

**Lee County Board Of County Commissioners  
Agenda Item Summary**

**Blue Sheet No. 20041609**

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Approve revised Interlocal Agreement between Lee County and School Board regarding the application of the Lee Plan and Land Development Code to site plan review for the construction and expansion of public education facilities. Approve establishment of one development review representative position to be funded through interlocal agreement. Approve budget amendment resolution and transfer in the amount of \$91,700.

**WHY ACTION IS NECESSARY:** The School superintendent has requested modifications to the agreement adopted by the Board on October 5, 2004. Board approval is required for new positions and budget resolutions/transfers.

**WHAT ACTION ACCOMPLISHES:** Implements procedures for site plan review for public educational facility construction.

**2. DEPARTMENTAL CATEGORY:  
COMMISSION DISTRICT #**

*A4A*

**3. MEETING DATE:**

*12-14-2004*

**4. AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:**

**5. REQUIREMENT/PURPOSE:**

*(Specify)*

- STATUTE §1013..33
- ORDINANCE
- ADMIN. CODE
- OTHER Interlocal Agreement

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT Community Development
- C. DIVISION Administration
- BY: Mary Gibbs, Director *M. Gibbs*

**7. BACKGROUND:** Dr. Browder, Superintendent, has requested further modifications to the Interlocal Agreement that was adopted by the County Commission October 5, 2004. The modifications relate to the issue of review times and fees. The modifications have been agreed to by the Superintendent and the staff. (see attached revised Interlocal draft for changes).

In summary, the changes include a quicker turnaround time for staff review for school development orders, in exchange for the school board funding of a staff position to provide priority review of school projects. See attached draft interlocal for details.

The proposed revised interlocal agreement would supersede the Interlocal Agreement adopted by the Board on October 5, 2004.

Revenues will be deposited in Account #LC5150015500.369900.9078 (Community Development/Dev.Svcs/DCD Revenues/Unincorp. MSTU/School Board Interlocal). Budget for new position expenditures will be available in LC515131550.501210 and LC515131550.6410 (Community Development/Dev.Svcs/Dev.Review/Unincorp.MSTU/ Salaries & Furniture & Equipment)

- Attachments: Draft Interlocal Agreement and 10/5/04 BoCC Minutes  
Budget Transfer Sheet  
Budget Amendment Resolution

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services			G County Manager
<i>Mary Gibbs</i>	N/A	N/A	N/A	<i>Dmc 11/30/04</i>	<i>1/6/04</i>	<i>1/6/04</i>	<i>Risk 12/10/04</i>	<i>[Signature]</i>

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty  
Date: *11/29/04*  
Time: *2:45*  
Forwarded To: *11/30/04 9:00 AM*

RECEIVED BY  
COUNTY ADMIN: *TP*  
*11-30-04*  
*9:15 AM*  
COUNTY ADMIN  
FORWARDED TO: *TP*  
*12/2/04*  
*3PM*

*B4*

# REQUEST FOR TRANSFER OF FUNDS

FUND NAME: MSTU DATE: 11/24/04 BATCH NO. \_\_\_\_\_

FISCAL YEAR: 04/05 FUND #: 15500 DOC TYPE: YB LEDGER TYPE: BA

TO: Community Development/Development Services Development Review  
 (DIVISION NAME) (PROGRAM NAME)

NOTE: PLEASE LIST THE ACCOUNT NUMBER BELOW IN THE FOLLOWING ORDER:  
 FUND #-DEPT/DIV #-PROGRAM #-OBJECT CODE #-SUBFUND #-PROJECT #-COST CENTER #.  
 (EXAMPLE: BB5120100100.503450)

ACCOUNT NUMBER	OBJECT NAME	DEBIT
LC5151315500.501210	Salaries	\$89,200
LC5151315500.506410	Furniture & Equipment	2,500
TOTAL TO:		\$ 91,700

TO: Non-departmental Reserves  
 (DIVISION NAME) (PROGRAM NAME)

ACCOUNT NUMBER	OBJECT NAME	CREDIT
GC5890115500.509910	Reserves for Contingencies	\$ 91,700
TOTAL FROM:		\$ 91,700

EXPLANATION: Budget for a new position to be funded by School Board Interlocal Agreement

*Patricia  
 Cloutier  
 11/23/04*

DIVISION DIRECTOR SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

DBS: APPROVAL  DENIAL

APPROVAL  DENIAL

CO. ADMIN.: APPROVAL \_\_\_\_\_ DENIAL \_\_\_\_\_

BCC APPROVAL DATE \_\_\_\_\_

*Mary G. Ellis*  
 DEPARTMENT DIRECTOR SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

*Delores S. Davis 11/30/04*  
 OPERATIONS ANALYST SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

*Joe Papp 11/30/04*  
 BUDGET OPERATIONS MANAGER SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

CO. ADMIN. SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

BCC CHAIRMAN SIGNATURE \_\_\_\_\_

BA NO \_\_\_\_\_ AUTH CODE \_\_\_\_\_ TRANS DATE \_\_\_\_\_

REV. 05/93

# RESOLUTION #

Amending the Budget of the Unincorporated Area MSTU, Fund #15500 to incorporate the unanticipated receipts into Estimated Revenues and Appropriations for the fiscal year 2004-2005.

**WHEREAS**, in compliance with the Florida Statutes 129.06(2), it is the desire of the Board of County Commissioners of Lee County, Florida, to amend the Unincorporated Area MSTU, Fund #15500 budget for \$91,700 of the unanticipated revenue from miscellaneous fees and revenue, and an appropriation of a like amount for salaries and furniture and;

**WHEREAS**, the Unincorporated Area MSTU, Fund #15500 budget shall be amended to include the following amounts which were previously not included.

<b>ESTIMATED REVENUES</b>		
Prior Total:		\$99,222,875
Additions		
LC5150015500.369900.9078	DCD Revenues/School Bd Interlocal	\$91,700
Amended Total Estimated Revenues		\$99,314,575

<b>APPROPRIATIONS</b>		
Prior Total:		\$99,222,875
Additions		
LC5151315500.501210	Salaries	\$89,200
LC5151315500.506410	Furniture & Equipment	2,500
Amended Total Appropriations		\$99,314,575

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Lec County, Florida, that the Unincorporated Area MSTU, Fund #15500 budget is hereby amended to show the above additions to its Estimated Revenue and Appropriation accounts.

Duly voted upon and adopted in Chambers at a regular Public Hearing by the Board of County Commissioners on this \_\_\_\_ day of \_\_\_\_\_, 2004.

ATTEST:  
CHARLIE GREEN, EX-OFFICIO CLERK

BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY, FLORIDA

BY: \_\_\_\_\_  
DEPUTY CLERK

\_\_\_\_\_  
CHAIRMAN

APPROVED AS TO FORM

\_\_\_\_\_  
OFFICE OF COUNTY ATTORNEY

DOC TYPE YA  
LEDGER TYPE BA

1. **COUNTY ADMINISTRATION**

No requests received.

2. **CONSTRUCTION AND DESIGN**

No requests received.

3. **COUNTY COMMISSIONERS**

No requests received.

4. **COMMUNITY DEVELOPMENT**

No requests received.

5. **HUMAN SERVICES**

No requests received.

6. **INDEPENDENT**

No requests received.

7. **PUBLIC SAFETY**

No requests received.

8. **SOLID WASTE-NATURAL RESOURCES**

No requests received.

9. **TRANSPORTATION**

No requests received.

10. **UTILITIES**

No requests received.

11. **PARKS AND RECREATION**

No requests received.

12. **COUNTY ATTORNEY**

(a) **ACTION REQUESTED:**

Approve and authorize the Chairman to execute the Interlocal Impact Fee Agreement with the City of Fort Myers for the future use of Roads Impact Fees to be collected from residential development in the City of Fort Myers, but whose primary project access will utilize Palomino Lane in unincorporated Lee County.

**WHY ACTION IS NECESSARY:**

Interlocal agreements require Board approval.

**WHAT ACTION ACCOMPLISHES:**

Approves an interlocal agreement with the City of Fort Myers for the future use of Roads Impact Fees collected in the City, but to be utilized for road improvement in unincorporated Lee County.

(#20041218-County Attorney)

In response to Commissioner Coy's inquiry whether the District #2 Commissioner was okay with this request; Commissioner St. Cerny moved approval, seconded by Commissioner Coy, called and carried.

(b) **ACTION REQUESTED:**

Approve updated Interlocal Agreement, between Lee County and School Board, regarding the application of the Lee Plan and Land Development Code to site plan review for the construction and expansion of public educational facilities.

**WHY ACTION IS NECESSARY:**

Delineates respective rights and obligations under the Florida Statutes, Lee Plan and Land Development Code.

**WHAT ACTION ACCOMPLISHES:**

Implements procedures for site plan review for public educational facility construction. (#20041221-County Attorney)

Assistant County Attorney Donna Marie Collins reviewed the request; and noted the following outstanding issues: fees – whether the school Board should pay site review application fees for development orders, the time line view for development orders submitted by the School Board, and permits for early work for site clearing and foundations on School property; Staff has reviewed these outstanding issues and feels that concerning the fees it a Board policy issue, regarding the time line for review Administrative Staff feels that the guidelines for timeframes provided by the Statutes are realistic and would attempt to expedite them to the greatest extent possible but did not feel comfortable with shortening those timelines in the agreement; and as to the early work issue Administrative Staff is prepared to allow early work permits to be issued under certain circumstances but would like the opportunity to review the application and identify issues that need to be worked out before work can commence. In response to Commissioner Judah’s inquiry, Attorney Collins noted that stop work orders could be issued if early work were carried out contrary to the Agreement. The Chairman called for public input and the following persons came forward:

Lee County School District Superintendent Dr. David Browder requested that they continue with the same Interlocal Agreement that they have been operated under for the last 13 year, and that, because of their longstanding partnership, the Board continue to waive the fees, continue to allow for the same time line review as in the past; and continue to allow the early work permits.

Lee Building Industry Association Executive Vice President Michael Ritemann commended the County and the School Board for working together to eliminate duplication and redundancy; and requested the fees not be waived and the Board not implement something that would be at the expense of the private sector.

In response to Commissioner Albion’s comments, Assistant County Attorney Timothy Jones stated that they could not continue with the present Interlocal because old agreement does not meet the requirements of current state law. At the request of Commissioner Judah, Attorney Jones acknowledged that impact fees could be used to cover the fees. In response to Commissioner Judah’s request for clarification, Mary Gibbs stated that, due to the current volume of work, DCD has agreed to provide a review within 21 days; that no one is exempt from fees and because DCD is a fee supported office fees are necessary; and that an expedited review of the development order is necessary for early permitting. Ms. Gibbs confirmed that the Administrative fee currently is at 2.6%; and Attorney Jones stated that the Administrative fee is in addition to the regular fee which is not charged to the School Board. Commissioner St. Cerny briefly recapped the discussion and stated the Board’s concern for the welfare of the children of Lee County. Commissioner Albion noted his concerns with waiving fees for a fee based process. Commissioner Judah moved to approve the updated Interlocal between the Lee County and the School Board, seconded by Commissioner Janes. Attorney Collins clarified the motion that the agreement is a presented by the staff, the time line is as proposed in the agreement, and the early site work will be as set forth in the agreement, and fees are at the will of the Board. The motion was called and carried.

**13. HEARING EXAMINER**

No requests received.

**14. PORT AUTHORITY**

No requests received.

**15. CONSTITUTIONAL OFFICERS**

No requests received.

**CARRY-OVER NO.1**

**1. COUNTY ADMINISTRATION**

INTERLOCAL AGREEMENT BETWEEN  
LEE COUNTY AND THE LEE COUNTY SCHOOL BOARD

This agreement is entered into on \_\_\_\_\_, 2004, by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as "Lee County", and the Lee County School Board, a public agency of the State of Florida, hereinafter referred to as "School Board."

WHEREAS, Lee County and the School Board entered into an interlocal agreement pursuant to Florida Statutes, Section 163.01, the Florida Interlocal Cooperation Act of 1969, on October 23, 1991, in an effort to address the State policy expressed in Section 235.193(1), Florida Statutes (1990), which was to require the coordination of planning between the School Board and local governing bodies to ensure plans for construction and opening of public educational facilities are coordinated with other necessary services. The Statute also required that proposed educational facilities site plans and off-site impacts be consistent with the local comprehensive plan and land development regulations [**See** former 235.193(6)]; and

WHEREAS, Section 235.193, *et seq.*, was repealed by the Florida Legislature in 2002 and replaced by Section 1013.33; and

WHEREAS, pursuant to Section 1013.33, Florida Statutes (2003), it continues to be the policy of the Florida Legislature to require the coordination of planning between the School Board and local governing bodies to ensure that plans for the construction and opening of public educational facilities are facilitated and coordinated in time and place with the plans for residential development and concurrently with other necessary services [1013.33(1)]; and

WHEREAS, pursuant to Section 1013.33(1), Florida Statutes, this planning must include the integration of the educational facilities plan and applicable policies and procedures of a school board with the local comprehensive plan and land development regulations of local governments [**See** also 1013.33(3)(d), (10) and (13)];and

WHEREAS, the School Board, Lee County, and the city or town council of the municipalities of Bonita Springs, Cape Coral, Fort Myers, Fort Myers Beach, and Sanibel entered into an interlocal agreement on August 20, 2002, that jointly established the specific ways in which the plans and processes of the School Board and the local governments are to be coordinated; and

WHEREAS, pursuant to Section 1013.33(10), Florida Statutes (2003), the location of educational facilities must be consistent with the Lee County Comprehensive Plan (Lee Plan) and consistent with the Lee Plan implementing land development regulations as set forth in the Land Development Code (LDC); and

WHEREAS, pursuant to Section 1013.33(12), (13), and 163.3161(5), the proposed education facility site plan must be consistent with the Lee Plan and LDC; and

WHEREAS, Lee County adopted the LDC, which addresses the development of real property in unincorporated Lee County; and

WHEREAS, the County and the School Board desire to further delineate their respective rights and obligations under the Florida Statutes, Lee Plan, and LDC as set forth below:

NOW, THEREFORE, IT IS AGREED as follows:

1. Authority and Intent. This agreement is made pursuant to Florida Statutes, Section 163.01, *et seq.*, the Florida Interlocal Cooperation Act of 1969. It is the intent to incorporate recitals set forth above into the terms of this agreement.
2. Notice of Site Acquisition. The School Board must provide written notice to the Planning Director, Lee County Division of Planning, 1500 Monroe Street, Fort Myers, FL 33901, at least ~~60~~ 30 calendar days prior to signing a contract for ~~acquiring or leasing~~ property that may be used for a public educational facility. [1013.33(11)].
3. Consistency of Site Location with Lee Plan. Upon receipt of this notice, Lee County will notify the School Board within ~~45~~ 30 ~~10~~ calendar days if the site (location) proposed for acquisition or lease is consistent with the future land use categories and policies of the Lee Plan. This preliminary notice does not constitute Lee County's determination of consistency relative to the "site plan" pursuant to the paragraphs set forth below. [1013.33(11) and AGO 03-02].
4. Consistency of Site Plan with Lee Plan. As early in the design phase as feasible, but no later than 90 calendar days before commencing construction, the School Board must submit a written request to Lee County for a determination of consistency with the Lee Plan and LDC of the proposed public educational facility site plan [1013.33(12) and 163.3161(5)]. This request must be accompanied by an application for local development order (DO) in accordance with Chapter 10 of the LDC. [**Note** that Section 163.3161(5) provides that it is the State legislature's intent that adopted comprehensive plans have legal status and that no public or private development will be permitted except in conformity with the comprehensive plan].
5. Adequacy of Site Plan. Lee County and the School Board acknowledge and agree that Lee County may not deny a proposed site plan based on adequacy of the site plan as it relates solely to the internal site needs of a public educational facility such as building separation, internal pedestrian ways, location of parking areas, athletic field location and internal traffic plan. In addition, if the site location is consistent with the Lee Plan's policies and future land use categories, Lee County may not deny the site (location) application. However, both parties agree that pursuant to Section 1013.33(13), Florida Statutes, Lee

County may legally impose reasonable development standards and conditions and consider the proposed site plan and its adequacy as it relates to environmental concerns, health, safety, welfare, and effects on adjacent property. [1013.33(11) and (13)]. [See also AGO79-37 confirming that the comprehensive plan and LDC do not apply to or regulate the same subject as the State Building Code for Public Education Facilities.]

6. Review of Site Plan. Lee County will provide a written response within ~~21 calendar~~ 12 working days after receiving the application for local development order approval. If Lee County fails to provide a written determination of the proposed site plan's consistency status with the Lee Plan and LDC within ~~90 45~~ calendar days after the School Board requests a determination of consistency, the application will be considered approved. [1013.33(12)]. The County's response must set forth whether the proposed development order for the educational facility is consistent with the Lee Plan and the LDC. [1013.33(12)]. If Lee County determines that the proposed development order application is consistent with the Lee Plan and LDC, the County will issue the DO approval. Once the DO is approved, the School Board may commence construction of those site improvements included in the DO without further County approval, except as provided herein.

7. Priority Review. The County will afford priority to School Board applications for the construction or expansion of public educational facilities. All submittals or resubmittals to the Development Services Division will be reviewed within ~~21 calendar~~ 12 working days of submittal. The Development Services Division will offer assistance to the School Board in order to reduce the necessity for re-submittal of documents. Early work permits can be granted within ~~21 calendar~~ 12 working days if ~~all pertinent issues are resolved at the discretion of the Director of Development Services.~~

8. Review Costs. Fees. ~~The parties agree that, to cover the cost of review, the School Board will annually provide 50% of the full cost of the county's Development Services Representative staff position assigned to review school projects on a priority basis. Funding will be provided upon execution of this agreement and will be billed annually thereafter on October 1<sup>st</sup> of each year. Non-payment will result in termination of any review activities, while property owned by school districts used for educational purposes is constitutionally and statutorily exempt from taxation and special assessments, there is no analogous exemption from service charges or fees for the use of services. [AGO 91-27]. Accordingly, the School Board will be subject to the adopted fee schedule for local development order review.~~

9. Site Plan Review. In connection with its development order review, Lee County will specifically review the adequacy of site plans as they relate to the items set forth below:

- a. Adequacy of the fire flows and placement of hydrants for fire protection;
- b. Traffic Impact Statement/adequacy of site access;
- c. Off-site turn lanes and utility improvements;
- d. Site lighting;
- e. Proposed storm-water outfall;



- f. On-site and off-site (~~perimeter for property on street frontage~~) sidewalk and bike-path improvements;
- g. Open space and indigenous preservation (per commercial standards);
- h. Site buffering (per commercial standards);
- i. Removal of exotic vegetation;
- j. Protected species survey and management, if applicable;
- k. Impacts on archeological and historic resources.
- l. Compatibility with adjacent land uses;

The County will impose reasonable development standards, provisions, and conditions as appropriate. The parties will meet to resolve Lee Plan and LDC consistency issues when they arise. [See AGO 79-37, wherein it is noted that under Section 163.3194(1), it is clear and unambiguous that all development undertaken by and all action taken in regard to development orders by school boards must be consistent with the plan.] [See also AGO 89-31 which states that to the extent the comprehensive plan and land development regulations do not regulate the same subject as the State Uniform Building Code for Public Education Facilities, a district school board is subject to the comprehensive plan and land development regulations when developing land in the county.]

10. Conflicts. Lee County will not impose standards and conditions that conflict with those established in Chapter 1013, Florida Statutes, or the Florida Building Code for Public Educational Facilities Construction, unless mutually agreed and consistent with the interlocal agreement adopted on August 20, 2002. [1013.33(13)]. [AGO 79-37 confirms that a local government comprehensive plan and land development regulations do not regulate the same subject matter as the State Building Code for Public Education Facilities.]

11. State and Federal Regulations. The School Board must comply with all State and Federal regulations pertaining to wetlands protection and endangered species. The School Board must submit copies of State and Federal permits applications with the DO application including a copy of the application for the SFWMD permit and the Storm Water Pollution Prevention Plan. No early work permits or final development order approval will be issued by the county until the State and Federal permits have been issued.

12. Parking. It is agreed by the parties that public educational facilities will not be subject to the on-site parking requirements of the LDC.

13. Waiver. The construction of new educational facilities, the expansion of existing facilities that increase the student population by more than 5 percent, stadiums, and construction that changes the primary use of a facility must obtain a development order pursuant to the LDC. The County will waive the following requirements:

- a. Assurance of completion for off-site improvements provided the School Board obtains appropriate assurance of completion sureties as part of the contracts for construction of off-site improvements; and

- b. Review of wetland impacts.

14. Exemptions/Limitations. Lee County review or approval is not required for the following activities:

- a. placement of temporary or portable classroom facilities.
- b. proposed renovation or construction on existing school sites to the extent the activity does not fall within the exceptions set forth below or in paragraph 15 hereto.

However, construction that changes the primary use of a facility, construction of stadiums, or construction activity that results in a greater than 5 percent increase in the student capacity is subject to the Lee County site plan review described in this agreement.

15. Existing Public Education Facilities Site Plans. The parties agree that existing facilities will be considered consistent with the Lee Plan. If the School Board submits an application to expand an existing school site, Lee County may impose reasonable development standards and conditions on the expansion only. Lee County will not impose standards and conditions that conflict with those established in Chapter 1013, Florida Statutes, or the Florida Building Code for Public Educational Facility Construction, unless mutually agreed. [1013.33(15)].

16. Application of the LDC to Building Construction. The parties acknowledge and agree that the Lee Plan and LDC (except Chapter 6) do not apply to conventional construction standards, but rather relate to zoning and land use development activity. Accordingly, those regulations, by law, apply to the development of public educational facilities. Chapter 6 of the LDC is not applicable to the extent it conflicts with the Florida Building Code. Therefore, it is agreed that the Florida Building Code has the force and affect of law and will supersede the provisions of Chapter 6 of the LDC.

17. Certificate of Compliance. The School Board project engineer and landscape architect (~~if the plan has been designed by a landscape architect~~) must comply with the Certificate of Compliance (CC) process specified in LDC Chapter 10.

18. Impact Fees. Public education facilities are exempt from County impact fees.

19. Dispute Resolution. The adjudication of disputes and disagreements will be resolved in accordance with the governmental conflict resolution procedures specified in Chapters 164 and 186 of the Florida Statutes.

20. Governing Agreement and Future Amendments. This agreement is intended to supersede the interlocal agreement entered into on October 23, 1991. It will remain in full force and effect until the Florida Legislature amends Chapter 1013, Florida Statutes, to exempt public educational facilities from compliance with local comprehensive plans and land development regulations, or until such time as the parties hereto mutually agree to

amend the terms. This agreement is intended to supplement the interlocal agreement entered into on August 20, 2002.

IN WITNESS WHEREOF, this interlocal agreement has been executed by and on behalf of Lee County and the Lee County School Board of Lee County on \_\_\_\_\_, 2004. This agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument and be the agreement between the parties.

Attest:  
Charlie Green, Clerk

Board of County Commissioners  
Lee County, Florida

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
John E. Albion  
Chairman

Date: \_\_\_\_\_

(SEAL)

Approved as to form

By: \_\_\_\_\_  
Donna Marie Collins,  
Lee County Attorney's Office

Attest:

The School Board of Lee County, Florida

By: \_\_\_\_\_  
James Browder  
Superintendent

By: \_\_\_\_\_  
Chairman

Date: \_\_\_\_\_

Approved as to Form

By: \_\_\_\_\_  
Keith Martin, Esq.  
Attorney for the School Board



NST # 6609097 OR BK 03761 PG 3120 RECORDED 10/28/2002 03:12:16 PM  
CHARLIE GREEN, CLERK OF COURT, LEE COUNTY  
DEPUTY CLERK J MERR

**THIRD AMENDMENT TO PURCHASE OPTION AND AGREEMENT CONCERNING EASEMENTS**

THIS THIRD AMENDMENT TO PURCHASE OPTION AND AGREEMENT CONCERNING EASEMENTS (the "Third Amendment") is entered into as of the 5<sup>th</sup> day of May, 2002, by and between REJ GROUP, INC., an Ohio corporation ("Purchaser"), and AGRICULTURAL INSURANCE COMPANY, LTD., a Bermuda corporation ("Seller"), successor in interest to Alico, Inc., a Florida corporation.

**WITNESSETH:**

WHEREAS, Purchaser and Seller entered into a Purchase Option dated as of May 6, 1997, a Memorandum of which dated of even date therewith is recorded at O.R. 2829, Page 2507 of the Lee County, Florida Records, as amended by a First Amendment to Purchase Option dated as of February 12, 1998 (the "First Amendment"), and as further amended by a Second Amendment to Purchase Option dated as of May 2, 2001 (the "Second Amendment") (as so amended by the First Amendment and the Second Amendment, the "Option"), pursuant to which Seller granted to Purchaser the option to purchase certain real property (the "Option Property") located in Lee County, Florida, all as more particularly described in the Option and on Exhibit A-1, attached hereto and made a part hereof;

WHEREAS, Seller is the owner of certain additional real property (the "Adjacent Property") located in Lee County, Florida, being contiguous to the Option Property and being described in Exhibit A-2, attached hereto and made a part hereof;

WHEREAS, the location and configuration of the Option Property, the Release Parcel (defined below) and Adjacent Property are depicted on Exhibit B, attached hereto and made a part hereof; and

WHEREAS, Seller, as the owner of the Option Property and the Adjacent Property, respectively, and Purchaser, as the holder of an option granted by Seller to purchase the Option Property, or a portion thereof, all as more particularly described in the Option, desire, among other matters, (a) to provide for the grant of reciprocal access easements over and across a portion of the Option Property and Adjacent Property, for the purpose of permitting ingress to and on, over and across the Option Property and Adjacent Property by pedestrian and vehicular traffic, (b) to release from the Option the approximately 40.54-acre parcel described on Exhibit C and depicted on Exhibit B, attached hereto and made a part hereof (the "Release Parcel"), and (c) extend a time period requirement contained in Section 6(b) of the Option, all in accordance with the terms and conditions of this Third Amendment.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, Purchaser and Seller hereby agree as follows:

1. Incorporation of Terms: All capitalized terms not specifically defined herein shall have the meaning ascribed to such terms in the Option.

2. Amendments to Option. The Option is hereby amended as follows:

A. Sections 6(a) and 6(b) of the Option are hereby amended in their entirety to read as follows:

"(a) Subject to exclusions set forth in this Section 6, the property to be purchased by Purchaser under this Option will include not less than 106 acres of the Premises, more or less (the "Minimum Acreage"), as depicted on the preliminary site plan, dated May 1, 2002, attached hereto as Exhibit B and made a part hereof (the "Site Plan"), and up to a maximum of 204 acres of the Premises, more or less (the "Maximum Acreage").

(b) Purchaser shall have the option to increase the Minimum Acreage included in this Option in two (2) twenty-five (25)-acre increments, more or less, one (1) thirty-two (32)-acre parcel, more or less, and one (1) fifteen and one-half (15.5)-acre increment, more or less (collectively, the "Incremental Acreage"), not to exceed the Maximum Acreage. The Incremental Acreage is identified on the Site Plan as Incremental Parcels "A" through "D". Exercise of this Option as to the Incremental Acreage shall be north to south such that all Incremental Acreage shall be contiguous to each other or the Minimum Acreage, as the case may be, so that there shall be no gaps between any Incremental Parcels or the creation of residual parcels that are not adjacent to Ben Hill Griffin Parkway (f.k.a. Treeline Avenue). On or before May 6, 2003, Purchaser shall identify any and all Incremental Acreage to be included in this Option. Purchaser shall furnish to Seller upon request a recordable Disclaimer and Quit Claim Deed (in the form set forth as Exhibit G) as to those portions of the lands described in Exhibit B no longer included in the Option."

B. Exhibit B attached to the original Option is hereby deleted and replaced with Exhibit B attached hereto and made a part hereof.

C. Section 23 of the Option is hereby amended by adding the following sentence at the end of Section 23:

"This Option may be assigned by Seller in connection with a sale or transfer of the Option Property, but only upon the prior written consent of Purchaser, which shall not be unreasonably withheld, provided that the proposed assignee (i) assumes in writing all obligations of Seller under this Option and (ii) has a net financial worth of at least \$10,000,000, as determined in accordance with generally accepted accounting principles consistently applied."

D. The Option is hereby amended by adding as a new Section 26 the following:

**"SECTION 26 - GRANT OF RECIPROCAL ACCESS EASEMENTS**

(a) Grant of Easements.

(i) Upon request of Seller by Purchaser, in writing, provided Purchaser has exercised its right and option to purchase all or a portion of the Option Property under and pursuant to the terms and conditions set forth in this Option and/or to cause one or more "Outparcel(s)" (as defined in the First Amendment) to be conveyed or ground leased pursuant to the First Amendment, Seller shall grant to Purchaser, for the benefit of the Option Property, a perpetual (subject to termination upon abandonment), non-exclusive right, privilege and easement for pedestrian and vehicular traffic only, along, over and across a strip of land extending to and from the boundary of the Option Property that is contiguous with the Adjacent Property (including, if applicable, any such Outparcel(s), for the purpose of providing ingress to and egress from the remainder of the Option Property through such Outparcel(s) to the Adjacent Property), over portions of the Adjacent Property and extending to Alico Road, the location of which strip of land is depicted by hatching and identified as the "Easement Area" on Exhibit B-1 (the "Easement Plat"), attached hereto and made a part hereof, for the limited purpose of providing ingress to and egress from the Option Property to Alico Road.

(ii) Upon the request of Purchaser by Seller, in writing, provided Purchaser has exercised its right and option to purchase all or a portion of the Option Property under and pursuant to the terms and conditions set forth in this Option and/or to cause one or more Outparcel(s) to be conveyed or ground leased pursuant to the First Amendment, Purchaser shall grant to Seller, for the benefit of the Adjacent Property, a perpetual (subject to termination upon abandonment), non-exclusive right, privilege and easement for pedestrian and vehicular traffic only, along, over and across a strip of land extending to and from the boundary of the Adjacent Property that is contiguous with the Option Property, over portions of the Option Property (including, if applicable, any such Outparcel(s)) and extending to Ben Hill Griffin Parkway, the location of which strip of land is depicted by hatching and identified as the "Easement Area" on the Easement Plat. (The easement to be granted to Purchaser pursuant to Subparagraph (a)(i) above and the easement to be granted to Seller pursuant to this Subparagraph (a)(ii) are herein collectively referred to as the "Access Easements" and individually as an "Access Easement"; the roadways, if any, constructed within each Access Easement are herein referred to collectively as the "Access Roads" and individually as an "Access Road"; Seller and Purchaser, each in its respective capacity as the grantor of an Access Easement, being sometimes herein referred to collectively as "Grantors" and individually as a "Grantor," and Seller and Purchaser, each in its

respective capacity as the grantee of an Access Easement, being sometimes herein referred to collectively as "Grantees" and individually as a "Grantee.")

- (b) **Signage.** Upon request of Seller by Purchaser, in writing, provided Purchaser has exercised its right and option to purchase all or a portion of the Option Property under and pursuant to the terms and conditions set forth in this Option and/or to cause one or more Outparcel(s) to be conveyed or ground leased pursuant to the First Amendment, Seller shall grant to Purchaser, for the benefit of the Option Property, a perpetual (subject to termination upon abandonment) exclusive right, privilege and easement (the "Sign Easement") to use, without payment of any fee or other charge with respect thereto, one (1) area of the Adjacent Property, at the approximate location marked "Permitted Sign Location" on Exhibit B-1, for the purpose of installing, replacing, operating, maintaining and repairing one (1) pylon or monument sign, as elected by Purchaser, in its discretion, which may be illuminated. The size, location and design of such sign shall be subject to all applicable governmental authorities. The type and design of such sign shall be subject to the approval of Seller, which approval shall not be unreasonably withheld, conditioned or delayed. In the event Purchaser installs any such sign, unless Purchaser subsequently removes same, Purchaser shall maintain such sign in a good condition and repair and shall bear the expense of installation, replacement, operation, maintenance and repair thereof and pay any taxes imposed upon Purchaser or Seller by reason of the existence of such sign. If a variance or other approvals are needed by Purchaser in connection with the installation or use of such sign, Seller shall reasonably cooperate with Purchaser's efforts to obtain such variance or other approvals. Seller shall also execute any consents or applications reasonably necessary to obtain any permits or approvals relating to such sign.
- (c) **Execution of Easement Agreement(s).** The Access Easement, Access Easements or Sign Easement, as the case may be, shall be granted pursuant to an Easement Agreement or Easement Agreements to be executed and delivered by Seller and/or Purchaser, as the case may be, the terms and conditions of which shall be subject to the mutual approval of Seller and Purchaser, which approval Seller and Purchaser agree to not unreasonably withhold, delay or condition. Without limiting the generality of the foregoing, the Access Easement or Access Easements, as the case may be, shall be granted subject to the terms and conditions set forth on Exhibit D, attached hereto and made a part hereof."

E. The Option is hereby amended by adding as a new Section 27 the following:

**"SECTION 27 - DECLARATION**

Contemporaneously with the execution and delivery of this Third Amendment, Seller has executed a Declaration of Covenants, Conditions, Restrictions and Easements, dated as of May 5, 2002 (the "Declaration"), which shall be recorded with the Lee County Recorder's Office contemporaneously with the recording of this Third Amendment. The Release Parcel shall be subject to the terms and conditions of the Declaration. During the Option Term, Seller shall not amend, modify or waive any term or provision of the Declaration without the prior written approval of Purchaser."

F. The Option is hereby amended by adding as a new Section 28 the following:

**"SECTION 28 - RESTRICTIONS**

Upon the request of Seller by Purchaser, in writing, provided that Purchaser has exercised its right and option to purchase all or a portion of the Option Property under and pursuant to the terms and conditions set forth in this Option and/or to cause one or more Outparcel(s) to be conveyed or ground leased pursuant to the First Amendment, Seller shall, for the benefit of the Option Property, subject the Adjacent Property to the following restrictions: (a) in addition to the requirements of Section 26 hereof, any Access Road constructed on the Adjacent Property shall (i) include a landscaped median of at least twenty (20) feet wide for the first one hundred (100) feet of the Access Road closest to Alico Road and at least ten (10) feet wide for the remainder of the Access Road, and (ii) include landscaped buffers of at least ten (10) feet wide on both sides of the Access Road, and (b) all buildings shall be set back at least twenty-five (25) feet measured from the back of the curb line of the Access Road. The foregoing restrictions shall be set forth in a Declaration of Restrictions, to be recorded with the Lee County Recorder's Office, and shall contain such other terms and conditions as may be mutually agreed to by Seller and Purchaser, each acting reasonably and in good faith. Seller shall use its best efforts to increase the width of the landscaped buffers to thirty (30) feet, provided that such increase does not materially adversely impact the development of the Adjacent Property."

3. Purchaser's Release: Continued Agricultural Use. Purchaser hereby releases the Release Parcel from the terms and conditions of the Option and hereby disclaims all right, title, interest, claim and demand Purchaser may have on the Release Parcel by virtue of the Option. Seller shall file all applications and take all other actions necessary to continue, as may be permitted by law, all agricultural uses on the Option Property for so long as the Option has not expired or otherwise terminated in accordance with its terms and conditions.



4. Successors and Assigns; Covenants Running with the Land. This Third Amendment and the covenants, agreements, conditions and restrictions set forth herein shall be construed as covenants running with the land, binding upon, inuring to the benefit of and enforceable by the parties hereto, their respective successors and assigns, and the Option Property (including the Release Parcel) and Adjacent Property, respectively. This Third Amendment shall survive a closing pursuant to the Option and the conveyance of all or a portion of the Option Property to Purchaser (or the conveyance or ground leasing of one or more Outparcels pursuant to the First Amendment), but shall terminate and be of no further force and effect upon such date as the Option shall expire by its terms, without the acquisition by Purchaser of all or any portion of the Option Property (or the conveyance or ground leasing of one or more Outparcels), pursuant to the terms and conditions of the Option.

5. Revocation of Notice. Due to the amendment of Sections 6(a) and 6(b) of the Option contained in Paragraph 2 of this Third Amendment, Purchaser hereby revokes the notice, dated May 1, 2002 (the "May 1, 2002 Notice"), previously delivered to Seller pursuant to Section 6(b) of the Option. Seller acknowledges and the foregoing revocation and agrees that the election to include Incremental Acreage is reinstated as set forth in Paragraph 2 of this Third Amendment. The May 1, 2002 Notice is hereby deemed null and void of no force or effect.

6. No Other Modifications. Except as amended herein, all other terms, covenants, representations and warranties contained in the Option shall continue and remain unchanged and in full force and effect and are hereby ratified and confirmed.

7. Execution in Counterparts. This Third Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, and all of which, taken together, shall constitute but one and the same instrument.

8. Recordation. This Third Amendment may be recorded among the Lee County, Florida Records by either party hereto, at its sole cost and expense.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to be executed as of the date first above written.

**WITNESSES:**

Linda Moran  
Name: LINDA MORAN  
Title: Secretary

Margaret H. Shaw  
Name: MARGARET H. SHAW  
Title: Secretary

**PURCHASER:**

REJ GROUP, INC., an Ohio corporation

By: Richard E. Jacobs  
Name: Richard E. Jacobs  
Title: President

Attest: William R. Hansen  
Name: William R. Hansen  
Title: Assistant Secretary

**SELLER:**

AGRI-INSURANCE COMPANY, LTD.,  
a Bermuda corporation

By: Ben Hill Griffin III  
Name: Ben Hill Griffin III  
Title: President

Attest: L. Craig Simmons  
Name: L. Craig Simmons  
Title: Assistant Secretary

Denise Plais  
Name: Denise Plais  
Title: Alico Corp. Sec

W. Bernard Lester  
Name: W. Bernard Lester  
Title: Alico Inc Pres

STATE OF Florida )  
 )  
COUNTY OF Lee ) SS:

The foregoing instrument was acknowledged before me this 30 day of August, 2002, by Ben Hill Griths III, the President of AGRI-INSURANCE COMPANY, LTD., a Bermuda corporation, for and on behalf of said corporation.



Henry O. Hendry  
MY COMMISSION # DD092197 EXPIRES  
March 20, 2006  
BONDED THRU TROY FARM INSURANCE, INC.

Henry O. Hendry  
Notary Public

My commission expires:

\_\_\_\_\_

STATE OF OHIO )  
 )  
COUNTY OF CUYAHOGA ) SS:

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of September, 2002, by Richard E. Jacobs, the President of REJ GROUP, INC., an Ohio corporation, for and on behalf of said corporation.

Margaret H. Shaw  
Notary Public

My commission expires: **MARGARETH H. SHAW**  
Notary Public - State of Ohio  
Recorded in Lorain County  
My Commission Expires May 29, 2005

\_\_\_\_\_

PREPARED BY AND WHEN  
RECORDED RETURN TO:  
Patrick J. Sweeney, Esq.  
Thompson Hine LLP  
3900 Key Center  
127 Public Square  
Cleveland, OH 44114  
216.566.5500

## EXHIBIT A-1 Legal Description

University Village Regional Mall site, being part of Sections 10 and 11, Township 46 South, Range 25 East, Lee County, Florida.

All that part of Sections 10 and 11 of Township 46 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

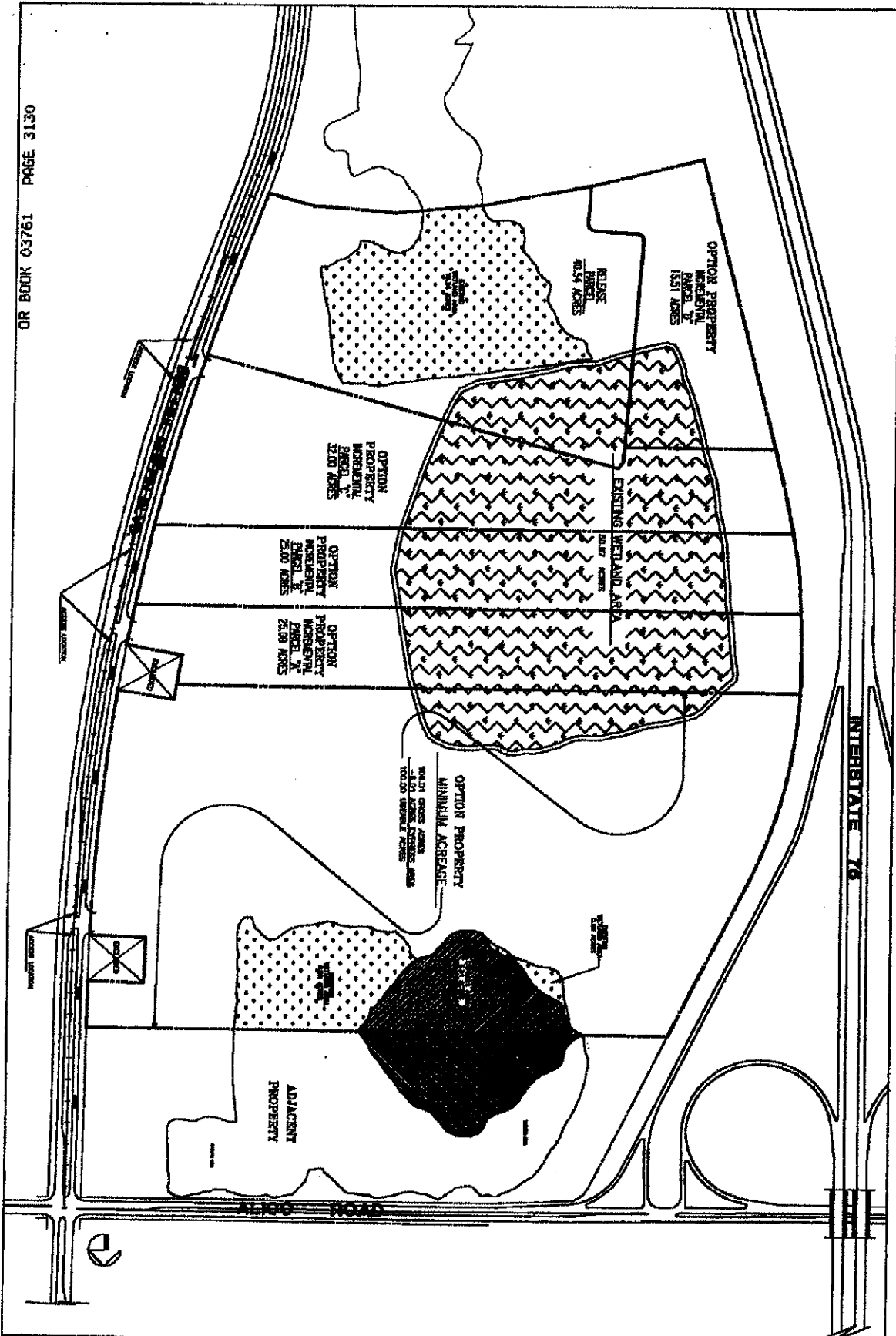
Commencing at the north line of said Section 11, South 89°42'24" East 1844.61 feet; thence South 01°01'21" West 842.23 feet to The Point Of Beginning of The Parcel herein described; thence continue South 01°01'21" W 176.58 feet; thence southerly 38.25 feet along the arc of a circular curve concave to the west, having a radius of 9925.00 feet, through a central angle of 00°13'15" and being subtended by a chord which bears South 01°07'59" West 38.25 feet to a point on said curve; thence North 88°45'24" West 256.00 feet; thence South 01°51'56" West 209.96 feet; thence South 87°30'45" East 256.00 feet to a point on a curve; thence southerly and southwesterly 1139.75 feet along the arc of a non-tangential circular curve concave to the northwest, having a radius of 9925.00 feet, through a central angle of 06°34'47" and being subtended by a chord which bears South 05°46'38" West 1139.12 feet to a point on said curve; thence North 80°55'58" West 256.00 feet; thence South 09°41'21" West 209.96 feet; thence South 79°41'19" East 256.00 feet to a point on a curve; thence southerly and southwesterly 1715.32 feet along the arc of a circular curve concave to the northwest, having a radius of 9925.00 feet, through a central angle of 90°54'08" and being subtended by a chord which bears South 15°15'45" West 1713.19 feet; thence South 20°12'49" West 473.55 feet; thence North 74°31'06" West 209.92 feet; thence North 85°27'53" West 381.51 feet; thence South 84°35'26" West 384.54 feet; thence South 79°14'37" West 501.77 feet; thence South 76°08'54" West 527.61 feet to the east right-of-way line of Interstate 75; thence along said right-of-way in the following five (5) courses: 1) North 14°13'09" West 1370.42 feet; 2) northwesterly 584.96 feet along the arc of a circular curve to the northeast, having a radius of 5567.58 feet, through a central angle of 06°01'11" and being subtended by a chord which bears North 11°12'33" West 584.69 feet to a point on said curve; 3) northerly 510.16 feet along the arc of a non-tangential circular curve concave to the east, having a radius of 5635.58 feet, through a central angle of 05°11'12" and being subtended by a chord which bears North 01°32'26" West 509.98 feet to a point of compound curvature; 4) northerly and northeasterly 977.35 feet along the arc of a circular curve concave to the southeast, having a radius of 2197.83 feet, through a central angle of 25°28'44" and being subtended by a chord which bears North 13°47'32" East 969.32 feet; 5) North 26°31'54" East 786.13 feet; thence leaving said right-of-way South 89°42'24" East 2628.92 feet to The Point Of Beginning of The Parcel herein described; Subject to easements and restrictions of record.

Containing 244.06 acres more or less. Bearings are based on the north line of Section 11, being South 89°42'24" East.

**EXHIBIT A-2**  
**Legal Description**

All that part of Sections 10 and 11 of Township 46 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

Commencing at the Northwest corner of said Section 11; thence along the North line of said Section 11, South 89°42'24" East for 703.18 feet; thence leaving said line South 00°17'36" West for 135.61 feet to a point on the Southerly limited access right-of-way line for I-75 and **The Point of Beginning of The Parcel** herein described; thence along said right-of-way line, North 78°55'31" East, 187.79 feet; thence continue along leaving said right-of-way line South 88°58'39" East for 956.00 feet; thence leaving said line South 01°01'21" West for 730.50 feet; thence North 89°42'24" West for 2628.92 feet to a point of the limited access right-of-way of I-75; thence along said line in the following four (4) described courses: (1) North 26°31'54" East for 611.66 feet; (2) North 57°02'57" East for 219.37 feet; (3) North 87°34'00" East for 748.65 feet; (4) South 89°54'59" East for 296.50 feet to **The Point of Beginning of The Parcel** herein described; bearings are based on the North line of said Section 11 being South 89°42'24" East.

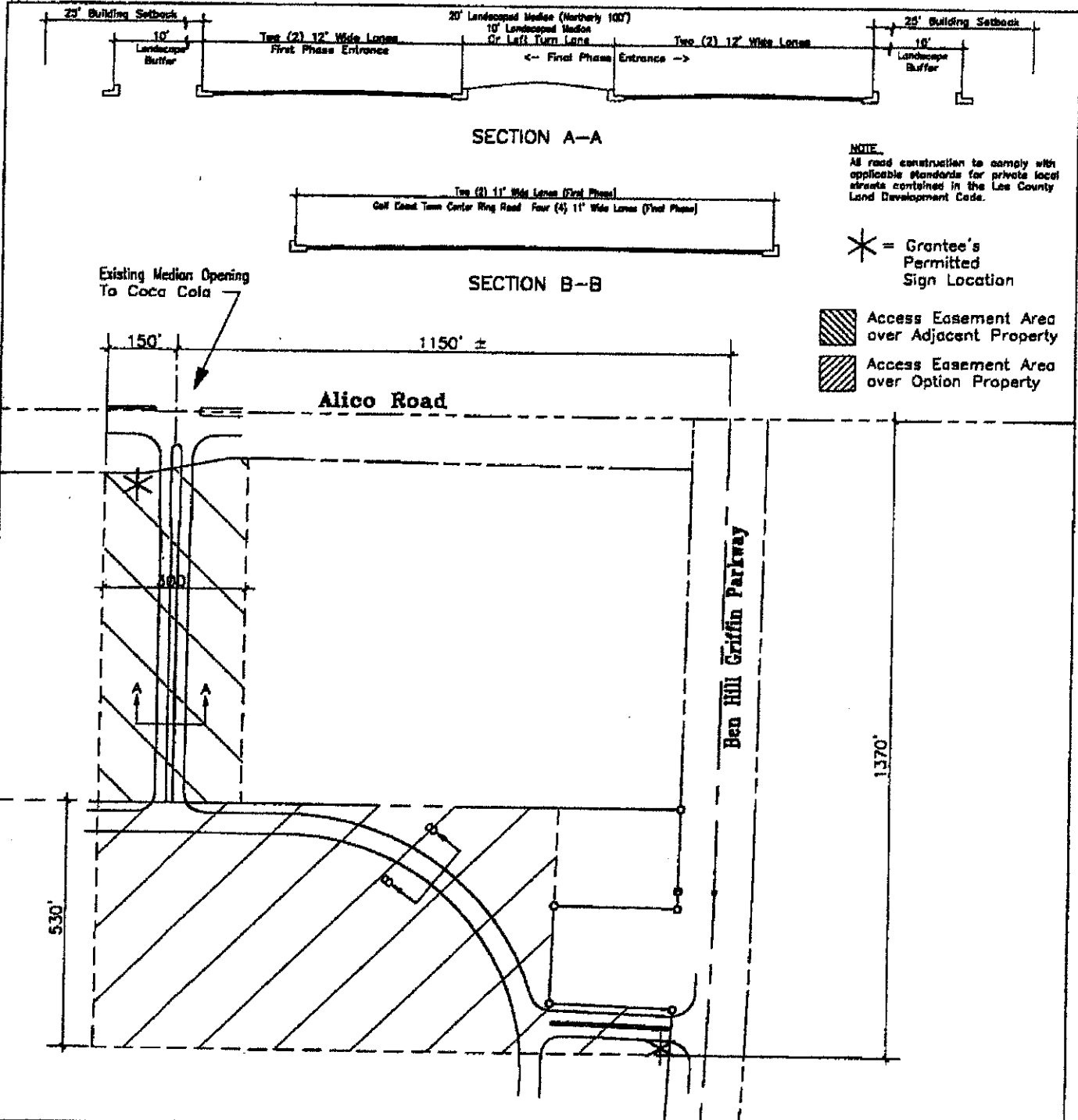


<b>EXHIBIT 'B'</b>	DATE	12/17/01
	BY	DR/10/02

**The Richard E. Jacobs Group**  
 2000 Water Ridge Road, Cleveland, OH 44122-4122  
 Phone 216-971-2000

**ALICO OPTION EXHIBIT 'B'**

**ALICO PROPERTY FORT MYERS, FLORIDA**  
 Center Ridge Design Services, Inc.  
 Architects - Engineers  
 2000 Water Ridge Road, Cleveland, OH 44122-4122  
 Phone 216-971-2000



ACCESS EASEMENTS  
FOR  
UNIVERSITY VILLAGE  
GULF COAST TOWN CENTER



The Richard E. Jacobs Group

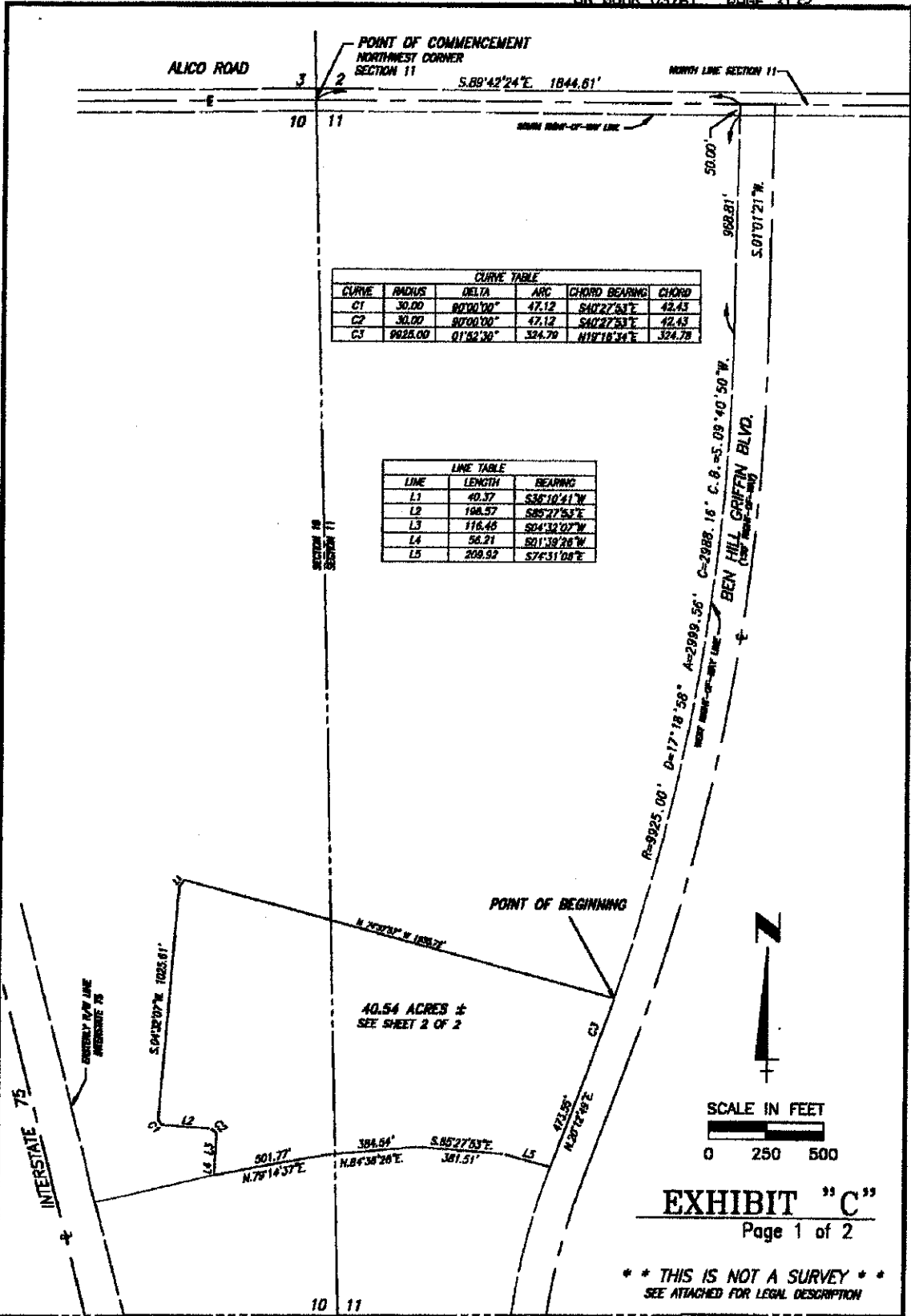
25425 Center Ridge Road Cleveland, Ohio 44148-4122  
Phone: 440-871-4800

Center Ridge Design Services, Inc.  
Architects - Engineers

25425 Center Ridge Road Cleveland, Ohio 44148-4122  
Phone: 440-871-4800

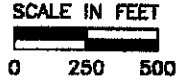
DRAWN BY: <b>KJK</b>	DATE: <b>01/16/02</b>
SCALE: <b>1"=300'</b>	JOB NUMBER:
REVISED: <b>waf</b>	DATE: <b>08/20/02</b>
CAD FILENAME: <b>exhibit-B-1.dwg</b>	
DRAWING NUMBER:	

EXHIBIT B-1



CURVE TABLE					
CURVE	RADIUS	DELTA	ARC	CHORD BEARING	CHORD
C1	30.00	02°00'00"	47.12	S40°27'53"E	42.43
C2	30.00	02°00'00"	47.12	S40°27'53"E	42.43
C3	9925.00	01°42'30"	324.79	N18°18'34"E	324.78

LINE TABLE		
LINE	LENGTH	BEARING
L1	40.37	S36°10'41"W
L2	198.57	S85°27'53"E
L3	116.45	S04°32'02"W
L4	56.21	S01°39'28"W
L5	209.92	S75°31'08"E



**EXHIBIT "C"**  
Page 1 of 2

\*\* THIS IS NOT A SURVEY \*\*  
SEE ATTACHED FOR LEGAL DESCRIPTION

FOR: ALICO INC.

SKETCH TO ACCOMPANY LEGAL DESCRIPTION

40.62 ACRES ±

PART OF SECTIONS 10, 11, TOWNSHIP 46 S.,  
RANGE 25 E., LEE COUNTY, FLORIDA

**Wilson Miller**

DRAWN BY: 1099	CHECKED BY: 448	CAD FILE: 0253L901.dwg	PIN: 0253-008-005	TASK: LSSLD	SHEET 1 OF 2	DRAWING INDEX NO: A-0253-218 (23715)	REV:
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**EXHIBIT "C"**  
**Page 2 of 2**  
**LEGAL DESCRIPTION**  
**40.54 Acres**

being part of Sections 10 and 11,  
Township 46 South, Range 25 East, Lee County Florida

All that part of Sections 10 and 11, Township 46 South, Range 25 East, Lee County, Florida being more particularly described as follows:

Commencing at the northwest corner of said Section 11;

thence along the north line of said Section 11, South 89°42'24" East 1844.61 feet;  
thence South 01°01'21" West 50.00 feet to the an intersection of the South right-of-way line of Alico Road and the West right-of-way line of Ben Hill Griffin Boulevard;  
thence continue on said West right-of-way line of Ben Hill Griffin Boulevard, South 01°01'21" West 968.81 feet to a point of curvature;  
thence southerly 2999.56 feet along the arc of a circular curve concave to the west, having for its elements a radius of 9925.00 feet, a central angle of 17°18'58", subtended by a chord which bears South 09°40'50" West 2988.16 feet to the POINT OF BEGINNING of the parcel herein described;  
thence North 74° 37' 57" West 1935.72 feet  
thence South 36° 10' 41" West 40.37 feet thence South 04°32'07" West 1025.61 feet to a point of curvature;  
thence easterly 47.12 feet along the arc of a tangent circular curve concave to the northeast, having for its elements a radius of 30.00 feet, a central angle of 90°00'00", subtended by a chord which bears South 40°27'53" East 42.43 feet to a point of tangency;  
thence South 85°27'53" East 198.57 feet to a point of curvature;  
thence southerly 47.12 feet along the arc of a tangent circular curve concave to the southwest, having for its elements a radius of 30.00 feet, a central angle of 90°00'00", subtended by a chord which bears South 40°27'53" East 42.43 feet to a point of tangency;  
thence South 04°32'07" West 116.46 feet;  
thence South 01°39'26" West 56.21 feet;  
thence North 79°14'37" East 501.77 feet;  
thence North 84°36'26" East 384.54 feet;  
thence South 85°27'53" East 381.51 feet;  
thence South 74°31'06" East 209.92 feet;  
thence North 20°12'49" East 473.55 feet to a point on a curve and the aforementioned West right-of-way line of Ben Hill Griffin Boulevard;  
thence northeasterly 324.79 feet along the arc of a tangent circular curve concave to the west, having for its elements a radius of 9925.00 feet, a central angle of 01°52'30", subtended by a chord which bears North 19°16'34" East 324.78 feet to the POINT OF BEGINNING of the parcel herein described;

Subject to easements and restrictions of record.

Containing 40.54 acres more or less.

Bearings are based on the north line of Section 11, being South 89°42'24" East.

**EXHIBIT D****Summary of Basic Terms and Conditions  
of Access Easement Agreements**

The Easement Agreements to be executed and delivered pursuant to the Third Amendment to Option Agreement shall include the following terms and conditions:

1. Each Grantee and its permitted successors and assigns shall be permitted to use the Access Easement granted to such Grantee and the Access Road constructed thereon in common with the Grantor and its successors and assigns. The Grantee of an Access Easement and its permitted successors and assigns shall use the Access Easement solely for pedestrian and vehicular traffic for the limited purpose of providing access to and from Grantee's property.

2. A Grantee shall not be permitted (i) ingress or egress on, over or across any portion of Grantor's property other than on, over and across an Access Road constructed within the Access Easement, or (ii) to park any vehicles on any portion of Grantor's property except as may be permitted by separate agreement of the parties.

3. A Grantor shall not be required to construct an Access Road within the Access Easement located on such Grantor's property. In the event a Grantor (including for such purpose, Seller, as to the Option Property, in the event Seller desires to construct an Access Road on the Option Property prior to the date on which all or the affected portion(s) of the Option Property is conveyed pursuant to the Option) elects to construct, from time to time, an Access Road on its property, such Access Road shall (i) be located entirely and only within the Easement Area for such Grantor's property, as depicted on the Easement Plat, (ii) be constructed to not less than the minimum construction specifications set forth on the Easement Plat (including, without limitation, the road and median widths indicated thereon) and in accordance with applicable governmental requirements, and (iii) be constructed at the sole cost and expense of Grantor. In addition, if Seller desires to construct an Access Road within the Access Easement Area over the Adjacent Property, it shall also comply with the requirements of Paragraph 4 below.

4. In the event a Grantee desires to use and enjoy the Access Easement granted to it and, as of the date on which such Grantee desires to commence using and enjoying such Access Easement, Grantor has not caused an Access Road to be constructed within such Access Easement, such Grantee shall be permitted, at its sole cost and expense, to construct, from time to time, the Access Road thereon, subject to the following:

- (a) Grantee shall construct the Access Road on Grantor's property entirely and only within the Easement Area for such Grantor's property, as depicted on the Easement Plat;
- (b) Grantee shall construct the Access Road to not less than the minimum construction specifications set forth on the Easement Plat (including, without

limitation, the road and median widths indicated thereon) and in accordance with applicable governmental requirements;

- (c) Not less than sixty (60) days prior to the date on which Grantee intends to commence construction of the Access Road, Grantee shall give written notice to Grantor and shall submit to Grantor, for Grantor's prior approval, which approval Grantor shall not unreasonably withhold or condition, a site plan that depicts the location(s) at which the Access Road is to be constructed and preliminary plans and specifications for the Access Road;
- (d) Grantee shall promptly repair or restore, at Grantee's sole cost and expense, any damage to the Grantor's property and any improvements thereon;
- (e) Grantee shall, at its sole cost and expense, comply with all laws, regulations and orders applicable to construction of the Access Road, including without limitation, securing and complying with all environmental permits and other permits and licenses; and
- (f) Grantee shall construct the Access Road with due diligence after commencing construction and shall coordinate such construction with Grantor.

The foregoing requirements shall also apply to Seller's construction of the Access Road within the Adjacent Property, as though Seller were the Grantee referenced above.

5. Each Grantor shall, at its sole cost and expense, maintain and repair in a good condition and state of repair, any Access Road constructed by such Grantor within an Access Easement on its property. Each Grantee shall have the right, without obligation, following not less than thirty (30) days' prior written notice to Grantor (except in the case of an emergency or to correct a hazardous situation, in which event Grantee shall give such prior notice as is reasonable under the circumstances), to maintain and repair all or any part of an Access Road constructed by such Grantor which Grantor fails to maintain and repair. Each Grantee shall, at its sole cost and expense, maintain and repair, in a good condition and state of repair, any Access Road constructed by such Grantee within an Access Easement on a Grantor's property, until such date, if ever, as of which such Grantor shall commence construction of any permanent improvements on such Grantor's property, at which time the obligation of Grantee to maintain and repair the Access Road constructed within an Access Easement on such Grantor's property shall terminate, and such obligation shall be assumed by Grantor; provided, however, that Grantee shall cause such Access Road to be in a good condition and state of repair as of the date on which such obligation is assumed by Grantor. Notwithstanding anything in the foregoing to the contrary, regardless of who constructs an Access Road, if owners or occupants or both Grantor's property and Grantee's property are using the Access Road, then the cost of maintaining, repairing or replacing (as the case may be) the Access Road shall be equitably shared, from time to time, by the Owners of all properties using the Access Road based on the relative amount and type of traffic generated, from time to time, by each Parcel.

6. The total number of access points or curb cuts onto the Access Road through the Adjacent Property shall not exceed two (2). The Access Road shall include left turn lanes and right turn deceleration lanes designed in accordance with sound traffic engineering principles.

7. The Access Easement over the Adjacent Property shall (a) permit Purchaser to use the Easement Area over the Adjacent Property for the construction, installation, maintenance, repair, replacement and operation of any utility lines or services that serve the Option Property from connections via Alico Road, (b) permit Purchaser to dedicate to public use the Access Road over the Adjacent Property or any utility lines located therein, and (c) prohibit the placement or installation of any stop lights, stop or yield signs or other devices restricting or affecting the flow of traffic over and along the Access Road over the Adjacent Property unless the same are required by applicable governmental authorities.

8. Upon the construction of any Access Road, the remainder of the land within an Easement Area will be released from the terms and conditions of the Easement Agreements.

9. Purchaser shall have the right, at its cost and expense, to relocate any Access Road constructed within an Access Easement, subject to the right of Seller to approve, in its reasonable discretion, the location thereof.

10. Each Grantee shall indemnify, defend and hold Grantor, its successors and assigns, harmless from and against any and all claims, actions, damages, liability or expense (including, without limitation, attorneys' fees and expenses) occasioned by any act or omission of Grantee, its successors or assigns, occurring upon, in or about Grantor's property, the area subject to the Access Easement granted in favor of such Grantee or the Access Road constructed thereon, arising out of such Grantee's use of the rights, privileges and easements granted to Grantee and/or arising out of any and all construction, maintenance or repair activity by Grantee on or with respect to the Grantor's property, except to the extent caused by an intentional or grossly negligent act or omission of Grantor or its successors or assigns.

11. The easements created under the Easement Agreements shall run with the land and shall be binding upon and inure to the benefit of the successors and assigns of Grantee and Grantor.

12. The Easement Agreements shall contain such other terms and conditions as may be mutually agreed to by Seller and Purchaser, each acting reasonably and in good faith.

DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS

BY

AGRI-INSURANCE COMPANY, LTD.

Dated: May 5, 2002

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**LIST OF EXHIBITS**

- Exhibit A - Legal Description of Property
- Exhibit B - Plat
- Exhibit C - Legal Description of Main Parcel
- Exhibit D - Legal Description of Release Parcel

DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ("Declaration") is made as of the 5<sup>th</sup> day of May, 2002 (the "Effective Date") by AGRI-INSURANCE COMPANY, LTD., a Bermuda corporation, successor in interest to Alico, Inc., a Florida corporation whose mailing address is P. O. Box 338, LaBelle, Florida 33975, its successors and assigns ("AIC").

WITNESSETH:

WHEREAS, AIC is the fee simple owner of certain parcels of real property located in Lee County, Florida, which parcels are legally described on Exhibit A attached hereto and by this reference made a part hereof (the "Property");

WHEREAS, the Property is also depicted as the Main Parcel and the Release Parcel on the Plat attached hereto as Exhibit B and by this reference made a part hereof;

WHEREAS, the Property is subject a Purchase Option dated as of May 6, 1997, a Memorandum of which dated of even date therewith is recorded at O.R. 2829, Page 2507 of the Lee County, Florida Records, pursuant to which AIC granted to REJ Group Inc., an Ohio corporation, the option to purchase the Property, as amended by a First Amendment to Purchase Option dated as of February 12, 1998 (the "First Amendment"), as further amended by a Second Amendment to Purchase Option dated as of May 2, 2001 (the "Second Amendment"), and as further amended by a Third Amendment to Option Agreement and Agreement Concerning Easements, dated as of May 5, 2002 (the "Third Amendment") (as so amended by the First Amendment, the Second Amendment and the Third Amendment, the "Option").

WHEREAS, pursuant to the Third Amendment, REJ Group, Inc. has agreed to release the Release Parcel from the terms and conditions of the Option, subject to the imposition of the restrictions, easements and obligations set forth in this Declaration; and

WHEREAS, AIC intends, among other things, that the Release Parcel be developed pursuant to this Declaration and desires by this Declaration to establish for its own benefit, and the mutual benefit of all future owners, mortgagees, tenants and occupants of the Property or any part thereof, restrictions, easements and obligations with respect to the development, use, improvement, operation and maintenance thereof so as to achieve the purposes more fully set forth in Article II of this Declaration.

NOW, THEREFORE, AIC hereby declares that the Property shall be held, sold, conveyed and accepted subject to the terms of this Declaration, which are imposed for the purposes set forth in Article II of this Declaration. AIC hereby further declares that the following covenants, restrictions, easements, conditions, burdens, uses, privileges, charges and liens shall: (a) exist at all times hereafter among all parties having or acquiring any right, title or interest in any portion of the Property; (b) be binding upon and inure to the benefit of each



Owner to the extent specified herein; and (c) run with the land included in the Property, which land shall be held, sold, conveyed and accepted subject to this Declaration.

**ARTICLE I**  
**DEFINITIONS**

1.1 **Definitions.** As used in this Declaration, the following terms have the meanings set forth below:

"Applicable Laws" shall mean all federal, state and local statutes, codes, ordinances, rules and regulations applicable to the Property, including, but not limited to, the Development Order.

"Building" shall mean any building or other similar enclosed structure on the Release Parcel.

"City" shall mean the City of Ft. Myers, Florida.

"County Records" shall mean the real property records for Lee County, Florida.

"Development Order" shall mean the Gulf Coast Town Center DRI Zoning Resolution and Development Order adopted on November 1, 2000 by the Board of County Commissioners of Lee County, Florida, relating to the Property (State DRI No. 08-9798-144; Case No. DRI960993), as the same may be amended from time to time by the Option Holder.

"Impact Fees" shall mean the development impact fees assessed against the Property and/or Owners by the governmental authorities pursuant to Applicable Laws.

"Improvements" shall mean all installations, improvements, alterations, additions, structures, fixtures or modifications upon or to the Release Parcel, including, without limitation, all (a) Buildings, (b) vehicular parking areas and facilities, including the number, size and layout of parking spaces, (c) landscaping, (d) loading and storage facilities, (e) signs, (f) lighting fixtures, (g) curbs, sidewalks and drives, (h) utilities and (i) any other physical change to the Release Parcel determined to be an Improvement under the applicable provisions of the Zoning Ordinance.

"AIC" shall mean Agri-Insurance Company, Ltd., a Bermuda corporation (successor in interest to Alico, Inc., a Florida corporation), and its successors and assigns.

"Landscaping Standards" shall mean those portions of the Release Parcel not covered by Improvements (excluding for this purpose landscaping), which shall be landscaped with grass, trees, shrubbery and other appropriate ground cover or landscaping material that shall at all times be maintained in a first-class and healthy condition, so as to assure adequate screening of residences and other Improvements, absorption of rainfall and prevention of erosion from rapid run-off of surface water.

"Main Parcel" shall mean the Parcel depicted on the Plat as the "Main Parcel" and legally described on Exhibit C attached hereto and by this reference made a part hereof.

"Main Parcel Owner" shall mean AIC as the owner of fee simple title to the Main Parcel as of the Effective Date, and any other successor owner of fee simple title to the Main Parcel, or any portion thereof, as shown from time to time by the County Records.

"Master Plan" shall mean Gulf Coast Towne Centre Master Concept Plan prepared for the Richard E. Jacobs Group, Inc. by WilsonMiller, Inc. and Florida Land Planning, Inc., dated 09/11/98, last revised 8/25/00, and consisting of two sheets and included in the Development Order.

"Occupant" shall mean any person legally entitled to occupy and use all or any portion of a Parcel.

"Option Holder" shall mean REJ Group, Inc., an Ohio corporation, and its successors and assigns.

"Owner" shall mean the owner of fee simple title to any Parcel as shown from time to time by the County Records, as the case may be; provided, however, if more than one Person comprises an Owner, then "Owner" shall mean all such Persons or entities collectively.

"Parcel" shall mean the Main Parcel and the Release Parcel and any portion of such Parcel that hereafter is lawfully split or subdivided from the balance of such Parcel so as to be recognized as a separate parcel pursuant to Applicable Laws.

"Permittees" shall mean, with respect to each Owner and Occupant, as the case may be, such Owner's or Occupant's tenants, subtenants, licensees, officers, directors, employees, agents, contractors, customers, visitors and invitees as well as necessary governmental entities, such as police, fire personnel, post office personnel, and also those providing utility services to the Release Parcel, the Main Parcel or any portion thereof.

"Person" shall mean a natural person, firm, corporation, partnership or any other legal entity, public or private.

"Plat" shall mean the Plat attached hereto as Exhibit B and by this reference made a part hereof.

"Release Parcel" shall mean the Parcel depicted on the Plat as the "Release Parcel" and legally described in Exhibit D attached hereto and by this reference made a part hereof.

"Release Parcel Owner" shall mean the owner of fee simple title to the Release Parcel, and any other successor owner of fee simple title to the Release Parcel or portion thereof as shown from time to time by the County Records.

"Release Parcel Storm Sewers" shall mean the drainage pipes, conduits, lines and other facilities serving the Release Parcel for the purpose of draining storm water and other excess water incidental to operation of the Release Parcel.

1.2 Interpretation of Defined Terms. Words of any gender shall include the other gender and the neuter. Whenever the singular is used, the same shall include the plural wherever appropriate, and whenever the plural is used, the same shall also include the singular wherever appropriate.

ARTICLE II  
PURPOSE

2.1 Purpose. The Release Parcel is hereby made subject to the conditions, covenants, restrictions and easements set forth in this Declaration to accommodate, integrate and structure the rights and obligations of the Owners of the Parcels comprising the Release Parcel from time to time relative to the proper development, use, improvement, operation and maintenance of the Release Parcel for the purpose of: (a) ensuring adequate and reasonably consistent development of the Release Parcel; (b) encouraging and ensuring the construction of attractively designed, high quality, permanent Improvements appropriately located within the Release Parcel which achieve a harmonious appearance and function; and (c) providing for Improvements that will promote the general welfare of all Owners and Occupants of the Parcels. The Main Parcel is hereby made, for the benefit of the Release Parcel, subject to all covenants and easements set forth in this Declaration that expressly apply to the Main Parcel.

ARTICLE III  
RESTRICTIONS GOVERNING IMPROVEMENTS

3.1 Improvements. No Improvement shall be installed, constructed or erected on any portion of the Release Parcel unless it complies with the provisions of this Article III, Article IV below and Applicable Laws.

3.2 Use. The Release Parcel shall be used only for multi-family residential dwellings, up to a maximum of 600 units (subject, however, to the limitations in Section 3.7), together with typical amenities that serve residents, such as a clubhouse, outdoor recreation facilities and a maintenance building as set forth in the Master Plan, and for no other use, including, without limitation, any commercial, industrial or retail use.

3.3 Parking on Parcels. Each Owner of a Parcel shall at all times provide a sufficient number of parking spaces on or with respect to its Parcel to meet or exceed all parking regulations required by Applicable Laws. All Owners and Occupants of the Release Parcel, and their Permittees, shall park their vehicles only on the Release Parcel.

3.4 Curb Cuts. All access from the Release Parcel to Ben Hill Griffin Boulevard shall be via the Access Road described in Section 6.2 hereof. There shall be no curb cuts from the Release Parcel onto Ben Hill Griffin Boulevard. In addition, only two (2) curb cuts shall be permitted from the Access Road described in Section 6.2 hereof to the Release Parcel, each curb cut being at least 150' apart from the other and each having a minimum width of 24 feet and maximum width of 36 feet.

3.5 Landscaping. The Release Parcel shall be landscaped only in accordance with a plan (a "Landscaping Plan") submitted to and approved in writing by the Main Parcel Owner

pursuant to Article IV prior to any development of the Release Parcel, which approval shall not be unreasonably withheld. If the Landscaping Plan is not approved or disapproved within thirty (30) days after submission thereof, then it shall be deemed approved. If the Release Parcel is developed in phases, then a Landscaping Plan shall be submitted only for the phase then sought to be developed. A landscape buffer designed in accordance with a "Type D" buffer zone, as set forth in the Lee County Land Development Code, will be deemed to have satisfied the requirements of this Section 3.5. Such Landscaping Plan shall include information regarding the type of sodding, seeding, trees, hedges, shrubs, irrigation systems and information regarding other customary landscape treatment for the Release Parcel, including fences, walls and screening. All landscaping shall be undertaken and completed in accordance with such approved Landscaping Plan.

### 3.6 Utilities.

(a) All electric, gas, sanitary and storm sewer, water, telephone and other utility lines, connections and installations shall be underground (except for installations that are customarily located above ground, such as transformers, backflow preventers and meters) and shall run directly from the public street commonly known on the Effective Date as Ben Hill Griffin Boulevard, rather than by connection to lines within, under or over the Main Parcel.

(b) Prior to commencement of any construction of any Improvements on the Release Parcel, the Release Parcel Owner shall deliver to the Main Parcel Owner the drawings and specifications detailing the size and capacity of the sanitary sewer line and water main that will service the development(s) to be constructed on the Release Parcel, together with a detailed construction cost breakdown of the proposed sanitary sewer and water mains. The Main Parcel Owner shall have the right, to be exercised by written notice to the Release Parcel Owner within twenty (20) days after receipt of the drawings, specifications and construction cost breakdown, to require that the size and capacity of the proposed utilities be increased. The incremental cost only (*i.e.*, the difference between the cost of installing the lines proposed to be installed by the Release Parcel Owner and the cost of installing the larger lines) will be paid by the Main Parcel Owner. Incremental costs shall include, without limitation, additional costs of materials, additional installation costs, redesign costs and any increase in the cost of permits or fees. If the Main Parcel Owner elects to require the larger sanitary sewer and/or water mains, the parties will enter into a construction reimbursement agreement setting forth the exact scope of work, approval rights and reimbursement method, all in a form and substance reasonably satisfactory to the parties. In any event, all utility lines shall be constructed within the right-of-way of Ben Hill Griffin Boulevard to a point that is directly opposite the northernmost boundary of the Release Parcel where it abuts Ben Hill Griffin Boulevard. The utility lines shall be constructed in a good and workmanlike manner and in accordance with all Applicable Laws.

3.7 Impact Fees. Prior to the commencement of any construction of any Improvements on the Release Parcel, the Owner of the Release Parcel shall pay all applicable fees to Lee County that are then due and owing, including, without limitation, Impact Fees and

proportionate share payments in accordance with the Development Order. Impact Fees shall be paid to Lee County in the amount stipulated in the applicable ordinance. Proportionate share payments shall be paid separately from Impact Fees directly to Lee County. It is agreed that the proportionate share payments shall be equal to the road impact fees multiplied by 0.2534. Prior to October 1, 2005, the Release Parcel Owner's development of multi-family housing units on the Release Parcel shall not be permitted to reach such number of units that the total road impact fees required to be paid by the Release Parcel Owner under the Development Order will equal or exceed \$1,000,000, in the aggregate. If any Impact Fees or proportionate share payments for the Property have been previously paid by or on behalf of the Main Parcel Owner, then the Release Parcel Owner shall reimburse the Main Parcel Owner for such payment applicable to the Release Parcel using the formula set forth above; otherwise, such payment shall be made directly to the relevant governmental authority. In no event shall the Release Parcel Owner's reimbursement obligation under this Section require the Release Parcel Owner to make payment to the Main Parcel Owner sooner than the Release Parcel Owner would have otherwise had to pay any Impact Fees or proportionate share payments. If the required proportionate share payments are increased and, at the time of such increase the Release Parcel has not been fully developed, then the Release Parcel Owner shall pay its proportionate share of any increases in connection with any further development of the Release Parcel.

3.8 Storm Water Management. Prior to commencement of any construction of any Improvements on the Release Parcel, the Release Parcel Owner shall develop and implement a storm water detention program for the Release Parcel that is consistent with the Development Order, and, except as permitted by Article VI, all storm water detention areas shall be restricted to such areas within the Release Parcel as are designated in the Master Plan. The Release Parcel Owner shall not be permitted to use any detention ponds or other storm water detention facilities that are located on the Main Parcel. The Release Parcel Owner shall coordinate its storm water detention program with the Main Parcel Owner's engineers.

3.9 Development Order. Any and all development of the Release Parcel shall be consistent with the Development Order and the Release Parcel Owner shall comply with all requirements of the Development Order as they relate to the Release Parcel, including, without limitation, compliance with wetlands mitigation, the obtaining of all required permits and the payment of all required fees. No Owner of the Release Parcel shall seek governmental approval for any amendment, modification or deviation from the Development Order (or the Master Plan contained therein) without the prior written consent of the Main Parcel Owner, which consent may be denied in the Main Parcel Owner's sole discretion. The Release Parcel Owner shall provide to the Main Parcel Owner a copy of the requested amendments or modifications prior to their submission to the appropriate authorities. Notwithstanding the foregoing, if an Owner of the Release Parcel seeks to amend or modify the conditions in the Development Order or the Master Plan that affect only the Release Parcel, and such amendments or modifications will not change the uses of the Release Parcel permitted under Section 3.2 hereof and will not materially adversely affect the Main Parcel, then the Main Parcel Owner will not unreasonably withhold or delay its approval. The Main Parcel Owner reserves the right to amend or modify either the Development Order or the Master Plan so long as such amendment or modification does not change the uses of the Release Parcel permitted under Section 3.2 hereof, or change the number of units allowed on the Release Parcel or otherwise materially, adversely affect the Release

Parcel; provided, however, that, if the Release Parcel Owner plans to develop less than six hundred (600) residential units on the Release Parcel, the Main Parcel Owner shall be permitted to amend the Development Order or the Master Plan to reflect such lower number of residential units.

**ARTICLE IV  
PLAN APPROVAL**

4.1 Plan Approval. No Improvements shall be installed, constructed, maintained, placed or permitted on the Release Parcel by a Release Parcel Owner without the prior submission in writing of a schematic plan to, and written approval of, the Main Parcel Owner as specified in this Article IV. The foregoing approval is intended to verify that all Improvements on the Release Parcel are aesthetically consistent with the purposes set forth in Article II hereof. Provided that such submittals evidence compliance with the terms and conditions of this Declaration, approvals required hereunder shall not be unreasonably withheld or delayed by the Main Parcel Owner.

4.2 Submissions to the Main Parcel Owner. To request the Main Parcel Owner's plan approval, the Release Parcel Owner shall deliver to the Main Parcel Owner, in form reasonably satisfactory to the Main Parcel Owner, three (3) complete sets of the following:

- (a) A preliminary site plan showing, among other things, the location and dimensions of all intended Improvements;
- (b) Schematic drawings and outline specifications of all exterior surfaces, showing schematic building elevations, and including the color, quality and type of exterior construction materials;
- (c) Schematic grading and drainage and stormwater management plans;
- (d) A schematic Landscaping Plan that complies with the provisions of Section 3.5 hereof; and
- (e) All such other information as may be reasonably required that will enable the Main Parcel Owner to determine the use, location, scale, design, character, style and appearance of the Release Parcel Owner's intended Improvements.

All of the foregoing (hereinafter collectively called "Schematic Plans ") shall conform to the applicable provisions of this Declaration and all other Applicable Laws.

4.3 Exterior of Buildings. In addition to all other requirements of this Declaration, the exterior of all Buildings and other Improvements shall be of a character and quality equal to that contained, as of the Effective Date, within the development known as "The Villas of Pelican Landing" in Lee County, Florida.

4.4 Time for Review of Schematic Plans. Within fourteen (14) days after the Release Parcel Owner has submitted all required Schematic Plans to the Main Parcel Owner concerning

the phase then sought to be developed, the Main Parcel Owner shall notify the Release Parcel Owner in writing whether such Schematic Plans are approved or disapproved. Any disapproval shall set forth the reason(s) for such disapproval. No approval application shall be submitted to the City and no construction of the Improvements provided for in the submitted Schematic Plans shall be commenced until the expiration of the aforementioned fourteen (14)-day period or the receipt of the Main Parcel Owner's written approval of Schematic Plans, whichever shall first occur. Neither review nor approval by the Main Parcel Owner of any Schematic Plans shall constitute a representation or warranty by the Main Parcel Owner that such Schematic Plans either (a) are complete or suitable for their intended purpose or (b) comply with Applicable Laws, it being expressly agreed by each Release Parcel Owner that the Main Parcel Owner assumes no responsibility or liability whatsoever to any Release Parcel Owner or to any other person or entity for such completeness, suitability or compliance. If the Main Parcel Owner fails to advise a Release Parcel Owner of whether or not such Schematic Plans are approved or disapproved within the above referenced fourteen (14)-day period, then the Main Parcel Owner's approval shall be deemed to have been granted.

4.5 Time for Review of Revised Schematic Plans. If the Main Parcel Owner shall disapprove any part of the submitted Schematic Plans, the Release Parcel Owner shall revise its Schematic Plans in a manner responsive to the Main Parcel Owner's reasons for disapproval and shall deliver three (3) complete sets of revised Schematic Plans to the Main Parcel Owner, highlighting the revisions in a manner that will expedite review. Within seven (7) days after such submission, the Main Parcel Owner shall notify the Release Parcel Owner in writing whether such revised Schematic Plans are approved or disapproved. Any disapproval shall set forth the reason(s) for such disapproval. Should the Main Parcel Owner fail to advise the Release Parcel Owner in writing of whether or not such revised Schematic Plans are approved or disapproved within the above referenced seven (7)-day period, then the Main Parcel Owner's approval shall be deemed to have been granted.

4.6 Changes in Approved Schematic Plans. Release Parcel Owner shall secure the approval of the Main Parcel Owner to any material change or revision in approved Schematic Plans in the manner provided in this Article for the approval of Schematic Plans. The Main Parcel Owner shall endeavor to review such changes or revisions within a shorter period of time than the fourteen (14)-day period provided in Section 4.4 hereof but shall not be required to do so. If the Main Parcel Owner fails to advise a Release Parcel Owner of whether or not such Schematic Plans are approved or disapproved within the above referenced fourteen (14)-day period, then the Main Parcel Owner's approval shall be deemed to have been granted.

## ARTICLE V MAINTENANCE/RESTORATION OBLIGATIONS

5.1 Owner's Maintenance. Each Owner of the Release Parcel shall at all times, at its sole cost and expense, maintain, repair, replace and renew or cause to be maintained, repaired, replaced or renewed all Improvements on their respective Parcel, so as to keep same in a clean, sightly and first-class condition and otherwise in compliance with the terms of this Declaration and Applicable Laws.

5.2 **Restoration.** If any Improvement on the Release Parcel is damaged or destroyed, the Owner of such Improvement shall promptly commence, or cause to be commenced, restoration of such Improvement to the condition existing prior to such damage or destruction or, in the alternative, raze and remove, or cause to be razed and removed, such Improvement and landscape, or cause to be landscaped, the Parcel pursuant to a Landscaping Plan approved as provided in Article IV hereof. Such restoration or razing and removal and landscaping shall be completed within twelve (12) months after such damage or destruction subject to extension of the time of performance pursuant to Section 8.7.

**ARTICLE VI  
EASEMENTS**

**6.1 Storm Water Sewer Easement.**

(a) Subject to the terms of this Article VI, the Main Parcel Owner hereby reserves and grants to the Release Parcel Owner, its respective successors and assigns as Owner, a non-exclusive, perpetual (subject to termination upon abandonment pursuant to Section 6.7 below) easement appurtenant for the benefit of the Release Parcel, to construct and thereafter maintain the Release Parcel Storm Sewers to be installed within a "Storm Sewer Easement Area" at a location to be mutually agreed upon by the Main Parcel Owner and the Release Parcel Owner, provided that all such lines shall be underground (the "Storm Water Detention Easement"). Neither party shall unreasonably withhold or delay its approval of the location of the Storm Sewer Easement Area and, upon the parties agreement as to the location thereof, this Declaration shall be amended to show the exact location of the Storm Sewer Easement Area.

(b) The Release Parcel Owner shall, at its sole cost and expense, maintain, repair, replace and renew, or cause to be maintained, replaced or renewed, all Release Parcel Storm Sewers, and shall keep the same in good condition and repair and in compliance with all Applicable Laws. All Release Parcel Storm Sewers shall be connected to the public storm sewer system as required by Applicable Laws and no right or permission is granted to use any portion of the storm water management facilities that may be located on the Main Parcel.

(c) The Release Parcel Owner shall have the right to construct the Release Parcel Storm Sewers within the Storm Sewer Easement Area in order to provide storm sewer service to the Improvements located on the Release Parcel, provided that each of the following conditions is satisfied: (i) the Release Parcel Owner provides to the Main Parcel Owner at least sixty (60) days' prior written notice of the Release Parcel Owner's intended installation of the Release Parcel Storm Sewers; and (ii) the Release Parcel Owner submits to the Main Parcel Owner, and the Main Parcel Owner approves, the Schematic Plans relating to the Release Parcel Storm Sewers, all in accordance with Article IV of this Declaration.

(d) After initial construction of the Release Parcel Storm Sewers, and after any maintenance, repairs or replacements thereof, the Release Parcel Owner agrees to repair and restore, at its sole cost and expense, the portions of the Main Parcel and any



improvements thereon to a condition as good as or better than as existed prior to such installation of the Release Parcel Storm Sewers. The Release Parcel Owner shall also be responsible for obtaining any and all permits and approvals from governing authorities prior to commencing construction and Main Parcel Owner shall execute any consents or applications reasonably necessary to obtain such permits and approvals.

6.2 Access Easement

(a) Subject to the terms of this Article VI, the Main Parcel Owner grants to the Release Parcel Owner, its respective successors and assigns as Owner, a perpetual (subject to termination upon abandonment pursuant to Section 6.7 below), non-exclusive right, privilege and easement for the benefit of the Release Parcel for pedestrian and vehicular traffic only, along, over and across a strip of land located on the Main Parcel having a minimum width of 36 feet and extending to Ben Hill Griffin Boulevard, the location of which strip of land is depicted by hatching and identified as the "Access Easement Area" on the Plat, for the limited purpose of providing ingress to and egress from the Release Parcel to Ben Hill Griffin Boulevard. (The easement granted and reserved hereunder is referred to as the "Access Easement"; the roadway, if any, constructed from time to time within the Access Easement is referred to as the "Access Road.")

(b) Each Release Parcel Owner, its Occupants and Permittees shall be permitted to use the Access Easement and the Access Road constructed thereon in common with the Main Parcel Owner, its Occupants and Permittees. The Release Parcel Owner, its Occupants and Permittees shall use the Access Easement solely for pedestrian and vehicular traffic for the limited purpose of providing access to and from the Release Parcel to Ben Hill Griffin Boulevard. The Release Parcel Owner shall restore, repair or replace (as the case may be) any portion of the Access Road damaged as a result of the negligence or willful acts of the Release Parcel Owner, its Occupants or Permittees, to the condition existing immediately prior to such damage. The Main Parcel Owner shall restore, repair or replace (as the case may be) any portion of the Access Road damaged as a result of the negligence or willful acts of the Main Parcel Owner, its Occupants or Permittees, to the condition existing immediately prior to such damage.

(c) No Parcel Owner shall be permitted (i) ingress or egress on, over or across any portion of another Parcel Owner's property other than on, over and across an Access Road constructed within the Access Easement, or (ii) to park any vehicles on any portion of such other Parcel Owner's Parcel.

(d) Parking within the Access Road is prohibited except when necessary for the maintenance thereof.

(e) The Main Parcel Owner shall not be required to construct the Access Road within the Access Easement. If the Main Parcel Owner elects to construct the Access Road, the Access Road shall (i) be located only within the Access Easement Area; (ii) be constructed in accordance with Applicable Laws, and (iii) be constructed at the sole cost and expense of the Main Parcel Owner.

(f) If the Release Parcel Owner desires to use and enjoy the Access Easement granted to it, then the Release Parcel Owner shall be permitted, at its sole cost and expense, to construct thereon the Access Road (or portion thereof) to the extent the Main Parcel Owner has not already constructed the Access Road (or a portion thereof), subject to the following:

(i) The Release Parcel Owner shall construct the Access Road only within the Access Easement Area;

(ii) Not less than sixty (60) days prior to the date on which the Release Parcel Owner intends to commence construction of the Access Road, Release Parcel Owner shall give written notice to the Main Parcel Owner and shall submit to the Main Parcel Owner, for the Main Parcel Owner's prior approval, which approval Main Parcel Owner shall not unreasonably withhold or condition, a site plan that depicts the exact location within the Access Easement Area at which the Access Road or portion thereof is to be constructed and preliminary plans and specifications for the Access Road or portion thereof;

(iii) The Release Parcel Owner shall promptly repair or restore, at the Release Parcel Owner's sole cost and expense, any damage to the Main Parcel Owner's property and any improvements thereon caused by the Release Parcel Owner's construction activities;

(iv) The Release Parcel Owner shall, at its sole cost and expense, comply with all Applicable Laws relating to planning and construction of the Access Road, including without limitation, securing and complying with all environmental permits and other permits and licenses required by the Development Order; and

(v) The Release Parcel Owner shall construct the Access Road with due diligence after commencing construction and shall coordinate such construction with the Main Parcel Owner or its designees.

(g) The Main Parcel Owner shall, at its sole cost and expense, maintain and repair in a good condition and state of repair, any Access Road constructed by the Main Parcel Owner within the Access Easement. The Release Parcel Owner shall have the right, without obligation, following not less than thirty (30) days' prior written notice to the Main Parcel Owner (except in the case of an emergency or to correct a hazardous situation, in which event the Release Parcel Owner shall give such prior notice as is reasonable under the circumstances), to maintain and repair all or any part of an Access Road constructed by the Main Parcel Owner that the Main Parcel Owner fails to maintain and repair. The Release Parcel Owner shall, at its sole cost and expense, maintain and repair, in a good condition and state of repair, any Access Road constructed by the Release Parcel Owner within the Access Easement, until such date, if ever, as the Main Parcel Owner shall commence construction of any permanent improvements on the Main Parcel that will be served by the Access Road, at which time, subject to the Release Parcel Owner's obligations under Section 6.2(b) hereof, such obligation shall be assumed

by the Main Parcel Owner; provided, however, that the Release Parcel Owner shall cause the Access Road to be in a good condition and state of repair as of the date on which such obligation is assumed by the Main Parcel Owner. Notwithstanding anything in the foregoing to the contrary, regardless of who constructs the Access Road, if the Main Parcel Owner constructs permanent improvements on the Main Parcel and the Release Parcel Owner, its Occupants or Permittees are using the Access Road, then the cost of maintaining, repairing or replacing (as the case may be) the Access Road shall be equitably shared from time to time by the Owners of the Release Parcel and the Main Parcel based on relative amount and type of traffic generated from time to time by each Parcel.

(h) The Main Parcel Owner shall have the right to change the location or dimensions of the Access Easement Area and any Access Road located thereon to a different location (or with different dimensions) within the Main Parcel upon at least thirty (30) days' prior written notice from the Main Parcel Owner to the Release Parcel Owner, provided any such relocated easement area and the Access Road constructed thereon shall: (i) not materially interfere or substantially impede access to and from the Release Parcel and Ben Hill Griffin Boulevard; (ii) maintain the same access points and grade level; (iii) be completed in accordance with the requirements of this Declaration and all Applicable Laws; and (iv) not be subordinate to any mortgages or prior encumbrances (other than the lien of unpaid taxes or assessments that are not currently due and payable). To the extent practicable, the then existing Access Road shall continue to be used until the relocated Access Road is completed and open for use. During any construction of the relocated Access Road, the Main Parcel Owner shall provide any necessary temporary access to and from the Release Parcel and Ben Hill Griffin Boulevard. The Main Parcel Owner shall bear the cost and expense of relocating the Access Easement Area and any Access Road located thereon. In the event that the Main Parcel Owner elects to change the location or dimensions of the Access Easement Area, then, subject to the requirements of this Section 6.2, the Owner of the Main Parcel Owner and the Release Parcel Owner shall each execute and deliver an amendment to this Declaration, which amendment shall indicate the new location or dimension of the Access Easement Area and the Access Road effective only after completion of construction, shall terminate the former easement and shall otherwise be in a form and substance acceptable to the Main Parcel Owner and the Release Parcel Owner. It is the intent of the foregoing that the right of access to and from Ben Hill Griffin Boulevard and the Release Parcel will not be materially adversely affected by the exercise of right of relocation of the Access Easement Area or the Access Road.

6.3 Burden and Benefit of Easements. The easements contained in this Article VI (collectively, the "Easements") shall each burden the land it passes over, under, and across and shall benefit and run with the Parcels specifically referenced above as the Parcels benefited by each such easement.

6.4 Prohibition Against Granting Further Easements. Except as specifically herein permitted, no Release Parcel Owner shall grant an easement of any type affecting any Parcel for

the benefit of any land not included within the Property without the prior written approval of the Main Parcel Owner.

6.5 Priority of Easements. Any mortgagee(s) of all or any portion of the Property shall, by recording its mortgage, be deemed to have agreed for itself and its successors and assigns, for the benefit of the Owners, that its mortgage shall be subject and subordinate to this Declaration and the Easements or any other easement hereafter granted pursuant to the terms of this Declaration and to have agreed to execute and deliver such instruments as may be reasonably requested by any Owner of the Parcels burdened or benefited by such easements for the purpose of evidencing such subordination.

6.6 General Right of Access/Indemnity. Subject to the terms, conditions and restrictions set forth in this Declaration, each Owner shall have the right, by its employees, agents and contractors, to enter upon any such portions of the Property as may from time to time be reasonably required for the exercise and fulfillment of such Owner's rights and obligations created by Article VI of this Declaration. Release Parcel Owner shall indemnify, defend and hold Main Parcel Owner, its successors and assigns, harmless from and against any and all claims, actions, damages, liability or expense (including, without limitation, attorneys' fees and expenses) occasioned by any act or omission of Release Parcel Owner, its successors or assigns, occurring upon, in or about Main Parcel Owner's property, the area subject to the Storm Water Sewer Easement or the Access Easement, arising out of such Release Parcel Owner's use of the rights, privileges and easements granted to Release Parcel Owner hereunder and/or arising out of any and all maintenance or repair activity by the Release Parcel Owner on or with respect to the Main Parcel Owner's property, except to the extent caused by an intentional or grossly negligent act or omission of Main Parcel Owner or its successors or assigns or as otherwise provided in Section 6.2.

6.7 Termination of Perpetual Easements For Non-Use. The perpetual easements provided for in Sections 6.1 and 6.2 shall terminate if such easement or easements shall not have been used for a period of two (2) years after written notice of such non-use shall have been given by the then record owner of the fee of the real estate burdened by such easements and shall have been actually received by the then Owner(s) of the real estate benefitted by such easements; provided, however, if the then Owner(s) of the fee of such real estate benefitted by such easements shall, within six (6) months following receipt of said notice, again commence to continuously use such easements and so notify, in writing, the then record owner of the fee of the real estate burdened with such easements, then such easements shall not be terminated as herein provided. Notwithstanding the foregoing, this Section 6.7 shall not be applicable during the two-year period immediately after the recording of this Declaration in the County Records.

## ARTICLE VII TAXES AND UTILITY FEES

Each Owner shall pay, or cause to be paid, before the respective dates when they shall become delinquent (subject to such Owner's right to avail itself of any legally available grace periods), all real estate taxes and general and special assessments levied and assessed on the Parcel owned by such Owner and all Improvements thereon; provided, however, that each Owner shall have the right to contest the same, at such Owner's cost and expense, and shall have

the further right to defer payment thereof so long as the validity or amount thereof is contested in good faith; provided further, however, that if at any time payment of the whole or any part thereof shall become necessary to prevent foreclosure of the lien for any such unpaid tax or assessment, because of the nonpayment thereof, then such Owner shall pay, or cause to be paid, such tax or assessment in time to prevent such foreclosure. In addition to the allocation of the Impact Fees and proportionate share payments as set forth in Section 3.7 hereof, each Owner shall be responsible for all usual and customary connection or tap in fees required to connect its Improvements to the applicable utility systems.

ARTICLE VIII  
MISCELLANEOUS SECTIONS

8.1 Term. The terms, restrictions, conditions and covenants of this Declaration (other than the easements granted herein which are perpetual) shall remain in full force and effect until December 31, 2099. Thereafter, such restrictions, conditions and covenants shall be automatically renewed for successive periods of ten (10) years each unless amended or terminated in accordance with Section 8.2 below.

8.2 Amendment; Termination. This Declaration may be amended or terminated by an instrument executed by the Owners, and, until such time as the Option expires, the Option Holder. All amendments shall become effective when recorded in the County Records. No amendment, modification, supplement or termination of this Declaration shall be effective without the written consent of the Option Holder for so long as the Option has not expired or otherwise been released of record, as evidenced by a release or quit-claim deed signed by the Option Holder and recorded in the County Records.

8.3 Enforcement. The covenants, conditions, restrictions, uses, privileges, charges and liens of this Declaration shall run with the land and be binding upon and inure to the benefit of each Owner, and its respective successors and assigns, as specified herein. A breach of any of the provisions of this Declaration shall give to the party entitled to enforce such provision the right to bring a proceeding in law or in equity against the party or parties breaching or attempting to breach this Declaration and to enjoin such party or parties from so doing or to cause such breach to be remedied or to recover damages resulting from such breach. In any legal or equitable proceedings for the enforcement of this Declaration or to restrain a breach thereof, the party or parties against whom judgment is entered shall pay the attorneys' fees and costs of the party or parties for whom judgment is entered in such amount as may be fixed by the court in such proceedings. Except as provided herein, all remedies provided under this Declaration including those at law or in equity shall be cumulative and not exclusive. No waiver of any default by a party having a right to enforce this Declaration shall be implied from any omission by such party to take any action with respect to any such default if such default continues or is repeated. The failure of a party having a right to enforce this Declaration to so do shall not be deemed a waiver of the right of any other party having such right nor a waiver to do so for a subsequent breach or the right to enforce any other provisions of this Declaration. No party having the right to enforce this Declaration shall be obligated to enforce this Declaration or liable for failure to enforce this Declaration. Notwithstanding any term or provision of this Declaration to the contrary, in the event of a claim by any Owner arising out of or relating to the Main Parcel

Owner's exercise or failure to exercise of its approval or other rights hereunder, the sole remedies available to such Owner as a result of the Main Parcel Owner's exercise or failure to exercise shall be to seek specific performance or other injunctive relief and in no event shall such Owner have any remedy at law for money damages or otherwise, such remedies being hereby expressly waived.

**8.4 Notice to First Mortgagee; Right to Cure.**

(a) No Owner shall have the right to refuse to fully perform its obligations under this Declaration as a result of another Owner's default under this Declaration unless prior to exercising any such right such Owner (i) provides written notice to the defaulting Owner's First Mortgagee (as defined below), if any, of such default and (ii) affords such First Mortgagee an opportunity to cure such default in the same period provided to the defaulting Owner under this Declaration.

(b) The Owners agree that no amendment or modification of this Declaration shall be made unless each First Mortgagee shall consent in writing to such amendment or modification, such consent not to be unreasonably withheld, conditioned or delayed. Any First Mortgagee's failure to respond to a request for its consent within thirty (30) days after receipt of such request shall be conclusively deemed as such First Mortgagee's consent to the subject amendment or modification.

(c) For purposes of this Declaration, a "First Mortgagee" of an Owner shall mean a holder of a first mortgage lien on the Parcel of such Owner that has provided to all other Owners written notice of its first mortgage lien on such Parcel in accordance with Section 8.9 of this Declaration, together with such holder's mailing address. A First Mortgagee may change its mailing address by giving notice to each Owner in accordance with the provisions of Section 8.9 of this Declaration concerning notice of a change in address by an Owner.

**8.5 Severability.** If any of the covenants, conditions or terms of this Declaration shall be found void or unenforceable for whatever reason by any court of law or of equity, then every other covenant, condition or term herein set forth shall remain valid and binding; provided, that in such event the Main Parcel Owner and all other Owners shall to the fullest extent possible modify such covenant, condition or term to the extent required to carry out the purpose of this Declaration specified in Section 2.1 and to impart validity to such covenant, condition or term.

**8.6 Owner's Liability.** From and after the closing of the sale of a Parcel, the Owner, including the Main Parcel Owner and the Release Parcel Owner so selling, shall have no further rights or liability for the obligations with respect to such Parcel that accrue after the date of the recording of the instrument of conveyance; provided, however, that nothing herein contained shall be construed so as to release any lien against the Parcel arising by reason of such liability or the Owner of such Parcel from any liabilities or obligations incurred under this Declaration prior to such recording.

**8.7 Force Majeure.** If the performance of any act or obligation under this Declaration is prevented or delayed by an act of God, fire, earthquake, flood, explosion, action of the

elements, lightning, terrorism, war, invasion, insurrection, mob violence, sabotage, malicious mischief, inability to procure or general shortage of labor, equipment or facilities, materials or supplies in the open market, failure of transportation, industry-wide strike, lockout, or action of labor union, condemnation, threatened condemnation requisitions, governmental failure to issue required approvals after submission of properly completed applications and materials, and the payment of all necessary fees to such governmental agencies, laws, orders of government or civil or military or naval authorities or any other cause whether similar or dissimilar to the foregoing not within the reasonable control of the Person required to perform such act or obligation, then such Person shall be excused from the performance of such act or obligation for so long as such person is so prevented or delayed by reason thereof. This force majeure provision shall apply to each Owner's obligations hereunder except those that require the payment of money. If any Owner contends that it is entitled to an extension of time for performance as a result of this Section 8.7, then such Owner shall provide written notice of such event of force majeure to all other Owners within thirty (30) days after the occurrence of such event. An Owner's failure to provide such notice in compliance with the foregoing shall be deemed such Owner's waiver of any claim for an extension.

8.8 Rule Against Perpetuities. If and to the extent that any of the covenants herein would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision concerned shall continue and endure only until the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of the former United States Ambassador to Great Britain, Joseph P. Kennedy, living on the Effective Date.

8.9 Notices.

(a) All notices and other instruments given or delivered pursuant to this Declaration shall be in writing and sent by: (a) prepaid United States registered or certified mail, return receipt requested; (b) by telecopy or facsimile, confirmed by registered or certified mail, return receipt requested; or (c) overnight courier. Notices (including, without limitation, those provided by telecopy or facsimile and then confirmed as provided above) shall be deemed given on the date evidenced by the postal or overnight courier receipt or other written evidence of delivery. Each Owner may specify, from time to time, as its address for purposes of this Declaration, any address and any addressee, in the continental United States, upon giving fifteen (15) days' written notice thereof to the other Owners; provided, however, that unless and until such a notice is given, an Owner's address shall be as set forth herein or, failing which, shall be deemed to be the tax mailing address for its Parcel disclosed by the County Records. The addresses, telecopy and facsimile numbers for notices to the Main Parcel Owner, unless and until another notice has been given as above provided, shall be as follows:

Main Parcel Owner: Agri-Insurance Company, Ltd.  
P.O. Box 338  
LaBelle, Florida 33975  
Attention: President

With a required copy to: Option Holder per Section 8.21

(b) If the notice being delivered pursuant to this Section 8.9 relates to any obligation of any party that provides for an Owner's deemed approval or consent after expiration of a certain response period, then the form of notice shall contain in bold capital letters prominently displayed at the top of such notice the time period within which a response must be tendered and the consequence for failure to respond within such time period. An Owner's failure to comply with the requirements of this Section 8.9(b) shall render any notice not meeting the requirements hereof ineffective for the purposes of this Declaration.

8.10 Binding Effect of Declaration. All the rights, covenants, agreements, reservations, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon the Owner of the affected Parcel, and their respective grantees, heirs, successors, personal representatives and assigns, to the extent specified herein, with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Property or any part thereof. Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and covenants herein described shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees or trustees of such parcels as fully and completely as though said easements and covenants were fully recited and set forth in their entirety in such documents.

8.11 Captions. The title, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

8.12 Governing Law. This Declaration shall be construed and applied in accordance with the laws of the State of Florida.

8.13 No Partnership. Nothing in this Declaration shall be construed to make any of the Owners and/or the Main Parcel Owner partners or joint venturers or render any Owners or the Main Parcel Owner liable for the debts or obligations of others.

8.14 Mechanics' Liens. In the event a mechanic's lien or other lien is filed on any portion of the Property as the result of any construction, alterations, repairs or other such activities alleged to be caused by the activities of an Owner of any other portion of the Property (the "Responsible Owner") or its Permittees, or anybody acting by, through or under such Owner or its Permittees, then such Responsible Owner shall cause such lien to be bonded or otherwise removed of record within thirty (30) days after receipt of written notice from the Owner against whose land the mechanic's lien shall have been filed. Nothing contained in this Declaration shall be construed as constituting the consent or request of an Owner or its Permittees, express or



implied, to or for the performance of any contractor, laborer, materialman, or vendor of any labor or services or for the furnishing of any materials for any construction, alteration or repair of any portion of the Property not owned by such Owner.

8.15 Eminent Domain. If any part of a Parcel shall be taken by eminent domain or any similar authority of law, then the entire award for the value of the land, buildings and improvements so taken shall belong to the Owner of the Parcel so taken, or to its mortgagees or Occupants, as their interest may appear, and no other Owner (or Occupant of such other Owner) shall claim any portion of such award by virtue of any interest created by this Declaration; provided, however, that any such other Owner (or Occupant) may file a collateral claim with the condemning authority over and above the value of the land, buildings and improvements being so taken to the extent of any damage suffered by such other Owner (or Occupant) resulting from the severance of the area so taken, provided that such claim shall in no way diminish or affect the award of the Owner or the mortgagee (or Occupant as to such Owners) of the Parcel taken. If the Owner of the Parcel so condemned or taken shall elect to restore, then such restoration shall be done without contribution from the Owner(s) of the area not so taken.

8.16 Incorporation by Reference. Each Exhibit referenced herein is attached hereto and is incorporated herein by such reference as if fully rewritten herein.

8.17 Entire Declaration. This Declaration and the exhibits hereto contain the entire agreement between the Owners with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements (whether written or oral) are superseded in their entirety by this Declaration. The provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against any Owner.

8.18 Counterparts. This Declaration may be executed in any one or more counterparts, each of which, when so executed, shall be deemed an original, and all such counterparts together shall constitute the same instrument. Execution of this Declaration at different times and places by the parties shall not affect the validity thereof.

8.19 No Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Parcels to the general public or for any public use or purpose whatsoever, it being the intention of the Owners that this Declaration be for the exclusive benefit of the Owners, and that nothing herein, express or implied, shall confer upon any other person any rights or remedies under or by reason of this Declaration, other than the Owners who hereafter own all or any portion of a Parcel.

8.20 No Termination. Notwithstanding any term or provision of this Agreement or any provision of law or equity to the contrary, no default by an Owner under this Declaration shall entitle any non-defaulting Owner to terminate this Declaration or to terminate such non-defaulting Owner's obligations or any other Owner's rights hereunder, it being the express understanding of the Owners that this Declaration shall continue in effect throughout its term, notwithstanding any default by any party hereto.

8.21 Rights of Option Holder. Until such time as the Option has expired or has otherwise been released of record, as evidenced by a release or quit-claim deed signed by the

Option Holder and recorded in the County Records, the Option Holder shall have the following rights: (a) any approval or consent by the Main Parcel Owner shall not be effective unless also approved or consented to in writing by the Option Holder; and (b) copies of any and all notices sent pursuant to Section 8.9 shall be simultaneously delivered to Option Holder at REJ Group, Inc., 25425 Center Ridge Road, Cleveland, Ohio 44145-4122, Attention: President, with a copy at the same address to the attention of its General Counsel. The review and approval rights of the Option Holder shall be subject to the same standards as apply to the Main Parcel Owner, including, but not limited to, for example, any time limitation or obligation to act reasonably as may be expressly herein provided.

8.22 Third Party Beneficiary. Until such time as the Option has expired or has otherwise been released of record, as evidenced by a release or quit-claim deed signed by the Option Holder and recorded in the County Records, the Option Holder is expressly acknowledged as a third party beneficiary of this Declaration entitled to enforce any violation of the conditions, covenants and restrictions contained herein to the same extent as a party under Section 8.3.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

WITNESSES:

AGRI-INSURANCE COMPANY, LTD.,  
a Bermuda corporation

Donna H. Reppus  
Name: Donna H. Reppus  
Title: Executive Secretary

By: [Signature]  
Name: Ben Hill Griffin III  
Title: President

W. Bernard Lester  
Name: W. Bernard Lester  
Title: Vice Pres Agr

Attest: [Signature]  
Name: L. Craig Simmons  
Title: Assistant Secretary

**CONSENT**

The undersigned, as the Option Holder, consents to the execution of this Declaration.

WITNESSES:

REJ GROUP, INC., an Ohio corporation

Linda Moran  
Name: LINDA MORAN  
Title: Secretary

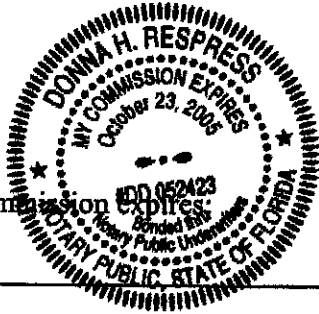
By: [Signature]  
Name: Richard E. Jacobs  
Title: President

Margaret H. Shaw  
Name: MARGARET H. SHAW  
Title: Secretary

Attest: [Signature]  
Name: William R. Hansen  
Title: ~~Assistant~~ Secretary

STATE OF Florida )  
COUNTY OF Polk ) SS:

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of October, 2002, by Ben Hill Griffin, III, the President of AGRI-INSURANCE COMPANY, LTD., a Bermuda corporation, for and on behalf of said corporation.



Donna H. Respess  
Notary Public

STATE OF OHIO )  
COUNTY OF CUYAHOGA ) SS:

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of September, 2002, by Richard E. Jacobs, the President of REJ GROUP, INC., an Ohio corporation, for and on behalf of said corporation.

Margaret H. Shaw  
Notary Public

My commission expires: **MARGARET H. SHAW**  
Notary Public - State of Ohio  
Recorded in Lorain County  
My Commission Expires May 29, 2005

PREPARED BY AND WHEN  
RECORDED RETURN TO:  
Patrick J. Sweeney, Esq.  
Thompson Hine LLP  
3900 Key Center  
127 Public Square  
Cleveland, OH 44114  
216.566.5500

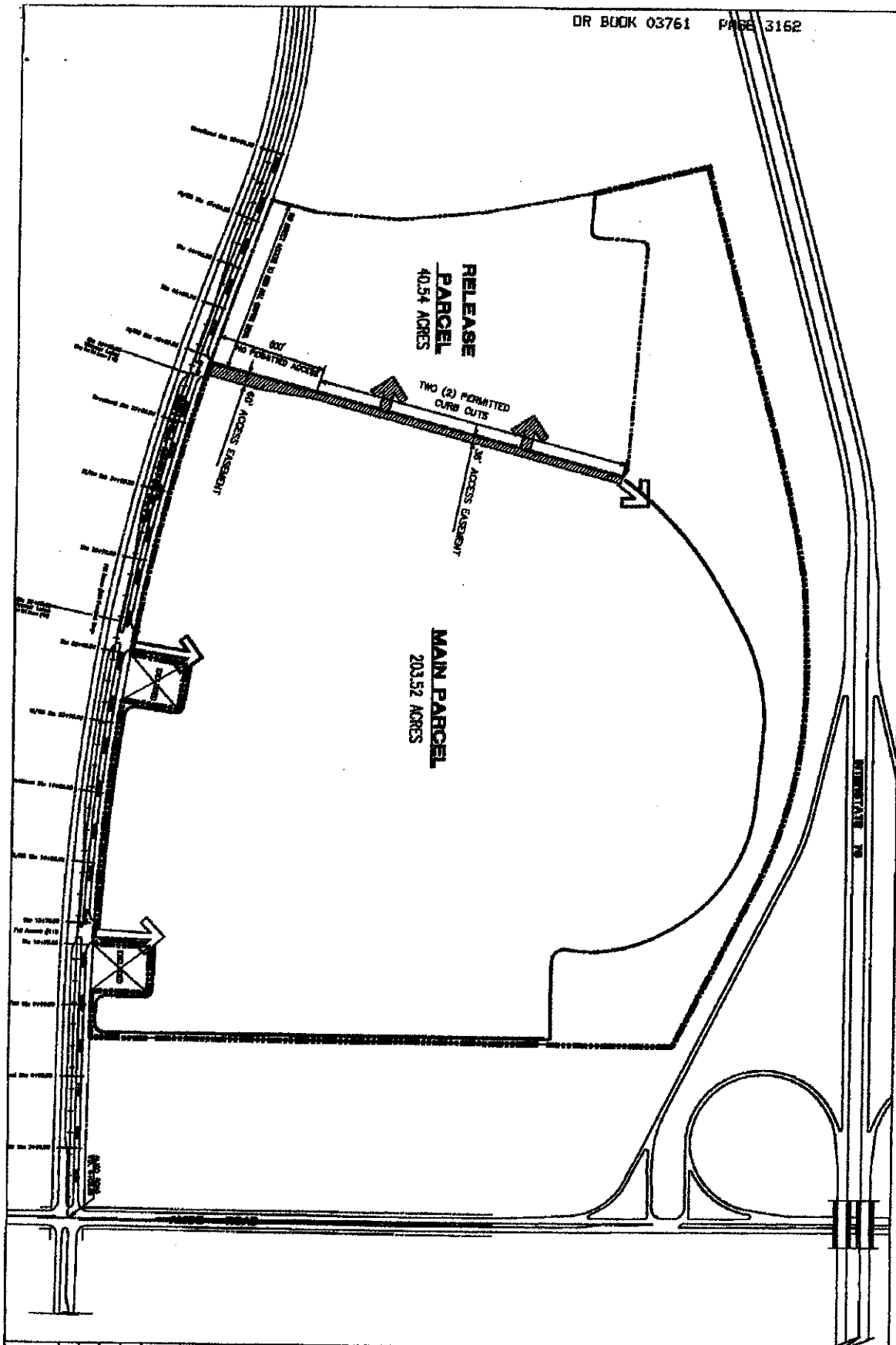
## EXHIBIT A Legal Description

University Village Regional Mall site, being part of Sections 10 and 11, Township 46 South, Range 25 East, Lee County, Florida.

All that part of Sections 10 and 11 of Township 46 South, Range 25 East, Lee County, Florida, being more particularly described as follows:

Commencing at the north line of said Section 11, South 89°42'24" East 1844.61 feet; thence South 01°01'21" West 842.23 feet to **The Point Of Beginning of The Parcel** herein described; thence continue South 01°01'21" W 176.58 feet; thence southerly 38.25 feet along the arc of a circular curve concave to the west, having a radius of 9925.00 feet, through a central angle of 00°13'15" and being subtended by a chord which bears South 01°07'59" West 38.25 feet to a point on said curve; thence North 88°45'24" West 256.00 feet; thence South 01°51'56" West 209.96 feet; thence South 87°30'45" East 256.00 feet to a point on a curve; thence southerly and southwesterly 1139.75 feet along the arc of a non-tangential circular curve concave to the northwest, having a radius of 9925.00 feet, through a central angle of 06°34'47" and being subtended by a chord which bears South 05°46'38" West 1139.12 feet to a point on said curve; thence North 80°55'58" West 256.00 feet; thence South 09°41'21" West 209.96 feet; thence South 79°41'19" East 256.00 feet to a point on a curve; thence southerly and southwesterly 1715.32 feet along the arc of a circular curve concave to the northwest, having a radius of 9925.00 feet, through a central angle of 90°54'08" and being subtended by a chord which bears South 15°15'45" West 1713.19 feet; thence South 20°12'49" West 473.55 feet; thence North 74°31'06" West 209.92 feet; thence North 85°27'53" West 381.51 feet; thence South 84°35'26" West 384.54 feet; thence South 79°14'37" West 501.77 feet; thence South 76°08'54" West 527.61 feet to the east right-of-way line of Interstate 75; thence along said right-of-way in the following five (5) courses: 1) North 14°13'09" West 1370.42 feet; 2) northwesterly 584.96 feet along the arc of a circular curve to the northeast, having a radius of 5567.58 feet, through a central angle of 06°01'11" and being subtended by a chord which bears North 11°12'33" West 584.69 feet to a point on said curve; 3) northerly 510.16 feet along the arc of a non-tangential circular curve concave to the east, having a radius of 5635.58 feet, through a central angle of 05°11'12" and being subtended by a chord which bears North 01°32'26" West 509.98 feet to a point of compound curvature; 4) northerly and northeasterly 977.35 feet along the arc of a circular curve concave to the southeast, having a radius of 2197.83 feet, through a central angle of 25°28'44" and being subtended by a chord which bears North 13°47'32" East 969.32 feet; 5) North 26°31'54" East 786.13 feet; thence leaving said right-of-way South 89°42'24" East 2628.92 feet to **The Point Of Beginning of The Parcel** herein described; Subject to easements and restrictions of record.

Containing 244.06 acres more or less. Bearings are based on the north line of Section 11, being South 89°42'24" East.



<b>EXHIBIT 'B'</b>	DATE	05/10/02
	BY	11/10/02
SCALE	1"=500'	
PROJECT	[Illegible]	

**The Richard E. Jacobs Group**  
 2000 Harbor Ridge Road, Fort Myers, FL 33907  
 Phone: 941-931-1000

**EXHIBIT 'B'**

**ALICO PROPERTY  
 FORT MYERS, FLORIDA**  
 Center Ridge Design Services, Inc.  
 Architects - Engineers  
 2000 Harbor Ridge Road, Fort Myers, FL 33907  
 Phone: 941-931-1000

EXHIBIT C  
Legal Description

University Village Regional Mall site, being part of Sections 10 and 11, Township 46 South, Range 25 East, Lee County, Florida.

All that part of Sections 10 and 11 of Township 46 South, Range 25 East, Lee County, Florida, be more particularly described as follows:

Commencing at the north line of said Section 11, South 89°42'24" East 1844.61 feet; thence South 01°01'21" West 842.23 feet to **The Point of Beginning of the Parcel** herein described; then continue South 01°01'21" W 176.58 feet; thence southerly 38.25 feet along the arc of a circular curve concave to the west, having a radius of 9925.00 feet, through a central angle of 00°13'15" and being subtended by a chord which bears South 01°07'59" West 38.25 feet to a point on said curve; thence North 88°45'24" West 256.00 feet; then South 01°51'56" West 209.96 feet; thence South 87°30'45" East 256.00 feet to a point of a curve; then southerly and southwesterly 1139.75 feet along the arc of a non-tangential circular curve concave to the northwest, having a radius of 9925.00 feet, through a central angle of 06°34'47" and being subtended by a chord which bears South 05°46'38" West 1139.12 feet to point on said curb; thence North 80°55'58" West 256.00 feet; thence South 09°41'21" West 209.96 feet; then South 79°41'19" East 256.00 feet to a point on a curve; thence Southerly and Southwesterly 1390.53 feet along the arc of a circular curve concave to the Northwest, having a radius of 9925.00 feet, through a central angle of 08°02'01" and being subtended by a chord which bears South 14°19'31" West 1389.39 feet; thence North 74°37'57" West 1935.72 feet; thence South 36°10'41" West 40.37 feet thence South 04° 32'07" West 1025.61 feet to a point of curvature; thence easterly 47.12 feet along the arc of a tangent circular curve concave to the northeast, having for its elements a radius of 30.00 feet, a central angle of 90°00'00", subtended by a chord which bears South 40°27'53" East 42.43 feet to a point of tangency; thence south 85°27'53" East 198.57 feet to a point of curvature; thence southerly 47.12 feet along the arch of a tangent circular curve concave to the southwest, having for its elements a radius of 30.00 feet, a central angle of 90°00'00", subtended by a chord which bears South 40°27'53" East 42.43 feet too a point of tangency; thence South 04°32'07" West 116.46 feet; thence South 01°39'26" West 56.21 feet; thence South 76°08'54" West 527.61 feet to the east right-of-way line of Interstate 75; then along said right-of-way in the following five (5) courses: 1) North 14°13'09" West 1370.42 feet; 2) northwesterly 584.96 feet along the arc of a circular curve to the northeast, having a radius of 5567.58 feet, through a central angle of 06°01'11" and being subtended by a chord which bears North 11°12'33" West 584.69 feet to a point on said curve; 3) northerly 510.16 feet along the arc of a non-tangential circular curve concave to the east, having a radius of 5635.58 feet, through a central angle of 05°11'12"

and being subtended by a chord which bears North 01°32'26" West 509.98 feet to a point of compound curvature; 4) northerly and northeasterly 977.35 feet along the arc of a circular curve concave to the southeast, having a radius of 2197.83 feet, through a central angle of 25°28'44" and being subtended by a chord which bears North 13°47'32" East 969.32 feet; 5) North 26°31'54" East 786.13 feet; thence leaving said right-of-way South 89°42'24" East 2628.92 feet to **The Point of the Parcel** herein described; Subject to easements and restrictions of record.

Containing 203.52 acres more or less. Bearings are based on the north line of Section 11, being South 89°42'24" East.

Legals/Exhibit C Ben Hill Griffin Parkway 091002

**EXHIBIT "D"**  
**LEGAL DESCRIPTION**  
**40.54 Acres,**

being part of Sections 10 and 11,  
Township 46 South, Range 25 East, Lee County Florida

All that part of Sections 10 and 11, Township 46 South, Range 25 East, Lee County, Florida being more particularly described as follows:

Commencing at the northwest corner of said Section 11;

thence along the north line of said Section 11, South 89°42'24" East 1844.61 feet;  
thence South 01°01'21" West 50.00 feet to the an intersection of the South right-of-way line of Allico Road and the West right-of-way line of Ben Hill Griffin Boulevard;  
thence continue on said West right-of-way line of Ben Hill Griffin Boulevard, South 01°01'21" West 968.81 feet to a point of curvature;  
thence southerly 2999.56 feet along the arc of a circular curve concave to the west, having for its elements a radius of 9925.00 feet, a central angle of 17°18'58", subtended by a chord which bears South 09°40'50" West 2988.16 feet to the POINT OF BEGINNING of the parcel herein described;  
thence North 74° 37' 57" West 1935.72 feet  
thence South 36° 10' 41" West 40.37 feet thence South 04°32'07" West 1025.61 feet to a point of curvature;  
thence easterly 47.12 feet along the arc of a tangent circular curve concave to the northeast, having for its elements a radius of 30.00 feet, a central angle of 90°00'00", subtended by a chord which bears South 40°27'53" East 42.43 feet to a point of tangency;  
thence South 85°27'53" East 198.57 feet to a point of curvature;  
thence southerly 47.12 feet along the arc of a tangent circular curve concave to the southwest, having for its elements a radius of 30.00 feet, a central angle of 90°00'00", subtended by a chord which bears South 40°27'53" East 42.43 feet to a point of tangency;  
thence South 04°32'07" West 116.46 feet;  
thence South 01°39'26" West 56.21 feet;  
thence North 79°14'37" East 501.77 feet;  
thence North 84°36'26" East 384.54 feet;  
thence South 85°27'53" East 381.51 feet;  
thence South 74°31'06" East 209.92 feet;  
thence North 20°12'49" East 473.55 feet to a point on a curve and the aforementioned West right-of-way line of Ben Hill Griffin Boulevard;  
thence northeasterly 324.79 feet along the arc of a tangent circular curve concave to the west, having for its elements a radius of 9925.00 feet, a central angle of 01°52'30", subtended by a chord which bears North 19°16'34" East 324.78 feet to the POINT OF BEGINNING of the parcel herein described;

Subject to easements and restrictions of record.

Containing 40.54 acres more or less.

Bearings are based on the north line of Section 11, being South 89°42'24" East.

Legals/Exhibit D of 40.54 acre parcel west of Ben Hill Griffin Blvd. 091002



**Donna Marie Collins - GCTC Easement to Connect to Alico Road**

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**From:** Anthony Garn <agarn@johnsoneng.com>  
**To:** "COLLINS@leegov.com" <COLLINS@leegov.com>  
**Date:** 11/29/2004 3:18 PM  
**Subject:** GCTC Easement to Connect to Alico Road  
**CC:** Pat Newton <PNewton@johnsoneng.com>

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Please find attached the recorded "THIRD AMENDMENT TO PURCHASE OPTION AND AGREEMENT CONCERNING EASEMENTS" for Gulf Coast Town Center which contains to above mentioned easement (OR BK 03761 PG 3131) on page 12 of 45. If you have any further questions, please feel free to call Patricia Newton or me.

<<OR BK 3761 PG 3120.pdf>>

Thanks,

Anthony Garn

**2158 Johnson Street**

**Fort Myers, FL 33901**

**Tel: (239) 461-2466**

**Fax: (239) 334-3661**