



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.3.

11/10/2020

Subject:

Acceptance, Re: Binding Development Plan with Canaveral Landing, LLC (District 1)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

In accordance with Section 62-1157, it is requested that the Board of County Commissioners accept, and the Chair sign, the Binding Development Plan.

Summary Explanation and Background:

A BDP (Binding Development Plan) is a voluntary agreement presented by the property owner to self-impose limits upon development of a property in support of a change of zoning or conditional use permit. Pursuant to Section 62-1157, a BDP shall be recorded in the public records within 120 days of the Board's approval of the zoning request. Following staff and legal review, the BDP is presented to the Board in recordable form as a Consent Agenda item in order to finalize the zoning action.

On August 6, 2020, the Board approved a rezoning request from TR-1 (Single-Family Mobile Home Residential) to TRC-1 (Mobile Home Cooperative) and a CUP (Conditional Use Permit) for Cluster Development of Mobile Homes, with a BDP. The conditions of the BDP include, but are not limited to, the following:

- Developer/Owner shall limit density to 100 units, consistent with the RES4 future land use designation, and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.
- Developer/Owner shall maintain a twenty-foot (20') buffer on the portion of the Property that is developed with the mobile homes and amenities along the boundaries that abut other property owners.
- Developer/Owner agrees that Developer/Owner shall grant a conservation easement to Brevard County and the Putnam Land Conservancy, Inc., or other entity as approved of by Brevard County and said conservation easement shall be in a format approved of by the County, in a form substantially similar to Exhibit "B", and shall be recorded in the Brevard County Public Records prior to Developer/Owner obtaining any site plan or subdivision approval for development on the Property. In the event that Brevard County does not approve of another similar entity to accept the Conservation

easement, Developer/Owner agrees to protect the wetlands on the Property (that are not impacted and mitigated) as a Conservation Area, to be preserved and protected by the Cooperative Association formed by the Developer/Owner.

Clerk to the Board Instructions:

Upon recordation, please return two certified copies of the BDP to Planning and Development.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

November 12, 2020

M E M O R A N D U M

TO: Jennifer Jones, Zoning

RE: Item F.3., Binding Development Plan Agreement – Canaveral Landing, LLC

The Board of County Commissioners, in regular session on November 10, 2020, executed Binding Development Plan with Canaveral Landing, LLC. Said Plan was recorded in 8923/875. Enclosed for your necessary action are two certified copies of the recorded document.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

A handwritten signature in cursive script that reads "Kimberly Powell".

Kimberly Powell, Clerk to the Board

/dt

Encls. (2)

Resolution 20Z00006

On motion by Commissioner Pritchett, seconded by Commissioner Lober, the following resolution was adopted by a unanimous vote:

WHEREAS, Canaveral Landing, LLC has requested a change of zoning classification from TR-1 (Single-Family Mobile Home) to TRC-1 (Single-Family Mobile Home Cooperative) and a CUP (Conditional Use Permit) for Cluster Development of Mobile Homes, with a BDP (Binding Development Plan) limited to 100 units, on property described as Tax Parcel 501, as recorded in ORB 8617, Pages 637 – 639, of the Public Records of Brevard County, Florida. **Section 36, Township 23, Range 35.** (33.80 acres) Located on the north side of Canaveral Groves Boulevard, approximately 675 feet east of Grissom Parkway. (No assigned address. In the Cocoa area); and

WHEREAS, a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning and Zoning Board recommended that the requested CUP for Cluster Development of Mobile Homes be approved with the additional condition that Fountain Palm Road be used as an ingress/egress if accessible, and recommended approval of a BDP limited to 100 units; and

WHEREAS, the Board, after considering said application and Brevard County Planning and Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be approved as recommended; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from TR-1 to TRC-1 and a CUP for Cluster Development of Mobile Homes, with a BDP limited to 100 units be **APPROVED** as recommended with the additional CUP condition that Fountain Palm Road be used as an ingress/egress if accessible, and with a BDP, recorded on November 17, 2020, in ORB 8923, Pages 875 – 886, limiting development to 100 units, expanding the 10-foot buffer on the site plan to 20 feet, and providing a conservation easement over the wetlands. The Planning and Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of November 17, 2020.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida

Bryan Andrew Lober
Bryan Andrew Lober, Chair
Brevard County Commission

As approved by the Board on November 10, 2020.

ATTEST:

Scott Ellis
SCOTT ELLIS, CLERK

(SEAL)

Planning and Zoning Board Hearing – July 6, 2020

Board of County Commissioners Zoning Hearing – August 6, 2020

Please note: A CUP will generally expire on the three-year anniversary of its approval if the use is not established prior to that date. CUPs for Towers and Antennas shall expire if a site plan for the tower is not submitted within one year of approval or if construction does not commence within two years of approval. A Planned Unit Development Preliminary Development Plan expires if a final development plan is not filed within three years. **The granting of this zoning does not guarantee physical development of the property. At the time of development, said development must be in accordance with the criteria of the Brevard County Comprehensive Plan and other applicable laws and ordinances.**



BDP FINAL - me rev. 10.30.20.docx

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E-Signature Summary

Signer 1: Kelly M. Ellebracht (KME)

November 04, 2020 06:39:39 -8:00 [CA670778BEC4] [108.188.194.192]
KEllebracht@laceyandlyons.com (Principal) (Personally Known)

Signer 2: Patricia L. Clark (plc)

November 04, 2020 06:39:39 -8:00 [0F757923F84E] [108.188.188.164]
pclark@laceyandlyons.com (Principal) (Personally Known)

Signer 3: Nicholas J Dottore (NJD)

November 04, 2020 06:39:39 -8:00 [843F49FE267D] [68.205.152.99]
sales@canaverallanding.com (Principal) (ID Verified)

E-Signature Notary: Rebecca E. Daniels (RD)

November 04, 2020 06:39:39 -8:00 [C0A36DFF3712] [108.188.194.192]
rdaniels@laceyandlyons.com
I, Rebecca E. Daniels, did witness the participants named above
electronically sign this document.



Prepared by: Kimberly B. Rezanka
Lacey Lyons Rezanka
1290 US Highway 1, Ste. 201
Rockledge, FL 32955

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 10 day of Nov., 2020, between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter referred to as "County") and **CANAVERAL LANDING, LLC**, a Wyoming limited liability company, (hereinafter referred to as "Developer/Owner").

RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has requested the TRC-1 zoning classification, with a conditional use permit for cluster development of mobile homes, and desires to develop the Property as a mobile home cooperative with a cluster development of mobile homes, and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on abutting land owners and affected facilities or services; and

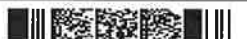
WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.



2. Developer/Owner shall limit density to 100 units, consistent with the RES4 future land use designation, and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.
3. Developer/Owner shall maintain a twenty-foot (20') buffer on the portion of the Property that is developed with the mobile homes and amenities along the boundaries that abut other property owners.
4. Developer/Owner agrees that Developer/Owner shall grant a conservation easement to Brevard County and the Putnam Land Conservancy, Inc., or other entity as approved of by Brevard County and said conservation easement shall be in a format approved of by the County, in a form substantially similar to Exhibit "B", and shall be recorded in the Brevard County Public Records prior to Developer/Owner obtaining any site plan or subdivision approval for development on the Property. In the event that Brevard County does not approve of another similar entity to accept the Conservation easement, Developer/Owner agrees to protect the wetlands on the Property (that are not impacted and mitigated) as a Conservation Area, to be preserved and protected by the Cooperative Association formed by the Developer/Owner.
5. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This Agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as they may apply to this Property.
6. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court the cost of recording this Agreement in the Public Records of Brevard County, Florida.
7. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on 8/6/20, 2020. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.



8. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended.
9. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 8, above.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:



Scott Ellis, Clerk
(SEAL)

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA
2725 Judge Fran Jamieson Way
Viera, FL 32940



Bryan Andrew Lober, Chair
As approved by the Board on November 10, 2020

WITNESSES:



Kelly Ellebracht



Patricia Clark



Kelly Ellebracht



Patricia Clark



Nicholas J. Dottore

CANAVERAL LANDING, LLC, a Wyoming limited liability co.
as DEVELOPER/OWNER
1712 Pioneer Avenue, Suite 285
Cheyenne, WY 82001

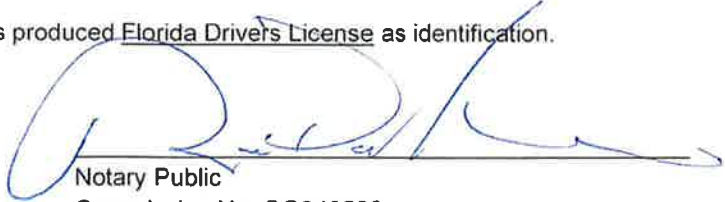


Nicholas J. Dottore

NICHOLAS J. DOTTORE
President of Wyoming American Holdings, LLC,
the Preferred Member and Manager of Canaveral
Landing, LLC

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☒ online notarization, this 4th day of July, 2020, by Nicholas J. Dottore, President of Wyoming American Holdings, LLC, the Preferred Member and Manager of CANAVERAL LANDING, LLC, a Wyoming limited liability company, who is personally known to me or who has produced Florida Drivers License as identification.



Notary Public
Commission No.: GG346502
My commission expires: 7/22/2023



EXHIBIT "A"

A part of the East 1/2 of the West 1/2 of the SW 1/4 of Section 36, Township 23 South, Range 35 East, Brevard County, Florida, being more particularly described as follows: For a point of reference, commence at the SW corner of said Section 36, thence East along the South line of said Section 36 a distance of 669.58 feet; thence N. 0 degrees 20' 47" W., 50 feet to the Point of Beginning; said point being on the Northerly R/W of Canaveral Groves Blvd.; thence N. 0 degrees 20' 47" W., 2218.02 feet; thence N. 89 degrees 32' 10" E., 671.18 feet; thence SO degrees 18' 07" E., 2222.93 feet to the Northerly right of way line of Canaveral Groves Blvd.; thence West 669.46 feet to the Point of Beginning.

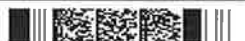


Exhibit "B"

Prepared by:

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this ____ day of _____, _____ by CANAVERAL LANDING, LLC whose address is 3737 N Cocoa Highway, Ste B, Cocoa, Florida 32926 ("Grantor"), in favor of BREVARD COUNTY BOARD, FLORIDA, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 ("Grantee County") and PUTNAM LAND CONSERVANCY, INC., a Florida not for profit corporation, whose address is 501 Atlantic Avenue, Interlachen, Florida 32148 ("Grantee Putnam").

WITNESSETH:

WHEREAS, Grantor solely owns in fee simple certain real property in Brevard County, Florida, more particularly described in Exhibit "A" attached hereto and incorporated by this reference (the "Property");

WHEREAS, Grantor grants this conservation easement to Grantee County and Grantee Putnam in accordance with Section 704.06, Florida Statutes, as a condition of the Binding Development Plan accepted and approved by Grantee County and as part of Planning and Development Application 20Z00006 as submitted by Grantor, solely to off-set adverse impacts to natural resources and wetland functions; and

WHEREAS, Grantor desires to preserve the Property in its natural condition in perpetuity;

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the provisions of section 704.06, Florida Statutes, Grantor hereby voluntarily grants and conveys to Grantee County and Grantee Putnam a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (the "Conservation Easement"). Grantor fully warrants title to said Property, and will warrant and defend the same against the lawful claims of all persons whomsoever.

1. Purpose. The purpose of this Conservation Easement is to assure that the Property will be retained forever in its existing natural condition and to prevent any use of the Property that will impair or interfere with the environmental value of the Property.

2. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) Construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.

(b) Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials.

(c) Removal or destruction of trees, shrubs, or other vegetation.

(d) Excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substance in such a manner as to affect the surface.

(e) Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition.

(f) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

(g) Acts or uses detrimental to such retention of land or water areas.

(h) Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

3. Rights of Grantees. To accomplish the purposes stated herein, Grantor conveys the following rights to Grantees:

(a) To enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantor or its successors and assigns are complying with the covenants and prohibitions contained in this Conservation Easement.

(b) To proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the Property that may be damaged by any activity inconsistent with this Conservation Easement.

4. Grantees' Discretion. Either Grantee may enforce the terms of this Conservation Easement at its discretion, but if Grantor breaches any term of this Conservation Easement and Grantees do not exercise their rights under this Conservation Easement, Grantees' forbearance shall not be construed to be a waiver by Grantees of such term, or of any subsequent breach of the same, or any other term of this Conservation Easement, or of any of the Grantees' rights under this Conservation Easement. No delay or omission by Grantees in the exercise of any right

or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Grantees shall not be obligated to Grantor, or to any other person or entity, to enforce the provisions of this Conservation Easement.

5. Grantor's Liability. Grantor will assume all liability for any injury or damage to the person or property of third parties which may occur on the Property arising from Grantor's ownership of the Property. Neither Grantor, nor any person or entity claiming by or through Grantors, shall hold Grantees liable for any damage or injury to person or personal property which may occur on the Property.

6. Enforcement. The terms and conditions of this Conservation may be enforced by the Grantees by injunctive relief or other appropriate available remedies, and Grantor consents that venue for such enforcement actions shall lie exclusively in the circuit court in Brevard County Florida.

7. Recordation. Grantor shall record this Conservation Easement in timely fashion in the Official Records of Brevard County, Florida, and shall rerecord it at any time Grantees may require to preserve its rights. Grantor shall pay all recording costs and taxes necessary to record this Conservation Easement in the public records. Grantor will hold Grantees harmless from any recording costs or taxes necessary to record this Conservation Easement in the public records.

8. Successors. The covenants, terms, conditions and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantor has executed this Conservation Easement on
the day and year first above written.

Signed, sealed and delivered
in our presence as witnesses:

GRANTOR:

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Signature: _____

Printed Name: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical
presence or ☐ online notarization this _____ day of _____, _____, by
_____, who did not take an oath.

Notary Public, State of Florida
at Large.

My Commission Expires:

Serial No. _____

Personally known _____ OR produced identification _____. Identification
produced _____.

EXHIBIT A

legal description



Affidavit of No Mortgage CL LLC.docx

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E-Signature Summary

Signer 1: Kelly M. Ellebracht (KME)

November 04, 2020 06:39:40 -8:00 [4758521BBB82] [108.188.194.192]
 KEllebracht@laceyandlyons.com (Principal) (Personally Known)

Signer 2: Patricia L. Clark (plc)

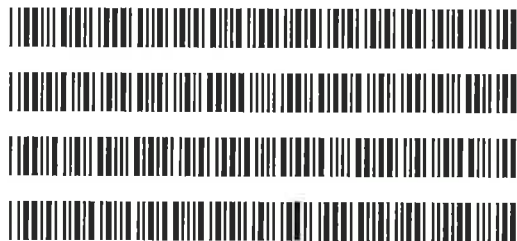
November 04, 2020 06:39:40 -8:00 [E8510374EA80] [108.188.188.164]
 pclark@laceyandlyons.com (Principal) (Personally Known)

Signer 3: Nicholas J Dottore (NJD)

November 04, 2020 06:39:40 -8:00 [204BBE4E0C16] [68.205.152.99]
 sales@canaverallanding.com (Principal) (ID Verified)

E-Signature Notary: Rebecca E. Daniels (RD)

November 04, 2020 06:39:40 -8:00 [19269A77511F] [108.188.194.192]
 rdaniels@laceyandlyons.com
 I, Rebecca E. Daniels, did witness the participants named above electronically sign this document.



AFFIDAVIT OF NO MORTGAGE

Nicholas J. Dottore, Manager of Canaveral Landing, LLC, a Florida limited liability company, after being duly sworn, depose and say:

1. Canaveral Landing, LLC is the owner of the real property as more particularly described in **Exhibit "A"** attached hereto
2. There are no mortgages on the Property.

Canaveral Landing, LLC

Dated: November 4, 2020

By:

Nicholas J Dottore

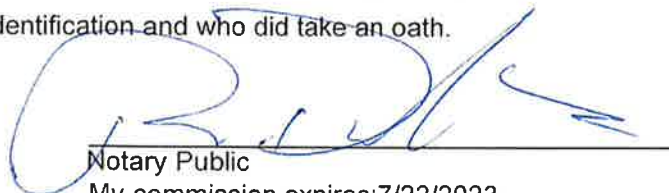
Nicholas J. Dottore
President of Wyoming American Holdings,
LLC, which is the Preferred Member and
Manager of Canaveral Landing, LLC

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me, by means of ☐ **physical presence** or ☒ **online notarization** this 4th day of November, 2020, by Nicholas J. Dottore, President of Wyoming American Holdings, LLC, which is the Preferred Member and Manager of Canaveral Landing, LLC, a Wyoming limited liability company, who is personally known to me or who has produced Florida Drivers License as identification and who did take an oath.




Notary Public

My commission expires: 7/22/2023
Commission No.: GG346502



EXHIBIT "A"

A part of the East 1/2 of the West 1/2 of the SW 1/4 of Section 36, Township 23 South, Range 35 East, Brevard County, Florida, being more particularly described as follows: For a point of reference, commence at the SW corner of said Section 36, thence East along the South line of said Section 36 a distance of 669.58 feet; thence N. 0 degrees 20' 47" W., 50 feet to the Point of Beginning; said point being on the Northerly R/W of Canaveral Groves Blvd.; thence N. 0 degrees 20' 47" W., 2218.02 feet; thence N. 89 degrees 32' 10" E., 671.18 feet; thence S 0 degrees 18' 07" E., 2222.93 feet to the Northerly right of way line of Canaveral Groves Blvd.; thence West 669.46 feet to the Point of Beginning.

