



Office of *Attorney's Matters 11/13/2018*
INDIAN RIVER COUNTY
ATTORNEY

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MEMORANDUM

TO: Board of County Commissioners

THROUGH: Roland DeBlois, ^{FMD}Chief, Environmental Planning

FROM: William K. DeBaal, Deputy County Attorney *W.K.D.*

DATE: November 5, 2018

SUBJECT: Second Addendum to Agreement between Indian River County and REDEVGROUP, Inc.

At its meeting on June 12, 2018, the Board of County Commissioners approved an Agreement between Indian River County and REDEVGROUP, Inc. ("Agreement" attached as Exhibit 1) 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 subject 4.7 acre Lot 5 property is located on State Road 60 near the Mall's main entrance, west of and adjacent to the existing Wendy's Restaurant (see aerial, Exhibit 2).

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 contains a clause allowing release of the easement provided alternative conservation land of equal or greater environmental value is protected to fulfill the intent of the D.O. In the June 12 exchange Agreement, two alternative conservation properties were identified:

- 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.]

After the June 12 agreement was approved, REDEVGROUP approached staff with a First Addendum to Amend Agreement (First Addendum, attached as Exhibit 3) 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 Alternative 1 (the Siew Property) and Alternative 2 (the Kinner Property). This third proposed alternative ("Option 3") was described as follows:

- RevdevGroup conveyance of the \pm 10.3 acre Kinner Property to the IRLT (Indian River Land Trust) with a conservation easement over \pm 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.

REDEVGROU has again approached staff and now requests a Second Addendum to Agreement (Second Addendum, attached as Exhibit 4). Shortly after the original Agreement was approved by the Board, REDEVGROU placed a sign on Lot 5 advertising the development proposed for the property. REDEVGROU was contacted by the owner of the Indian River Mall who claimed ownership of Lot 5 via purchase of the mall property at the recent foreclosure sale. While REDEVGROU has title insurance from the purchase of Lot 5, it is concerned that should a dispute for title arise and REDEVGROU would lose title to Lot 5, the terms of the Agreement would call for REDEVGROU to convey the Siew and Kinner parcels to the County, thus REDEVGROU would lose Lot 5 and the money used to purchase the Siew and Kinner parcels. In the current Agreement, the County is obligated to release the conservation easement over Lot 5 at the time title to the Siew or Kinner properties are conveyed to the County. REDEVGROU has requested that the release of the conservation easement by the County be changed until the recording of the restrictive covenants covering Lot 5 by REDEVGROU. The restrictive covenants on the property deal with density, tree protection and location of storm ponds. The County will not let development on Lot 5 go forward until the restrictions are recorded and REDEVGROU will still have to convey title to either the Siew and/or the Kinner parcels by the December 2018 deadline as contemplated in the original Agreement, so the County's interests are protected by this Second Addendum. REDEVGROU feels they are protected by the Second Addendum because they are in control of when the conservation easement can be lifted – only after the recording of the restrictive covenants. So if REDEVGROU never records the restrictive covenants, the conservation easement remains in place and the development value of Lot 5 is significantly affected, which REDEVGROU hopes will scare off any adverse claims of ownership.

Staff has no objection to the Second Addendum to Agreement.

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

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

Attachments: Agreement between Indian River County and REDEVGROU, Inc.
Aerial Photo
First Addendum to Amend Agreement
Second Addendum to Agreement

Copy to: Roland DeBlois, Chief, Environmental Planning
Stan Boling, Director, Community Development
Bruce Barkett, Esq., REDEVGROU, Inc.