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**AGENDA ITEM
ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS**

Deadline for Submission - Wednesday 9 a.m. – Thirteen Days Prior to BCC Meeting

4/16/2019

BCC MEETING DATE

TO: Michael D. Wanchick, County Administrator **DATE:** April 1, 2019

FROM: Patrick F. McCormack, County Attorney **PHONE:** 209-0805

SUBJECT OR TITLE: Proposed Settlement of Ponte Vedra Corporation Litigation

AGENDA TYPE: Business Item, Contract, Resolution

BACKGROUND INFORMATION:

In September 2016, Ponte Vedra Corporation ("PVC") filed suit against St. Johns County regarding the proposed rezoning of a parcel of land PVC owns at the end of Neck Road in St. Johns County commonly referred to as the "Outpost." The County Attorney has managed the County's defense in the litigation. In order to resolve the dispute, PVC and staff have proposed to dismiss the litigation without prejudice and for PVC to submit an application to change the land use designation for the property. The application would be processed by staff and subsequently reviewed by the Board for transmittal and, if transmitted, for adoption, in conjunction with the pending rezoning application. The Board retains ultimate authority to approve or deny transmittal or adoption of the land use application and to approve or deny the rezoning application. In the event the land use change and rezoning applications are approved, the litigation would be dismissed with prejudice. The complete language can be found in the attached Settlement Agreement. The relevant departments have been consulted and reviewed the proposed settlement. The County Attorney is prepared to continue defending the litigation, but if the Board directs approval, recommends that the Settlement Agreement would serve the public interest.

1. IS FUNDING REQUIRED? No **2. IF YES, INDICATE IF BUDGETED.** No
IF FUNDING IS REQUIRED, MANDATORY OMB REVIEW IS REQUIRED:
INDICATE FUNDING SOURCE:

SUGGESTED MOTION/RECOMMENDATION/ACTION:

APPROVE: Motion to adopt Resolution 2019-_____, approving the terms, conditions, provisions, and requirements of the Settlement Agreement between St. Johns County and Ponte Vedra Corporation regarding the Outpost litigation, and authorizing the Chair to execute the Settlement Agreement on behalf of the County.

DENY: Motion to disapprove of the proposed Settlement Agreement between St. Johns County and Ponte Vedra Corporation and to direct the County Attorney to continue defense of the Outpost litigation.

For Administration Use Only:
Legal: BB 4/3/2019 **OMB:** JDD 4/3/2019 **Admin:** DML 4/3/2019

RESOLUTION NO. 2019-_____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF THE SETTLEMENT AGREEMENT BETWEEN ST. JOHNS COUNTY AND PONTE VEDRA CORPORATION REGARDING THE OUTPOST LITIGATION; AND AUTHORIZING THE CHAIR OF THE BOARD OF COUNTY COMMISSIONERS TO EXECUTE THE SETTLEMENT AGREEMENT ON BEHALF OF ST. JOHNS COUNTY.

RECITALS

WHEREAS, St. Johns County and Ponte Vedra Corporation are currently engaged in litigation styled as *Ponte Vedra Corporation v. St. Johns County, Florida*, Case No. CA16-0958, pending in St. Johns County Circuit Court (“Action”), concerning an approximately 100-acre parcel located in St. Johns County and owned by Ponte Vedra Corporation, commonly referred to as “the Outpost”; and

WHEREAS, in order to avoid the expense, delay, and uncertainty of lengthy litigation while protecting the public health, safety, and welfare, the County and Ponte Vedra Corporation desire to resolve all claims asserted in the Action and to formally memorialize the terms of the settlement in a writing consistent with the Settlement Agreement attached as Exhibit A hereto and incorporated herein; and

WHEREAS, the County has reviewed the Settlement Agreement and determined that approval of the Settlement Agreement, and the terms, conditions, provisions, and requirements thereof, is in the best interest of the public.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as finds of fact.

Section 2. The Board of County Commissioners hereby approves the terms, conditions, provisions, and requirements of the Settlement Agreement between St. Johns County and Ponte Vedra Corporation, and authorizes the Chair of the Board of County Commissioners to execute the Settlement Agreement on behalf of the County, in substantially the form and format as attached.

Section 3. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this ____ day of April, 2019.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

By: _____
Paul M. Waldron, Chair

ATTEST: Hunter S. Conrad, Clerk

By: _____
Deputy Clerk

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this “**Agreement**”) is entered into by and among PONTE VEDRA CORPORATION, a Florida corporation (“**PVC**”), and ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida (the “**County**”). PVC and the County may sometimes together be referred to herein as the “**Parties**.”

RECITALS

WHEREAS, the Parties are currently engaged in litigation styled as *Ponte Vedra Corporation v. St. Johns County, Florida*, Case No. CA16-0958, pending in St. Johns County Circuit Court (the “**Action**”), concerning an approximately 100-acre parcel located in St. Johns County and owned by PVC (the “**Property**”); and

WHEREAS, the Property is designated in the County’s current 2025 Comprehensive Plan (“**Comprehensive Plan**”) in the “Conservation” Future Land Use category and in the County’s Official Zoning Atlas, as provided by the Land Development Code (“**Code**”), in the “Open Rural” zoning district; and

WHEREAS, on July 11, 2016, PVC filed a Planned Unit Development rezoning application with the County seeking a rezoning of the Property to permit a low-density residential development (the “**PUD Application**”), which remains pending, and sought a separate boundary determination by the County Administrator through an administrative interpretation process; and

WHEREAS, in the Action, PVC alleges the County is obligated to timely process the PUD Application, that the County may not predicate processing the PUD Application on the processing of a Comprehensive Plan amendment, and that the PUD Application was sufficiently complete for processing at the time of submission (“**Count I**”); and

WHEREAS, in the Action, PVC further alleges that it is entitled to a formal and appealable administrative interpretation by the County Administrator that the Comprehensive Plan’s designation of property in the Conservation Future Land Use category is subject to a boundary determination based upon a demonstration of site specific conditions on the property as described in the Comprehensive Plan (“**Count II**”); and

WHEREAS, on December 11, 2018, partial summary judgment was entered in the Action in favor of the County as to Count II; and

WHEREAS, in the Action, PVC further alleges that the current Future Land Use designation of the Property as “Conservation” requires adjustment for the upland portions of the Property to the “Residential C” Future Land Use category under the Comprehensive Plan (“**Count III**”); and

WHEREAS, in the Action, PVC alleges that by failing to provide PVC with an administrative interpretation or by failing to provide final agency action as of the date of the Action, the County has violated PVC’s substantive and procedural due process rights under the Florida Constitution (“**Count IV**”); and

WHEREAS, the County continues to maintain, without limitation, all defenses asserted in the Action, including that Counts I, III and IV of the Amended Complaint in the Action are not ripe or are moot; and

WHEREAS, PVC and the County desire to resolve all claims asserted in the Action and to allow for PVC to apply for an amendment to the Comprehensive Plan designating the upland portions of the Property as in the “Residential-A” Future Land Use category and the jurisdictional wetland portions of the Property as in the “Conservation” Future Land Use category, while allowing the PUD Application to proceed concurrently; and

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants, promises, agreements and undertakings that follow, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree, each with the other, as follows:

AGREEMENT

1. Recitals. The recitations set forth in the Recitals are true and accurate and are incorporated as if fully set forth herein.

2. Settlement Terms. The Parties have agreed to resolve all claims that were raised or could have been raised in the Action as follows:

(a) Action. Within five (5) business days from the date that both Parties execute this Agreement, the Parties shall file in the Action the *Joint Motion for Approval of Settlement and for Dismissal With Prejudice as to Count II and Without Prejudice as to Remaining Counts* attached hereto as Exhibit “A” (the “**Joint Motion**”) and submit to the court for entry the *Consent Order Approving Settlement and Dismissing Action With Prejudice as to Count II and Without Prejudice as to Remaining Counts* attached hereto as Exhibit “B” (the “**Consent Order**”), requesting (i) approval of this Agreement, (ii) dismissal of the Action as contemplated by the Joint Motion and Consent Order, with each Party to bear its own attorneys’ fees and costs, and (iii) express retention of jurisdiction for the purposes of enforcing the terms and conditions of this Agreement. Within five (5) business days from the expiration of all appeals periods, without a successful appeal, following approval of the Amendment Application and the PUD application, the PVC shall notify the Court of the resolution of the Action in its entirety with prejudice, with each Party to bear its own attorneys’ fees and costs.

(b) Comprehensive Plan Amendment.

(i) Submission of Amendment Application. Within thirty (30) days from the date that both Parties execute this Agreement, PVC shall submit to the County an application for a Comprehensive Plan amendment seeking to designate the upland portions of the Property as in the “Residential-A” Future Land Use category and the jurisdictional wetland portions of the Property as in the “Conservation” Future Land Use category (the “**Amendment Application**”).

(ii) Amendment Transmittal Processing. Upon submission by PVC of the Amendment Application, following the review and public hearing requirements

of State and local law, the County shall timely process the Amendment Application, and the St. Johns County Planning and Zoning Agency (the “PZA”) and the St. Johns County Board of County Commissioners (the “BOCC”) shall consider and vote on transmittal of the Amendment Application to the appropriate State agencies (the “Amendment Transmittal”). At any time during the Amendment Transmittal process, including after public hearing(s) have closed but prior to a vote by the BOCC, PVC may request withdrawal of the Amendment Application, at which time the BOCC, immediately and before taking any other action on the Amendment Application, shall approve such request to withdraw the Amendment Application and take no further action on the Amendment Application. Additionally, in its review and consideration of the Amendment Application, the County, including without limitation the BOCC, shall not make or adopt any related site-specific text amendments or any other amendments, conditions, or provisions directly to the Amendment Application without PVC’s prior consent.

- (1) Approval. If the BOCC votes to approve the Amendment Transmittal, then the County, following the requirements of State and local law, shall transmit the Amendment Application to the appropriate State agencies.
- (2) Denial or Withdrawal. If the BOCC votes to deny the Amendment Transmittal, or if the Amendment Application is withdrawn as described in paragraph 2(ii) above, then the PUD Application shall remain pending without prejudice to PVC continuing to process the PUD Application for consideration by the BOCC within one (1) year after the BOCC’s continuance/postponement.

(iii) Amendment Adoption and PUD Adoption Processing. If the BOCC votes to approve the Amendment Transmittal, then, upon receipt by the County of the state agencies’ report(s) on the Amendment Application, and following the review and public hearing requirements of State and local law, the County shall process concurrently but separately both the Amendment Application for adoption and the PUD Application for adoption. In their consideration of and vote on the Amendment Application and the PUD Application, the items shall be presented at the same public hearings and as a part of consolidated presentations before the PZA and BOCC, but the Amendment Application for adoption (the “Amendment Adoption”) and the PUD Application for adoption (the “PUD Adoption”) shall be considered and voted on as separate items (first, on the Amendment Application; second, on the PUD Application).

- (1) Amendment Adoption Processing. At any time during the Amendment Adoption process, including after public hearing(s) have closed but prior to a vote by the BOCC, PVC may request withdrawal of the Amendment Application, at which time the BOCC, immediately and before taking any other action, shall approve such request to withdraw the Amendment Application and take no further action on the

Amendment Application. Additionally, during its review and consideration of the Amendment Application, the County, including without limitation the BOCC, shall not make or adopt any related site-specific text amendments or any other amendments, conditions, or provisions relating solely to the Property or the Amendment Application without PVC's prior consent.

- (2) PUD Application Processing. At any time during the PUD Adoption process, including after public hearing(s) have closed and after a vote by the BOCC to deny the Amendment Adoption, PVC may request continuance/postponement of no more than one (1) year or withdrawal of the PUD Application, at which time the BOCC, immediately and before taking any other action, shall approve such request by PVC to continue/postpone or withdraw the PUD Application and take no further action on the PUD Application at that time; provided, however, such approval is not required after a vote by the BOCC to approve the Amendment Adoption. Additionally, during its review and consideration of the PUD Application, the County, including without limitation the BOCC, shall not make or adopt any conditions or provisions relating to the PUD Application without PVC's prior consent.
- (3) Denial of Amendment Adoption or Withdrawal of Amendment Application. If the BOCC votes (A) to deny the Amendment Adoption or (B) to withdraw the Amendment Application, and also votes to continue/postpone the PUD Application as described in paragraph 2(iii)(2) above, then the pending PUD Application shall remain pending without prejudice to PVC to continue processing the PUD Application. At any time within one (1) year after the BOCC's continuance/postponement of the PUD Application, PVC may request in writing that the PUD Application be placed on a future BOCC meeting agenda for a public hearing and vote, provided that such request shall include withdrawal of the Amendment Application, in the event it had not previously been withdrawn or denied by the BOCC.
- (4) Modification to the PUD Application. PVC, in its sole and absolute discretion, may modify the pending PUD Application at any time prior to its withdrawal or expiration. Any such modifications may be subject to additional review and public hearings as required by State and local law.

3. Development Agreement Statute Inapplicable. The Parties hereto agree that this Agreement, including paragraph 2 above and its subparts, does not constitute a development agreement as such term is defined and used in Sections 163.3220-163.3243, Florida Statutes.

4. Limitations. By entering this Agreement, the BOCC agrees and finds that the Action and the facts and circumstances surrounding the Action constitute good cause under Section 9.00.06 of the Code to extend the time periods provided in Section 9.00.04 of the Code as applied to the PUD Application for a period of one (1) year from the date that both Parties execute this Agreement. Nothing herein prevents or limits the authority of the BOCC to provide additional extensions or waivers for good cause as provided by the Code.

5. State and Local Law. All actions contemplated in this Agreement shall be conducted in accordance with applicable Florida Statutes and the St. Johns County Comprehensive Plan and the Code. The Parties hereto agree and acknowledge that the Amendment Application and PUD Application are ultimately subject to approval and adoption by the BOCC and that, by entering into this Agreement, the County is not abrogating its duty to conduct publicly noticed hearings on approval of transmittal and adoption of the Amendment Application and approval and adoption of the PUD Application

6. Time of Essence. Time is of the essence as to all matters herein.

7. No Admission. The Parties hereto agree that each enters into this Agreement in an effort to compromise disputed claims and to avoid the inherent risks, costs, fees, and expenses associated with the Action. Nothing contained in this Agreement shall constitute an admission by the County regarding the consistency of the PUD Application with the Comprehensive Plan. Further, nothing contained in this Agreement shall constitute an admission by PVC that the Amendment, or any amendment to the Comprehensive Plan, is required to be adopted by the BOCC before the BOCC may consider the PUD Application or consider an adjustment for the upland portions of the Property to the "Residential C" Future Land Use category under the Comprehensive Plan. Nothing in this Agreement obligates the County to act in any way contrary to its Code, Comprehensive Plan or other law, or to make any particular decision regarding the Amendment Application or PUD Application. Finally, nothing in this Agreement shall be an admission of fault, liability or wrongdoing by either Party, nor shall the negotiation of, or entering into, this Agreement give rise to, or form any basis for, a claim or lawsuit alleging infringement of substantive or procedural due process rights, inverse condemnation, or a cause of action under the Bert J. Harris, Jr., Private Property Rights Protection Act, § 70.001, Florida Statutes.

8. No Waiver. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving Party or Parties. The failure of any Party to require the performance of any term or obligation of this Agreement, or the waiver by any Party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

9. Successors; No Third-Party Beneficiaries. The terms and conditions of this Agreement shall inure to the benefit of, and be binding upon, the Parties' respective successors and assigns, including without limitation successors in title to the Property. None of the provisions of this Agreement shall inure to the benefit of any party other than the Parties hereto and their

successors and assigns, or be deemed to create any rights, benefits, or privileges in favor of any other person or entity except the Parties and their successors and assigns.

10. No Duress; Neutral Interpretation. The Parties each warrant to each other that they are represented by counsel in this transaction and have thoroughly read and reviewed the terms and provisions of this Agreement and that the terms and provisions contained herein are clearly understood by them and have been unconditionally consented to by them. The Parties each further warrant to each other that they have entered into this Agreement freely, voluntarily, with full knowledge, and without duress, and that in executing this Agreement, they are not relying upon any representations or warranties made to them by each other or any of each other's employees or agents. In the event that an ambiguity or question of intent or interpretation arises as to any provision or provisions hereof, no presumption, rule of construction, or burden of proof shall apply favoring or disfavoring any of the Parties by virtue of the authorship of any provision hereunder inasmuch as this Agreement has been mutually drafted.

11. Headings. Headings as utilized within this Agreement are solely for the benefit of the Parties hereto and for their convenience. Such headings are not intended to, and they shall not be interpreted or construed to, alter, modify, increase, enlarge, decrease or diminish the meaning of the individual paragraphs hereto.

12. Remedies. In the event of any default under this Agreement, the Party not in default shall be entitled to any and all remedies available at law or in equity, except that specific performance shall not be available to compel any County board to approve the Amendment Transmittal, the Amendment Adoption, or the PUD Application.

13. Governing Law; Stipulated Jurisdiction. This Agreement shall be interpreted in accordance with the laws of the State of Florida without regard to choice of law principles. The Parties consent to the jurisdiction over their respective persons and proper venue of the state and federal courts having jurisdiction over St. Johns County, Florida for any and all disputes arising out of or resulting from this Agreement.

14. Entire Agreement. This Agreement and the exhibits hereto contain the entire agreement among the Parties. This Agreement may not be modified, except in writing and signed by the Parties to be charged with its modification.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the last date of execution listed below.

PONTE VEDRA CORPORATION, a
Florida corporation

ST. JOHNS COUNTY, FLORIDA

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

Exhibit "A"

Joint Motion

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

PONTE VEDRA CORPORATION, a Florida
corporation,

CASE NO. CA16-0958
DIVISION 55

Plaintiff,

v.

ST. JOHNS COUNTY, FLORIDA, a political
subdivision of the State of Florida,

Defendant.

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AND
FOR DISMISSAL WITH PREJUDICE AS TO COUNT II AND
WITHOUT PREJUDICE AS TO REMAINING COUNTS**

Plaintiff, Ponte Vedra Corporation, a Florida corporation (“Plaintiff”), and Defendant, ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida (“Defendant”), by and through their undersigned counsel, file this Joint Motion for Approval of Settlement and for Dismissal With Prejudice as to Count II and Without Prejudice as to Remaining Counts and state as follows:

1. Plaintiff and Defendant have reached a settlement resolving the claims and defenses raised in this action, the terms and conditions of which are included in the Settlement Agreement attached hereto as Exhibit “1” (the “Settlement Agreement”).

2. Pursuant to the terms thereof, the parties jointly move the Court for approval of the Settlement Agreement and dismissal of Count II of the Amended Complaint with prejudice and dismissal without prejudice as to the remaining counts of the Amended Complaint, with each party to bear its own attorneys’ fees and costs, with the Court reserving jurisdiction to enforce the terms and conditions of the Settlement Agreement.

WHEREFORE, Plaintiff and Defendant respectfully request that the Court enter an Order approving the Settlement Agreement and dismissing with prejudice Count II of the Amended Complaint and dismissing without prejudice as to the remaining counts of the Amended Complaint, with each party to bear its own attorneys' fees and costs, with the Court reserving jurisdiction to enforce the terms and conditions of the Settlement Agreement.

RESPECTFULLY SUBMITTED this ___ day of _____, 2019.

SHEPARD, SMITH, KOHLMYER & HAND, P.A.

ROGERS TOWERS, P.A.

By: _____

Patrick Brackins
Florida Bar No. 27520
Jacob Schumer
Florida Bar No. 111756
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By: _____

A. Graham Allen
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**OFFICE OF THE ST. JOHNS COUNTY
ATTORNEY**

By: _____

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Bradley Bulthuis
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St. Augustine, Florida 32084
Office: (904) 209-0805
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pmccormack@sjcfl.us
bbulthuis@sjcfl.us

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed through the Florida Courts E-Filing Portal which will send a copy to all counsel of record this ___ day of _____, 2019:

Office of the St. Johns County Attorney
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Attorneys for Defendant St. Johns County

Attorney

Exhibit "1"

Settlement Agreement

Exhibit "B"

Consent Order

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

PONTE VEDRA CORPORATION, a Florida
corporation,

CASE NO. CA16-958
DIVISION 55

Plaintiff,

vs.

ST. JOHNS COUNTY, FLORIDA, a political
subdivision of the State of Florida,

Defendant.

_____ /

**CONSENT ORDER APPROVING SETTLEMENT AND
DISMISSING ACTION WITH PREJUDICE AS TO COUNT II AND
WITHOUT PREJUDICE AS TO REMAINING COUNTS**

THIS CAUSE came before the Court upon the Joint Motion for Approval of Settlement and for Dismissal With Prejudice as to Count II and Without Prejudice as to Remaining Counts (the “Joint Motion”) and, the Court having considered the Joint Motion and being otherwise fully advised in the premises, it is hereby **ORDERED AND ADJUDGED** that:

1. The Joint Motion is **GRANTED**.
2. The Settlement Agreement attached to the Joint Motion as Exhibit “1” is **APPROVED**.
3. This action is **DISMISSED WITH PREJUDICE** as to Count II of the Amended Complaint and **WITHOUT PREJUDICE** as to the remaining counts of the Amended Complaint, with each party to bear its own attorneys’ fees and costs; however, the Court expressly reserves jurisdiction to enforce the terms and provisions of the Settlement Agreement.

DONE AND ORDERED this _____ day of _____, 2019.

CIRCUIT JUDGE

Copies to:

Rogers Towers, P.A., A. Graham Allen, Esq., Scott J. Kennelly, Esq., Courtney P. Gaver, Esq.,
1301 Riverplace Boulevard, Suite 1500, Jacksonville, Florida 32207,
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Office of the St. Johns County Attorney, Patrick F. McCormack, Esq. and Bradley Bulthuis,
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