

U
Return to Stewart & Nall, P. A.
Post Office Box 3345
Vero Beach, Florida 32964-3345

IN THE RECORDS OF
JEFFREY K. BARTON
CLERK CIRCUIT COURT
INDIAN RIVER CO., FLA.

DOCUMENTARY STAMPS

DEED \$.70

NOTE \$

JEFFREY K. BARTON, CLERK
INDIAN RIVER COUNTY

CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT, made and executed this 18th day of September, 1995, by DeBARTOLO REALTY PARTNERSHIP, Limited, a Delaware limited partnership, whose mailing address is 7655 Market Street, Youngstown, Ohio 44512, hereinafter called Grantor, to INDIAN RIVER COUNTY, a political subdivision of the State of Florida, whose mailing address is 1840 25th Street, Vero Beach, Florida 32960, hereinafter called Grantee,

WITNESSETH:

WHEREAS, Grantor is the fee simple owner of certain real property situated in Indian River County, Florida, on which is proposed to be developed a Development of Regional Impact ("DRI") known as Indian River Mall; and

WHEREAS, on July 19, 1994, Indian River county issued Resolution No. 94-93 granting development approval of the Indian River Mall DRI which approval as amended from time to time is herein referred to as the "Development Order"; and

WHEREAS, Grantor finds that it is appropriate to retain certain land or water areas on Grantor's property in their natural, scenic, open, or wooded condition; to retain such areas as suitable for habitat for fish, plants, or wildlife; to retain the structural integrity or physical appearance of sites or properties of historical, architectural, archeological, or cultural significance; and

WHEREAS, the establishment of a conservation easement is required by Indian River County Comprehensive Plan Conservation Element, Policy 5.1(h) to overlay all preserved, created, or enhanced wetlands or deep water habitats (and upland buffers, as applicable) associated with development site mitigation; and

WHEREAS, it may be appropriate pursuant to Indian River County Comprehensive Plan Conservation Element, Policy 6.12 to preserve certain native plant communities in viable condition with intact canopy, understory, and ground cover; and

WHEREAS, it is a special condition of the Development Order that Grantor preserve, by dedicating a conservation easement, approximately 4.7 acres of cabbage palm hammock, including canopy, understory and ground cover, within the DRI property as hereinafter described;

NOW, THEREFORE, Grantor, for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid, by Grantee, by these presents does grant a conservation easement upon and across that real property described in Exhibit "A" (the "Easement Area") to Grantee which conservation easement shall run with the land and be binding upon the owner, its heirs, successors and assigns, and remain in full force and effect, enforceable by the Grantee either by injunction or proceeding in equity or at law, said easement, subject to

0904582

95 SEP 20 PM 2:10

OR 1072PG2581

certain uses hereinafter permitted, specifically prohibiting any of the following activities except to the extent that such activities are either required or permitted by the Development Order:

(a) constructing 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, other than invasive exotic species.

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

(e) surface use except for purposes that permit the land or water area to remain predominately 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 the 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, archeological, architectural, or cultural significance.

Nothing herein shall be deemed to prevent Grantor from performing such activities on, about or within the Easement Area as are either necessary or desirable in fulfilling the requirements of the Development Order or related obligations imposed by Grantee, its agents or other governmental entities. In the event that Grantor wishes to undertake an activity which is expressly prohibited by the terms of this Conservation Easement, it shall provide written notice thereof to Grantee; thereafter this Conservation Easement may be modified on terms and conditions mutually acceptable to the parties.

Grantee acknowledges that 1) the granting of this conservation easement satisfies the condition and advances the intent set forth in paragraph 17 of the Development Order; and 2) such conservation easement qualifies, pursuant to Section 193.501, Florida Statutes, as a covenant or conveyance entitling Grantor to reduced valuation of the land subject thereto.

Notwithstanding any provision to the contrary herein contained, Grantor reserves the right for certain passive recreational uses not detrimental to the health of the ecological system.

Notwithstanding any provision to the contrary herein contained, the above-stated conservation easement shall not transfer to Grantee any of the normal duties and obligations of the Grantor to maintain the fee simple property in a safe condition.

Notwithstanding any provision to the contrary herein contained, the above-stated conservation easement shall not preclude the Indian River Mosquito Control District from obtaining access to the property for the purposes of mosquito inspection, treatment, and management. Notwithstanding any provision to the contrary herein contained, Grantor may convey fee simple title to that portion of the Easement Area permitted by the Development Order to be used for storm water management or treatment areas, and actually used for either of such purposes, to the State of Florida, Department of Transportation or to such other governmental agency with responsibility for State Road 60 storm water management or treatment, and the use of the property so conveyed for storm water management or treatment areas shall not be considered to be inconsistent with the provisions of this easement.

In the event Grantee and Grantor (or subsequent owners of the servient estate) mutually agree that the intent of development condition 17 in the Development Order can be fulfilled by the designation and use of alternative preserve property, this Conservation Easement may be released on terms and conditions mutually acceptable to the parties.

This easement shall be perpetual and shall run with the land and be binding upon all subsequent owners of the servient estate. This easement shall be assignable to other governmental bodies or agencies, charitable organizations, or trusts authorized to acquire such easements. This easement may be enforced by the Grantee by injunction or proceeding in equity or at law. This easement may be released by the Grantee to the owners of the servient estate. This easement shall be recorded and indexed in the same manner as any other instrument affecting the title to real property.

The conservation easement granted herein shall be extinguished automatically in the event that the development approval granted by the Development Order shall be terminated, and the order of termination shall be recorded in the public records of Indian River County, Florida.

Grantor hereby covenants that it is lawfully seized of said servient land in fee simple, and that it has good right and lawful authority to convey the easements hereby established, and will defend the same against the lawful claims of all persons whomsoever.

Grantor previously executed a Conservation Easement dated August 1, 1995 and recorded in Official Record Book 1067, Page 1179, Public Records of Indian River County, Florida, identical to this instrument. This Conservation Easement has been executed by the Executive Vice President of the Grantor and recorded on the public records in order to remove any question as to the authority of the officer who executed the instrument referred to above.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed this 18th day of September, 1995.

Signed in the presence of:

Marlo Gillett
printed name: Marlo Gillett

Maralice M. Palm
printed name: Maralice M. Palm

DeBartolo Realty Partnership, Limited
a Delaware Limited Partnership

By: DeBartolo Realty Corporation,
an Ohio corporation
Its Partner

By: Kim A. Rieck
Kim A. Rieck
Its Senior Vice President

STATE OF OHIO
COUNTY OF MAHONING

The foregoing instrument was acknowledged before me this 18th day of September, 1995 by Kim A. Rieck, the Senior Vice President of DeBartolo Realty Corporation, an Ohio corporation, on behalf of and as the act and deed of said corporation, as General Partner of, and for DeBARTOLO REALTY PARTNERSHIP, Limited, a Delaware limited partnership. He ~~is~~ is personally known to me or has produced _____ (passport/driver license) as identification.

Rebecca E. Luthern
Notary Public
Notary's name: Rebecca E. Luthern
State of Ohio at Large.
My Commission Expires: May 3, 1999
Commission No.: _____

REBECCA E. LUTHERN, Notary Public
State of Ohio
My Commission Expires May 3, 1999

Exhibit "A"

INDIAN RIVER MALL
PRESERVE PARCEL
4.700 ACRES

Beginning at a point being 50.00 feet east and 30.00 feet south of the Northwest corner of the Northwest one-quarter of Section 5, Township 33 South, Range 39 East; thence run parallel to the West line of said Section 5, S 00° 01' 21" W a distance of 2458.03 feet to a point on the North right-of-way line of State Road 60; thence along said North right-of-way line N 89° 52' 25" E, a distance of 1277.97 feet to a point; thence leaving said North right-of-way line N 00° 02' 43" E, a distance of 497.58 feet to a point; thence S 89° 50' 24" E, a distance of 619.04 feet to a point; thence S 00° 02' 44" W, a distance of 494.52 feet to a point on the North right-of-way line of State Road 60; thence along said North right-of-way line N 89° 52' 37" E, a distance of 229.12 feet to the principal point and place of beginning of the following description:

Thence due North, a distance of 368.58 feet to a point; thence N 45° 00' 00" W a distance of 65.64 feet to a point; thence due North a distance of 85.00 feet to a point; thence due East a distance of 225.00 feet to a point; thence S 55° 53' 54" E a distance of 327.27 feet to a point; thence due South, a distance of 315.55 feet to a point on the North right-of-way line of State Road 60; thence along said North right-of-way line S 89° 52' 37" W, 449.58 feet to the principal point and place of beginning and containing 4.700 acres of land more or less.

\\dbarto\casement 2

This instrument prepared by:
William J. Stewart, Esq.
Stewart & Nall, P.A.
P. O. Box 3345
Vero Beach, FL 32964-3345

OR 1072 Pg 2585