

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

CASE NO.: 2021 CA 000109
DIVISION: Christopher A. France

FLAGLER COUNTY,

Plaintiff,

v.

AJMAL M. ZULALI, ZUBAIR M.
ZULALI and 2251 S OLD DIXIE
HIGHWAY LLC,

Defendants.

PLAINTIFF'S AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT

The Plaintiff, FLAGLER COUNTY, pursuant to Rule 1.510, of the Florida Rules of Civil Procedure, hereby moves for partial summary judgment against the Defendant, 2251 S OLD DIXIE HIGHWAY LLC, and states:

STATEMENT OF THE CASE

This action involves the enforcement of an Agreement between Plaintiff, FLAGLER COUNTY, and the Defendant, 2251 S OLD DIXIE HIGHWAY LLC, regarding property located in Flagler County at 2251 South Old Dixie Highway, Bunnell, Florida 32110, Parcel No.: 03-13-31-0650-000A0-0091 ("Property") and more particularly described in instrument number 2017043977 recorded in Book 2247, Pages 1598 to 1601, of the Public Records of Flagler County, Florida.

UNDISPUTED FACTS

1. Prior to May 2021, Defendants, AJMAL M. ZULALI and ZUBAIR M. ZULALI,

were the record owners of Property.¹

2. The Property consisted of an unsecured and abandoned motel with large amounts of refuse, overgrown vegetation, and vegetative debris throughout the premises. The Property also contained an unsecured and partially filled swimming pool containing green stagnant water.²

3. The Property and the abandoned motel were unsafe, unsanitary, constituted a fire hazard, were dangerous to human life and were a hazard to the safety and health of the community by reason of inadequate maintenance and dilapidation.³

4. The unsafe and unsanitary condition of the Property and abandoned motel included, but was not limited to:

- a. The fire alarm system had been vandalized and was not operable;
- b. Potable water was unavailable and the sewer not operable;
- c. The electrical service had been vandalized and was not operable. There were numerous exposed electrical wires and open electrical panels and switch/outlet boxes;
- d. The roof structure was partially collapsed, allowing water to enter the structure;
- e. Large sections of the second floor railing were absent which creates a high risk of serious injury and/or death to the public;
- f. A high percentage of the windows were broken allowing water and rodents to enter the structure;
- g. The structure was in such a state of disrepair that during a storm event, its contents will become wind borne debris, injuring the public and damaging neighboring properties;

¹ Second Amended Verified Complaint ¶ 3.

² Second Amended Verified Complaint ¶ 5.

³ Second Amended Verified Complaint ¶ 6.

- h. All of the HVAC systems had either been removed, stolen or vandalized;
- i. The Property was unsecured and is open and accessible, fostering vagrants and is a location of repeated criminal activity; and
- j. The unsecured and partially filled swimming pool was a danger to the public of serious injury and/or death, particularly to children.⁴

5. Staff from the County, the Flagler County Sheriff, and the Florida Department of Health, met with the Defendants, AJMAL M. ZULALI and ZUBAIR M. ZULALI, several times and were assured that the unsafe and unsanitary condition of the Property would be corrected. Each time, however, the Defendants, AJMAL M. ZULALI and ZUBAIR M. ZULALI, failed to adhere to their covenants to correct the Property's condition.⁵

6. On February 8, 2019, a Final Order was entered against the Defendants, AJMAL M. ZULALI and ZUBAIR M. ZULALI, by the State of Florida, Department of Health, and recorded in the Public Records of Flagler County, Florida, instrument number 2020009333, in Book 2425, Page 1659, finding that the Property constitutes a sanitary nuisance that is a threat to public health in violation of Chapters 386.041(1) subsections (e) and (f), and ordered the Defendants, AJMAL M. ZULALI and ZUBAIR M. ZULALI, to abate the nuisance or pay a fine of \$1,000.00 per day up to a maximum fine of \$45,000.00. A copy of the Final Order is attached hereto as Exhibit A.⁶

7. The Defendants, AJMAL M. ZULALI and ZUBAIR M. ZULALI, failed to abate the nuisance or pay the fine imposed by the Florida Department of Health.⁷

⁴ Second Amended Verified Complaint ¶ 7.

⁵ Second Amended Verified Complaint ¶ 8.

⁶ Second Amended Verified Complaint ¶ 9.

⁷ Second Amended Verified Complaint ¶ 10.

8. On February 25, 2020, the Defendants, AJMAL M. ZULALI and ZUBAIR M. ZULALI, were issued a Notice of Code Enforcement informing the Defendants that the Property is unsafe and its use or occupancy is prohibited under the Florida Building Code and Section 8-301, of the Flagler County Standard Unsafe Abatement Code. A copy of the Notice of Code Enforcement is attached hereto as Exhibit B.⁸

9. Defendants, AJMAL M. ZULALI and ZUBAIR M. ZULALI, failed to respond to the Notice of Code Enforcement.⁹

10. On January 13, 2021, a Certificate of Unsafe Structure was issued by the Flagler County Building Department and recorded in Book 2516, Page 551, of the Public Records of Flagler County, Florida. A copy of the recorded Certificate of Unsafe Structure is attached hereto as Exhibit C.¹⁰

11. On January 15, 2021, the County delivered, by personal service, written notice informing the Defendants, AJMAL M. ZULALI and ZUBAIR M. ZULALI, of the public nuisance and demanding that the Defendants take action to abate the nuisance within ten (10) days.¹¹

12. On January 21, 2021, the Flagler County Sheriff sent a letter informing the County that the property containing the unsecured abandoned motel was the focus of continued criminal activity, suicide and nearby resident complaints. A copy of the letter from Flagler County Sheriff, Rick Staly, is attached hereto as Exhibit D.¹²

13. Defendants, AJMAL M. ZULALI and ZUBAIR M. ZULALI, however, took no action and the Plaintiff, FLAGLER COUNTY, brought suit on March 3, 2021, to abate the

⁸ Second Amended Verified Complaint ¶ 11.

⁹ Second Amended Verified Complaint ¶ 12.

¹⁰ Second Amended Verified Complaint ¶ 13.

¹¹ Second Amended Verified Complaint ¶ 14.

¹² Second Amended Verified Complaint ¶ 15.

nuisance and public health hazard that existed on the Property and filed a Notice of Lis Pendens, Case No. 2021 CA 000109.¹³

14. Defendants, AJMAL M. ZULALI and ZUBAIR M. ZULALI, did not respond to service of the Plaintiff's Complaint.¹⁴

15. During the pendency of the litigation but prior to May 15, 2021, Defendant, 2251 S. OLD DIXIE HWY LLC, began negotiations with Defendants, AJMAL M. ZULALI and ZUBAIR M. ZULALI, to purchase the dilapidated Property.

16. The Plaintiff, FLAGLER COUNTY, notified Defendant, 2251 S. OLD DIXIE HWY LLC, of the public nuisance complaint, and also providing them, as the prospective purchasers, with the notices previously served on the Defendants, AJMAL M. ZULALI and ZUBAIR M. ZULALI.¹⁵

17. To facilitate the sale of the Property, the Defendant, 2251 S OLD DIXIE HWY LLC, requested the County stay the action seeking temporary and permanent injunctive relief requiring the Defendants to correct the Health and Building Code violations that exist on the Property.¹⁶

18. On May 13, 2021, the Plaintiff, FLAGLER COUNTY, and Defendant, 2251 S OLD DIXIE HWY LLC, entered into an agreement attached hereto as Exhibit E, wherein Defendant, 2251 S OLD DIXIE HWY LLC, agreed to actively pursue renovations of the dilapidated Property in exchange for the Plaintiff, FLAGLER COUNTY, abating the litigation by not scheduling the lawsuit for hearing or, if a hearing is set by the Court, the County would seek

¹³ Second Amended Verified Complaint ¶ 16.

¹⁴ Second Amended Verified Complaint ¶ 17.

¹⁵ Second Amended Verified Complaint ¶ 18.

¹⁶ Second Amended Verified Complaint ¶ 19.

a continuance to allow the Defendant, 2251 S OLD DIXIE HWY LLC, time to make the necessary improvements.¹⁷

19. Sections 3 and 4 of the Agreement provide specifically:

“3. Company will correct and/or repair the conditions on the Property, as more specifically described below, such that, in the County’s sole determination, the public nuisance on the Property no longer exists.

A. On or before June 3, 2021, Company will:

i.) Remove all litter and debris from the Property;
ii.) Drain or repair and secure the pool; and
iii.) Erect a fence on the Property to prevent the access of trespassers to the dilapidated motel site.

B. On or before August 20, 2021, Company will satisfactorily pass an “all rough” inspection to include specifically inspection of:

i.) Electrical rough;
ii.) Mechanical rough;
iii.) Second rough plumbing; and
iv.) Framing.

4. B. If Company does not complete the remedial tasks outlined above prior to August 20, 2021, Company shall provide a cash deposit of \$250,000.00 to the Flagler County Clerk of Court as security for the abatement of the public health and Building Code violations which exist on the Property (“Cash Bond”)....”

20. On May 14, 2021, the Defendant, 2251 S OLD DIXIE HWY LLC, purchased Property from the Defendants, AJMAL M. ZULALI and ZUBAIR M. ZULALI, described in instrument number 2021029869, recorded in Book 2568, Pages 150 to 154, of the Public Records of Flagler County, Florida attached hereto as Exhibit F.¹⁸

¹⁷ Second Amended Verified Complaint ¶ 20; Defendant 2251 S OLD DIXIE HWY LLC Answer and Affirmative Defenses ¶ 4.

¹⁸ Second Amended Verified Complaint ¶ 24.

21. In accordance with the Agreement the Plaintiff, FLAGLER COUNTY, abated the lawsuit to allow Defendant, 2251 S OLD DIXIE HWY LLC, time to make the necessary improvements as specified in the Agreement.¹⁹

22. After purchasing the Property, the Defendant, 2251 S OLD DIXIE HWY LLC, began to take the remedial steps required under the Agreement, such as by removing the swimming pool and other debris. However, the Defendant, 2251 S OLD DIXIE HWY LLC, failed to correct and remediate the conditions on the Property as required under Section 3 of the Agreement or, alternatively, provide a cash deposit of \$250,000.00 to the Flagler County Clerk of Court in accordance with Section 4 of the Agreement.²⁰

23. On or before June 3, 2021, the Defendant, 2251 S OLD DIXIE HWY LLC, did not remove all litter and debris from the Property, described in Section 3A of the Agreement.²¹

24. On or before June 3, 2021, the Defendant, 2251 S OLD DIXIE HWY LLC, did not erect a fence on the Property, described in Section 3A of the Agreement, to prevent the access to the motel.²²

25. On or before August 20, 2021, the Defendant, 2251 S OLD DIXIE HWY LLC, did not apply for a building permit to perform any electrical repairs on the Property, described in Section 3B of the Agreement and therefore, no electrical work was performed which could pass inspection.²³

¹⁹ Sworn deposition Gregory Kong, Corporate Representative of 2251 S OLD DIXIE HWY LLC, Page 73 Lines 10-13.

²⁰ Second Amended Verified Complaint ¶ 20.

²¹ Sworn deposition Gregory Kong, Corporate Representative of 2251 S OLD DIXIE HWY LLC, Page 40 Lines 12-25, Page 23 Lines 14-17.

²² Second Amended Verified Complaint ¶ 20. Sworn deposition Gregory Kong of as Corporate Representative of 2251 S OLD DIXIE HWY LLC Page 24 Lines 1-13; Defendant, 2251 S OLD DIXIE HWY LLC Answer and Affirmative Defenses ¶ 5.

²³ Second Amended Verified Complaint ¶ 25, Sworn deposition Gregory Kong, Corporate Representative of 2251 S OLD DIXIE HWY LLC, Page 40 Lines 12-25, Page 41 Lines 1-19.

26. On or before August 20, 2021, the Defendant, 2251 S OLD DIXIE HWY LLC, did not apply for a building permit to perform any mechanical repairs on the Property, described in Section 3B of the Agreement and therefore, no mechanical work was performed which could pass inspection.²⁴

27. On or before August 20, 2021, the Defendant, 2251 S OLD DIXIE HWY LLC, did not apply for a building permit to perform any plumbing repairs on the Property, described in Section 3B of the Agreement and therefore, no plumbing work was performed which could pass inspection.²⁵

28. On or before August 20, 2021, the Defendant, 2251 S OLD DIXIE HWY LLC, did not apply for a building permit to perform any framing repairs on the Property, described in and Section 3B of the Agreement and therefore, no framing work was performed which could pass inspection.²⁶

29. On October 1, 2021 and again on November 2, 2021, the Plaintiff, FLAGLER COUNTY, provided the Defendant, 2251 S OLD DIXIE HWY LLC, written notice attached hereto as Exhibit G, informing the Defendant, 2251 S OLD DIXIE HWY LLC, that it had failed to correct the conditions on the Property and demanding the Defendant, 2251 S OLD DIXIE HWY LLC, provide a cash deposit of \$250,000.00 to the Flagler County Clerk of Court as security to abate the public nuisance and Building Code violations which exist on the Property described in Section 3 of the Agreement.²⁷

²⁴ Second Amended Verified Complaint ¶ 25. Sworn deposition Gregory Kong, Corporate Representative of 2251 S OLD DIXIE HWY LLC, Page 40 Lines 12-25, Page 41 Lines 1-19.

²⁵ Second Amended Verified Complaint ¶ 25. Sworn deposition Gregory Kong, Corporate Representative of 2251 S OLD DIXIE HWY LLC, Page 40 Lines 12-25, Page 41 Lines 1-19.

²⁶ Second Amended Verified Complaint ¶ 25. Sworn deposition Gregory Kong, Corporate Representative of 2251 S OLD DIXIE HWY LLC, Page 40 Lines 12-25, Page 41 Lines 1-19.

²⁷ Second Amended Verified Complaint ¶ 27, Defendant 2251 S OLD DIXIE HWY Answer and Affirmative Defenses ¶ 6.

30. The Defendant, 2251 S OLD DIXIE HWY LLC, failed to respond to the County's written notice or deposit the \$250,000.00 with the Flagler County Clerk of Court, except to request a reduction of the contracted amount, which the County Commission declined to accept.²⁸

31. On December 3, 2021, the County brought suit against the Defendant, 2251 S OLD DIXIE HWY LLC, seeking an Order requiring the Defendant under Section 4 of the Agreement, to provide a cash deposit of \$250,000.00 to the Flagler County Clerk of Court as security to abate the public nuisance and Building Code violations including achieving successful commencement of redevelopment in accordance with the Agreement.²⁹

32. As of May 2, 2023, the Defendant, 2251 S OLD DIXIE HWY LLC, had not hired a licensed general contractor to perform any electrical, mechanical, plumbing or framing repairs on the Property described in Section 3B of the Agreement.³⁰

33. The Defendant, 2251 S OLD DIXIE HWY LLC, has not applied for any building permit to perform any electrical, mechanical, plumbing or framing repairs on the Property described in Section 3B of the Agreement.³¹

34. The Defendant, 2251 S OLD DIXIE HWY LLC, is aware of no actions by the County that delayed or prevented the Defendant, 2251 S OLD DIXIE HWY LLC, from obtaining building permits to perform any electrical, mechanical, plumbing, or framing repairs on the Property described in Section 3B of the Agreement.³²

35. The Defendant, 2251 S OLD DIXIE HWY LLC, is unaware of any terms or

²⁸ Second Amended Verified Complaint ¶ 28; 2251 S OLD DIXIE HWY LLC Answer ¶ 5.

²⁹ Order Granting Plaintiff's Motion to Amend Complaint and Case Style dated December 3, 2021.

³⁰ Sworn deposition Gregory Kong, Corporate Representative of 2251 S OLD DIXIE HWY LLC, Page 34 Lines 19-24.

³¹ Sworn deposition Gregory Kong, Corporate Representative of 2251 S OLD DIXIE HWY LLC, Page 40 Lines 12-25, Page 41 Lines 1-13. Second Amended Verified Complaint ¶ 20.

³² Sworn deposition Gregory Kong, Corporate Representative of 2251 S OLD DIXIE HWY LLC, Page 71 Lines 18-23.

conditions under the Agreement that the County failed to perform.³³

36. The Property has exposed electrical wiring and no secured railings, no sanitary sewer and no fire prevention in violation of the Florida Building Code.³⁴

37. The Defendant, 2251 S OLD DIXIE HWY LLC, in its answer has asserted certain alternative defenses challenging the validity of the Agreement.

38. The Plaintiff, FLAGLER COUNTY, now seeks Partial Summary Judgment as to Count I of the Second Amended Complaint for Breach of Contract and as to Defendant's, 2251 S OLD DIXIE HWY LLC, Affirmative Defenses challenging the validity of the Agreement, specifically its Third Defense-Breach of Implied Duty, its Fourth Defense-Frustration, Impossibility, or Impracticability; its Fifth Defense-Illusory Contract, its Sixth Defense-Unconscionable Contract; its Seventh Defense-Failure of Consideration; and its Thirteenth Defense-Mistake.

LEGAL STANDARD FOR SUMMARY JUDGMENT

The summary judgment standard is be construed and applied in accordance with the federal summary judgment standard articulated in *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).” *In re Amends. to Fla. Rule of Civ. Pro. 1.510*, 309 So. 3d at 196. These cases are commonly referred to as the Celotex trilogy. *In re Amendments to Florida Rule of Civil Procedure 1.510*, 317 So. 3d 72, 74 (Fla. 2021).

³³ Sworn deposition Gregory Kong, Corporate Representative of 2251 S OLD DIXIE HWY LLC, Page 73 Lines 10-13.

³⁴ See Affidavit of Bo Snowden, Chief Building Official for Flagler County, filed concurrently herewith.

The court should grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The moving party bears the burden of establishing that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. *Fed.R.Civ.P. 56(c)*; *Board of Regents*, 289 N.W.2d at 809 (1980); see also *Celotex*, 477 U.S. at 323, 106 S.Ct. at 2553 (the moving party has the responsibility of informing the Court of portions of the record or affidavits that demonstrate the absence of a triable issue).

If the moving party meets its burden, once it has established “a *prima facie* case for summary judgment,” the opposing party “may not rest upon the mere allegations or denials of the pleadings, but must, by affidavits or other statutory means, set forth specific facts showing that there exists a genuine issue requiring a trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87, 106 S.Ct. 1348, 1355–56, 89 L.Ed.2d 538 (1986). That is, “[t]he nonmoving party must do more than raise some metaphysical doubt about the material facts and cannot rest on mere denials or allegations. The nonmoving party must instead present enough evidence that a jury could reasonably find in his favor.” *Bedford*, 880 F.3d at 997 (quoting *Torgerson v. City of Rochester*, 643 F.3d 1031, 1042 (8th Cir. 2011)). Finally, to underscore the point, under the *Celotex* Trilogy, it is not Plaintiff, FLAGLER COUNTY’s, burden to disprove Defendant, 2251 S OLD DIXIE HWY LLC’s, affirmative defenses. The party who bears the burden at trial also has the burden at summary judgment. *Wease v. Ocwen Loan Servicing, LLC*, 915 F. 3d 987, 997 (5th Cir. 2019).

ARGUMENT

As a matter of law, the obligations of the Agreement are not illusory or unconscionable, are supported by consideration, are not impossible or impractical, and the undisputed facts show

that the Plaintiff, FLAGLER COUNTY, did not breach any implied duty of good faith or fail to furnish the agreed consideration.

As the basis for its defenses of Illusory Contract, Unconscionable Contract, and Failure of Consideration, Defendant, 2251 S OLD DIXIE HIGHWAY, LLC, asserts that the Agreement contains no definite terms as to the Plaintiff, FLAGLER COUNTY's use of the cash deposit or as to when the funds would be returned to Defendant together with the County's ability to "satisfactorily pass an 'all rough' inspection" rendering the Agreement unenforceable. The plain language of the Agreement and undisputed facts presented by the parties, however, undoes the notion that the cash deposit would disappear upon its tender to the County and undoes the further notion that approving an inspection lacks standards applicable to a local government through its chief building official.

- I. The Agreement sets forth substantial and binding obligations upon the parties and is valid as a matter of law.**
- A. The Agreement places specific obligations on the County and is not illusory.**

Under Florida law, a contract is illusory only when 'one of the promises appears on its face to be so insubstantial as to impose no obligation at all on the promisor-who says, in effect, 'I will if I want to.' " *Princeton Homes, Inc. v. Virone*, 612 F.3d 1324, 1331 (11th Cir.2010) (quoting *Johnson Enters. Of Jacksonville, Inc. v. FPL Group, Inc.*, 162 F.3d 1290, 1311 (11th Cir.1998)). See *Handi-Van, Inc. v. Broward Cnty.*, 116 So. 3d 530, 540 (Fla. 4th DCA 2013). The Defendant, 2251 S OLD DIXIE HIGHWAY, LLC, argues that the completion of the Tasks outlined in Section 3B to the satisfaction of the Plaintiff, FLAGLER COUNTY, render the Agreement illusory.

The Plaintiff, FLAGLER COUNTY's, obligations under Section 3 are not illusory as a matter of law because they include an obligation upon the County to act in good faith in its determination as to whether Defendant, 2251 S OLD DIXIE HIGHWAY, LLC, satisfactorily

completed the tasks. See *Cox v. CSX Intermodal, Inc.*, 732 So. 2d 1092, 1097–98 (Fla. 1st DCA 1999) holding where the terms of the contract afford a party substantial discretion to promote that party’s self-interest, the duty to act in good faith, nevertheless, limits that party’s ability to act capriciously to contravene the reasonable contractual expectations of the other party. See also *Travellers Int’l v. Trans World Airlines, Inc.*, 41 F.3d 1570, 1575 (2d Cir.1994)(“Even when a contract confers decision-making power on a single party, the resulting discretion is nevertheless, subject to an obligation that it be exercised in good faith”).

Furthermore, the Florida Building Code applies to all structures renovated in Flagler County and is enforced by the COUNTY’s Chief Building Official in performing those inspections. See Section 8-31, *Flagler County Code of Ordinances*, and Section 553.73, *Florida Statutes*.

The undisputed evidence shows that Defendant, 2251 S OLD DIXIE HIGHWAY, LLC, never applied for any permits or performed any of the electrical, mechanical, plumbing or framing repairs required under Section 3B on the Property for which the County could have exercised any discretion in the application of the Florida Building Code. Likewise, the Defendant, 2251 S OLD DIXIE HWY LLC, is aware of no evidence that the County would have abused its discretion in applying the Florida Building Code in those inspections had the Defendant, 2251 S OLD DIXIE HWY LLC, actually applied for the permits and performed the work.

Finally, Defendant, 2251 S OLD DIXIE HIGHWAY, LLC, alleges that the Agreement is illusory because it lacks definite terms as to FLAGLER COUNTY’s use of the \$250,000 it was to tender to the Clerk of the Court or when it would be returned to the Defendant. The plain text of the Agreement however refutes this claim. First, the Agreement describes the funds not as a “deposit” but as a “security for the abatement of the public health and Building Code violations

which exist on the Property (“Cash Bond”).” Agreement, Section 4.B emphasis supplied. Next, upon receipt of the Cash Bond, the Agreement specifically requires FLAGLER COUNTY to voluntarily dismiss the present lawsuit and to move to discharge the lis pendens on the Property. Then the Agreement states that FLAGLER COUNTY may utilize the bond to demolish the structure or otherwise abate the nuisance conditions on the Property. Finally, the Agreement requires any unused portions of the bond to be returned to the Defendant, 2251 S OLD DIXIE HIGHWAY, LLC. These terms are not vague, place specific requirements on FLAGLER COUNTY with regard to use of the bond and therefore, are anything but illusory. The fact that the Defendant is unhappy with the terms it agreed to does not render the terms illusory, and the Defendant cannot ask the Court to rewrite the terms of a valid contract to achieve more favorable terms.

B. The Agreement recites valid consideration for the benefit of the Defendant, 2251 S OLD DIXIE HWY, LLC,

The Defendant, 2251 S OLD DIXIE HWY, LLC, alleges that the Agreement lacks mutual consideration because (i) there are no definite terms as to FLAGLER COUNTY’s use of the cash bond or when the bond would be returned to the Defendant; and (ii) FLAGLER COUNTY determines when the Defendant passes the all rough inspections.

Section 4.A. of the Agreement, however, recites FLAGLER COUNTY’s required consideration by obligating FLAGLER COUNTY to abate the pending litigation, including not scheduling any hearings and/or seeking continuance of any scheduled hearings to allow the Defendant, 2251 S OLD DIXIE HWY, LLC, time to make the necessary repairs and improvements outlined in the Agreement.

It is well settled Florida law that forbearance from pursuing a legal remedy, where the promisee has a bona fide belief that a viable legal right exists, constitutes valid consideration for

an agreement which benefits the promisor. *Henderson v. Kendrick*, 82 Fla. 110, 89 So. 635 (1921); *Matey v. Pruitt*, 510 So.2d 351 (Fla. 2d DCA 1987), rev. denied, 518 So.2d 1276 (Fla.1987) and 520 So.2d 585 (Fla.1988); *Shay v. First Federal of Miami, Inc.*, 429 So.2d 64 (Fla. 3d DCA 1983); *Lea v. Suhl*, 417 So.2d 1179 (Fla. 2d DCA 1982); *Alpha Electric Supply, Inc. v. Drake Contracting, Inc.*, 407 So.2d 363 (Fla. 5th DCA 1981); *Uwanawich v. Gaudini*, 334 So.2d 116 (Fla. 3d DCA 1976), cert. denied, 341 So.2d 1086 (Fla.1976); *City of Valparaiso v. Long*, 141 So.2d 334 (Fla. 1st DCA 1962). Even if the legal right is of doubtful validity, it can still constitute valid consideration sufficient to support a contract or promise where the promisee has a bona fide belief of a fair chance of success in the lawsuit. *Henderson v. Kendrick*, 82 Fla. at 110, 89 So. at 635. Furthermore, it is not necessary that the forbearance be promised or mentioned expressly in the language of the agreement. *Boymer v. Birmelin*, 227 So.2d 358 (Fla. 3d DCA 1969). As this Court stated in *Boymer v. Birmelin*, 227 So.2d at 362:

“It is well recognized that forbearance to enforce a legal right may constitute consideration for a promise. It is not required that the forbearance be provided for in express language or terms. This is so because a request by the promisor or undertaking by the promisee to forebear may be implied from conduct of the parties and the nature of the transaction. Consideration is supplied when the circumstances are such that it is reasonable to infer that forbearance was desired and sought by the promisor and forbearance by the promisee follows.” Id. *Citibank Intern. v. Mercogliano*, 574 So. 2d 1190, 1191 (Fla. 3d DCA 1991).

The undisputed facts show that the County abated the pending litigation, including not scheduling any hearings to allow the Defendant time to make the necessary repairs and improvements outlined in the Agreement. The Country, therefore, performed a legally binding consideration as set forth in the Agreement.

II. 2251 S OLD DIXIE HIGHWAY, LLC presents no factual or legal basis to support its defense that the Agreement is unconscionable.

Unconscionability is a common law doctrine that courts have used to prevent the enforcement of contractual provisions that are overreaches by one party to gain “an unjust and

undeserved advantage which it would be inequitable to permit him to enforce.” *Steinhardt v. Rudolph*, 422 So.2d 884, 889 (Fla. 3d DCA 1982) (quoting *Peacock Hotel, Inc. v. Shipman*, 103 Fla. 633, 138 So. 44, 46 (1931)). To succeed on an unconscionability claim, there must be a showing of both procedural and substantive unconscionability. *Bland, ex rel. Coker v. Health Care & Ret. Corp. of Am.*, 927 So.2d 252, 256 (Fla. 2d DCA 2006). Procedural unconscionability relates to the manner in which a contract is made and involves consideration of issues such as the bargaining power of the parties and their ability to know and understand disputed contract terms. *Id.*; *Orkin Exterminating Co. v. Petsch*, 872 So.2d 259, 265 (Fla. 2d DCA 2004). Substantive unconscionability requires an assessment of whether the contract terms are “so ‘outrageously unfair’ as to ‘shock the judicial conscience.’ ” *Id.* (quoting *Gainesville Health Care Ctr., Inc. v. Weston*, 857 So.2d 278, 285 (Fla. 1st DCA 2003)). A substantively unconscionable contract is one that “no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other.” *Id.* (quoting *Hume v. United States*, 132 U.S. 406, 411, 415, 10 S.Ct. 134, 33 L.Ed. 393 (1889)). See also *Woebse v. Health Care & Ret. Corp. of Am.*, 977 So. 2d 630, 632 (Fla. 2d DCA 2008).

The terms of the Agreement are clearly not outrageous, unfair or would shock the conscious of the Court, the Defendant, 2251 S OLD DIXIE HWY, LLC, simply made no meaningful attempt to accomplish them. The Defendant, 2251 S OLD DIXIE HIGHWAY, LLC, is unaware of any due diligence it performed prior to or at the time of the execution of the Agreement to determine if could meet the agreed time frames set forth in Section 3(B).

The Defendant, 2251 S OLD DIXIE HIGHWAY, LLC, is a sophisticated commercial investor which negotiated the terms of the Agreement in an arms’ length transaction. The Defendant agreed to adhere to the timeline in the Agreement or, alternatively, to furnish the cash

deposit. Neither the amount of the required deposit, \$250,000 on a commercial project, nor its intended use to abate public health and Florida Building Code violations on the Property are outrageous or unfair. The Defendant freely entered into the Agreement and, moreover, could have declined to enter into the Agreement in the first place, defended against FLAGLER COUNTY's public nuisance lawsuit, and dealt with the Certificate of Unsafe Structure in any number of ways.

The Defendant, 2251 S OLD DIXIE HIGHWAY, LLC, acknowledges that it waited until the end of May or beginning of June of 2021 before appointing, Gregory Kong, a real estate salesperson, to be the project manager for the renovations of the Property and did not inform him at that time of the Agreement with the County or the deadline for the remedial tasks contain therein. Instead, Mr. Kong only became aware of the Agreement after conversations with the County Administrator later in July. Even after Mr. Kong's hiring as the project manager, and to date, the Defendant has not performed its obligations under the Agreement.

Rather than provide the Cash Bond or perform the remedial tasks the Defendant, 2251 S OLD DIXIE HWY, LLC, unfortunately failed to take even preliminary steps to accomplish either obligation. The Defendant, 2251 S OLD DIXIE HWY, LLC, instead has forced FLAGLER COUNTY to pursue relief through this Court, unnecessarily draining public resources.

III. No evidence supports 2251 S OLD DIXIE HIGHWAY, LLC's defenses of frustration, impossibility, and impracticability.

The Defendant, 2251 S OLD DIXIE HIGHWAY, LLC, asserts that it should be excused from performance of its obligations under the Agreement because they are impossible due to (i) FLAGLER COUNTY controls Defendant's successful completion of the milestones outlined in the Agreement; (ii) FLAGLER COUNTY has hindered Defendant's ability to perform the construction project; (iii) Supply chain disruptions due to the COVID-19 pandemic and the building boom; and (iv) Defendant could never meet the construction deadlines in the Agreement.

The Defendant, 2251 S OLD DIXIE HIGHWAY, LLC's, however, fails to present any facts in support of these assertions.

In accordance with Florida law, FLAGLER COUNTY's Building Official inspects construction sites to ensure compliance with the Florida Building Code and is a tautological fact not a defense to void the Agreement, particularly in the absence of any evidence of bad faith. The Defendant is a sophisticated investor, who freely negotiated and entered into the Agreement, with options of compliance with the Florida Building Code or payment for the County to do so. There is no bad faith here other than Defendant's lack of performing under either option.

The Defendant, 2251 S OLD DIXIE HIGHWAY, LLC's allegation that FLAGLER COUNTY has hindered 2251 S OLD DIXIE HWY, LLC's ability to perform the construction project is unsupported by any evidence and specifically contradicted by the Defendant, 2251 S OLD DIXIE HWY LLC,'s own representative. Instead, the undisputed evidence shows that FLAGLER COUNTY performed its obligations under the Agreement and abated the litigation to allow the Defendant, 2251 S OLD DIXIE HWY LLC, time to perform its obligations under the Agreement.

Summarily, the Defendant, 2251 S OLD DIXIE HIGHWAY, LLC, acknowledges that it waited until the end of May or beginning of June of 2021 before appointing a project manager for the renovations of the Property and did not inform him at that time of the Agreement with the County or the deadline for the remedial tasks contain therein. The Defendant, 2251 S OLD DIXIE HIGHWAY, LLC's project manager only became aware of the Agreement after conversations with the County later in July. Even after hiring a project manager, and to date, the the Defendant, 2251 S OLD DIXIE HIGHWAY, LLC, has not performed its obligations under the Agreement.

Finally, the assertion that the Agreement imposes impossible obligations on 2251 S OLD

DIXIE HWY, LLC is unavailing. The Agreement contemplates that 2251 S OLD DIXIE HWY, LLC might not meet the construction deadlines in the Agreement and specifically provides in Section 4.B., that if 2251 S OLD DIXIE HWY, LLC does not meet the construction deadlines, it shall furnish a cash deposit of \$250,000,00.

IV. 2251 S OLD DIXIE HWY, LLC fails to assert a mistake of fact to justify rescission of the Agreement.

The Defendant, 2251 S OLD DIXIE HWY, LLC, asserts that when entering into the Agreement, it mistakenly believed it could get a third party to cover its Cash Bond obligation which entitles the Defendant to rescission of the Agreement.

A party has a duty to learn and know the contents of an agreement before signing it. See *Onderko v. Advanced Auto Ins.*, 477 So.2d 1026 (Fla. 2d DCA 1985). In order for a party to rescind a deed on the basis of a mistake of a material fact, the injured party must affirmatively show that the mistake did not result from his own failure to exercise reasonable care. See *Williams, Salomon, Kanner, Damian, Weissler & Brooks v. Harbour Club Villas Condominium Ass'n, Inc.*, 436 So.2d 233 (Fla. 3d DCA 1983). Where a party has the ability to gather information as to the quality of land being conveyed and fails to make such inquiry, that party is not entitled to the cancellation of the deed conveying the property. See *Willis v. Hillsborough County*, 117 Fla. 1, 157 So. 29 (1934). See also *Jabour v. Calleja*, 731 So. 2d 792, 795 (Fla. 3d DCA 1999).

There is no evidence that the source of Defendant's funds for the Cash Bond were ever discussed with FLAGLER COUNTY when entering into the Agreement, nor is a third-party bond referenced within the four corners of the Agreement. The Defendant, 2251 S OLD DIXIE HIGHWAY, LLC's claimed unilateral mistake of fact, therefore, cannot legally justify rescission of the Agreement. Even if true, the Defendant bore the risk of that mistake and cannot escape its obligations under the Agreement due to its own risk. See *Mellini v. Paulucci*, 310 So. 3d 123 (Fla.

5th DCA 2020); See also *Langley v. Irons Land & Dev. Co.*, 114 So. 769 (Fla. 1927).

V. The undisputed evidence shows that Flagler County fully performed its obligations under the Agreement.

Defendant, 2251 S OLD DIXIE HIGHWAY, LLC, does not specify which obligation under the Agreement the Plaintiff, FLAGLER COUNTY, allegedly failed to perform. Nevertheless, the undisputed evidence shows that the Plaintiff, FLAGLER COUNTY, performed its obligation under the Agreement and abated the litigation to allow the Defendant, 2251 S OLD DIXIE HWY LLC, time to perform the necessary tasks specified in the Agreement. The Defendant, 2251 S OLD DIXIE HIGHWAY, LLC, on the other hand, never applied for any permits or performed any of the electrical, mechanical, plumbing or framing repairs on the property specified under Section 3B for which an inspection by the County could be conducted. Furthermore, Defendant, 2251 S OLD DIXIE HWY LLC, is aware of no evidence that the Plaintiff, FLAGLER COUNTY, would have abused its discretion in satisfactorily passing all rough inspections had Defendant, 2251 S OLD DIXIE HWY LLC, actually applied for the permits and performed the work.

VI. The undisputed evidence shows that the County did not breach any duty imposed under the Agreement.

“[U]nder an agreement that appears by word or silence to invest one party with a degree of discretion in performance sufficient to deprive another party of a substantial proportion of the agreement's value, the parties' intent to be bound by an enforceable contract raises an implied obligation of good faith to observe reasonable limits in exercising that discretion, consistent with the parties' purpose or purposes in contracting.” *Centronics v. Genicom Corp.*, 132 N.H. 133, 562 A.2d 187, 193 (N.H.1989). (*Cox v. CSX Intermodal, Inc.*, 732 So. 2d 1092, 1098 (Fla. 1st DCA 1999).

Thus, where the terms of the contract afford a party substantial discretion to promote that party's self-interest, the duty to act in good faith, nevertheless, limits that party's ability to act capriciously to contravene the reasonable contractual expectations of the other party. See also *Travellers Int'l v. Trans World Airlines, Inc.*, 41 F.3d 1570, 1575 (2d Cir.1994)(“Even when a contract confers decision-making power on a single party, the resulting discretion is nevertheless, subject to an obligation that it be exercised in good faith”). *Cox v. CSX Intermodal, Inc.*, 732 So. 2d 1092, 1097–98 (Fla. 1st DCA 1999)

The implied obligation of good faith, however, cannot be used to vary the express terms of a contract. See *City of Riviera Beach v. John's Towing*, 691 So.2d 519, 521 (Fla. 4th DCA 1997); *Riedel v. NCNB Nat'l Bank of Florida*, 591 So.2d 1038, 1040 (Fla. 1st DCA 1991).

Here, the undisputed evidence shows that the Plaintiff, FLAGLER COUNTY, did not breach any express or implied duty under the Agreement. Defendant, 2251 S OLD DIXIE HWY LLC, is aware of no actions by the County that delayed or prevented the Defendant, 2251 S OLD DIXIE HWY LLC, from obtaining the permits necessary to perform the electrical, mechanical, plumbing and framing repairs on the Property described in the Agreement. Similarly, Defendant, 2251 S OLD DIXIE HWY LLC, is aware of no evidence that the Plaintiff, FLAGLER COUNTY, would have abused its discretion in satisfactorily passing all rough inspections had the Defendant, 2251 S OLD DIXIE HWY LLC, actually applied for the permits and performed the work. To the contrary, the County is eager to abate this public nuisance within its jurisdiction and had hoped for the success of the Defendant, 2251 S OLD DIXIE HWY LLC.

WHEREFORE, the Plaintiff, FLAGLER COUNTY, respectfully requests that this Court grant the Plaintiff's Amended Motion for Partial Summary Judgment and enter Final Summary Judgment against the Defendant, 2251 S OLD DIXIE HIGHWAY, LLC, finding:

1. That the Agreement is a valid and binding contract between the parties;
2. That the Plaintiff, FLAGLER COUNTY, fully performed its obligations under the Agreement;
3. That the Defendant, 2251 S OLD DIXIE HIGHWAY, LLC, failed to perform remedial tasks under section 3(A)(i) and 3(A)(iii) of the Agreement;
4. That the Defendant, 2251 S OLD DIXIE HIGHWAY, LLC, failed to perform any of remedial tasks under section 3(B) of the Agreement;
5. That the Defendant, 2251 S OLD DIXIE HIGHWAY, LLC, is obligated under Section 4(B) of the Agreement to deposit a Cash Bond with the Flagler County Clerk of the Court as security for the abatement of the public health and building code violations that may exist on the Property; and
6. Order such other relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 12, 2024, I electronically filed the foregoing with the Clerk of the Court by using the E-portal system which will send a notice of electronic filing to Theodore D'Apuzzo, Esquire at ted@dapuzzolaw.com and at service@dapuzzolaw.com and have mailed a copy to Ajmal M. Zulali and Zubair M. Zulali, 10780 Foxwood Road, San Diego, CA 92126.

/s/ Abraham C. McKinnon
Abraham C. McKinnon, Esquire
Florida Bar No. 629081
Noah C. McKinnon, Jr., Esquire
Florida Bar No.: 108598
595 W. Granada Blvd., Suite A
Ormond Beach, Florida 32174
(386) 677-3431 – Telephone
(386) 673-0748 – Facsimile
Primary Email: lynn@mckinnonandmckinnonpa.com

Secondary: amckinnon@mckinnonandmckinnonpa.com

and

Albert J. Hadeed, Esquire
Florida Bar No. 180906
Primary Email: ahadeed@flaglercounty.org
Sean S. Moylan, Esquire
Florida Bar No. 76251
Primary Email: smoylan@flaglercounty.org
Flagler County Board of County Commissioners
1769 E. Moody Blvd., Bldg. 2
Bunnell, FL 32110
(386) 313-4056 - Telephone
(386) 313-4105 - Facsimile
Attorneys for the Plaintiff.

RECEIVED
DEPARTMENT OF HEALTH
2019 FEB 12 AM 11:43
OFFICE OF THE CLERK

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

**STATE OF FLORIDA
DEPARTMENT OF HEALTH,
Petitioner,**

vs.

**Rendition No.: DOH-19-0363-FOI-HO
No.: 2019-0135**

**AJMAL M. ZULALI
SUBAIR M. ZULALI,**

FLAGLER COUNTY

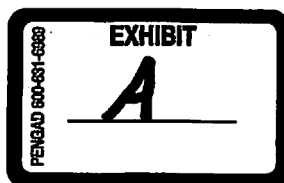
Respondents.

FINAL ORDER

THIS MATTER is before the Department of Health for consideration of the entry of a Final Order. The Respondent has failed to file any document with the Department or the Department's agency clerk regarding the Petitioner's Administrative Complaint or the Motion for Final Order by Default.

The Department served the Respondents with the Administrative Complaint by Federal Express on June 19, 2018. The Administrative Complaint charged the Respondents with violation of Section 388.041(1)(e), Florida Statutes, in that the conditions existing, permitted, maintained, kept or caused by the Respondents upon the property, as evidenced by the unmaintained pool and spa, constitute a sanitary nuisance that is a threat to public health. The Administrative Complaint further charged the Respondents with violation of Section 388.041(1)(f), Florida Statutes, in that the conditions existing, permitted, maintained, kept or caused by the Respondents upon the property, as evidenced by the rodent harborage in and about the abandoned building and overgrown vegetation, additionally constitute a sanitary nuisance that is also a threat to public health.

The Administrative Complaint notified the Respondent of the right to request an administrative hearing, and that failure to timely request a hearing within twenty-one



(21) days would result in all matters being deemed admitted and a waiver of a right to a hearing.

The Petitioner has complied with all requirements of the law. By failing to file a request for a hearing within twenty-one (21) days of receipt of the Administrative Complaint, and failing to respond to the Petitioner's Motion for Final Order of Default, the Respondent has waived the right to request an Administrative Hearing in this cause.

The findings of fact and conclusions of laws set forth in the Administrative Complaint served on June 19, 2018 are hereby established and incorporated herein.

Based upon the foregoing, the Petitioner's Motion for Final Order by Default is GRANTED. Respondent is ORDERED to pay the administrative fine of \$500 per day for each of the 2 violations, resulting in a total daily fine of \$1,000.00 for 45 days. A total fine is therefore imposed of Forty-Five Thousand Dollars (\$45,000.00). Payment is due in full no later than ten (10) days from the date of filing of this Final Order. Payment is to be made by check or money order payable to Department of Health Flagler County, Attention: John Bey, Environmental Health Administrator, Department of Health Flagler County, 208 Dr. Carter Blvd., Bunnell, Florida 32110.

DONE AND ORDERED this 8 day of February, 2019 in Tallahassee, Florida.

By: Michele Tallent
Michele Tallent
Deputy Secretary for Operations

Code Enforcement
1769 E. Moody Blvd., Bldg. 2
Bunnell, FL 32110



www.flaglercounty.org
Phone: (386)313-4083
Fax: (386)313-4102

Amial Zulali & Zubair M Zulali
10780 Foxwood Rd
San Diego, CA 92126

March 9th 2020

Inspection Date: 2/25/2020

Case # ABDS- 000322-2020

Inspectors: Mark Bolce, Chief Building Official, Scott Simon, Code Enforcement Officer

Street Address: 2251 S OLD DIXIE HWY, BUNNELL, FL 32110

Parcel ID # 03-13-31-0650-000A0-0091

Legal Description: 0006.38 ACRES BUNNELL DEV CO SUBD BLK A PART OF TRACTS 9-10 BOUNDED ON WEST BY STRICKLAND CANAL BOUNDED ON NORTH BY A LINE 827.05' NORTH OF FPL EASEMENT OR BK 49 PG 325 (EXC OR 94 PG 667) QC OR 128 PGS 59,60, OR 148 PG 338 OR 152 PG 240 OR 359 PG 632 OR 439 PG 271-CT SEE NOTES FOR BLDG CHANGE PER JPS OR 458 PG 1112 OR 597/366 OR 1887/1181 OR 1975/233 OR 2247/1598

THIS BUILDING IS UNSAFE AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE FLAGLER COUNTY BUILDING OFFICIAL.

Code Violation: Chapter 8, Article x of the Flagler County code, STANDARD UNSAFE ABATEMENT: Any building, structure or portion thereof that is unsafe, unsanitary or not provided with adequate egress, or which constitutes a fire hazard, or is otherwise dangerous to human life, or which is relation to existing use constitutes a hazard to the safety or health by reason of inadequate maintenance, dilapidation, obsolescence or abandonment. (See attached specific condition).

ACTION REQUIRED:

The building or structure shall be repaired within sixty (60) days. Flagler County permits will be required. Repair by May 8th 2020.

The building or structure shall be vacated within immediately 0 days.

The building or structure is to be removed/demolished. The premises shall be vacated within sixty (60) days. All required permits for removal/demolition shall be secured and the demolition shall be completed by May 8th 2020. A detailed report documenting the conclusion rendering the building or structure unsafe is attached hereto as Exhibit "A."

Charles Ericksen, Jr.
District 1

Greg Hansen
District 2

David Sullivan
District 3

Joe Mullins
District 4

Donald O'Brien, Jr.
District 5



continued

If the required action as determined by the Building Official is not commenced within or completed by the time specified above. The Building Official may cause the work or demolition to be completed and all cost incurred charged against the property or the owner of record. Any person having a legal interest in the property may appeal this notice by the Building Official to the Board of County Commissioners. Said appeal shall be filed with the Building Official within (30) days from the date of notice. Failure to appeal in the time specified.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Boice', with a long horizontal line extending to the right.

Mark Boice,
Chief Building Official
Flagler County

**Growth Management Department
Building
1769 E. Moody Blvd, Bldg. 2
Bunnell, FL 32110**



**www.flaglercounty.org
Phone: (386)313-4003
Fax: (386)313-4102**

"EXHIBIT A"

The structure located at 2251 S. Old Dixie Hwy., Bunnell Fl is in a state of disrepair and was posted "UNSAFE" by the Flagler County Building Department. Due to the circumstances identified on this site, the building is hazardous to the health, safety and well-being of those who utilize the structure and neighboring properties.

This may or may not be an all inclusive list of items and issues required to be addressed.

1. The structure is in such a state of disrepair that it and its contents could potentially become wind borne debris and damage neighboring properties during a storm event.
2. The fire alarm system has been vandalized and is not operable.
3. Potable water and sewer is not available on site.
4. The electrical service has been vandalized and is not operable. There are many exposed electrical wires and open electrical enclosures on site.
5. The roof structure has collapsed in some areas, leaking in others, allowing water to enter the structure. The ceiling has collapsed in many areas due to water infiltration.
6. Large sections of guardrail are nonexistent on the second floor.
7. A high percentage of the windows have been broken, this is a very hazardous condition and is allowing water and rodents to enter the entire structure.
8. All of the HVAC systems have either been removed, stolen or vandalized.
9. The pool is in a state of disrepair.
10. Since the property is unsecured, debris, including room contents is open and accessible; this causes a condition that fosters vagrants and rodents.

Any work performed on site will be required to comply with the Florida Building Code and require permits to be issued to a licensed contractor.

**Charles Ericksen, Jr.
District 1**

**Greg Hansen
District 2**

**David Sullivan
District 3**

**Joe Mullins
District 4**

**Donald O'Brien, Jr.
District 5**

Code Enforcement
1769 E. Moody Blvd., Bldg. 2
Bunnell, FL 32110



www.flaglercounty.org
Phone: (386) 313-4083
Fax: (386) 313-4102

CERTIFICATE OF UNSAFE STRUCTURE

The undersigned Flagler County Building Official hereby certifies that the structure located
At **2251 S OLD DIXIE HWY, BUNNELL FL 32110** upon property legally described as,

PARCEL ID # 03-13-31-0650-000A0-0091

Owner: **Zulali Ajmal M & Zubair M Zulali**
 10780 Foxwood Rd
 San Diego, CA 92126

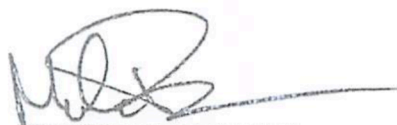
Legal Description: 0006.38 ACRES BUNNELL DEV CO SUBD BLK A PART OF TRACTS 9-10
BOUNDED ON WEST BY STRICKLAND CANAL BOUNDED ON NORTH BY A LINE 827.05' NORTH OF FPL
EASEMENT OR BK 49 PG 325 (EXC OR 94 PG 667) QC OR 128 PGS 59,60, OR 148 PG 338 OR 152 PG 240 OR 359 PG 632
OR 439 PG 271-CT SEE NOTES FOR BLDG CHANGE PER JPS OR 458 PG 1112 OR 597/366 OR 1887/1181 OR 1975/233 OR
2247/1598

Is **UNSAFE** pursuant to the requirements of the Florida Building Code and Section 8-
301, et seq., of the Flagler County Standard Unsafe Abatement Code ("Code".)

The above described property was posted on February 25, 2020
The record title owner was duly served with notice of required action on March 19,
2020

This notice is filed in the Public Records of Flagler County pursuant to the
requirements of Section 8-354 of the Code.

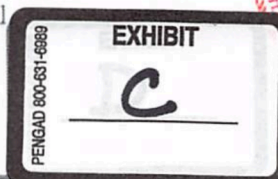
I hereby certify that the above is true and correct, stated this day January 13, 2021


Mark Boice,
Chief Building Official



I HEREBY CERTIFY this to be a true
And correct copy of the original
TOM BEXLEY
CLERK & COMPTROLLER


B. D.C.



Andy Dance
District 1

Greg Hansen
District 2

David Sullivan
District 3

Joe Mullins
District 4

Donald O'Brien, Jr.
District 5



Rick Staly, Sheriff
FLAGLER COUNTY SHERIFF'S OFFICE

"An honor to serve, a duty to protect."

January 21, 2021

Mr. Jerry Cameron
County Administrator
Flagler County Government

VIA EMAIL

RE: Abandoned Hotel, Old Dixie Highway near I-95

Dear Administrator Cameron:

This letter is a follow-up to the issue my staff and I brought to your attention many months ago concerning the derelict and abandoned hotel on Old Dixie Highway that has been the focus of criminal activity, suicide and nearby resident complaints.

As you may recall this derelict hotel was brought to your attention and the BOCC as a public safety hazard. Since that time the owners have only installed a partial fence which is inadequate to stop persons from entering the property. The abandoned pool remains a safety and health hazard. As you know decaying properties like this often become attractive to criminal activity and other quality of life issues for nearby homes and businesses. Because this property is located in a remote corner of Flagler County near the Volusia County line it can attract criminal activity from both counties with little law enforcement oversight.

I further understand the owners claimed they were going to start a major renovation of this property many months ago but that does not seem to have materialized. I am requesting a status of the County's threatened condemnation of this property and its subsequent demolition.

Thank you in advance for an update so I can respond to resident concerns.

Sincerely,

RICK STALY
Sheriff

RS/sg



Proudly Serving the Community Since 1917
A Four Diamond Accredited Law Enforcement Agency



AGREEMENT

FLAGLER COUNTY (hereinafter referred to as "County") and 2251 S OLD DIXIE HWY LLC (hereinafter referred to as "Company") hereby agree on this ____ day of May, 2021, to the following terms and conditions regarding the property located in Flagler County at 2251 South Old Dixie Highway, Bunnell, Florida 32110, Parcel No.: 03-13-31-0650-000A0-0091 ("Property"):

RECITALS:

WHEREAS: The Property contains an abandoned motel and pool and is unsafe, unsanitary, constitutes a fire hazard, is dangerous to human life and is a hazard to the safety and health of the community by reason of inadequate maintenance and dilapidation and constitutes a public nuisance pursuant to Chapters 823.05 and 60.05, Florida Statutes; and

WHEREAS: The County initiated a lawsuit on March 3, 2021, Case No.: 2021 CA 000109, for temporary and permanent injunctive relief to abate the nuisance and correct the health and building code violations that exist on the Property or, alternatively, to allow the County to demolish and make safe the public nuisance and impose a lien on the Property for such expenses (the "Lawsuit"); and

WHEREAS: Company has entered into a Contract to Purchase the Property from the current property owners, identified as Ajmal M. Zulali and Zubair M. Zulali, and desires to have the County dismiss the Lawsuit and release the associated Lis Pendens; and

WHEREAS: Company agrees with Flagler County that the Property, in its current state, constitutes a public nuisance pursuant to Chapters 823.05 and 60.05, Florida Statutes, and agrees to remedy the health and building code violations that exist on the Property after purchase of the Property.

THEREFORE the parties agree as follows:

1. The recitals set forth above are true and correct and form the basis of this Agreement.
2. Upon closing of the purchase of the Property, Company shall pay all outstanding fines and costs attached to the Property, including but not limited to unpaid property taxes, as well as all fines imposed by Flagler County Code Enforcement and the fine imposed by the Final Order dated February 8, 2019 entered by the State of Florida, Department Health, and recorded in the Public Records of Flagler County, Florida, instrument number 2020009333, in Book 2425, Page 1659. The taxes and costs are listed in Exhibit A, attached hereto and incorporated herein.
3. Company will correct and/or repair the conditions on the Property, as more specifically described below, such that, in the County's sole determination, the public nuisance on the Property no longer exists.
 - A. On or before June 3, 2021, Company will:
 - i.) Remove all litter and debris from the Property;
 - ii.) Drain or repair and secure the pool; and
 - iii.) Erect a fence on the Property to prevent the access of trespassers to the dilapidated motel site.



- B. On or before August 20, 2021, Company will satisfactorily pass an "all rough" inspection to include specifically inspection of:**
- i.) Electrical rough;**
 - ii.) Mechanical rough;**
 - iii.) Second rough plumbing; and**
 - iii.) Framing.**
- 4. A. In consideration of Company paying the taxes and fines and diligently pursuing and performing the remedial tasks, as described in Sections 2 and 3 above, the County will not schedule the Lawsuit for hearing or, if a hearing is set by the Court, the County will seek a continuance to allow Company time to make the necessary repairs and improvements.**
- B. If Company does not complete the remedial tasks outlined above prior to August 20, 2021, Company shall provide a cash deposit of \$250,000.00 to the Flagler County Clerk of Court as security for the abatement of the public health and Building Code violations which exist on the Property ("Cash Bond"). Upon satisfactory completion of the tasks outlined in Sections 2 or 3 above, as determined in the County's sole discretion, or, alternatively, upon depositing the Cash Bond with the Clerk of Court, the County will voluntarily dismiss the Lawsuit and move to discharge the associated Lis Pendens. The County may utilize the Cash Bond to demolish the building structures or to perform such work as the County deems necessary, in its sole discretion, to abate the public nuisance conditions on the Property. The County may perform this work on its own or in conjunction with any private contractors as may be determined by the County, and any work performed by the County or any subcontractors shall be exempt from any requirements for public bid. Any proceeds not used by the County shall be returned to Company upon completion of the work.**
- C. If Company does not pay the taxes and fines and does not complete the tasks outlined in Section 3 above by August 21, 2021, and also does not as an alternative provide the Cash Bond in the same time period, the County will prosecute the Lawsuit including, if necessary, setting the matter for a hearing.**
- 5. Notwithstanding the timelines and obligations listed above, Company covenants to take ownership and possession of the Property and to make use of the Property in full compliance with all applicable laws, rules, and regulations, including without limitation the Flagler County Code of Ordinances and the Florida Building Code.**
- 6. Complete Agreement. This Agreement constitutes the complete and exclusive statement of the agreement between the parties. It supersedes all prior written and oral statements, including any prior representation, statements, conditions, or warranties.**
- 7. Applicable Law. All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the law of the State of Florida. Should the County be required to take legal action to enforce any term or condition of this Agreement the County shall be entitled to recover its reasonable attorneys' fees and cost incurred for such action.**

8. Jurisdiction and Venue. Any suit involving any dispute or matter arising under this Agreement may only be brought in the State courts of the State of Florida within the County of Flagler, Seventh Judicial Circuit.
9. Counterparts. This Agreement may be executed simultaneously in two or more counterparts each of which shall be deemed an original, and all of which, when taken together, constitute one and the same document.

IN WITNESS WHEREOF, this Agreement is executed as of the date first written above by Flagler County and 2251 S Old Dixie Hwy LLC.

FLAGLER COUNTY

2251 S OLD DIXIE HWY LLC

BY: 
Jerry Cameron, County Administrator

BY: 
Signature

Date: 5-6-21

DAVID SHEBIRO, MANAGING MEMBER
Name, Title

Date: MAY 13, 2021

EXHIBIT A

Property Taxes, as of 04/29/21	\$10,036.59
Health Department Fine	\$45,000.00
Code Enforcement Fines	\$10,190.00
Unsafe Structure Costs	\$4,836.00

Prepared by and after recording return to:

Berry J. Walker, Jr., Esquire
Walker & Tudhope, P.A.
225 South Westmonte Drive, Suite 2040
Altamonte Springs, Florida 32714

File Number: FA21-158

Consideration = \$650,000.00

General Warranty Deed

Made this May 14, 2021 A.D. By **Ajmal M. Zulali, a married man, and Zubair M. Zulali, a married man**, whose mailing address is 10780 Foxwood Road, San Diego, California 92126, hereinafter called the grantor, to **2251 S OLD DIXIE HWY LLC, a Florida limited liability company**, whose post office address is: 12550 Biscayne Blvd., Suite 406, North Miami, Florida 33181, hereinafter called the grantee:

(Whenever used herein the term "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the grantor, for and in consideration of the sum of Ten Dollars, (\$10.00) and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in Flagler County, Florida, viz:

See Attached Schedule "A"

Said property is not the homestead of the Grantor(s) under the laws and constitution of the State of Florida in that neither Grantor(s) or any members of the household of Grantor(s) reside thereon.

Parcel ID Number: 0313310650000A00091

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 2020.



Prepared by and after recording return to:

Berry J. Walker, Jr., Esquire
Walker & Tudhope, P.A.
225 South Westmonte Drive, Suite 2040
Altamonte Springs, Florida 32714

File Number: FA21-158

Consideration = \$650,000.00

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence:

Mohamad Nazir Zulali
Witness Printed Name MOHAMAD NAZIR ZULALI

Ajmal M. Zulali (Seal)
Ajmal M. Zulali

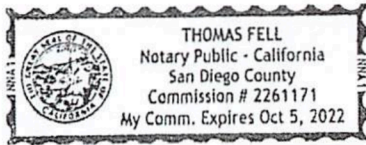
Thomas Fell
Witness Printed Name Thomas Fell

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 14 day of May, 2021, by Ajmal M. Zulali who is personally known to me or who has produced CADL - B3101930 as identification.



Thomas Fell
Notary Public
Print Name: Thomas Fell
My Commission Expires: OCT 5, 2022

Prepared by and after recording return to:

Berry J. Walker, Jr., Esquire
Walker & Tudhope, P.A.
225 South Westmonte Drive, Suite 2040
Altamonte Springs, Florida 32714

File Number: FA21-158

Consideration = \$650,000.00

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence:

M. D. Zullali
Witness Printed Name Mahammad D. Zullali

Zubair M. Zulali
Zubair M. Zulali

Ali Zullali
Witness Printed Name Ali Zullali

State of Colorado

County of Adams

The foregoing instrument was acknowledged before me by means of () physical presence or () online notarization, this 14th day of May, 2021, by Zubair M. Zulali () who is personally known to me or () who has produced Colorado, Driver License, as identification.

Lucero Olague
Notary Public

Print Name: Lucero Olague

My Commission Expires: 03/15/2022

LUCERO OLAGUE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20184011978
MY COMMISSION EXPIRES MARCH 15, 2022

Prepared by and after recording return to:

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Walker & Tudhope, P.A.
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Altamonte Springs, Florida 32714

File Number: FA21-158

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"Schedule A"

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND SITUATE, LYING AND BEING IN THE COUNTY OF FLAGLER AND STATE OF FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

That certain piece, parcel or tract of land, situate, lying and being in the County of Flagler, State of Florida, to-wit: The following land in Flagler County, Florida: Being a portion of Section 3, Township 13 South, Range 31 East, Flagler County, Florida, described as follows: From the intersection of the Northerly line of said Section 3 and the Westerly line of I-95 (300.00 feet wide); thence along said Northerly line South $89^{\circ} 30' 18''$ West, 419.57 feet to the Easterly line of a 50.00 foot Strickland Canal; thence along said Easterly line South $06^{\circ} 28' 50''$ West, 1639.20 feet to the true Point of Beginning; thence North $89^{\circ} 23' 27''$ East, 599.13 feet; thence South $00^{\circ} 36' 33''$ East, 445.61 feet to the P.C. curve concave Northwesterly; thence along the arc of said curve having a radius of 52.58 feet through a delta of $60^{\circ} 00' 00''$ a distance of 55.06 feet to the point of tangency; thence South $59^{\circ} 23' 27''$ West, 464.97 feet to the P.C. of a curve concave Southeasterly; thence along the arc of said curve having radius of 112.58 feet through a delta of a $60^{\circ} 00' 00''$ a distance of 117.89 to the point of tangency; thence South $00^{\circ} 36' 33''$ East, 0.15 feet; thence North $89^{\circ} 32' 15''$ West, 215.95 feet to the Easterly line of the Strickland Canal 50.00 feet wide; thence along said Easterly line North $06^{\circ} 28' 50''$ East, 827.05 feet to the Point of Beginning.

LESS AND EXCEPT:

That certain strip of land being approximately 100.77 x 559.13', the ownership of which was in dispute in Case No. 92-073-CA, in the Circuit Court, Seventh Judicial Circuit, in and for Flagler County, Florida; said strip of land being more particularly described as follows:

A parcel of land being in Section 3, Township 13 South, Range 31 East, Flagler County, Florida, being more particularly described as follows: From the intersection of the Northerly line of said Section 3 with the Westerly right-of-way line of I-95, a 300 foot right-of-way; thence South $89^{\circ} 30' 18''$ West, along the said Northerly line of Section 3, 419.57 feet to the Easterly line of a 50 foot right-of-way known as the Strickland Canal; thence South $06^{\circ} 28' 50''$ West, along the said Easterly canal right-of-way, 1639.20 feet to the concrete monument marking the Point of Beginning; thence North $89^{\circ} 23' 27''$ East, 599.13 feet; thence South $00^{\circ} 36' 33''$ East, 100.25 feet; thence South $89^{\circ} 23' 27''$ West, 611.61 feet to the said Easterly right-of-way line of the Strickland Canal; thence North $06^{\circ} 28' 50''$ East, along the said Easterly right-of-way line, 100.77 feet to the Point of Beginning.

TOGETHER WITH a 60 foot Entrance Easement, a portion of Lots 9 & 10, Block A, Section 3, Township 13 South, Range 31 East, Bunnell Development Company Subdivision Flagler County, Florida, as per map recorded in Plat Book 1, page 1, Public Records of Flagler County, being more particularly described as follows:

Prepared by and after recording return to:

Berry J. Walker, Jr., Esquire
Walker & Tudhope, P.A.
225 South Westmonte Drive, Suite 2040
Altamonte Springs, Florida 32714

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Commence at the intersection of the Northerly line of said Section 3, with the Westerly line of I-95 right-of-way, a 300 foot right-of-way as now laid out and used; thence along the said Northerly line of South 89°30' 18" West, 419.57 feet to the Easterly right-of-way line of a 50.00 foot Strickland Canal right-of-way; thence along said Easterly line South 06°28'50" West, 1639.20 feet (1640.84 measured); thence North 89°23'27" East, 599.13 feet to the Point of Beginning of this description; thence continue North 89°23'27" East, 60.00 feet; thence South 00°36'33" East, 445.61 feet to a point of curvature concave Northwesterly, having a radius of 112.58 feet; thence along the arc of said curve a distance of 117.89 feet through a delta of 60°00'00" to the point of tangency; thence South 59°23'27" West, 464.97 feet to a point of curvature of a curve concave Southeasterly, having a radius of 52.58 feet; thence along the arc of said curve a distance of 55.06 feet through a delta of 60°00'00" to the point of tangency; thence South 00°36'33" East, 200 feet to the North right-of-way line of the Old Dixie Highway a 66 foot right-of-way; thence South 89°23'27" West along the North right-of-way line of the Old Dixie Highway 60 feet; thence North 00°36'33" West, 200.00 feet to a point of curvature of a curve concave Southeasterly, having a radius of 112.58 feet; thence along the arc of said curve a distance of 117.89 through a delta of 60°00'00" to the point of tangency; thence North 59°23'27" East 464.97 feet to a point of curvature of a curve concave Northwesterly, having a radius of 52.58 feet; thence along the arc of said curve a distance of 55.06 feet through a delta of 60°00'00" to the point of tangency; thence North 00°36'33" West through a delta of 60°00'00" to the point of tangency; thence North 00°36'33" West, 445.61 feet to the Point of Beginning of this description.

County Attorney
1769 E. Moody Blvd Bldg 2
Bunnell, FL 32110



www.flaglercounty.org
Phone: (386) 313-4005
Fax: (386) 313-4105

October 1, 2021

David Shebeiro, Managing Member
2251 S. Old Dixie Hwy LLC
12550 Biscayne Blvd., Suite 406
North Miami, FL 33181

Manny Gomez, Managing Member
2251 S. Old Dixie Hwy LLC
12550 Biscayne Blvd., Suite 406
North Miami, FL 33181

Re: Status of Compliance with Agreement on Old Dixie Highway Hotel

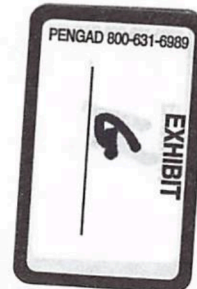
Dear Messrs. Shebeiro and Gomez:

We are in receipt of the timeline provided by your design professional, Mr. Albano, dated September 22nd, in which Mr. Albano referenced the completion of the schematic design and the ongoing preparation of construction documents. Unfortunately, the timeline provided is unsatisfactory as is the failure to provide any design documents as requested by our Chief Building Official ("CBO") and agreed to by Mr. Albano after the two spoke last week. There appear to be no design documents of any kind and you have failed to apply for permits to advance the project.

Also, subsequent my correspondence to you of September 8th, I was advised that despite earlier assurances, the site has not been adequately fenced and remains unsecure. In fact, three individuals were arrested for entering onto the site and vandalizing the dilapidated structure.

Please recall that Messrs. Yin and Biton engaged in extensive negotiations with the County to reach agreement on the public nuisance complaint, including agreeing to the timeline. You also ultimately agreed to that timeline and executed the agreement on May 13, 2021. The agreement is unambiguous and requires you to diligently perform the remedial tasks specified in the agreement. Unfortunately, you have not fulfilled your legal obligations, and a nuisance situation persists at the site.

You are hereby notified to immediately furnish the Flagler County Clerk of Court with a \$250,000.00 cash bond as you covenanted to do in Section 4.B of the agreement.



Andy Dance
District 1

Greg Hansen
District 2

David Sullivan
District 3

Joe Mullins
District 4

Donald O'Brien Jr.
District 5

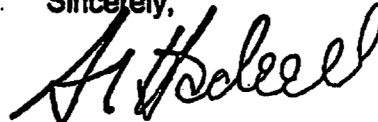
David Shebeiro, Managing Member
Manny Gomez, Managing Member
October 1, 2021
Page 2

Upon receipt of the bond, the County will voluntarily dismiss the suit and move to discharge the associated lis pendens recorded against your property. The County will use the funds as provided for in the agreement. Failure to furnish the cash bond within ten business days of receipt of this letter will result in the County taking all legal remedies at its disposal including joining 2251 S. Old Dixie Hwy LLC to the lawsuit pending against the property.

In addition, be advised that Flagler County is no longer willing to provide the funding to extend potable water and wastewater utility lines to your site. This was to be a substantial contribution of the County in reliance on your commitment to remediate a longstanding blight in Flagler County.

We had hoped to avoid the need for depositing the cash bond as evidenced by my correspondence to you of 8 September. Fortunately however, the agreement we entered into prior to these events unfolding anticipates the possibility of the current situation and clearly spells out our mutual obligations going forward. We continue to hope to avoid the expense of prosecuting this matter in the Circuit Court and look forward to abatement of the nuisance.

Sincerely,



Albert J. Hadeed
County Attorney

cc: Jim Albano
Heidi Petito, Interim County Administrator
Abraham McKinnon
Chief Building Official
Code Enforcement Officer
Growth Management Department
Yan Yin, MG Capital Partners
Ofer Biton, MG Capital Partners
Valeria Schwartzman, Esq.
Greg Kong

County Attorney
1769 E. Moody Blvd Bldg 2
Bunnell, FL 32110



www.flaglercounty.gov
Phone: (386) 313-4005
Fax: (386) 313-4105

November 2, 2021

The D'Apuzzo Law Firm
Attn.: Mr. Ted D'Apuzzo, Esq.
2755 E. Oakland Park Blvd., Ste. 303
Ft. Lauderdale, FL 33306

Re: 2251 South Old Dixie Highway

Dear Mr. D'Apuzzo:

I write in follow up to our conversation and your email inquiry dated October 26, 2021, seeking to reduce the cash deposit your client is to provide the County based on revised demolition estimates. To recap briefly, your client and the County executed an Agreement on May 13, 2021, wherein your client agreed to either complete certain clean-up and restoration activities at the above site by August 20, 2021, or to furnish the Clerk of Court a cash deposit of \$250,000. The amount of the deposit was agreed to after extensive negotiations and is intended to provide an incentive for the expeditious removal of the nuisance conditions at the site through the restoration of hotel structure. The Agreement requires the County, upon receipt of the deposit, to dismiss the nuisance suit against the property and to discharge the associated lis pendens. The Agreement also requires the County to return the funds to your client upon the completion of certain restoration tasks identified in the Agreement or, failing that, to use the funds to itself demolish the structures or otherwise abate the public nuisance conditions at the site.

Having not received the cash deposit or applications for building permits, the County sent correspondence to your client on September 8, 2021, requesting an updated timeline and reminding your client of the cash deposit. Your client's design professional responded on September 22, advising that the project budget has increased by over \$2 million, but no mention was made of the cash deposit. Moreover, the letter advised that the owners would not apply for permits until January 2022. The County replied on October 1, that the revised timeline is unsatisfactory and demanded the cash deposit. We also advised that due to your client's failure to fulfill its obligations, the County is not willing to expend the public funds to extend potable water and wastewater utility lines to the site which had been offered in reliance on your client's commitment to remediate a longstanding blight in Flagler County.

Please be advised that, in light of these circumstances, the Board of County Commissioners has declined your client's request to amend the Agreement to reduce

Andy Dance
District 1

Greg Hansen
District 2

David Sullivan
District 3

Joe Mullins
District 4

Donald O'Brien Jr.
District 5

the amount of the cash deposit. We have attempted to resolve these matters amicably. However at this point, your client remains in breach of the Agreement. Unfortunately, as stated in our October 1 correspondence, we now have no alternative but to engage the Circuit Court to ensure compliance with the terms of the Agreement.

Sincerely,

**Sean S.
Moylan**

Digitally signed by Sean
S. Moylan
Date: 2021.11.02
13:33:20 -0400

**Sean S. Moylan
Assistant County Attorney**

**CC: Heidi Petito, County Administrator
Bo Snowden, Chief Building Official
Adam Mengel, Growth Management Director
Scott Simon, Code Enforcement Officer**