

THIS INSTRUMENT PREPARED BY:
THE CITY OF EDGEWATER
P.O. Box 100
Edgewater, FL 32132-0100

AFTER RECORDING RETURN TO:
Robin L. Matusick
City Clerk/Paralegal
CITY OF EDGEWATER
104 N. Riverside Drive
Edgewater, Florida 32132

For Recording Purposes Only

**DEVELOPMENT AGREEMENT
PARKTOWNE INDUSTRIAL CENTER
AMENDED AND RESTATED**

THIS AGREEMENT (this "Agreement") is made and entered into this 15th day of July, 2016 by and between the **CITY OF EDGEWATER, FLORIDA**, a municipal corporation, whose mailing address is 104 N. Riverside Drive, Edgewater, Florida 32132, (hereafter referred to as "City") and the **PARKTOWNE INDUSTRIAL CENTER OWNERS ASSOCIATION**, with Karla Bauman as the authorized agent and whose address is 391 S. Timberlane Drive, New Smyrna Beach, FL 32168 (hereafter referred to as "Owners"). The term "Owners" shall also include the City as to any property held by the City for development in its role as land owner and developer.

WHEREAS, the City and the Owners own fee simple title to approximately 330.06 acres of land located south of the Gabordy Canal, west of the FEC Railroad north of West Park Avenue in Volusia County, Florida, and within the corporate limits of the City of Edgewater, Florida, all as more particularly described in **Exhibit "A"** attached hereto and by this reference incorporated herein (hereafter referred to as "Park"); and

WHEREAS, the Owners and the City desire to execute this Agreement in order to evidence their mutual agreement as to certain matters related to development of the Park.

NOW, THEREFORE, in consideration of the agreements, premises, and covenants set forth herein and other good and valuable consideration, the parties agree as follows:

1. RECITALS

The above recitals are true and correct and incorporated herein by this reference.

2. DEVELOPMENT OF THE PROPERTY

The City and the Owners hereby agree to develop the Park in accordance with this Agreement and all permits and approvals issued by the City and other governmental entities with respect to the Park. It is anticipated and acknowledged that the Owners intend to sell or develop acreage within the Park to unidentified buyers/developers and the ownership of the City's developable portion of the Park will evolve into private ownership.

3. EFFECTIVE DATE

The Effective Date of this Agreement shall be the day this Agreement is executed by the City.

4. DEVELOPMENT USES PERMITTED

The Owners hereby agree to develop the Park subject to the terms of this Agreement and in accordance with the City of Edgewater's "IPUD Zoning Classification" as defined in the currently adopted Land Development Code as amended from time to time. The Park shall be developed consistent with the City's development review procedures. Development of the Park shall be consistent with the following:

A. Minimum Lot Size

One acre

B. Maximum Lot Coverage

No more than 80% of the surface area of any parcel shall be developed as impervious surface area.

C. Regulation of Uses /Designated Use Areas

It is the intent of this section to establish two (2) designated "Areas" of the Park whereby only certain business and industrial type uses shall be permitted to ensure the Park will be developed with uses that are attractive, inviting, aesthetically pleasing, and harmonious with the surrounding property, businesses and industry.

Any parcels within the Park, hereinafter referred to as Areas "A" and "B" and shown on the attached Preliminary Development Plan, may be developed and used in a manner established for that particular Area. Area "A" is restrictive and is intended to have outdoor storage as an ancillary use. Area "B" is less restrictive and outdoor storage is authorized. The permitted use in one Area may be prohibited in another Area or as amended and provided for from time to time.

Industrial, warehousing, office, accessory retail and commercial use of the Park may be permitted within designated areas, subject to compliance with applicable provisions of the City's codes or ordinances, provided it is primarily performed or carried out in accordance with an approved site plan that is so designed and constructed such that the operation and the uses *do not cause or produce any of the following effects:*

Any trade or activity, or material (including advertisement), that is pornographic, obscene, lewd or lascivious;

Disposal of any hazardous waste in any form on the site;

Dust, dirt, flying ash, smoke or pollutants that exceed FDEP air quality standards;

Noise, light, sound or vibrations that are objectionable due to intermittence, intensity, beat, frequency or shrillness;

Toxic, or corrosive fumes;

Pollution of groundwater that exceeds FDEP water quality standards;

Fire or explosion hazards;

Violations of the City of Edgewater Land Development Code, City Code of Ordinances, Florida Building Code, Life Safety Codes, Federal Aviation Administration Standards or all other applicable Federal and State standards.

1) **Permitted Uses (see Preliminary Development Plan for Area locations)**

The following uses are general in nature and permissible in the designated Areas.

Other uses will require a modification of this Agreement signed by the Owners and the City.

AREA "A"

Aircraft Manufacturing (outdoor use as an accessory use)

Boat Building, sales and service (outdoor storage as an accessory use)

Commercial/Industrial Equipment and Supplies

Distribution Facilities (without outdoor storage)

Financial Institutions

Fleet Based Services

Laboratories

Manufacturing

Marine Related Industries

Outdoor Equipment Sales

Outdoor Storage as an accessory use consistent with Declaration of Covenants,

Conditions and Restrictions

Professional Office Facilities

Research Facilities

Retail - as an accessory use to manufacturing

Retail Home Building Materials

Schools-Private (adult vocation)

Truck Freight Terminals

Warehouse Storage (without outdoor storage)

Warehousing and Storage (without outdoor storage)
Wholesale and Distribution (without outdoor storage)
Xerographic and Offset Printing

AREA "B"

All uses in Area "A"
Aluminum, Steel, Plastic Container Transfer Station
Boat Building, Repair and Storage
Bulk Processing
Containment Facilities
Distribution Facilities (with outdoor storage)
Machine Shop/Repair
Outdoor Storage
Recycling Facilities
Rock Crushing
Shipping Facility (railroad usage)
Telecommunication-Unmanned
Telecommunication Towers
Wholesale and Distribution (with outdoor storage)
Warehouse Facilities (with outdoor storage)

2) Prohibited Uses

The following uses *shall not be permitted* within the Park. Prohibited uses shall include, but may not be limited to the following:

Adult Entertainment
Agriculture - General
Aquiculture
Auction/Flea Markets
Bed & Breakfast
Car Wash
Cemeteries
Chauffeur/Vehicle for Hire
Crematoriums
Day Care - Children or Adults (accessory use is permitted)
Disposal of refuse, solid waste, hazardous waste
Fish Camp
Funeral Homes
Home Occupations
Hotel/Motel
Lodges - Fraternal/Sorority
Manufacturing of Raw Chemicals
Medical/Dental Offices
Mini-Warehouses

Mobile Home Sales
Night Club/Lounge/Bar
Nursing Homes
Personal Service Facilities
Pool Hall/Billiards
Places of Worship
Places of Worship - Schools
Quarrying of any material
Refining of Petroleum or of its products
Restaurants (accessory use for employees is permitted)
Salvage/Junk Yards
Schools - Public
Shopping Center
Silviculture
Stockyard or Slaughter of animals
Taxidermy
Theaters
Tire recapping facility
Towing/Wrecker Service and Impoundment

D. Platting of lots

The City and Owners agree to plat parcels in accordance with Florida Statutes when a lot split or subdivision is made.

5. FUTURE LAND USE, ZONING DESIGNATION AND DEVELOPMENT PLAN

The Future Land Use designation for the Park is Industrial. The zoning designation for the Park is Industrial Planned Unit Development (IPUD). The Preliminary Development Plan for the Park is depicted in **Exhibit "B"**.

6. PUBLIC FACILITIES

The Owners agree to connect to and utilize the City's wastewater distribution/collection system upon receiving reservation of capacity.

The Owners agree to connect to and utilize the City's potable water system upon receiving reservation of capacity.

The Owners agree to provide underground installation of on-site electric, telephone, and other utility services.

The Owners agree to provide all required perpetual non-exclusive easements for all utility services as needed.

The City agrees to provide roadway improvements in accordance with the City's Land Development Code.

The City agrees to provide a master stormwater management system.

Sidewalks are not required within the Park.

The Owners agree that all approved impact fees are applicable to the development of the Park.

7. CONSISTENCY OF DEVELOPMENT

The City agrees to issue development permits consistent with this Agreement after having determined that the development is consistent with the City of Edgewater Comprehensive Plan and Land Development Code.

8. DEDICATION OF LAND FOR PUBLIC PURPOSES

The Owners shall convey to the City of Edgewater by plat and/or warranty deed, together with title insurance showing the conveyed land free and clear of all liens and encumbrances, all roadway rights-or-way, utility easements and/or stormwater management systems as may be required.

9. PERMITS REQUIRED

The Owners may be required to obtain certain federal, state, county and local development permits. Permits may include but not be limited to the following:

1. Site plan approval (City). Projects with structures exceeding 100,000 square feet must be approved by City Council.

2. Building permits (City)
3. Platting (City)
4. Federal Department of Environmental Protection (State)
5. Department of Health (State/County)
6. Army Corps of Engineers (Federal)
7. St. Johns River Water Management District (State)
8. Florida Fish and Wildlife Conservation Commission (State)
9. Fish and Wildlife (Federal)

10. DEVELOPMENT REQUIREMENTS

Failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve the Owners of the necessity of complying with those permitting requirements, conditions, terms or restrictions, and any matter or thing required to be done under the existing ordinances of the City of Edgewater.

Unless otherwise noted in this Agreement, development standards shall be those contained in the Land Development Code.

Development standards particular to the Park include:

A. Landscaping Front Yard

The following front yard landscape buffer areas shall be provided along the property fronting on any street, including side corner lots. These buffers supersede the Land Development Code requirements of 21-54.03a. (Parking Lot Landscaping Requirements).

- 25 feet (along ParkTowne Blvd.)
- 15 feet (along Dale Street)
- 10 feet (along Megan Z Avenue)
- 5 feet (along Timaquan Trail)
- 8 feet (along other internal streets)

B. Building Setbacks

- 25 feet from property line for front
- 20 feet from property line for rear (zero setback adjacent to Railroad)
- 10 feet from property line for side

C. Building Height

- 45 feet maximum building height in Area "A"
- 60 feet maximum building height in Area "B"

D. Tree Requirements

Notwithstanding other landscaping requirements, no minimum number of trees are required on individual parcels with the exception of the following:

- 1) Any development proposing the removal of specimen trees shall require the mitigation of said trees in a location approved by the City.
- 2) If it is determined by the City that replacement trees (to mitigate removal of specimen trees) would not benefit a particular lot or area, the Owner(s) shall pay into a mitigation bank, an amount determined by the City. The proceeds may only be used for replacement of trees as approved by the City.

E. Landscape Buffer

- 1) There shall be a minimum fifty (50') foot landscape buffer "conservation easement" consisting of natural tree/vegetation along the Park's northern and western perimeter boundary except those bounded by the FEC railroad and spurline.
- 2) Landscape buffer areas shall not be required on interior side or rear yards, except as outlined above.

F. Irrigation

A fully operational underground irrigation system shall be provided by the Owners for non-xeriscape landscaped areas as part of the landscape improvements.

G. Driveways

In the interest of proper on-site vehicular traffic circulation and its relation to pedestrian safety, two (2) points of access shall be permitted on any lot or parcel of property containing two (2) acres or more.

11. HEALTH SAFETY AND WELFARE REQUIREMENTS

The Owners shall comply with such conditions, terms, restrictions, or other requirements determined to be necessary by the City for the public health, safety or welfare of its citizens.

12. APPEAL

If any Owner is aggrieved by any City official interpreting the terms of this Agreement, the Owner shall file a written appeal to the City Manager. After receiving the written appeal, the appeal will be reviewed by the City Manager. The decision of the City Manager can be appealed to the City Council within 15 days of the City Manager's decision. The action of the City Council is the final authority concerning this.

13. PERFORMANCE GUARANTEES

During the term of this Agreement, regardless of the ownership of the Park, the Park shall be developed in compliance with the terms of this Agreement and applicable regulations of the City not inconsistent with, or contrary to, this Agreement.

14. BINDING EFFECT

The provisions of this Agreement, including any and all supplementing amendments, and all final site plans, shall bind and inure to the benefit of the Owners and City or their successors in interest and assigns and any person, firm, corporation, or entity who may become the successor in interest to the land subject to this Agreement or any portion thereof and shall run with the land and shall be administered in a manner consistent with the laws of the State of Florida.

15. RECORDING

Upon execution by all parties, the City shall record this Agreement with the Clerk of the Court in Volusia County. The cost of recordation shall be paid by the City.

16. PERIODIC REVIEW

The City shall review the development subject to this Agreement every twelve (12) months, commencing twelve (12) months after the Effective Date of this Agreement to determine if there has been good faith compliance with the terms of this Agreement. If the City finds on the basis of competent substantial evidence that there has been a failure to comply with the terms of this Agreement, the Agreement may be revoked or modified by the City.

17. APPLICABLE LAW

This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

18. TIME OF THE ESSENCE

Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement.

19. AGREEMENT/ AMENDMENT

This Agreement constitutes the entire agreement between the parties, and supersedes all previous discussions, understandings and agreements, with respect to the subject matter hereof. This Agreement concerns property described in Exhibit A hereto (hereinafter the "Property"). Amendments to this Agreement shall be made by a written agreement, to be recorded in the public records of Volusia County, Florida, executed by the City of Edgewater, Florida, and by the fee simple title owners owning at least 152 acres of the Property, the 152 acres being comprised of a minimum of ten (10) lots or parcels, at the time of the amendment, provided, however, each said owner's lot or parcel shall be comprised of at least one acre and have been approved as a legal parcel by the City of Edgewater. If a said lot or parcel is owned by more than one person or entity, then such multiple owners of said lot or parcel shall decide among themselves who shall execute

the amendment on their behalf, and a person or entity executing the amendment on behalf of such multiple owners shall be deemed to have authority to bind such multiple owners and deemed to have represented such authority was given, unless prior to the final execution of the amendment the president of the ParkTowne Industrial Center Owners Association, Inc. has been notified in writing that such person or entity has no such authority. If multiple owners of an aforesaid lot or parcel are unable to appoint a representative to sign an amendment, then such owners shall not be entitled to sign the amendment.

20. FURTHER DOCUMENTATION

The parties agree that at any time following a request therefore by any other party, each shall execute and deliver to the other party such further documents and instruments, in form and substance reasonably necessary to confirm and/or effectuate the obligations of any party hereunder.

21. SPECIFIC PERFORMANCE

Both the City and the Owners shall have the right to enforce the terms and conditions of this Agreement by an action for specific performance.

22. ATTORNEYS' FEES

In the event that any party finds it necessary to commence an action against another party to enforce any provision of this Agreement or because of a breach by another party of any terms hereof, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees, legal assistants' fees and costs incurred in connection therewith, at both trial and appellate levels, including bankruptcy proceedings, without regard to whether any legal proceedings are commenced or whether or not such action is prosecuted to judgment.

23. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

24. CAPTIONS

Captions of the sections of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

25. SEVERABILITY

If any sentence, phrase, paragraph, provision, or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be made and entered into the date and year first written above.

ATTEST

CITY COUNCIL OF THE CITY
OF EDGEWATER, FLORIDA


ROBIN L. MATUSICK
CITY CLERK/PARALEGAL


MICHAEL IGNASIAK
MAYOR

WITNESSED BY:

PARKTOWNE INDUSTRIAL
CENTER OWNERS
ASSOCIATION, INC.

Pasquale A. Brianiola
PASQUALE A. BRIANIOLA
Karen A. Lindstrom
KAREN A. LINDSTROM

Karla Bauman
KARLA BAUMAN, registered
agent, ParkTowne Industrial Center
Owners Association, Inc.

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me on this 19th day of July, 2016
by KARLA BAUMAN who has authority to execute this document on behalf of the
PARKTOWNE INDUSTRIAL CENTER OWNERS ASSOCIATION, INC and who has
produced personally known as identification and who did not take an
oath.

Karen A. Lindstrom
Notary

SEA

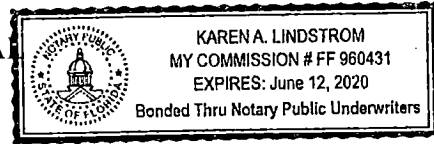


EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL A:

A PARCEL OF LAND LYING IN SECTIONS 29, 32, 50, 51 AND 52, TOWNSHIP 17 SOUTH, RANGE 34 EAST AND BEING A PART OF THE LAND DESCRIBED IN OFFICIAL RECORDS BOOK 4920, PAGE 3041 AND ALL OF THE PARCELS OF LAND DESCRIBED IN OFFICIAL RECORDS BOOKS (5268, PAGE 2995), (5171, PAGE 922), (5058, PAGE 4839), (5221, PAGE 1290), (2907, PAGE 676), (4612, PAGE 3561), (2641, PAGE 605), (2450, PAGE 123), (4565, PAGE 0037), (5176, PAGE 3286), (1877, PAGE 2006), (2796, PAGE 770), (2300, PAGE 1740), (3970, PAGE 4154), (4458, PAGE 4143), (1248, PAGE 425), (3931, PAGE 4691) AND (2857, PAGE 424) ALL OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, SAID PARCEL OF LAND BEING DESCRIBED AS FOLLOWS:

COMMENCING AT A CONCRETE MONUMENT STAMPED "PLS 2027" LOCATED AT THE SOUTHWEST CORNER OF SECTION 49, TOWNSHIP 17 SOUTH, RANGE 34 EAST (THE SEYMOUR PICKETT GRANT); THENCE N.71°36'38"E., ALONG THE SOUTH LINE OF SAID SECTION 49, A DISTANCE OF 955.05 FEET TO THE NORTHWEST CORNER OF PARCEL C AS DESCRIBED IN THE AFORESAID OFFICIAL RECORDS BOOK 4920, PAGE 3041 AND SAID POINT BEING THE NORTHWEST CORNER OF THE AFORESAID SECTION 29 AND THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE S.01°17'19"E., ALONG THE WEST LINE OF SAID PARCEL C AND THE WEST LINE OF SAID SECTION 29, A DISTANCE OF 1008.58 FEET TO THE NORTHEAST CORNER OF THE PARCEL OF LAND DESCRIBED IN SAID OFFICIAL RECORDS BOOK 3931, PAGE 4691; THENCE ALONG THE BOUNDARIES OF SAID PARCEL, THE FOLLOWING THREE COURSES AND DISTANCES: THENCE S.88°42'41"W., 50.09 FEET; THENCE S.01°17'19"E., 93.28 FEET; THENCE N.88°42'41"E., 50.09 FEET TO A POINT LYING ON THE AFORESAID WEST LINE OF SAID PARCEL C AND THE WEST LINE OF SAID SECTION 29; THENCE S.01°17'19"E., ALONG SAID LINE, 1770.82 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL C AND SECTION 29 AND SAID POINT LYING ON THE NORTH LINE OF LOT 34 OF THE PLAT OF ASSESSORS SUBDIVISION OF G. ALVAREZ GRANT IN SECTION 52, TOWNSHIP 17 SOUTH, RANGE 34 EAST AS RECORDED IN MAP BOOKS 3, PAGE 137 AND 22, PAGE 24 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG THE BOUNDARIES OF SAID PLAT AND SAID SECTION 52, THE FOLLOWING TWO COURSES AND DISTANCES: THENCE S.74°19'36"W., 637.44 FEET; THENCE S.13°42'05"E., 1825.12 FEET TO THE NORTHWEST CORNER OF THE AFORESAID SECTION 32; THENCE S.08°12'41"E., ALONG THE WEST LINE OF SAID SECTION 32, A DISTANCE OF 778.37 FEET TO A POINT LYING ON THE NORTH RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY RIGHT OF WAY (EDGEWATER CUTOFF)(A 150 FOOT WIDE RIGHT OF WAY); THENCE ALONG SAID RIGHT OF WAY LINE, THE FOLLOWING TWO COURSES AND DISTANCES; THENCE N.67°52'11"E., 3138.11 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE, CONCAVE NORTHERLY AND HAVING A RADIUS OF 1357.69 FEET; THENCE EASTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 22°05'35", 523.52 FEET TO THE SOUTHWEST CORNER OF THE PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS

BOOK 3825, PAGE 0283 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG THE BOUNDARIES OF SAID PARCEL OF LAND DESCRIBED IN SAID OFFICIAL RECORDS BOOK 3825, PAGE 0283, THE FOLLOWING EIGHT COURSES AND DISTANCES; THENCE N.28°19'12"W., 46.36 FEET; THENCE N.27°03'23"W., 90.09 FEET; THENCE N.25°56'59"W., 210.92 FEET; THENCE N.24°39'33"W., 364.08 FEET; THENCE N.24°34'36"W., 334.44 FEET; THENCE N.62°20'34"E., 574.63 FEET; THENCE N.22°06'19"W., 180.03 FEET; THENCE N.67°16'41"E., 332.17 FEET TO A POINT LYING ON THE WESTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY RIGHT OF WAY; THENCE ALONG SAID RIGHT OF WAY LINE, THE FOLLOWING THREE COURSES AND DISTANCES; THENCE N.22°06'29"W., 243.08 FEET; THENCE N.67°53'31"E., 38.00 FEET; THENCE N.22°06'29"W., 3389.68 FEET TO THE INTERSECTION WITH THE SOUTH LINE OF SECTION 49, TOWNSHIP 17 SOUTH, RANGE 34 EAST, (THE SEYMOUR PICKETT GRANT) AND SAID LINE BEING THE SOUTH RIGHT OF WAY LINE OF TENTH STREET; THENCE S.71°36'38"W., ALONG SAID LINE, 745.94 FEET TO A CORNER OF PARCEL A AS DESCRIBED IN OFFICIAL RECORDS BOOK 4920, PAGE 3041 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG THE BOUNDARIES OF SAID PARCEL A, THE FOLLOWING SEVEN COURSES AND DISTANCES: THENCE S.23°18'56"E., 194.01 FEET; THENCE N.66°41'04"E., 80.00 FEET; THENCE S.23°18'56"E., 3145.54 FEET; THENCE S.67°17'32"W., 939.54 FEET; THENCE N.23°19'31"W., 3198.50 FEET; THENCE N.66°40'29"E., 80.00 FEET; THENCE N.23°19'31"W., 198.30 FEET TO A POINT LYING ON THE AFOREMENTIONED SOUTH LINE OF SECTION 49 AND THE SOUTH RIGHT OF WAY LINE OF TENTH STREET; THENCE S.71°36'38"W., ALONG SAID LINE 901.28 FEET TO THE POINT OF BEGINNING CONTAINING 323.10 ACRES MORE OR LESS.

TOGETHER WITH:

PARCEL B:

A PARCEL OF LAND BEING PARCEL B AS DESCRIBED IN OFFICIAL RECORDS BOOK 4920, PAGE 3041 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF LOT 42 AS SHOWN ON THE PLAT OF ASSESSOR'S SUBDIVISION OF G. ALVAREZ GRANT SECTION 52 – T17S. – R.34E. AS RECORDED IN MAP BOOKS 3, PAGE 137 AND 22, PAGE 24 OF SAID PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA WITH THE SOUTH RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY RIGHT OF WAY; THENCE ALONG THE BOUNDARIES OF SAID PARCEL B AS DESCRIBED IN SAID OFFICIAL RECORDS BOOK 4920, PAGE 3041, ALL THE FOLLOWING COURSES AND DISTANCES: THENCE ALONG SAID RIGHT OF WAY LINE, THE FOLLOWING TWO COURSES AND DISTANCES: THENCE N.67°52'11"E., 276.30 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE, CONCAVE NORTHERLY AND HAVING A RADIUS OF 1507.69 FEET; THENCE EASTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 10°01'37", 263.85 FEET; THENCE S.22°44'12"E.,

121.65 FEET TO A POINT LYING ON THE NORTH RIGHT OF WAY LINE OF PARK AVENUE; THENCE S.67°00'46"W., ALONG SAID RIGHT OF WAY LINE, 539.01 FEET; THENCE N.22°44'40"W., 106.68 FEET TO THE POINT OF BEGINNING.
CONTAINING 1.32 ACRES MORE OR LESS.

ALSO TOGETHER WITH:

PARCEL C:

A PARCEL OF LAND BEING A PART OF LOT 42 AS SHOWN ON THE PLAT OF ASSESSOR'S SUBDIVISION OF G. ALVAREZ GRANT, SECTION 52, TOWNSHIP 17 SOUTH, RANGE 34 EAST AS RECORDED IN MAP BOOKS 3, PAGE 137 AND 22, PAGE 24 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF SAID LOT 42 WITH THE SOUTH RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY RIGHT OF WAY (EDGEWATER CUTOFF); THENCE S.67°52'11"W., ALONG SAID RIGHT OF WAY LINE, 2345.79 FEET TO THE NORTHEAST CORNER OF THAT PORTION OF DALE STREET, (A 60.00 FOOT WIDE EASEMENT AS DESCRIBED IN OFFICIAL RECORDS BOOK 2436, PAGE 1018 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA) LYING SOUTH OF SAID RAILWAY RIGHT OF WAY AND SAID POINT BEING THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE CONTINUE ALONG THE BOUNDARIES OF SAID EASEMENT, THE FOLLOWING FOUR COURSES AND DISTANCES:

THENCE CONTINUE S.67°52'11"W., ALONG SAID RIGHT OF WAY LINE, 60.00 FEET; THENCE S.21°29'44"E., 145.05 FEET TO A POINT LYING ON THE NORTHERLY RIGHT OF WAY LINE OF PARK AVENUE; THENCE N.67°00'13"E., ALONG SAID RIGHT OF WAY LINE, 60.02 FEET; THENCE N.21°29'44"W., 144.14 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.20 ACRES MORE OR LESS.

**THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:**

Paul E. Rosenthal,
~~Scott A. Cookson, Esq.~~
Foley & Lardner LLP
City of Edgewater
City Attorney
111 N. Orange Avenue, Suite 1800
Orlando, Florida 32801
407-423-7656

For Recording Purposes Only

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR PARKTOWNE INDUSTRIAL CENTER**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR PARKTOWNE INDUSTRIAL CENTER** (this "Declaration") is made this 14th day of June, 2005 by the **CITY OF EDGEWATER**, a municipal corporation, whose address is P.O. Box 100, Edgewater FL 32132 (the "City"), **OSCAR ZELLER** and **JULIAN GREENE**, whose mailing address is P.O. Box 358, Edgewater, Florida 32132 ("Zeller/Greene"), **MASSEY ENTERPRISES**, a Florida partnership, whose mailing address is P.O. Box 949, New Smyrna Beach, Florida 32170 ("Massey"), **SCOTT PORTA**, whose address is 210 Quay Assisi, New Smyrna Beach, Florida 32169 ("Scott Porta"), **SCOTT S. PORTA** and **JENNIFER P. PORTA**, whose mailing address is 210 Quay Assisi, New Smyrna Beach, Florida 32169 ("Portas"), **LESLIE A. MORGAN, TTEE, F/B/O LESLIE A. MORGAN TRUST U/T/D APRIL 3, 1989**, whose mailing address is 579 Via Lugano, Winter Park, Florida 32789 ("Leslie Morgan"), **RETA S. MORGAN, TTEE, F/B/O RETA S. MORGAN TRUST U/T/D APRIL 3, 1989**, whose mailing address is 570 Via Lugano, Winter Park, Florida 32789 ("Reta Morgan"), **BRADLEY C. STEWART**, whose mailing address is 139 Arbor Lane, Edgewater, Florida

32141 ("Stewart"), **WALTER WARNING**, whose mailing address is 91 Aqua Court, New Smyrna Beach, Florida 32168 ("Warning"), **NIT HOLDINGS, LLC**, a Florida limited liability company, whose mailing address is 91 Aqua Court, New Smyrna Beach, Florida 32168 ("NIT Holdings") and **CORREIA HOLDINGS, INC.**, a Florida corporation, whose mailing address is 4670 Links Village Drive, B206, Ponce Inlet, Florida 32127 ("Correia Holdings").

RECITALS

WHEREAS, the City, Zeller/Greene, Massey, Scott Porta, Portas, Leslie Morgan, Reta Morgan, Stewart, Warning, NIT Holdings and Correia Holdings are individually referred to herein as an "Owner" and collectively referred to herein as the "Owners"; and

WHEREAS, each Owner owns in fee simple a portion of that certain real property located in Edgewater, Volusia County, Florida, known as ParkTowne Industrial Center (the "Park") which is generally depicted in Exhibit "A" attached hereto and more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Owners desire to submit the Property to certain covenants, conditions and restrictions (hereinafter referred to as CCRs) set forth herein upon and subject to which all of the Property shall be held, improved, maintained and conveyed.

NOW, THEREFORE, for and in consideration of the benefits accruing to the Owners from the CCR's created hereby, the Owners hereby submit and subject the Property to the CCRs hereinafter set forth.

ARTICLE I

PURPOSE AND APPLICATIONS

The purpose of these CCRs is to insure proper development and use of the Property, to prevent the erection on the Property of structures built of improper design or materials, to

encourage the erection of attractive improvements at appropriate locations, to prevent haphazard and inharmonious improvements and in general to provide adequately for quality improvements on the Property.

The Property shall be held, conveyed, rented, leased, encumbered, used, occupied and improved subject to the CCRs and limitations hereinafter set forth, which shall bind all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall apply to and bind their heirs, assignees and successors in right, title or interest thereof. Any owner of any portion of the Property shall be entitled to enforce the CCRs contained herein.

Each Owner shall own their portion of the Property, and all subsequent purchasers of any portion of the Property shall take title to their portion of the Property, subject to:

- a. Public utility and drainage easements of record;
- b. Taxes for the year of closing, if any, and subsequent years;
- c. This Declaration and other restrictions and covenants applicable to the Park;
- d. All valid and applicable regulations and ordinances of the City of Edgewater;
- e. The Development Agreement;
- f. For the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Property together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft; now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating in Massey Ranch Airpark;
- g. A restriction on the height of structures, objects of natural growth and other obstructions on their portion of the Property to such a height so as to comply with Federal Obstruction Standards as defined in the Federal Aviation Regulations.

h. A restriction on the use of their portion of the Property which would interfere with or adversely affect the safe operation of aircraft or maintenance of Massey Ranch Airpark, or otherwise constitute an aircraft or airport hazard.

ARTICLE II

PARKTOWNE OWNERS' ASSOCIATION

The Owners shall require the creation of the ParkTowne Industrial Center Owners Association, Inc. (the "Association") to administer the provisions of these CCRs, and upon creation thereof, any person or entity holding title to a lot within the Park shall be a member of the Association. The Association shall be governed by Articles of Incorporation of ParkTowne Industrial Center Owners Association, Inc. attached hereto and incorporated herein by this reference as Exhibit "C" and the Bylaws of ParkTowne Industrial Center Owners Association, Inc. attached hereto and incorporated herein by this reference as Exhibit "D", provided each lot within the Park containing at least one acre of land, including additional fractions up to 0.5 acres within the Park, shall have one vote as a member of the Association. Example: 1 to 1.50 acres equals one vote, 1.51 to 2.50 acres equals two votes.

All Owners of any portion of the Property shall be subject to this Declaration and the authority of the Association as set forth herein.

ARTICLE III

FEES AND ASSESSMENTS

3.1 **Covenant for Maintenance, Annual Assessments; Special Assessments, Individual Lot Assessments; Fines and Levies.** The Owners, for each parcel/lot owned within the Property, hereby covenant and agree that each subsequent Owner of any parcel/lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to

covenant and agree to accept such parcel/lot subject to all outstanding and subsequent assessments due for said parcel/lot.

3.2 Purpose of Assessment.

a. In general the assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Owners and the Property and in particular for the improvement and maintenance of the Common Area, landscape areas, sidewalks, poles, signs and lighting.

b. The City shall be responsible for basic maintenance of the primary stormwater system and conveyance system within the right of ways to provide functional stormwater treatment services. The City also be responsible for maintenance and repair of the public roads within the Property. Additional aesthetic improvements will be provided for by the Association which will have the right to contract for the additional services upon assumption of financial responsibility for those services.

c. Annual Assessments shall be levied in order to provide for and assure the availability of the funds necessary to pay Common Expenses, which expenses shall include, without limitation, the following:

(1) Those incurred in connection with the maintenance, protection and improvement of the Common Area, including without limitation, landscape areas, irrigation, lake, sidewalks, poles, lighting, signs and lighting.

(2) Those incurred for utility services to the Common Area, including without limitation, electric or gas power for any common entry, street lighting, and, if applicable, water for common irrigation systems.

(3) Those incurred in the administration of the business of the Association including without limitation, necessary and appropriate fees for services rendered by engineers, accountants and attorneys.

(4) Those incurred for the payment of real and personal property taxes and assessments for any portion of the Property owned by the Association.

(5) Those incurred for the maintenance of adequate casualty and liability insurance on the Common Areas and for director and officer liability insurance.

(6) Those incurred by the Association in the billing, levying and collection of assessments as provided for in this Declaration.

(7) Those incurred to establish a reserve for the replacement and repair of any Association equipment or personal property; to provide operating funds for the Association; and cover any non-payment or late payment of assessments by other members.

(8) Those incurred for doing any other thing necessary or desirable which in the judgment of the Association may be of general benefit to the Owners or the Property. Annual Assessments and Special Assessments shall be levied proportionate to the member's share of expenses as determined by the Board of Directors as set forth herein.

3.3 Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment for the purpose of defraying, in whole or in part, the cost of complying with any governmental regulation, permit condition or for any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, for sidewalks, streets, lighting, retention, drainage system or other facilities which are in the interest of the Owners of the Property, including fixtures and personal property and the financing of same related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of

members who are voting in person or by proxy at a meeting duly called for this purpose. A Special Assessment may be levied which permits payment on an annual installment basis provided the Board of Directors establishes an interest rate which will accrue on the unpaid principal of such assessment if the assessment is paid on an installment basis. If an improvement is not built for which a Special Assessment is levied, the Association shall refund to the Owner the amount collected from that Owner for the Special Assessment.

3.4 Notice and Quorum for Any Action Authorized Under this Section. Written notice of any meeting called for the purpose of taking any action authorized under this Section shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty,(60) days following the preceding meeting.

3.5 Uniform Rate of Assessment. Both Annual Assessments and Special Assessments must be fixed and prorated or apportioned as determined by the Board of Directors consistent with the Declaration for all parcel(s)/lot(s) and may be collected on an annual basis, or such other basis as the Board of Directors determines.

3.6 Date of Commencement of Annual Assessments; Due Dates. The Annual Assessments provided herein shall commence on all parcels/lots within the Property on the first day of the month following the first meeting of the Association. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Annual Assessment against each parcel/lot at least thirty

(30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to the Owners subject thereto. The due date shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified parcel/lot have been paid. A properly executed certificate of the Association as to the status of assessments on a parcel/lot is binding upon the Association as of the date of its issuance.

3.7 Individual Lot Assessments. In addition to any other assessments for which provisions are made in this Declaration, the Association shall have the authority to levy and collect against a particular parcel/lot within the Property an Individual Lot Assessment for:

a. Costs and expenses incurred by the Association in bringing a particular parcel/lot into compliance with the provisions of this Declaration, including any action taken or cost or expense incurred by the Association to cure and eliminate any violation of or noncompliance with the provisions of this Declaration following the failure of such Owner, within fourteen (14) days following written notice from the Association of the nature of the violation of or noncompliance with this Declaration, to cure or remedy such violation or noncompliance;

b. Costs and expenses, including reasonable attorneys' fees, whether or not suit be brought, incurred by the Association in the enforcement of the provisions of this Declaration against a particular parcel/lot;

c. Costs and expenses incurred by the Association in furnishing or providing labor, services and materials which benefit a particular parcel/lot or the Owner of a particular parcel/lot, provided that such labor, services or materials can be accepted or rejected by such particular Owner in advance of the Association's furnishing or providing the same and that such

Owner's acceptance of any such labor, services or materials shall be deemed to have been such Owner's agreement that the costs and expenses associated therewith shall be levied and collected as an Individual Lot Assessment against such particular Owner and the Owner's particular parcel/lot; and

d. Reasonable overhead expenses of the Association associated with any Individual Lot Assessment levied and collected pursuant to this Section, in an amount not to exceed fifteen percent (15%) of the actual costs and expenses incurred by the Association for any Individual Lot Assessment specified in this Section.

3.8 Effect of Non-Payment of Assessments and Fines; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum rate allowed by law per annum. The Association shall have the right to establish fines for late payment of assessments and fines for any violation of any rule or regulation of the Association, or any violation of this Declaration, and shall have a lien on the parcel/lot for any unpaid assessments, fines and all costs and interest which have been assessed against the Owner of the parcel/lot. The said lien shall be effective from and after the time of recording in the Public Records of Volusia County, Florida, of a Claim of Lien stating the description of the property, the name of the record Owner, the amount due and payable and the date when due; and said lien shall continue in effect until all sums secured by the lien shall have been fully paid. All such Claim of Liens shall include only assessments and fines which are payable and due when the said Claim of Lien is recorded, and all such Claim of Liens shall be signed and verified by an officer or agent of the Association. When any such liens shall have been paid in full, the party making payment thereof shall be entitled to receive a Satisfaction of such lien in such form that it may be recorded in the Public Records of Volusia County, Florida. The Board of Directors may take such action as it deems necessary to collect assessments by

enforcing and foreclosing said lien, and may settle and compromise the same if in the best interest of the Association. The delinquent Owner shall pay all costs including reasonable attorney's fees, incurred by the Association incident to the collection of such assessments. The lien shall be deemed to cover said additional costs and advances. Filing of one action shall not be a bar to the filing of other actions. The Association, through its Board of Directors, will be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien, and it may apply as a cash credit against its bid all sums due the Association covered by the lien enforced. No Owner may waive or otherwise escape liability for the assessments provided for herein against his parcel/lot by the non-use of the Common Area or abandonment of the Owner's parcel/lot.

3.9 Exempt Property. The Common Area and those portions of the Property located within any public right-of-way and dedicated to and accepted by the applicable local public authority and devoted to public use shall be exempt from the assessments, fines, charges and liens created herein.

3.10 Subordination of the Lien to Mortgages. The lien of the assessments or fines provided for herein shall be subordinate and inferior to all liens securing amounts due or to become due under any mortgage now or hereafter encumbering any parcel/lot; and provided that as a condition precedent to any proceeding to enforce such lien for assessments or fines upon any parcel/lot upon which there is a valid and subsisting first mortgage, the Association shall give the holder of such mortgage, if known by the Association, sixty (60) days written notice of such proposed action, which notice shall be sent to the nearest office of such first mortgage lien holder by prepaid U. S. certified mail and shall contain a statement of the delinquent assessment upon which the proposed action is based. Upon the request of any such first mortgage lien holder, the Association shall acknowledge in writing its obligations to give the foregoing notice with respect to the particular parcel/lot covered by such mortgage to the holder thereof. Sale or transfer of

any parcel/lot shall not affect the assessment, fine or lien. Nevertheless, any foreclosure by a prior lien holder shall cut off and extinguish the liens securing the assessments or fines which became due and payable prior to such foreclosure date, but no such foreclosure shall free any parcel/lot from securing charges thereafter becoming due and payable, nor shall any personal obligation of any Owner be extinguished by any foreclosure. No mortgagee shall be required to collect an assessment, and the failure to pay an assessment will not constitute a default under any insured mortgage.

ARTICLE IV

DEFINITIONS

For purposes of this Declaration the following definitions shall apply:

4.1 **Alteration** means any act that changes any feature of a building, structure or property.

4.2 **Association** means the ParkTowne Industrial Center Owners Association, Inc., a corporation not for profit which the Owners shall cause to be formed and to which shall be delegated and assigned the power, authority, duty and obligation: (1) to enforce and administer the CCRs governing the Property; (2) to collect and disburse all assessments and charges deemed necessary for such maintenance, administration and enforcement; and (3) to perform such other services as may be deemed desirable to benefit the Owners.

4.3 **Board of Directors** means the Board of Directors of the Association.

4.4 **CCRs** means the covenants, conditions and restrictions set forth in this Declaration.

4.5 **City** means the City of Edgewater, Florida.

4.6 **Common Area** means and refers to the drainage and retention areas, the open tracts, landscape easements and roads and sidewalk easements (including the improvements thereto) designated on the plat or property which is conveyed or dedicated to the Association pursuant to the provision hereof, or property which is leased or conveyed to the Association for recreational/public use.

4.7 **Declaration** means this Declaration of Covenants, Conditions and Restrictions for ParkTowne Industrial Center and all amendments, modifications and supplements thereto as are from time to time recorded among the Public Records of Volusia County, Florida.

4.8 **Development Agreement** means that certain Development Agreement (ParkTowne Industrial Center) recorded in Official Records Book 5070, Page 2930, Public Records of Volusia County, Florida.

4.9 **Governmental Regulations** means and refers to all applicable laws, statutes, codes, ordinances, rules, regulations, limitations, restrictions, orders, judgments or other requirements of any governmental authority having jurisdiction over the Property or any improvements constructed or located thereon, including, without limitations, those pertaining to building and zoning.

4.10 **Improvements** means and includes buildings, out-buildings, parking areas, loading areas, driveways, fences, walls, landscaped areas, surface water or storm water management systems, easements, roadways, right of ways, poles, signs and any structure of any type or kind.

4.11 **Maintenance Fee** means a fee composed of the total revenues received by the Association from the Annual Assessments, Special Assessments and Individual Lot Assessments levied by the Association pursuant to Article III hereof.

4.12 **Member and/or members** means all those Owners who are entitled to membership in the Association as provided in Article II hereof.

4.13 **Owner** means and refers to the record owner, whether one or more persons or entities, of fee simple title to any lot or parcel which is a part of the Property, its successors and assigns, but excluding those having an interest in any such Lot merely as security for the payment of a debt or the performance of an obligation.

4.14 **Owners** means and refers to the City of Edgewater, Oscar Zeller and Julian Greene, Massey Enterprises, Scott Porta, Scott S. Porta and Jennifer P. Porta, Leslie A. Morgan, Ttee, f/b/o Leslie A. Morgan Trust u/t/d April 3, 1989, Reta S. Morgan, Ttee, f/b/o Reta S. Morgan Trust u/t/d April 3, 1989, Bradley C. Stewart, Walter Warning, NIT Holdings, LLC, and Correia Holdings and their successors and assigns by purchase of all or a portion of the Property.

4.15 **Park** means the ParkTowne Industrial Center within the Property.

4.16 **Permanent Structure** means a building designed, and constructed from the ground up, meeting all building code and fire protection standards and intended to be used for more than 180 days, but does not include land preparation, such as clearing, grading and filling.

4.17 **Property** means that real property generally depicted in Exhibit "A" and more particularly described in Exhibit "B" attached hereto.

4.18 **Specimen Trees** means any tree that is unique by reason of age, size, rarity, or status as a landmark as determined by an arborist, botanist and/or licensed surveyor and includes the following species of trees with a minimum twelve (12") inch diameter measured at breast height: Turkey and other oak species, Red Maple, Bald Cypress, Sweet Gum, Hickory, Elm, Loblolly, Sweet Bay, Red Bay and Swamp Bay, Sycamore and Magnolia.

4.19 **Surface Water or Storm Water Management System** means a stormwater system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges.

4.20 **Violation** means any contravention, transgression or non-compliance with any article, section, provision of this Declaration or the rules and regulations of the Association. A notice of violation will be sent, by certified mail, to the last address of the violator on record with the Association, of the alleged violation before a fine is imposed. A violation is considered separate and independent for each day it exists uncorrected or unabated.

ARTICLE V

REGULATION OF IMPROVEMENTS

All improvements constructed within the Property shall be subject to the following regulations:

5.1 **Landscaping/Fencing.** Unless otherwise specified in this document, all lots and parcels within the Property shall provide landscaping approved by the Association. All approved landscaping shall be maintained thereafter in a well kept condition. Specimen trees removed from any lot or parcel shall be replaced and the replacement location shall be approved by the Association. All disturbed, unused and non-landscaped land areas including areas planned for future expansion or other purposes shall be sodded, maintained and kept free from weeds, other unsightly plant growth, rubbish and debris.

Landscaping at the ParkTowne Boulevard entrance shall be provided by the City and shall be subsequently maintained by the Association.

The maximum height of any fencing shall not exceed eight (8) feet without approval by the Association.

5.2 Parking/Loading. Adequate off-street parking shall be provided in accordance with the City's Land Development Code to accommodate all parking needs for employees, visitors and company vehicles on the site. Parking on streets and right-of-ways within the Park is prohibited. If parking requirements increase as a result of a change in use or number of employees, additional off-street parking shall be provided to satisfy the intent of this Section. The Association may at its discretion further prohibit parking where the same constitutes a hazard or increases congestion or inconvenience.

All loading, including turn-around areas shall be designed and constructed based on AASHTO's "A Policy on Geometric Design of Highways and Streets."

All loading, including turn-around areas must be conducted entirely on the building site and shall have a minimum width of twelve (12') feet. All loading dock areas must not face the street unless specific approval to the contrary is granted in writing by the Association. Roll up doors, sliders or overhead doors which face the street in Area "A", as defined in the Development Agreement, are prohibited. If due to parcel/lot or building constraints, loading docks or truck doors may be permitted, but shall be hidden from street view by landscaping, berms or walls or a combination.

Loading docks shall be a minimum of one hundred (100) feet from the street. Vehicles engaged in loading and unloading of goods and materials shall not utilize public streets, utility or drainage easements.

5.3 Storage and Refuse Areas. Except in Area "B", as defined in the Development Agreement, no materials, supplies, or equipment, including company-owned or operated trucks,

refuse, or trash containers or satellite dishes or antennas shall be stored, installed or kept in any areas on a lot or parcel which are visible from the frontage view of a public street.

All accessory storage and refuse areas shall be located on the rear or side portions of the parcel/lot and not in the area between structures and the street.

All accessory storage and refuse areas shall be properly maintained in a mannerly and well-kept condition.

Commercial dumpsters shall be enclosed from view with six (6) foot high opaque fencing and gate.

5.4 Building Regulations. All construction facing a street shall be of masonry walls, tilt walls, cast in place concrete, precast architectural concrete, architectural metal, glass, timber or any combination. All materials proposed for the front of buildings shall be pre-approved by the Association. All other exterior walls may be made of sheet or corrugated iron, steel or aluminum or similar material. The Association reserves the right to approve other materials and finishes.

Exterior walls shall not be repainted or refinished from the original color or finish unless and until the Association has approved in writing the color or refinishing materials to be used. All on-site electrical, telephone and other utility lines shall be underground for new development or redevelopment of any portion of the Property.

5.5 Regulation of Exterior Maintenance and Repair. All maintenance and repair of site improvements shall be properly performed or overseen by the Owner or lessee. Such work may include, but not be limited to:

a. Any maintenance of landscaping, maintenance of unused or non-landscaped areas, maintenance and repair of all utility lines and landscape irrigation systems;

b. Collection and proper disposal of rubbish, trash, garbage or waste of any character which lies on the site or which originated from the site and was carried to a neighboring parcel/lot; and;

c. Maintenance and repair of the exterior of all parcel/lot improvements.

The maintenance and repair of the exterior of all parcel/lot improvements shall include but not be limited to:

a. The periodic repainting of the exterior surfaces of any permanent structure placed on the site and;

b. The repair or replacement of damaged or non-operating equipment either located on the exterior of any structure or of a free-standing nature.

5.6 Accessory Buildings or Structures. Accessory buildings, structures or enclosures, whether attached to or detached from the main building, shall be of similar or compatible design. No roof structure or appurtenances shall be unsightly from street view.

5.7 Street and Exterior Lighting. Street lighting locations shall be approved by the Association and provided by the local power company. A street light fee shall be charged to each Owner by the Association to cover installation, maintenance and operational costs. The associated fee/charge for street lighting is as determined in Article III - Fees and Assessments.

All exterior area site lighting shall be high pressure sodium vapor fixtures.

All exterior lighting must be so arranged or shielded as to avoid excessive glare or reflection onto any portion of any adjacent road, street, the path of oncoming vehicles, or any adjacent property. Unless required by FAA regulations, no flashing, rotating, traveling, animated, colored or intermittent lighting shall be permitted.

5.8 Signs. Signs shall conform to the City's Land Development Code relating to maximum size, area and location.

No permanent signs shall be permitted, other than those identifying the name, business and products of the person or firm occupying the premises. Temporary signs such as those offering the premises for sale, lease or rent shall be permitted. All signs must be approved by the Association.

One permanent ground sign no larger than 60 square feet, 10 feet high shall be permitted for each lot frontage.

Wall signs and identification on buildings shall be of such size, design, content, illumination, color and placement as specifically approved in writing by the Association and shall not exceed two (2) square feet per one (1) linear foot of addressed business frontage, not exceeding 64 square feet. No sign shall be substituted or modified without approval by the Association.

Roof signs shall not be permitted.

Political signs shall not be permitted.

5.9 **Subdividing.** No Owner may subdivide their portion of the Property to create or leave less than a one (1) acre parcel/lot.

ARTICLE VI APPROVAL OF PLANS

No improvements, as that term is herein above defined, shall be erected, placed, altered, maintained or permitted to remain on any land subject to these CCRs until plans and specifications showing parcel/lot layout and all exterior elevations, with materials and color thereof, signs, parking and loading areas, and landscaping have been submitted and approved in writing by the Association.

Such plans and specifications shall be based, among other things, on adequacy of parcel/lot dimensions, conformity and harmony of external design with the neighboring

structures, effect of location and use of improvements on neighboring sites, operations, improvements, and uses, relation of topography, grade and finished ground elevation of the site being improved to that of neighboring sites, proper orientation of permanent structures with respect to nearby streets and conformity of the plans and specifications to the planned purpose and general plan and intent of those restrictions.

Neither the Association or its assigns shall be liable in damages to anyone submitting plans and specifications to them for approval, or to any Owner or lessee or land affected by this Declaration, by reason of mistake in judgment, negligence or non-feasance arising out of or in connection with the approval or disapproval or failure to approve any such plans. Every person who submits plans for approval hereunder agrees, by submission of such plans, and every Owner or lessee of any parcel/lot agrees, by acquiring title thereto or an interest therein, that they will not bring any action or suit against the Association to recover any such damages.

ARTICLE VII

SURFACE WATER AND STORM WATER MANAGEMENT

Each Owner shall be responsible for the maintenance and management of their portion of the Property's surface water area. The City shall be responsible for the surface water maintenance, operation and repair of the stormwater management systems in the "Common Areas". Maintenance of the stormwater management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District (SJRWMD). Any repair or reconstruction of the surface water or stormwater management system shall be as permitted or, if modified, as approved by the SJRWMD.

Additionally, the City shall have a perpetual non-exclusive easement for drainage over the entire surface water or storm water management system. Other than needed repair work, no person shall alter the drainage flow of the surface water or stormwater management system, including buffer areas or swales, prior to receiving a permit from the SJRWMD.

7.1 Easements for Access - The City shall have a perpetual non-exclusive easement over all areas of surface waters or stormwater management systems, roadways, and utilities easements for access to operate, maintain and repair the system.

By this easement, the City shall have the right to enter upon any portion of any parcel or lot which is a part of the system, at a reasonable time and in a reasonable manner as may be required.

ARTICLE VIII
MISCELLANEOUS

8.1 Amendments - This Declaration, the Articles of Incorporation and the Bylaws may be amended at any time, and, with the written consent or vote of the Owners of at least 75% of the Property, exceptions from the provisions hereof may be granted, so long as such amendment or exceptions do not conflict with the general purpose set forth in paragraph 1 above.

Any amendment or exceptions shall be binding on the Owners and shall be effective when recorded in the Public Records of Volusia County, Florida.

8.2 Enforcement - The Association shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration.

8.3 Inspection - The Association may from time to time upon reasonable notice enter and inspect any portion of the Property subject to this Declaration to ascertain compliance therewith.

8.4 Abatement and Suit - Violation or breach of any restriction herein contained shall give the Association the right to enter upon the portion of the Property where the violation or breach exists and to summarily abate or remove, at the expense of the Owner and lessee, as the case may be, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof. The Association or any Owner of any portion of the Property may prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of these restrictions to enjoin or prevent them from doing so, to cause said violation to be remedied and/or to recover damages for said violation.

The result of every action or omission whereby any restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity may be exercised by the Association.

In any legal or equitable proceeding for the enforcement of any provisions hereof, the non-prevailing party or parties shall pay the reasonable attorney's fees and costs of the prevailing party or parties, in such amount as may be fixed by the court in such proceedings.

8.5 Term - The easements set forth in this Declaration shall be perpetual in duration unless otherwise specifically provided. The restrictions, covenants and conditions set forth in this Declaration shall be binding upon and enforceable against the Owners for a period of twenty (20) years from the date this Declaration is recorded among the public records of Volusia County, Florida, after which time, such restrictions, covenants, and conditions shall be automatically extended for successive periods of twenty (20) years each. In the event any law prohibits any such restrictions, covenants, and/or conditions from being enforceable for a period in excess of twenty (20) years, or beyond any other stated period, the Association is granted a power of attorney, coupled with an interest, to rerecord this Declaration at any time and from

time to time for the purpose of extending the enforceability of same as contemplated by this Section.

8.6 No Rights in Public Generally - The easements, restrictions, covenants and conditions created, reserved, granted and established in this Declaration do not, are not intended to, and/or shall not be construed to create any easements, rights or privileges in and for the benefit of the general public.

8.7 Partial Invalidity - In the event any provision of this Declaration is determined to be illegal or legally unenforceable, such determination shall have no effect upon the remaining terms and provisions hereof, and the remaining terms and provisions hereof shall continue in full force and effect.

8.8 Indemnity - Each Owner (herein, individually, "Indemnitor") shall defend, indemnify, and hold harmless the other Owners from all claims, losses, actions, proceedings and costs (including reasonable attorney's fees actually incurred and court costs) resulting from any construction, including liens, or any accident, injury, loss, or damage occurring to any person or to the property of any person arising out of or resulting from the Indemnitor's exercise of the rights, privileges, and easements granted herein (provided, however, that the foregoing shall not be applicable to events or circumstances caused by the negligence or willful act or omission of the indemnified Owner), or resulting from the Indemnitor's violation of any of the restrictions, covenants, and conditions established hereby.

8.9 Environmental Indemnification - Each Owner shall indemnify and hold harmless all other Owners from and against any and all costs, claims, suits, causes of action, losses or damages resulting from the presence or removal of Hazardous Materials stored, installed or deposited on or delivered to a lot or parcel, during the period of ownership thereof by

the indemnifying Owner. No person or entity shall be liable for acts or claims arising from acts not occurring during the period such person or entity owned or owns the lot or parcel, to which such acts or claims relate. As used herein, the term "Hazardous Materials" means any material or substance that is toxic, ignitable, reactive or corrosive and that is regulated by the State of Florida, the United States Government or any agency thereof including, without limitation, any and all materials defined as "Hazardous Waste", "Extremely Hazardous Waste", or "Hazardous Material" pursuant to state, federal or local government law, as amended from time to time. Each indemnifying Owner shall be responsible for all costs including, but not limited to, those resulting from monitoring, cleanup or compliance, incurred with respect to any Hazardous Materials stored, installed or deposited on or delivered to a lot or parcel, during the period of ownership thereof by the indemnifying Owner. The terms and provisions of this Section shall be perpetual in duration.

IN WITNESS WHEREOF the Owners have caused this Declaration to be executed as of the date set forth above.

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