

SPECIAL MEETING OF THE FLAGLER BEACH CITY COMMISSION, WEDNESDAY, SEPTEMBER 20, 2017 AT 5:01 P.M. 105 S. 2<sup>nd</sup> STREET, FLAGLER BEACH, FLORIDA 32136

AMENDED AGENDA

1. Call the meeting to order.
2. Pledge of allegiance.
3. Second public hearing on the 2017/2018 fiscal year budgets.
4. Resolution 2017-30, a resolution of the City of Flagler Beach, Florida levying the ad valorem property tax millage rate for municipal purposes on all taxable property within the City for the fiscal year beginning October 1, 2017 and ending September 30, 2018, stating the millage to be levied is 5.3600 in Flagler County and 5.3600 is the rate to be levied for Volusia County; and providing an effective date.
5. Resolution 2017-31, adopting budgets for the General Fund, Utility Fund, Sanitation Fund, Stormwater Fund, CRA Fund, Pier Enterprise Fund, and Building Code Inspection Fund for the fiscal year 2017-18, fixing appropriations therein; proposing expenditures thereunder; and determining the amount of money to be raised by taxation and providing an effective date hereof; first reading.
6. Discussion and possible action regarding the 110 Holly Avenue Settlement Agreement – Drew Smith, City Attorney.
7. Discussion and possible action regarding a temporary waiver of Code Enforcement for Hurricane recovery – Drew Smith, City Attorney.
8. Receive an update related to recovery efforts and status – Larry Newsom, City Manager.
9. Adjournment.

RECORD REQUIRED TO APPEAL: In accordance with Florida Statute 286.0105 if you should decide to appeal any decision the Commission makes about any matter at this meeting, you will need a record of the proceedings. You are responsible for providing this record. You may hire a court reporter to make a verbatim transcript, or you may buy a CD of the meeting for \$3.00 at the City Clerk's office. Copies of CDs are only made upon request. The City is not responsible for any mechanical failure of the recording equipment.

In accordance with the Americans with Disabilities Act, persons needing assistance to participate in any of these proceedings should contact the City Clerk at (386) 517-2000 ext. 233 at least 72 hours prior to the meeting.

The City Commission reserves the right to request that all written material be on file with the City Clerk a minimum of three days before the proposed action.

#4

RESOLUTION 2017-30

A RESOLUTION OF THE CITY OF FLAGLER BEACH, FLORIDA LEVYING THE AD VALOREM PROPERTY TAX MILLAGE RATE FOR MUNICIPAL PURPOSES ON ALL TAXABLE PROPERTY WITHIN THE CITY FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2017 AND ENDING SEPTEMBER 30, 2018, STATING THE MILLAGE TO BE LEVIED IS 5.3600 IN FLAGLER COUNTY AND 5.3600 IS THE RATE TO BE LEVIED FOR VOLUSIA COUNTY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida law requires the City Commission of the City of Flagler Beach, Flagler/Volusia County, Florida, to pass an ordinance or resolution levying the millage rate for ad valorem property taxes for municipal purposes on all taxable property within the City limits of the City of Flagler Beach, Florida, for the fiscal year beginning October 1, 2017 and ending September 30, 2018 and

WHEREAS, Florida law requires said ordinance or resolution to state the millage rate to be levied, and also, to state the percentage by which the millage rate to be levied exceeds the rolled-back rate as computed pursuant to Florida law; and

WHEREAS, the City Commission of the City of Flagler Beach, Florida, has duly considered the budgetary requirements of the City; has adopted a tentative budget for the fiscal year beginning October 1, 2017 and ending September 30, 2018 based on a millage rate of **5.3600 mills for Flagler County and 5.3600 mills for Volusia County** on the taxable property within the City; and has acted in accordance with the terms, provisions, and procedures contained in Section 200.065, Florida Statutes;

WHEREAS, the gross taxable value for operating purposes not exempt from taxation within Flagler County has been certified by the Flagler County Property Appraiser to the City of Flagler Beach as \$610,625,316. The gross taxable value for operating purposes not exempt from taxation within Volusia County has been certified by the Volusia County Property Appraiser to the City of Flagler Beach as \$8,107,799

NOW THEREFORE, be it resolved by the City Commission of the City of Flagler Beach, Florida, in special session assembled, that:

Resolution 2017-30 continued.

SECTION 1. The ad valorem property tax millage rate for municipal purposes to be levied on the taxable property within the City limits of the City of Flagler Beach, Florida, during the fiscal year beginning October 1, 2017, and ending September 30, 2018, is hereby set at the rate of **5.3600 mills for Flagler County and 5.3600 mills for Volusia County.**

SECTION 2. The Fiscal Year 2017-2018 operating millage rate is **5.3600 mills**, which is a 9.76% increase for Flagler County. The Fiscal Year 2017-18 operating millage rate is **5.3600 mills**, which is a 9.76% increase for Volusia County.

SECTION 3. This Resolution shall take effect immediately upon its final passage and adoption by the City Commission of the City of Flagler Beach, Florida.

TENTATIVELY ADOPTED THIS 6TH DAY OF **SEPTEMBER**, 2017.

PASSED AND ADOPTED IN SPECIAL SESSION, THIS \_\_\_\_\_ TH DAY OF **SEPTEMBER**, 2017

CITY OF FLAGLER BEACH, FLORIDA  
CITY COMMISSION

\_\_\_\_\_  
Linda Provencher, Mayor

ATTEST:

\_\_\_\_\_  
Penny Overstreet, City Clerk

#5

RESOLUTION 2017-31

A RESOLUTION BY THE CITY COMMISSION OF THE CITY OF FLAGLER BEACH, FLORIDA, ADOPTING BUDGETS FOR THE GENERAL FUND, UTILITY FUND, SANITATION FUND, STORMWATER FUND, CRA FUND, PIER ENTERPRISE FUND, AND BUILDING CODE INSPECTION FUND FOR THE FISCAL YEAR 2017-18 FIXING APPROPRIATIONS THEREIN; PROPOSING EXPENDITURES THERE UNDER; AND DETERMINING THE AMOUNT OF MONEY TO BE RAISED BY TAXATION AND PROVIDING AN EFFECTIVE DATE HEREOF.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FLAGLER BEACH, FLORIDA AS FOLLOWS:

- Section 1. The budgets for the City of Flagler Beach, Florida, for the General Fund, Utility Fund, Sanitation Fund, Stormwater Fund, Pier Enterprise Fund, Building Code Inspection Fund and CRA Fund for the fiscal year commencing on October 1, 2017 and ending September 30, 2018, shall be as outlined in Exhibit "A".
- Section 2. All Resolutions or parts thereof in conflict herewith be and the same are hereby repealed.
- Section 3. This Resolution shall take effect immediately upon its final passage and adoption by the City Commission of the City of Flagler Beach, Florida.

TENTATIVELY ADOPTED THIS 6 TH DAY OF **SEPTEMBER**, 2017.

PASSED AND ADOPTED IN SPECIAL SESSION, THIS \_\_\_ TH DAY OF **SEPTEMBER**, 2017.

CITY OF FLAGLER BEACH, FLORIDA  
CITY COMMISSION

\_\_\_\_\_  
Linda Provencher, Mayor

ATTEST:

\_\_\_\_\_  
Penny Overstreet, City Clerk

BUDGET SUMMARY  
CITY OF FLAGLER BEACH - FISCAL YEAR 2017/18

\*THE PROPOSED OPERATING BUDGET EXPENDITURES OF THE CITY OF FLAGLER BEACH ARE 13.2% MORE THAN LAST YEARS TOTAL OPERATING EXPENDITURES.

	GENERAL ENTERPRISE FUND	PIER FUND	BUILDING CODE INSPECTION FUND	UTILITY FUND	SANITATION FUND	STORM WATER FUND	CRA FUND	TOTAL BUDGET
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**ESTIMATED REVENUES:**

Taxes: Millage per \$1000 = 5.3600 Flagler Co.

Taxes: Millage per \$1000 = 5.3600 Volusia Co.

Ad Valorem Taxes	\$3,108,857						\$227,053	\$3,335,910
Sales and Use Taxes	\$1,260,660							\$1,260,660
Licenses and Permits	\$117,750			254,500				\$372,250
Intergovernmental	\$661,669							\$661,669
Charges for Services	\$33,501	\$415,000						\$615,000
Fines and Forfeitures	\$49,000			\$4,140,694	\$1,205,464	\$362,401		\$6,157,560
Miscellaneous Revenue	\$44,000			\$35,000	10,000	\$2,500		\$96,500
Internal Service Charges	\$0			\$2,198,200	\$12,400	\$975		\$2,255,575
<b>TOTAL SOURCES</b>	<b>\$5,275,437</b>	<b>\$415,000</b>	<b>\$254,500</b>	<b>\$6,373,894</b>	<b>\$1,227,864</b>	<b>\$365,876</b>	<b>\$227,053</b>	<b>\$14,139,624</b>
Transfers In	\$23,000			\$400,000				\$423,000
Use of Fund Balances/Reserves/Net Assets	\$ 769,955		\$ 8,028				\$ 57,099	\$835,082
<b>TOTAL ESTIMATED REVENUES,</b>	<b>\$6,068,392</b>	<b>\$415,000</b>	<b>\$262,528</b>	<b>\$6,773,894</b>	<b>\$1,227,864</b>	<b>\$422,975</b>	<b>\$227,053</b>	<b>\$15,397,706</b>
<b>TRANSFERS AND BALANCES</b>								

**EXPENSES**

General Government Services	\$1,362,313					\$1,086,031	92,700	\$2,541,044
Public Safety	\$3,049,370			247,528				\$3,296,897
Physical Environment	\$161,973			5,470,507				\$5,804,731
Transportation	\$415,385							\$415,385
Human Services								\$0
Culture and Recreation	220,429	414,764						\$635,194
Debt Services					\$656,660			\$880,886
Financial and Administrative	\$755,520			\$391,792	\$98,504	\$132,112		\$1,377,928
<b>TOTAL EXPENSES</b>	<b>\$5,964,990</b>	<b>\$414,764</b>	<b>\$247,528</b>	<b>\$6,518,959</b>	<b>\$1,184,535</b>	<b>\$422,975</b>	<b>\$198,313</b>	<b>\$14,952,064</b>
Transfers Out	\$100,660			\$15,000	\$165,000			\$280,660
Fund Balances/Reserves/Net Assets	\$2,742		\$236	\$0	\$89,935	\$43,329	\$0	\$164,981
<b>TOTAL APPROPRIATED EXPENDITURES</b>	<b>\$6,068,392</b>	<b>\$415,000</b>	<b>\$262,528</b>	<b>\$6,773,894</b>	<b>\$1,227,864</b>	<b>\$422,975</b>	<b>\$227,053</b>	<b>\$15,397,706</b>
<b>TRANSFERS, RESERVES AND BALANCE</b>								

The tentative, adopted, and / or final budgets are on file in the clerk's office of the City of Flagler Beach as a public record

Must show at least 95% Ad Valorem for each millage

#6

**Penny Overstreet**

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**From:** Drew Smith  
**Sent:** Wednesday, September 06, 2017 11:31 AM  
**To:** Penny Overstreet  
**Subject:** FW: 110 Holly/City of Flagler Beach - Settlement Agreement  
**Attachments:** Settlement Agreement rev. JWL 9.1.2017 CL.pdf; Settlement Agreement rev. JWL 9.1.2017 RL.pdf

Penny:

Here is the latest and greatest re: the marina. There are a few changes from the last version that I sent you and I am not expecting any more.

Provided I can find somewhere to put gas in my car, I will see you this evening.

Drew



**DISCLAIMER:**

The information transmitted is intended only for the person or entity to which it is addressed and contains confidential and/or privileged materials protected under the Attorney-Client Privilege. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.

**From:** Jay Livingston  
**Sent:** Tuesday, September 5, 2017 8:58 AM  
**To:** Drew Smith  
**Subject:** 110 Holly/City of Flagler Beach - Settlement Agreement

Drew,

Howard has approved the revised agreement, which is attached in both redline and clean formats. I removed the exception clause to the manufacturing/scratch parts and the OSHA exception we discussed. After taking a closer look at OSHA and other regulations issues there are no issues we will have to worry about as far as the building is concerned and what can be done inside.

I am supposed to get the signed copy from Howard sometime today or tomorrow and will forward a scan of that to you as soon as I have it. I wanted to get you this in the meantime so Penny can keep it on the agenda for next week's meeting.

Contact me if you have any questions or comments.

--

Jay W. Livingston, Esq.  
Livingston & Sword, P.A.  
393 Palm Coast Pkwy SW #1  
Palm Coast, Florida 32137

Copy w/ strike throughs

Prepared by and Return to:  
Jay W. Livingston, Esq.  
Livingston & Sword, P.A.  
393 Palm Coast Pkwy SW #1  
Palm Coast, Florida 32137

----- [SPACE ABOVE THIS LINE FOR RECORDING DATA] -----

**SETTLEMENT AGREEMENT BETWEEN THE CITY OF FLAGLER  
BEACH AND 110 HOLLY AVE. CORPORATION AND FLAGLER  
BRIDGE BOATWORKS & MARINA, INC.**

**THIS SETTLEMENT AGREEMENT**, (herein referred to as the “Settlement Agreement”) is made and executed this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **CITY OF FLAGLER BEACH**, a Florida municipal corporation (herein referred to as the “City”), and the owner of the subject property, **110 Holly Ave. Corporation**, a Florida Corporation, whose address is P.O. Box 280, Flagler Beach, FL 32136 (herein referred to from time-to-time as the “Owner” regardless of whether singular or plural ownership status). **Flagler Bridge Boatworks and Marina, Inc.**, a Florida Corporation, whose address is 145 Lehigh Avenue, Flagler Beach, Florida 32136, (herein referred to from time-to-time as the “Operator”) is the operator of the marina on the Subject Property, as those capitalized terms are defined herein, and is joining in this Settlement Agreement and consenting to be bound by its terms.

**WITNESSETH:**

**WHEREAS**, this Settlement Agreement is the result of a settlement of Case Number 2010 CA 000456 brought in the Circuit Court of the Seventh Judicial Circuit in and for Flagler County, Florida (the “Lawsuit”);

**WHEREAS**, on October 8, 2009, the City adopted Ordinance 2009-17, which changed, in part, both how the City regulates vessels within its jurisdiction and revised the regulations



applicable to marinas located within the Tourist Commercial zoning district:

**WHEREAS**, on September 16, 2010 the City adopted Ordinance 2010-13 making further revisions to the City's regulations affecting vessels and liveaboard vessels;

**WHEREAS**, Ordinance 2009-17 and Ordinance 2010-13 are collectively referred to herein as the "Ordinance";

**WHEREAS**, in addition to the regulation of vessels and the permitted uses allowed at a marina within the Tourist Commercial zoning district, the City also changed and modified the parking requirements applicable to marinas and boat slips:

**WHEREAS**, the Owner is the owner of fee simple title to certain real property consisting of approximately 2.077 acres of uplands and approximately 1.623 acres of submerged lands, with a total project area of 3.7 acres, located at 127 Lehigh Avenue in the City of Flagler Beach, Flagler County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (referred to herein as the "Subject Property");

**WHEREAS**, prior to the City's adoption of the Ordinance the Owner constructed the marina as depicted in Exhibit "A" (the "Marina");

**WHEREAS**, on February 18, 1999, the Florida Department of Environmental Protection ("FDEP") issued permit # 18-140599-001-EI authorizing development of an 82-slip marina, which may be utilized, in part, by liveaboard vessels subject to the general and specific conditions of the permit:

**WHEREAS**, on October 31, 2005 the FDEP agreed to a modification to permit # 18-140559-001-EI and issued permit modification # 18-140599-004-EM, which, in part, modified the permit to specifically allow 50 of the 82 slips to be utilized by liveaboards and houseboats subject to the general and specific conditions of the modification and the unchanged provisions of the original permit. The original permit and the modification are collectively referred to herein as the

“Permit”;

**WHEREAS**, in addition to the Permits, the United States Army Corps of Engineers (“USACOE”) also issued permit # 1997-01994(IP-JG) authorizing, *inter alia*, construction of the marina facilities.;

**WHEREAS**, prior to the adoption of the Ordinance, the City considered boat slips as additional parking spaces and did not consider such boat slips to generate a need for additional vehicular parking;

**WHEREAS**, the Owner previously assembled two (2) floating structures, which are currently docked at slips at the Marina (the “Existing Floating Structures”);

**WHEREAS**, 110 Holly Ave. Corporation and Flagler Bridge Boatworks and Marina, Inc. filed the Lawsuit against the City alleging both state preemption of laws regulating vessels within the Intracoastal Waterway and interference with their vested rights;

**WHEREAS**, on November 15, 2016 the Circuit Court entered a Final Order and Judgment in the Lawsuit; and

**WHEREAS**, the Court held that the Ordinance is not preempted by Section 327.60, Florida Statutes; and

**WHEREAS**, the Court held that the Existing Floating Structures are floating structures and not vessels as defined by Section 327.02, Florida Statutes; and

**WHEREAS**, the Court held that the Owner and the Operator have vested and grandfathered rights to utilize and operate the Marina consistent with the rights and obligations set forth in the Permit, including the right to utilize 50 of the 82 slips for houseboats or liveaboard vessels and the remaining 32 slips for transient vessels; and

**WHEREAS**, the Court held that the Existing Floating Structures are lawful pre-existing nonconforming uses that may remain at the Marina; and

**WHEREAS,** the Court held that the assembly of small personal watercraft and vessels from premanufactured components for retail sale that are substantially similar to the Existing Floating Structures at the Marina is a lawful pre-existing nonconforming use that may continue at the Marina; and

**WHEREAS,** the Court held that the construction of boats, "i.e. the creating and building of a boat from scratch or parts made on-site" is not a lawful use at the Marina; and

**WHEREAS,** the Court held that the City did not violate the Plaintiffs substantive due process rights and that Plaintiffs were not entitled to any monetary judgment; and

**WHEREAS,** to clarify among themselves any issues not fully resolved by the Court and to avoid the possibility of appeal and further protracted litigation, the parties desire to enter into this Settlement Agreement to settle and resolve the Lawsuit.

**WHEREAS,** the City of Flagler Beach Commission finds that this Settlement Agreement is consistent with and a valid exercise of the City's powers under the *Municipal Home Rule Powers Act*; Article VIII, Section 2(b) of the *Constitution of the State of Florida*; Chapter 166, *Florida Statutes*; the *City of Flagler Beach Charter*; all other relevant laws and regulations; and the City's police powers;

**WHEREAS,** this Settlement Agreement shall constitute a full resolution and settlement of all claims arising from or related to the Lawsuit; and

**NOW THEREFORE,** it is hereby resolved and agreed by and between the City and the Owner that this Settlement Agreement is subject to the following terms and conditions:

**SECTION 1. RECITALS.**

The above recitals are true and correct and are incorporated herein by this reference and form a material part of this Settlement Agreement upon which the City and the Owner have relied.

**SECTION 2. REPRESENTATION OF OWNER.**

- (a) The Owner hereby represents and warrants to the City that it is the Owner of and controls the Subject Property.
- (b) The Owner agrees to use the Subject Property and operate the Marina according to all State and Federal permits and all regulations contained therein. This representation shall be binding on the Owner, Flagler Bridge Boatworks and Marina, Inc., and their respective heirs, tenant's successors and assigns.
- (c) This Settlement Agreement shall be recorded in the Public Records of Flagler County, Florida and shall run with the land and be binding on the Subject Property, and inure to benefit of the Owner and the Operator and their respective successors and assigns.

**SECTION 3. PERMITTED PRIMARY USES**

The existing zoning for the Subject Property currently allows the following uses:

- (a) **Wet Slips.** The Subject Property shall be permitted to use the existing 82 wet slips for the docking and mooring of vessels, of any kind, as defined in the Constitution of the State of Florida and in the Florida Statutes, including, without limitation, sailboats, navigable barges, houseboats and liveaboard vessels, subject to the restrictions contained herein and in the Permit. The wet slips shall be permitted to be used as follows in addition to any other use allowed by the current Code of Ordinances and Land Development Code of the City of Flagler Beach as they may be amended from time to time:
  - i. Up to 50 slips for the mooring of houseboats, which may be assembled at the Marina as provided herein, or any other vessels, which may constitute liveaboard vessels or houseboats as defined by state statutes.

Other than the two Existing Floating Structures allowed to remain pursuant to the Court's Order, no Floating Structures, as defined in Section 192.001, Florida Statutes, shall be allowed at the Marina. Notwithstanding other provisions contained herein, no additional parking shall be required for the 50 slips described in this paragraph.

ii. 32 of the 82 permitted slips are to be used solely for transient vessels of any type. Notwithstanding other provisions contained herein, no additional parking shall be required for the 32 slips described in this paragraph.

(b) **Fueling Station.** Fueling facilities for vessels at the Marina are allowed by existing City Code and shall be permitted so long as all required State, Federal and local permits, and approvals, as may be required, are obtained. If such fueling facilities located at the Marina only serve transient vessels and vessels moored at the Marina and do not serve land based vehicles and cars then no additional parking shall be required for fueling facilities at the Marina.

(c) **Boat Assembly.** The assembly of houseboats at the Marina is permitted on the Subject Property subject to the following provisions:

i. The term "assembly" shall mean and include the construction and assembly of the box-units that comprise the internal structure of the houseboat hulls ("Box Units"); assembly of the houseboat hulls; the application of fiberglass to make the hulls water tight and capable of navigation; and the assembly and finishing work of any and all decks, cockpits, living quarters, helms, engine transoms and other components and improvements necessary to complete the houseboats so that they

may be docked in the dedicated slips at the Marina.

- ii. The manufacture or construction of boats from scratch parts made on-site is not permitted on the Subject Property ~~except as provided above.~~
- iii. All components and parts that are assembled in and on the finished hulls and houseboats shall be pre-manufactured or built off-site before being assembled and integrated into the houseboats, except as provided herein.
- iv. The application of fiberglass to the houseboat hulls shall be limited to hand tools and rollers. Under no circumstances will chop guns, sprayers, injection molds, or other industrial methods and processes used in vessel manufacturing operations, now or in the future, be allowed on the Subject Property.
- v. Assembly of the houseboat hulls from the Box Units shall be performed inside an existing structure or a structure constructed for the houseboat assembly operation on the Subject Property. A structure for the houseboat assembly operation is permitted on the Subject Property. Except as specifically provided for herein, all work related to fiberglass application shall be performed inside. Fiberglass application may be performed outside on a limited basis to patch a hull or deck as part of the finishing work and for repairs to the houseboats ~~or as may be required by applicable State or Federal laws and regulations, including, without limitation, Occupational Safety and Health Administration standards and regulations.~~ The wood for the Box Units may be cut outside prior to assembly so long as the Box Units are built and

assembled into the houseboat hulls inside. Any fiberglass work that is permitted outside on the Subject Property, as provided herein, shall be performed in such a way to avoid impacts to surrounding properties or that would otherwise constitute a nuisance. The requirements in the foregoing sentence shall only apply to activities conducted outside and shall not be applicable to activities that will be performed inside.

- vi. All other portions of the houseboat assembly shall be performed inside except the installation of safety and cosmetic features that cannot be practically installed inside.
- vii. For the purposes of clarification, the work on the houseboats that may be done outside on the Subject Property shall be limited to cutting the wood for the individual Box Units, fiberglass patchwork and repair to the hulls and decks, interior finishing work, installation of appliances, outfitting the houseboats with engines, installation of helms and safety railings for any decks on the top portions of the houseboats, and installation of cosmetic features that if installed inside would prevent a houseboat from being able to be safely moved outside after installation.
- viii. Construction of the Box Units and assembly of the houseboats shall be permitted at the Marina on the Subject Property until all fifty (50) of the liveboard slips are occupied at which time the houseboat construction and assembly operation shall cease. After the fifty (50) liveboard slips are occupied the Owner shall only be allowed to construct and assemble additional houseboats at the Marina, as provided herein, if an owner of a houseboat chooses to leave the Marina.

- ix. All houseboats assembled at the Marina shall be intended for use at the Marina. The City understands and acknowledges that owners of houseboats assembled at the Marina may choose to relocate from the Marina but under no circumstances shall houseboats be assembled at the Marina for immediate relocation.
- x. The provisions of Section 3(c) apply solely to any houseboat assembly operation and is not intended to apply to any other activity at the Marina, including, without limitation, vessel repair and maintenance.
- xi. No additional parking shall be required for the houseboat assembly operation, including additional structures or buildings not existing at the time of this Settlement Agreement, so long as any such structures or buildings are solely for the houseboat assembly operation and for vessel maintenance and repair.

(d) **Dry Boat Storage.** The storage of up to 36 vessels and boats on trailers or storage racks is allowed on the Subject Property by the Permit and existing code. Notwithstanding other provisions contained herein, no additional parking shall be required for the Dry Boat Storage unless such use is increased to the storage of more than 36 vessels.

(e) **Boat Supply Shop.** A ships store and bait and tackle shop on the Subject Property is permitted by existing code so long as the floor area does not exceed 4,000 square feet. Notwithstanding other provisions contained herein, no additional parking shall be required for the boat supply shop so long as the floor area does not exceed 4,000 square feet.

(f) **Boat Maintenance & Repair.** The Marina is permitted to utilize the uplands



of the Subject Property for vessel maintenance and repair. Such use may include, without limitation, a travel-lift or other facilities used to haul out vessels and boats docked at the Marina, and may also include any and all accessory uses necessary for the repairs and maintenance of vessels and boats. All vessel maintenance and repair activities shall be permitted outside at the Marina. The foregoing shall not prevent vessel maintenance and repair from being performed inside as determined at the sole discretion of the Owner or Operator. Notwithstanding other provisions contained herein, no additional parking shall be required for boat maintenance and repair.

- (g) **Boat Ramp.** The existing boat ramp is permitted by existing code and may be expanded by the Owner subject to all required Federal, State and local permits.
- (h) **Caretaker Quarters.** One single family residential dwelling unit for the caretaker of the Marina and his or her family is permitted by existing code. Notwithstanding other provisions contained herein, no additional parking shall be required for the caretaker quarters.
- (i) **Restroom and Laundry Facilities.** Attached or detached restroom facilities, including showers, and laundry facilities are permitted by existing code in any ship's store and bait and tack shop and elsewhere on the Subject Property for vessel owners and their guests. As long as the facilities and amenities described in this paragraph are only used by vessel owners and their guests or transient vessels that navigate to the Marina no additional parking shall be required for the uses described in this paragraph.
- (j) **Club House and Amenity Center.** A clubhouse or amenity center for owners of vessels docked at the Marina and their guests is permitted by existing code.

If the clubhouse or amenity center is used only by owners of vessels docked at the Marina and their guests or by transient vessels that navigate to the Marina then no additional parking shall be required for the uses described in this paragraph.

- (k) **Restaurant.** An up to 185 seat waterfront restaurant and bar in the existing restaurant shell is permitted on the Subject Property. The restaurant shall not be required to provide more than 49 regular parking spaces and 2 handicap spaces, in addition to the boat slips that also may serve as parking spaces. One boat slip shall accommodate up to one hundred fifty square feet of restaurant floor area or per three fixed seats or as established by the Florida Building Code, whichever is greater.

The foregoing describes certain uses that are allowed by existing Code and judicial interpretation of existing Code. Nothing provided herein shall be interpreted to relieve the Owner, Operator, or any successor or assign from obtaining all necessary permits and approvals, including site plan approval, as applicable, unless such approvals have been specifically and expressly waived herein.

#### **SECTION 4. DENSITY.**

In addition to the use of up to 50 permitted slips for houseboats and liveaboard vessels, one residential dwelling unit on the upland portion of the Marina shall be allowed for the caretaker quarters, as provided in Section 3(e) above.

#### **SECTION 5. DEVELOPMENT STANDARDS.**

The following development standards shall apply to the Subject Property:

- (a) **Maximum Building Height.** The maximum building height, including the maximum height for dry boat storage, on the uplands of the Subject Property

shall be thirty-five (35) feet.

(b) **Parking.** The Subject Property shall be exempt from the additional parking requirements created by the Ordinance but shall not be exempt from any other parking requirements except as specifically and expressly provided herein. The Owner and/or the Operator shall use its best efforts to ensure that all employees, residents, invitees, licensees and guests, as the case may be, park on-site or other lawful private parking areas so as not to park on or adjacent to any public rights-of-way. The Owner and/or the Operator shall be permitted to utilize the vacant property located on the opposite side of 5<sup>th</sup> Street from the Subject Property, which is designated Flagler County Property Appraiser's Number 12-12-31-2425-00830-0010, if the Owner and/or the Operator is able to secure a lease for such purposes. Notwithstanding the foregoing, the Owner and/or the Operator is not waiving any rights it has to utilize public rights-of-way for parking purposes as is permitted by the City's Code of Municipal Ordinances and Land Development Regulations but shall use its best efforts to ensure that such use only occurs after available private parking areas on-site or otherwise are full or in situations where temporary activities necessary for the development, improvement of the Subject Property or operation of any business thereon restrict the available private parking onsite or otherwise.

(c) **Buildings.** The locations and sizes of buildings shown on the attached Exhibit "A" are allowed and in conformity with this Settlement Agreement and any applicable local, State and Federal laws and regulations. Additional buildings and structures may be constructed to the extent they are permitted by this Settlement Agreement or the codes and ordinances of the City in place at the

time of the proposed construction so long as any additional buildings or structures do not require additional parking beyond that already existing on the Subject Property.

(d) **Utilities.** The Subject Property is located wholly within the municipal limits of the City and is therefore within the City's water and wastewater service areas. All proposed permanent uses within the Marina will be served by central water and sewer services. The City shall be the potable water and wastewater service provider for the Marina and the occupants of any slips with water and sewer connections.

#### **SECTION 6. EXISTING FLOATING STRUCTURES**

The two Existing Floating Structures docked at the Marina on the effective date of this Agreement shall be permitted to remain and will count towards the 50 houseboats permitted at the Marina.

#### **SECTION 7. LAND DEVELOPMENT CODE APPLICABILITY.**

This Settlement Agreement is the result of settled litigation and expressly recognizes and confirms the vested rights acquired by the Owner on the Subject Property prior to the adoption of the challenged legislation. Those rights determined herein to have vested and which are no longer lawful conforming uses shall be allowed to continue as lawful nonconforming uses as provided in the Land Development Code. The Subject Property and the uses permitted thereon as specified in this Settlement Agreement shall be exempt from the provisions added by the Ordinances to the City's Code of Ordinances and Land Development Regulations. **The foregoing exemption shall include, without limitation, the following sections from the City's Code of Ordinances in effect on the date of this Agreement, which shall not apply to the Subject Property:**

- **Section 2.06.08.5(2)(d);**

- Section 2.06.08.5(2)(c);
- Section 2.0608.5(3)(b);
- Section 2.06.08.6 in its entirety;
- Section 2.06.08.7(1); and
- Section 2.06.08.7(3).

The vested rights outlined herein shall not be considered abandoned for any reason other than written notice by the Owner to the City of its intent to abandon the rights to develop and use the property as more specifically described herein.

#### **SECTION 8. SETTLEMENT AND RELEASE OF CLAIMS**

The parties to this Settlement Agreement hereby release and forever discharge each other, their employees and agents and all other persons, firms or entities, whether known or unknown, from any and all claims arising out of the Lawsuit. The parties hereto warrant and represent that the claims for which this release is given have not been assigned in whole or in part. Upon execution and recording of this Settlement Agreement the plaintiffs in the Lawsuit shall file a voluntary dismissal of the case with prejudice. After both parties have completed the execution of this Settlement Agreement, counsel for the parties shall file all necessary documents to dismiss any pending motions and/or appeals. If any party is required to bring any litigation based upon a breach of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and paraprofessional fees, expenses and costs at trial and on appeal.

***[SIGNATURES ON NEXT PAGE(S)]***

Signed, sealed and delivered  
in the presence of:

110 Holly Ave Corporation,  
a Florida corporation

Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Howard Sklar, President

Print Name: \_\_\_\_\_

Signed, sealed and delivered  
in the presence of:

Flagler Bridge Boatworks and Marina Inc.,  
a Florida corporation

Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Howard Sklar, President

Print Name: \_\_\_\_\_

STATE OF FLORIDA \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ }

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE this \_\_\_\_ day  
of \_\_\_\_\_, 2017, by Howard Sklar, as President of both 110 Holly Ave Corporation, a  
Florida corporation, and Flagler Bridge Boatworks and Marina Inc., a Florida corporation who is  
personally known to me or who has produced \_\_\_\_\_ as  
identification, and who executed the foregoing Waiver, Release and Settlement Agreement and  
acknowledged to and before me that he/she executed said instrument for the purposes therein  
expressed freely and voluntarily.

\_\_\_\_\_  
NOTARY SIGNATURE  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
Notary Comm. No.: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

City of Flagler Beach  
A Florida Municipal corporation

BY \_\_\_\_\_  
Linda Provencher, Mayor  
Date: \_\_\_\_\_

ATTEST

\_\_\_\_\_  
Penny Overstreet  
City Clerk

**EXHIBIT "A"**  
**"AS-BUILT" SURVEY**  
**RESTAURANT PARKING LAYOUT**  
**AND**  
**LEGAL DESCRIPTION OF SUBJECT PROPERTY**



