1. **Application #3190** – APPLICATION FOR AMENDMENT TO PUD (PLANNED UNIT DEVELOPMENT) TO AMEND THE SEASIDE LANDINGS PUD DEVELOPMENT AGREEMENT – request is for third amendment to the PUD Development Agreement for Seaside Landings PUD. Parcel Numbers: 38-12-31-5445-00000-00A0 through -00E0, and 38-12-31-5445-00000-0010 through -0990; 250 +/- acres; Owner/Applicant: Bulow Shores Homeowners Association, Inc.
   Project #AR-000030-2019 **(TRC, PDB, BCC)**

2. **Application #3204** – APPLICATION FOR A VARIANCE IN THE AC (AGRICULTURE) DISTRICT – request is for a 13 foot side yard and a 38 foot rear yard setback variance for a detached garage at 76 Kentucky Avenue; Parcel Number: 32-12-29-2600-00000-0760; 0.92 acres; Owner/Applicant: Joshua T. Gaither.
   Project #VAR-000070-2019 **(TRC, PDB)**

PLEASE TAKE NOTICE THAT INDIVIDUAL COMMISSIONERS OF THE BOARD OF COUNTY COMMISSIONERS MAY ATTEND THIS EVENT. THE COMMISSIONERS WHO ATTEND WILL NOT TAKE ANY ACTION OR TAKE ANY VOTE AT THIS MEETING. THIS IS NOT AN OFFICIAL MEETING OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY. THIS NOTICE IS BEING PROVIDED TO MEET THE SPIRIT OF THE SUNSHINE LAW TO INFORM THE PUBLIC THAT COMMISSIONERS MAY BE PRESENT AT THESE DISCUSSIONS. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT, PERSONS NEEDING ASSISTANCE TO PARTICIPATE IN THIS MEETING SHOULD CONTACT THE PLANNING & ZONING DEPARTMENT AT (386) 313-4009 AT LEAST 48 HOURS PRIOR TO THE MEETING.
FLAGLER COUNTY

TECHNICAL REVIEW COMMITTEE COMMENTS

MEETING DATE: NOVEMBER 20, 2019

AMENDMENT TO PUD DEVELOPMENT AGREEMENT
SEASIDE LANDINGS PUD
1st Resubmittal

APPLICANT / OWNER: BULOW SHORES HOMEOWNERS ASSOCIATION, INC.

Distribution date: Friday, November 15, 2019

Project #: AR-000030-2019

Application #: 3190

Attached are departmental comments regarding your submittal to Flagler County for the above referenced project. Any questions regarding any of the comments should be addressed to the department providing the comment.

Flagler County Building Department 386-313-4002
Flagler County Planning Department 386-313-4009
Flagler County Development Engineering 386-313-4082
Flagler County General Services (Utilities) 386-313-4184
County Attorney 386-313-4005
Flagler County Fire Services 386-313-4258
E-911 GIS Specialist 386-313-4274
Environmental Health Department 386-437-7358
Flagler County School Board 386-586-2386
REVIEWING DEPARTMENT: FIRE INSPECTOR
1. No comments.

REVIEWING DEPARTMENT: BUILDING DEPARTMENT
1. No comments.

REVIEWING DEPARTMENT: ENVIRONMENTAL HEALTH DEPT
1. No comments or objections.

REVIEWING DEPARTMENT: COUNTY ATTORNEY
County Attorney's Office review comments from the August submission still apply.
1. There needs to be an absolute limit on the percentage of a lot’s dry ground that can be covered by impervious surfaces regardless with how much or how little of the platted lot boundaries encompass submerged land. This number should take into account normal planning considerations especially drainage.

County Attorney's Office Review Comments 20190820:
General
1. When presenting this item to the Planning Board and County Commission, the applicant should explain the potential impact of the proposed changes. The applicant also should explain why the established development parameters previously agreed to should be undone. The existing PUD is the result of multiple re-submittals of development plans by the developer to County staff. Establishing drainage capacity within the development was particularly complex given the undersized lots with narrow setbacks in a flood zone. To create such small, low-lying lots in the plat, the developer created slope easements, the first time the County used such a technique in a proposed Flagler subdivision. The applicant and the County utilized slope easements to minimize the environmental and aesthetic damage of excessive fill on the lots. This system controlled the volume and timing of fill to preserve the feel of natural space within the Bulow Creek watershed. The proposed changes allow more intensification of the development area, a major shift in the project objectives in this sensitive area.

Impervious/pervious ratio and definition change
2. LDC §5.00.00 states, “All development shall be designed to avoid unnecessary impervious surface cover.” The proposed amendment would increase the allowable impervious area of the development by an order of magnitude. The proposal would change the maximum coverage of each lot (by principal and accessory structures) from 35% of the lot area to 55%. Not factored into this equation is the amount of driveways and patios that are impervious. Thus a property going to the revised max of 55% will have more impervious surface to be able to add.

3. In addition, the amendment would allow submerged portions of lots to count toward the total lot area. This has the effect of intensifying the development footprint on an ad hoc basis in the neighborhood as individuals build. Some neighbors may face or border more intensely developed lots than their own. Moreover, while the amendment would require each lot to retain 30% pervious area, it would allow submerged portions of lots to count toward the pervious area. The net result is that some lot owners would achieve the necessary pervious area by virtue of being adjacent to a natural water body and would allow them to cover every square inch of the unsubmerged portion of their lots with impervious surfaces. This contributes to the randomness of the development pattern -- more intense lots among those
where the lot owner selected more conservation.

Trees
4. The proposed amendment cites to LDC § 5.01.04(3), regarding landscape development standards, which requires three trees in a quarter acre lot. The proposed amendment seeks to modify the default provisions of the LDC in order to allow lot owners to transfer the location of half of the required index trees from the lot owner’s parcel to a common area parcel. LDC § 6.01.00(2)A.2 states, “A tree relocation or replacement plan meeting the requirements of this section is a condition precedent to land clearing.” The land has already been cleared. The intent of the development agreement and the expectation of those who purchased relying on it, is that the development of housing would have trees. The proposed amendment would curtail this intent. Some lot owners would end up bearing the burden and cost of providing tree scapes to an adjacent lot owner who chose to keep his or her lot bare. It is uncertain how this would change the development pattern. Would more lot owners choose to keep their properties bare and develop intensely to match the dollar values of other more intensely developed lots?

5. The applicant should explain how the proposed change in the PUD would achieve the purposes of the LDC’s resource protection standards after the land is already cleared.

REVIEWING DEPARTMENT: DEVELOPMENT ENGINEERING
1. No further comments at this time.

REVIEWING DEPARTMENT: PLANNING DEPARTMENT
1. No further comments at this time.
November 14, 2019

Via Email in pdf.
Adam Mengel, AICP, LEED AP BD+C amengel@flaglercounty.org
Gina Lemon glemon@flaglercounty.org
Al Hadeed ahadeed@flaglercounty.org
Sean S. Moylan smoylan@flaglercounty.org

Re: Response to TRC Comments
Project #: AR-000030-2019
Application #: 3190
Amendment to Seaside Landings PUD
Applicant: Bulow Shores Homeowners Association, Inc.

Dear TRC:

Our firm represents the above-referenced Applicant as legal counsel. We are writing in conjunction with our submission of a proposed, revised (Third) Amendment to the Seaside Landings PUD submitted October 14, 2019 to address the Committee’s comments in response to the draft of the proposed Third Amendment to the Seaside Landings PUD previously submitted in July of this year. We look forward to addressing any questions or concerns at the next TRC meeting at which the Application is proposed to be considered.

Comments by County Attorney

1. General. The Applicant understands the concerns expressed and believe that the Application, as revised, will not affect the previous slope easement arrangement or otherwise increase the development intensity by any significant degree. The Applicant is not a property developer; it is an organization of lot owners within the subdivision which is seeking to address two issues: (1) To permit the construction of docks and boathouses of a limited size over adjacent waterways within the subdivision so they may use and enjoy a primary feature of the development (the waterways); and (2) To allow owners of lots within the subdivision, some of whom have a limited area of buildable space on their lots, to transfer up to half of the trees contemplated by Section 5.01.04(3) of the Land Development Code (non-index trees) to the Association to thereafter be planted or installed on Association property, if properly documented and accepted by the Association. We believe that the transfer of half of the tree obligations of Section 5.01.04(3) of the LDC will preserve the purpose and intent of that section (tree preservation) while allowing lot owners within the subdivision more flexibility in constructing improvements on their lots considering the small buildable areas of some lots.

2. Impervious Area/Maximum Lot Coverage Ratio. The Applicant no longer proposes to add a provision to the PUD regarding a minimum pervious area or otherwise modify the maximum lot coverage percentage included in the existing PUD. Instead, the existing
maximum lot coverage is proposed to remain at 35%, but a revision clarifying the calculation of the percentage has been proposed. One part of the proposed revision would provide that permitted docks and boathouses, or parts of them, which are constructed over a part of the lot consisting of the waterway will be considered pervious; however, any parts of the structures located over the parts of the lot comprised of land (i.e., cantilevered or not submerged) will be considered impervious. This is the main goal of the proposed PUD amendment which would provide the clarification necessary for the Building Department to feel comfortable permitting docks and boathouses over the adjacent waterway. Further, we have communicated with the St. Johns River Water Management District, which stated that the District does not consider structures located over waterways to be impervious because any rainfall would still reach the body of water as it otherwise would irrespective of the presence of permitted structures located over the waterway.

3. **Impervious Area/Maximum Lot Coverage Ratio.** This point is addressed in the preceding paragraph; however, we would add that it is not the proposed amendment that would allow submerged portions of the lot to count toward the total lot area for determining the maximum lot coverage; the total lot coverage is already based on the total area included in a lot and there is no exclusion from the definition of “Lot” for submerged portions (i.e., that is the status quo under the existing PUD and LDC). Please see Section 3.08.00 defining “Lot” as “[a] parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law.” Similarly, when used in the LDC, “maximum lot coverage” refers to the “total lot area” without excluding submerged portions of the lot. Additionally, please see Section 3.08.02 of the LDC, which defines “Pervious area” as “[t]he total lot area left in a condition that permits full percolation of the stormwater including surface water bodies, wetlands and retention areas.” (emphasis added). Considering water bodies as pervious is also consistent with the statement offered by the St. Johns River Water Management District.

4. **Trees.** The proposed Application as revised has removed any reference to the ability to transfer any obligations with respect to index trees contemplated by LDC § 6.01.03. With respect to the trees contemplated by LDC § 5.01.04(3), we believe the purpose and intent of that section (tree preservation) is preserved in the proposed Application, as revised, especially where the trees required by that section would be located within a relatively close proximity (within the same development) as the trees would have otherwise been located. Further, we believe the PUD zoning category was developed to address unique situations like those experienced by lot owners in the subdivision, which is to allow for a derogation from the strict requirements of the LDC where the purposes of the provisions would otherwise be satisfied and if they would otherwise be compatible with the Comprehensive Plan. In other words, given the relatively unique nature of the development in which some lots have small portions which are not submerged and buildable, we believe a process for allowing some of the trees in some cases to be transferred to the Association and planted on Association property would allow certain lot owners with smaller buildable lots to have more flexibility in planning the lot improvements while satisfying the purpose and intent of the LDC by requiring the same number of trees to be planted within the same geographic region. Moreover, Section 5.01.04(3) does not expressly state that the trees required by that Section must be planted on the single-family lot; it states in passive voice that such trees “must be preserved or planted” without specifying a location in which they must be planted. Accordingly, the proposed Application does not appear to derogate from the requirements of Section 5.01.04(3) but only serves to clarify where up to half of the trees may be planted. Furthermore, other owners in the
development would not bear the costs associated with one lot owner transferring up to half of his or her tree requirements to the Association because the Association would condition acceptance of the transfer on payment of the associated costs by the transferring lot owner (which would be a part of the required written agreement).

5. **Resource Protection Standards.** The proposed Application, as revised, would appear to have no impact on the LDC’s resource protection standards because it will not change the total number of trees otherwise required by the LDC and all such trees will be planted within the same geographic region.

**Development Engineering Comments**

1. **Name of Development.** The original application proposed to change the name of the PUD Development Agreement from “Seaside Landings” (previously “Bulow Preserve”) to “Seaside Landing at Flagler Beach.” The Applicant still desires to change the name by which the Development is identified to “Seaside Landing at Flagler Beach,” but this is not a material part or goal of the Application. It is our understanding that another entity may have claimed certain rights with respect to the name “Seaside Landings,” which the Applicant would dispute, but notwithstanding the Applicant would prefer to avoid any potential dispute by changing the name by which the development is referred if feasible.

2. **Consistency with SJRWMD Permit.** We have communicated with the SRJWMD and the SJRWMD has provided correspondence dated September 26, 2019 regarding treatment of docks and associated structures located over water. The SJRWMD has indicated that it would not consider such structures to be impervious if located over a waterway if the system was not designed to have water from the waterway drained back onto land (which does not apply in this case). Accordingly, we believe the Application, as amended, is consistent with the existing stormwater management permit (ERP).

3. **Verification of Tree Transfer.** All transfers of caliper inches of tree replacement to the Association must be evidenced by a written instrument signed by the lot owner and the Applicant-Association. Accordingly, the Building Department could request a copy of the required written agreement and compliance with each party’s respective obligation can be demonstrated through evidence (e.g., photos, affidavits, etc.) provided by each respective party.

**Planning Department Comments**

1. **Stormwater Management Permit.** The proposed Application, as revised, removed any proposed changes to the maximum lot coverage percentage or any reference to a minimum pervious surface requirement. The current ERP provides for a maximum impervious surface requirement of 35%, which is consistent with the maximum lot coverage requirement of the PUD. Also, we have contacted the SJRWMD to discuss the treatment of structures located over waterways, and based on the response offered, we do not believe the proposed Application, as revised, would permit something which would be violative of the existing ERP.

2. **Text Change – 7(b)(4).** The Applicant will gladly add the requested language.
3. **Tree Requirements.** We believe this issue was addressed by the proposed, revised Application. A written agreement will be required to transfer any tree obligations and proof of compliance with the obligation may be demonstrated through any means desirable by the County (e.g., affidavits or photos). If there is no longer available space on Association property to accept the transfer of tree obligations, then the lot owner would need to comply with the applicable provisions of the LDC, which would presumably require the owner to preserve or plant trees on his or her lot.

We look forward to addressing any questions or concerns at the upcoming TRC meeting. If you have any questions or concerns in the meantime, please do not hesitate to contact me.

Sincerely,

McCabe & Ronsman

James J. Roche, Esq.
Good morning,

Please see the attached, proposed amendment to the PUD along with a letter from the St. Johns River Water Management District regarding treatment of structures located over water. As you will likely see from reviewing the application, we’ve deleted some of the previously proposed language in an effort to take a more narrow approach to resolve the issue we’re attempting to resolve through the amendment.

If we anticipate that the TRC will have concerns regarding the application, we’d like to meet with you again to discuss the application and any changes that the County may desire before the TRC generates its report and recommendation. In other words, as discussed, the Association is really looking to resolve two issues (construction of docks on smaller lots and allocation of trees) and is flexible, and desires to work amicably with the County, on the method to accomplish the goals.

Thank you for all your assistance to date and I look forward to hearing from you regarding the application and the next steps in the process. Please do not hesitate to contact me with any questions or concerns.

Thank you,

James J. Roche, Esq.
McCabe | Ronsman
110 Solana Road, Suite 102
Ponte Vedra Beach, Florida 32082
Phone: 904-396-0090
Email: jroche@flcalegal.com

*Please note our new mailing address.*
Good afternoon Mr. Roche,

As defined in subsection 2.0(a)52, ERP Applicant’s Volume I, “Impervious” for purposes of applying permitting thresholds and exemption criteria, means surfaces that do not allow, or minimally allow, the penetration of water, including semi-impervious areas, but excluding wetlands or other surface waters. For other purposes, “impervious” means all artificial surfaces that that are not pervious. Included as examples are building roofs and normal concrete and asphalt pavements.

As discussed with you by phone, the District does not typically require the impervious surfaces associated with the docks and associated structures that are constructed over the canals and open water to be included in the impervious areas considered in the water quality and quantity calculations for the stormwater management system design. The reason for this is that the stormwater runoff from the over water structures typically drains directly into the surface water, and, for calculation purposes, both impervious surfaces and water have equivalent runoff potential. As such, the impervious surfaces constructed over and draining directly into the water body would not cause an increase in runoff volume. However, if impervious surfaces constructed over the canal or open water are designed and constructed to drain back onto land, where the associated runoff would contribute to the permitted stormwater management facilities, then those areas would contribute toward the maximum impervious surface area allowed for each lot.

I apologize for the delay in responding. I do appreciate you following up, as I needed the reminder. Please let me know if you need any further clarification or additional information.

Sincerely,
Melissa

Melissa Bryan Parsons, P.E.
Senior Professional Engineer
Division of Regulatory Services
St. Johns River Water Management District
P.O. Box 1429  ●  Palatka, FL 32178-1429
4049 Reid Street/Highway 100 West  ●  Palatka, FL 32177
Office: (386) 329-4830  ●  Fax: (386) 329-4490
Email: mparsons@sjrwmd.com
Website: www.sjrwm.com
Connect with us: Newsletter, Facebook, Twitter, Instagram, YouTube, Pinterest

www.sjrwm.com/permitting
SECOND THIRD AMENDMENT TO
BULOW PREERVE N/K/A SEASIDE LANDINGS
PUD DEVELOPMENT AGREEMENT

THIS SECOND THIRD AMENDMENT TO BULOW PREERVE (N/K/A SEASIDE LANDINGS AT FLAGLER BEACH) DEVELOPMENT AGREEMENT (hereinafter referred to as the "Development Agreement") is made and entered into as of the ___ day of _____, 2015 by and between BULOW SHORES HOMEOWNERS SEASIDE LANDINGS, LLC ASSOCIATION, INC., a Foreign Limited Liability Corporation Florida Not-For-Profit Corporation, whose address is 183 Water Street, Williamstown, Massachusetts 01267, 1410 Palm Coast Pkwy NW, Palm Coast, Florida 32137 ("Applicant") and FLAGLER COUNTY, a political subdivision of the State of Florida, whose mailing address is 1769 East Moody Boulevard, Building 2, Bunnell, Florida 32110 ("County").

WITNESSETH:

WHEREAS, the Applicant Seaside Landings LLC ("previous applicant") was the owner of a 250± acre (609± acres less the 359± acres deeded to the public) parcel of land that is situated in Flagler County, Florida, bounded by B ulow Creek to the west and the Intracoastal Waterway to the east. This parcel of land is currently referred to as Bulow Preserve, and is more particularly described in Exhibit “A” and depicted in the plan dated May 18, 2015, consisting of one (1) sheet prepared by Miller Legg and Associates (the "PUD Site Development Plan"), attached in Exhibit “B” hereto. The PUD Site Development Plans describing the parcel of land shall be filed and retained for public inspection in the office of the Flagler County Planning and Zoning Department, and the description of the parcel of land contained in the PUD Site Development Plan is incorporated herein by reference (the "Property"); and

WHEREAS, William and Mary Lenssen, as previous parties and co-applicants for this Property, have previously elected to remove their parcel – Parcel No. 38-12-31-0000-04050-0020 and 1.90 acres in size – from the Bulow Preserve PUD, to be combined with sufficient lands from the Applicant and contiguous to their parcel to the south so as to exceed the minimum parcel size requirements of the AC (Agriculture) zoning district, totaling 7.68± acres, which will be rezoned through a subsequent application which has been filed with the County, resulting in an eventual area of the Property of 242± acres following conveyance; and

WHEREAS, the Property is subject of Flagler County Ordinance 2005-01 , and Ordinance 2006-28, Ordinance No. 2016-04, and the associated Bulow Preserve PUD Development Agreement as amended. Flagler County Ordinance 2005-01 amended the zoning of the subject property to PUD (Planned Unit Development) District. The
associated amended Development Agreement set forth development criteria for the Bulow Preserve PUD; and

WHEREAS, the Property is subject of that certain Mediated Settlement Agreement entered into by the Von Bulow Corporation, Flagler County and the Board of Trustees of the Internal Improvement Trust Fund resolving Case No. 04-482CA of the Seventh Judicial Circuit, providing for the transfer of density at one dwelling unit per five acres of the disputed parcel and the conveyance of approximately 359 acres to the public for preservation; and

WHEREAS, a Warranty Deed was executed on April 21, 2007 (Official Records Book 1565, Page 1834, Public Records of Flagler County, Florida) transferring said 359 acres to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, effectively transferring the development rights for 71.8 units of density to be used within this project consistent with the Mediated Settlement Agreement; and

WHEREAS, the Applicant desires to amend the Bulow Preserve PUD Development Agreement was previously amended by Ordinance No. 2016-04 in order to develop the Property as a Planned Unit Development, composed of 99 single family residential lots, with various waterfront and natural amenities, with all common facilities and amenities to be operated by a homeowners' association or granted in fee simple to a public agency for perpetual preservation; and

WHEREAS, the Applicant has applied to amend the existing approved Planned Unit Development (the “PUD”) as provided in Section 3.03.20 of the Flagler County Land Development Code (as now or hereafter amended, the “Land Development Code”; and the previous applicant has transferred control of the homeowners’ association to the lot owners of Bulow Preserve, which now operates and manages the Bulow Preserve property; and

WHEREAS, given the unique nature of the development whereby large portions of lots are submerged by adjacent water bodies, the Applicant has applied to amend the existing Bulow Preserve PUD Development Agreement as provided in Section 3.03.20 of the Flagler County Land Development Code (as now or hereafter amended, the “Land Development Code”); and

WHEREAS, the amendment of the PUD is consistent with the Flagler County Comprehensive Plan and meets the guidelines established by the policies and the intent and purpose of Flagler County Ordinances and the Comprehensive Plan, and does promote the public health, safety, morals, general welfare and orderly growth of the area affected by the rezoning request.
NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable considerations exchanged between the parties hereto, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals:

The above recitals are true and correct and incorporated herein by this reference.

2. Findings:

The proposed amendment to the existing approved PUD does not adversely affect the orderly development of Flagler County and complies with the Comprehensive Plan adopted by the Flagler County Board of County Commissioners and the proposed amendment to the existing approved PUD will not adversely affect the health and safety of residents or workers in the area and will not be detrimental to the use of adjacent properties or the general neighborhood.

3. Development Agreement:

(a) The Planned Unit Development consists of this "Development Agreement" and the PUD Site Development Plan. This Development Agreement and the PUD Site Development Plan shall be filed and retained for public inspection in the office of the Flagler County Planning and Zoning Department. All amendments to this Development Agreement and the PUD Site Development Plan, other than those deemed by the Growth Management Director to be minor amendments as set forth in Section 3.04.02(G) of the Land Development Code, shall require the review and recommendation of the Flagler County Planning Board and the Flagler County Board of County Commissioners in the same manner as for the original rezoning.

(b) This Development Agreement shall be recorded in the Public Records of Flagler County, Florida, upon approval and following execution by the Flagler County Board of County Commissioners. The Applicant shall pay all recording costs.

4. Platting:

(a) The Applicant will obtain final plat approval for all site related improvements provided for in the PUD Site Development Plan, including but not limited to, landscaping and infrastructure improvements. The conditions of plat approval shall be consistent with this Agreement.

(b) The Applicant or its successor shall maintain unified ownership of the Property until after approval of the Final Plat(s) for the specific portion of the Property being subdivided.
(c) The Applicant shall be permitted, but not required, to plat or subdivide the Property in the manner provided in the PUD Site Development Plan, and as further refined in plat(s) submitted to the County, and transfer said platted or subdivided parcels within the Property.

5. Development Standards:

(a) For so long as the property remains zoned PUD, the development of the Property shall be consistent with the limits for use as prescribed for each land use area within the approved PUD. To the extent that this Development Agreement and/or the approved PUD Site Development Plan are inconsistent with the requirements of the Land Development Code, this Development Agreement and the approved PUD Site Development Plan shall control. The Property shall be eligible for special exceptions, home occupations and for individual variances provided the overall scheme of development approved herein is not impaired and provided all standards and criteria for the issuance thereof are met. The location and size of the residential land use areas are shown generally on the PUD Site Development Plan, and shall be further delineated in subsequent plat submissions submitted to the County for review and approval. Uses within the residential area shall be as provided in this paragraph.

(b) The following are preliminary development standards that shall be applied and further refined as part of future plat submissions pertaining to the Property:

1. Total number of single family detached residential lots: Maximum of 99.

2. Residential building setbacks: All setbacks will be measured from the adjacent property line to the vertical wall of the dwelling unit, at ground level. For waterfront lots, the minimum setback shall be measured from the mean high water line.

   Front yard: 20 feet

   Rear yard: 20 feet

   Rear yard (canal lots, east of John Anderson Highway): 5 feet from the mean high water line

   Side yard interior lot: 10 feet

   Abutting any street: 20 feet
Canal lots will be allowed to cantilever structures waterward of the rear setback line, but floors above the first or ground floor may not project beyond the mean high water line.

(3) **Buffer Requirements:**

a. **John Anderson Highway:** There will be a 100 foot wide buffer along each side of John Anderson Highway, which may consist of private and/or commonly held property. The buffer will be kept in its natural state and will not be cleared with the exception of the entrances to the development, and crossings for driveways and utilities. Management of the buffers along each side of John Anderson Highway shall be in accordance with "Firewise" best management practices, which may include periodic underbrushing, but not tree removal, to reduce fire fuel load.

b. **Archaeological site:** During site evaluation, an archaeological study revealed the existence of a prehistoric shell midden lying partly within an otherwise designated buffer, which has been designated as Site 8FL229 in the Florida Master Site File. The Applicant shall convey this Site to William and Mary Lenssen as part of the removal of their parcel from the PUD and the addition of acreage associated with the rezoning of their parcel to its previous AC (Agriculture) zoning district designation.

c. **Bulow Creek:** The Bulow Creek Buffer/Wildlife Corridor shall correspond to the existing Conservation Future Land Use designation, consisting of forested wetlands and adjacent uplands, which shall be additionally placed in a conservation easement or otherwise restricted from development subject to County approval at the time of plat approval.

d. **South project buffer, west of John Anderson:** There shall be a one-hundred twenty (120) foot wide buffer along the southern border of the project west of John Anderson Highway running west to Bulow Creek. There shall be a stabilized roadway along the northern portion of this buffer that meanders as needed to preserve mature trees terminating at its most westernmost point with six (6)
parking spaces at the canoe launch facility. No other development will be allowed in this designated buffer.

e. North project buffer, east of John Anderson: There shall be a one-hundred (100) foot buffer along the northern border of the project west of John Anderson Highway running west to Bulow Creek. No development will be allowed in this designated buffer.

(4) Phases: The Applicant shall be permitted to develop the Property in not more than two phases, as approved herein by Flagler County and may be subsequently platted in not more than two phases consistent with this Development Agreement.

(5) Maximum Gross density: 1 unit per 5.7 acres. However, approximately 44.375 acres of the Property located adjacent to Bulow Creek are designated as Conservation by the Flagler County Comprehensive Plan and shall receive no density credit. The transfer of density from the Von Bulow Islands not so designated, consisting of approximately 359 acres of land, shall otherwise be and is hereby permitted in accordance with the terms of the Mediated Settlement Agreement in The Von Bulow Corporation v. Flagler County and the Board of Trustees of the Internal Improvement Trust Fund, Case No. 04-482CA, Circuit Court for Flagler County the ("Settlement Agreement").

(6) Minimum Square footage of each home: 1,800 square feet.

(7) Maximum Lot Coverage: The total lot area covered with principal and accessory buildings shall not exceed thirty-five percent (35%) (this shall apply to all impervious areas on a residential lot, excluding pathways 6 feet or less in width between the principal and ancillary structures). For the purposes of calculating the Maximum Lot Coverage, and corresponding maximum impervious surface, any portions of lots submerged by water shall be considered pervious. Further, parts of any permitted docks or boathouses (roofed or not roofed) located over a body of water shall be considered pervious; provided, however, that any part of a roofed boathouse located over an unsubmerged part of a lot shall be considered impervious.

(8) Maximum Building Height: 3 stories or 40 feet at peak of roof, measured from the centerline of the nearest adjacent street. Notwithstanding the foregoing, chimneys, catwalks and porch
towers constructed as an integral part of the main residence structure may extend up to 50 feet in height, but further provided that the square footage of any level floor area of such a catwalk or porch tower may not exceed 200 square feet.

(9) Minimum driveway depth: 22 feet from edge of private street to garage door entry.

(10) Minimum separation between buildings on a lot: 10 feet.

(11) Maximum Floor Area Ratio: .3 (excluding docks and boathouses less than 500 square feet).

(121) Minimum lot size: 6,000 square feet.

(132) Sidewalk/bike path: The Applicant shall construct an eight (8) foot wide bicycle path along John Anderson Highway, west of the existing paved roadway and connecting to the southerly terminus of the bicycle path constructed as part of the subdivision improvements for the Flagler Beach Polo Club subdivision, Map Book 34, Page 37, Public Records of Flagler County, Florida. This bicycle path will be paved concrete or asphalt, as approved by the County Development Engineer, and will measure approximately 2,200 linear feet in length. Construction of the bicycle path will be completed and approved by the County prior to any final plat approval for the Property. Once completed, the bicycle path will be maintained by the County in perpetuity as part of the John Anderson Highway right-of-way.

(143) Subdivision Sign(s): The Applicant shall construct a Subdivision sign(s) at the entryway to the subdivision on the east side of John Anderson Highway. The sign(s) will have a maximum of forty-eight (48) square feet of copy area and may be incorporated into a landscape feature, not to exceed nine (9) feet in height, as part of an approved Landscape Design Plan.

(14) Construction within Easements: Lot owners shall not construct any improvement within any easement areas located between Lots (i.e., side lot line easements for drainage or utilities).

6. Land Uses:

All permitted principal uses in the R-1 zoning district for those areas designated as residential shall be permitted. This shall consist of single-family residential together

7
with those accessory uses permitted in the R-1 zoning district and a non-commercial, community clubhouse and other community recreational facilities.

7. Environmental Considerations:

(a) The percentage of the Property dedicated to residential lots shall be limited to a maximum of thirty percent (30%) of the original 609± acre total PUD acreage. Substantially all lands within the jurisdiction of the Florida Department of Environmental Protection and not otherwise conveyed under the Settlement Agreement or approved by said Department for mitigation, shall be subject to a conservation easement or otherwise maintained as open space.

(b) Subject to permitting, if applicable, by the Florida Department of Environmental Protection, docks and boathouses shall be constructed based upon the following standards:

1. Docks for single family homes will be permitted on an individual basis for lots along the canals and any waters contiguous to the Intracoastal Waterway (not including Bulow Creek).

2. Docks for single family homes shall have a minimum setback of 15 feet from the side property line, unless a common dock is shared by an adjoining property under a recorded agreement.

3. Docks will extend from shorelines to a length adequate to reach sufficient water depth to prevent prop dredging (but no greater in length or area than permitted by any regulation).

4. Any dock, boardwalk and associated terminal platforms constructed within the Property shall meet the standard permitting requirements of Flagler County and the St. John's River Water Management District, the Florida Department of Environmental Protection and the United States Army Corps of Engineers, as applicable. **Docks and boathouses shall be limited to a maximum of 1,000 square feet unless: (i) approved by the St. Johns River Water Management District or other agency having jurisdiction to permit such structures; and (ii) a Flagler County building permit is issued.**

5. A maximum of two (2) community boat ramps and docks may be permitted for use by residents of the PUD. The community boat ramps and docks will be owned, operated and maintained by the homeowners' association.
a. Bulow Creek shall be limited to a single community dock for limited watercraft (non-motorized, electric motor or gas-powered motor not to exceed 10 hp; jet skis or wave runners are specifically prohibited) and with terminal platform size not to exceed 300 square feet. A community boat shed or canoe locker, not to exceed 1,000 square feet under roof, may be located on common upland area in the vicinity of the Bulow Creek dock.

b. One community dock/ramp will be permitted along the canals or any waters contiguous to the Intracoastal Waterway.

c. All environmental restrictions provided in this Development Agreement also shall be included in the Covenants, Conditions and Restrictions of the homeowners' association and recorded within the Public Records of Flagler County, Florida.

c. Section 5.01.04(3) of the Land Development Code prescribe landscape development standards and tree protection and replacement requirements. To satisfy the requirements of Section 5.01.04(3) of the Land Development Code, owners of lots within the development may, upon approval of the homeowners' association, transfer up to fifty percent (50%) of the required caliper replacement (measured in inches) to the homeowners’ association provided that the trees associated with any transfer of caliper inches are planted on common areas or association property within the development. The transfer of the caliper inches of tree replacement to the homeowners’ association shall be evidenced by a written instrument signed by the lot owner and an authorized representative of the homeowners’ association. Nothing herein shall be construed to transfer any obligation of a lot owner to comply with the above-referenced provisions of the Land Development Code to the homeowners’ association.

8. Potable Water and Sewage:

The Applicant anticipates that potable water will be provided by the City of Flagler Beach. All lots under one acre in size within this development shall be required to connect to central potable water and sanitary sewer service in accordance with Florida law. The Applicant will construct the infrastructure, to include individual water and sewer lines and taps, necessary to provide for each lot (under one acre in size) or amenity requiring a connection to connect to public water and sewer. To the extent that lines to facilitate such connection are not anticipated to be included in public rights-of-way or easements, then a fifteen (15) foot wide utility easement shall be reserved by the Applicant as necessary in conjunction with the final platting of the Property. A
fifteen (15) foot wide utility easement shall be granted in conjunction with the final platting of the Property to connect interior private roadways and easements with John Anderson Highway for the purpose of facilitating water and sewer connections.

Lots one acre or more in size shall be allowed to develop by providing their own individual on-site potable drinking water well and approved on-site septic disposal system.

(a) Landscape irrigation: Individual wells will be allowed for landscape irrigation purposes, subject to permitting by the Florida Department of Health.

9. Stormwater Drainage:

Stormwater management systems shall meet or exceed the requirements of the Land Development Code and the St. Johns River Water Management District. All tracts intended for use for stormwater purposes and dedicated for such purpose by plat shall be owned and maintained by the homeowners' association.

10. Private Roadways:

All roads within the Property and/or easements shall be owned and maintained by the Applicant and/or the homeowners' association. Membership in the homeowners' association by the owner(s) of each lot will be mandatory. The roadway system within the PUD may be gated and its use by the general public may be restricted with the exception of ordinary utility and government services for the residents and for emergency personnel. The main access travel ways into the Property shall be designed as minimum 26 foot wide 2-way pavement (twenty-two (22) foot wide asphalt pavement with a two (2) foot wide curb on each side) cross-section streets. Any gate constructed must meet the design standards of Flagler County Fire Services.

11. Covenants and Restrictions:

A copy of the Covenants, Conditions and Restrictions shall be furnished to the County following recordation. The Applicant shall be responsible for recording said information in the Public Records of Flagler County, Florida. The Applicant also shall pay all costs for recording the aforementioned documents. The County may only enforce the provisions of this Development Agreement and the Flagler County Land Development Code, as applicable, and not private agreements, covenants, restrictions and easements entered into between subsequent owners of lots in the PUD or imposed by the Applicant on the Property.
12. Tri-party Settlement Agreement:

Recorded at Official Records Book 1241, page 680 of the Public Records of Flagler County, Florida is the Settlement Agreement entered into by the previous Applicant (The Von Bulow Corporation), Flagler County and The Board of Trustees of the Internal Improvement Trust Fund. The Settlement Agreement is the result of litigation between the parties over the ownership and control of certain real property adjacent to the Intracoastal Waterway. Under the terms of the Settlement Agreement, the Applicant is obligated to deed approximately 359 acres of real property that was the subject of the litigation to the Board of Trustees of the Internal Improvement Trust Fund prior to commencement on the development of the subdivision envisioned by this Development Agreement. The Applicant hereby agrees to deliver a deed to such property within thirty (30) days from the receipt of all necessary approvals to commence construction of the project or prior to the conveyance of any parcel encumbered by this agreement. A Warranty Deed was executed on April 21, 2007 (Official Records Book 1565, Page 1834, Public Records of Flagler County, Florida) transferring said 359 acres to the Board of Trustees of the Internal Improvement Trust Fund.

13. Notice:

Any notice delivered with respect to this Development Agreement shall be in writing and be deemed to be delivered when (i) hand delivered to the other party at the address appearing on the first page of this Development Agreement, or (ii) when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address appearing on the first page of this Development Agreement to the person or address as the party shall have specified by written notice to the other party delivered in accordance herewith.

14. Covenant Running with the Land:

The provisions of this Development Agreement shall run with the Property and bind and inure to the benefit of the Applicant or its successor in title or interest.

15. Recording:

The parties hereto agree that an executed original of this Development Agreement shall be recorded by the County, at the Applicant's expense, in the Public Records of Flagler County, Florida. All subsequent orders and resolutions relating to the Property of this Development Agreement shall be filed by the County in the Official Records of Flagler County, Florida.
16. Applicable Law:

This Development Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

17. Amendment:

This Second Amendment to Bulow Preserve PUD Development Agreement constitutes the entire agreement between the parties, and supersedes all previous discussions, understandings and agreements, with respect to the subject matter hereof. Amendments to and waivers of the provisions of this Development Agreement shall be made by the parties only in writing by formal amendment.

18. Counterparts:

This Development Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

19. Captions:

Captions of the Sections and Subsections of this Development Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Development Agreement.

20. Severability:

If any word, sentence, phrase, paragraph, provision, or portion of this Development Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion hereof so long as the purpose and intent of this Development Agreement can still be achieved.

21. Construction:

In the event of an inconsistency between the terms of this Development Agreement and the PUD Site Development Plan, the terms of this Development Agreement will control.

[Signature page follows]
IN WITNESS WHEREOF, the parties hereto have set their hand this ___ day of 
___________________, 2019.

"APPLICANT"

BULOW SHORES HOMEOWNERS SEASIDE LANDINGS, LLC ASSOCIATION, INC. 
a Foreign Limited Liability Corporation Florida Not-For-Profit Corporation

____________________________  By: ___________________________
Print Name:__________________  Name:____________________
Title:__________________________

____________________________
Print Name:__________________

STATE OF __________________
COUNTY OF ________________

The foregoing instrument was acknowledged before me this ___ day of 
___________________, 2019, by Michael S. Patten______________________, as Managing 
Member of Patten Special Assets, LLC, the Authorized Person for Seaside Landings, LLC, 
President of a Foreign Limited Liability CorporationBulow Shores Homeowners 
Association, Inc., on behalf of the corporation. He [ ] is personally known to me, or has 
produced __________________________ as identification.

____________________________ 
NOTARY PUBLIC 
Print Name:____________________

[Signatures continued on next page]
BOARD OF COUNTY COMMISSIONERS
OF FLAGLER COUNTY, FLORIDA

___________________________________
Frank J. Meeker
Donald O’Brien, Jr.
Chairman

ATTEST:

_______________________________
Gail Wadsworth
Tom Bexley, Clerk of the Circuit
Court and Comptroller

APPROVED AS TO FORM:

____________________________________
Al Hadeed, County Attorney
EXHIBIT “A”

Legal Description

A portion of Sections 19 and 37, Township 12 South, Range 32 East, a portion of Section 38, Township 12 South, Range 31 East, Flagler County, Florida; and also being a portion of Bulow Grant Lot 4 lying Easterly of the Westerly mean high water line of Bulow Creek, all in Flagler County, Florida, and being more particularly described as follows:

Commence at the Northeast corner of said Bulow Grant Lot 6, said point also being the Southwest corner of Government Lot 3 of Section 30, Township 12 South, Range 32 East; thence North 24° 48' 05" West, 1306.04 feet to the Southwest corner of aforesaid Section 19; thence continuing along West line of said Section 19, North 03° 56' 05" East, 969.58 feet to an intersection with the Southerly line of Bulow Grant Lot 4 for the Point of Beginning; thence run South 68° 05' 38" West, along the said South line of Bulow Grant Lot 4, 4,518 feet, more or less, to the Westerly mean high water line of Bulow Creek; thence Northwesterly and meandering along the said Westerly mean high water line of Bulow Creek to an intersection with the North line of said Bulow Grant Lot 4; thence North 67° 59' 19" East, along said North line of Bulow Grant Lot 4, 4,696 feet, more or less, to the East line of the said Bulow Grant and to the Northeast corner of said Bulow Grant Lot 4; thence South 35° 51' 46" East, along the said West line of Bulow Grant Lot 4, 316.17 feet to an intersection with the Westerly line of the Florida East Coast Canal Intracoastal Waterway (Haulover Creek), a 500 foot right-of-way as recorded in Deed Book 19, Page 50, Public Records of Flagler County, Florida; thence South 49° 29' 40" West, 1491.61 feet; thence South 35°46' 14" East, along the said Westerly right-of-way line of the Florida East Coast Canal, 571.75 feet to the aforesaid Southerly line of Bulow Grant Lot 4; thence South 88° 31' 49" West, a distance of 905.32 feet; thence South 03° 56' 05" West, a distance of 351.20 feet to the Point of Beginning.

LESS AND EXCEPT that portion thereof lying within John Anderson Highway.

FURTHER LESS AND EXCEPT a portion of Section 38, Township 12 South, Range 31 East, Flagler county, Florida; and also being a portion of Bulow Grant Lot 4, being more particularly described as follows:

From a point of reference commence at the Northeast corner of Bulow Grant Lot 6, said point being the Southwest corner of Government Lot 3 of Section 30, Township 12 South, Range 32 East, thence North 24° 52' 38" West, a distance of 1306.04 feet to the Southwest corner of Section 19, Township 12 South, Range 32 East; thence continuing along the West line of said Section 19, North 03° 51'32" East, a distance of 969.58 feet to an intersection with the Southerly line of Bulow Grant Lot 4; thence South 68° 01' 05" West, along the said South line of Bulow Grant Lot 4, a distance of 2315.88 feet to the Easterly right of way of John Anderson Highway (a 100 foot right of way); thence North 16° 40' 17" West, along the said Easterly right of way of John Anderson Highway a
distance of 711.44 feet to the Point of Beginning; thence North 67° 45' 46" East, leaving said Easterly right of way of John Anderson a distance of 374.87 feet; thence North 08° 48' 18" West, a distance of 51.41 feet; thence South 67° 45' 46" West, a distance of 93.23 feet; thence North 20° 50' 40" West, a distance of 225.98 feet; thence South 68° 38' 22" West, a distance of 271.81 feet to the aforesaid Easterly right of way of John Anderson Highway; thence South 16° 40' 17" East, along said Easterly right of way of John Anderson Highway a distance of 281.40 feet to the Point of Beginning.
THIRD AMENDMENT TO
BULOW PRESERVE N/K/A SEASIDE LANDINGS
PUD DEVELOPMENT AGREEMENT

THIS THIRD AMENDMENT TO BULOW PRESERVE (N/K/A SEASIDE LANDINGS) DEVELOPMENT AGREEMENT (hereinafter referred to as the ("Development Agreement") is made and entered into as of the ___ day of ______, 2019 by and between BULOW SHORES HOMEOWNERS ASSOCIATION, INC. a Florida Not-For-Profit Corporation, whose address is 1410 Palm Coast Pkwy NW, Palm Coast, Florida 32137 ("Applicant") and FLAGLER COUNTY, a political subdivision of the State of Florida, whose mailing address is 1769 East Moody Boulevard, Building 2, Bunnell, Florida 32110 ("County").

WITNESSETH:

WHEREAS, Seaside Landings LLC ("previous applicant") was the owner of a 250± acre (609± acres less the 359± acres deeded to the public) parcel of land that is situated in Flagler County, Florida, bounded by Bulow Creek to the west and the Intracoastal Waterway to the east. This parcel of land is currently referred to as Bulow Preserve, and is more particularly described in Exhibit “A” and depicted in the plan dated May 18, 2015, consisting of one (1) sheet prepared by Miller Legg and Associates (the "PUD Site Development Plan"), attached in Exhibit “B” hereto. The PUD Site Development Plan describing the parcel of land shall be filed and retained for public inspection in the office of the Flagler County Planning and Zoning Department, and the description of the parcel of land contained in the PUD Site Development Plan is incorporated herein by reference (the "Property"); and

WHEREAS, William and Mary Lenssen, as previous parties and co-applicants for this Property, have previously elected to remove their parcel – Parcel No. 38-12-31-0000-04050-0020 and 1.90 acres in size – from the Bulow Preserve PUD, to be combined with sufficient lands from the Applicant and contiguous to their parcel to the south so as to exceed the minimum parcel size requirements of the AC (Agriculture) zoning district, totaling 7.68± acres, which will be rezoned through a subsequent application which has been filed with the County, resulting in an eventual area of the Property of 242± acres following conveyance; and

WHEREAS, the Property is subject of Flagler County Ordinance 2005-01, Ordinance 2006-28, Ordinance No. 2016-04, and the associated Bulow Preserve PUD Development Agreement as amended. Flagler County Ordinance 2005-01 amended the zoning of the subject property to PUD (Planned Unit Development) District. The associated amended Development Agreement set forth development criteria for the Bulow Preserve PUD; and
WHEREAS, the Property is subject of that certain Mediated Settlement Agreement entered into by the Von Bulow Corporation, Flagler County and the Board of Trustees of the Internal Improvement Trust Fund resolving Case No. 04-482CA of the Seventh Judicial Circuit, providing for the transfer of density at one dwelling unit per five acres of the disputed parcel and the conveyance of approximately 359 acres to the public for preservation; and

WHEREAS, a Warranty Deed was executed on April 21, 2007 (Official Records Book 1565, Page 1834, Public Records of Flagler County, Florida) transferring said 359 acres to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, effectively transferring the development rights for 71.8 units of density to be used within this project consistent with the Mediated Settlement Agreement; and

WHEREAS, the Bulow Preserve PUD Development Agreement was previously amended by Ordinance No. 2016-04 in order to develop the Property as a Planned Unit Development, composed of 99 single family residential lots, with various waterfront and natural amenities, with all common facilities and amenities to be operated by a homeowners' association or granted in fee simple to a public agency for perpetual preservation; and

WHEREAS, the previous applicant has transferred control of the homeowners' association to the lot owners of Bulow Preserve, which now operates and manages the Bulow Preserve property; and

WHEREAS, given the unique nature of the development whereby large portions of lots are submerged by adjacent water bodies, the Applicant has applied to amend the existing Bulow Preserve PUD Development Agreement as provided in Section 3.03.20 of the Flagler County Land Development Code (as now or hereafter amended, the “Land Development Code”); and

WHEREAS, the amendment of the PUD is consistent with the Flagler County Comprehensive Plan and meets the guidelines established by the policies and the intent and purpose of Flagler County Ordinances and the Comprehensive Plan, and does promote the public health, safety, morals, general welfare and orderly growth of the area affected by the rezoning request.

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable considerations exchanged between the parties hereto, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals:
The above recitals are true and correct and incorporated herein by this reference.

2. Findings:

The proposed amendment to the existing approved PUD does not adversely affect the orderly development of Flagler County and complies with the Comprehensive Plan adopted by the Flagler County Board of County Commissioners and the proposed amendment to the existing approved PUD will not adversely affect the health and safety of residents or workers in the area and will not be detrimental to the use of adjacent properties or the general neighborhood.

3. Development Agreement:

(a) The Planned Unit Development consists of this "Development Agreement" and the PUD Site Development Plan. This Development Agreement and the PUD Site Development Plan shall be filed and retained for public inspection in the office of the Flagler County Planning and Zoning Department. All amendments to this Development Agreement and the PUD Site Development Plan, other than those deemed by the Growth Management Director to be minor amendments as set forth in Section 3.04.02(G) of the Land Development Code, shall require the review and recommendation of the Flagler County Planning Board and the Flagler County Board of County Commissioners in the same manner as for the original rezoning.

(b) This Development Agreement shall be recorded in the Public Records of Flagler County, Florida, upon approval and following execution by the Flagler County Board of County Commissioners. The Applicant shall pay all recording costs.

4. Platting:

(a) The Applicant will obtain final plat approval for all site related improvements provided for in the PUD Site Development Plan, including but not limited to, landscaping and infrastructure improvements. The conditions of plat approval shall be consistent with this Agreement.

(b) The Applicant or its successor shall maintain unified ownership of the Property until after approval of the Final Plat(s) for the specific portion of the Property being subdivided.

(c) The Applicant shall be permitted, but not required, to plat or subdivide the Property in the manner provided in the PUD Site Development Plan, and as further refined in plat(s) submitted to the County, and transfer said platted or subdivided parcels within the Property.
5. Development Standards:

(a) For so long as the property remains zoned PUD, the development of the Property shall be consistent with the limits for use as prescribed for each land use area within the approved PUD. To the extent that this Development Agreement and/or the approved PUD Site Development Plan are inconsistent with the requirements of the Land Development Code, this Development Agreement and the approved PUD Site Development Plan shall control. The Property shall be eligible for special exceptions, home occupations and for individual variances provided the overall scheme of development approved herein is not impaired and provided all standards and criteria for the issuance thereof are met. The location and size of the residential land use areas are shown generally on the PUD Site Development Plan, and shall be further delineated in subsequent plat submissions submitted to the County for review and approval. Uses within the residential area shall be as provided in this paragraph.

(b) The following are preliminary development standards that shall be applied and further refined as part of future plat submissions pertaining to the Property:

1. Total number of single family detached residential lots: Maximum of 99.

2. Residential building setbacks: All setbacks will be measured from the adjacent property line to the vertical wall of the dwelling unit, at ground level. For waterfront lots, the minimum setback shall be measured from the mean high water line.

   Front yard: 20 feet

   Rear yard: 20 feet

   Rear yard (canal lots, east of John Anderson Highway): 5 feet from the mean high water line

   Side yard interior lot: 10 feet

   Abutting any street: 20 feet

   Canal lots will be allowed to cantilever structures waterward of the rear setback line, but floors above the first or ground floor may not project beyond the mean high water line.

3. Buffer Requirements:
a. **John Anderson Highway**: There will be a 100 foot wide buffer along each side of John Anderson Highway, which may consist of private and/or commonly held property. The buffer will be kept in its natural state and will not be cleared with the exception of the entrances to the development, and crossings for driveways and utilities. Management of the buffers along each side of John Anderson Highway shall be in accordance with "Firewise" best management practices, which may include periodic underbrushing, but not tree removal, to reduce fire fuel load.

b. **Archaeological site**: During site evaluation, an archaeological study revealed the existence of a prehistoric shell midden lying partly within an otherwise designated buffer, which has been designated as Site 8FL229 in the Florida Master Site File. The Applicant shall convey this Site to William and Mary Lenssen as part of the removal of their parcel from the PUD and the addition of acreage associated with the rezoning of their parcel to its previous AC (Agriculture) zoning district designation.

c. **Bulow Creek**: The Bulow Creek Buffer/Wildlife Corridor shall correspond to the existing Conservation Future Land Use designation, consisting of forested wetlands and adjacent uplands, which shall be additionally placed in a conservation easement or otherwise restricted from development subject to County approval at the time of plat approval.

d. **South project buffer, west of John Anderson**: There shall be a one-hundred twenty (120) foot wide buffer along the southern border of the project west of John Anderson Highway running west to Bulow Creek. There shall be a stabilized roadway along the northern portion of this buffer that meanders as needed to preserve mature trees terminating at its most westernmost point with six (6) parking spaces at the canoe launch facility. No other development will be allowed in this designated buffer.

e. **North project buffer, east of John Anderson**: There shall be a one-hundred (100) foot buffer along the northern border of the project west of John Anderson Highway
running west to Bulow Creek. No development will be allowed in this designated buffer.

(4) Phases: The Applicant shall be permitted to develop the Property in not more than two phases, as approved herein by Flagler County and may be subsequently platted in not more than two phases consistent with this Development Agreement.

(5) Maximum Gross density: 1 unit per 5.7 acres. However, approximately 44.375 acres of the Property located adjacent to Bulow Creek are designated as Conservation by the Flagler County Comprehensive Plan and shall receive no density credit. The transfer of density from the Von Bulow Islands not so designated, consisting of approximately 359 acres of land, shall otherwise be and is hereby permitted in accordance with the terms of the Mediated Settlement Agreement in The Von Bulow Corporation v. Flagler County and the Board of Trustees of the Internal Improvement Trust Fund, Case No. 04-482CA, Circuit Court for Flagler County the ("Settlement Agreement").

(6) Minimum Square footage of each home: 1,800 square feet.

(7) Maximum Lot Coverage: The total lot area covered with principal and accessory buildings shall not exceed thirty-five percent (35%)(this shall apply to all impervious areas on a residential lot, excluding pathways 6 feet or less in width between the principal and ancillary structures). For the purposes of calculating the Maximum Lot Coverage, and corresponding maximum impervious surface, any portions of lots submerged by water shall be considered pervious. Further, parts of any permitted docks or boathouses (roofed or not roofed) located over a body of water shall be considered pervious; provided, however, that any part of a roofed boathouse located over an unsubmerged part of a lot shall be considered impervious.

(8) Maximum Building Height: 3 stories or 40 feet at peak of roof, measured from the centerline of the nearest adjacent street. Notwithstanding the foregoing, chimneys, catwalks and porch towers constructed as an integral part of the main residence structure may extend up to 50 feet in height, but further provided that the square footage of any level floor area of such a catwalk or porch tower may not exceed 200 square feet.
(9) Minimum driveway depth: 22 feet from edge of private street to garage door entry.

(10) Minimum separation between buildings on a lot: 10 feet.

(11) Minimum lot size: 6,000 square feet.

(12) Sidewalk/bike path: The Applicant shall construct an eight (8) foot wide bicycle path along John Anderson Highway, west of the existing paved roadway and connecting to the southerly terminus of the bicycle path constructed as part of the subdivision improvements for the Flagler Beach Polo Club subdivision, Map Book 34, Page 37, Public Records of Flagler County, Florida. This bicycle path will be paved concrete or asphalt, as approved by the County Development Engineer, and will measure approximately 2,200 linear feet in length. Construction of the bicycle path will be completed and approved by the County prior to any final plat approval for the Property. Once completed, the bicycle path will be maintained by the County in perpetuity as part of the John Anderson Highway right-of-way.

(13) Subdivision Sign(s): The Applicant shall construct a Subdivision sign(s) at the entryway to the subdivision on the east side of John Anderson Highway. The sign(s) will have a maximum of forty-eight (48) square feet of copy area and may be incorporated into a landscape feature, not to exceed nine (9) feet in height, as part of an approved Landscape Design Plan.

(14) Construction within Easements: Lot owners shall not construct any improvement within any easement areas located between Lots (i.e., side lot line easements for drainage or utilities).

6. **Land Uses:**

All permitted principal uses in the R-1 zoning district for those areas designated as residential shall be permitted. This shall consist of single-family residential together with those accessory uses permitted in the R-1 zoning district and a non-commercial, community clubhouse and other community recreational facilities.

7. **Environmental Considerations:**

(a) The percentage of the Property dedicated to residential lots shall be limited to a maximum of thirty percent (30%) of the original 609± acre total PUD acreage. Substantially all lands within the jurisdiction of the Florida Department of Environmental
Protection and not otherwise conveyed under the Settlement Agreement or approved by said Department for mitigation, shall be subject to a conservation easement or otherwise maintained as open space.

(b) Subject to permitting, if applicable, by the Florida Department of Environmental Protection, docks and boathouses shall be constructed based upon the following standards:

(1) Docks for single family homes will be permitted on an individual basis for lots along the canals and any waters contiguous to the Intracoastal Waterway (not including Bulow Creek).

(2) Docks for single family homes shall have a minimum setback of 15 feet from the side property line, unless a common dock is shared by an adjoining property under a recorded agreement.

(3) Docks will extend from shorelines to a length adequate to reach sufficient water depth to prevent prop dredging (but no greater in length or area than permitted by any regulation).

(4) Any dock, boardwalk and associated terminal platforms constructed within the Property shall meet the standard permitting requirements of Flagler County and the St. John's River Water Management District, the Florida Department of Environmental Protection and the United States Army Corps of Engineers, as applicable. Docks and boathouses shall be limited to a maximum of 1,000 square feet unless: (i) approved by the St. Johns River Water Management District or other agency having jurisdiction to permit such structures; and (ii) a Flagler County building permit is issued.

(5) A maximum of two (2) community boat ramps and docks may be permitted for use by residents of the PUD. The community boat ramps and docks will be owned, operated and maintained by the homeowners' association.

a. Bulow Creek shall be limited to a single community dock for limited watercraft (non-motorized, electric motor or gas-powered motor not to exceed 10 hp; jet skis or wave runners are specifically prohibited) and with terminal platform size not to exceed 300 square feet. A community boat shed or canoe locker, not to exceed 1,000 square feet under roof, may be located on common upland area in the vicinity of the Bulow Creek dock.
b. One community dock/ramp will be permitted along the canals or any waters contiguous to the Intracoastal Waterway.

c. All environmental restrictions provided in this Development Agreement also shall be included in the Covenants, Conditions and Restrictions of the homeowners' association and recorded within the Public Records of Flagler County, Florida.

(c) Section 5.01.04(3) of the Land Development Code prescribe landscape development standards and tree protection and replacement requirements. To satisfy the requirements of Section 5.01.04(3) of the Land Development Code, owners of lots within the development may, upon approval of the homeowners’ association, transfer up to fifty percent (50%) of the required caliper replacement (measured in inches) to the homeowners’ association provided that the trees associated with any transfer of caliper inches are planted on common areas or association property within the development. The transfer of the caliper inches of tree replacement to the homeowners’ association shall be evidenced by a written instrument signed by the lot owner and an authorized representative of the homeowners’ association. Nothing herein shall be construed to transfer any obligation of a lot owner to comply with the above-referenced provisions of the Land Development Code to the homeowners’ association.

8. Potable Water and Sewage:

The Applicant anticipates that potable water will be provided by the City of Flagler Beach. All lots under one acre in size within this development shall be required to connect to central potable water and sanitary sewer service in accordance with Florida law. The Applicant will construct the infrastructure, to include individual water and sewer lines and taps, necessary to provide for each lot (under one acre in size) or amenity requiring a connection to connect to public water and sewer. To the extent that lines to facilitate such connection are not anticipated to be included in public rights-of-way or easements, then a fifteen (15) foot wide utility easement shall be reserved by the Applicant as necessary in conjunction with the final platting of the Property. A fifteen (15) foot wide utility easement shall be granted in conjunction with the final platting of the Property to connect interior private roadways and easements with John Anderson Highway for the purpose of facilitating water and sewer connections.

Lots one acre or more in size shall be allowed to develop by providing their own individual on-site potable drinking water well and approved on-site septic disposal system.
(a) Landscape irrigation: Individual wells will be allowed for landscape irrigation purposes, subject to permitting by the Florida Department of Health.

9. Stormwater Drainage:

Stormwater management systems shall meet or exceed the requirements of the Land Development Code and the St. Johns River Water Management District. All tracts intended for use for stormwater purposes and dedicated for such purpose by plat shall be owned and maintained by the homeowners' association.

10. Private Roadways:

All roads within the Property and/or easements shall be owned and maintained by the Applicant and/or the homeowners' association. Membership in the homeowners' association by the owner(s) of each lot will be mandatory. The roadway system within the PUD may be gated and its use by the general public may be restricted with the exception of ordinary utility and government services for the residents and for emergency personnel. The main access travel ways into the Property shall be designed as minimum 26 foot wide 2-way pavement (twenty-two (22) foot wide asphalt pavement with a two (2) foot wide curb on each side) cross-section streets. Any gate constructed must meet the design standards of Flagler County Fire Services.

11. Covenants and Restrictions:

A copy of the Covenants, Conditions and Restrictions shall be furnished to the County following recordation. The Applicant shall be responsible for recording said information in the Public Records of Flagler County, Florida. The Applicant also shall pay all costs for recording the aforementioned documents. The County may only enforce the provisions of this Development Agreement and the Flagler County Land Development Code, as applicable, and not private agreements, covenants, restrictions and easements entered into between subsequent owners of lots in the PUD or imposed by the Applicant on the Property.

12. Tri-party Settlement Agreement:

Recorded at Official Records Book 1241, page 680 of the Public Records of Flagler County, Florida is the Settlement Agreement entered into by the previous Applicant (The Von Bulow Corporation), Flagler County and The Board of Trustees of the Internal Improvement Trust Fund. The Settlement Agreement is the result of litigation between the parties over the ownership and control of certain real property adjacent to the Intracoastal Waterway. Under the terms of the Settlement Agreement, the Applicant is obligated to deed approximately 359 acres of real property that was the subject of the litigation to the Board of Trustees of the Internal Improvement Trust Fund.
prior to commencement on the development of the subdivision envisioned by this Development Agreement. The Applicant hereby agrees to deliver a deed to such property within thirty (30) days from the receipt of all necessary approvals to commence construction of the project or prior to the conveyance of any parcel encumbered by this agreement. A Warranty Deed was executed on April 21, 2007 (Official Records Book 1565, Page 1834, Public Records of Flagler County, Florida) transferring said 359 acres to the Board of Trustees of the Internal Improvement Trust Fund.

13. Notice:

Any notice delivered with respect to this Development Agreement shall be in writing and be deemed to be delivered when (i) hand delivered to the other party at the address appearing on the first page of this Development Agreement, or (ii) when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address appearing on the first page of this Development Agreement to the person or address as the party shall have specified by written notice to the other party delivered in accordance herewith.

14. Covenant Running with the Land:

The provisions of this Development Agreement shall run with the Property and bind and inure to the benefit of the Applicant or its successor in title or interest.

15. Recording:

The parties hereto agree that an executed original of this Development Agreement shall be recorded by the County, at the Applicant's expense, in the Public Records of Flagler County, Florida. All subsequent orders and resolutions relating to the Property of this Development Agreement shall be filed by the County in the Official Records of Flagler County, Florida.

16. Applicable Law:

This Development Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

17. Amendment:

This Second Amendment to Bulow Preserve PUD Development Agreement constitutes the entire agreement between the parties, and supersedes all previous discussions, understandings and agreements, with respect to the subject matter hereof. Amendments to and waivers of the provisions of this Development Agreement shall be made by the parties only in writing by formal amendment.
18. **Counterparts:**

This Development Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

19. **Captions:**

Captions of the Sections and Subsections of this Development Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Development Agreement.

20. **Severability:**

If any word, sentence, phrase, paragraph, provision, or portion of this Development Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion hereof so long as the purpose and intent of this Development Agreement can still be achieved.

21. **Construction:**

In the event of an inconsistency between the terms of this Development Agreement and the PUD Site Development Plan, the terms of this Development Agreement will control.

[Signature page follows]
IN WITNESS WHEREOF, the parties hereto have set their hand this ____ day of __________________, 2019.

"APPLICANT"

BULOW SHORES HOMEOWNERS ASSOCIATION, INC.
a Florida Not-For-Profit Corporation

__________________________
By:__________________________

Print Name:____________________  Name:__________________________

Title:__________________________

__________________________
Print Name:____________________

STATE OF __________________
COUNTY OF _____________

The foregoing instrument was acknowledged before me this ____ day of __________________, 2019, by ________________________, as President of Bulow Shores Homeowners Association, Inc., on behalf of the corporation. He [___] is personally known to me, or has produced _____________________________ as identification.

__________________________
NOTARY PUBLIC
Print Name:____________________

[Signatures continued on next page]
BOARD OF COUNTY COMMISSIONERS
OF FLAGLER COUNTY, FLORIDA

___________________________________
Donald O’Brien, Jr.
Chairman

ATTEST:

_______________________
Tom Bexley, Clerk of the Circuit
Court and Comptroller

APPROVED AS TO FORM:

__________________________________
Al Hadeed, County Attorney
EXHIBIT “A”
Legal Description

A portion of Sections 19 and 37, Township 12 South, Range 32 East, a portion of Section 38, Township 12 South, Range 31 East, Flagler County, Florida; and also being a portion of Bulow Grant Lot 4 lying Easterly of the Westerly mean high water line of Bulow Creek, all in Flagler County, Florida, and being more particularly described as follows:

Commence at the Northeast corner of said Bulow Grant Lot 6, said point also being the Southwest corner of Government Lot 3 of Section 30, Township 12 South, Range 32 East; thence North 24° 48' 05" West, 1306.04 feet to the Southwest corner of aforesaid Section 19; thence continuing along West line of said Section 19, North 03° 56' 05" East, 969.58 feet to an intersection with the Southerly line of Bulow Grant Lot 4 for the Point of Beginning; thence run South 68° 05' 05" West, along the said South line of Bulow Grant Lot 4, 4,518 feet, more or less, to the Westerly mean high water line of Bulow Creek; thence Northwesterly and meandering along the said Westerly mean high water line of Bulow Creek to an intersection with the North line of said Bulow Grant Lot 4; thence North 67° 59' 19" East, along said North line of Bulow Grant Lot 4, 4,696 feet, more or less, to the East line of the said Bulow Grant and to the Northeast corner of said Bulow Grant Lot 4; thence South 35° 51' 25" East, along the said East line of the Bulow Grant Lot 4, 316.17 feet to an intersection with the Westerly line of the Florida East Coast Canal Intracoastal Waterway (Haulover Creek), a 500 foot right-of-way as recorded in Deed Book 19, Page 50, Public Records of Flagler County, Florida; thence South 49° 29' 14" East, Easterly along said West line of the Florida East Coast Canal, 1491.61 feet; thence South 35°46' 14" East, along the said Westerly right-of-way line of the Florida East Coast Canal, 571.75 feet to the aforesaid Southerly line of Bulow Grant Lot 4; thence South 88° 31' 49" West, a distance of 905.32 feet; thence South 03° 56' 05" West, a distance of 351.20 feet to the Point of Beginning.

LESS AND EXCEPT that portion thereof lying within John Anderson Highway.

FURTHER LESS AND EXCEPT a portion of Section 38, Township 12 South, Range 31 East, Flagler county, Florida; and also being a portion of Bulow Grant Lot 4, being more particularly described as follows:

From a point of reference commence at the Northeast corner of Bulow Grant Lot 6, said point being the Southwest corner of Government Lot 3 of Section 30, Township 12 South, Range 32 East, thence North 24° 52' 38" West, a distance of 1306.04 feet to the Southwest corner of Section 19, Township 12 South, Range 32 East; thence continuing along the West line of said Section 19, North 03° 51'32" East, a distance of 969.58 feet to an intersection with the Southerly line of Bulow Grant Lot 4; thence South 68° 01' 05" West, along the said South line of Bulow Grant Lot 4, a distance of 2315.88 feet to the Easterly right of way of John Anderson Highway (a 100 foot right of way); thence North 16° 40' 17" West, along the said Easterly right of way of John Anderson Highway a
distance of 711.44 feet to the Point of Beginning; thence North 67° 45' 46" East, leaving said Easterly right of way of John Anderson a distance of 374.87 feet; thence North 08° 48' 18" West, a distance of 51.41 feet; thence South 67° 45' 46" West, a distance of 93.23 feet; thence North 20° 50' 40" West, a distance of 225.98 feet; thence South 68° 38' 22" West, a distance of 271.81 feet to the aforesaid Easterly right of way of John Anderson Highway; thence South 16° 40' 17" East, along said Easterly right of way of John Anderson Highway a distance of 281.40 feet to the Point of Beginning.
EXHIBIT “B”
PUD Site Development Plan
Attached are departmental comments regarding your submittal to Flagler County for the above referenced project. Any questions regarding any of the comments should be addressed to the department providing the comment.

Flagler County Building Department 386-313-4002
Flagler County Planning Department 386-313-4009
Flagler County Development Engineering 386-313-4082
Flagler County General Services (Utilities) 386-313-4184
County Attorney 386-313-4005
Flagler County Fire Services 386-313-4258
E-911 GIS Specialist 386-313-4274
Environmental Health Department 386-437-7358
Flagler County School Board 386-586-2386
REVIEWING DEPARTMENT: FIRE INSPECTOR
1. No comments received.

REVIEWING DEPARTMENT: BUILDING DEPARTMENT
1. No comments at this time.

REVIEWING DEPARTMENT: ENVIRONMENTAL HEALTH DEPT
1. No comments or objections.

REVIEWING DEPARTMENT: COUNTY ATTORNEY
1. No comments received.

REVIEWING DEPARTMENT: DEVELOPMENT ENGINEERING
1. The name should remain consistent with the PUD Document and the Plat.

2. Provide documentation that the increase in the impervious is consistent with the SJRWMD permit.

3. Should a builder decide to transfer the tree requirement to the HOA, how will this be verified during the building permit process?

4. The PUD document will need to be updated and approved to match the revision included in the document.

Further comments may be provided upon additional submittals.

REVIEWING DEPARTMENT: PLANNING DEPARTMENT
1. Please confirm that the SJRWMD stormwater permit for the subdivision is not affected by the increase in maximum lot coverage to 55% or setting the minimum pervious area at 30%, with the submerged portion of any lot counted towards the minimum pervious area.

2. The text at 7. (b)(4) for the docks exceeding 1,000 s.f. should be changed to read as: “In addition to the above requirements, docks and boathouses exceeding 1,000 square feet shall be subject to permitting by the St. Johns River Water Management District.”

3. The proposed text at 7. (c) is consistent with discussions between staff and the HOA; however, what happens when the HOA runs out of common areas or association property within the development to place trees from lot owners? How will this function: will the lot owner purchase the trees and turn them over to the HOA or will the lot owner contribute to a tree fund for future planting by the HOA? What will be the accounting method, and how will the lot owner and HOA verify to the County that the shade tree and index tree requirements have been met prior to issuance of a County Certificate of Occupancy?
**APPLICATION FOR REVIEW**

**FLAGLER COUNTY, FLORIDA**

1789 E. Moody Boulevard, Suite 105
Bunnell, FL 32110

Telephone: (386) 313-4009  Fax: (386) 313-4109

Application/Project #: **3190/AR-00030-2019**

<table>
<thead>
<tr>
<th><strong>PROPERTY OWNERS:</strong></th>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Name(s):</strong> Bulow Shores Homeowners Association, Inc. and its Members</td>
<td></td>
</tr>
<tr>
<td><strong>Mailing Address:</strong> 1410 Palm Coast Pkwy NW</td>
<td></td>
</tr>
<tr>
<td><strong>City:</strong> Palm Coast  <strong>State:</strong> Florida  <strong>Zip:</strong> 32137</td>
<td></td>
</tr>
<tr>
<td><strong>Telephone Number:</strong> 904-371-2098  <strong>Fax Number:</strong> 904-396-0088</td>
<td></td>
</tr>
<tr>
<td><strong>E-Mail Address:</strong> <a href="mailto:jroche@flcalegal.com">jroche@flcalegal.com</a></td>
<td></td>
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</tbody>
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<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>SITE LOCATION (street address):</strong></th>
<th>111 Seaside Landings Dr N., Flagler Beach, Florida, 32136</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LEGAL DESCRIPTION:</strong></td>
<td>Portion of Sections 18, 31, and 36, Townships 12 South, Ranges 32 East and 31 East, Flagler County, Florida, as ascribed on the Plat for Seaside Landings at Flagler Beach, Parcel 1.</td>
</tr>
<tr>
<td><strong>Parcel # (tax ID #):</strong></td>
<td>38-12-31-515-00000-0080 and many others (approximately 100 other parcel ids have been assigned for the planned Lots and parcels)</td>
</tr>
<tr>
<td><strong>Parcel Size:</strong></td>
<td>Approximately 253.117 acres</td>
</tr>
<tr>
<td><strong>Current Zoning Classification:</strong></td>
<td>NRC-PUD</td>
</tr>
<tr>
<td><strong>Current Future Land Use Designation:</strong></td>
<td>Agriculture and Timberlands</td>
</tr>
<tr>
<td><strong>Subject to A1A Scenic Corridor?</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Purpose of Submission/Project Data:</strong></td>
<td>To request a text amendment to the Bulow Preserve PUD Development Agreement</td>
</tr>
</tbody>
</table>

**Signature of Owner(s) or Applicant/Agent:**  
President  Bulow Shores HOA  July 14, 2019  

**Signature of Chairman:** ______________________  
**Date:** ___________ *(approved with conditions, see attached.)*

**Plannning Board Recommendation/Action:**  
*APPROVED WITH CONDITIONS*  
**Board of County Commissioners Action:**  
*APPROVED WITH CONDITIONS*
July 17, 2019

Via U.S. Mail
Jack Kurdock
VP Bulow Shores Homeowners Association, Inc.
1070 Hampstead Lane
Ormond Beach, FL 32174

Re: Development Order Amendment Application
Bulow Shores Homeowners Association, Inc.

Dear Mr. Kurdock:

Please find the proposed application to amend the development order for Bulow Shores/Seaside Landing at Flagler Beach enclosed with this correspondence. If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

McCabe & Ronsman

[Signature]

James J. Roche, Esq.
SECOND-THIRD AMENDMENT TO
BULOW PRESERVE N/K/A SEASIDE LANDING AT FLAGLER BEACH
PUD DEVELOPMENT AGREEMENT

THIS SECOND-THIRD AMENDMENT TO BULOW PRESERVE (N/K/A SEASIDE LANDING AT FLAGLER BEACH) DEVELOPMENT AGREEMENT (hereinafter referred to as the "Development Agreement") is made and entered into as of the ___ day of ____, 2019 by and between BULOW SHORES HOMEOWNERS SEASIDE LANDINGS, LLC ASSOCIATION, INC., a Foreign Limited Liability Corporation Florida Not-For-Profit Corporation, whose address is 183 Water Street, Williamstown, Massachusetts 01267 and FLAGLER COUNTY, a political subdivision of the State of Florida, whose mailing address is 1769 East Moody Boulevard, Building 2, Bunnell, Florida 32110 ("County").

WITNESSETH:

WHEREAS, the Applicant Seaside Landings LLC ("previous applicant") was the owner of a 250± acre (609± acres less the 359± acres deeded to the public) parcel of land that is situated in Flagler County, Florida, bounded by Bulow Creek to the west and the Intracoastal Waterway to the east. This parcel of land is currently referred to as Bulow Preserve, and is more particularly described in Exhibit "A" and depicted in the plan dated May 18, 2015, consisting of one (1) sheet prepared by Miller Legg and Associates (the "PUD Site Development Plan"), attached in Exhibit "B" hereto. The PUD Site Development Plans describing the parcel of land shall be filed and retained for public inspection in the office of the Flagler County Planning and Zoning Department, and the description of the parcel of land contained in the PUD Site Development Plan is incorporated herein by reference (the "Property"); and

WHEREAS, William and Mary Lenssen, as previous parties and co-applicants for this Property, have previously elected to remove their parcel – Parcel No. 38-12-31-0000-04050-0020 and 1.90 acres in size – from the Bulow Preserve PUD, to be combined with sufficient lands from the Applicant and contiguous to their parcel to the south so as to exceed the minimum parcel size requirements of the AC (Agriculture) zoning district, totaling 7.68± acres, which will be rezoned through a subsequent application which has been filed with the County, resulting in an eventual area of the Property of 242± acres following conveyance; and

WHEREAS, the Property is subject of Flagler County Ordinance 2005-01, and Ordinance 2006-28, Ordinance No. 2016-04, and the associated Bulow Preserve PUD Development Agreement as amended. Flagler County Ordinance 2005-01 amended the zoning of the subject property to PUD (Planned Unit Development) District. The
associated amended Development Agreement set forth development criteria for the Bulow Preserve PUD; and

WHEREAS, the Property is subject of that certain Mediated Settlement Agreement entered into by the Von Bulow Corporation, Flagler County and the Board of Trustees of the Internal Improvement Trust Fund resolving Case No. 04-482CA of the Seventh Judicial Circuit, providing for the transfer of density at one dwelling unit per five acres of the disputed parcel and the conveyance of approximately 359 acres to the public for preservation; and

WHEREAS, a Warranty Deed was executed on April 21, 2007 (Official Records Book 1565, Page 1834, Public Records of Flagler County, Florida) transferring said 359 acres to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, effectively transferring the development rights for 71.8 units of density to be used within this project consistent with the Mediated Settlement Agreement; and

WHEREAS, the Applicant desires to amend the Bulow Preserve PUD Development Agreement was previously amended by Ordinance No. 2016-04 in order to develop the Property as a Planned Unit Development, composed of 99 single family residential lots, with various waterfront and natural amenities, with all common facilities and amenities to be operated by a homeowners' association or granted in fee simple to a public agency for perpetual preservation; and

WHEREAS, the Applicant has applied to amend the existing approved Planned Unit Development (the "PUD") as provided in Section 3.03.20 of the Flagler County Land Development Code (as now or hereafter amended, the "Land Development Code"); and the previous applicant has transferred control of the homeowners' association to the lot owners of Bulow Preserve, which now operates and manages the Bulow Preserve property; and

WHEREAS, given the unique nature of the development whereby large portions of lots are submerged by adjacent water bodies, the Applicant has applied to amend the existing Bulow Preserve PUD Development Agreement as provided in Section 3.03.20 of the Flagler County Land Development Code (as now or hereafter amended, the "Land Development Code"); and

WHEREAS, the amendment of the PUD is consistent with the Flagler County Comprehensive Plan and meets the guidelines established by the policies and the intent and purpose of Flagler County Ordinances and the Comprehensive Plan, and does promote the public health, safety, morals, general welfare and orderly growth of the area affected by the rezoning request.
NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable considerations exchanged between the parties hereto, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals:

The above recitals are true and correct and incorporated herein by this reference.

2. Findings:

The proposed amendment to the existing approved PUD does not adversely affect the orderly development of Flagler County and complies with the Comprehensive Plan adopted by the Flagler County Board of County Commissioners and the proposed amendment to the existing approved PUD will not adversely affect the health and safety of residents or workers in the area and will not be detrimental to the use of adjacent properties or the general neighborhood.

3. Development Agreement:

(a) The Planned Unit Development consists of this "Development Agreement" and the PUD Site Development Plan. This Development Agreement and the PUD Site Development Plan shall be filed and retained for public inspection in the office of the Flagler County Planning and Zoning Department. All amendments to this Development Agreement and the PUD Site Development Plan, other than those deemed by the Growth Management Director to be minor amendments as set forth in Section 3.04.02(G) of the Land Development Code, shall require the review and recommendation of the Flagler County Planning Board and the Flagler County Board of County Commissioners in the same manner as for the original rezoning.

(b) This Development Agreement shall be recorded in the Public Records of Flagler County, Florida, upon approval and following execution by the Flagler County Board of County Commissioners. The Applicant shall pay all recording costs.

4. Platting:

(a) The Applicant will obtain final plat approval for all site related improvements provided for in the PUD Site Development Plan, including but not limited to, landscaping and infrastructure improvements. The conditions of plat approval shall be consistent with this Agreement.

(b) The Applicant or its successor shall maintain unified ownership of the Property until after approval of the Final Plat(s) for the specific portion of the Property being subdivided.
(c) The Applicant shall be permitted, but not required, to plat or subdivide the Property in the manner provided in the PUD Site Development Plan, and as further refined in plat(s) submitted to the County, and transfer said platted or subdivided parcels within the Property.

5. Development Standards:

(a) For so long as the property remains zoned PUD, the development of the Property shall be consistent with the limits for use as prescribed for each land use area within the approved PUD. To the extent that this Development Agreement and/or the approved PUD Site Development Plan are inconsistent with the requirements of the Land Development Code, this Development Agreement and the approved PUD Site Development Plan shall control. The Property shall be eligible for special exceptions, home occupations and for individual variances provided the overall scheme of development approved herein is not impaired and provided all standards and criteria for the issuance thereof are met. The location and size of the residential land use areas are shown generally on the PUD Site Development Plan, and shall be further delineated in subsequent plat submissions submitted to the County for review and approval. Uses within the residential area shall be as provided in this paragraph.

(b) The following are preliminary development standards that shall be applied and further refined as part of future plat submissions pertaining to the Property:

1. Total number of single family detached residential lots: Maximum of 99.

2. Residential building setbacks: All setbacks will be measured from the adjacent property line to the vertical wall of the dwelling unit, at ground level. For waterfront lots, the minimum setback shall be measured from the mean high water line.

   Front yard: 20 feet
   Rear yard: 20 feet
   Rear yard (canal lots, east of John Anderson Highway): 5 feet from the mean high water line
   Side yard interior lot: 10 feet
   Abutting any street: 20 feet
Canal lots will be allowed to cantilever structures waterward of the rear setback line, but floors above the first or ground floor may not project beyond the mean high water line.

(3) Buffer Requirements:

a. **John Anderson Highway:** There will be a 100 foot wide buffer along each side of John Anderson Highway, which may consist of private and/or commonly held property. The buffer will be kept in its natural state and will not be cleared with the exception of the entrances to the development, and crossings for driveways and utilities. Management of the buffers along each side of John Anderson Highway shall be in accordance with "Firewise" best management practices, which may include periodic underbrushing, but not tree removal, to reduce fire fuel load.

b. **Archaeological site:** During site evaluation, an archaeological study revealed the existence of a prehistoric shell midden lying partly within an otherwise designated buffer, which has been designated as Site 8FL229 in the Florida Master Site File. The Applicant shall convey this Site to William and Mary Lenssen as part of the removal of their parcel from the PUD and the addition of acreage associated with the rezoning of their parcel to its previous AC (Agriculture) zoning district designation.

c. **Bulow Creek:** The Bulow Creek Buffer/Wildlife Corridor shall correspond to the existing Conservation Future Land Use designation, consisting of forested wetlands and adjacent uplands, which shall be additionally placed in a conservation easement or otherwise restricted from development subject to County approval at the time of plat approval.

d. **South project buffer, west of John Anderson:** There shall be a one-hundred twenty (120) foot wide buffer along the southern border of the project west of John Anderson Highway running west to Bulow Creek. There shall be a stabilized roadway along the northern portion of this buffer that meanders as needed to preserve mature trees terminating at its most westernmost point with six (6)
parking spaces at the canoe launch facility. No other development will be allowed in this designated buffer.

e. North project buffer, east of John Anderson: There shall be a one-hundred (100) foot buffer along the northern border of the project west of John Anderson Highway running west to Bulow Creek. No development will be allowed in this designated buffer.

(4) Phases: The Applicant shall be permitted to develop the Property in not more than two phases, as approved herein by Flagler County and may be subsequently platted in not more than two phases consistent with this Development Agreement.

(5) Maximum Gross density: 1 unit per 5.7 acres. However, approximately 44.375 acres of the Property located adjacent to Bulow Creek are designated as Conservation by the Flagler County Comprehensive Plan and shall receive no density credit. The transfer of density from the Von Bulow Islands not so designated, consisting of approximately 359 acres of land, shall otherwise be and is hereby permitted in accordance with the terms of the Mediated Settlement Agreement in The Von Bulow Corporation v. Flagler County and the Board of Trustees of the Internal Improvement Trust Fund, Case No. 04-482CA, Circuit Court for Flagler County the ("Settlement Agreement").

(6) Minimum Square footage of each home: 1,800 square feet.

(7) Maximum Lot Coverage: The total lot area covered with principal and accessory buildings shall not exceed fifty-five (55%) percent (this shall apply to all impervious areas on a residential lot, excluding pathways 6 feet or less in width between the principal and ancillary structures). For the purposes of calculating the Maximum Lot Coverage, the percentage shall be applied to the total area of the entire lot indicated on the plat, including submerged portions.

(8) Minimum Pervious Area: Each lot shall have a minimum pervious area of at least thirty (30) percent. For the purposes of calculating the pervious area, any submerged portions of lots shall be considered pervious. Further, parts of any permitted docks or boathouses (roofed or not roofed) located over a body of water shall be considered pervious; provided, however, that any part of
a roofed boathouse located over an unsubmerged part of a lot shall be considered impervious.

(8) Maximum Building Height: 3 stories or 40 feet at peak of roof, measured from the centerline of the nearest adjacent street. Notwithstanding the foregoing, chimneys, catwalks and porch towers constructed as an integral part of the main residence structure may extend up to 50 feet in height, but further provided that the square footage of any level floor area of such a catwalk or porch tower may not exceed 200 square feet.

(10) Minimum driveway depth: 22 feet from edge of private street to garage door entry.

(11) Minimum separation between buildings on a lot: 10 feet.

(11) Maximum Floor Area Ratio: 0.3 (excluding docks and boathouses less than 500 square feet).

(12) Minimum lot size: 6,000 square feet.

(13) Sidewalk/bike path: The Applicant shall construct an eight (8) foot wide bicycle path along John Anderson Highway, west of the existing paved roadway and connecting to the southerly terminus of the bicycle path constructed as part of the subdivision improvements for the Flagler Beach Polo Club subdivision, Map Book 34, Page 37, Public Records of Flagler County, Florida. This bicycle path will be paved concrete or asphalt, as approved by the County Development Engineer, and will measure approximately 2,200 linear feet in length. Construction of the bicycle path will be completed and approved by the County prior to any final plat approval for the Property. Once completed, the bicycle path will be maintained by the County in perpetuity as part of the John Anderson Highway right-of-way.

(14) Subdivision Sign(s): The Applicant shall construct a Subdivision sign(s) at the entryway to the subdivision on the east side of John Anderson Highway. The sign(s) will have a maximum of forty-eight (48) square feet of copy area and may be incorporated into a landscape feature, not to exceed nine (9) feet in height, as part of an approved Landscape Design Plan.
15. Construction within Easements: Lot owners shall not construct any improvement within any easement areas located between Lots (i.e., side lot line easements for drainage or utilities).

6. Land Uses:

All permitted principal uses in the R-1 zoning district for those areas designated as residential shall be permitted. This shall consist of single-family residential together with those accessory uses permitted in the R-1 zoning district and a non-commercial, community clubhouse and other community recreational facilities.

7. Environmental Considerations:

(a) The percentage of the Property dedicated to residential lots shall be limited to a maximum of thirty percent (30%) of the original 609± acre total PUD acreage. Substantially all lands within the jurisdiction of the Florida Department of Environmental Protection and not otherwise conveyed under the Settlement Agreement or approved by said Department for mitigation, shall be subject to a conservation easement or otherwise maintained as open space.

(b) Subject to permitting, if applicable, by the Florida Department of Environmental Protection, docks and boathouses shall be constructed based upon the following standards:

(1) Docks for single family homes will be permitted on an individual basis for lots along the canals and any waters contiguous to the Intracoastal Waterway (not including Bulow Creek).

(2) Docks for single family homes shall have a minimum setback of 15 feet from the side property line, unless a common dock is shared by an adjoining property under a recorded agreement.

(3) Docks will extend from shorelines to a length adequate to reach sufficient water depth to prevent prop dredging (but no greater in length or area than permitted by any regulation).

(4) Any dock, boardwalk and associated terminal platforms constructed within the Property shall meet the standard permitting requirements of Flagler County and the St. John's River Water Management District, the Florida Department of Environmental Protection and the United States Army Corps of Engineers, as applicable. Docks and boathouses shall be limited to a maximum of 1,000 square feet unless: (i) approved by the St. Johns River Water Management District or other agency having...
jurisdiction to permit such structures; and (ii) a Flagler County building permit is issued.

(5) A maximum of two (2) community boat ramps and docks may be permitted for use by residents of the PUD. The community boat ramps and docks will be owned, operated and maintained by the homeowners' association.

a. Bulow Creek shall be limited to a single community dock for limited watercraft (non-motorized, electric motor or gas-powered motor not to exceed 10 hp; jet skis or wave runners are specifically prohibited) and with terminal platform size not to exceed 300 square feet. A community boat shed or canoe locker, not to exceed 1,000 square feet under roof, may be located on common upland area in the vicinity of the Bulow Creek dock.

b. One community dock/ramp will be permitted along the canals or any waters contiguous to the Intracoastal Waterway.

c. All environmental restrictions provided in this Development Agreement also shall be included in the Covenants, Conditions and Restrictions of the homeowners' association and recorded within the Public Records of Flagler County, Florida.

(c) Sections 5.01.04(3) and 6.01.03 of the Land Development Code prescribe landscape development standards and index tree protection and replacement requirements. To satisfy the requirements of either Section of the Land Development Code, or any other provision of the Land Development Code which may require the preservation or replanting of trees, owners of lots within the development may, upon approval of the homeowners' association, transfer up to fifty percent (50%) of the required caliper replacement (measured in inches) to the homeowners' association provided that the trees associated with any transfer of caliper inches are planted on common areas or association property within the development. Nothing herein shall be construed to transfer any obligation of a lot owner to comply with the above-referenced provisions of the Land Development Code to the homeowners' association.

8. Potable Water and Sewage:

The Applicant anticipates that potable water will be provided by the City of Flagler Beach. All lots under one acre in size within this development shall be required to connect to central potable water and sanitary sewer service in accordance with
Florida law. The Applicant will construct the infrastructure, to include individual water and sewer lines and taps, necessary to provide for each lot (under one acre in size) or amenity requiring a connection to connect to public water and sewer. To the extent that lines to facilitate such connection are not anticipated to be included in public rights-of-way or easements, then a fifteen (15) foot wide utility easement shall be reserved by the Applicant as necessary in conjunction with the final platting of the Property. A fifteen (15) foot wide utility easement shall be granted in conjunction with the final platting of the Property to connect interior private roadways and easements with John Anderson Highway for the purpose of facilitating water and sewer connections.

Lots one acre or more in size shall be allowed to develop by providing their own individual on-site potable drinking water well and approved on-site septic disposal system.

(a) Landscape irrigation: Individual wells will be allowed for landscape irrigation purposes, subject to permitting by the Florida Department of Health.

9. Stormwater Drainage:

Stormwater management systems shall meet or exceed the requirements of the Land Development Code and the St. Johns River Water Management District. All tracts intended for use for stormwater purposes and dedicated for such purpose by plat shall be owned and maintained by the homeowners' association.

10. Private Roadways:

All roads within the Property and/or easements shall be owned and maintained by the Applicant and/or the homeowners' association. Membership in the homeowners' association by the owner(s) of each lot will be mandatory. The roadway system within the PUD may be gated and its use by the general public may be restricted with the exception of ordinary utility and government services for the residents and for emergency personnel. The main access travel ways into the Property shall be designed as minimum 26 foot wide 2-way pavement (twenty-two (22) foot wide asphalt pavement with a two (2) foot wide curb on each side) cross-section streets. Any gate constructed must meet the design standards of Flagler County Fire Services.

11. Covenants and Restrictions:

A copy of the Covenants, Conditions and Restrictions shall be furnished to the County following recordation. The Applicant shall be responsible for recording said information in the Public Records of Flagler County, Florida. The Applicant also shall pay all costs for recording the aforementioned documents. The County may only enforce the provisions of this Development Agreement and the Flagler County Land
Development Code, as applicable, and not private agreements, covenants, restrictions and easements entered into between subsequent owners of lots in the PUD or imposed by the Applicant on the Property.

12. Tri-party Settlement Agreement:

Recorded at Official Records Book 1241, page 680 of the Public Records of Flagler County, Florida is the Settlement Agreement entered into by the previous Applicant (The Von Bulow Corporation), Flagler County and The Board of Trustees of the Internal Improvement Trust Fund. The Settlement Agreement is the result of litigation between the parties over the ownership and control of certain real property adjacent to the Intracoastal Waterway. Under the terms of the Settlement Agreement, the Applicant is obligated to deed approximately 359 acres of real property that was the subject of the litigation to the Board of Trustees of the Internal Improvement Trust Fund prior to commencement on the development of the subdivision envisioned by this Development Agreement. The Applicant hereby agrees to deliver a deed to such property within thirty (30) days from the receipt of all necessary approvals to commence construction of the project or prior to the conveyance of any parcel encumbered by this agreement. A Warranty Deed was executed on April 21, 2007 (Official Records Book 1565, Page 1834, Public Records of Flagler County, Florida) transferring said 359 acres to the Board of Trustees of the Internal Improvement Trust Fund.

13. Notice:

Any notice delivered with respect to this Development Agreement shall be in writing and be deemed to be delivered when (i) hand delivered to the other party at the address appearing on the first page of this Development Agreement, or (ii) when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address appearing on the first page of this Development Agreement to the person or address as the party shall have specified by written notice to the other party delivered in accordance herewith.

14. Covenant Running with the Land:

The provisions of this Development Agreement shall run with the Property and bind and inure to the benefit of the Applicant or its successor in title or interest.

15. Recording:
The parties hereto agree that an executed original of this Development Agreement shall be recorded by the County, at the Applicant's expense, in the Public Records of Flagler County, Florida. All subsequent orders and resolutions relating to the Property of this Development Agreement shall be filed by the County in the Official Records of Flagler County, Florida.

16. Applicable Law:

This Development Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

17. Amendment:

This Second Amendment to Bulow Preserve PUD Development Agreement constitutes the entire agreement between the parties, and supersedes all previous discussions, understandings and agreements, with respect to the subject matter hereof. Amendments to and waivers of the provisions of this Development Agreement shall be made by the parties only in writing by formal amendment.

18. Counterparts:

This Development Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

19. Captions:

Captions of the Sections and Subsections of this Development Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Development Agreement.

20. Severability:

If any word, sentence, phrase, paragraph, provision, or portion of this Development Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion hereof so long as the purpose and intent of this Development Agreement can still be achieved.

21. Construction:
In the event of an inconsistency between the terms of this Development Agreement and the PUD Site Development Plan, the terms of this Development Agreement will control.

[Signature page follows]
IN WITNESS WHEREOF, the parties hereto have set their hand this ___ day of _____________, 2012.

"APPLICANT"

BULOW SHORES HOMEOWNERS ASSOCIATION, INC.

By: ______________________________________

Print Name: ____________________________

Name: _________________________________

Title: _________________________________

_____________________________________

Print Name: ____________________________

STATE OF _____________________________

COUNTY OF ___________________________

The foregoing instrument was acknowledged before me this ___ day of _____________, 2012, by Michael S. Patten, as Managing Member of Patten Special Assets, LLC, the Authorized Person for Seaside Landings, LLC, President of a Foreign Limited Liability Corporation Bulow Shores Homeowners Association, Inc., on behalf of the corporation. He [ ] is personally known to me, or has produced ________________________________ as identification.

_____________________________________

NOTARY PUBLIC

Print Name: ____________________________

[Signatures continued on next page]
ATTEST:

Frank J. Meeker
Donald O’Brien, Jr.
Chairman

APPROVED AS TO FORM:

Al Hadeed, County Attorney
EXHIBIT “A”
Legal Description

A portion of Sections 19 and 37, Township 12 South, Range 32 East, a portion of Section 38, Township 12 South, Range 31 East, Flagler County, Florida; and also being a portion of Bulow Grant Lot 4 lying Easterly of the Westerly mean high water line of Bulow Creek, all in Flagler County, Florida, and being more particularly described as follows:

Commence at the Northeast corner of said Bulow Grant Lot 6, said point also being the Southwest corner of Government Lot 3 of Section 30, Township 12 South, Range 32 East; thence North 24° 48' 05" West, 1306.04 feet to the Southwest corner of aforesaid Section 19; thence continuing along West line of said Section 19, North 03° 56' 05" East, 969.58 feet to an intersection with the Southerly line of Bulow Grant Lot 4 for the Point of Beginning; thence run South 68° 05' 38" West, along the said South line of Bulow Grant Lot 4, 4,518 feet, more or less, to the Westerly mean high water line of Bulow Creek; thence Northwesterly and meandering along the said Westerly mean high water line of Bulow Creek to an intersection with the North line of said Bulow Grant Lot 4; thence North 67° 59' 19" East, along said North line of Bulow Grant Lot 4, 4,696 feet, more or less, to the East line of the said Bulow Grant and to the Northeast corner of said Bulow Grant Lot 4; thence South 35° 51' 25" East, along the said East line of the Bulow Grant Lot 4, 316.17 feet to an intersection with the Westerly line of the Florida East Coast Canal Intracoastal Waterway (Haulover Creek), a 500 foot right-of-way as recorded in Deed Book 19, Page 50, Public Records of Flagler County, Florida; thence South 49° 29' 14" West, along the said Westerly right-of-way line of the Florida East Coast Canal, 1491.61 feet; thence South 35°46' 14" East, along the said Westerly right-of-way line of the Florida East Coast Canal, 571.75 feet to the aforesaid Southerly line of Bulow Grant Lot 4; thence South 88° 31' 49" West, a distance of 905.32 feet; thence South 03° 56' 05" West, a distance of 351.20 feet to the Point of Beginning.

LESS AND EXCEPT that portion thereof lying within John Anderson Highway.

FURTHER LESS AND EXCEPT a portion of Section 38, Township 12 South, Range 31 East, Flagler County, Florida; and also being a portion of Bulow Grant Lot 4, being more particularly described as follows:

From a point of reference commence at the Northeast corner of Bulow Grant Lot 6, said point being the Southwest corner of Government Lot 3 of Section 30, Township 12 South, Range 32 East, thence North 24° 52' 38" West, a distance of 1306.04 feet to the Southwest corner of Section 19, Township 12 South, Range 32 East; thence continuing along the West line of said Section 19, North 03° 51'32" East, a distance of 969.58 feet to an intersection with the Southerly line of Bulow Grant Lot 4; thence South 68° 01' 05" West, along the said South line of Bulow Grant Lot 4, a distance of 2315.88 feet to the Easterly right of way of John Anderson Highway (a 100 foot right of way); thence North 16° 40' 17" West, along the said Easterly right of way of John Anderson Highway a
distance of 711.44 feet to the Point of Beginning; thence North 67° 45' 46" East, leaving said Easterly right of way of John Anderson a distance of 374.87 feet; thence North 08° 48' 18" West, a distance of 51.41 feet; thence South 67° 45' 46" West, a distance of 93.23 feet; thence North 20° 50' 40" West, a distance of 225.98 feet; thence South 68° 38' 22" West, a distance of 271.81 feet to the aforesaid Easterly right of way of John Anderson Highway; thence South 16° 40' 17" East, along said Easterly right of way of John Anderson Highway a distance of 281.40 feet to the Point of Beginning.
EXHIBIT "B"
PUD Site Development Plan
THIRD AMENDMENT TO
BULOW PRESERVE N/K/A SEASIDE LANDING AT FLAGLER BEACH
PUD DEVELOPMENT AGREEMENT

THIS THIRD AMENDMENT TO BULOW PRESERVE (N/K/A SEASIDE LANDING AT FLAGLER BEACH) DEVELOPMENT AGREEMENT (hereinafter referred to as the ("Development Agreement") is made and entered into as of the ___ day of _____, 2019 by and between BULOW SHORES HOMEOWNERS ASSOCIATION, INC. a Florida Not-For-Profit Corporation, whose address is 1410 Palm Coast Pkwy NW, Palm Coast, Florida 32137 ("Applicant") and FLAGLER COUNTY, a political subdivision of the State of Florida, whose mailing address is 1769 East Moody Boulevard, Building 2, Bunnell, Florida 32110 ("County").

WITNESSETH:

WHEREAS, Seaside Landings LLC ("previous applicant") was the owner of a 250± acre (609± acres less the 359± acres deeded to the public) parcel of land that is situated in Flagler County, Florida, bounded by Bulow Creek to the west and the Intracoastal Waterway to the east. This parcel of land is currently referred to as Bulow Preserve, and is more particularly described in Exhibit "A" and depicted in the plan dated May 18, 2015, consisting of one (1) sheet prepared by Miller Legg and Associates (the "PUD Site Development Plan"), attached in Exhibit "B" hereto. The PUD Site Development Plans describing the parcel of land shall be filed and retained for public inspection in the office of the Flagler County Planning and Zoning Department, and the description of the parcel of land contained in the PUD Site Development Plan is incorporated herein by reference (the "Property"); and

WHEREAS, William and Mary Lenssen, as previous parties and co-applicants for this Property, have previously elected to remove their parcel – Parcel No. 38-12-31-0000-04050-0020 and 1.90 acres in size – from the Bulow Preserve PUD, to be combined with sufficient lands from the Applicant and contiguous to their parcel to the south so as to exceed the minimum parcel size requirements of the AC (Agriculture) zoning district, totaling 7.68± acres, which will be rezoned through a subsequent application which has been filed with the County, resulting in an eventual area of the Property of 242± acres following conveyance; and

WHEREAS, the Property is subject of Flagler County Ordinance 2005-01, Ordinance 2006-28, Ordinance No. 2016-04, and the associated Bulow Preserve PUD Development Agreement as amended. Flagler County Ordinance 2005-01 amended the zoning of the subject property to PUD (Planned Unit Development) District. The associated amended Development Agreement set forth development criteria for the Bulow Preserve PUD; and

1
WHEREAS, the Property is subject of that certain Mediated Settlement Agreement entered into by the Von Bulow Corporation, Flagler County and the Board of Trustees of the Internal Improvement Trust Fund resolving Case No. 04-482CA of the Seventh Judicial Circuit, providing for the transfer of density at one dwelling unit per five acres of the disputed parcel and the conveyance of approximately 359 acres to the public for preservation; and

WHEREAS, a Warranty Deed was executed on April 21, 2007 (Official Records Book 1565, Page 1834, Public Records of Flagler County, Florida) transferring said 359 acres to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, effectively transferring the development rights for 71.8 units of density to be used within this project consistent with the Mediated Settlement Agreement; and

WHEREAS, the Bulow Preserve PUD Development Agreement was previously amended by Ordinance No. 2016-04 in order to develop the Property as a Planned Unit Development, composed of 99 single family residential lots, with various waterfront and natural amenities, with all common facilities and amenities to be operated by a homeowners' association or granted in fee simple to a public agency for perpetual preservation; and

WHEREAS, the previous applicant has transferred control of the homeowners' association to the lot owners of Bulow Preserve, which now operates and manages the Bulow Preserve property; and

WHEREAS, given the unique nature of the development whereby large portions of lots are submerged by adjacent water bodies, the Applicant has applied to amend the existing Bulow Preserve PUD Development Agreement as provided in Section 3.03.20 of the Flagler County Land Development Code (as now or hereafter amended, the “Land Development Code”); and

WHEREAS, the amendment of the PUD is consistent with the Flagler County Comprehensive Plan and meets the guidelines established by the policies and the intent and purpose of Flagler County Ordinances and the Comprehensive Plan, and does promote the public health, safety, morals, general welfare and orderly growth of the area affected by the rezoning request.

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable considerations exchanged between the parties hereto, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals:
The above recitals are true and correct and incorporated herein by this reference.

2. Findings:

The proposed amendment to the existing approved PUD does not adversely affect the orderly development of Flagler County and complies with the Comprehensive Plan adopted by the Flagler County Board of County Commissioners and the proposed amendment to the existing approved PUD will not adversely affect the health and safety of residents or workers in the area and will not be detrimental to the use of adjacent properties or the general neighborhood.

3. Development Agreement:

(a) The Planned Unit Development consists of this "Development Agreement" and the PUD Site Development Plan. This Development Agreement and the PUD Site Development Plan shall be filed and retained for public inspection in the office of the Flagler County Planning and Zoning Department. All amendments to this Development Agreement and the PUD Site Development Plan, other than those deemed by the Growth Management Director to be minor amendments as set forth in Section 3.04.02(G) of the Land Development Code, shall require the review and recommendation of the Flagler County Planning Board and the Flagler County Board of County Commissioners in the same manner as for the original rezoning.

(b) This Development Agreement shall be recorded in the Public Records of Flagler County, Florida, upon approval and following execution by the Flagler County Board of County Commissioners. The Applicant shall pay all recording costs.

4. Platting:

(a) The Applicant will obtain final plat approval for all site related improvements provided for in the PUD Site Development Plan, including but not limited to, landscaping and infrastructure improvements. The conditions of plat approval shall be consistent with this Agreement.

(b) The Applicant or its successor shall maintain unified ownership of the Property until after approval of the Final Plat(s) for the specific portion of the Property being subdivided.

(c) The Applicant shall be permitted, but not required, to plat or subdivide the Property in the manner provided in the PUD Site Development Plan, and as further refined in plat(s) submitted to the County, and transfer said platted or subdivided parcels within the Property.
5. Development Standards:

(a) For so long as the property remains zoned PUD, the development of the Property shall be consistent with the limits for use as prescribed for each land use area within the approved PUD. To the extent that this Development Agreement and/or the approved PUD Site Development Plan are inconsistent with the requirements of the Land Development Code, this Development Agreement and the approved PUD Site Development Plan shall control. The Property shall be eligible for special exceptions, home occupations and for individual variances provided the overall scheme of development approved herein is not impaired and provided all standards and criteria for the issuance thereof are met. The location and size of the residential land use areas are shown generally on the PUD Site Development Plan, and shall be further delineated in subsequent plat submissions submitted to the County for review and approval. Uses within the residential area shall be as provided in this paragraph.

(b) The following are preliminary development standards that shall be applied and further refined as part of future plat submissions pertaining to the Property:

(1) Total number of single family detached residential lots: Maximum of 99.

(2) Residential building setbacks: All setbacks will be measured from the adjacent property line to the vertical wall of the dwelling unit, at ground level. For waterfront lots, the minimum setback shall be measured from the mean high water line.

Front yard: 20 feet

Rear yard: 20 feet

Rear yard (canal lots, east of John Anderson Highway): 5 feet from the mean high water line

Side yard interior lot: 10 feet

Abutting any street: 20 feet

Canal lots will be allowed to cantilever structures waterward of the rear setback line, but floors above the first or ground floor may not project beyond the mean high water line.

(3) Buffer Requirements:
a. **John Anderson Highway**: There will be a 100 foot wide buffer along each side of John Anderson Highway, which may consist of private and/or commonly held property. The buffer will be kept in its natural state and will not be cleared with the exception of the entrances to the development, and crossings for driveways and utilities. Management of the buffers along each side of John Anderson Highway shall be in accordance with "Firewise" best management practices, which may include periodic underbrushing, but not tree removal, to reduce fire fuel load.

b. **Archaeological site**: During site evaluation, an archaeological study revealed the existence of a prehistoric shell midden lying partly within an otherwise designated buffer, which has been designated as Site 8FL229 in the Florida Master Site File. The Applicant shall convey this Site to William and Mary Lenssen as part of the removal of their parcel from the PUD and the addition of acreage associated with the rezoning of their parcel to its previous AC (Agriculture) zoning district designation.

c. **Bulow Creek**: The Bulow Creek Buffer/Wildlife Corridor shall correspond to the existing Conservation Future Land Use designation, consisting of forested wetlands and adjacent uplands, which shall be additionally placed in a conservation easement or otherwise restricted from development subject to County approval at the time of plat approval.

d. **South project buffer, west of John Anderson**: There shall be a one-hundred twenty (120) foot wide buffer along the southern border of the project west of John Anderson Highway running west to Bulow Creek. There shall be a stabilized roadway along the northern portion of this buffer that meanders as needed to preserve mature trees terminating at its most westernmost point with six (6) parking spaces at the canoe launch facility. No other development will be allowed in this designated buffer.

e. **North project buffer, east of John Anderson**: There shall be a one-hundred (100) foot buffer along the northern border of the project west of John Anderson Highway
running west to Bulow Creek. No development will be allowed in this designated buffer.

(4) Phases: The Applicant shall be permitted to develop the Property in not more than two phases, as approved herein by Flagler County and may be subsequently platted in not more than two phases consistent with this Development Agreement.

(5) Maximum Gross density: 1 unit per 5.7 acres. However, approximately 44.375 acres of the Property located adjacent to Bulow Creek are designated as Conservation by the Flagler County Comprehensive Plan and shall receive no density credit. The transfer of density from the Von Bulow Islands not so designated, consisting of approximately 359 acres of land, shall otherwise be and is hereby permitted in accordance with the terms of the Mediated Settlement Agreement in *The Von Bulow Corporation v. Flagler County and the Board of Trustees of the Internal Improvement Trust Fund*, Case No. 04-482CA, Circuit Court for Flagler County the ("Settlement Agreement").

(6) Minimum Square footage of each home: 1,800 square feet.

(7) Maximum Lot Coverage: The total lot area covered with principal and accessory buildings shall not exceed fifty-five (55) percent. For the purposes of calculating the Maximum Lot Coverage, the percentage shall be applied to the total area of the entire lot indicated on the plat, including submerged portions.

(8) Minimum Pervious Area: Each lot shall have a minimum pervious area of at least thirty (30) percent. For the purposes of calculating the pervious area, any submerged portions of lots shall be considered pervious. Further, parts of any permitted docks or boathouses (roofed or not roofed) located over a body of water shall be considered pervious; provided, however, that any part of a roofed boathouse located over an unsubmerged part of a lot shall be considered impervious.

(9) Maximum Building Height: 3 stories or 40 feet at peak of roof, measured from the centerline of the nearest adjacent street. Notwithstanding the foregoing, chimneys, catwalks and porch towers constructed as an integral part of the main residence structure may extend up to 50 feet in height, but further provided that the square footage of any level floor area of such a catwalk or porch tower may not exceed 200 square feet.
(10) Minimum driveway depth: 22 feet from edge of private street to garage door entry.

(11) Minimum separation between buildings on a lot: 10 feet.

(12) Minimum lot size: 6,000 square feet.

(13) Sidewalk/bike path: The Applicant shall construct an eight (8) foot wide bicycle path along John Anderson Highway, west of the existing paved roadway and connecting to the southerly terminus of the bicycle path constructed as part of the subdivision improvements for the Flagler Beach Polo Club subdivision, Map Book 34, Page 37, Public Records of Flagler County, Florida. This bicycle path will be paved concrete or asphalt, as approved by the County Development Engineer, and will measure approximately 2,200 linear feet in length. Construction of the bicycle path will be completed and approved by the County prior to any final plat approval for the Property. Once completed, the bicycle path will be maintained by the County in perpetuity as part of the John Anderson Highway right-of-way.

(14) Subdivision Sign(s): The Applicant shall construct a Subdivision sign(s) at the entryway to the subdivision on the east side of John Anderson Highway. The sign(s) will have a maximum of forty-eight (48) square feet of copy area and may be incorporated into a landscape feature, not to exceed nine (9) feet in height, as part of an approved Landscape Design Plan.

(15) Construction within Easements: Lot owners shall not construct any improvement within any easement areas located between Lots (i.e., side lot line easements for drainage or utilities).

6. Land Uses:

All permitted principal uses in the R-1 zoning district for those areas designated as residential shall be permitted. This shall consist of single-family residential together with those accessory uses permitted in the R-1 zoning district and a non-commercial, community clubhouse and other community recreational facilities.

7. Environmental Considerations:

(a) The percentage of the Property dedicated to residential lots shall be limited to a maximum of thirty percent (30%) of the original 609± acre total PUD acreage.
Substantially all lands within the jurisdiction of the Florida Department of Environmental Protection and not otherwise conveyed under the Settlement Agreement or approved by said Department for mitigation, shall be subject to a conservation easement or otherwise maintained as open space.

(b) Subject to permitting, if applicable, by the Florida Department of Environmental Protection, docks and boathouses shall be constructed based upon the following standards:

(1) Docks for single family homes will be permitted on an individual basis for lots along the canals and any waters contiguous to the Intracoastal Waterway (not including Bulow Creek).

(2) Docks for single family homes shall have a minimum setback of 15 feet from the side property line, unless a common dock is shared by an adjoining property under a recorded agreement.

(3) Docks will extend from shorelines to a length adequate to reach sufficient water depth to prevent prop dredging (but no greater in length or area than permitted by any regulation).

(4) Any dock, boardwalk and associated terminal platforms constructed within the Property shall meet the standard permitting requirements of Flagler County and the St. John's River Water Management District, the Florida Department of Environmental Protection and the United States Army Corps of Engineers, as applicable. Docks and boathouses shall be limited to a maximum of 1,000 square feet unless: (i) approved by the St. Johns River Water Management District or other agency having jurisdiction to permit such structures; and (ii) a Flagler County building permit is issued.

(5) A maximum of two (2) community boat ramps and docks may be permitted for use by residents of the PUD. The community boat ramps and docks will be owned, operated and maintained by the homeowners' association.

a. Bulow Creek shall be limited to a single community dock for limited watercraft (non-motorized, electric motor or gas-powered motor not to exceed 10 hp; jet skis or wave runners are specifically prohibited) and with terminal platform size not to exceed 300 square feet. A community boat shed or canoe locker, not to exceed 1,000 square feet
under roof, may be located on common upland area in the vicinity of the Bulow Creek dock.

b. One community dock/ramp will be permitted along the canals or any waters contiguous to the Intracoastal Waterway.

c. All environmental restrictions provided in this Development Agreement also shall be included in the Covenants, Conditions and Restrictions of the homeowners' association and recorded within the Public Records of Flagler County, Florida.

(c) Sections 5.01.04(3) and 6.01.03 of the Land Development Code prescribe landscape development standards and index tree protection and replacement requirements. To satisfy the requirements of either Section of the Land Development Code, or any other provision of the Land Development Code which may require the preservation or replanting of trees, owners of lots within the development may, upon approval of the homeowners' association, transfer up to fifty percent (50%) of the required caliper replacement (measured in inches) to the homeowners' association provided that the trees associated with any transfer of caliper inches are planted on common areas or association property within the development. Nothing herein shall be construed to transfer any obligation of a lot owner to comply with the above-referenced provisions of the Land Development Code to the homeowners' association.

8. Potable Water and Sewage:

The Applicant anticipates that potable water will be provided by the City of Flagler Beach. All lots under one acre in size within this development shall be required to connect to central potable water and sanitary sewer service in accordance with Florida law. The Applicant will construct the infrastructure, to include individual water and sewer lines and taps, necessary to provide for each lot (under one acre in size) or amenity requiring a connection to connect to public water and sewer. To the extent that lines to facilitate such connection are not anticipated to be included in public rights-of-way or easements, then a fifteen (15) foot wide utility easement shall be reserved by the Applicant as necessary in conjunction with the final platting of the Property. A fifteen (15) foot wide utility easement shall be granted in conjunction with the final platting of the Property to connect interior private roadways and easements with John Anderson Highway for the purpose of facilitating water and sewer connections.

Lots one acre or more in size shall be allowed to develop by providing their own individual on-site potable drinking water well and approved on-site septic disposal system.
(a) Landscape irrigation: Individual wells will be allowed for landscape irrigation purposes, subject to permitting by the Florida Department of Health.

9. Stormwater Drainage:

Stormwater management systems shall meet or exceed the requirements of the Land Development Code and the St. Johns River Water Management District. All tracts intended for use for stormwater purposes and dedicated for such purpose by plat shall be owned and maintained by the homeowners' association.

10. Private Roadways:

All roads within the Property and/or easements shall be owned and maintained by the Applicant and/or the homeowners' association. Membership in the homeowners' association by the owner(s) of each lot will be mandatory. The roadway system within the PUD may be gated and its use by the general public may be restricted with the exception of ordinary utility and government services for the residents and for emergency personnel. The main access travel ways into the Property shall be designed as minimum 26 foot wide 2-way pavement (twenty-two (22) foot wide asphalt pavement with a two (2) foot wide curb on each side) cross-section streets. Any gate constructed must meet the design standards of Flagler County Fire Services.

11. Covenants and Restrictions:

A copy of the Covenants, Conditions and Restrictions shall be furnished to the County following recordation. The Applicant shall be responsible for recording said information in the Public Records of Flagler County, Florida. The Applicant also shall pay all costs for recording the aforementioned documents. The County may only enforce the provisions of this Development Agreement and the Flagler County Land Development Code, as applicable, and not private agreements, covenants, restrictions and easements entered into between subsequent owners of lots in the PUD or imposed by the Applicant on the Property.

12. Tri-party Settlement Agreement:

Recorded at Official Records Book 1241, page 680 of the Public Records of Flagler County, Florida is the Settlement Agreement entered into by the previous Applicant (The Von Bulow Corporation), Flagler County and The Board of Trustees of the Internal Improvement Trust Fund. The Settlement Agreement is the result of litigation between the parties over the ownership and control of certain real property adjacent to the Intracoastal Waterway. Under the terms of the Settlement Agreement, the Applicant is obligated to deed approximately 359 acres of real property that was the subject of the litigation to the Board of Trustees of the Internal Improvement Trust Fund.
prior to commencement on the development of the subdivision envisioned by this Development Agreement. The Applicant hereby agrees to deliver a deed to such property within thirty (30) days from the receipt of all necessary approvals to commence construction of the project or prior to the conveyance of any parcel encumbered by this agreement. A Warranty Deed was executed on April 21, 2007 (Official Records Book 1565, Page 1834, Public Records of Flagler County, Florida) transferring said 359 acres to the Board of Trustees of the Internal Improvement Trust Fund.

13. Notice:

Any notice delivered with respect to this Development Agreement shall be in writing and be deemed to be delivered when (i) hand delivered to the other party at the address appearing on the first page of this Development Agreement, or (ii) when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address appearing on the first page of this Development Agreement to the person or address as the party shall have specified by written notice to the other party delivered in accordance herewith.

14. Covenant Running with the Land:

The provisions of this Development Agreement shall run with the Property and bind and inure to the benefit of the Applicant or its successor in title or interest.

15. Recording:

The parties hereto agree that an executed original of this Development Agreement shall be recorded by the County, at the Applicant’s expense, in the Public Records of Flagler County, Florida. All subsequent orders and resolutions relating to the Property of this Development Agreement shall be filed by the County in the Official Records of Flagler County, Florida.

16. Applicable Law:

This Development Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

17. Amendment:

This Second Amendment to Bulow Preserve PUD Development Agreement constitutes the entire agreement between the parties, and supersedes all previous discussions, understandings and agreements, with respect to the subject matter hereof. Amendments to and waivers of the provisions of this Development Agreement shall be made by the parties only in writing by formal amendment.
18. **Counterparts:**

This Development Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

19. **Captions:**

Captions of the Sections and Subsections of this Development Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Development Agreement.

20. **Severability:**

If any word, sentence, phrase, paragraph, provision, or portion of this Development Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion hereof so long as the purpose and intent of this Development Agreement can still be achieved.

21. **Construction:**

In the event of an inconsistency between the terms of this Development Agreement and the PUD Site Development Plan, the terms of this Development Agreement will control.

[Signature page follows]
IN WITNESS WHEREOF, the parties hereto have set their hand this ___ day of
__________________, 2019.

"APPLICANT"

BULOW SHORES HOMEOWNERS ASSOCIATION, INC.
a Florida Not-For-Profit Corporation

__________________________________________
Print Name: ____________________________

By: _________________________________

Name: ____________________________

Title: ________________________________

__________________________________________
Print Name: ____________________________

STATE OF _______________________

COUNTY OF _______________________

The foregoing instrument was acknowledged before me this ___ day of
________________, 2019, by ____________________________, as President of Bulow Shores
Homeowners Association, Inc., on behalf of the corporation. He [ ] is personally known
to me, or has produced _______________________________ as identification.

__________________________________________
NOTARY PUBLIC
Print Name: ____________________________

[Signatures continued on next page]
ATTEST:

Tom Bexley, Clerk of the Circuit Court and Comptroller

APPROVED AS TO FORM:

Al Hadeed, County Attorney
EXHIBIT “A”
Legal Description

A portion of Sections 19 and 37, Township 12 South, Range 32 East, a portion of Section 38, Township 12 South, Range 31 East, Flagler County, Florida; and also being a portion of Bulow Grant Lot 4 lying Easterly of the Westerly mean high water line of Bulow Creek, all in Flagler County, Florida, and being more particularly described as follows:

Commence at the Northeast corner of said Bulow Grant Lot 6, said point also being the Southwest corner of Government Lot 3 of Section 30, Township 12 South, Range 32 East; thence North 24° 48' 05" West, 1306.04 feet to the Southwest corner of aforesaid Section 19; thence continuing along West line of said Section 19, North 03° 56' 05" East, 969.58 feet to an intersection with the Southerly line of Bulow Grant Lot 4 for the Point of Beginning; thence run South 68° 05' 38" West, along the said South line of Bulow Grant Lot 4, 4,518 feet, more or less, to the Westerly mean high water line of Bulow Creek; thence Northwesterly and meandering along the said Westerly mean high water line of Bulow Creek to an intersection with the North line of said Bulow Grant Lot 4; thence North 67° 59' 19" East, along said North line of Bulow Grant Lot 4, 4,696 feet, more or less, to the East line of the said Bulow Grant and to the Northeast corner of said Bulow Grant Lot 4; thence South 35° 51' 25" East, along the said East line of the Bulow Grant Lot 4, 316.17 feet to an intersection with the Westerly line of the Florida East Coast Canal Intracoastal Waterway (Haulover Creek), a 500 foot right-of-way as recorded in Deed Book 19, Page 50, Public Records of Flagler County, Florida; thence South 49° 29' 14" West, along the said Easterly right-of-way line of the Florida East Coast Canal, 1491.61 feet; thence South 35° 46' 14" East, along the said Westerly right-of-way line of the Florida East Coast Canal, 571.75 feet to the aforesaid Southerly line of Bulow Grant Lot 4; thence South 88° 31' 49" West, a distance of 905.32 feet; thence South 03° 56' 05" West, a distance of 351.20 feet to the Point of Beginning.

LESS AND EXCEPT that portion thereof lying within John Anderson Highway.

FURTHER LESS AND EXCEPT a portion of Section 38, Township 12 South, Range 31 East, Flagler County, Florida; and also being a portion of Bulow Grant Lot 4, being more particularly described as follows:

From a point of reference commence at the Northeast corner of Bulow Grant Lot 6, said point being the Southwest corner of Government Lot 3 of Section 30, Township 12 South, Range 32 East, thence North 24° 52' 38" West, a distance of 1306.04 feet to the Southwest corner of Section 19, Township 12 South, Range 32 East; thence continuing along the West line of said Section 19, North 03° 51' 32" East, a distance of 969.58 feet to an intersection with the Southerly line of Bulow Grant Lot 4; thence South 68° 01' 05" West, along the said South line of Bulow Grant Lot 4, a distance of 2315.88 feet to the Easterly right of way of John Anderson Highway (a 100 foot right of way); thence North 16° 40' 17" West, along the said Easterly right of way of John Anderson Highway a
distance of 711.44 feet to the Point of Beginning; thence North 67° 45' 46" East, leaving said Easterly right of way of John Anderson a distance of 374.87 feet; thence North 08° 48' 18" West, a distance of 51.41 feet; thence South 67° 45' 46" West, a distance of 93.23 feet; thence North 20° 50' 40" West, a distance of 225.98 feet; thence South 68° 38' 22" West, a distance of 271.81 feet to the aforesaid Easterly right of way of John Anderson Highway; thence South 16° 40' 17" East, along said Easterly right of way of John Anderson Highway a distance of 281.40 feet to the Point of Beginning.
Attached are departmental comments regarding your submittal to Flagler County for the above referenced project. Any questions regarding any of the comments should be addressed to the department providing the comment.

Flagler County Building Department  386-313-4002
Flagler County Planning Department  386-313-4009
Flagler County Development Engineering  386-313-4082
Flagler County General Services (Utilities)  386-313-4184
County Attorney  386-313-4005
Flagler County Fire Services  386-313-4258
E-911 GIS Specialist  386-313-4274
Environmental Health Department  386-437-7358
Flagler County School Board  386-586-2386
REVIEWING DEPARTMENT: BUILDING DEPARTMENT

No comments at this time.

REVIEWING DEPARTMENT: COUNTY ATTORNEY

As presented, this application does not meet the minimum criteria for a variance. The applicant needs to present evidence to support the conclusory statements in the application.

REVIEWING DEPARTMENT: DEVELOPMENT ENGINEERING

No comments at this time.

REVIEWING DEPARTMENT: E-911 STAFF

No comments for this project.

REVIEWING DEPARTMENT: ENVIRONMENTAL HEALTH DEPT

No objections or comments to the proposed building, as the building is at the other end of the property from the existing septic system and does not adversely impact the system or required unobstructed area.

REVIEWING DEPARTMENT: FIRE INSPECTOR

No comments at this time

REVIEWING DEPARTMENT: PLANNING DEPARTMENT

Application submitted does not meet the minimum requirements for a variance. Evidence must be submitted meeting criteria for the request. If application to proceed to Planning Board as currently submitted a recommendation of denial will be provided to the Board.
**APPLICATION FOR VARIANCE**

**FLAGLER COUNTY, FLORIDA**

1769 E. Moody Blvd, Suite 105
Bunnell, FL 32110
Telephone: (386) 313-4009 Fax: (386) 313-4109

**APPLICATION FOR VARIANCE**

**FLAGLER COUNTY, FLORIDA**

1769 E. Moody Blvd, Suite 105
Bunnell, FL 32110
Telephone: (386) 313-4009 Fax: (386) 313-4109

### Property Owner(s)

<table>
<thead>
<tr>
<th>Name(s)</th>
<th>Joshua T Gaither</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mailing Address</td>
<td>740 Kentucky Ave</td>
</tr>
<tr>
<td>City</td>
<td>Bunnell</td>
</tr>
<tr>
<td>State</td>
<td>FL</td>
</tr>
<tr>
<td>Zip</td>
<td>32110</td>
</tr>
<tr>
<td>Telephone Number</td>
<td>386-882-2738</td>
</tr>
<tr>
<td>Fax Number</td>
<td>N/A</td>
</tr>
</tbody>
</table>

### Applicant/Agent

<table>
<thead>
<tr>
<th>Name(s)</th>
<th>Same as property owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mailing Address</td>
<td></td>
</tr>
<tr>
<td>City</td>
<td></td>
</tr>
<tr>
<td>State</td>
<td></td>
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<tr>
<td>Zip</td>
<td></td>
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<tr>
<td>Telephone Number</td>
<td></td>
</tr>
<tr>
<td>Fax Number</td>
<td></td>
</tr>
</tbody>
</table>

### E-Mail Address

josgaither88@yahoo.com

### Site Location

- **SITE LOCATION (street address):** 740 Kentucky Ave, Bunnell FL 32110
- **LEGAL DESCRIPTION:** Flagler Truck Farms Lot 7
- **Parcel # (tax ID #):** 32-12-29-2400-0000-0700
- **Parcel Size:** 1.00 AC
- **Current Zoning Classification:** Homestead, primary residence
- **Current Future Land Use Designation**
- **Subject to A1A Scenic Corridor IDO?** NO

### Relief Requested:

- Set back requirement variance for proposed building.

Signature of Owner(s) or Applicant/Agent:

Date: 10-21-19

**OFFICIAL USE ONLY**

**PLANNING BOARD RECOMMENDATION/ACTION:**

- **APPROVED** [ ]
- **APPROVED WITH CONDITIONS** [ ]
- **DENIED** [ ]

Signature of Chairman:

Date: 10-21-19

*approved with conditions, see attached.

**NOTE:** The applicant or a representative, must be present at the Public Hearing since the Board, at its discretion, may defer action, table, or take decisive action on any application.

Rev. 09/16
E. Variance guidelines. A variance may be granted, upon application, from the terms and provisions of this article as will not be contrary to the public health, safety, welfare and morals where, owing to special conditions, a literal enforcement of the provisions of this article will, in an individual case, result in unnecessary hardship. Such variances may be granted by the planning board in such individual case of unnecessary hardship upon a written finding that:

1. There are extraordinary and exceptional conditions pertaining to particular piece of property in question because of its size, shape, topography, or other unique features that, when considered in whole or part, creates an unnecessary hardship; and the proposed building cannot feasibly be constructed elsewhere on the property due to the size of the proposed building, location of the existing septic tank, and size of the property.

2. Such conditions were not created by the affirmative actions of the applicant and the applicant has acted at all times in good faith; and all other possible locations within the setback requirements without a variance have been exhausted.

3. The variance, if granted, would not cause substantial detriment to the public health, welfare, safety, and morals of the community or impair the purpose and intent of this article; and will not create a negative impact for the immediately adjacent neighbor. would also not adversely affect the general public in any way.

4. No variance may be granted for a use of land or building that is not permitted by this article.

The proposed building shall be utilized for storage of personal items such as a boat, which is an accessory to the single family dwelling.

A variance, if granted, shall be the minimum variance necessary to alleviate the hardship. For purposes of this section, an unnecessary hardship shall mean that without the granting of the variance the owner will be deprived of all reasonable use of the property as allowed in the zoning district.
THIS WARRANTY DEED made the 11th day of September, 2019 by

Ronald Dean Lewis, Jr., a single man and Haley Nichole Lewis N/K/A Hailey Nichole Davis

whose street address is 76 Kentucky Ave, Bunnell, FL 32110

hereinafter called the grantor, to

Joshua T. Galanter

whose street address is 76 Kentucky Ave, Bunnell, FL 32110

hereinafter called the grantee,

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

WITNESSETH, that the grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) and other valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed and confirmed unto the grantee and grantor's heirs forever the following described land situate in County of Flagler, State of Florida, to wit:

Lot 75 and 76, Map of Flagler Tract Farms, a subdivision according to the plat or map thereof described in Map Book 5, Page 43, of the Public Records of Flagler County, Florida.

GRANTOR WARRANTS THAT THIS IS NOT THE HOMESTEAD PROPERTY OF Haley Nichole Lewis N/K/A Hailey Nichole Davis

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

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

And the grantor hereby covenants with the 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, and hereby 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 31st, 2018. FURTHER SUBJECT TO Restrictions, Reservations, Covenants, Dedication, Resolutions, Conditions and Easements of record, if any, however this reference shall not operate to re-impose same.

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

[Signature]
Steve Davis

[Signature]
Ronald Dean Lewis, Jr.

Haley Nichole Lewis N/K/A Hailey Nichole Davis

Notary Public
My Commission Expires: 07/11/2026

The foregoing instrument was acknowledged before me this 11th day of September, 2019 by Haley Nichole Lewis N/K/A Hailey Nichole Davis who is personally known to me or who produced satisfactory identification and who did/did not take an oath.

Notary Public
My Commission Expires: 07/11/2026
DECLARATION OF UNITY OF TITLE

Whereas, Joshua T. Gaither (hereinafter the "Owner") owns two adjacent parcels of real property located within Flagler County, Florida, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (hereinafter together referred to as "the Property"); and

Whereas, the Property was acquired by the Owner pursuant to that Warranty Deed from Ronald Dead Lewis, Jr., a single man and Hailey Nichole Lewis N/K/A Hailey Nichole Davis, dated September 18, 2019 and recorded September 30, 2019 in Official Records Book 2387, at Page 575, of the Public Records of Flagler County, Florida; and

Whereas, the Owner has made application for issuance of a development order on a project that is designed in a manner that necessitates the Property being held in unified ownership as a single integrated parcel; and

Whereas, in order to assure that the Property will be used and developed and remain as a single integrated parcel and that the development of the Property complies with all land development regulations of the County of Flagler, including any variances heretofore granted with respect thereto, and in consideration of the County's issuance of development order, the Owner has agreed to execute this Declaration of Unity of Title and to record same in the Public Records of Flagler County, Florida.

Now therefore, the Owners declare that the Property shall hereafter be owned, used and developed and shall remain as a single integrated parcel and that no portion of the Property shall be sold, assigned, transferred, conveyed or devised separately. The Owner further declares and agrees that this condition, restriction, and limitation shall be deemed to be a covenant running with the land, and shall remain in full force and effect, and be binding upon the Owners, their successors, heirs, and assigns until such time as the same may be released in writing by the Flagler County Board of County Commissioners.

SIGNATURES ON FOLLOWING PAGE
IN WITNESS WHEREOF, the owner has caused this instrument to be duly executed as of this 7th day of October, 2019.

Signed, Sealed and Delivered
In the Presence of:

Witness

Joshua T. Gaither

Witness

The foregoing instrument was acknowledged before me this 7th day of October, 2019, by Joshua T. Gaither who is personally known to me or has produced as identification.

Notary Public and Expiration Date: March 21, 2021
Exhibit A

Parcel ID Number 32-12-29-2600-00000-0760 and 32-12-29-2600-00000-0750

Lot 75 and 76, Map of Flagler Truck Farms, a subdivision according to the plat or map thereof described in Map Book 5, Page 43, of the Public Records of Flagler County, Florida.
THIS WARRANTY DEED made the 12th day of September, 2019 by

Ronald Dean Lewis, Jr., a single man and Hailey Nichole Lewis N/K/A Hailey Nichole Davis

whose street address is 76 Kentucky Ave, Bunnell, FL 32110

hereinafter called the grantor, to

Joshua T. Gaither

whose street address is 500 County Road 367D, Bunnell, FL 32110

hereinafter called the grantee.

(Whenever used herein the words "grantor" and "grantee" shall 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 AND NO/100 DOLLARS ($10.00) and other valuable considerations to said grantor in hand paid by said grantees, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, released, surrendered and confirmed unto the grantees and grantee's heirs forever the following described landsituate in County of Flagler, State of Florida, to wit:

Lot 75 and 76, Map of Flagler Tract Farms, a subdivision according to the plat or map thereof described in Map Book 9, Page 43, of the Public Records of Flagler County, Florida.

GRANTOR WARNTS THAT THIS IS NOT THE HOMESTEAD PROPERTY OF Hailey Nichole Lewis N/K/A Hailey Nichole Davis

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

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

And the grantor hereby covenants with the grantees that the grantor is lawfully seffed in said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land, and hereby 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 31st, 2018. FURTHER SUBJECT TO Restrictions, Reservations, Covenants, Dedication, Resolutions, Conditions and Easements of record. If any, however this reference shall not operate to reissue same.

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

[Signatures]

[Printed or Typewritten Name] 
Ronald Dean Lewis, Jr.

[Printed or Typewritten Name] 
Hailey Nichole Lewis N/K/A Hailey Nichole Davis

[Printed or Typewritten Name]

STATE OF: Florida
COUNTY OF: Flagler

The foregoing instrument was acknowledged before me this 12th day of September, 2019, by Ronald Dean Lewis, Jr., who is personally known to me or who produced a, , as identification and who did not take an oath.

[Signature]
Notary Public
My Commission Expires: 07/17/2026