

**THIS INSTRUMENT PREPARED
BY and After Recording Return To:**
Jeri Poller, Esquire
Jeri Poller, PA
6013 NW 23rd Avenue
Boca Raton, FL 33496
(561) 998-3735

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "**Agreement**") is made this 15th day of December, 2016, by and between ORCHARD PARK JAX, LLC, a Florida limited liability company ("Seller"), and **LONGLEAF CENTER, LLC**, a Florida limited liability company ("Buyer"):

(A) Seller, and other parties have acquired the unimproved property commonly referred to as "**Durbin Crossing**", located in St. Johns County (the "**County**"), Florida containing approximately 2,045 acres (the "**Project**"), and have obtained certain approvals to allow the Project to be developed with a total of approximately 2498 units, containing a mixture of approximately 1883 single family homes, townhouses and apartments together with approximately 518 multifamily units and approximately 100,000 square feet of commercial uses comprising retail and office space, together with associated recreational and common areas, storm water retention and other facilities.

(B) The Project is a development of regional impact under Chapter 380 of the Florida Statutes and development of the Project has been authorized pursuant Notice of DRI Development Order as recorded in Official Records Book 2036, Page 1072, together with the terms and provisions of the comprehensive land use plan amendment as set forth in Ordinance No. 2003-32 issued by St. Johns County Board of County Commissioners as recorded in Ordinance Book 31, Page 285 as corrected by Ordinance No. 2003-47 as recorded in Ordinance Book 31, Page 764 of the Public Records of St. Johns County, Florida, as the same has been amended and may be amended in the future (the "**DO**").

(C) At the time Seller, and others acquired title to the Project, Durbin Crossing, LLC, a Florida limited liability company ("**Developer**") received an assignment of Developer's Rights and Obligations recorded in Official Records Book 2036 Page 1143 of the Public Records of St. Johns County, Florida.

(D) Buyer has agreed to purchase from Seller certain portions of the Project (the "**Buyer Land**") for the development of 40,275 square feet ("**Development Allocation**") of retail/commercial space and related infrastructure (the "**Buyer Improvements**") to be located within the Project as more particularly described on **Exhibit "A"** pursuant to that certain Purchase and Sale Buyer Commercial Purchase and Sale Agreement dated as of December 8, 2016 (collectively, "**Buyer Acquisition Agreement**").

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(E) Seller wishes to provide for certain covenants, conditions, and restrictions as to the development and use of the Buyer Land which shall be covenants running with title to the Buyer Land.

(F) Simultaneously with the execution of this Agreement by the Parties hereto, Seller intends to assign its rights under this Agreement to Developer, except for the provisions of paragraph 4(h) which will be assigned to the Durbin Crossing Master Association, Inc..

NOW, THEREFORE, for and in consideration of the covenants, conditions, and restrictions herein contained, Ten and No/100 Dollars (\$10.00), and other good and valuable consideration. the receipt and legal sufficiency of which are hereby acknowledged. The parties hereto hereby declare as follows:

1. **Recitals**. The statements contained in the recitals of fact set forth above (the "**Recitals**") are true and correct and the Recitals are, by this reference, made a part of this Agreement.

2. **Exhibits**. The exhibits attached to this Agreement are, by this reference, made a part of this Agreement.

3. **Definitions and Abbreviation**. The following terms are used in this Agreement as defined in this Section 3:

- (a) The terms defined in the Recitals are used in this Agreement as defined therein.
- (b) The term "ACOE" shall mean the United States Army Corps of Engineers.
- (c) The term "Assignee" shall have the meaning set forth in Section 6 hereto.
- (d) The term "CDD" shall mean the Durbin Crossing Community Development District formed in connection with the Project.
- (e) The term "FDOT" shall mean the Florida Department of Transportation.
- (f) The term "Master Development Plan" shall mean the master development plan adopted by the PUD Resolution.
- (g) The term "Master POA" shall mean and refer to Durbin Crossing Master Association, Inc., a Florida corporation not for profit.
- (h) The terms "Party" and "Parties" shall mean Developer and Buyer, and their Assignees, individually and collectively, respectively.
- (i) The term "PUD" or "PUD Resolution" shall mean Resolution No. 2004-07 approving the Master Zoning of the Project.
- (j) The term "SJRWMD" shall mean the St. Johns River Water Management District.

4. **Covenants, Conditions, and Restrictions with Respect to the Buyer Land**. Buyer and any other owner or owners of the Buyer Land or parts thereof, their respective tenants and sub-tenants, if any, and their respective successors and assigns shall be bound by the following covenants, conditions, and restrictions:

(a) Development of Buyer Land. The Buyer Land shall be developed in accordance with the DO and the PUD, as the DO and the PUD may be modified, pursuant to the provisions of subsection 4(c) below. With respect to any improvements or facilities within the Buyer Land which are required by the DO or PUD in order for other lands covered by the DO and/or PUD to proceed with development, Buyer affirmatively agrees that such improvements or facilities shall be constructed so as not to delay the development of other portions of the Project. To the extent that any such improvements are performed by the CDD in lieu of Buyer, then Buyer shall be relieved of its obligation hereunder.

(b) Use of Buyer Land and Maximum Number of Units. The Buyer Land shall be developed for retail/commercial space, and accessory uses related thereto, as permitted by the DO and the PUD on the date hereof. There shall be a maximum of 40,275 square feet of retail/commercial use within the Buyer Land which have been allocated in Phase II of the DO. Buyer may subdivide the Property and allocate the development rights assigned to Buyer to purchasers of designated portions of the Property, provided that the total development of the Property does not exceed 40,275 square feet of retail/commercial space and related infrastructure, unless Buyer or its successors or assigns acquire additional development rights under the DO.

(c) Changes to DO and DRI and PUD. Notwithstanding any provision or implication of this Agreement to the contrary, Buyer or their Assignees as is appropriate, may not seek amendments or other modifications or revisions of the zoning, the DO, or the DRI, the PUD Resolution, or file any plat or site plan with respect to the Buyer Land (each of the foregoing and collectively being a "**Master Approval**") without the prior written approval of Seller, its successors and assigns, which approval may be withheld under the following terms. Seller may, in its sole discretion, withhold approval of any amendment or other modification or revision (or any series of amendments, modifications or revisions, whether by Buyer or others) which would (i) increase the density within the Buyer Land, (ii) diminish the development rights of others within the Project, (iii) increase any development exactions imposed upon any other party within the Project, (iv) delay any other party in the exercise of any development right within the Project, (v) cause Seller or Developer to bear any cost or expense associated with such amendment or other modification or revision, (vi) rezone the Buyer Land, (vii) change the use within the Buyer Land (viii) constitute a substantial deviation under the DRI and Chapter 380 of the Florida Statutes, or (ix) might adversely impact other portions of Project, in the sole opinion of Seller. Seller shall not unreasonably withhold its consent to other type of any amendment or other modification or revision. The foregoing provisions are not intended for the benefit of any party other than Buyer and Seller and no third party shall have any rights hereunder.

(1) Future Governmental Approvals and Submissions. Buyer shall not, without the prior written consent of Seller, under the terms set forth in Paragraph 4(c) above: (i) make any submissions to, nor meet with, any governmental authority for the purpose of changing or modifying any Master Approval filed with any such governmental authority. Duplicate copies of all intended submissions, applications, written communications and requests shall be submitted to Seller for such prior review, and, if Seller consents to same, Seller shall thereafter be informed of all dates and times for meetings between Buyer and the appropriate governmental personnel, and Seller shall be entitled to have a representative present at all such meetings. Any refusal to consent shall be in writing and given within fifteen (15) days after request, together with the specific reasons for the disapproval. Seller's failure to timely disapprove a request in writing with reasons specified shall be deemed an approval of the request.

(a) Notwithstanding the foregoing, and in addition to all other provisions contained in this Agreement, Buyer agrees that it will not take any of the following actions, which might have an adverse impact on the potential development of portions of the Project lying outside of the Buyer Land: (i) increase the density within the Buyer Land, (ii) diminish the rights of others within the Project, in the opinion of Seller, (iii) increase any development exactions imposed upon any other party within the Project, (iv) delay any other party in the exercise of any development right within the Project, (v) cause Seller or Developer to bear any cost or expense associated with such amendment or other modification or revision, (vi) rezone the Buyer Land, (vii) change the use within the Buyer Land or (viii) constitute a substantial deviation under the DRI and Chapter 380 of the Florida Statutes, might adversely impact other portions of Project. The foregoing agreement of Buyer is made in recognition of the fact that Seller, as a material inducement to selling the Buyer Land to Buyer, insisted that Buyer agree that it would not do, permit, fail to do, or fail to permit anything that might adversely impact the development of any portion of the Project outside of the Buyer Land and that, but for such agreement, Seller would not have sold the Buyer Land to Buyer.

(b) Buyer agrees that it will not object to any application or request made by Seller or Developer for a special use, variance, modification of the DO or other zoning change with respect to any portion of the Project, as long as such special use, variance, modification or zoning change does not diminish the rights of Buyer within the Buyer Land or increase any development exactions upon Buyer within the Buyer Land.

(d) General Governmental Regulation. Buyer acknowledges that the County and other duly constituted governmental authorities may, at any time in the future, further regulate and restrict the use of the Buyer Land; the character, location, size, and use of improvements to be constructed thereon; the preservation of trees; the disposition of earth; the preservation of wetlands; and other matters relating to the development and use of the Buyer Land. Buyer covenants and agrees that it will strictly observe and comply with all governmental regulations and restrictions applicable from time to time to the Buyer Land or any part thereof, whether in effect on the effective date hereof or on any subsequent date. Buyer further agrees that it will grant, upon request by any governmental authority, public utility, the CDD, Developer or Seller, easements or rights-of-way for the installation and maintenance of wetlands, preserves, public utilities and other services, including, without limitation, telephone lines, power lines, gas mains, water mains, sewer and drainage mains and facilities, and cable television lines, provided that said easements or rights-of-way do not interfere with the siting or construction of the Buyer Improvements in accordance with approved Plans (as hereafter defined). Buyer agrees to execute such documents as may be reasonably required to evidence Buyer's agreements as set forth in this paragraph and to impose similar covenants and requirements in any agreements entered into by Buyer, its permitted grantees, assignees and mortgagees. Buyer further agrees to execute any and all documents as may be reasonably requested by the CDD with respect to the future issuance of bonds, including, but not limited to a Consent to Jurisdiction and Imposition of Special Assessments.

(e) Biennial Reporting. By separate agreement between Developer and an affiliate of Seller, an affiliate of Developer has agreed to be the party responsible for the preparation and filing of all reports and information required by the DO to be filed. Buyer hereby agrees with Seller that Buyer shall use all commercially reasonable efforts to cooperate and assist Developer's affiliate in its duties hereunder, including but not limited to granting Developer's

affiliate reasonable access to Buyer's Land and information applicable thereto and timely supplying to Developer's affiliate such information as Developer's affiliate shall reasonably require in order to timely and properly file all reports required by the DO. Developer's affiliate shall have the right to reasonably rely on the information provided by Buyer.

(f) Intentionally Deleted.

(g) Water Management/Drainage Matters.

(1) Water Conservation Strategies. Water conservation strategies, including xeriscape landscaping techniques and low-flow plumbing fixtures, shall be incorporated into the construction, operation, and maintenance phases of the development of the Buyer Land as provided for in the DO.

(2) Wells. Floridian Aquifer wells that do not fall within SJRWMD's specific consumptive use permitting requirements for non-potable water use throughout the Buyer Land are prohibited. Any abandoned wells discovered prior to or during development in the Buyer Land shall be properly plugged and abandoned in accordance with SJRWMD regulations. Buyer shall be responsible for the abandoned wells on the Buyer Land.

(h) Contribution to Master POA. Buyer acknowledges that the majority of the Project is subject to the terms and conditions of that certain Declaration as recorded in Official Records Book 2586 at Page 495 of the Public Records of St. Johns County, FL, as amended and as may be amended in the future ("**Declaration**"), which is governed by the Master POA. Further, the Master POA, in the performance of its duties will be responsible for the maintenance of aesthetic controls within the Project and for the maintenance and operation of certain facilities. While the Buyer Land is not subject to the lien of assessments or control by the Declaration or Master POA, the Buyer Land will benefit from the existence and operation of the Master POA. Therefore, Buyer agrees, from the date of this Covenant forward, to make an annual contribution to the Master POA equal to one hundred dollars (\$100.00), payable in quarterly installments, secured by a lien against the Buyer Land. If Buyer subsequently conveys portions of the Property, Buyer may allocate the obligation to pay up to one hundred dollars (\$100.00) to its successors in title on a square footage basis. The failure to pay such assessments shall entitle the Master POA to file a lien against the Buyer Land and foreclose the same in the same manner as a mortgage on real property; such lien shall be subordinate to the lien of any first priority mortgage encumbering the Buyer Land and will attach upon the date of recording of a Notice of Lien in the Public Records of St. Johns County, FL and shall not relate back to the date of recording of this Declaration. Past due sums not paid within ten (10) days of the due date thereof shall bear interest at the rate of ten percent (10%) per annum. Buyer, its successors and assigns, and the Buyer Land shall be responsible for any and all assessments, costs of collection, including, but not limited to court costs, attorneys fees, paralegal fees, mediation fees and appellate fees and costs. The terms and provisions of this paragraph (h) may be assigned by Seller to the Master POA.

5. True Up. Buyer, its successors and assigns, shall be solely responsible for any true up which may be due the CDD for development of the Buyer Land at less than the Development Allocation, and at no cost or expense to Seller, Developer or affiliates thereof, under terms and conditions as set forth in the Buyer Acquisition Agreement.

6. Duration. Except as otherwise provided herein, each covenant, condition, and restriction contained in this Agreement shall exist for a period of fifty (50) years, which may be renewed for terms of ten (10) years, unless the Parties or their Assignees agree in writing, to the contrary. In no event shall this Agreement be terminated in less than ten (10) years, without the consent of Seller, its successors or assigns.

7. Covenants Run With the Land. Each covenant, condition and restriction contained herein shall run with title to the Project, as applicable and shall be binding upon the Parties and each of their successors in interest as owners in the Project and only during their period of such ownership. Further, Seller expressly reserves the right to assign its rights and obligations under this Agreement to Developer. The provisions of this Agreement shall be enforceable only by the Parties and those successors in interest of the Parties to whom are assigned the right to enforce this Agreement by an assignment specifically referencing this Agreement and recorded in the public records of St. Johns County, Florida (an "**Assignee**").

8. Privity of Contract and/or Estate. This Agreement will create privity of contract and/or estate with and among the Parties and their Assignees. In the event of the breach of any of the terms, agreements, covenants, conditions, or restrictions contained herein, any Party or its Assignee will be entitled to full and adequate relief by all available legal and equitable remedies from any consequence of such breach, including but not limited to specific performance of any obligation to convey or improve certain properties for wetland enhancement, road or park/amenity uses as provided for herein, and all costs and expenses of any suit or proceeding for enforcement, including reasonable attorneys' fees, will be assessed against the defaulting owner.

9. Injunctive Relief. In the event of any violation or threatened violation by any property owner of any of the terms, agreements, covenants, conditions, and restrictions contained in addition to the other remedies herein provided or by law, any Party or its Assignee shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction and shall be entitled to recover the costs and reasonable attorney's fees for bringing such action.

10. Amendment and Modification Provision. Except as provided elsewhere herein, this Agreement may not be modified in any respect whatsoever, or rescinded, in whole or in part, except with the consent of the owner of the land affected by the modification or rescission at the time of such modification or rescission and, then, only by a written instrument duly executed and acknowledged by the requisite parties, duly recorded in the public records of St. Johns County, Florida. In addition to any other rights reserved herein, each Party reserves to the other the right to amend this Agreement without the joinder and consent of any other Party, Assignee or owner for the purpose of correcting a scrivener's error or incorporating any restriction specifically required under the DO, as of the date hereof.

11. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Project to the general public or for the general public or for any public purposes whatsoever, it being the intention of the Parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

12. Breach Shall Not Permit Termination. No breach of this Agreement shall entitle anyone to cancel, rescind, or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies hereunder by reason of any breach of this Agreement.

13. Severability. If any clause, sentence, or other portion of this Agreement shall become illegal, null, or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions hereof shall remain in full force and effect.

14. Common Ownership of Project. The ownership of the entire Project by the same Party shall not cause the termination of this Agreement.

15. Consent In Writing. Whenever it is provided in this Agreement that written permission, consent, or approval is required, such permission, consent, or approval shall not be unreasonably withheld or delayed. Except as otherwise expressly provided herein, failure to respond in writing to a request within thirty (30) days from the date of the request shall constitute an unqualified and irrevocable permission for, consent to, or approval of the matter so requested.

16. Notices. Any notice required or permitted under this Agreement shall be deemed sufficiently given if given personally or by certified mail, postage prepaid, return receipt requested at the following address of the Party to be notified or at such other address as the Party to be notified shall designate by written notice given to the other Parties and recorded in the public records:

If to Seller: Orchard Park Jax, LLC.
c/o Durbin Crossing Development Corp,
14883 Plumosa Dr
Jacksonville, FL 32250
Attn: Jason R. Sessions, Vice President
Telephone: (904) 386-8380
Email: jason@sessionsdevelopment.com

With copy to: Jeri Poller, Esq.
Jeri Poller, P.A.
6013 NW 23rd Avenue
Boca Raton, FL 33496
Telephone (561) 998-3735
Facsimile: (561) 998-3736
Email: jpoller@compuserve.com

If to Buyer: Longleaf Center, LLC
1912 Nightfall Drive
Neptune Beach, FL 32266
Attn: Daryl Grubbs
Telephone: 904-612-6800
Facsimile: 904-270-2244
Email: daryl@dgrubbs.com

17. Estoppel Certificates. Recognizing that the Parties may find it necessary to establish to third parties the then-current status or performance hereunder, any Party on the written request of any other Party made from time to time, will promptly furnish a written statement on the status of any matter (including the performance of the conveyance or payment obligations contemplated hereunder) pertaining to this Agreement.

18. Acknowledgment and Release. As such time as any Party shall have performed an obligation set forth pursuant to the terms of this Agreement such that the obligations set forth herein

are fully and completely performed upon reasonable evidence of the satisfaction of such performance obligation by a Party so obligated the other Party and their Assignees shall deliver an acknowledgment for recording in the public records of St. Johns County, Florida which shall acknowledge the performance of such obligations and the amendment of this Agreement which shall be effective to evidence full satisfaction of such obligations.

19. Third Party Beneficiary. This Agreement constitutes an agreement between the Parties and their Assignees as to the provisions contained herein. Notwithstanding anything contained herein to the contrary, this Agreement is not intended nor shall be construed to create any rights or remedies as to third parties including but not limited to successors of the Parties who do not constitute Assignees of the rights hereunder as defined in this Agreement. No party shall constitute a third party beneficiary to the terms of this Agreement.

20. CDD Improvements. Wherever in this Agreement a reference is made to an improvement to be constructed or not to be constructed by the CDD, nothing contained herein shall be deemed to require the CDD perform or not perform such improvement, it only being the intent of the parties to set forth what happens to the extent that the CDD, does, in fact, elect to perform such improvement, or does not elect to perform such improvement, through its own methods of adoption of projects.

21. Assignment. Seller reserves the right to assign all or any of its rights under this Covenant to any party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day and year first above written.

Signed, Sealed and Delivered in the Presence of:

[Handwritten Signature]

Print Name: David W Provoost

ORCHARD PARK JAX, LLC
A Florida limited liability company
By: Durbin Crossing Development Corp., a Florida corp., its Manager

[Handwritten Signature]
Print Name: Kristin Amanda Johnson

By: *[Handwritten Signature]*
Jason R. Sessions, Vice Pres.

STATE OF FLORIDA
COUNTY OF ST JOHN'S

The foregoing instrument was acknowledged before me this 8 day of December, 2016, by Jason R. Sessions, as Vice President of Durbin Crossing Development Corp., a Florida corporation, Manager of ORCHARD PARK JAX, LLC, a Florida limited liability company, on behalf of the company, who is personally known to me or has shown _____ as identification.

[Seal]

[Handwritten Signature]

(Sign on this line)

(Print name legible on this line)

NOTARY PUBLIC, State of Florida



WILLIAM M. ROBERTS
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF199204
Expires 2/12/2019

Signed, Sealed and Delivered in the Presence of:

**Longleaf Center, LLC,
a Florida limited liability company**

Carol P. Hutto
Print Name: CAROL P. HUTTO

Deborah Bircher
Print Name: DEBORAH

By: Daryl Grubbs
Daryl Grubbs, Manager

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 8th day of Dec., 2016, by Daryl Grubbs, as Manager, of Longleaf Center, LLC, a Florida limited liability company, who is personally known to me or has shown _____ as identification.

[Seal]

Deborah Bircher
(Sign on this line)

(Print name legible on this line)
NOTARY PUBLIC, State of Florida

