

THIS INSTRUMENT PREPARED BY  
AND RECORD AND RETURN TO:  
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JACKSONVILLE, FLORIDA 32207

## **DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS**

### **FOR**

### **LAKE ASBURY COMMERCE CENTER**

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS is made as of this 13<sup>th</sup> day of July, 2021, by **BENTOD, INC.**, a Florida corporation, whose address is 2809 Ocean Drive South, Jacksonville Beach, Florida 32250 (“Declarant”).

#### **Preliminary Statement**

Declarant is the owner of that real property located in Clay County, Florida more particularly described on **Exhibit “A”** attached hereto (“Property”). The Declarant intends by this Declaration: (i) to impose on the Property restrictions for the purpose of protecting the value and desirability thereof for the benefit of the owners of lands within the Property; (ii) to provide for a unified plan of commercial development; (iii) to provide for a master drainage plan; (iv) to establish ingress and egress easements between Parcels over the driveways, sidewalks or similar passageways located on Parcels to provide for an internal traffic circulation system among the Parcels; and (v) to provide a method for the administration, maintenance, preservation, use and enjoyment of the lands that are submitted to this Declaration.

NOW THEREFORE, Declarant hereby declares that all of the real property described in **Exhibit “A”** shall be held, sold, transferred, occupied and used subject to the easements, restrictions, covenants and conditions herein set forth.

#### **ARTICLE I** **DEFINITIONS**

Unless the context expressly requires otherwise, the words defined below whenever used in this Declaration and in the Governing Documents shall have the following meanings:

1.1. **“Assigned Building Square Footage”** shall have the meaning set forth in Section 2.1(a).

1.2. “Association” means the Lake Asbury Commerce Center Association, Inc., a Florida not for profit corporation, its successors and assigns.

1.3. “Bentod Eastern Parcel” means that portion of Declarant’s Property located east of the Branscomb Driveway.

1.4. “Civic Area(s)” means those portions of the Property designated by Declarant or an Owner as civic areas pursuant to the PUD Ordinance, as modified by Minor Amendment dated January 6, 2020 issued by the Clay County Florida Department of Economic and Development Services.

1.5. “Common Areas” means all property from time to time owned by the Association for the common use and enjoyment of the Owners, together with all improvements, fixtures, and tangible personal property now or hereafter situated thereon and all appurtenant easements.

1.6. “Common Maintenance Areas” means all property or areas providing common use and benefit to more than one Parcel within the Property (including all improvements, fixture and tangible personal property located thereon) designated by the Declarant or the Association pursuant to this Declaration as an area to be maintained by the Association.

1.7. “County” means Clay County, Florida, a political subdivision of the State of Florida.

1.8. “Declarant” means Bentod, Inc., a Florida corporation or the successors and assigns to whom the Declarant has specifically assigned its rights and obligations as Declarant with respect to all or a part of the Property.

1.9. “Declaration” means this Declaration of Easements, Covenants and Restrictions for Lake Asbury Commerce Center, as amended, and any supplemental declarations made pursuant to the terms hereof.

1.10. “Driveways” means the curb cuts, driveways, and other paved areas (but not parking spaces) intended for vehicular and pedestrian ingress and egress from time to time located within the Property and the Parcels as the same may be amended or relocated from time to time. The Branscomb Driveway, Access Parcel 1 and the Second Access Road Area as shown on the Initial Site Plan are examples of Driveways.

1.11. “Edgesen Drainage Easement Agreement” means that Drainage Easement and Cost Sharing Agreement dated July 13, 2021 by and among Lake Asbury Office Park Owners Association, Inc., Wiggins Investments of North Florida, Inc. and PNK Properties, LLC (collectively, “Grantors”) and Baptist Health Properties, Inc. and Bentod, Inc. (collectively, “Grantees”) recorded in the public Records of the County on the same date as this Declaration.

1.12. “Governing Documents” means this Declaration, any supplemental declarations made pursuant to the terms hereof, the Association's Articles of Incorporation, the Association's By-Laws, and all amendments to any of the foregoing.

1.13. “Institutional Mortgagee” means banks, savings and loan associations, insurance companies, credit unions, and governmental agencies that hold, insure or guaranty mortgage loans on all or portions of the Property.

1.14. “Law” includes, without limitation, any statute, ordinance, rule, regulation, or order validly created, promulgated, adopted, or enforced by the United States of America, or any agency or instrumentality thereof, or by the State of Florida, the County, or any department, agency or instrumentality thereof, and which is from time to time applicable to the Property or to any and all activities on or about the Property.

1.15. “Owner” means the record owner, whether one or more Persons, of the fee simple title to any Parcel, including Declarant for so long as Declarant owns any portion of the Property designated or to be designated as a Parcel, but excluding any Person holding such fee simple title merely as security for the performance of an obligation.

1.16. “Parcel” or “Parcels” means any parcel or area of land designated or conveyed by Declarant as a development parcel within the Property. The term Parcel does not include any parcels of land designated or conveyed to the Association as Common Areas, or to public authorities or utilities companies as streets or other right-of-ways, easements, or locations for utility facilities.

1.17. “Parcel Percentage” means that share of assessments levied by the Association allocated to each Parcel as set forth in Section 6.5 of this Declaration.

1.18. “Person” means any natural person, or any trust, partnership, corporation, limited liability company, association or other entity having legal capacity.

1.19. “Project” means the multi-use commercial retail project known as Lake Asbury Commerce Center as contemplated by the PUD Ordinance.

1.20. “Project Engineering Plans” means the engineering plans prepared from time to time and approved by the County, for the construction of the common facilities of the Project, including the Driveways, utilities systems and other infrastructure components for the development of the Property. Declarant reserves the right to amend the Project Engineering Plans from time to time as portions of the Project are developed and to amend this Declaration to include references to the amended Project Engineering Plans, including attaching a reduced copy of Project Engineering Plans as an exhibit to this Declaration provided that the amended Project Engineering Plans do not materially adversely affect the right of other Owners.

1.21. “Project Site Plan” means the site plan for the development of the Property, as amended from time to time. A copy of the initial Project Site Plan prepared by England, Thims & Miller dated April, 2020 is attached hereto as Exhibit “B” (the “Initial Project Site Plan”). Declarant reserves the right to amend the Project Site Plan and this Declaration to substitute an amended Project Site Plan as to any portion of the Property then owned by Declarant for the purpose of identifying the location and dimensions of areas designated by Declarant as Parcels, Driveways, Civic Areas, additions to or relocations of the Surface Water Management System, utilities systems and other infrastructure components, provided that the amended Project Site Plan does not materially adversely affect the rights of other Owners.

1.22. “Property” means the lands in Clay, Florida, described on Exhibit “A” attached to this Declaration, together with all other lands that hereafter may be made subject to the provisions of this Declaration in the manner provided herein.

1.23. “PUD Ordinance” means the Clay County, Florida Planned Unit Development Ordinance 2007-51 dated September 25, 2007 and filed and recorded in Ordinance Book 19, page 106, as amended by Ordinance 2012-10 dated April 24, 2012 filed and recorded in Ordinance Book 23, page 412, as amended by Minor Amendment to the PUD Site Plan approved December 12, 2019 by the Clay County Development Review Committee and further amended by Amendment Letter Modification dated January 6, 2020, as it may be further amended.

1.24. “Regulations” means any rules and regulations regarding the use of the Property or any part thereof duly adopted by the Association in accordance with the Governing Documents.

1.25. “Surface Water Management System” means the system designed and constructed in connection with the development of the Property to control discharges which are necessitated by rainfall events, and which incorporates methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, Florida Administrative Code. The foregoing includes without limitation all drainage pipes, equipment, outflow control structures, retention and detention ponds and underdrains and related drainage facilities located on the Property, which serve more than one Parcel, but excluding all such facilities and systems serving only one Parcel and includes the Edgesen Drainage Easement Agreement.

1.26. “Utility Services” means all utility services typically provided to a multi-use commercial development, including but not limited to electricity, telephone, water, wastewater disposal and communication systems.

ARTICLE II  
DEVELOPMENT PLAN; COMMON AREAS; EASEMENTS

2.1 Development Plan.

(a) Declarant intends to develop the Property as a multi-use commercial project in accordance with the PUD Ordinance and the Project Site Plan. The Initial Project Site Plan depicts the proposed multi-use commercial project with an internal road system providing access to each of the Parcels and public rights-of-way by the Driveways. The PUD Ordinance permits a total of seventy-eight thousand (78,000) square feet of heated and air-conditioned building space. As Declarant conveys a portion of Property to each Owner, Declarant shall identify such land as a Parcel, and shall assign a portion of the total square footage permitted under the PUD Ordinance to the Parcel (the "Assigned Building Square Footage"). The Initial Project Site Plan also depicts Parcel One and Parcel Two which are the initial two parcels to be designated by Declarant as Parcels.

(b) The PUD Ordinance establishes criteria for the Property which are set forth in the Written Statements attached to Ordinance 2007-21, as modified by the Written Statement attached to Ordinance 2012-10, and modified by the Minor Amendment Letter Modification dated January 6, 2020. All developments within the Property shall comply with the PUD Ordinance and the Written Statements.

(c) The PUD Ordinance requires the establishment of Civic Areas within each Parcel. The Minor Amendment of the PUD Ordinance dated January 6, 2020 authorized the relocation of Civic Areas from a Parcel to one or more consolidated Civic Area(s) at locations within the Property designated by Declarant. Declarant shall have the right to designate any such consolidated Civic Area(s) as Common Areas or Common Maintenance Areas.

2.2 Common Areas; Common Maintenance Areas; Easements of Enjoyment.

(a) The Declarant has designated the retention pond located at the southeast corner of the Property and the Branscomb Driveway as the only initial Common Areas. The Declarant reserves the right from time to time to designate as Common Areas any Civic Area, private roads, streets, landscaped areas, green areas, signs, or utility facilities of the Project owned by Declarant provided the same are intended for the common use and enjoyment of the Owners of more than one Parcel and so long as no Parcel is materially and adversely affected as a result of such designation. Declarant will convey or cause to be conveyed to the Association, in one or more conveyances, title to the Common Areas, subject to prorated taxes for the year of conveyance, and to restrictions, conditions, limitations, and easements of record. The Association shall accept the title to the Common Areas, subject to prorated taxes for the year of conveyance and to restrictions, conditions, limitations and easements of record. Provided however, for so long as Declarant is entitled to elect a majority of the Board of Directors of the

Association, the Declarant shall have the right to dedicate or transfer any area designated as a Common Area to any public agency, authority or utility provider, provided that the transfer does not materially adversely affect the rights of any Owner without the consent of the affected Owners. Following transfer of control of the Association to Owners other than Declarant, the Association has the right to dedicate or transfer all or any part of the Common Areas to any public agency, authority, utility provider or other Person, for such purpose and subject to such conditions as may be agreed to by the members of the Association. Such dedication or transfer must be approved by at least a two-thirds (2/3) vote of the total votes of the Association, as evidenced by a recorded certificate of the Association executed by the Association with the formalities from time to time required for a deed under the Laws of the State of Florida.

(b) The Declarant has designated the Driveways, the landscaped area required by the County located adjacent to public rights-of-way, the landscaped area adjacent to the retention pond (collectively the "Common Landscaping") as Common Maintenance Areas. Once the Civic Area has been designated by the Declarant after approval by the County, it will also become a Common Maintenance Area.

(c) Every Owner, its tenants or other lawful occupants of the Property shall have a nonexclusive right and easement of use and enjoyment in and to the Common Areas and the Common Maintenance Areas for the purposes set forth in this Declaration, or in any supplemental declaration subjecting Common Areas to this Declaration, or in any deed of conveyance conveying Common Areas to the Association.

### 2.3 Ingress and Egress Easements; Traffic Circulation.

(a) All Parcels within the Property shall be developed pursuant to the Project Site Plan and the Project Engineering Plans which include, among other matters, the Driveways and sidewalks, to promote a traffic circulation system for vehicular and pedestrian traffic between and among Parcels. Declarant reserves, to itself and its successors and assigns, and grants to the Association and the Owners, for the purpose of providing and enhancing an internal traffic circulation system within the Property, non-exclusive perpetual easements appurtenant to each Parcel and the Common Areas for ingress and egress (but not parking) across those portions of the Parcels upon which are constructed from time to time driveways, sidewalks, or similar passage ways for pedestrian and vehicular traffic to and from the Parcels to other Parcels and the Common Areas and to publicly dedicated rights-of-way. The Owner of each Parcel shall not have the right to relocate or obstruct the free passage of vehicles and pedestrians on the Driveways, but shall have the right to relocate the sidewalks, other driveways, and passage ways located on the Owner's Parcel, provided that any driveway curb cut locations between Parcels and the sidewalks initially approved by Declarant may not be relocated, unless approved by Declarant for so long as Declarant is entitled to elect a majority of the Board of Directors (and thereafter by the Board of Directors of the Association), and by the Owners of the Parcels connected by the driveway or sidewalk to be relocated.

(b) Declarant hereby reserves to itself and its successors and assigns and hereby grants to the Association and the Owners, non-exclusive perpetual easements on and over the Driveways as an appurtenance to each Parcel and the Common Areas for ingress and egress for pedestrian and vehicular traffic to and from the Parcels and the Common Areas to publicly dedicated rights-of-way. In addition, Declarant hereby grants to the Owners of Parcel 1 and Parcel 2 non-exclusive easements in, upon and through the Branscomb Driveway which is more particularly described on Exhibit "C" attached hereto for (i) the installation, maintenance, transmission and use of Utility Services; and (ii) facilities for stormwater drainage up to and connecting with drainage facilities in Branscomb Road.

(c) The foregoing easements shall inure to the benefit of the Association and the Owners of Parcels, and their respective invitees, guests, lessees, successors and assigns, the holders of mortgages encumbering their Parcels, United States mail carriers and delivery personnel, fire protection and emergency personnel, police and other authorities of Law, representatives and personnel of utilities and refuse collection services and other public or utility personnel requiring access to such lands. Nothing herein shall be deemed to create any easements or rights in the general public, and Declarant reserves to itself and the Association the right to deny access to any Person, except those Persons described above, who is not authorized to enter onto the Property, or who has or may be reasonably expected to cause a disturbance, nuisance or damage to the Property.

2.4 Utilities Easements. Declarant hereby reserves to itself and grants to each Owner the non-exclusive easements appurtenant to each Parcel for Utility Service on, under and through those areas that may be designated as utility easements on the Project Engineering Plans. The easements may be used for the installation, maintenance, transmission and use of any or all Utility Services, subject to the rights of Utility Service providers under the terms and conditions of specifically granted easements. The foregoing utility easement shall terminate automatically as to any easement area dedicated to a public utility service provider.

2.5 Drainage Easements.

(a) Declarant reserves to itself and grants to the Association and to each Owner non-exclusive perpetual easements appurtenant to the Bentod Eastern Parcel for the drainage of storm and surface waters over and through the Surface Water Management System, and those portions of the Bentod Eastern Property identified on the Project Engineering Plans or on the Project Site Plan as drainage easements, retention ponds, stormwater ponds, or similar wording and for the storage and treatment of storm and surface waters in areas identified as retention ponds, storm water ponds, or similar wording.

(b) The Association shall have a perpetual non-exclusive easement over all areas of the Surface Water Management System and over the Bentod Eastern Parcel for access to operate, maintain or repair the Surface Water Management System. By this easement, the Association shall have the right to enter upon any portion of the Bentod Eastern Parcel which is a

part of the Surface Water Management System, at a reasonable time and in a reasonable manner, to operate, maintain or repair the Surface Water Management System as required by applicable permits. The owners of Parcel One and Parcel Two shall not contribute to the Association's cost for the maintenance and repair of the Surface Water Management System located within the Bentod Eastern Parcel.

(c) The Edgesen Drainage Easement Agreement provides for the storage and treatment of storm and surface water discharged from Parcel One and Parcel Two and the Branscomb Driveway (such terms being shown on the Initial Project Site Plan) to an off-site retention pond located within the Lake Asbury Office Park north of the Project. The retention pond, the drainage pipes and related drainage facilities located within the Lake Asbury Office Park are not a part of the Surface Water Management System of the Project and the Association is not responsible for maintenance and repair of the off-site drainage facilities. The Owners of Parcel One and Parcel Two are responsible for contributing to the cost of such off-site drainage facilities pursuant to the Edgesen Drainage Easement Agreement.

2.6 Additional Restrictions and Easements; Common Area Alterations. Declarant reserves the right to grant or dedicate additional easements and rights-of-way or to designate additional Common Areas or Common Maintenance Areas on any portions of the Property owned by Declarant provided the same are intended for the common use and enjoyment of more than one Parcel. In addition, Declarant reserves the right for so long as Declarant is the owner of lands designated as Common Areas to grant easements over, under and through such designated Common Areas, to enlarge or diminish such areas, to make improvements thereon and alter such improvements, or to withdraw an area from a Common Area designation, except the Surface Water Management System. Provided, however, any easements granted by Declarant or any withdrawal of Common Areas shall not materially adversely affect any improvements located on the Common Areas or unreasonably interfere with the easements of use and enjoyment of the Common Areas herein granted to the Association and the Owners or an Owner's use and enjoyment of its Parcel.

2.7 All Rights and Easements Appurtenant. The benefit of all rights and easements granted by this Article constitute a permanent appurtenance to, and pass with, the title to every Parcel enjoying such benefit. Whenever any such right or easement is described as nonexclusive by this Article its benefit nevertheless is exclusive to all Parcels granted such benefit by this Article unless this Article expressly grants such benefit to additional Persons. In no event does the benefit of any such easement extend to the general public.

2.8 General. Reference is made to the utilities, drainage, ingress and egress, non-access, and other easements shown on the Project Engineering Plans or the Project Site Plans and described in this Article. The Owner of a Parcel subject to any easement, shall not construct any improvements on the easement area that interferes with the full utilization of the easement for its intended purpose, nor alter the flow of drainage that might interfere with the exercise of the easement rights. If any Owner constructs any improvements on such easement areas, the Owner

of the Parcel shall remove the improvements upon written request of Declarant, the Association or the grantee of the easement.

ARTICLE III  
USE RESTRICTIONS

3.1 General.

(a) The Property and each of the Parcels shall be owned, held, transferred and used only in accordance with the use restrictions established in this Declaration and any supplemental declaration which Declarant may subsequently impose on portions of the Property owned by Declarant. The Declarant, Owners and the Association acting through its Board of Directors shall have the authority to enforce all use restrictions established in the Declaration or in any supplemental declaration.

(b) Subject to the provisions of subparagraph 3.1(e) below and other provisions of this Declaration and additional restrictions or exclusivity rights that may be imposed by any supplemental declaration or other recorded document applicable to portions of the Property, permitted uses of the Property are all uses that are permitted under the PUD Ordinance for the Property, and with the written consent of Declarant or the Association, that are permissible by exception or variance under the PUD Ordinance.

(c) Each Parcel shall be developed only in accordance with a site plan approved in accordance with the architectural review and approval procedures set forth in Article VIII hereof before submission to governmental authorities, which shall conform to the unified plan of development for the Property as depicted on the Project Site Plan and the Project Engineering Plans. Without limiting the generality of the foregoing, each Parcel site plan must contain driveways, sidewalks, and curb cuts necessary to provide for the traffic circulation system for vehicular and pedestrian traffic between and among Parcels.

(d) No activity is permitted, nor shall any object or substance be kept, stored, or emitted, anywhere within the Property in violation of Law. No use of the Property shall be permitted which is noxious, destructive, or offensive by reason of odors, dust, smoke, noise, or which is hazardous by reason of the likelihood of fire or explosion. The foregoing does not prohibit gasoline service stations or the sale or dispensing of liquified petroleum. Nothing shall be done within the Property that may constitute a nuisance to any Owner or to any other Person at any time lawfully occupying any Parcel.

(e) No part of the Property shall be used for adult or pornographic video or book stores or movie houses, bar, tavern or cocktail lounge, off-track or other forms of betting or gambling facilities (except lotteries or other games of chance conducted by governmental authorities or as a promotion incidental to retail sales activities), funeral parlors, mortuaries, crematorium, bingo parlor, theater, auditorium, educational facility or school (except day care facilities are a permitted use), gymnasiums, automotive maintenance or automotive repair

facility, car wash (except as part of a gasoline service station), pawn shop, flea market, carnival, circus, amusement center or game room, billiards parlor, night club or comedy club, mini-warehouse, recreational vehicle/boat storage, bail bonds offices, psychics or the storage, manufacture or disposal of hazardous or toxic materials, or any other use which is inconsistent with community-oriented first class retail shopping centers in the County.

3.2 Construction Standards. No building, structure, or permanent improvement of any kind shall be constructed, placed, or permitted to exist on any Parcel, nor shall the exterior of any building, structure, or other improvement be materially altered or modified, except in accordance with the PUD Ordinance with plans and specifications approved in writing in accordance with the architectural review and approval procedures set forth in Article VIII hereof. Any interior improvements or alterations that are not visible from the other Parcels are not subject to the architectural review and approval provisions of this Declaration. Buildings with metal exteriors, exposed smooth concrete block, untextured tilt-up panels are not permitted. Metal buildings may be constructed on a Parcel provided that all exterior surfaces of the building except the roof, doors and windows are covered with another material such as wood, stone or other material as set forth in the PUD Ordinance and approved in accordance with Article VIII hereof.

3.3 Temporary Structures. Without the prior written approval of the Declarant, no temporary buildings, trailers, storage containers, or other non-permanent structures of any type may be erected or maintained within the Property, except construction trailers and storage containers required in connection with the construction of any improvements on the Property, provided that all such temporary construction buildings or structures are removed within sixty (60) days of substantial completion of construction of the permanent building. The foregoing does not preclude maintaining storage containers within approved fenced areas, the daily temporary display of merchandise in areas immediately adjacent to store fronts, or the use of tents or similar structures for such purposes.

3.4 Landscaping. In connection with the construction of buildings or other permanent improvements on a Parcel, each Owner shall install landscaping in compliance with the applicable requirements of the County, including the PUD Ordinance, and an underground automated irrigation system. Parcels fronting on Henley Road and Branscomb Road shall include the landscape buffer required by the PUD Ordinance, which shall be maintained by the Owner of such Parcel. All required landscaping shall be fully completed within thirty (30) days following substantial completion of construction of the building. All landscaped areas require periodic irrigation, fertilization and trimming of all landscaped areas, as is appropriate to maintain the landscaping in an attractive condition.

3.5 Signs. The location, size and number of all signs on Parcels must comply with applicable building and zoning codes and the PUD Ordinance and must be approved in accordance with the architectural review and approval procedures set forth in Article VIII hereof. Declarant reserves the right to impose sign standards or limitations greater than those required by local governmental regulations or other regulations. The maintenance of each Parcel's

monument sign is solely the responsibility of the respective Parcel Owner. All building signs must be attached to a building so as to be parallel to the building wall and so that the sign does not project above the roofline of the building. No portable signs or flashing or intermittently lighted signs shall be permitted on the Property. No sign shall be painted directly on the exterior walls of any building.

3.6 Screening of Roof; Antennae and Satellite Dishes. Air conditioning units, satellite dishes and antennae, and all other structures or equipment located on the roof of a building shall be effectively shielded from view so that they are not visible from the public rights-of-way adjacent to the Property. No television, radio or other communication towers, antennas, aerials, satellite dishes, or similar appurtenances shall be erected, constructed, or maintained on the exterior of any building or Parcel unless the location, size and design thereof have been approved in accordance with the architectural review and approval procedures set forth in Article VIII hereof, except that any such communication equipment serving one Parcel only may be located on the roof of the building, provided they are not visible from the public rights of way adjacent to the Property.

3.7 Outdoor Storage. Merchandise, articles, goods and materials may be stored outside of buildings if permitted by the PUD Ordinance and if approved in accordance with the provisions of Article VIII hereof, and temporarily during construction activities and during loading or unloading of vehicles.

3.8 Fences. The location, size and design of all fences and walls must be approved in writing by Declarant prior to installation. Declarant may require uniform fence types and color schemes in all or portions of the Property. Fences and walls shall be used to enclose service, storage and utility areas, to secure areas against unauthorized entrance, or to reduce the risk of personal injury or property damage (such as fences around utility facilities and storm water retention ponds), and for decorative purposes and shall not be used to define property lines, without the consent of Declarant. No fence, wall or hedge may exceed four feet 4') in height without the written consent of the Declarant. All fences must be maintained by the Owner in an attractive appearance.

3.9 Set-Back Lines and Parcel Coverage. Set-backs or side yards and maximum Parcel coverage of buildings and impervious surfaces shall meet the minimum requirements for commercial developments under the County zoning regulations, the PUD Ordinance and all other permits, approvals or conditions applicable to the Property or a Parcel.

3.10 Parking. Parking adequate for the intended use of each Parcel and in compliance with local governmental regulations shall be provided by on-site improved parking areas on each Parcel. No Owner shall permit on a regular or on-going basis any use on his Parcel that exceeds or is likely to exceed the available parking spaces on his Parcel. The Driveways may not be used for parking of vehicles. Nothing in this Declaration, the Project Site Plan or the Project

Engineering Plans is intended, nor shall it be construed, to create cross parking easements among the Parcels.

3.11 Lighting. Indirect light sources shall be used to illuminate signs, facades, buildings, parking and loading areas and shall be so arranged or shaded to direct light away from streets, buildings on other Parcels, and properties lying outside of the Property. No intermittent or flashing lights shall be allowed anywhere on the Property.

3.12 Equipment, Fuel Tanks, Garbage and Trash Receptacles. All above ground equipment, including heating, air conditioning or ventilation equipment, tanks, cylinders or containers for the storage of liquefied petroleum, gas or other fuel, garbage or trash receptacles, shall be screened from view from adjacent Parcels, the Driveways and any street by landscaping, fences, or other screening facilities. No rubbish, trash, garbage, or other waste material or accumulations shall be kept, stored or permitted anywhere within the Property, except inside buildings, or in appropriate trash containers.

3.13 Utilities. All electric, telephone, and other utility lines on the Parcels shall be underground, except for transformers, terminals, or other utility facilities normally placed above ground, in accordance with standard engineering and construction practices.

3.14 Casualty Damage. In the event of damage or destruction by fire or other casualty to the improvements on any Parcel, all debris must be removed, and the Parcel restored to an orderly condition as soon as possible, but not to exceed ninety (90) days after such damage or destruction. If the Owner elects to rebuild the improvements, the Owner shall repair or rebuild such damaged or destroyed improvements in a good workmanlike manner, within a reasonable time not to exceed one year and in accordance with the provisions of Article VIII of this Declaration.

3.15 Surface Water Management System; Jurisdictional Area.

(a) Reference is made to the St. Johns River Water Management District ("SJRWMD") permit and the United States Army Corps of Engineers ("USACE") permits applicable to the Property, as amended and supplemented, (copies of which are on file in the offices of the Association). The Property is being developed in accordance with requirements of these permits and each Owner must comply with the terms of these permits in the development, use and ownership of its Parcel. All Owners of Parcels shall, by acceptance of title to the Parcel be deemed to have assumed the obligation to comply with the requirements of the foregoing permits as such relate to the Parcel. Except as required or permitted by the foregoing permits issued by the USACE and SJRWMD, no Owner of a Parcel shall alter, fill, dredge, place sod or excavate, or perform similar activities on any portion of their Parcel which contains jurisdictional wetlands or conservation areas as established by the USACE or SJRWMD, or construct any structures within upland buffers unless and until such activity is authorized by or exempt from the requirements of USACE and SJRWMD permits. In the event that a Parcel Owner violates the terms and conditions of such permits and for any reason the Declarant, another Owner, or the

Association is cited therefor, the Parcel Owner agrees to indemnify and hold the Declarant, the other Owner(s), and the Association harmless from all costs arising in connection therewith, including without limitation all costs and attorneys' fees as well as costs of curing such violation.

(b) The SJRWMD, its successors or assigns, shall have the right to enter upon the property at all reasonable times and in a reasonable manner, to assure compliance with the aforesaid prohibitions and restrictions. The prohibitions and restrictions set forth in this section may be enforced by the SJRWMD or its successor agency by proceedings at law or in equity including, without limitation, actions for injunctive relief. The provisions of this paragraph may not be amended nor released by Declarant or the Owners without prior approval from the SJRWMD. All right and obligations arising hereunder are appurtenances and covenants running with the land and shall be binding upon and shall inure to the benefit of the SJRWMD and its successors and assigns. Upon conveyance by the Declarant to third parties of any land affected by these restrictions, the Declarant shall have no further liability or responsibility hereunder, except for matters, if any, occurring prior to the conveyance.

(c) No Person shall alter the drainage flow of the Surface Water Management System established by Declarant for the Property pursuant to the SJRWMD Permit, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.

#### ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

4.1 Membership. Every Owner of a Parcel is a member of the Association. The Declarant is a member of the Association for each Parcel owned and as to all portions of the Property owned by Declarant that have not been designated as Parcels. An Owner of more than one Parcel is entitled to one membership for each Parcel owned. Each membership appurtenant to a Parcel is transferred automatically by conveyance of title to that Parcel whereupon the membership of the previous Owner automatically terminates. Membership in the Association may not be transferred or encumbered except by the transfer of title to a Parcel.

#### 4.2 Voting Rights and Classifications.

(a) Voting Rights. Voting rights within the Association shall be determined for each Parcel by the number of square feet of enclosed heated and air-conditioned space of the building constructed on each Parcel in accordance with the PUD Ordinance and the Assigned Building Square Footage assigned to each Parcel by Declarant. The total building square footage permitted under the PUD Ordinance is 78,000 square feet. Each Parcel shall have one vote for each one thousand (1,000) square feet of Assigned Building Square Footage (rounded to the nearest one thousand (1,000) square feet). Provided, however: (i) each Parcel shall have at least one vote; (ii) there shall be no fractional votes; (iii) Declarant shall have three (3) votes for each one thousand (1,000) square feet (rounded to the nearest one thousand (1,000) of the unassigned

total square footage permitted under the PUD Ordinance for the portions of the Property owned by Declarant that have not been designated as Parcels.

- (b) Classification. The Association has two classes of voting membership:
- (i) Class A. So long as there is Class B membership, Class A members are all Owners, except Declarant. Upon termination of Class B Membership, Class A members are all Owners, including Declarant so long as Declarant is a member of the Association.
  - (ii) Class B. The Class B member is Declarant. Declarant is entitled to one (1) vote for each one thousand (1,000) square feet of the Assigned Building Square Footage assigned to a Parcel owned by Declarant and three (3) votes for each one thousand (1,000) square feet of the unassigned total square footage permitted under the PUD Ordinance for the portions of the Property owned by Declarant that have not designated as Parcels. The Class B membership will cease and be converted to Class A membership upon the happening of the following events, whichever occurs first: (i) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; (ii) the date elected by Declarant in a written notice to the Association resigning as Class B member; or (iii) seven (7) years from the recording date of this Declaration. Upon the cessation of the Class B membership, the Declarant shall no longer be entitled to elect a majority of the Board of Directors of the Association.

(c) Voting Records. The Association shall maintain records setting forth the total votes in the Association, the number of votes allocated to each Parcel, the number of votes allocated to the Declarant and the Persons authorized to exercise voting rights within the Association. As Declarant conveys Parcels to other Persons, Declarant shall assign to the Parcel the Assigned Building Square Footage approved by Declarant and shall provide a copy of the Assignment to the Association. From time to time (but not less frequently than annually), Declarant shall advise the Association of the number of votes allocated to Parcels, the number of the Parcels owned by Declarant, and the remaining unassigned building square footage owned by Declarant. Upon the request of any Owner or Institutional Mortgagee of a Parcel, the Association shall issue a certificate in recordable form stating the number of votes allocated to a Parcel and the total votes within the Association.

4.3 Designation of Voting Representative. If title to a Parcel is held by a corporation, limited liability company, or partnership, the secretary of the corporation or the managing general partner or member, or other authorized representative shall file with the Association a certificate designating the authorized voting representative of the corporation, company or partnership, which shall be effective until rescinded.

4.4 Inspection of Records. All books, records, and papers of the Association will be open to inspection and copying during reasonable business hours by any Owner and by Declarant, so long as Declarant is a member of the Association. Such right of inspection may be exercised personally or by one or more representatives. Upon request of an Owner or an Institutional Mortgagee holding a first mortgage encumbering an Owner's Parcel, the Association also will furnish to the Owner or such mortgagee copies (certified, if requested) of any of its books, records, and other papers, although the Association may make a reasonable, uniform charge for such copies and certification.

4.5 Amplification. The members of the Association shall elect the Board of Directors of the Association, who shall manage the affairs of the Association. The Board of Directors shall appoint officers of the Association to administer the operation of the Association. The provisions of this Article are amplified by the Association's Articles and By-Laws; but no such amplification shall alter or amend substantially any of the rights or obligations of the Owners set forth in this Article. Declarant intends that the provisions of this Declaration, and the provisions of the Articles and By-Laws be interpreted, construed, applied, and enforced to avoid inconsistencies or conflicting results. If any such conflict necessarily results, however, the provisions of this Declaration shall control anything in the Articles or By-Laws to the contrary.

## ARTICLE V RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

5.1 The Common Area. The Common Areas and the Common Maintenance Areas, including any Civic Areas, designated by Declarant or Association as a Common Area or Common Maintenance Area shall be managed and maintained by the Association in accordance with the Governing Documents. All maintenance to be performed by the Association to Common Areas and Common Maintenance Areas pursuant to this Article V shall be done in a first-class manner as is normal and customary for Class A commercial developments located in Clay County.

(a) Maintenance and Repair. Subject to the rights of the Declarant and the Owners as set forth in this Declaration, the Association has exclusive management and control of the Common Areas and all of the improvements located thereon, and any related personal property. The Association shall keep the foregoing in a clean, attractive, sanitary, and serviceable condition, and in good order and repair as appropriate for its intended use. The Association's duties with respect to the Common Areas and the Common Maintenance Areas include the repair, servicing, replacement, and renewal of all improvements, drainage systems, landscaping, signs, equipment, and tangible personal property located within the Common Areas.

(b) Insurance. The Association shall keep any structures or other improvements that may be located on the Common Areas or the Common Maintenance Areas insured as determined by the Board of Directors, with coverage against loss or damage by fire or other hazards covered by a standard extended coverage endorsement and such other risks as from time to time are customarily covered with respect to improvements similar in construction,

location and use as the improvements on the Common Areas. The Association shall carry public liability insurance, officers and director's liability insurance, and such other insurance in amounts and with coverages as determined by the Board of Directors. To the extent from time to time available, the Association's insurance must provide for waiver of subrogation by the Association's insurer against any Owner because of unintentional acts or omissions.

5.2 Parcel Maintenance. In the event an Owner of any Parcel shall fail to maintain all portions of his Parcel and the improvements located thereon, including all landscaping, in accordance with the provisions of the Governing Documents, the Association, after reasonable notice specifying the violation and upon approval by not less than two-thirds (2/3) of the members of the Board of Directors, shall have the right, but not the obligation, through its agents and employees, to enter upon the Parcel, and to replace, repair, remove, maintain, or restore the Parcel and any improvements erected thereon to the condition required by this Declaration. Except in cases of an emergency, the Owner of the Parcel shall be given reasonable notice of the Board of Director's meeting and an opportunity to be heard regarding the alleged violations or noncompliance. Two (2) times the cost of such replacement, repair, removal, restoration or maintenance shall be added to and become part of the assessment to which such Parcel is subject, and shall become due and payable in all respects, together with interest and fees and costs of collection, as provided for other assessments of the Association. Additionally, all such costs and interest shall be secured by a lien against the Parcel and shall be the personal obligation of the Owner of the Parcel in the same manner as herein provided for other assessments of the Association.

5.3 Surface Water Management.

(a) The Association shall maintain for the benefit of the Parcel Owners the Surface Water Management System serving the Property in accordance with permits issued by the St. Johns River Water Management District, the United States Army Corps of Engineers, or other governmental authorities having jurisdiction over the maintenance of surface water drainage facilities in a good and serviceable condition and in compliance with permits applicable to the Project and the regulations of such governmental authorities. Maintenance of the Storm Water Management System shall include the exercise of practices which allow the system to provide drainage, water storage, conveyance or other surface water or storm water management capabilities as permitted by the St. Johns River Water Management District. Any repair or construction of the Surface Water Management System shall be as permitted by the St. Johns River Water Management District or, if modified, as approved by the St. Johns River Water Management District. It is the Association's obligation to maintain these facilities, notwithstanding that all or a portion of the Surface Water Management System is located within one or more Parcels. The provisions of this paragraph do not supersede the provisions of this Declaration that require Owners to maintain their Parcels.

(b) Notwithstanding any other provisions to the contrary herein or elsewhere, the Association's responsibility to maintain the Storm Water Management System, may not be

altered, mitigated, abated, terminated or otherwise lessened. This provision for maintenance shall inure to the benefit of governmental authorities having jurisdiction over said areas as well as the Owners of Parcels within the Property, and such governmental authority or Owner shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation or repair of the Surface Water Management System.

5.4 Services. The Association may obtain and pay for the services of any Person to manage its affairs to the extent it deems advisable and may contract any Persons, including Owners, as the Board of Directors determines are necessary, convenient, or desirable for the proper performance of the Association's responsibilities hereunder. Without limitation, the Association may obtain and pay for legal and accounting services necessary, convenient, or desirable in connection with the performance of the Association's responsibilities or the enforcement of the Governing Documents or the Association's Regulations.

5.5 Rules and Regulations. The Association from time to time may adopt, amend, rescind, and enforce reasonable Regulations governing the use of the Common Areas and the Common Maintenance Areas and other areas within the Property, so long as such Regulations are consistent with the rights and duties established by the Governing Documents. The validity of the Association's Regulations, and their enforcement, shall be determined by a standard of reasonableness for the purpose of protecting the value and desirability of the Property. The Regulations initially shall be promulgated by the Declarant or the Association's Board of Directors and may be amended by a majority vote of the Board of Directors or may be amended by a majority of the membership present and voting at any regular or special meeting convened for such purpose. No rule shall have the effect of terminating or substantially impairing any rights granted to any Owner without the written consent of such Owner. No rule, regulation, decision, amendment or other action that reasonably may have the effect of waiving, lessening, impairing, or otherwise interfering with the scope or enforcement of any restriction or covenant imposed on the Property by this Declaration shall be effective without the written approval of the Declarant.

5.6 Implied Rights. The Association may exercise any other right, power, or privilege given to it expressly by the Governing Documents and every other right, power, or privilege so granted or reasonably necessary, convenient, or desirable to effectuate the exercise of any right, power, or privilege so granted.

5.7 Access by Association. The Association, its agents, employees, or contractors have a right of entry on to each Parcel to the extent reasonably necessary to perform any duty imposed, or to exercise of any right granted, by the Governing Documents. Such right of entry must be exercised in a peaceful and reasonable manner and upon reasonable notice whenever circumstances permit.

5.8 Reserves. The Association may establish and maintain adequate reserve funds for the repair and replacement of improvements and personal property that the Association is obligated to maintain under the provisions of the Governing Documents. Reserves, as determined from time to time by the Board of Directors, shall be funded from the annual maintenance assessment described in Article VI hereof.

## ARTICLE VI COVENANTS FOR ASSESSMENTS

6.1 Assessments Established. There are hereby established for each Parcel within the Property and each Owner of any Parcel by acceptance of a deed or other conveyance of record title to a Parcel, whether or not it is so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (a) annual assessments, as provided in paragraph 6.2 of this Article; (b) special assessments for property taxes or capital improvements for the Common Areas, as provided in paragraphs 6.3 and 6.4 of this Article; (c) specific assessments against particular Parcels that are established pursuant to any provisions of the Governing Documents, as provided in paragraph 6.7 of this Article; and (d) all taxes, if any, that from time to time may be imposed upon all or any portion of the assessments established by this Article.

### 6.2 Annual Assessment.

(a) Purpose. The annual assessment levied by the Association against all Parcels shall be used for the operation, management, maintenance, repair, servicing, renewal, replacement, and improvement of the Common Areas, Common Maintenance Areas and other areas to be maintained by the Association, and the performance of the Association's responsibilities and exercise of the Association's rights as established in the Governing Documents. The foregoing includes the expense of the maintenance and repair of the Surface Water Management System, including without limitation, maintenance and repair work within retention areas, drainage structures, and drainage easements. The expenses related to the maintenance and repair of the Surface Water Management System shall only be assessed and paid by Parcels within the Bentod Eastern Parcel. The Board of Directors may include in the annual assessments reserves to provide for the repair, replacement and improvement of capital improvements within the Common Areas, Common Maintenance Areas, or other capital improvements that are the maintenance obligation of the Association.

(b) Amount. The Board of Directors shall prepare an annual budget for each fiscal year of the Association setting forth anticipated expenses of operating, maintaining and repairing the Common Areas and the Common Maintenance Areas and performing the Association's duties, as set forth above. The Directors shall deliver a copy of the proposed budget to each Owner not less than fifteen (15) days prior to the meeting of the Directors at which the proposed budget will be reviewed and voted upon. Any Directors meeting at which the budget or assessments are to be considered shall be open to Owners and notice thereof, stating the purpose, time and place of the meeting, shall be given not less than fifteen (15) days before such

meeting. The amount of the annual assessment for each Parcel shall be determined by the Board of Directors as hereinafter provided, and the assessment shall be payable in one or more installments as determined by the Board of Directors without interest so long as the payment is not more than thirty (30) days delinquent. Written notice of such assessment shall be given to every Owner; but the failure to give notice will not invalidate any otherwise proper assessment. In the absence of Board action to fix an annual assessment for the next fiscal year, the annual assessment then in effect will continue until the Board adopts a new budget and fixes assessments thereunder.

(c) Commencement of Annual Assessment. The annual assessment begins as to each Parcel within the Property on the first day of the month following the first to occur of: (i) the date of the issuance of a certificate of occupancy for the building constructed on a Parcel, whether such certificate of occupancy is temporary or permanent; or (ii) one year following commencement of construction of the building, which shall mean the date that the footers for the building have been poured. The first annual assessment against any Parcel shall be prorated according to the number of months then remaining in the fiscal year.

6.3 Property Taxes. The Association shall timely pay all ad valorem real estate taxes, special assessments and other taxes levied on the Common Areas, if any, and shall assess each Owner of a Parcel as part of the annual assessment for the anticipated cost thereof. If the amount collected from annual assessments is insufficient to pay the taxes, then the Board may levy a special property tax assessment and assess each Owner of a Parcel for his share thereof based on the Parcel's Percentage. In the Board's discretion, such special assessment may be payable in a lump sum within thirty (30) days after notice or in installments as determined by the Board. Each year the Board shall determine whether such special assessment shall be levied, and its amount, after receiving notice of the amount of taxes due.

6.4 Special Assessments for Capital Improvements. In addition to the annual assessment, the Association may assess each Owner of a Parcel in any fiscal year a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, renewal, repair, or replacement of a capital improvement on the Common Areas or other improvements which are the maintenance responsibility of the Association, including fixtures and related personal property, provided that such assessment is approved by two-thirds (2/3) of the votes of Owners of Parcels present in person or by proxy and eligible to vote at a duly called meeting of the Association.

6.5 Calculation of Assessments for Parcels. The amount of the annual assessment, special property tax assessments under paragraph 6.3, and special assessments under paragraph 6.4, allocable to each Parcel shall in each case be determined by multiplying the total of such assessment by a percentage (the "Parcel Percentage"), determined by dividing the number of square feet of the Assigned Building Square Footage (rounded to the nearest one thousand (1,000) square feet) assigned to such Parcel by the total number of square feet (rounded to the

nearest one thousand (1,000) square feet) of building space permitted by the PUD Ordinance within the Property, which is seventy-eight thousand (78,000) square feet.

6.6 Declarant Limitation. Any Parcel or other portion of the Property owned by Declarant which is not improved and being occupied for uses permitted hereunder is exempt from all assessments established under this Article VI, provided that Declarant shall fund the deficits, if any, between the aggregate amount assessed Class A members and Declarant and the total annual operating expenses of the Association during the applicable period. The Declarant shall cease to pay any portion of the deficit of the annual operating expenses of the Association under the provisions of this paragraph when Declarant is no longer entitled to elect a majority of the Board of Directors of the Association and shall thereafter pay the annual assessment applicable to such unimproved portions of the Property. Upon transfer of title of a Declarant owned Parcel, the Parcel shall be assessed in the applicable amount then payable by the Class A members of the Association, prorated as of, and commencing with, the date of transfer of title.

6.7 Specific Assessments. Any and all accrued, liquidated indebtedness of any Owner to the Association arising under any provision of the Governing Documents, including any indemnity, or any act or omission of the Owner or any tenant or occupant of such Owner's parcel which is corrected or cured by the Association as permitted by the Governing Documents, also shall be assessed by the Association against such Owner after the Owner fails to pay it when due and such default continues for thirty (30) days after written notice.

6.8 Certificates of Payment. The Association shall furnish to any interested Person a certificate signed by an officer of the Association setting forth whether the assessments against a Parcel have been paid and, if not, the unpaid balance, and such other matters as shall be reasonably requested by such Person. To defray its costs, the Association may impose a reasonable, uniform charge for issuing such certificates. A properly executed certificate of the Association as to the status of assessments on a Parcel is binding on the Association as of the date of issuance.

6.9 Lien for Assessments. All sums assessed to any Parcel, together with interest and all costs and expenses of collection, including reasonable attorneys' fees, are secured by a lien on the Parcel in favor of the Association. This lien shall be effective upon recording a claim of lien which shall continue in effect until all sums secured by the lien have been paid in full, or as otherwise limited by Law. Claims of lien shall be signed by an officer of the Association or the attorney retained by the Association to collect assessments. The Association's lien is subject and inferior to the lien for all sums secured by any recorded mortgage, deed of trust or similar document securing an indebtedness, held by an Institutional Mortgagee, unless a claim of lien for delinquent assessments has been recorded prior to the recording of such mortgage, deed of trust or similar document. However, an Institutional Mortgagee shall be responsible for payment of assessments imposed after its acquisition of title to the Parcel, whether by foreclosure, deed in lieu of foreclosure, or otherwise. Except for liens for all sums secured by such Institutional Mortgage, all other lienors acquiring liens on any Parcel after this Declaration is recorded are

deemed to consent that their liens are inferior to the lien established by this Declaration, whether or not such consent is specifically set forth in the instrument creating such lien.

#### 6.10 Remedies of the Association.

(a) General. Any assessment not paid within thirty (30) days after its due date bears interest at a uniform rate from time to time established by the Board of Directors not to exceed eighteen percent (18%) nor less than ten percent (10%) per annum. In the absence of action by the Board of Directors, the rate shall be the lesser of eighteen percent (18%) or the maximum rate permitted by Law. Each Owner of a Parcel shall be personally obligated to pay the assessment levied against the Owner's Parcel, whether or not the Owner was the Owner of the Parcel at the time the assessment was levied, and each Owner shall remain obligated notwithstanding the subsequent sale, foreclosure or other transfer of the Parcel. The Association may bring an action at law or in equity against any Owner to collect the assessment, together with interest and all costs and expenses of collection, including reasonable attorneys' fees. No Owner may waive or otherwise escape liability for the Association's assessments by non-use of the Common Areas or Common Maintenance Areas, or by abandonment of such Owner's Parcel. A suit to recover a money judgment for unpaid assessments, interests and costs may be maintained without waiving, or otherwise impairing the security of the Association's lien or its priority. The Association may pursue both a money judgment and a foreclosure of its lien, and the Owner personally obligated to pay the assessment may be sued to recover any deficiency.

(b) Foreclosure. The lien for sums assessed pursuant to this Article may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property from time to time may be foreclosed in the State of Florida. In any such foreclosure, the Owner is required to pay all costs and expenses of foreclosure, including reasonable attorneys' fees. All such costs and expenses are secured by the lien foreclosed. The Owner also is required to pay to the Association any assessments against the Parcel that become due during the period of foreclosure, which also are secured by the lien foreclosed and shall be accounted and paid as of the date the Owner's title is divested by foreclosure. The Association has the right and power to bid at the foreclosure or other legal sale to acquire the parcel foreclosed, or to acquire such Parcel by deed or other proceeding or conveyance in lieu of foreclosure, and thereafter to hold, convey, lease, rent, encumber, use, and otherwise deal with such Parcel as an owner, but for purposes of resale only.

### ARTICLE VII OBLIGATIONS OF OWNERS

7.1 Compliance. Each Owner shall comply with the provisions of the Governing Documents and the Regulations of the Association and shall not construct or install, or permit to continue to exist, any building, structure or other improvement that violates the restrictions of this Declaration, or use or permit the use of, a Parcel in a manner that violates these restrictions.

7.2 Parcel Maintenance. The Owner of each Parcel shall at all times keep the premises, buildings, improvements, parking areas, driveways, sidewalks, and landscaping located on the Owner's Parcel in conformance with the provisions of the Declaration and in a well maintained, safe, clean, and attractive condition and in compliance with all government, health, safety and police requirements. All maintenance to be performed by Owners pursuant to this Article VII shall be done in a first-class manner as is normal and customary for Class A commercial developments located in the County. Owners of unimproved Parcels shall mow weeds or grass not less frequently than twice a year.

7.3 Unoccupied Premises. Owners of improved parcels that are temporarily or permanently not open for business shall nonetheless maintain the buildings, landscaping, parking areas, or other improvements in compliance with the requirements of this Article.

7.4 Damage. Each Owner shall be responsible for and shall promptly repair or replace at its sole expense any damage caused by the Owner, its agents, employees or contractors to any portion of the Property, or any equipment or improvements located thereon or any adjacent lands, streets or ways, including but not limited to Parcels, paved streets, curbs, gutters, storm and sanitary sewer lines, telephone lines, water lines, electrical lines, gas lines, trees and landscaped areas. Declarant or the Association may, but shall not be obligated to, repair any such damage, and the Owner shall promptly reimburse Declarant or the Association for all expense incurred together with interest thereon at the rate of eighteen percent (18%) per annum from the date the expense is incurred. If an Owner within thirty (30) days from receipt of written notice from Declarant or the Association has not promptly repaired any damages and paid any reimbursements, Declarant or the Association shall be entitled to institute legal proceedings for damages or specific performance to enforce the provision of this paragraph, and additionally shall be entitled to record a lien against any Parcel of the Owner in the amount of the damages sustained or any unpaid reimbursements.

7.5 Removal of Debris. Each Owner agrees, during construction activities, to remove stumps, trees, construction debris and all other waste from the Property and to keep the building site in an orderly condition. Each Owner agrees for themselves and their contractors not to dump debris or waste in any area of the Property or on adjacent lands. Each Owner agrees to promptly repair any damage caused by construction activities. If an Owner fails to comply with this paragraph, Declarant or the Association at their sole discretion may remove the debris and/or repair such damage and shall have all of the rights and remedies provided for under paragraph 7.4 hereof.

## ARTICLE VIII ARCHITECTURAL CONTROL

8.1 Intent and Operation. It is the intent of the Declarant to preserve and enhance the value of the Property and ensure that the completed buildings and structures complement and are harmonious with each other and Declarant's unified plan of development for the Property.

Accordingly, Declarant has reserved the architectural review and approval rights set forth in this Declaration. The Declarant for so long as it owns any unimproved portion of the Property, and thereafter the Board of Directors of the Association, shall exercise the architectural review and approval rights reserved herein. Prior written approval from the Declarant is required for the clearing of a Parcel and the construction of all improvements on a Parcel including buildings, driveways, walks, fences and landscaping, and all alterations or modifications (including color changes), additions or attachments of any nature whatsoever to the exterior of any previously approved buildings or structure or Parcel, including the installation and usage of signs. In the event any building or other improvement that has been approved under the provisions of this Article shall be damaged by casualty, the restoration of the building or improvement to its approved condition shall not require further approval provided that it is repaired or restored in accordance with the original approved plans. The architectural controls have been established by the Declaration to: (i) assure harmony of exterior design and location in relation to surrounding buildings and topography in accordance with Declarant's unified plan of development, as amended from time to time; (ii) to protect and conserve the value and desirability of the Property as a first class commercial development; and (iii) maintain, to the extent reasonably practical, the exterior design, appearance and landscaping of the improvements, subject to normal wear and tear that cannot be avoided by normal maintenance. The power to regulate includes the power to prohibit, and to require the removal of, those exterior appearances, uses or activities in violation of the provisions of this Declaration. The provisions of this Article apply only to the site plan for a Parcel and the exterior of the buildings and other improvements to be constructed on a Parcel and not to interior improvements.

8.2 Applications. All applications to the Declarant or the Association for review and approval must be signed by the applicant and accompanied by two sets of detailed and complete plans and specifications for all aspects of the construction or alteration including site plans, elevations, exterior color schemes, locations and orientation on the Parcel, set back lines, dimensions, grading and landscaping plans. The plans and specifications shall be prepared by a licensed architect for the specific use of the Owner or proposed purchaser on the subject Parcel and shall conform to any architectural guidelines issued by Declarant, as amended from time to time. The foregoing does not require complete construction drawings. The application shall include samples of exterior building materials as may be reasonably required by the Declarant or the Association. The Declarant or the Association shall issue a dated, written receipt to the applicant when it has received a complete application. If the Declarant or the Association has not approved, disapproved for stated reasons, or requested additional information any application request within thirty (30) days after the date of the receipt, the approval will be deemed given. In all other events, the Declarant or the Association's approval must be in writing.

8.3 Inspection. The Declarant or the Association or their designates shall have the right, but not the obligation to inspect construction or alteration work to assure compliance with the approved plans and specifications and shall, if requested, issue a certificate of compliance if the improvements substantially comply with the approved plans and specifications and any non-compliance does not materially violate the provisions of this Declaration.

8.4 No Liability. In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from the Declarant or the Association neither the Declarant nor the Association or its members shall be liable to an Owner, a prospective purchaser of a Parcel or to any other Person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an Owner, prospective purchaser or such other Person and arising out of or in any way related to the subject matter of any such reviews, inspections, consents or required approvals, whether granted or withheld. Approval of any plans does not in any way warrant that the improvements are structurally sound or in compliance with applicable codes, nor does it eliminate the need for approval from the appropriate governmental authorities.

8.5 Chain Operations. It is recognized that an Owner or its tenant may from time to time conduct business on a Parcel as part of a chain operation and that the architectural approval of such "chain operations" shall also be subject to the provisions of this paragraph.

(a) Definition. For this purpose, a "chain operation" shall be defined as any coordinated enterprise operated under common or affiliated ownership or management, or under franchise or similar arrangements (a "Chain Operation") having a standardized appearance and mode of operation and having at least ten (10) other separate business locations in operation at the time the Owner or tenant seeks to begin doing business on the Property as part of such chain.

(b) Effect. If an Owner or tenant (for this purpose, the "Chain Operator") demonstrates to the reasonable satisfaction of Declarant (or the Association following assignment from the Declarant) that it qualifies as a Chain Operation within the foregoing definition, it shall still be required to submit its plans for architectural review in accordance with this Article. However, neither Declarant nor the Association following assignment shall be entitled to reject any alteration, improvement or other aspect of the Chain Operator's plans that is a "chain requirement", although they may offer their suggestions or advice to the Chain Operator as to such matters. For this purpose, "chain requirements" shall mean those alterations, improvements or specific items of the plans, such as building shape, size, architectural theme, exterior colors, exterior materials, and exterior signage or logos, that identify or provide public recognition of the Chain Operation, and are expressly governed by the chain's written or graphic standards and are then in use by the Chain Operation. The foregoing does not prohibit the Declarant or the Association from requiring architectural enhancements or compliance with building standards to maintain harmony with other buildings in the Property. The Chain Operator shall provide evidence to the Declarant or the Association of the then required chain requirements in use by the Chain Operation.

(c) Construction; Maintenance. Once the Chain Operator's plans have been reviewed and approved in the manner described in (b) above, the Chain Operator shall construct and thereafter maintain its improvements in accordance with such approved plans and the standards set forth in this Declaration.

(d) Loss of Status. If the Chain Operator's business establishment on the Property should cease to qualify as a Chain Operation after the Chain Operator has received initial review and approval of its plans in accordance with this Article VIII and has constructed its improvements, and if the Owner thereafter desires to expand, alter, renovate or reconstruct its exterior improvements the Owner shall be required to obtain the architectural approval of Declarant or the Association in accordance with this Article, without regard to the provisions of this paragraph 8.5.

(e) Compliance with Laws. Notwithstanding the foregoing, all proposed "chain requirement" improvements or modifications must comply with all zoning, building code and other governmental requirements, and no approval shall be required to be issued under this Article until evidence of such compliance has been provided to Declarant or the Association, as the case may be.

## ARTICLE IX GENERAL PROVISIONS

### 9.1 Enforcement.

(a) General. The Declarant, the Association, or any Owner, has the right to enforce, by any appropriate legal proceeding, all restrictions, conditions, covenants, easements, reservations, rules, and regulations now or hereafter imposed by, or pursuant to, the provisions of the Governing Documents. If the Association is the prevailing party in any litigation or other enforcement proceedings involving the Governing Documents or any of the Association's Regulations against any Owner, then the Association shall be entitled to recover all costs and expenses, including reasonable attorneys' fees incurred in trial and appellate proceedings from such Owner. If the Association is the prevailing party against any Owner, such costs and expenses, including reasonable attorneys' fees, may be assessed against the Owner's Parcel, in the manner provided in the Article entitled "Covenant for Assessments". If any Owner or class of Owners is a prevailing party against any other Owner or class of Owners, such Owner or Owners shall be entitled to recover all costs and expenses incurred, including reasonable attorneys' fees incurred in trial and appellate proceedings. Failure by the Declarant, Association or by any Owner to enforce any covenant, restriction, rule or regulation will not constitute a waiver of the right to do so at any time.

(b) Commercial Reasonableness. With reference to the requirements of Articles III and VIII hereof, the Declarant and the Association shall use a standard of commercial reasonableness in applying, interpreting and enforcing the use restrictions and architectural review and approval provisions hereof.

(c) St. Johns River Water Management District. The St. Johns River Water Management District shall have the right to enforce by proceeding at law or in equity, the

provisions contained herein that relate to the maintenance, operation, and repair of the Surface Water Management System.

9.2 Term and Renewal. The grantee of any deed conveying a Parcel, or any portion of the Property thereof shall be deemed, by the acceptance of such deed, to have agreed to observe, comply with and be bound by the provisions of this Declaration. The provisions of this Declaration shall run with and bind the Property, and all other lands to which it may hereafter be extended as provided herein and shall inure to the benefit of and be enforceable by the Declarant, the Association or any Owner, their respective heirs, successors, and assigns, for a period of thirty (30) years from the date this Declaration is recorded. The provisions of this Declaration may be extended for one or more renewal periods in compliance with Florida's Marketable Record Title Act.

9.3 Amendment.

(a) Declarant. For so long as there is a Class B membership, the Declarant reserves and shall have the sole right without the joinder or consent of any Owner, the Association, the holder of any mortgage, lien or other encumbrance affecting the Property, or any other Person to amend this Declaration: (i) to comply with any requirements of a governmental agency, Institutional Mortgagee, or other Person willing to make, insure or purchase mortgage loans secured by a Parcel; or (ii) to cure any ambiguity or error in this Declaration or the other Governing Documents, or any inconsistency between these provisions and the other Governing Documents; or (iii) to comply with the requirements of any governmental authority regulating the use or development of the Property, including agencies or authorities issuing building permits, water management permits or environmental permits; or (iv) to modify the development plan for the Property or (v) to make reference to revised Project Engineering Plans, or the Project Site Plans including without limitation, attaching a reduced copy of revised Project Engineering Plans or revised Project Site Plans. Provided that no amendment described in subparagraphs (i) through (iv) shall materially adversely interfere with the rights and privileges of other Parcel Owners without the written consent of affected Parcel Owners;

(b) Owners. Subject to the foregoing amendment provisions of this Declaration, this Declaration may be amended: (i) by an instrument executed by the Association with the formalities from time to time required of a deed under the Laws of the State of Florida and signed by those Owners holding not less than two-thirds (2/3) of the total voting interests from time to time existing within the Association; and (ii) with the joinder of Declarant in such instrument, for so long as Declarant is the record owner of any part of the Property. Provided, any amendment, that is adopted as a result of Declarant controlling two-thirds (2/3) or more of the votes in the Association, shall not materially adversely interfere with the rights and privileges of other Parcel Owners under this Declaration without the written consent of affected Parcel Owners. No amendment shall be effective until recorded but the Associations' proper execution shall entitle it to public record, notwithstanding the informal execution by the requisite percentage of Owners.

(c) Surface Water Management System. Any amendment which alters the Surface Water Management System, including maintenance of the water management portions of the Common Areas, must have the prior approval of the St. Johns River Water Management District.

9.4 Reservation of Right to Release Restrictions. Subject to applicable zoning regulations and applicable permit requirements, in each instance where an improvement has been erected, or the construction thereof is substantially advanced, in such a manner that some portion of the improvement encroaches upon any easement area or the Common Area or otherwise violates or would violate any provision of this Declaration, Declarant reserves for itself the right to release the encroachment or violation and to grant an exception to permit the encroachment or violation by the structure without the consent or joinder of any Person irrespective of who owns the affected lands, provided that such release or exception does not materially adversely affect the rights and privileges of the affected Parcel Owners, without the written consent of affected Parcel Owners. Upon granting of an exception to an Owner, the exception granted shall be binding upon all subsequent Owners of the affected property.

9.5 Rights of Institutional Mortgagees. Any Institutional Mortgagees have the following rights:

(a) Inspection. During normal business hours, and upon reasonable notice and in a reasonable manner, to inspect current copies of the Governing Documents and Regulations and the books, records, and financial statements of the Association; and

(b) Financial Statements. Upon written request to the Secretary of the Association, to receive copies of the annual financial statements for the immediately preceding fiscal year of the Association, provided, however, the Association may make a reasonable, uniform charge to defray its cost incurred in providing such copies; and

(c) Meetings. To designate a representative to attend all meetings of the membership of the Association, who is entitled to a reasonable opportunity to be heard in connection with any business brought before such meeting but in no event entitled to vote thereon.

(d) Notices. By written notice to the Secretary of the Association, and upon payment to the Association of any reasonable, uniform annual fee that the Association from time to time may establish for the purpose of defraying its costs, any Institutional Mortgagee shall be entitled to receive any notice that is required to be given to the Class A members of this Association under any provision of the Governing Documents. Additionally, any such Mortgagee, insurer, or guarantor of a first Mortgage giving written notice to the Association shall be entitled to written notice of: (i) any condemnation or casualty loss affecting a material portion of the Property or any Parcel encumbered by its Mortgage; (ii) any 60 day delinquency in the payment of assessments or charges owed by the Owner of any Parcel encumbered by its

Mortgage; (iii) lapse, cancellation or material modification of any insurance coverage or fidelity bond maintained by the Association; and (iv) any changes to the PUD Ordinance, or to the Governing Documents as to the use of any of the Parcel encumbered by its mortgage, any change, transfer, or abandonment of any Common Areas or use of any insurance proceeds for something other than the repair or reconstruction of the damaged Common Areas.

9.6 Severability. Invalidation of any particular provision of the Governing Documents by judgment or court order will not affect any other provision, all of which will remain in full force and effect. Any court of competent jurisdiction may, to the extent practicable, reform any otherwise invalid provision contained in the Governing Documents when necessary to avoid a finding of invalidity while effectuating Declarant's intent of providing a comprehensive plan for the use, development, sale, and beneficial enjoyment of the Property.

9.7 Notices. Any notice required to be sent to any Owner, or the Declarant under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the Owner on either the records of the Association or the public records of the County at the time of such mailing. Notices to the Association or the Declarant shall be sent in the manner described above to the registered office of the Association or the Declarant.

9.8 Delegation to Association or Owners. At any time and from time to time, Declarant may transfer or assign to the Association, all or a part of the rights and privileges herein reserved to Declarant. If at any time the Association is dissolved, and its rights, privileges, duties and obligations have not been assumed by another association of Owners having legal capacity, then: (a) all the rights, privileges, duties and obligations that would have been exercised or performed by the Board of Directors of the Association, may be exercised or performed by a committee elected or appointed by the Owners of Parcels constituting a majority of the voting interests in the Association within the Property; (b) all matters under the Governing Documents requiring the approval of the Owners as members of the Association, may be approved by the Owners of a majority (or greater percentage where applicable) of the voting interests in the Association; and (c) such committee shall have the authority to reinstate the Association as a Florida not for profit corporation in good standing.

9.9 Interpretation. Unless the context expressly requires otherwise, the use of the singular includes the plural and vice versa; the use of one gender includes all genders; the use of the terms "including" or "include" is without limitation; and the use of the terms "will", "must", and "should" has the same effect as the use of the term "shall". Wherever any time period is measured in days, "days" means consecutive calendar days, and, if any such time period expires on a Saturday, Sunday, or national holiday, it shall be extended to the next succeeding calendar day that is not a Saturday, Sunday, or national holiday. The terms "Common Areas", "Common Maintenance Areas", "Parcels" and "Property" mean all or any portion applicable to the context and include any and all improvements, fixtures, trees, vegetation and other property from time to time situated thereon, and the benefit of all appurtenant easements. This Declaration shall be

construed liberally in favor of the party seeking to enforce its provisions to effectuate its purpose of protecting and enhancing the value, marketability, and desirability of the Property by providing a common plan for the development and enjoyment thereof. Headings and other textual divisions are for indexing purposes only and are not to be used to interpret, construe, apply, or enforce any substantive provisions. The provisions of this subparagraph apply to the interpretation, construction, application, and enforcement of all the Governing Documents.

*[Signatures begin on the following page]*

IN WITNESS WHEREOF, the Declarant has executed this Declaration of Easements, Covenants and Restrictions as of the date first above written.

Signed, sealed and delivered  
in our presence:

**BENTOD, INC.**, a Florida corporation

By: *Necdet Senhart*  
Necdet Senhart, President

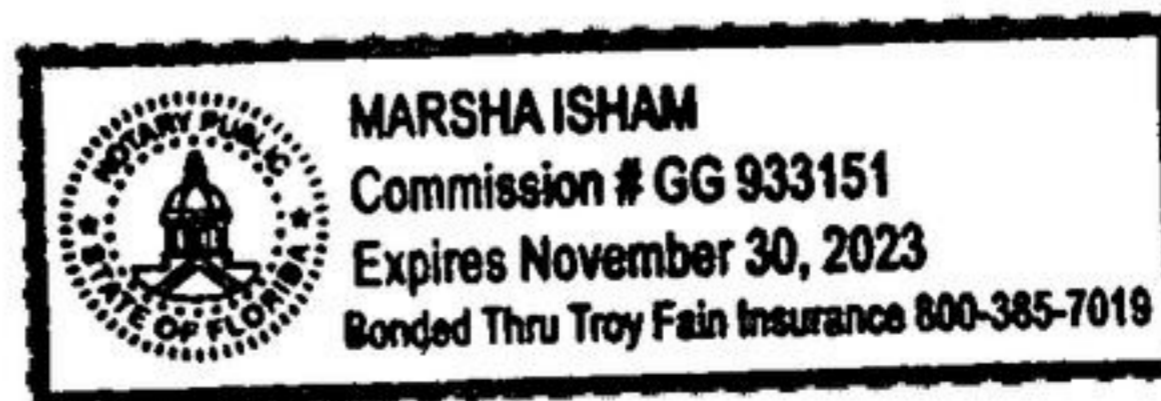
*Bert C. Simon*  
Print Name BERT C. SIMON

*Marsha Isham*  
Print Name Marsha Isham

STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this 9<sup>th</sup> day of July, 2021, by Necdet Senhart, President of Bentod, Inc., a Florida corporation, who is personally known to me, or who has produced \_\_\_\_\_ as identification.

*Marsha Isham*  
Notary Public, State of Florida at Large  
Print Name: Marsha Isham  
My Commission Expires: \_\_\_\_\_



LIST OF EXHIBITS:

Exhibit "A" - the "Property"

Exhibit "B" - "Initial Project Site Plan"

Exhibit "A"Property

A portion of Section 21, Township 5 South, Range 25 East, Clay County, Florida, being a portion of those lands described and recorded in Official Records Book 2162, page 1150, of the Public Records of said county, being more particularly described as follows:

For a Point of Beginning, commence at the Southerly corner of the Westerly terminus of Branscomb Road, a 60 foot right of way as depicted on the plat thereof, recorded in Plat Book 42, pages 71 and 72, of said Public Records; thence Southeasterly along the Southerly right of way line of said Branscomb Road the following 8 courses: Course 1, thence Northeasterly along the arc of a curve concave Southeasterly having a radius of 30.00 feet, through a central angle of 90°00'00", an arc length of 47.12 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of North 45°17'07" East, 42.43 feet; Course 2, thence South 89°42'53" East, 12.10 feet to the point of curvature of a curve concave Northerly having a radius of 530.00 feet; Course 3, thence Easterly along the arc of said curve, through a central angle of 16°09'54", an arc length of 149.53 feet to a point of reverse curvature, said arc being subtended by a chord bearing and distance of North 82°12'10" East, 149.03 feet; Course 4, thence Easterly along the arc of a curve concave Southerly having a radius of 270.00 feet, through a central angle of 22°17'02", an arc length of 105.01 feet to a point of compound curvature, said arc being subtended by a chord bearing and distance of North 85°15'44" East, 104.35 feet; Course 5, thence Southeasterly along the arc of a curve concave Southwesterly having a radius of 730.00 feet, through a central angle of 31°47'32", an arc length of 405.06 feet to a point of compound curvature, said arc being subtended by a chord bearing and distance of South 67°41'59" East, 399.88 feet; Course 6, thence Southeasterly along the arc of a curve concave Southwesterly having a radius of 480.00 feet, through a central angle of 39°57'54", an arc length of 334.81 feet to a point of compound curvature, said arc being subtended by a chord bearing and distance of South 31°49'17" East, 328.06 feet; Course 7, thence Southerly along the arc of a curve concave Westerly having a radius of 394.00 feet, through a central angle of 34°08'45", an arc length of 234.81 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of South 05°14'03" West, 231.35 feet; Course 8, thence South 22°18'25" West, 204.01 feet to the Easterly most corner of those lands described and recorded in Official Records Book 4192, page 649, of said Public Records; thence Northwesterly along the boundary line of last said lands the following 4 courses: Course 1, thence North 67°41'35" West, departing said Westerly right of way line, 36.08 feet; Course 2, thence North 00°19'09" East, 156.05 feet; Course 3, thence North 54°40'51" West, 79.22 feet; Course 4, thence North 89°40'51" West, 644.37 feet to the Northwesterly most corner thereof, said corner lying on the Easterly right of way line of Henley Road, (County Road No. C-739) (Formerly State Road No. S-739), a variable width right of way as presently established; thence North 00°20'07" East, along said Easterly right of way line, 389.84 feet; thence North 00°17'07" East, continuing along said Easterly right of way line, 182.03 feet to the Point of Beginning.

Containing 11.01 acres, more or less.

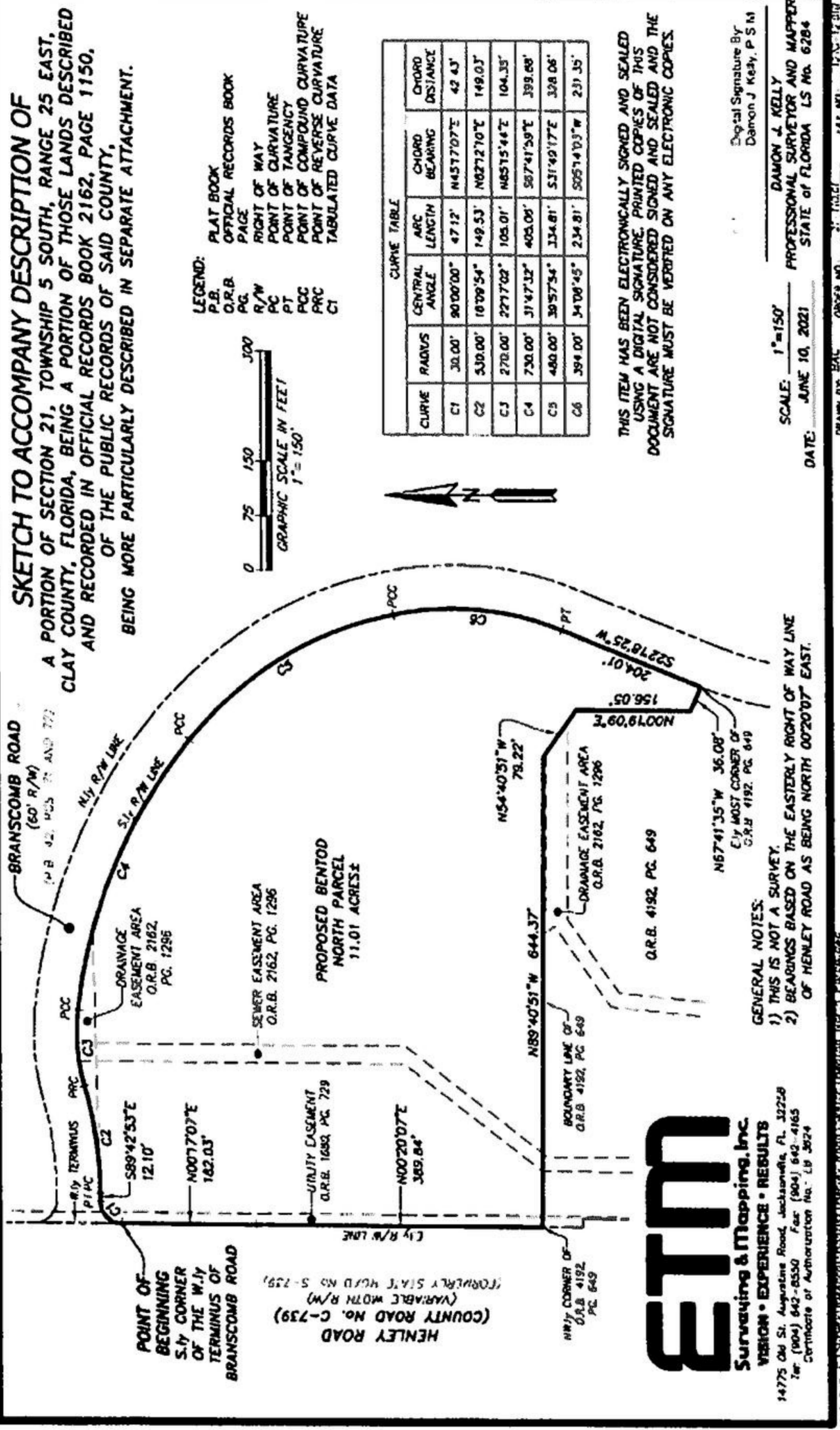


EXHIBIT "A"  
PAGE 2 OF 2

Exhibit "B"

Initial Project Site Plan

