

Proposed

PREPARED BY AND RETURN TO:
Kimberly B. Rezanka
Cantwell & Goldman, P.A.
96 Willard Street, Suite 302
Cocoa, FL 32922

**SECOND AMENDMENT TO
BINDING DEVELOPMENT PLAN**

THIS SECOND AMENDMENT TO BINDING DEVELOPMENT PLAN, entered into this _____ day of _____, 2020, between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter referred to as "County" and **RIVER FLY-IN CONDOMINIUM, INC.**, a Florida corporation (successor to RIVER FLY-IN, LLC, a Florida limited liability company) (hereinafter referred to as "Developer/Owner").

RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner desires to develop the Property in a residential, multi-family condominium ~~configuration~~ (the Project); and

WHEREAS, the Property is located within 1,500 feet of the Merritt Island Airport; and
WHEREAS, as part of its plan for development of the Property, the Titusville-Cocoa Airport Authority has requested that the Developer/Owner mitigate negative impacts of the abutting Merritt Island Airport upon the residential units planned to be constructed by the Developer/Owner; and

WHEREAS, the County approved PUD zoning for the Property on or about May 16, 2006, including a Preliminary Development Plan (Zoning Action Z-510205), and is authorized to regulate development of the Property; and

WHEREAS, the County and the Owner entered into a Binding Development Plan on May 16, 2006, said Binding Development Plan being recorded in Official Records Book 5648, Page 7252, Public Records of Brevard County, Florida; and

WHEREAS, the County and the Owner entered into a First Amendment to the Binding Development Plan on August 5, 2014, said Amendment being recorded in Official Records Book 7182, Page 1198, Public Records of Brevard County, Florida ("First Amendment"); and

WHEREAS, the Owner desires to add a new subsection to paragraph 2.D. and a new paragraph 6. to the First Amendment to provide for additional restrictions to comply with Brevard County Code Sec. 62-1841.5.5. - Resort dwellings; and

WHEREAS, Resort Dwellings are a permitted use with conditions in Brevard County Code Sec. 62-1443 (PUD zoning classification); and

NOW, THEREFORE, the parties agree and the Binding Development Plan is amended as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.

2. To meet the desires of the Titusville-Cocoa Airport Authority and the Brevard County Commission the Developer/Owner agrees to the following:

A. Upon the approval of the original Binding Development Plan, the Developer/Owner recorded the Declaration of Covenants and Waiver of Claims in the Public Records of Brevard County, Florida at Official Records Book 5648, Page 7258.

B. Upon the approval of the original Binding Development Plan the Developer/Owner recorded the Aviation Easement in the Public Records of Brevard County, Florida at Official Records Book 5648, Page 7262.

C. In addition, a recorded copy of the Declaration of Covenants and Waiver of Claims shall be included as an exhibit within the condominium/homeowners' association documents for any Project built upon the Property.

D. The condominium/homeowners' association documents for any Project on the subject Property shall further provide:

i. A copy of the Declaration of Covenants and Waiver of Claims and Avigation Easement will be attached to the Declaration of Condominium/Declaration of Covenants as Exhibits.

ii. The condominium/homeowners' association documents shall provide that the condominium/homeowners' association documents shall approve each and every conveyance of a unit and resale of a unit. The condominium/homeowners' association shall obtain from any person or entity of any conveyance of any interest in a unit a signed acknowledgement for receipt of a copy of the Declaration of Covenants and Waiver of Claims and the Brevard County Avigation Easement. Copies of same signed by any person or entity of any conveyance of any interest in a unit shall then be sent to the Titusville-Cocoa Airport Authority. Any conveyance made without the condominium/homeowners' association's approval shall be voidable by the condominium/homeowners' association.

iii. The condominium/homeowners' association shall provide annually, on or before July 1st of each year, to the Titusville-Cocoa Airport Authority and to the County Manager's Office of Brevard County, a sworn report setting forth the names and addresses of any person or entity of any conveyance of any interest in a unit within the Property for the previous calendar years and a copy of the documentation required by paragraph 2.D.(ii) above to insure that a purchaser has received copies of the Declaration of Covenants and Waiver of Claims and Avigation Easement.

iv. The condominium/homeowners' association documents shall provide that the Titusville-Cocoa Airport Authority shall have the standing to enforce the provisions of



paragraphs 2D.(i-iii) above. If the Titusville-Cocoa Airport Authority files suit to enforce the provisions of paragraph 2D.(i-iii) above, the prevailing party shall be entitled to attorney's fees. The condominium/homeowners' association documents shall specifically provide that the doctrine of waiver shall not apply to any new owner of a residential unit, even though the condominium/homeowners' association has allowed, knowingly or unknowingly, the conveyance of a unit without receipt of the above referenced documents. In addition, the condominium/homeowners' association documents shall provide that the provisions set forth in 2D. (i-iii) above may not be amended without the written consent of the Titusville-Cocoa Airport authority.

v. The condominium/homeowners' association documents shall provide that all units are restricted to no more than six (6) occupants without the association's consent and that no individual room in a unit may be rented.

3. Developer/Owner agrees to install sound attenuation materials within all units to achieve an outdoor to indoor noise level reduction (NRL) of at least 25 decibels and protective lighting shall be installed to limit the Project's glare upon the Merritt Island Airport.

4. No direct access from the Project to the Merritt Island Airport shall be allowed unless expressly approved in writing by the Titusville-Cocoa Airport Authority.

5. Developer/Owner agrees that no structure on the subject property shall exceed 94 feet.

6. Developer/Owner/association shall ensure that the number of persons occupying any dwelling unit shall not exceed the number of rooms in the dwelling unit, require that there shall be a designated local manager for each resort dwelling unit, and demand compliance with Brevard County Code Sec. 62-1841.5.5 (2).

7. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This Agreement provides no vested rights against changes to the comprehensive plan or land development regulations as they may apply to this Property.

8. Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of

recording this Agreement in Brevard County, Florida.

9. This Second Amended Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on May 29, 2014. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

10. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Section 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as it may be amended

11. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 9 above.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed all as of the date and year first above written.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA,
2725 Judge Fran Jamieson Way
Viera, FL 32940

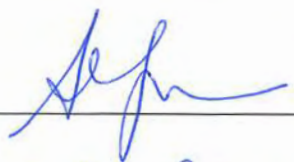
Scott Ellis, Clerk
(SEAL)

Bryan Lober, Chair
As approved by the Board on _____

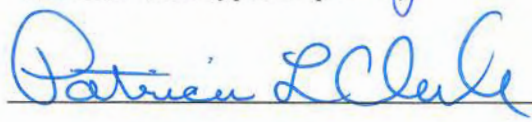


(Please note: You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

WITNESSES:

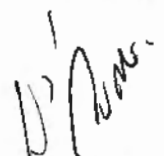


Samantha Ghanayem
(Witness Name typed or printed)



Patricia L. Clark
(Witness Name typed or printed)

DEVELOPER/OWNER
RIVER FLY-IN CONDOMINIUM, INC., a
Florida corporation



WASIM NIAZI, as President
1910 Rockledge Blvd
Rockledge, FL 32955

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 29th day of January, 2020 by WASIM NIAZI, as President of RIVER FLY-IN CONDOMINIUM, INC., A Florida corporation, on behalf of the corporation. He is ☒ personally known to me or ☐ has produced _____ as identification.

My commission expires

SEAL

Commission No.:



Patricia L. Clark
Comm. #GG363212
Expires: October 1, 2023
Bonded Thru Aaron Notary



Notary Public

Patricia L. Clark

(Name typed, printed or stamped)

Schedule "A"

A PARCEL OF LAND IN GOVERNMENT LOT 1, SECTION 1, TOWNSHIP 25 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1, SAID POINT BEING ON THE CENTERLINE OF CONE ROAD; THENCE SOUTH $0^{\circ} 58' 27''$ EAST ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 144.74 FEET TO THE POINT OF BEGINNING; THENCE NORTH $88^{\circ} 54' 19''$ EAST ALONG THE SOUTH LINE OF LANDS DESCRIBED IN DEED BOOK 418, PAGE 510 AND DEED BOOK 435, PAGE 3 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 150.22 FEET; THENCE NORTH $1^{\circ} 19' 12''$ WEST PARALLEL WITH THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 114.74 FEET; THENCE NORTH $88^{\circ} 49' 40''$ EAST ALONG A LINE 30 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 629.69 FEET; THENCE SOUTH $0^{\circ} 27' 26''$ EAST ALONG THE WEST LINE OF LANDS CONVEYED IN OFFICIAL RECORDS BOOK 692, PAGE 522 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 115.12 FEET; THENCE NORTH $88^{\circ} 46' 52''$ EAST ALONG THE SOUTH LINE OF SAID LANDS CONVEYED IN OFFICIAL RECORDS BOOK 692, PAGE 522, A DISTANCE OF 171.85 FEET TO THE CENTER OF AN APPROXIMATE 15 FEET WIDE LEVEE; THENCE SOUTH $2^{\circ} 12' 58''$ WEST ALONG THE CENTER OF SAID LEVEE A DISTANCE OF 533.03 FEET; THENCE SOUTH $89^{\circ} 02' 12''$ WEST PARALLEL WITH THE SOUTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 918.62 FEET TO THE WEST LINE OF SAID GOVERNMENT LOT 1; THENCE NORTH $1^{\circ} 09' 48''$ WEST ALONG THE WEST LINE OF GOVERNMENT LOT 1 A DISTANCE OF 529.19 FEET TO THE POINT OF BEGINNING.

ALSO DESCRIBED AS:

A PARCEL OF LAND IN GOVERNMENT LOT 1, SECTION 1, TOWNSHIP 25 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1, SAID POINT BEING ON THE CENTERLINE OF CONE ROAD; THENCE SOUTH $1^{\circ} 10' 22''$ EAST ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 145 FEET TO THE POINT OF BEGINNING; THENCE NORTH $88^{\circ} 50' 36''$ EAST ALONG THE SOUTH LINE OF LANDS DESCRIBED IN DEED BOOK 418, PAGE 510 AND DEED BOOK 435, PAGE 3 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 150 FEET; THENCE NORTH $1^{\circ} 10' 22''$ WEST PARALLEL WITH THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 115 FEET; THENCE N $88^{\circ} 50' 36''$ EAST ALONG A LINE 30 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 629.60 FEET; THENCE SOUTH $0^{\circ} 24' 24''$ EAST ALONG THE WEST LINE OF LANDS CONVEYED IN OFFICIAL RECORDS BOOK 692, PAGE 522 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 115 FEET; THENCE NORTH $88^{\circ} 50' 36''$ EAST ALONG THE SOUTH LINE OF SAID LANDS CONVEYED IN OFFICIAL RECORDS BOOK 692, PAGE 522, A DISTANCE OF 171.84 FEET TO THE CENTER OF AN APPROXIMATE 15 FEET WIDE LEVEE; THENCE SOUTH $2^{\circ} 13' 56''$ WEST ALONG THE CENTER OF SAID LEVEE A DISTANCE OF 632.54 FEET; THENCE SOUTH $89^{\circ} 02' 56''$ WEST PARALLEL WITH THE SOUTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 918.28 FEET TO THE WEST LINE OF SAID GOVERNMENT LOT 1; THENCE NORTH $1^{\circ} 10' 22''$ WEST ALONG THE WEST LINE OF GOVERNMENT LOT 1 A DISTANCE OF 528.30 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT ANY ROAD RIGHT OF WAY

AFFIDAVIT OF NO MORTGAGE

I, WASIM NIAZI, President of the River Fly-In Condominium, Inc., a Florida corporation, after being duly sworn, deposes and says:

1. River Fly-In Condominium, Inc. is the owner of the real property as more particularly described in **Exhibit "A"** attached hereto
2. There are no mortgages on the Property.

Dated January 29, 2020.

By: 

Wasim Niazi, President
River Fly-In Condominium, Inc.

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 29th date of January, 2020 by WASIM NIAZI, President of the River Fly-In Condominium, Inc., a Florida corporation, who is personally known to me or who has produced _____ as identification.

My commission expires
SEAL

Commission No.:


Notary Public

Patricia L. Clark

(Name typed, printed or stamped)



Patricia L. Clark
Comm. #GG363212
Expires: October 1, 2023
Bonded Thru Aaron Notary

35

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