

THIS INSTRUMENT WAS PREPARED BY
AND PLEASE RETURN TO:

Paul H. Freeman
2 South University Drive
Suite 325
Plantation, FL 33324

**DECLARATION OF EASEMENTS,
COVENANTS AND OPERATION OBLIGATIONS**

THIS DECLARATION OF EASEMENTS, COVENANTS AND OPERATION OBLIGATIONS (the "Declaration") is made and entered into this ____ day _____ of 2019, by ALAN C. FREEMAN, AS TRUSTEE OF A CERTAIN UNRECORDED LAND TRUST, with power and authority to protect, conserve, sell, lease, encumber, or otherwise to manage and dispose of the real property described therein (the "Declarant"), who declares that the "Parcels" (as hereinafter defined) are and shall be held, transferred, sold, conveyed and occupied, subject to the easements, covenants, charges and obligations hereinafter set forth.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of a certain parcel of real property located in Lee County, Florida particularly described on Exhibit A attached hereto, and which property the Declarant intends to plat and develop into a commercial development to be platted and known under the name Oriole Road Distribution Center (the "OR Distribution Center Property"); and

WHEREAS, the OR Distribution Center Property is proposed to be platted in a manner consistent with the Site Plan is attached hereto as Exhibit B (the "Site Plan") and which Site Plan depicts the parcels into which the OR Distribution Center Property is initially intended to be divided (individually referred to as a "Lot" or "Parcel" or collectively "Lots" or "Parcels"); and

WHEREAS, Declarant, at the time of execution of this Declaration is the owner of all of the Parcels within the Site Plan; and

WHEREAS, Declarant is the owner of additional real property adjacent to the OR Distribution Center Property Which Declarant may, in the future, add to the OR Distribution Center and subject the additional real property to the terms of this Declaration; and

WHEREAS, Declarant intends to enter into this Declaration to grant and create certain easements for the benefit of the properties and to impose certain obligations upon and grant certain rights to Owners (as hereafter defined) of the Parcels so as to create an integrated development plan on the Parcels.

NOW, THEREFORE, Declarant hereby declares as follows:

ARTICLE I
DEFINITIONS

1.1. Articles. "Articles shall mean the Articles of Incorporation of Oriole Road Distribution Center Property Owners Association, Inc, as filed with the Secretary of State, State of Florida, and as may be amended, from time to time.

1.2 Assessable Parcels. "Assessable Parcels" shall mean those parcels which are obligated to pay portions of the Common Area and other charges to the Association, as described in this Declaration, including parcels which may be added to the OR Distribution Center Property and utilize any of the Common Facilities within the OR Distribution Center Property.

1.3. Assessment. "Assessment" shall mean any of the types of assessments defined below in this Section.

(a) "Common Assessment" shall mean the charge against each Parcel which comprises the proportionate share for annual cost for the Common Expenses to be incurred by the Association during the year, as is particularly described in this Declaration.

(b) "Special Assessments" shall mean a charge against one or more (but not necessarily all) Parcels, which charge is equal to the cost incurred by the Association in connection with an expenditure for the benefit of one or more, but not all, Owners, including, but not limited to, costs incurred in connection with the enforcement of the provisions of this Declaration, the costs of enforcement of liens and assessments, repair costs, and fines for violations of this Declaration, the By Laws or the rules and regulations promulgated by the Association.

(c) "Reconstruction Assessment" shall mean a charge against one or more (but not necessarily all) Owners and their lots which charge is equal to the cost incurred by the Association for reconstruction of any portion or portions of the Common Facilities, including, but not limited to, the Water Management System and any private roadways accessing the Parcels, pursuant to the provisions of this Declaration.

(d) "Capital Improvement Assessment" shall mean a charge against one or more (but not necessarily all) Owners and their lots which charge is equal to the cost incurred by the Association for the installation or construction of any Common Facilities, including the Water Management System, which may be authorized by the Association, from time to time.

1.4 Association. "Association" shall mean Oriole Road Distribution Center Property Owners Association, Inc., a Florida not-for-profit corporation, and its successors and assigns, the members of which will be the owners of the Parcels, and their successors and assigns.

1.5 Board. "Board" shall mean the Board of Directors of the Association elected in accordance with the By Laws of the Association.

1.6 By Laws. "By Laws" shall mean the By Laws of the Association, as initially adopted by the Association, and as amended from time to time.

1.7 Common Expenses. "Common Expenses" shall mean the actual and estimated costs of ownership, maintenance, management, operation, repair and replacement of the lands,

personalty or other properties of the Association (including unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments and including any costs not collectible from an Owner responsible for payment); the costs of maintaining, repairing, monitoring, improving and restoring any real or personal property maintained or utilized for the benefit of any or all Owners of Lots; the actual or estimated costs of ownership, maintenance, repair, improvements and replacement, (including insurance and all other related expenses) for Common Facilities, including the Water Management System and any conservation areas, and buffers utilized for the benefit of all Owners, access easements or roadways, and the cost of any and all commonly metered utilities, irrigation system charges, and other common charges attributable to the OR Distribution Center Property subject to or governed by the provisions of this Declaration; costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees and costs of insurance bonds covering those personnel; the costs of all utilities, landscape, monitoring, maintenance, and other services benefiting the OR Distribution Center Property governed by the Association; the cost of fire, casualty and liability insurance, worker's compensation insurance, and other insurance covering the lands, personalty or other properties of the Association; the costs of bonding of the members of the Board and any management body; taxes paid by the Association; the costs of any assessments charged to the OR Distribution Center Property by the Master Association for the maintenance of portions of the Water Management System which are managed and operated by the Master Association and other charges assessable under the Master Declaration; the costs of any other item or items so designated by, or in accordance with, other expenses incurred by the Association for any reason whatsoever in connection with the operation and management of the Association for the benefit of the Owners; and reserves for capital improvements and deferred maintenance of the real and/or personal property owned or operated by the Association for or on behalf of the Owners or any of them.

1.8 Common Facilities. "Common Facilities" shall mean all of the following now or hereafter located on the OR Distribution Center Property: (i) The Primary Access Roads for the OR Distribution Center Property intended to provide vehicular ingress and egress to the various Parcels within the OR Distribution Center Property and which are labeled as roadways on the Site Plan; (ii) sidewalks and walkways to provide pedestrian access to and ingress and egress to and from the Parcels within the OR Distribution Center Property; (iii) landscaped and planted areas in roadways or entrance feature areas, or other areas depicted on the Site Plan as common to the Parcels within the OR Distribution Center Property; and (iv) all areas within the Site Plan designated as detention and or drainage easements on the Site Plan and which are intended to be utilized for drainage and retention for the OR Distribution Center Property and which are not owned by or maintained by the Master Association.

1.9 Detention Ponds. "Detention Ponds" shall mean that portion of any Lot or Lots which is designated for collecting, retaining and discharging any surface water or storm water from the Lot, and facilities adjacent and related to the collecting, retaining and discharging any surface water or storm water from the Lot. The cost and responsibility of maintaining Detention Ponds shall be that of the Owner of the Parcel on which the Detention Pond is located and for which the Detention Pond is designed to collect and retain the surface water.

1.10 District. "District" shall mean the South Florida Water Management District or

any governmental body that shall replace or assume the powers of South Florida Water Management District as they relate to the matters governed by this Declaration.

1.11 Lot(s) or Parcel(s). "Lot" or "Parcel" shall mean each separately identified parcel of real property now constituting a part of the real property subjected to this Declaration, as depicted on the Site Plan, or as the Site Plan may be amended or supplemented at any time in the future. The term shall also refer to any Lot or Parcel created by any future subdivision of any Lot or Parcel. The term "Lots" or "Parcels" may be used to describe more than one Lot or Parcel. For purposes hereof, a Lot shall be deemed to be unimproved until permits have been obtained to construct improvements, and construction of such improvements has commenced.

1.12 Master Association. "Master Association" shall mean the North Alico Property Owners' Association, Inc.

1.13 Master Declaration. "Master Declaration" shall mean the Declaration of Covenants and Restrictions of the North Alico Property Owners' Association recorded at Instrument Number 2005000065896, in the Public Records of Lee County, Florida, including any supplements and amendments thereto.

1.14 Owner. "Owner" shall mean the fee owner or ground lessee, (if a Parcel is ground leased), of a Parcel or any portion thereof and, after compliance with the notice requirements set forth below, their respective successors and assigns who become fee owners or ground lessees of any portion of the properties. Each Owner shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to Parcels owned by it which accrue during the period of such ownership, and such liability shall continue with respect to any portion transferred until evidence of the transfer of such portion of the Parcel is recorded in the Public Records of Lee County, Florida, at which time the transferring Owner's liability for obligations shall terminate. The liability of any Owner ("Underlying Fee Owner") of the fee title to any of the Parcel which has been ground leased to an Owner shall continue with respect to any portion of the fee which has been transferred, until evidence of the transfer of a Parcel or portion thereof is recorded in the Public Records of Lee County, Florida, at which time the transferring Underlying Fee Owner's liability for obligations shall terminate. An Owner or Underlying Fee Owner transferring all or any portion of its interest in a Parcel shall give notice to all other Owners of such transfer and shall include therein at least the following information:

- (a) the name and address of the new Owner or Underlying Fee Owner, as the case may be; and
- (b) a copy of the legal description of the portion of the Parcel transferred.

1.15 Parcel Area. "Parcel Area" shall mean the actual number of square feet contained within any Parcel as determined by a survey of the Parcel or as set forth in this Declaration. The Parcel Area shall be the gross square feet of land area within the Parcel and shall be the basis for the proportionate assessments of Assessable Parcels.

1.16 Permittees. "Permittees" shall mean the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s).

1.17 Primary Access Roads. "Primary Access Roads" shall mean the roadways contained within the OR Distribution Center Property, as shown on the Site Plan, the primary purpose of which are to provide access to the various Parcels within the OR Distribution Center Property.

1.18 Site Plan. "Site Plan" shall mean that site plan of the Parcels attached hereto as Exhibit "B" and by reference made a part hereof, and as may be amended or supplemented with the addition of additional parcels of real property within the OR Distribution Center Property. Except as may be otherwise provided in this Agreement, the Site Plan is for identification purposes only.

1.19 "Supplemental Declaration" shall mean shall mean any instrument recorded by Declarant in the Public Records of Lee County, Florida, for the purpose of clarifying or supplementing this Declaration, for the purpose of declaring certain properties to be Common Facilities (or withdrawn as such), or for the purposes of declaring certain properties to be added to the Property and subject to the terms and provisions of this Declaration, (whether or not as Lots), or of withdrawing Lots or other properties from the operation of the Declaration, consistent with the terms and provisions hereof. Any Supplemental Declaration, and the terms thereof, shall be consistent with permits obtained by the Association from the District or other applicable governing body.

1.20. Utility Line(s). "Common Utility Line(s) " shall mean those facilities and systems for the transmission of utility services and drainage and storage of surface water which are installed to provide the applicable service to the OR Distribution Center Property, as a whole. "Separate Utility Lines" shall mean those facilities and systems for the transmission of utility services which are installed to provide the applicable service exclusively to a building on a Parcel. For the purpose of this Declaration, the portion of a Utility Line extending between a Common Utility Line and a building shall be considered a Separate Utility Line. Common Utility Lines and Separate Utility Lines may be collectively referred to hereinafter as "Utility Lines".

1.21 Water Management System. "Water Management System" shall mean any surface water or storm water drainage or management system which is dedicated to or constructed by the Association, or any Owner, including but not limited to any Detention Ponds which may be designed and constructed or implemented to control discharges which are necessitated by rainfall or similar events. The Water Management System shall include all methods utilized for or permitted to collect, convey, store, absorb, inhibit, treat, use or reuse water or prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise effect the quantity and/or quality of discharges of surface water or storm water on or from the Property, or any portion thereof.

ARTICLE II PROPERTY GOVERNED AND ASSOCIATION

2.1 Property Subject to Covenants and Restrictions. All of the Property, as described in Exhibit "B", attached hereto and incorporated herein, is the real property subject to this Declaration. This Declaration may, in the future, further govern certain real property not

included in Exhibit "B" which is owned or managed by the Declarant, and certain additional real property which may be added to this Declaration by a Supplemental Declaration in accordance with the terms and provisions of this Declaration. The parties bound by this Declaration shall include all Owners and their tenants, licensees and holders of easements in and to any Lot, and holders of any other interest in and to a Lot subject to the terms of this Declaration.

2.2 Additions and Withdrawals. Declarant may, from time to time, by recording appropriate Supplemental Declarations in the Public Records of Lee County, Florida, add lands to the Property, as defined by this Declaration and may declare all or part of such additional property (including any Improvements thereon) to be Lots or Common Facilities, or both. To be effective, any such Supplemental Declaration must be executed by both the Declarant and the record fee owner or owners, if any, of the property which the Supplemental Declaration purports to add. In such event, the joinder in or consent to such Supplemental Declaration by Lot Owners (except for the Declarant and the record fee owners of the additional property) or by lienors or the Association, shall not be necessary for such Supplemental Declaration to be effective. The acknowledgement by the record title owner, or the acceptance of title to Lots by Lot Owners shall constitute full acknowledgment and approval of the foregoing contained in this Section and nothing shall be construed to require the joinder by, or entitle a right to consent by, Owners of Lots or any other lands which are not the owners of the property being added by any such Supplemental Declaration.

Further, Declarant reserves the absolute right at any time to withdraw portions of the Property and any Lots or Common Facilities thereon from the provisions of this Declaration by recording an appropriate Supplemental Declaration in the Public Records of Lee County, Florida, provided that to be effective, any such Supplemental Declaration must be executed by the Declarant, the Owner of each Lot located on the property sought to be withdrawn (if any), each holder of a mortgage on a Lot located on the property sought to be withdrawn (if any). The execution of a joinder in, or consent to, any such Supplemental Declaration by Lot Owners, (except as prescribed by the preceding sentence), or by lienors or the Association, shall not be necessary for such Supplemental Declaration to be effective, and the joinder in or consent to this Declaration by any such parties shall constitute the full acknowledgment and approval of the foregoing. However, no property may be withdrawn from this Declaration if the withdrawal will have an adverse effect on the Common Facilities, any permits obtained from the District or any other permitting body, or on the Water Management System.

2.3 Articles and By-Laws. The Association has been created to effectively and efficiently provide for the administration, operation, maintenance, monitoring, repair and upkeep of the Common Facilities including the Water Management System. The Association shall have the right, power and authority to enforce the restrictions and covenants contained herein, and shall undertake and perform all acts and duties necessary and incident to such enforcement, all in accordance with the provisions of this Declaration and the Articles and By-Laws of the Association. The Articles and By-Laws are attached hereto and made a part hereof, as Exhibits "E" and "F", respectively.

2.4 Officers and Directors. The Association has been formed in accordance with the Articles attached hereto as Exhibit "E". The Board of Directors of the Association will be selected in accordance with the By-Laws attached hereto as Exhibit "F". The officers of the

Association will be selected by the Board of Directors of the Association in the manner provided for in the By-Laws. The officers and Directors of the Association shall hold office for one year terms, or such other periods as shall be set forth in the Articles of Incorporation and the By Laws of the Association.

2.5 Membership. Each Lot Owner shall automatically become a member in the Association upon his, her or its acquisition of an ownership interest in and to any Lot (or upon the inclusion of his, her or its property being added to the Property by the recording of a Supplemental Declaration). The membership of any Lot Owner shall automatically terminate at the time that such Lot Owner sells, transfers or is otherwise divested of his, her or its ownership interest or title in a Lot, regardless of the means by which such ownership may have been sold, transferred or divested, and the person or entity acquiring title to the Lot shall thereafter become a member in the Association. After the Effective Date, the Owner of any Lot shall become the Lot Owner upon the acquisition of the title to a Lot. Each Lot Owner shall notify the Association of the change of ownership of his, her or its Lot at the time of the transfer.

2.5 Powers and Authority. The Association shall have all powers required to enforce all provisions of this Declaration, as provided herein, including, but not limited to the power and authority to: (a) own and convey its property, including all portions of the Water Management System, and the Common Facilities which may be owned or conveyed to the Association pursuant to any provisions of this Declaration; (b) to assess the owners of the Lots, as provided for in this Declaration, to establish procedures for collection of assessments and to enact and impose fines for failure to pay any assessment, or for the violation of nonmonetary obligations in the Declaration; (c) to sue and be sued; (d) to hire contractors, subcontractors, engineers, construction managers, employees, or others to carry out the functions and services contemplated for the Association under this Declaration, including the contracting for the construction of the roadways, the installation of utilities and drainage and other improvements within the authority of the Association, and the hiring of professionals, attorneys, accountants and others to provide administrative services and advice to the Association, the Owners and the Board; (e) to contract for services of third parties to manage or operate the Association and perform the functions of the Association; (f) to obtain comprehensive public liability insurance, including medical payments and malicious mischief, in such limits as it shall deem desirable, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction, property insurance, officer and director liability insurance, worker's compensation insurance and such other insurance coverage as the Board may deem desirable; and (g) to do all things reasonably necessary to enforce the provisions of the Declaration.

Further, in the administration, operation, maintenance and management of the Common Facilities, and all parts thereof, and in the enforcement of this Declaration, the Association shall have, and is hereby granted, full power and authority to enforce all of the provisions of this Declaration, including, but not limited to: (v) the right to operate and maintain the Water Management System and the Common Facilities, as described in this Declaration; (w) the right to levy and collect assessments in accordance with the terms of this Declaration; (x) the rights to adopt, promulgate, and enforce all rules and regulations governing the Association, (including the rules and regulations which involve the maintenance, operation, repair, monitoring and use of the Common Facilities); (y) the right to deal with the Master Association and coordinate the Common

Facilities of the OR Distribution Center Property and the Water Management System with the rights and duties of the Master Association; and (z) the right to administer this Declaration in such manner as the Board of Directors of the Association may, from time to time, in its sole and reasonable discretion, deem appropriate and in the best interest of the Association and the Owners.

2.7 Water Management Responsibility. The Association shall be primarily responsible for the maintenance, operation, monitoring, and repair of the Water Management System, which shall be coordinated with the rights and responsibilities of the Master Association. Maintenance of the Water Management System shall mean the exercise of practices which allow the Water Management System to provide drainage, water storage or conveyance or other surface water and/or stormwater management capabilities, as permitted by the District under all permits applicable to the Property, and consistent with the Master Declaration and permits issued by the District to the Master Association. Any repair or reconstruction of all, and/or any portion, of the Water Management System shall be as permitted or, if modified, as such modification is approved by the District.

2.8 Perpetual Easement. The Association shall have a perpetual non-exclusive easement over all areas of the Water Management System to operate, maintain or repair the Water Management System, and shall have the right to delegate any rights within the easements to the Master Association. By this easement, the Association, including its contractors and subcontractors, shall have the right to enter portions of any Lot or the Property, as shall reasonably be necessary to access any part of the Water Management System. Such access shall be at all reasonable times and in all reasonable manners (or at any time in the event of an emergency), to operate, maintain or repair the Water Management System as required under good maintenance practices or any permit issued by the District. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire Water Management System provided such easement shall be consistent with the rights and duties of the Master Association. No person shall alter the drainage flow of the Water Management System, including buffers, or swales, without the prior written approval of the District. All easement areas over Lots shall be recorded at such time as the Association reasonably determines the necessity of such easement or its recordation, or at such time as the recordation of a specific easement is required to clear a title cloud on any Lot, tract or any other portion of the Property.

2.9 Easements for Conservation and Mitigation Areas. In the event any conservation or mitigation areas are located within the OR Distribution Center Property, then the Association shall have a perpetual non exclusive easement over all such designated conservation areas and all mitigation areas within the OR Distribution Center Property or over which the Association has any management, operation or monitoring responsibilities. This perpetual non exclusive easement shall include the right to assign any rights of the Association, in whole or in part, to the Master Association. This easement shall grant access rights to the Association, and its contractors and subcontractors, for any reasonable purpose, provided all access shall be consistent with rules and regulations of the District and / or restrictions placed on any areas which may be designated as conservation areas or mitigation areas. The easements reserved to the Association may be recorded at such time, and in such event, as the Association determines the necessity for an easement or its recordation, or at such time as the recordation of a specific easement is required to clear a title cloud on any Lot, tract or any other portion of the Property.

ARTICLE III
ASSOCIATION RESPONSIBILITIES AND COVENANTS

3.1 Maintenance and Monitoring. The Association shall be responsible for the maintenance, operation, monitoring, and repair of the Common Facilities, including the Water Management System, provided that a Lot Owners shall have that responsibility for any Detention Pond, wetland, conservation or mitigation areas that are solely within a permit for the Lot. Annual Assessments collected by the Association for the Water Management System shall be used by the Association for the maintenance, operation, monitoring, and repair of the Water Management System, including but not limited to work within retention areas, drainage structures and drainage easements. Maintenance of the Water Management System shall include the exercise of practices which allows the Water Management System to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities for the Property, as permitted by the District. Any repair or reconstruction of the Water Management System shall be as permitted by the District. The duties of the Association with regard to the Water Management System shall be coordinated with the Master Association, which has duties for the maintenance, operation, monitoring, and repair of the Master water management system, which is integrated with the Water Management System for the OR Distribution Center Property.

If the Association or any Lot Owner shall construct drainage swales on any Lot or tract for the purpose of managing and containing the flow of excess surface water, if any, found upon such Lot or tract, from time to time, each Lot Owner, (including all contractors and subcontractors) shall be responsible for the maintenance, operation, and repair of the swales on the applicable Lot or tract. Maintenance, operation, and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the District. Filling, excavating, constructing of fences or otherwise obstructing the surface water flow in any swales is prohibited, unless a permit for such filling, excavating, constructing of fences or otherwise obstructing the surface water flow in any swales is obtained from the District, and is also approved by the Association. No alteration of any drainage swales shall be authorized and any damage to any drainage swale, whether caused by natural or human induced phenomena, shall be repaired and the drainage swale returned to its former condition as soon as possible by the Owner(s) of the Lot(s) or tract(s) upon which any drainage swale is located.

The Association shall have a perpetual non exclusive easement over all areas of the Water Management System, for access to operate, maintain, monitor, or repair the Water Management System. By this easement, the Association shall have the right to enter upon any portion of any Lot or tract at a reasonable time and in a reasonable manner, to operate, maintain, monitor, or repair the Water Management System, as required by all applicable District permits. Additionally, the Association, together with the Master Association, shall have a perpetual non-exclusive easement for drainage over the entire Water Management System for the benefit of the Owners of the Lots within the Property. No person shall alter the drainage flow of the Water Management System, including buffer areas or swales, without the prior written approval of the District, or such agency or agencies having jurisdiction over the Conservation Areas or Mitigation Areas, and the Association.

3.2 Covenants. Declarant hereby covenants, agrees, declares and establishes for the benefit of the Owners of the Parcels, the Parcels located within the OR Distribution Center Property shall be and are hereby declared to be subject to the following covenants and restrictions, which covenants and restrictions shall bind the Owners of the Parcels and their respective successors-in-title:

A. Use Restrictions. In the event that Parcel 2 is developed into a medical/surgery center then Declarant agrees that the portion of the OR Distribution Center Property located within 200 feet of the Property boundary of Parcel 2 will be restricted against the following primary uses: (i) a funeral home; (ii) an animal kennel; (iii) an auto service station; (iv) a business engaged in boat repair and service; (v) outside storage of lawn and garden supplies; (vi) a lumber yard or truss plant or a business that involves outdoor bulk storage of building materials that are not screened from view from adjacent properties; and (vii) any fruit or food processing plant which produces significant odor or noise. This use restriction shall also apply to OR Distribution Center Property located within 200 feet of the Property boundary of Parcel 3 in the event Parcel 3 is developed into a medical/surgery center. This restriction shall apply to Declarant and any successor in title and interest to any Parcel located within the area subject to the restrictions in this Paragraph.

B. Architectural Review, Signage and Declarant Approval. The project to be permitted and developed as the OR Distribution Center Property shall be a part of the Master Association and shall be subject to the provisions of the Master Declaration. The Master Declaration includes an annual assessment for, among other things, the maintenance of backbone stormwater drainage system and administrative costs of the Master Association. Additionally, in order to provide for the integration of the development and construction of the Parcels within the OR Distribution Center Property, the Declarant reserves the right of approval of all architectural and construction which is performed within the OR Distribution Center Property. With regard to the architectural approvals, prior to construction of any units, common areas or structures within a Parcel, the Parcel Owner shall submit site plans and construction plans to Declarant for approval. The exterior building plans, construction materials, signage and landscaping to be used in constructing the building(s) to be constructed on the Parcel(s) are subject to the reasonable approval by Declarant. Declarant agrees to review all proposed plans within thirty (30) days after the receipt of the submittal request for approval, unless the Declarant shall agree on a shorter approval period with the Owner. The architectural submittal will only be considered complete if it contains a complete package of drawings and other information, including plant materials, colors and height and materials for signage, reasonably required to evaluate the request for approval. If Declarant fails to provide such approval or provide written notice requesting additional information or its specific reasons for withholding approval prior to the expiration of such review period, then the approval shall be deemed automatically granted. The Declarant shall have the right to assign or terminate the architectural review requirement set forth in this Paragraph at any time.

All improvements located within a Parcel, other than signage within an easement granted to the Association, shall be the construction and maintenance responsibility of Owner, or its successors and assigns, and not the responsibility of the Association. Further, the Owner(s) will be responsible for the construction and maintenance of all drainage and other facilities within the Parcel, but will have the rights to connect and drain the Parcel into the Water Management

System.

C. Utilities. Each Owner shall maintain and replace, at its sole cost and expense, its own Separate Utility Lines, in a first class condition, regardless of where such Separate Utility Lines are located, unless the provider of the service or a public or quasi- public authority has agreed to maintain such Utility Lines. Any Owner performing, or causing to be performed, maintenance or repair work on a Separate Utility Line promptly shall pay all costs and expenses associated therewith, diligently shall complete such work as quickly as possible and promptly shall clean the area and restore the affected portion of the Common Facilities to a condition equal to or better than the condition which existed prior to the commencement of such work. Common Utility Lines shall be maintained and replaced as part of the Common Facilities or by the utility company providing the services where the utility service is in easements dedicated to the respective utility.

D. Building Improvements. After completion of construction on each Parcel, each Owner shall maintain and keep the building improvements located on its Parcel in first-class condition and state of repair, in compliance with all governmental laws, rules, regulations, orders, and ordinances exercising jurisdiction thereover, and in compliance with the provisions of this Declaration, including the use and architectural restrictions. Each Owner shall store all trash and garbage in adequate containers, shall locate such containers so that such containers are not readily visible from the parking area, and shall arrange for regular removal of such trash or garbage. In the event any of the building improvements are damaged by fire or other casualty (whether insured or not), the Owner upon whose Parcel such building improvements are located shall immediately remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter either shall: (i) repair or restore the building improvements so damaged, such repair or restoration to be performed in accordance with all provisions of this Declaration; or (ii) erect other building improvements in such location, such construction to be performed in accordance with all provisions of this Declaration; or (iii) demolish the damaged portion of such building improvements and promptly restore the area. Such Owner shall have the option to choose which of the foregoing alternatives to perform, but such Owner shall be obligated to perform one of such alternatives. Such Owner shall give notice to the Association within ninety (90) days from the date of such casualty of which alternative it elects.

ARTICLE IV ASSESSMENTS

4.1 Creation of Lien and Personal Obligation. Each Lot Owner, and the tenant, licensee, easement holder, or holder of any other interest, of or in each and every Lot, where applicable, no matter how title to any Lot is acquired (including lenders or third parties that acquire title through the foreclosure of any mortgage, lien, pledge, assessment or tax deed) shall by acceptance of a deed or other instrument of conveyance therefore, whether or not it shall be so expressed in any such deed or instrument, be deemed to covenant and agree to all of the terms in this Declaration, and the Owner agrees to promptly pay to the Association, its successors or assigns the following:

- (a) All Annual Assessments or charges as described in Section 4.3 of this Article; and
- (b) All Special Assessments or charges, and other Assessments, including Capital

Improvement Assessments and Reconstruction Assessments, as provided for in Sections 4.4 and 4.5 of this Article, as such assessments or charges shall be fixed, established, levied, and collected, from time to time, as hereinafter provided.

The Annual, Special, Capital Improvement and Reconstruction Assessments, (together with such interest thereon and the cost of collection, including reasonable attorneys' fees, whether prior to filing suit, after filing suit, at trial or on appeal, as hereinafter provided) shall be a charge and a continuing lien on the applicable Lot, and all improvements constructed thereon, against which such assessment is made, whether or not a claim of lien is filed. Each such Assessment (together with such interest thereon and the cost of collection, including reasonable attorneys' fees as above established) shall also be the personal obligation of the person who was the Lot Owner of such Lot at the time the assessment first accrued, and also against any Lot Owners that may have transferred an interest in a Lot but have not yet notified the Association of the transfer. Prospective purchasers are hereby notified of the possible charges against any Lot, and are directed to carefully review all other provisions of this Article, this Declaration, and particularly Sections 4.3, 4.4, 4.5, 4.6, 4.9, 4.10 and 4.12 below.

4.2 Assessments. The Assessments provided for in this Declaration, whether an Annual Assessment, a Special Assessment, a Capital Improvement Assessment or a Reconstruction Assessment, levied by the Association shall be used for the improvement, operation, construction, maintenance, monitoring, repair, enhancement and enlargement of the Common Facilities, or other properties owned, managed, operated, maintained or monitored by the Association, the construction of the extensions of any Primary Access Roads, including the installation of utilities and any improvements related thereto or within the permits issued for the construction of those roadway extensions, and to provide services which the Association is authorized to provide, including, but not limited to, the payment of taxes, governmental assessments, insurance, maintenance, monitoring, repair and replacement of any common access road, landscaping, and the Water Management System, together with professional services of attorneys and accountants, the supervision reasonably necessary to carry out the authorized functions of the Association, and all administrative and billing costs incurred in operating the Association and billing the assessments of the Association. In addition, the Association may keep in force liability insurance on the Common Facilities, the Water Management System, and such other areas, as well as general liability insurance, directors and officers liability insurance, and other insurance, in amounts that may be determined, from time to time, by the Board of Directors to be reasonable and necessary. The Association shall not be bound in setting assessments in subsequent years by the amount of the assessments set in earlier years. Notwithstanding any of the provisions of this Article, in no event shall the Assessments and other revenue collected by the Association exceed its expenses plus reasonable working capital, replacement, reconstruction and other reserves, to the extent it would violate the Association's not-for-profit status.

Section 4.3 Annual Assessments. The assessments for the periodic operation, maintenance, repair, management, and replacement of the Common Facilities, including the Water Management System and for the operation, management and administration of the Association, shall be made on an annual calendar year basis, and billed on a quarterly or other periodic basis, as established by the Association, from time to time. Assessments shall be set for each year, by the

Board, at the Annual Meeting. In the event that the Board does not set an annual assessment for any calendar year as of January 1 of that year, then the assessment for the prior year shall continue in effect, as an interim assessment, until the Annual Meeting is held and the then current assessment is set. If, at the time an annual assessment is set, the Association has billed the Owners based on the prior year's assessment, the first due payment, after the corrected billing, shall be adjusted, upward or downward, to take into effect the billed and paid assessments, as if the current assessment had been in effect as of January 1 of the year in question. Common Assessments shall be allocated among the Owners of the Lots on a reasonable basis determined by the Association, based on the proportionate responsibility of the respective Owners for the improvements being maintained, or the administration thereof, or as such percentages shall be reallocated in the event that a Lot is further divided or split. Assessments for annual charges for the normal and anticipated costs for items which are specifically allocable to an Owner, such as buffer maintenance or maintenance or monitoring of areas which are for the benefit of one or more, but not all of the Owners, shall be levied against the Lots of the benefited Owners, on the basis of the reasonably proportionate cost allocable to the benefited Owner, and shall be reallocated in the event that a Lot is later further divided or split. The Annual Assessment for a Lot shall be the Common Assessment plus all specially allocated costs assessed against the Lot for any year. If the Common Assessment and/or the specially allocated assessments for any year are not sufficient to meet the actual costs incurred, the Association may recover the shortfall by: (i) making a Special Assessment for the shortfall at any time or times during the year; (ii) by utilizing working capital reserves to fund the shortfall; or (iii) by including the shortfall in the Common Assessment or specially allocated assessments, as applicable, for the following year. All assessments in excess of actual costs expended shall be accounted for in the Common Assessment or specially allocated assessment, as applicable, for the following year. All shortfalls of specially allocated assessments paid from working capital reserves common to all Lot Owners (or common to Owners other than the benefited Owners in the benefited proportions) shall be accounted for in the assessments for the following year and returned to the reserve account as a part of the assessments collected in the following year. Assessments specifically allocable to the Lots of benefited Owners, but not allocable to the Lots of all Owners, (such as maintenance that may be required by the Association to Detention Ponds pursuant to requirements of the District) shall be allocated according to the percentages reasonably established by the Association, or as may be set forth on Exhibits which may be appended to this Declaration, in the future and from time to time, and as such specifically allocable items are clarified to or by the Association.

4.4 Special Assessments. In the event that the Association requires funds for a budget shortfall due to unforeseen expenses, or any capital improvements, restoration, maintenance or repairs (other than for items covered under Section 4.5 below), then the Board shall have the right to levy an Assessment against the Owners in order to raise the funds required to operate the Association and comply with all permits and orders of the District and other governmental regulatory bodies. Special Assessments shall be approved by the Board and a sixty percent (60%) majority of the votes held by the Lot Owners as of the record date established for notice of the meeting called to approve the Special Assessment, unless the Assessment is required to comply with an order or permit from the District or other governmental body, or results from expenditures which were not in the budget or which were in excess of budgeted amounts, in which event the approval of the Board shall be sufficient for the approval of such Special Assessment. Special Assessments shall be payable as set forth in the resolution adopting and approving the

assessment, provided that no Special Assessment shall be due and payable sooner than fifteen (15) days after notice of the approval of the Assessment is sent to the Owners responsible for the payment of the Assessment. Special Assessments shall be levied against the Lots, on the basis of the percentages for the payment of Common Assessments, (or as such percentages shall be reallocated in the event that a Lot is further divided or split), if the assessment is for a purpose common to all Owners, provided however, if an item for which an assessment applies is more properly allocated directly to a Lot or a number of Lots, but not all Lots, then the assessment shall be allocated by an equitable means which evaluates the cost and benefit of the item which is the subject matter of the assessment. An example of an assessment that is more properly allocated directly to a Lot or a number of Lots, but not all Lots, would be an improvement required by the District to the Water Management System which solely relates to a permit applicable to one Owner.

4.5 Capital Improvement Assessments and Reconstruction Assessments. In the event that the Association requires funds for capital improvements or restoration, then the Board shall have the right to levy an Assessment against the Owners in order to raise the funds required to operate the Association and comply with all permits and orders of the District and other governmental regulatory bodies. Capital Improvement Assessments and Reconstruction Assessments shall be approved by the Board and if not for a purpose defined herein, shall also be approved by at least sixty (60%) percent of the Owners of Lots which are subject to the Capital Improvement Assessment of Reconstruction Assessment, provided however, if the Capital Improvement or Reconstruction Assessment is required to comply with an order or permit from the District or other governmental body, then the approval of the Board shall be sufficient for the approval of such Assessment. Capital Improvement Assessments and Reconstruction Assessments shall be payable as set forth in the resolution adopting and approving the assessment, provided that no Capital Improvement Assessment or Reconstruction Assessment shall be due and payable sooner than fifteen (15) days after notice of the approval of the Assessment is sent to the Owners responsible for the payment of the Assessment. Capital Improvement Assessments and Reconstruction Assessments shall be levied against the Lots on the basis of the proportionate share of the Lots for the construction or reconstruction of the improvement, (or as such percentages shall be reallocated in the event that a Lot is further divided or split), if the assessment is for a purpose common to all Owners.

4.6 Delinquent Assessments. Assessments which are not paid on or before the date the same shall become due and payable, shall be delinquent, and each delinquent assessment shall bear interest at eighteen percent (18%) per annum from the due date until the date the assessment is paid in full. In addition to the accrual of interest, when an assessment becomes delinquent in payment, and the delinquency continues for thirty (30) days after the due date for payment, then the Association may file a claim of lien to perfect the lien for such assessment as against third persons, against any Lot, which has defaulted in the payment of such assessment. There shall be no exemption from the payment of any assessment or installment thereof by waiver of the use of all or any portion of the Common Facilities, including the Water Management System, or by or for any other reason.

4.7 Statements of Assessments. The Association, upon receipt of the written request of any Lot Owner, shall furnish to the Lot Owner and/or a prospective purchaser or prospective

mortgagee or other authorized person, a statement of the current status of the assessments levied against a Lot. When executed by an Association officer or other authorized person of the Association, any purchaser or mortgagee that purchases or places a mortgage against a Lot may, unless notified prior to closing, rely upon such statement as an accurate statement of the status of assessments. The failure to obtain such a statement shall result in the new Owners liability for any unpaid assessment, jointly and severally with the former Owner.

4.8 Association Revenue. All revenue collected by the Association shall be segregated, held and used as the separate property of the Association, and such revenue may be applied by the Association, at the discretion of the Board of Directors, towards the payment of any expenses of operation and maintenance of the Common Facilities, including the Water Management System, or retained as reserves or working capital, if reasonably required. Revenue collected by the Association from a Lot Owner may be co-mingled with monies collected from other Lot Owners. Revenue collected from Common Assessments shall be accounted for on the basis of the Association as a whole. Revenue collected from specially allocated costs may be co-mingled with other revenues collected by the Association, but should be accounted for on a segregated basis, to the extent reasonably practical and economically feasible.

4.9 Liens for Assessments. Recognizing that the proper management and operation of the Common Facilities, including the Water Management System results in a benefit to all members of the Association, the Association is hereby granted a lien upon all of the Lots within the Property (present and future), and the present and future interest of each member of the Association for the maintenance of these improvements. To secure the prompt payment of each and all Annual Assessments, Special Assessments, Capital Improvement Assessments, Reconstruction Assessments, or other assessments made and levied in accordance with this Declaration, each Lot Owner shall be liable for, and this lien shall secure, the full amount of said assessment and the costs and expenses, including reasonable attorneys' fees, (whether incurred prior to or after institution of court action, during trial or on appeal), if any, which may be incurred by the Association in enforcing its lien or any other provisions of this Declaration.

4.10 Lien Foreclosure. The lien herein established may be foreclosed in the same manner as real estate mortgages may be foreclosed in the State of Florida. The lien granted herein shall also secure such payment of, or advances for, taxes and payments on superior mortgages, liens, or encumbrances which may be required to be advanced by the Association in order to protect its interests, and the Association shall be entitled to interest on all such advances.

4.11 Notice of Unpaid Assessments. All persons, firms, corporations, and other business entities which shall acquire, by whatever means, any interest in the ownership of any Lot, or which may be given or which may acquire a mortgage, lien or other encumbrance on a Lot, are hereby placed on notice of the lien rights granted to the Association under this Declaration, and all of such persons, firms, corporations, business entities or others, (including persons or entities acquiring Lots through the foreclosure of any mortgage, lien or other obligation) shall acquire their right, title and interest in and to said Lot expressly subject to the lien rights provided herein.

4.12 Filing a Claim of Lien. The lien created pursuant to this Declaration shall be perfected by the recording of a "Claim of Lien" in the Public Records of Lee County, Florida,

which Claim of Lien shall include the description of the Lot encumbered by the lien, the name of the Lot Owner last known to the Association, the amounts due and the date when the same became due and payable. The lien shall continue in effect until all sums secured by the lien have been fully paid. The Claim of Lien may include assessments due and payable when the claim is made and recorded, plus interest, collection costs, attorneys' fees, and advances to pay taxes and prior encumbrances and interest thereon, all as provided herein.

4.13 Assessments Caused By Tenants or Others. Each Owner shall be responsible for any damage to the Common Facilities, including, but not limited to, the Water Management System caused by any employee, agent or invitee of the Owner, or any Tenant, employee or agent of a tenant, or anyone holding a right to or be on the Lot of the Owner, including licensees and holders of easements. The duty to correct or repair such damage shall be with the Owner and if notified, the Owner shall repair or restore any damage. Due to the restrictions placed on the Common Facilities, the Association shall make the repairs to those areas and shall have the right to assess the cost of repair, including the administrative costs, against the Owner responsible for the damage, as provided for in this Section. Failure to repair or pay an assessment under this Section may be enforced by the Association in the same manner as the failure to pay an Annual Assessment, and the rights of the Association shall include the right to file a lien against the Lot of the responsible Owner. The rights of the Association under this Paragraph shall also apply to the Master Association for damage to the facilities and water management system managed and maintained by the Master Association.

ARTICLE V EASEMENTS AND CONSTRUCTION

5.1. Easements reserved for the Declarant. Declarant hereby reserves unto Declarant and also grants, declares and establishes perpetual, non-exclusive easements for the benefit of the Association, as follows:

A. Drainage. A perpetual easement to establish, operate, maintain, repair and replace drainage and related facilities which are a part of the Water Management System, said easement being for the purpose of draining, passing, collecting, retaining, and discharging surface and subsurface water and runoff from the OR Distribution Center Property in accordance with permits obtained from Lee County and the South Florida Water Management District, together with the right to construct, maintain, repair and replace any pipes, headwalls, swales, slopes or other facilities necessary for the proper functioning of the Drainage Facilities and the collection of such waters from the Parcels within the OR Distribution Center Property. Such easement shall include the right to enter the various Parcels within the OR Distribution Center Property, at all reasonable times, for the purpose of effecting such construction, maintenance, repair and replacement of the Drainage Facilities. This easement and the drainage of the OR Distribution Center Property is subject to the rights and obligations of the Master Association which operates and maintains the backbone drainage system for certain real property which includes the OR Distribution Center Property.

B. Access. A perpetual easement for vehicular and pedestrian ingress and egress in, over, upon and across the Primary Access Roads, and to the extent reasonably necessary to perform the duties of the Association or the duties of the Master Association, over all driveways, access ways, ramps, roads, walkways, and paths that now exist or may hereafter exist.

C. Landscape. A perpetual easement to install, maintain, repair and replace landscaping within those portions of the OR Distribution Center Property, and such easement shall allow for the maintenance or replacement of landscaping not maintained by the Owner in accordance with the provisions of this Declaration.

D. Construction Easement. A non exclusive easement over, across and upon portions of the Parcels if necessary to permit the construction or maintenance of the Common Facilities; provided that the use of this easement shall be kept to a minimum and shall not unreasonably interfere with the construction or operation of the improvements on the Parcel(s), and further provided that this easement shall not permit the storage of materials or equipment upon any Parcel without the consent of the Owner.

E. Utility. A perpetual easement over the Common Facilities for the installation, operation, maintenance and repair of power lines and other underground utility lines to serve the Parcels within the OR Distribution Center Property.

5.2 General Construction Requirements.

A. All construction activities performed on or within the OR Distribution Center Property, including without limitation, all construction performed by an Owner, or the Association, on another Owner's Parcel pursuant to any of the easement rights herein created, shall be performed in compliance with all laws, rules, regulations, orders, and ordinances of the county, state, and federal governments, or any department or agency thereof, affecting improvements and construction within the OR Distribution Center Property.

B. No construction activities on the Properties shall: (i) cause any unreasonable increase in the cost of constructing improvements upon another Owner's Parcel; (ii) unreasonably interfere with construction work being performed on any other Parcel; (iii) unreasonably interfere with the use, occupancy or enjoyment of any other Parcel by any other Owner or its tenants, guests, customers, agents, licensees, employees or invitees (its "Permittees"); or (iv) cause any building located on another Parcel to be in violation of any law, rule, regulation, order or ordinance authorized by any city, county, state, federal government, or any department or agency thereof.

C. The Owner or the Association performing or causing to be performed such construction activities shall promptly pay all costs and expenses associated therewith, diligently shall complete such construction activities as quickly as possible and shall promptly clean the area and restore the affected portion of the other Owner's Parcel to a condition equal to the condition which existed prior to the commencement of such construction activities.

D. Each Owner, and the Association if applicable, shall defend, indemnify and hold harmless the other Owners from all claims, losses, liabilities, actions, proceedings and costs incurred in connection therewith (including reasonable attorneys' fees actually incurred and costs of suit) resulting from any construction work, 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 performance of any construction activities performed or authorized by such indemnifying Owner; provided, however, that the foregoing shall not be applicable to events or circumstances caused by the negligence or willful act or omission of such indemnified Owner, or its Permittees, or anyone claiming by, through, or under either of them.

5.3 Common Facilities. The Common Facilities as shown on the Site Plan, as amended or supplemented, from time to time, once constructed, may not be changed or modified

by any Owner, including portions of the Common Facilities which may be located on an Owner's Parcel, without the approval of the Association.

ARTICLE VI
OPERATION OF THE OR DISTRIBUTION CENTER PROPERTY

6.1 Uses.

(A) No portion of the OR Distribution Center Property shall be used for any business which is not permitted under the zoning regulations applicable to the respective Parcel.

(B) No use shall be permitted on any Parcel which is inconsistent with the operation of a first-class business on the Parcel, whether that business shall be retail, office, commercial, industrial, or such other use as permitted under the zoning regulations applicable to the Parcel. Without limiting the generality of the foregoing, the following uses shall not be permitted:

- (i) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);
- (ii) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of the building) ;
- (iii) Any central laundry or dry cleaning plant unless it can be shown to the Declarant, if the Declarant still owns any parcel that there is no possibility of pollution or discharge of hazardous materials from the central laundry or dry cleaning plant on the OR Distribution Center Property, any adjacent property or any property within the 1 mile radius of the OR Distribution Center Property;
- (iv) Any living quarters, sleeping apartments, or lodging rooms;
- (v) Any establishment selling or exhibiting pornographic materials in open view;
- (vi) Billboards or cellular towers, other than as shall be approved by the Declarant, or exist on the OR Distribution Center Property at the time of this Declaration.

6.2 Insurance.

(A) The Association shall maintain or cause to be maintained in full force and effect for the benefit of the officers, directors, Declarant, and the Owners of the Parcels, to the extent it is able to obtain such insurance coverage, Comprehensive General/Commercial General Liability Insurance covering the Common Facilities within the OR Distribution Center Property, including coverage which insures liability for acts that occur on any private roads within the OR Distribution Center Property; with a combined single limit of liability of not less than Two Million (\$2,000,000.00) Dollars for bodily injury to, or personal injury or death of, any person and consequential damages arising therefrom, and for property damage, arising out of any one occurrence. The cost of such insurance the insurance maintained by the Association shall be allocated among the Owners of the Assessable Parcels on the basis of the respective cost of such insurance, as it applies to each Parcel.

(B) Except to the extent coverage is provided by the insurance required to be

maintained under subparagraph (A) above, each Owner (as to its Parcel only) shall maintain or cause to be maintained in full force and effect Comprehensive General/Commercial General Liability Insurance with a combined single limit of liability of not less than Two Million (\$2,000,000.00) Dollars for bodily or personal injury or death, and for property damage, arising out of any one occurrence. Each Owner ("Indemnitor") covenants and agrees to defend, protect, indemnify and hold harmless each of the other Owners ("Indemnitees") from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorneys' fees actually incurred and costs of suit) arising from or as a result of the injury to or death of any person, or damage to the property of any person which shall occur on the Parcel owned by Indemnitor, except for claims caused by the negligence or willful act or omission of such Indemnitees, their licensees, concessionaires, agents, servants, or employees, or the agents, servants, partners, or employees of any licensee or concessionaire thereof.

(C) Prior to commencing any construction activities on its Parcel, each Owner shall obtain or require its contractor to obtain, and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages set forth below :

- (i) Workers' Compensation - statutory limits;
- (ii) Employers Liability - \$500,000.00;
- (iii) Comprehensive General/Commercial General Liability and Business Auto Liability as follows :
 - (a) Bodily Injury - \$1,000,000 per occurrence;
 - (b) Property Damage - \$1,000,000 per occurrence;
 - (c) Independent Contractors Liability; same coverage as set forth in (a) and (b) above;
 - (d) Products/Completed Operations coverage which shall be kept in effect for two (2) years after completion of work;
 - (e) "XCU" Hazard Endorsement, if applicable;
 - (f) "Broad Form" Property Damage Endorsement;
 - (g) "Personal Injury" Endorsement;
 - (h) "Blanket Contractual Liability" Endorsement.

(D) Effective upon the completion of construction of improvements, the constructing Owner will carry or cause to be carried, All-Risk Replacement Cost Property Insurance, such coverage extending to at least the perils identified in the then current standard "All-Risk" policy. Each Owner (the "Releasing Party") hereby releases and waives, for itself and on behalf of its insurer, any other Owner (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Properties, which loss or damage is of the type generally covered by the insurance required to be maintained under this clause, irrespective either of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried. Each Owner agrees to use its best efforts to obtain, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given. Each Owner ("Indemnitor") covenants and agrees to indemnify, defend and hold harmless each other Owner ("Indemnitees")

from and against all claims asserted by or through any Permittees of the Indemnitor's Parcel for any loss or damage to the property of such Permittee located upon the respective Indemnitor's Parcel, which loss or damage is of the type generally covered by the insurance required to be maintained under this clause, irrespective of any negligence on the part of the Indemnitees which may have contributed to, or caused, such loss.

(E) All insurance required by Paragraph 6.2 shall be procured from companies licensed in the state of Florida and shall be rated by Best's Insurance Reports not less than A/X.

6.3 Taxes and Assessments. Each Owner shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Parcel, the buildings, and improvements located thereon and any personal property owned or leased by such Owner at the Parcels, provided that if the taxes or assessments or any part thereof may be paid in installments, the Owner may pay each such installment as and when the same comes due and payable. Nothing contained in this subsection shall prevent any Owner from contesting, at its sole cost and expense, any such taxes and assessments with respect to its Parcel in any manner such Owner elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time as such contest is concluded (allowing for appeal to the highest appellate court), the contesting Owner shall pay promptly all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon. Taxes and assessments on any Common Facilities shall be paid by the Association with the cost of such taxes and assessments allocated among the Owners of the Assessable Parcels in accordance with the percentage share cost allocable to each Parcel.

ARTICLE VII MISCELLANEOUS

7.1 Covenants to Run With The Land. The restrictions and burdens imposed by the provisions and covenants of this Declaration shall constitute covenants running with the Property, and each covenant and restriction shall constitute an equitable servitude upon the Lot owned by each Lot Owner. The covenants set forth herein shall inure to the benefit of and be enforceable by the Association and by Owners of the Parcels, by actions at law or suits in equity, including, without limitation, injunctive relief and the specific performance of the provisions of these covenants. The failure of any person or organization to enforce any covenant or restriction herein contained shall in no event be deemed a waiver by that, or any other, person or organization of its rights to thereafter enforce the same nor shall any liability attach to any Owner or any other organization or individual for failure to enforce such covenants or restrictions.

7.2 Water Management Permits. The Association has, or will, obtain permits from the District for the surface water management system for the development of the OR Distribution Center Property. A copy of the surface water management system permit(s) obtained by the Association shall be maintained on file at the office of the Association and shall be binding on all of the OR Distribution Center Property. Additionally, the Registered Agent for the Association shall maintain copies if all permitting action which shall occur after the recording of this Declaration for the benefit of the Association and the Owners.

7.3 Notices. All notices, demands, statements, and requests (collectively "Notice") required or permitted to be given under this Declaration must be in writing and shall be deemed to have been properly given or served on the earlier of: (i) the date of personal service upon the Owner to whom the Notice is addressed; (ii) one (1) business day after the date the Notice is postmarked by the United States Post Office, provided it is sent prepaid, registered or certified mail, return receipt requested; (iii) one (1) business day after the date the Notice is deposited with an overnight courier service (including Federal Express, Express Mail, UPS or similar operation) to the address of the person to whom it is directed, provided it is sent prepaid; or (iv) one (1) business day after the date the Notice is delivered by facsimile or other electronic transmission if the original of such transmission is sent by a method described in (ii) or (iii) above within one (1) day of such transmission. The address of the Declarant is set forth below:

Declarant: Alan C. Freeman, Trustee
28120 Hunters Ridge Blvd, Suite 5
Bonita Springs, Florida 34135

with a copy to: Paul H. Freeman, Esq.
2 South University Drive
Suite 325
Plantation, FL 33324

7.4 Binding Effect. The term of this Declaration and all easements declared hereunder shall inure to the benefit of, and be binding upon, the Owners of the Parcels and their respective successors and assigns who shall become Owners hereunder.

7.5 Singular and Plural. Whenever required by the context of this Declaration, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

7.6 Counterparts and Signature Pages. This Declaration may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Declaration may be executed and notarized on separate pages, and when attached to this Declaration, shall constitute one complete document.

7.7 Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise. Each Owner shall be considered a separate owner, and no Owner shall have the right to act as an agent for another Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

7.8 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any Parcel, or any portion thereof, to the general public, or for any public use or purpose whatsoever. Any Owner may dedicate to the public or to a private entity having jurisdiction thereover, any utility line, drive or easement declared herein. Except as herein

specifically provided, no right, privileges or immunities of any Owner hereto shall inure to the benefit of any third-party person, nor shall any third-party person be deemed to be a beneficiary of any of the provisions contained herein.

7.9 Excusable Delays. Whenever performance is required of any Owner hereunder, such Owner shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, terrorism, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Owner, then the time for performance, herein specified, shall be extended appropriately by the amount of the delay actually so caused. The provisions of this section shall not operate to excuse any Owner from the prompt payment of any monies required by this Declaration.

7.10 Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any person by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

7.11 Amendments. This Declaration may be amended by, and only by, a written declaration signed by all of the then current Owners in accordance with the provisions of this Declaration, and shall be effective only when recorded in the Public Records of Lee County, Florida. No consent to the amendment of this Declaration shall ever be required of any party or person other than the Owners, nor shall any such parties other than the Owners have any right to enforce any of the provisions hereof.

7.12 Captions and Capitalized Terms. The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of the Declaration.

7.13 Mitigation of Damages. In all situations arising out of this Declaration, all Owners shall attempt to avoid and mitigate the damages resulting from the conduct of any other Owner. Each Owner shall take all reasonable measures to effectuate the provisions of this Declaration.

7.14 Declaration Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this Declaration shall: (i) entitle any Owner to cancel, rescind or otherwise terminate this Declaration; or (ii) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any Parcel, or portion thereof. However, such limitation shall not affect, in any manner, any other rights or remedies which an Owner may have hereunder by reason of any such breach.

7.15 Time. Time is of the essence of this Declaration.

7.16 Non Waiver. The failure of any Owner to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies

which that Owner may have hereunder, or at law or equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

7.17 Delegation of Use and Enjoyment. The Owner of each Parcel shall have the right to delegate to its Permittees and occupants the right to use and enjoy the easements and licenses granted to such Owner herein; provided, such delegation shall not cause any interest in the real property subject to this Declaration to pass to such Permittee or occupant as a result of such delegation.

7.18 Indemnification. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he or she is or was a director, employee, officer or agent of the Association, against expenses (including attorney's fees and appellate attorney's fees), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, unless: (a) a court of competent jurisdiction determines after all available appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association; and with respect to any criminal action or proceeding, that he had no reasonable cause to believe his conduct was unlawful; and (b) such court further specifically determines that indemnification should be denied. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to hereinabove or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees and appellate attorney's fees) actually and reasonably incurred by him in connection therewith. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Association.

The indemnification provided by this Section and the Articles shall not be deemed exclusive of any other right to which those seeking indemnification may be entitled under the Articles or any bylaw, agreement, vote of members or otherwise, both as to action in his official capacity while holding such office or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person. The Association shall further have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Association, or is or was serving, at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him

against such liability under the provisions of this Article.

7.19 Legal Construction. No prior or present agreements or representations shall be binding upon any of the parties hereto unless incorporated in this Declaration. This Declaration shall be governed and interpreted under the laws of the State of Florida, and exclusive venue for all proceedings hereunder shall be in Lee County, Florida.

ARTICLE VIII TERM, AMENDMENT AND ENFORCEMENT

8.1 Term of this Declaration. This Declaration shall be effective as of the date first above written and shall continue in full force and effect until 11:59 p.m. on December 31, 2058, and shall automatically renew thereafter for successive ten (10) year terms, unless all of the then Owners execute and record a termination of this Declaration; provided, however, that the easements referred to in Article II hereof which are specified as being perpetual, or as continuing beyond the term of this Declaration, shall continue in force and effect as provided therein. Upon termination of this Declaration, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of the Declaration, except as relates to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this Declaration shall not limit or affect any remedy at law or in equity that an Owner may have against any other Owner with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination.

Notwithstanding any provision to the contrary contained in this Declaration, if the term of this Declaration ever expires, if the Association is dissolved, or if for any other reason the Association may not otherwise have the authority to manage and operate the Water Management System and any other areas which are permitted through the District and described in this Declaration, then the rights of the Association in and to the Water Management System, and any other areas which are permitted through the District shall be conveyed to the District or other local governmental agency that has jurisdiction over the maintenance and operation of the Water Management System, and any other areas which are permitted through the District, and if the conveyance is not accepted then the conveyance shall be to such similar non profit corporation as shall accept the rights of the Association hereunder in and to the Water Management System, and any other areas which are permitted through the District.

8.2 Amendment. The Association hereby reserves, for itself and its assigns, the right to amend, modify or rescind such parts of this Declaration as it, in its sole discretion, deems necessary or desirable provided such amendment or modification does not materially or substantially change the character, nature, or general scheme of development of the Property. Any amendment to the Declaration which alters or modifies any provision relating to the Water Management System beyond maintenance in its original condition, including water management portions of the Common Facilities, must be consistent with modifications to permits issued by the District, or shall have the prior approval of the District.

8.3 Approval of Amendment. This Declaration may be amended or modified by the approval of a sixty percent (60%) majority of the votes held by the Lot Owners of record, according to the Articles and By Laws of the Association, so long as such amendment or

modification does not materially or substantially change the character, nature, or general scheme of development of the Property and such amendment or modification does not adversely affect the Water Management System or any portion of the Common Facilities permitted through the District, unless the prior written approval of the District has been obtained.

8.4 Enforcement. This Declaration may be enforced by an action at law for damages, or by a proceeding in equity for an injunction or other equitable relief against any person or entity violating or attempting to violate any provision herein, to restrain such violation, to require compliance with the provisions contained herein to recover damages, or to enforce any lien created herein. Expense of any litigation to enforce this Declaration shall be borne by the person against whom enforcement is sought, provided such proceeding results in a finding that such person was in violation of this Declaration. All costs of enforcing the provisions of this Declaration, including costs and reasonable attorneys fees shall be borne by the non-prevailing party. For purposes of this Section attorney fees shall include fees incurred in the filing of a suit, post filing, at trial and on appeal.

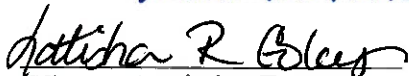
8.5 Rules and Regulations. In addition to the provisions of this Declaration, and in connection with the administration, operation, maintenance and management of the Water Management System and the Common Facilities, the Association shall have the right to adopt and promulgate rules and regulations governing the Association, and shall have the right to enforce those rules and regulations. All rules and regulations shall be consistent with the permits issued by the District for the FGC Business Center Property, including all portions thereof.

8.6 Enforcement by the District. The District shall have the right to enforce the provisions contained in this Declaration as they relate to the maintenance, operation and repair of the Water Management System permitted through the District. Enforcement by the District may be by a proceeding at law or in equity.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed effective as of the day and year first above written.

DECLARANT
ALAN C. FREEMAN, AS TRUSTEE OF A
CERTAIN UNRECORDED LAND TRUST


Witness: MARK M. AARAL


Witness: Latisha R. Coley

By: 
ALAN C. FREEMAN, Trustee

STATE OF FLORIDA
COUNTY OF LEE

EXECUTION OF the foregoing instrument was acknowledged before me this 15 day of Oct, 2019, by ALAN C. FREEMAN, as Trustee of a certain unrecorded land trust agreement, who is personally known to me or who has produced sufficient evidence of identification (described below) and who did not take an oath.

Description of identification produced: _____.



NOTARY PUBLIC - SIGNATURE ABOVE

NOTARY NAME: Sharon Hrabak

(Affix Notary Seal)

COMMISSION NO.: 66355296

COMMISSION EXP. DATE: July 23, 2023

This instrument prepared by:
Paul H. Freeman, Esq.
2 South University Drive
Suite 325
Ft. Lauderdale, FL 33324
954-380-8784