Nicholas Dancaescu

Dale A. Scott

Michael D. Chiumento, III

Hon. Terence R. Perkins

David A. Theriaque

S. Brent Spain

**EXHIBIT C**

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

PRESERVE FLAGLER BEACH AND BULOW  
CREEK, INC., A FLORIDA NOT FOR PROFIT  
CORPORATION, AND STEPHEN NOBLE,

Petitioner,

v.

CASE NO. 5D21-2548  
LT CASE NO. 20-CA-565

FLAGLER COUNTY, FLORIDA, A POLITICAL  
SUBDIVISION OF THE STATE OF FLORIDA,  
AND PALM COAST INTRACOASTAL, LLC, A  
FLORIDA LIMITED LIABILITY COMPANY,

Respondent.

\_\_\_\_\_ /

DATE: June 06, 2022

**BY ORDER OF THE COURT:**

ORDERED that Petitioner's "Motion for Rehearing/Clarification . . .  
," filed May 20, 2022, is denied.

*I hereby certify that the foregoing is  
(a true copy of) the original Court order.*

*Sandra B. Williams*

SANDRA B. WILLIAMS, CLERK



Panel: Judges Evander, Cohen and Wozniak

cc:

Albert J. Hadeed

John W. Tanner

V. Nicholas Dancaescu

Dale A. Scott

Michael D. Chiumento,

III

David A. Theriaque

S. Brent Spain

**EXHIBIT D**