



Office of  
**INDIAN RIVER COUNTY  
ATTORNEY**

Dylan Reingold, County Attorney  
William K. DeBraul, Deputy County Attorney  
Kate Pingolt Cotner, Assistant County Attorney

**MEMORANDUM**

TO: Board of County Commissioners

FROM: William K. DeBraul, Deputy County Attorney 

DATE: January 4, 2017

SUBJECT: Cancellation of Agreement for Reservation of Right-of-Way for United Irrigation, Inc.

Right-of-way reservations were common tools used 30 years ago to encumber property as right-of-way for future road expansion without expending tax dollars to purchase the future right-of-way and without using the eminent domain process. The Florida DOT, counties and municipalities would enter into agreements with landowners wherein the landowners would refrain from placing buildings on property abutting state or county roadways and agree to sell the property to the government at some point in the future when road improvement was necessary. In exchange for these promises, local governments would grant site plan approval or the Florida DOT would grant driveway access to the state road. No money was paid to the landowner for the reservation. The agreements were recorded in the public records so as to run with the land and be binding on future owners. Since that time, the courts have ruled right-of-way reservations are the equivalent of a taking while avoiding the eminent domain process. The courts have held these agreements to be illegal and unenforceable as almost all use of the property by the owner is prohibited under the terms of the agreement.

United Irrigation, Inc. (United) owns a 0.25 acre parcel of property at the southwest corner of U.S. Highway 1 and 11<sup>th</sup> Street. The parcel is leased to Paradise Scooters, a retail sales and repair shop for small motorcycles and scooters. On March 22, 1988, Bobby Hiers as president of United and Indian River County (County) entered into an Agreement for Reservation for Road Right-of-Way (Agreement). A copy is attached to this memorandum. The Agreement was made a condition of United's site plan approval back in 1988. In exchange for site plan approval, United agreed to refrain from improving a 10 foot wide setback of their property abutting U.S. Highway 1. They further agreed to sell this property to the County if and when the County widened U.S. Highway 1 at some point

in the future. There was no expiration date specified in the Agreement. At the time of the Agreement, there were no plans to improve U.S. Highway 1.

United now desires to sell this property. A title search has revealed the Agreement and it is now a cloud on the title to the property. The dimensions of U.S. Highway 1 have not changed in the 28 years following United's site plan approval. Expansion of U.S. Highway 1 is not included in any future plans, including the County's 2035 long range plan. Thus, since the County has no plans to expand U.S. Highway 1 in the next 19 years, the County Attorney's Office and staff are of the opinion the Agreement for Road Right-of-Way Reservation should be terminated. The attached Cancellation of Agreement for Reservation of Road Right-of-Way between United and the County revokes all reservations and covenants contained in the original Agreement.

**Funding:** The recording fees for the document will be less than \$30.00 and be funded from the County Attorney's Office budget for other professional services (account number 00110214-033190).

**Recommendation:** Staff recommends the Board approve the Cancellation of Agreement for Reservation of Road Right-of-Way and authorize the Chairman to execute the document on behalf of the Board.

c: Kelly K. Hiers, President, United Irrigation, Inc.  
John McCoy, Community Development