

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

THE HAMMOCK COMMUNITY  
ASSOCIATION, INC., and KATHY  
VIEHE,

Petitioners,

vs.

FLAGLER COUNTY, FLORIDA,  
and HAMMOCK HARBOUR, LLC,

Respondents.

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Filed Pursuant to Fla. R.  
App. P. 9.100(f)

Case No. 26-CA-2026 CA 000161

**APPENDIX TO PETITION FOR WRIT OF CERTIORARI**

Exhibit A Settlement Agreement dated February 9, 2026

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court by using the *ePortal* system and served a copy thereof via Electronic Mail to the **Honorable Leann Pennington**, Chair, Flagler County Board of County Commissioners (lpennington@flaglercounty.gov), **Michael Rodriguez, Esquire** (mrodriguez@flaglercounty.gov), and **M. Scott Thomas, Esquire** (msthomas@burr.com), on this 10th day of March 2026.

*/s/ S. Brent Spain*

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DAVID A. THERIAQUE, ESQUIRE  
Florida Bar No. 0832332  
S. BRENT SPAIN, B.C.S.  
Florida Bar No. 0320810  
THERIAQUE & SPAIN  
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sbs@theriaquelaw.com

COUNSEL FOR PETITIONERS

**STIPULATION AND SETTLEMENT AGREEMENT BETWEEN  
FLAGLER COUNTY AND HAMMOCK HARBOUR, LLC**

THIS STIPULATION AND SETTLEMENT AGREEMENT (“Agreement”) is entered into by and between the Flagler County, a political subdivision of the State of Florida, (the “County”), and Hammock Harbour, LLC, a Florida limited liability company, (“Hammock Harbour”). Collectively, the County and Hammock Harbour are the “Parties” to this Agreement.

**RECITALS**

WHEREAS, Hammock Harbour is the owner of that certain real property located at 5658 N. Oceanshore Blvd., Palm Coast, FL 32137, with a Parcel Identification Number 40-10-31-3150-00000-0420 (the “Property”);

WHEREAS, Hammock Harbour has sought to construct a marina on the Property including dry-stack boat storage, a restaurant, and commercial retail storefronts (the “Proposed Use”);

WHEREAS, Hammock Harbour’s Proposed Use is depicted in the Site Development Plan, submitted to the County and bearing Application No. 3383 and Project No. 2023070010 (the “Site Plan”). A copy of the Site Plan is attached hereto;

WHEREAS, on April 1, 2023, Flagler County, acting through its Technical Review Committee, denied Hammock Harbour’s Proposed Use and Site Plan;

WHEREAS, Hammock Harbour thereafter filed suit against the County alleging that the County’s actions constituted a regulatory taking compensable under Article V of the U.S. Constitution and Article X, Section 5(a) of the Florida Constitution and inordinately burdened Hammock Harbour’s vested right to a specific use of the Property compensable under the State of Florida’s Bert J. Harris Act, codified in Section 70.001 of the Florida Statutes, with such suit pending in the United States District Court for the Middle District of Florida, Jacksonville Division and styled as *Hammock Harbour, LLC v. Flagler County*, bearing Case No. 25-cv-00163 (the “Litigation”);

WHEREAS, Flagler County and Hammock Harbour desire to resolve the Litigation in a manner which protects and promotes the public interest and enter into this Agreement for that purpose; and

WHEREAS, the settlement effected herein does not have the effect of a modification, variance or a special exception to the application of a rule, regulation, or ordinance as would otherwise apply to the Property and is a non-statutory agreement which is not subject to or enacted pursuant to the Florida Local Government Development Agreement Act contained in section 163.3220-163.3243, Florida Statutes.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants, promises, agreements and undertakings that follow, and other good and valuable consideration, the



receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree, each with the other, as follows:

### AGREEMENT

1. Recitals. The above stated recitals are true and correct and fully incorporated herein.
2. Agreement. The Parties stipulate and agree to the development of the Property as follows:
  - a. Permissible Use. Flagler County acknowledges that Hammock Harbour's Proposed Use of the Property is consistent with the County's Comprehensive Plan, Land Development Regulations, and Manatee Protection Plan. Moreover, Hammock Harbour's Proposed Use is a permitted principal use in the C-2—General commercial and shopping center district. The Proposed Use is also consistent with the strictures of the Scenic Corridor Overlay District.
  - b. Development. It is the intent and effect of this Agreement that Hammock Harbour's use of the Property shall be consistent with all applicable laws, rules, and regulations. Therefore, Flagler County approves the Site Plan for the development of the Property. Hammock Harbour may apply for all applicable permits and approvals to construct the Proposed Use consistent with the Site Plan; and, on the condition such applications are consistent with the Site Plan, Flagler County will approve same and cause all such permits and approvals to be issued in a timely manner.
  - c. Fees and Costs. Except as provided in Section 3(b) of this Agreement, Hammock Harbour agrees to pay all fees required by any ordinance of general application in effect at the time of application for the permits and approvals required to construct the Proposed Use, including application and impact fees.
3. Financial Consideration:
  - a. Payment. Within thirty (30) days of the approval of this Agreement by the Flagler County Board of County Commissioners, Flagler County agrees to pay Hammock Harbour the lump sum of Four Hundred Thousand (\$400,000.00) Dollars.
  - b. Fee Credits. Hammock Harbour shall receive a non-transferable credit on Building Permit Fees applicable to the Site Plan in an amount not to exceed Fifty Thousand (\$50,000.00) Dollars. Hammock Harbour shall also receive a non-transferable credit on all applicable impact fees relating to the Site Plan in amount not to exceed One Hundred Thousand (\$100,000.00) Dollars. For purposes of clarification, those County Impact Fees applicable

to the Site Plan include Transportation Impact Fees pursuant to Chapter 17, Article III, Flagler County Code; Law Enforcement Impact Fees pursuant to Chapter 17, Article V, Flagler County Code; Fire Rescue Impact Fees pursuant to Chapter 17, Article VI, Flagler County Code; and Emergency Medical Services Impact Fees pursuant to Chapter 17, Article VII, Flagler County Code.

4. Dismissal of Litigation. Within five (5) days of Hammock Harbour's receipt of the Payment set forth in Section 3(a) of this Agreement, the Parties shall cause the Litigation to be dismissed with prejudice, with each of the Parties to bear their own attorneys' fees and costs associated with the Litigation. The parties agree to jointly file a request for extensions in the Litigation for any filings that would be due prior to the Payment set forth in section 3(a) of this Agreement.

5. Binding Effect. Except as specifically provided herein, this Agreement shall run with the Property and the rights and the obligations under this Agreement shall benefit, burden, and bind the successors in interest, grantees and assigns of all parties to this Agreement.

6. No Admission of Liability. The Parties specifically understand and agree that this settlement of the Parties' claims and disputes is a compromise of disputed claims and that the existence of this Agreement or any action taken hereunder shall not be construed as an admission of liability or of the truth of the allegations, claims or contentions of any Party, and that there are no covenants, promises, undertakings or understandings between the Parties outside of this Agreement except as specifically set forth herein.

7. Governing Law. This Agreement, and the rights and obligations of the County and Hammock Harbour hereunder shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida.

8. 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 the law and the public interest.

9. Further Assurances. Each of the parties hereto agrees to do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts and assurances as shall be reasonably requested by the other party in order to carry out the intent of this Agreement and give effect thereto. Without in any manner limiting the specific rights and obligations set forth in this Agreement, the parties hereby declare their intentions to cooperate with each other in effecting the terms of this Agreement and to coordinate the performance of their respective obligations under the terms of this Agreement.

10. Attorneys' Fees and Costs. The prevailing party in any dispute arising under this Agreement shall be entitled to recover reasonable attorneys' fees and costs incurred in connection

with such dispute, including but not limited to the attorneys' fees and costs incurred on appeal and attorneys' fees and costs relating to pursuing determination of entitlement to and reasonableness of any prevailing party attorneys' fees and costs to be awarded.

11. Entire Agreement. This Agreement encompasses the complete agreement between the Parties with regard to the subject matter hereof. This Agreement may only be modified by a written instrument executed by duly authorized representatives of the Parties.

12. Effective Date. This Agreement shall take effect upon the date of the last Party to execute it, as indicated below. The County shall record this Agreement in the Official Records of Flagler County.

13. No Third-Party Beneficiaries or Waiver of Immunity. This Agreement is not intended to create any rights in third parties and shall not be construed as a consent by the County to be sued by third parties or to constitute in any manner a waiver or limitation of the County's sovereign immunity.

14. Joint Preparation and Interpretation. Preparation of this Agreement has been a joint effort of the parties, with the benefit of counsel. None of the parties shall be considered the drafter of all or any portion of this Agreement for the purposes of interpreting it; nor shall the Agreement be construed more severely against one of the parties than the other.

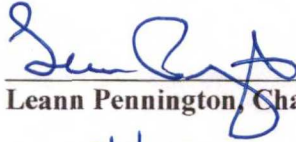
15. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original, and all of which together shall constitute one agreement binding on all Parties hereto, notwithstanding that all the Parties shall not have signed the same counterpart. This Agreement may be executed as facsimile originals or scanned e-mail originals, each of which shall constitute an authorized signature and each copy of this Agreement bearing the authorized transmitted signature of any party's authorized representative shall be deemed to be an original.

16. Promotion of the Public Interest. The County acknowledges and agrees that this Agreement protects the public interest by furthering the Goals, Objectives and Policies set forth in the County's Comprehensive Plan objectives, permitting development consistent with the County's Land Development Regulations, and limiting the County's financial exposure arising from the Litigation.



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by its duly authorized representatives on the dates indicated below.

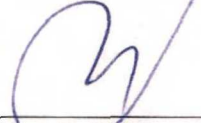
**FLAGLER COUNTY BOARD OF  
COUNTY COMMISSIONERS**



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**Leann Pennington, Chairman**

Date: 2/9/2024

**HAMMOCK HARBOUR, LLC**



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**Robert B. Million, Manager**

Date: 1-20-2026