



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.1.

10/5/2023

Subject:

Acceptance, Re: Tracey C. and Teresa B. Higginbotham. (District 1)

Fiscal Impact:

None

Dept/Office:

Planning & Development

Requested Action:

In accordance with Section 62-1157, it is requested that the Board of County Commissioners accept, and the Chair sign, the Binding Development Plan.

Summary Explanation and Background:

A BDP (Binding Development Plan) is a voluntary agreement presented by the property owner to self-impose limits upon development of a property in support of a change of zoning or conditional use permit. Pursuant to Section 62-1157, a BDP shall be recorded in the public records within 120 days of the Board's approval of the zoning request. Following staff and legal review, the BDP is presented to the Board in recordable form as a Consent Agenda item in order to finalize the zoning action.

On September 7, 2023, the Board approved a change of zoning classification from GU (General Use) to AU (Agricultural Residential), with a BDP stipulating no overnight lodging for commercial purposed. The attached BDP includes this provision.

Clerk to the Board Instructions:

Upon recordation, please return a copy of the Binding Development Plan to Planning and Development.

Resolution 23Z00024

On motion by Commissioner Steele, seconded by Commissioner Feltner, the following resolution was adopted by a unanimous vote:

WHEREAS, Tracey C. and Teresa B. Higginbotham requests a change of zoning classification from GU (General Use) to AU (Agricultural Residential), on property described as Lot 4, Block 1, Canaveral Groves Subdivision, as recorded in ORB 9088, Pages 2874 - 2875, of the Public Records of Brevard County, Florida; and Lot 4.01, Block 1, Canaveral Groves Subdivision, as recorded in ORB 9088, Page 2877, of the Public Records of Brevard County, Florida; and Lot 4.02, Block 1, Canaveral Groves Subdivision, as recorded in ORB 9088, Page 2876, of the Public Records of Brevard County, Florida. **Section 28, Township 23, Range 35.** (3.55 acres) Located approx. 0.20 miles north of Port St. John Pkwy., and approx. 0.35 miles east of Golfview Ave. (No assigned address. In the Cocoa area.); and

WHEREAS, a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning and Zoning Board recommended that the application be approved; and

WHEREAS, the Board, after considering said application and Brevard County Planning and Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be approved with a BDP stipulating overnight lodging for commercial purposes shall be prohibited on the property; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from GU to AU, be approved with a BDP, recorded on 10/06/23, in ORB 9903, Pages 244 - 247, stipulating overnight lodging for commercial purposes shall be prohibited on the property. The Planning and Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of October 6, 2023.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida



Rita Pritchett, Chair
Brevard County Commission
As approved by the Board on October 5, 2023.

ATTEST:



RACHEL SADOFF, CLERK

(SEAL)

Planning and Zoning Board Hearing – August 14, 2023
Board of County Commissioners Hearing – September 7, 2023

Please note: A CUP (Conditional Use Permit) will generally expire on the three-year anniversary of its approval if the use is not established prior to that date. CUPs for Towers and Antennas shall expire if a site plan for the tower is not submitted within one year of approval or if construction does not commence within two years of approval. A Planned Unit Development Preliminary Development Plan expires if a final development plan is not filed within three years. **The granting of this zoning does not guarantee physical development of the property. At the time of development, said development must be in accordance with the criteria of the Brevard County Comprehensive Plan and other applicable laws and ordinances.**



October 6, 2023

MEMORANDUM

TO: Jennifer Jones, Zoning

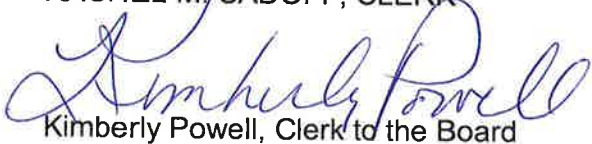
RE: Item F.1., Binding Development Plan with Tracey C. and Teresa B. Higginbotham

The Board of County Commissioners, in regular session on October 5, 2023, executed Binding Development Plan Agreement with Tracey C. and Teresa B. Higginbotham for property located on Lot 4, Block 1, Canaveral Groves Subdivision, as recorded in ORB 9088, Pages 2874 – 2875, of the Public Records of Brevard County, Florida; Lot 4.01, Block 1, Canaveral Groves Subdivision, as recorded in ORB 9088, Page 2877, of the Public Records of Brevard County Florida; and Lot 4.02, Block 1, Canaveral Groves Subdivision, as recorded in ORB 9088, Page 2876, of the Public Records of Brevard County Florida. Enclosed are two certified copies of the recorded document and copy of receipt.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/ds

Encls. (3)



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

October 6, 2023

MEMORANDUM

TO: Recording

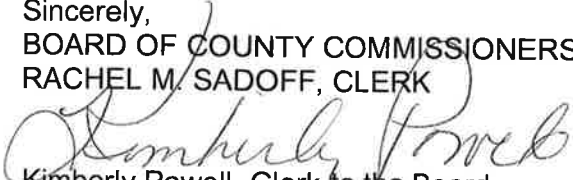
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Please record the Agreement in the Public Records and return the recorded instrument to this office.

Your continued cooperation is always appreciated.

Sincerely,
BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/ds

Encls. (2)

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 5 day of October, 2023 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Tracey C. & Teresa B. Higginbotham (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 has requested the AU zoning classification(s) and desires to develop the Property as Agricultural, and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impacts on abutting landowners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:


1. Recitals. The above recitals are true and correct and are incorporated into this Agreement by their reference.
2. 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.
3. Overnight lodging for commercial purposes shall be prohibited on the Property.
4. 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 Brevard County Comprehensive Plan or land development regulations as they may apply to this Property.

5. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court all costs of recording this Agreement in the Public Records of Brevard County, Florida.
6. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and shall be subject to the above referenced conditions as approved by the Board of County Commissioners on September 7, 2023. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.
7. Violation of this Agreement shall constitute a violation of the zoning classification and of this Agreement. This Agreement may be enforced by Sections 1-7 and 62-5 of the Code of Ordinances of Brevard County, Florida, as may be amended.
8. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and shall be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any condition is a violation of this Agreement and constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 7 above.
9. Severability clause. If any provision of this BDP is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall continue in full force and effect without being impaired or invalidated in any way.

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

ATTEST:


Rachel M. Sadoff, Clerk of Court
(SEAL)


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


Rita Pritchett, Chair


As approved by the Board on OCT 05 2023

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


WITNESSES:



SERENELLA ZARI
(Witness Name typed or printed)

(PROPERTY OWNER)
Tracey C. Higginbotham


6545 BIRCH DR., COCOA, FL 32927
(Address)

(PROPERTY OWNER)
Teresa Higginbotham


Stacey Kurzman
(Witness Name typed or printed)


6545 BIRCH DR., COCOA, FL 32927
(Address)

STATE OF FLORIDA §

COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me, by means of X physical presence or
_____ online notarization, this 8TH day of SEPTEMBER, 20 23, by Tracey C.
Higginbotham and Teresa B. Higginbotham, who are personally known to me or who has produced
as identification.


Notary Public

SEAL



PEDRO BALDEON
Commission # HH 023458
Expires July 26, 2024
Bonded thru Budget Notary Services

My commission expires: 7/26/2024

Commission No.: HH023458

EXHIBIT 'A'

Lot 4, Block 1, Canaveral Groves Subdivision, as recorded in ORB 9088, Pages 2874 - 2875, of the Public Records of Brevard County, Florida; and Lot 4.01, Block 1, Canaveral Groves Subdivision, as recorded in ORB 9088, Page 2877, of the Public Records of Brevard County, Florida; and Lot 4.02, Block 1, Canaveral Groves Subdivision, as recorded in ORB 9088, Page 2876, of the Public Records of Brevard County, Florida.

RACHEL M. SADOFF
CLERK OF THE CIRCUIT COURT & COMPTROLLER
BREVARD COUNTY, FLORIDA



POST OFFICE BOX 2767
TITUSVILLE, FLORIDA 32781-2767
(321) 637-2006
WWW.BREVARDCLERK.US

Transaction #: 3498376
Receipt #: 63305910
Cashier Date: 10/06/2023 03:54:23 PM
Cashier Branch: Titusville - Six Story

Print Date:
10/06/2023 03:54:31 PM

CUSTOMER INFORMATION	TRANSACTION INFORMATION		PAYMENT SUMMARY	
RANDY RODRIGUEZ 4742 BROOKHAVEN ST COCOA, FL 32927	Date Received:	10/06/2023	Total Fees:	\$35.50
	Source Code:	Titusville - Six Story	Total Payments:	\$35.50
	Return Code:	Hand Carried	Balance Due:	\$0.00
	Trans Type:	Recording		

1 Payments

CHECK #1816	\$35.50
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1 Recorded Items

AGREEMENT	BK/PG: 9903/244 CFN: 2023212101 Date: 10/06/2023 03:54:23 PM
From: To:	
Recording @ 1st=\$10 Add'l=\$8.50 ea.	4 \$35.50

STATE OF FLORIDA
COUNTY OF BREVARD

TRACEY C. HIGGINBOTHAM, after being duly sworn, deposes and says:

The undersigned is the owner of the real property described as follows:

Lot 4, Block 1, Canaveral Groves Subdivision, as recorded in ORB 9088, Pages 2874 - 2875, of the Public Records of Brevard County, Florida; and Lot 4.01, Block 1, Canaveral Groves Subdivision, as recorded in ORB 9088, Page 2877, of the Public Records of Brevard County, Florida; and Lot 4.02, Block 1, Canaveral Groves Subdivision, as recorded in ORB 9088, Page 2876, of the Public Records of Brevard County, Florida.

There are no mortgages on the above described property

Dated this 8TH day of SEPTEMBER 2023.

Tracey C. Higginbotham
Signature

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 8TH day of SEPTEMBER, 2023, by

TRACEY C. HIGGINBOTHAM, who is personally known to me or who has produced N/A as identification, and who did take an oath.

Notary Public:



PEDRO BALDEON
Commission # HH 023458
Expires July 26, 2024
Bonded Thru Budget Notary Services

Pedro Baldeon
State of Florida at Large

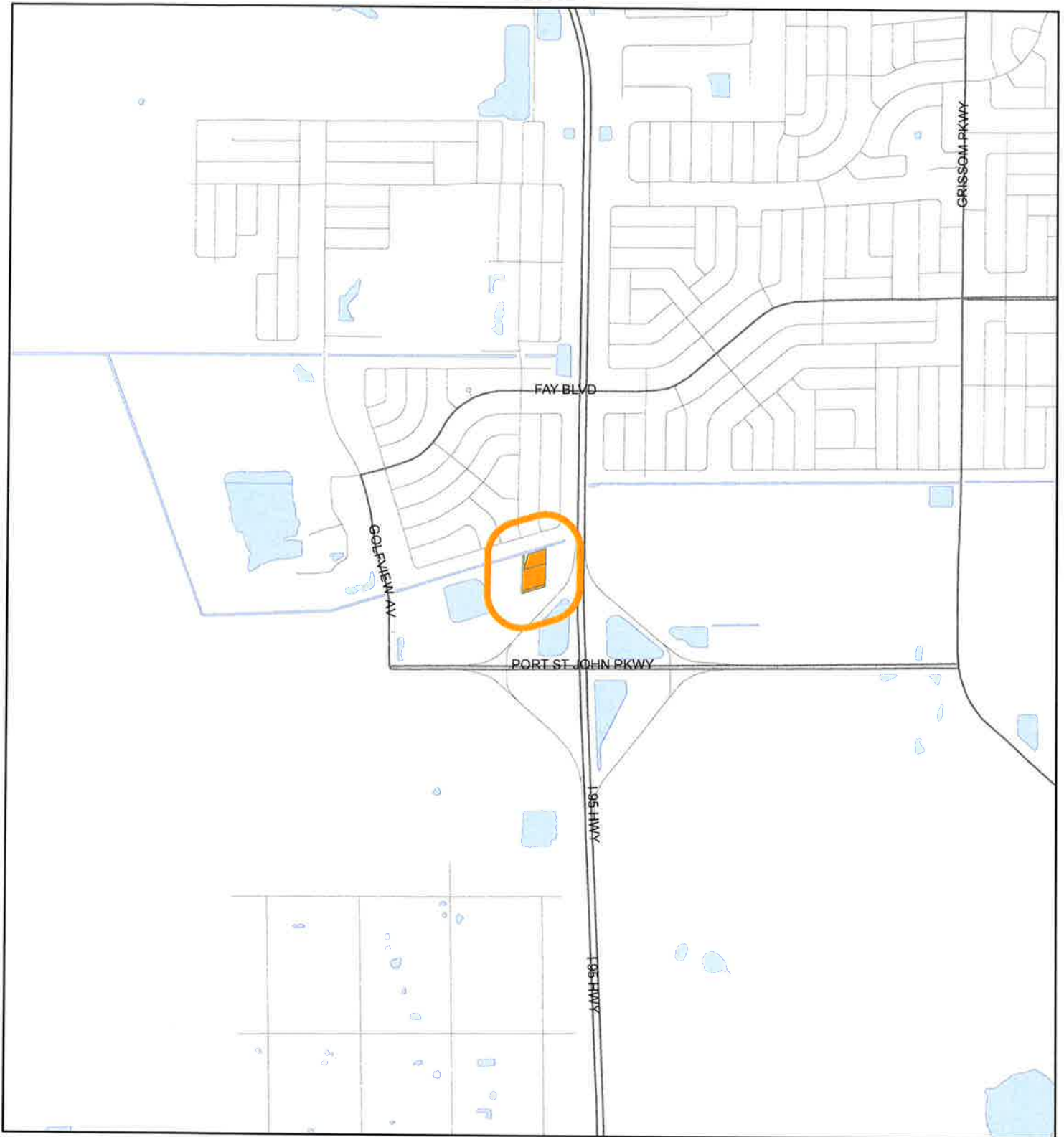
My Commission Expires: 7/26/2024

(SEAL)

LOCATION MAP

HIGGINBOTHAM, TRACEY & TERESA

23Z00024



1:24,000 or 1 inch = 2,000 feet

Buffer Distance: 500 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/31/2023

Buffer
Subject Property

P&Z Recommendation: Minneboo/Glover – Approved with a BDP. The vote was unanimous.
BCC ACTION: Goodson/Tobia – Approved with a BDP. The vote was unanimous. The BDP will be scheduled as a Consent Item on a subsequent County Commission agenda, per Policy BCC-52. Resolution to be completed upon receipt of recorded BDP.

11. **(23SS00012) Colleen Mary Golub Revocable Trust** (Kim Rezanka) requests a Small Scale Comprehensive Plan Amendment (23S.12), to change the Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial). The property is 1.72 acres, located on the southeast corner of N. Wickham Rd. and St. Andrews Blvd. (No assigned address. In the Melbourne area.) (Tax Account 2627864) (District 4)

LPA Recommendation: Glover/Thomas – Approved. The vote was unanimous.

BCC ACTION: Feltner/Steele – Approved as recommended, and adopted Ordinance No. 23-19. The vote was unanimous.

12. **(23Z00051) Colleen Mary Golub Revocable Trust** (Kim Rezanka) requests a Major Amendment to a PUD (Planned Unit Development). The property is 1.72 acres, located on the southeast corner of N. Wickham Rd. and St. Andrews Blvd. (No assigned address. In the Melbourne area.) (Tax Account 2627864) (District 4)

P&Z Recommendation: Glover/Thomas – Approved. The vote was unanimous.

BCC ACTION: Feltner/Steele – Approved with the condition that ingress and egress to the site via Wickham Road shall be in accordance with Plat Note #5 of Mercedes Plaza Plat recorded in Plat Book 53, Page 47. The vote was unanimous.

13. **(23SS00013) Chelsea Lee James** requests a Small Scale Comprehensive Plan Amendment (23S.13) to change the Future Land Use designation from AGRIC (Agricultural) to RES 1 (Residential 1). The property is 1.18 acres, located on the southeast corner of D Johnson Ave. and Merritt St. (4585 D Johnson Ave., Mims) (Tax Account 2002343) (District 1)

LPA Recommendation: Hodgers/Bartcher – Approved. The vote was unanimous.

BCC ACTION: Feltner/Tobia – Approved as recommended, and adopted Ordinance No. 23-23. The vote was unanimous.

14. **(23Z00052) Chelsea Lee James** requests a change of zoning classification from GU (General Use) to RRMH-1 (Rural Residential Mobile Home). The property is 1.18 acres, located on the southeast corner of D Johnson Ave. and Merritt St. (4585 D Johnson Ave., Mims) (Tax Account 2002343) (District 1)

P&Z Recommendation: Hodgers/Bartcher – Approved. The vote was unanimous.

BCC ACTION: Feltner/Tobia – Approved as recommended. The vote was unanimous.

15. **(23Z00024) Tracey C. and Teresa B. Higginbotham** (Randy Rodriguez) request a change of zoning classification from GU (General Use) to AU (Agricultural Residential). The property is 3.55 acres, located approx. 0.20 miles north of Port St. John Pkwy., and approx. 0.35 miles east of Golfview Ave. (No assigned address. In the Cocoa area.) (Tax Accounts 2312731,

2319995, 2319996) (District 1)

P&Z Recommendation: Bartcher/Hodgers – Approved. The vote was unanimous.

BCC ACTION: Feltner/Tobia – Approved with a BDP prohibiting overnight lodging for commercial purposes. The vote was unanimous. The BDP will be scheduled as a Consent Item on a subsequent County Commission agenda, per Policy BCC-52. Resolution to be completed upon receipt of recorded BDP.

16. **(23SS00008) IR Tiki, LLC** (Kelly Hyvonen) requests a Small Scale Comprehensive Plan Amendment (23S.08), to change the Future Land Use designation from NC (Neighborhood Commercial) and CC (Community Commercial), to all CC. The property is 1.72 acres, located on the east side of U.S. Highway 1, approx. 735 ft. south of Suntree Blvd. (6533 S. U.S. Highway 1, Rockledge) (Tax Account 2605971) (District 2)

LPA Recommendation: Thomas/Hodgers – Approved. The vote was unanimous.

BCC ACTION: Goodson/Steele – Approved as recommended, and adopted Ordinance No. 23-20. The vote was unanimous.

17. **(23Z00043) IR Tiki, LLC** (Kelly Hyvonen) requests a change of zoning classification from RU-2-10 (Medium Density Multi-Family Residential) and BU-2 (Retail, Warehousing, and Wholesale Commercial) to all BU-2. The property is 1.72 acres, located on the east side of U.S. Highway 1, approx. 735 ft. south of Suntree Blvd. (6533 S. U.S. Highway 1, Rockledge) (Tax Account 2605971) (District 2)

P&Z Recommendation: Hodggers/Thomas – Approved. The vote was unanimous.

BCC ACTION: Goodson/Steele – Approved as recommended. The vote was unanimous.

18. **Amendments to Chapter 46 – Environment, Article IV. – Noise, and Section 62-2271. – Noise, of the Brevard County Code of Ordinances.**

LPA Recommendation: Minneboo/Hodgers – Approved. The vote was 7:1, with Hopengarten voting nay.

old

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 6 day of _____, 20____ between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Tracey C. & Teresa B. Higginbotham (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 has requested the AU zoning classification(s) and desires to develop the Property as Agricultural, and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impacts on abutting landowners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

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3. Overnight lodging for commercial purposes shall be prohibited on the Property.
4. 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 Brevard County Comprehensive Plan or land development regulations as they may apply to this Property.

5. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court all costs of recording this Agreement in the Public Records of Brevard County, Florida.
6. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and shall be subject to the above referenced conditions as approved by the Board of County Commissioners on September 7, 2023. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.
7. Violation of this Agreement shall constitute a violation of the zoning classification and of this Agreement. This Agreement may be enforced by Sections 1-7 and 62-5 of the Code of Ordinances of Brevard County, Florida, as may be amended.
8. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and shall be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any condition is a violation of this Agreement and constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 7 above.
9. Severability clause. If any provision of this BDP is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall continue in full force and effect without being impaired or invalidated in any way.

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