

4A1

Department: County Administration

Motion and Title: Staff requests Board direction: concerning the construction of an approximately 250,000 sf Innovation Center for Intelligent Buildings by United Technologies Corporation Building & Industrial Systems (UTC BIS) on 30 acres within an approximately 100 acre deed restricted parcel. The deed restriction is subject to conflicting interpretation by the beneficiaries as to whether it restricts the property to only those uses that are supportive to bioscience. If the Board supports UTC Building & Industrial Systems locating on the 30 acres, direct staff to negotiate a release of the Declaration of Covenants or consent to the uses described below, contingent upon UTC BIS locating and operating on the property.

Summary: On February 28, 2006, the Board of County Commissioners approved a Donation and Purchase and Sale Agreement (R2006-0423) for 70 acres of property in the amount of \$16 Million from the Lester Family Investment (Lesters) located within the Briger Property in Palm Beach Gardens. This 70 acre property is to be used for Scripps future expansion. As a condition of the purchase, the Lesters agreed to place a Declaration of Covenants (Declaration) on an adjacent 100 acre parcel to promote the development of the bioscience cluster. The 100 acre parcel has since been acquired by The Kolter Group (Kolter). The County along with Scripps, the State of Florida (State), the City of Palm Beach Gardens (Gardens), and Kolter are beneficiaries under the Declaration. County staffs' and Scripps' interpretation of the Declaration is that the uses allowed are to be in direct support of the County's biotechnology industry cluster. The State, Gardens, and Kolter disagree with this interpretation. It is their collective belief that the UTC BIS use is specifically allowed. In a letter to County Administration dated March 10, 2015, Scripps has stated that they will not object to UTC BIS locating on the 30 acres provided non-biotech uses moving forward are limited in scope and materially enhance the development of the biotechnology industry.

UTC BIS plans to construct an approximately 250,000 sf state of the art building to be known as the "UTC Center for Intelligent Buildings". The UTC Center for Intelligent Buildings will serve as a showcase to demonstrate new building technologies and will encourage global customer interaction, collaboration and inspiration to see the new possibilities for advanced, integrated and sustainable building solutions. It will also provide office space for employees engaged in, amongst other things, research and product development activities of the company. UTC BIS is a \$29 Billion operating segment of United Technologies Corporation, a Fortune 50 company. UTC BIS is the world's largest provider of building technologies, including security, fire safety, building automation, heating, ventilation, air conditioning, elevator, escalator and refrigeration systems. The estimated total economic impact over five (5) years is approximately \$662 Million. The company has not entered into an agreement to purchase the site and is still in the exploratory stages of determining whether or not this is an appropriate site for the proposed project. Countywide/District 1 (HF/JM)

Background and Policy Issues: On November 6, 2007, the BCC approved an Agreement (R2007-1888) with the Lester Family Investments to jointly fund professional services related to a joint application for a Development of Regional Impact (DRI), Future Land Use Amendment, Concurrency Approval, Planned Community Development District and a Conceptual Environmental Resource Permit for the 863 acre Briger Property, including the 70 acres for Scripps Florida.

1. The Scripps Research Institute letter dated March 10, 2015
2. Florida Department of Environmental Protection dated March 6, 2015
3. City of Palm Beach Gardens letter dated February 18, 2015
4. KG Donald Ross, LLC/Heights Biotech Investments, LLC letter dated March 5, 2015

Date _____

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	\$0	\$0	\$0	\$0	\$0
Operating Costs	0	0	0	0	0
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
(County)					
In-Kind Match (County)	0	0	0	0	0
NET FISCAL IMPACT	\$0	\$0	\$0	\$0	\$0
# Additional FTE	0	0	0	0	0
Positions (Cumulative)					
Is Item Included in Current Budget:	Yes	_____	No	_____	

Budget Account No:


Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Departmental Fiscal Review: _____

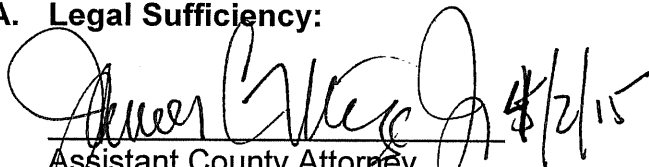
III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development & Control Comments:


OFMB ⁴⁰ _{3/3, 3/31} ^{5/31} _{5/31}


Contract Development & Control ^{4/11/15}
_{4-1-15 b k}

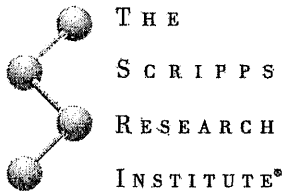
A. Legal Sufficiency:


Assistant County Attorney ^{4/2/15}

A. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.



Thomas E. Northrup, Ph.D., J.D.
General Counsel

10550 North Torrey Pines Road
La Jolla, California 92037
mail TPG 8
tel 858 784 2937
fax 858 784 9399
e-mail: northrup@scripps.edu

March 10, 2015

Ms. Shannon LaRocque
Assistant County Administrator
Palm Beach County
301 N. Olive Avenue, 11th Floor
West Palm Beach, FL 33401

Via Federal Express and Email

561-355-2428
slarocqu@pbcgov.org

Re: Declaration of Covenants Recorded in Official Record Book 21129, Page 244,
Public Records of Palm Beach County, Florida (the "Declaration of Covenants")

Dear Shannon,

During the Fall and Winter of 2003 and 2004, The Scripps Research Institute (Scripps) entered into agreements with the State of Florida and Palm Beach County to establish, operate and maintain a world-class biomedical research institute in Palm Beach County, Florida. Our Scripps Florida facility on the Jupiter Campus of the Florida Atlantic University is now fully operational. Our success is the direct result of a strong partnership with support of both the County and the State. Our future success will depend on the continuation of such private and public partnerships.

While both the County and the State vision of a thriving biomedical community in and around Scripps Florida has been partially realized, much work remains ahead. Scripps stands ready to actively participate in the future development of such a community, and is presently engaged in talks with numerous entities for development of further biotechnology/biomedical enterprises on an about 70 acre parcel of land on the "Briger Tract", presently owned by Palm Beach County and leased to Scripps.

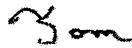
The purpose of this letter is to set forth the position of Scripps regarding a proposed use of a portion of an about 100 acre parcel of land (Tract B on the Plat of Alton PCD), which parcel is presently encumbered by the above referenced Declaration of Covenants. We understand that an about 30 acre portion of Tract B may be sold to a company for construction and development of an innovation center. Even though Scripps has not been made aware of any details regarding the proposed use, all interested parties agree that the proposed use is non-biotech related. We are willing to accept the use as being "high technology",

Attachment # 1

We are aware that other stakeholders and beneficiaries have opined that such proposed "high technology" use of this 30 acres is consistent with the above-reference Declaration, and the terms of the 2006 Grant Agreement between Scripps and Palm Beach County (See Definition of "Biotech Cluster Plan"). Scripps does not agree with these conclusions. We interpret the phrase "high technology", as used in the Declaration and Grant Agreement, as comprising only biotech and closely affiliated technologies.

Scripps is acutely aware of the desire by the various stakeholders and beneficiaries to use the land in a manner that will generate needed revenue. There seems little doubt that the proposed use will accomplish this goal. The question then is whether a non-biotech development on land encumbered for biotechnology can satisfy the need for economic development without significantly and adversely affecting the vision of a biotech cluster in the area. Scripps believes that such a non-biotech use is tenable if limited in scope and with appropriate mutually acceptable provisions that materially enhance biotech development in the area.

Respectfully submitted,



Thomas E. Northrup
General Counsel and Secretary

cc (via email):

Property Owner:

John Csapo, Heights Biotech Investments LLC (jcsapo@kolter.com)
Hugh W. Perry, Esq., Gunster (hpererry@gunster.com)

Florida Department of Environmental Protection:

Kelley Boree, Director, Division of State Lands (kelley.boree@dep.state.fl.us)

Palm Beach County:

Leonard Berger, Esq., Asst. County Attorney (LBerger@pbcgov.org)
Howard J. Falcon, III, Esq., Asst. County Attorney (HFalcon@pbcgov.org)
Jim Mize, Esq., Asst. County Attorney (JMize@pbcgov.org)

City of Palm Beach Gardens:

Ron Ferris, City Manager (rferris@pbgfl.com)
R. Max. Lohman, Esq., City Attorney (max@lohmanlawgroup.com)

The Scripps Research Institute:

Jim Paulson, Ph.D., President and CEO (jpaulson@scripps.edu)
Peter S. Holton, Esq., Jones Foster Johnston & Stubbs, P.A. (PHolton@jonesfoster.com)



FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

MARJORY STONEMAN DOUGLAS BUILDING
3900 COMMONWEALTH BOULEVARD
TALLAHASSEE, FLORIDA 32399-3000

RICK SCOTT
GOVERNOR

CARLOS LOPEZ-CANTERA
LT. GOVERNOR

JONATHAN P. STEVERSON
SECRETARY

March 6, 2015

VIA FEDERAL EXPRESS

Ms. Shannon LaRocque
Assistant County Administrator
Palm Beach County
301 N. Olive Avenue, 11th Floor
West Palm Beach, FL 33401

Re: Declaration of Covenants recorded in Official Records Book 21129, Page 244, Public
Records of Palm Beach County, Florida (the "Declaration of Covenants")

Dear Ms. LaRocque:

I am writing with respect to the referenced Declaration of Covenants. The Board of Trustees of the Internal Improvement Trust Fund ("Board of Trustees") is one of the four "Beneficiaries" identified in the Declaration of Covenants. As you may know, the State of Florida Department of Environmental Protection ("DEP") is the state agency that performs all staff duties on behalf of the Board of Trustees pursuant to a statutory delegation (See, Section 253.002, Florida Statutes).

By way of background, the Declaration of Covenants encumbers a 100-acre parcel ("Parcel") located in Palm Beach County that is part of the Briger Tract, legally described as "Tract B" on the Plat of Alton PCD, Plat Book 118, Page 197, Public Records of Palm Beach County, Florida. We generally understand that the northernmost 30 acres of the Parcel may be used and developed for the construction of an innovation center and the creation of a large number of jobs in Palm Beach County. You have asked for our opinion on whether this is a permitted use under the Declaration of Covenants.

DEP's Division of State Lands and Office of General Counsel have reviewed the Declaration of Covenants, including the Grant Agreement between Palm Beach County and The Scripps Research Institute dated May 23, 2006 ("Grant Agreement"). The permitted uses of the Parcel are outlined in the Declaration of Covenants, which permits the Parcel to be used for the "uses contemplated to be included in the Biotech Cluster Plan" as defined in the Grant Agreement. (Emphasis added.) The Grant Agreement defines "Biotech Cluster Plan" as "[t]he plan developed to create, implement and promote a biotech industry cluster, including bioresearch, medical, pharmaceutical, educational, healthcare, manufacturing, financial, communications/information technology and high-technology business or operations" on the Parcel. (Emphasis added.) Based on the foregoing, DEP believes that the contemplated use, or any other high technology based use is specifically permitted under the Declaration of Covenants, inasmuch as it specifically allows the Parcel to be used for "high-technology businesses or operations." Accordingly, DEP, in its capacity as staff to the Board of Trustees, will not object to this proposed use of the Parcel.

Ms. Shannon LaRocque
March 6, 2015
Page Two

This opinion does not express the opinion of any of the other Beneficiaries or the Declarant identified in the Declaration of Covenants and does not disclaim any interest the Board of Trustees may have in the Parcel.

If I may be of any assistance in this matter, please do not hesitate to contact me.

Sincerely,



Kelley Boree
Director, Division of State Lands

KB/sew

cc: John Csapo, Heights Biotech Investments LLC
Hugh W. Perry, Esquire
Leonard Berger, Asst. County Attorney, Palm Beach County
Howard J. Falcon III, Asst. County Attorney, Palm Beach County
Jim Mize, Asst. County Attorney, Palm Beach County
Ron Ferris, City Manager, Palm Beach Gardens
R. Max Lohman, City Attorney, Palm Beach Gardens
Jim Paulson, CEO, Scripps Research Institute
Thomas E. Northup, General Counsel, Scripps Research Institute



CITY OF PALM BEACH GARDENS

10500 N. MILITARY TRAIL PALM BEACH GARDENS, FLORIDA 33410-4698

RFC'D FEB 11 2015

February 18, 2015

VIA FEDERAL EXPRESS

Ms. Shannon LaRocque
Assistant County Administrator
Palm Beach County
301 N. Olive Avenue, 11th Floor
West Palm Beach, FL 33401

**Re: Declaration of Covenants recorded in Official Records Book 21129, Page 0244,
Public Records of Palm Beach County, Florida (the "Declaration of Covenants")**

Dear Ms. LaRocque,

I am writing with respect to the above mentioned Declaration of Covenants, which encumbers an approximately 100-acre parcel within the property known as the "Briger Tract", which parcel is more specifically referred to as "Tract B" on the Plat of Alton PCD. I generally understand that the northernmost 30 acres of Tract B may be sold to a large technology company for the construction and development of an innovation center, which will create approximately 500 technology jobs in our City.

As one of the "Beneficiaries" under the Declaration of Covenants, the City of Palm Beach Gardens fully supports this use of Tract B. Furthermore, we have reviewed the Declaration of Covenants and believe that this, or any other high technology based use, is permitted under the Declaration of Covenants, as it specifically permits this property to be used for "high-technology businesses or operations". In addition, this use is also permitted under the DRI Development Order and the PCD Development Order for this property, which were both approved by the City in 2010.

Finally, the City would be willing to execute any consents, acknowledgements or clarifying amendments that are consistent with our interpretation of the Declaration of Covenants. Additionally, the City would also agree to a release of the Declaration of Covenants from the 30 acres if requested to do so.

If I may be of any assistance in this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald M. Ferris".

Ronald M. Ferris
City Manager

A handwritten signature in black ink, appearing to read "R. Max Lohman".

R. Max Lohman
City Attorney

Attachment # 3

**KG DONALD ROSS LLC
HEIGHTS BIOTECH INVESTMENTS LLC
701 South Olive Avenue, Suite 104
West Palm Beach, FL 33401**

March 5, 2015

VIA FEDERAL EXPRESS

Ms. Shannon LaRocque
Assistant County Administrator
Palm Beach County
301 N. Olive Avenue, 11th Floor
West Palm Beach, FL 33401

Re: Declaration of Covenants recorded in Official Records Book 21129, Page 244, Public Records of Palm Beach County, Florida (the "Declaration of Covenants")

Dear Shannon,

I am writing with respect to the above mentioned Declaration of Covenants, which encumbers an approximately 100-acre parcel within the property known as the "Briger Tract", which parcel is more specifically referred to as "Tract B" on the Plat of Alton PCD. As you may know, the northernmost approximately 30 acres of Tract B (the "Biotech Parcel") may be sold to a large technology company for the construction and development of an innovation center and the creation of approximately 500 technology jobs in Palm Beach County.

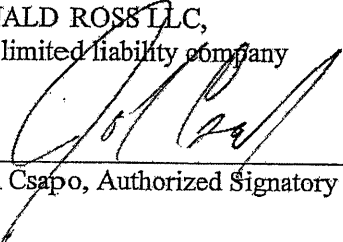
As successor-in-interest to Declarant under the Declaration of Covenants, KG Donald Ross LLC, and Heights Biotech Investments LLC, owner of the Biotech Parcel, fully support this use of Tract B. Furthermore, we have reviewed the Declaration of Covenants and believe that this, or any other "high technology" based use, is permitted under the Declaration of Covenants, as it specifically permits this property to be used for "high-technology businesses or operations".

Finally, we would also be willing to execute any consents, acknowledgements or clarifying amendments that are consistent with our interpretation of the Declaration of Covenants and would also agree to a release of the Declaration of Covenants from the approximately 30 acres if requested to do so.

If I may be of any assistance in this matter, please do not hesitate to contact me.

Sincerely,

KG DONALD ROSS LLC,
a Florida limited liability company

By: 
John Csapo, Authorized Signatory

Attachment # 4

Joined By:

HEIGHTS BIOTECH INVESTMENTS LLC,
a Florida limited liability company

By: 

John Csapo, Authorized Signatory

CC:

Property Owner:

John Csapo, Heights Biotech Investments LLC (jcsapo@kolter.com)
Hugh W. Perry, Esq., Gunster (herry@gunster.com)

Palm Beach County:

Leonard Berger, Esq., Asst. County Attorney (LBerger@pbcgov.org)
Howard J. Falcon III, Esq., Asst. County Attorney (HFalcon@pbcgov.org)
Jim Mize, Esq., Asst. County Attorney (JMize@pbcgov.org)

City of Palm Beach Gardens:

Ron Ferris, City Manager, PBG (rferris@pbgfl.com)
R. Max Lohman, Esq., City Attorney, PBG (max@lohmanlawgroup.com)

Scripps Research Institute:

Jim Paulson, CEO, Scripps Research Institute (JPaulson@scripps.edu)
Thomas E. Northrup, Esq., General Counsel, Scripps Research Institute (Northrup@scripps.edu)