

# INDIAN RIVER COUNTY, FLORIDA

## MEMORANDUM

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**TO:** Indian River County Board of County Commissioners

**VIA:** Jason E. Brown, County Administrator

**FROM:** Dan Russell, Information Technology Director

**SUBJECT:** TIGR Acquisitions III, LLC – Easement, 1725 17<sup>th</sup> Avenue, Vero Beach, FL

**DATE:** July 12, 2022

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**CONSENT**

### **BACKGROUND:**

On October 12, 2021, the Indian River County Board of County Commissioners approved staff to proceed with the sale of a County owned communications tower, located at 1340 Old Dixie Highway, Vero Beach, FL, to TIGR Acquisitions III, LLC and authorized staff to work with TIGR Acquisitions III, LLC to prepare the transactional documents required to complete the sale.

### **ANALYSIS**

During the review of the purchase and sale agreement for the tower located at 1340 Old Dixie Highway, staff noted a potential conflict in the Non-Competition section of the purchase and sale agreement. This section was originally worded as follows:

” For the ten (10) year period commencing on the Closing Date through and including the tenth (10th) anniversary of the Closing Date (the “Restricted Period”), neither Seller nor any of its Affiliates (and Seller will ensure that none of their respective members of senior management) will, directly or indirectly, own or operate (whether as owner, partner, officer, director, employee, investor, lender or otherwise) any telecommunications tower or site that is located within a one (1) mile radius of the Site.”

The County has an indirect interest in a communications tower, owned by Datapath Tower, LLC and located at 1723 17<sup>th</sup> Avenue, Vero Beach, FL, which is approximately .8 miles from the 1340 Old Dixie Highway site.

In order to mitigate the competition concerns expressed by TIGR Acquisitions III, LLC, relative to their purchase of the 1340 Old Dixie Tower, staff has negotiated rewording Non-Competition section of the purchase and sale agreement for the tower located at 1340 Old Dixie Highway as follows:

“For the ten (10) year period commencing on the Closing Date through and including the tenth (10th) anniversary of the Closing Date (the “Restricted Period”), neither Seller nor any of its Affiliates (and Seller will ensure that none of their respective members of senior management) will, directly or indirectly, own or operate (whether as owner, partner, officer, director, employee, investor, lender or otherwise) any telecommunications tower or site that is located within a one (1) mile radius of the Site, excepting from such geographic scope any site currently owned, managed, leased, licensed, pending approval or lease, or operated by Seller as of the Closing Date in the attached Schedule 1(c), Existing Tower Sites.”

Use of this revised verbiage in the agreement is conditioned upon the County’s agreement to sell TIGR Acquisition III, LLC an exclusive Easement (described as a twenty (20) foot wide easement surrounding the north and east sides of that certain Utility Equipment and Landscape Easement

dated July 17, 2018 between Indian River County and Datapath Tower, LLC recorded in Book 3162, Page 1416 of the Public Records of Indian River County, FL) together with a Springing Easement that will encompass the entire area of the Utility Equipment and Landscape Easement in the event that the Utility Equipment and Landscape Easement is terminated by Datapath Tower, LLC. In the event of a termination by Datapath Tower, LLC, then the "Springing Easement" shall be granted by Indian River County to TIGR Acquisitions III, LLC simultaneously with such termination. Thereafter, the Springing Easement shall be a part of and included in all references to the Easement granted to TIGR Acquisitions III, LLC.

### **FUNDING**

In return for granting the Easement together with the Springing Easement TIGR Acquisitions III, LLC is prepared to pay the County a lump sum amount of \$75,000 and a 50% revenue share for all future collocation agreements associated with the tower, located at 1723 17<sup>th</sup> Avenue.

All funds associated with this transaction will be deposited into the General Fund/Radio Tower Rents account 001038-362011.

### **RECOMMENDATION**

Staff recommends that the Board of County Commissioners approve the sale of the Easement and the associated Springing Easement to TIGR Acquisitions, LLC. Staff further recommends that the Board authorize the County Administrator to execute the purchase and sale agreement and the other transactional documents which will be part of the closing process for this property following the completion of the due diligence period and after the County Attorney has approved them as to form and legal sufficiency.

### **ATTACHMENTS**

1725 17th Avenue\_Easement\_Agreement\_2022.07.06\_Clean.pdf

### **DISTRIBUTION**

Dylan Reingold – County Attorney

Kristin Daniels – Director, Office of Management and Budget

Elissa Nagy – Director, Finance

Randy King – Information Systems & Telecommunications Manager