



Office of

Attorney's Matters 11/10/2020

INDIAN RIVER COUNTY ATTORNEY

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MEMORANDUM

TO: Board of County Commissioners

THROUGH: Andrew Sobczak, Chief, Environmental Planning and Code Enforcement

FROM: William K. DeBraul, Deputy County Attorney

DATE: November 5, 2020

SUBJECT: Third Addendum to Agreement between Indian River County and REDEVGROUP, 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. An aerial photo of Lot 5 is depicted in *Figure 1* below.



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

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

The Lot 5 conservation easement was originally established in 1994 as a condition of County Resolution 94-93, which serves as the Development Order (D.O.) for the Indian River Mall. 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. The Board approved the June 12 exchange Agreement which offered the Board a choice of acquiring one of two alternative conservation properties:

- Alternative 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
- Alternative 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). [Note: this alternative includes payment of \$291,819.00 to the County to be used for public access improvements to county-owned conservation lands.]

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 Mall Lot 5 easement, and therefore was approved by the Board on September 11, 2018.

REDEVGROUPE again approached staff in November 2018, and requested a Second Addendum to Agreement. The Second Addendum changed the timing of the recordation of the restrictive covenants proposed by REDEVGROUPE due to a possible title challenge. The Second Addendum was approved by the Board on November 13, 2018.

Staff has been approached by REDEVGROUPE, Inc. for a Third Addendum to the original Agreement. As part of the original Agreement, four deed restrictions were recorded concerning Lot 5:

- 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.

REDEVGROUPE seeks 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. Staff has no objection to the Third Addendum to Agreement and Second Amendment and Restatement of Declarations of Restrictive Covenants.

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

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

Attachments: Third Addendum to Agreement between Indian River County and REDEVGROUPE,
Inc.
Second Amendment and Restatement of Declarations of Restrictive Covenants

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