



Office of

County Attorney's Matters 11/08/2022

INDIAN RIVER COUNTY ATTORNEY

Dylan Reingold, County Attorney
William K. DeBraul, Deputy County Attorney
Susan J. Prado, Assistant County Attorney

MEMORANDUM

TO: Board of County Commissioners

THROUGH: Ryan Sweeny, Chief Planner

FROM: William K. DeBraul, Deputy County Attorney

DATE: November 3, 2022

SUBJECT: Fifth Addendum to Agreement between Indian River County and REDEVGROU, Inc. for Lot 5, Plat of Indian River Mall

Lot 5, Plat of Indian River Mall is an undeveloped 4.7-acre parcel of property on State Road 60, just west of the Wendy's restaurant near the main entrance to the Indian River Mall. It is owned by IR Mall Associates, LTD and marketed by REDEVGROU, Inc. At the time the plat for the Mall was moving forward, environmental studies revealed the existence of hand fern, a species of critical concern, on the mature trees growing on Lot 5. In 1994, as a condition of County Resolution 94-93, which serves as the Development Order (D.O.) for the Indian River Mall, a conservation easement was established over Lot 5. The Lot 5 conservation easement contained a clause which allowed release of the easement provided alternative conservation land of equal or greater environmental value was protected to fulfill the intent of the D.O.

Early in 2018, REDEVGROU approached the County with a report concluding that the hand fern was no longer found on Lot 5. REDEVGROU asked the Board to release the conservation over Lot 5 in exchange for two parcels:

- Property 1: "The Alice Siew Property," approximately 9.17 acres (4 contiguous tax parcels) of riverfront coastal wetlands north of and adjacent to the County-owned Oyster Bar Marsh Conservation Area; or
- Property 2: "The Kinner Property," approximately 10.3 acres of riverfront coastal wetlands south of Quay Dock Road, north of Spoonbill Marsh, adjacent to conservation land owned by the Indian River Land Trust (IRLT). Also included was a payment of \$291,819.00 to the County to be used for public access improvements to county-owned conservation lands.

At its meeting on June 12, 2018, the Board of County Commissioners approved an Agreement between Indian River County and REDEVGROU, Inc. to allow for release of the conservation easement on Indian River Mall Lot 5 in exchange for alternative conservation land and special development restrictions on Lot 5. The development restrictions included the following:

- Pervious area of the Lot must be at least 44%, with no building, paving or construction on the southern most 75' of the Lot.
- At least 6 specimen trees preserved.

- State Road 60 corridor code requirement would apply.
- No single building footprint could exceed 7,200 square feet with all buildings being separated by at least 50 feet.

Three months after the June 12 agreement was approved, REDEVGROUPE approached staff with a First Addendum to Amend Agreement that contained a third alternative proposal that the Board considered at its September 11, 2018 meeting. The third alternative was a combination of portions of both the Siew Property and the Kinner Property. This third proposed alternative was described as follows:

- REDEVGROUPE conveyance of the ± 10.3 acre Kinner Property to the IRLT (Indian River Land Trust) with a conservation easement over ± 8.8 acres in favor of Indian River County covering all but the east 150 feet of the Kinner Property, together with conveyance of ± 7.87 acres of the Siew Property to the County (all but the eastern ± 1.3 acres of the originally proposed Siew Property).

The third alternative exchange option, which combined and protected the majority of both the Siew and Kinner properties (i.e., ± 16.67 protected acres combined), provided greater ecological value than the current 4.7 acre I. R. Mall Lot 5 easement, and therefore was approved by the Board on September 11, 2018.

An aerial photo of Lot 5 is depicted in *Figure 1* below.



Figure 1. Aerial Photo of Lot 5, Plat of Indian River Mall

Staff was again approached by REDEVGROUPE for a Third Addendum to the original Agreement. As part of the original Agreement, four deed restrictions were recorded concerning Lot 5. REDEVGROUPE asked to amend the deed restrictions concerning the 7,200 square foot limitation to

allow the size of one building to be 7,800 square feet, asserting that one of the potential restaurants interested in building on Lot 5 has a standard template which is just less than 7,800 square feet. In exchange for the size increase for the one building, the remaining buildings could not exceed an average of 7,200 square feet. On November 10, 2020, the Board approved the amendment, but increased the building size limit to Staff to 8,000 square feet with no change in the other restrictions.

On July 13, 2021, REDEVGROUPE appeared before the BCC with a proposed Fourth Addendum to Agreement as Texas Roadhouse, Inc. had expressed interest in building a restaurant on Lot 5. With the advent of COVID 19, restaurant designs changed, including increased room for carryout service, increased room when waiting for a table, greater distances between tables and additional outdoor dining space. REDEVGROUPE asked to amend the 8,000 square foot building restriction and increase it to 8,225 square feet in size. The Board approved the expansion to 8,225 square feet as there were no other changes to the original restrictions on Lot 5 tree preservation, building sizes or open space requirements.

Texas Roadhouse, Inc. has signed a lease agreement with REDEVGROUPE to build a Texas Roadhouse restaurant on Lot 5, however, when the prototype building plan was examined more closely by its project engineer, it was discovered that the building's footprint would exceed the 8,225 square foot footprint previously approved. REDEVGROUPE now asks the Board to allow Roadhouse to increase the building footprint of the restaurant to 9,400 square feet. The larger footprint will account for increased sizes for carryout service, waiting area for a table, distances between tables and covered outdoor/open air dining space. As with the earlier addendums, there is no change to the original restrictions on Lot 5 tree preservation, other building sizes or open space requirements. Staff has no objection to the Fifth Addendum.

FUNDING. There is no impact to County funds with this Fifth Addendum.

RECOMMENDATION. Staff recommends the Board of County Commissioners approve the Fifth Addendum to Agreement between Indian River County and REDEVGROUPE, Inc., and authorize the Chairman to execute the Fifth Addendum on behalf of the Board.

Attachments: Fifth Amendment to Agreement between Indian River County and
REDEVGROUPE, Inc.
Fourth Amendment and Restatement of Declarations of Restrictive Covenants

Copy to: Ryan Sweeney, Planning Director
Bruce Barkett, Esq., REDEVGROUPE, Inc.