

**CONTRACT FOR PURCHASE AND SALE OF REAL PROPERTY**

**THIS AGREEMENT** is entered into as of this 29 day of December, 2004, between the City of Gainesville, a municipal corporation of the State of Florida, hereinafter referred to as SELLER, and, Trachtenberg Enterprise Group, Inc., hereinafter referred to as PURCHASER, whose mailing address is 10858 SE Co. Rd. 221, Starke, Florida 32091.

**WITNESSETH**

**SUBJECT TO** the terms, covenants, and conditions contained in this Agreement, SELLER agrees to sell to PURCHASER, and PURCHASER agrees to purchase from SELLER, the following described property (collectively, the "Premises"):

See Legal Description (Exhibit "A") attached hereto and made a part hereof as if set forth in full.

**1. PURCHASE AND SALES PRICE:** The purchase price for the Premises (the "Purchase Price") shall be the sum of \$100,000.00, subject to prorations and adjustments described in this Agreement. (Purchase Price is based on \$20,000.00 per acre for five acres for a total of \$100,000.00). The Purchase Price shall be payable as follows:

<b>PURCHASE PRICE AND FINANCING:</b>	\$ 100,000.00
Payable by Purchaser in U.S. Currency as follows:	
(a) Deposit received on December 13, 2004, by _____ for Escrow Agent.	\$ 500.00
(b) Total Financing.....	\$ _____
(c) Other Funds Paid Prior to Closing.....	\$ _____
(d) Balance to Close (not including PURCHASER'S closing cost, adjustments, credits, set offs and ..... Prorations as provided in this agreement).....	\$ 99,500.00
(e) _____	\$ _____
<b>TOTAL PURCHASE AND SALES PRICE</b>	<b>\$ 100,000.00</b>

On or before December 17<sup>th</sup>, 2004, PURCHASER shall deliver to Alachua County Abstract Company ("Escrow Agent"), in cash or by cashier's check or wire transfer, the sum of five hundred U.S. Dollars (\$500.00), the proceeds of which shall be held by Escrow Agent as an earnest money deposit (the "Deposit"). If the transaction contemplated by this Agreement closes, the Deposit and all interest earned on the Deposit shall be paid to the SELLER, subject to all adjustments, credits, setoffs, and prorations as provided in this agreement, along with PURCHASER'S balance due at closing. If the transaction contemplated by this Agreement does not close, Escrow Agent shall disburse both the Deposit and the interest earned on the Deposit to the party entitled to the Deposit as provided for in this Agreement.

**2. CLOSING DATE:** This Agreement will be closed and the deed and possession delivered on or before November 25, 2005, unless extended per the terms of this Agreement. This Agreement is contingent on the PURCHASER obtaining a firm commitment letter from an institutional lender for a loan to purchase and build a manufacturing plant and showroom on the Premises. Said loan commitment letter shall include the lender's agreement to fund the loan on or before the Closing Date subject only to such conditions as are customarily required by commercial banks or savings and loan associations in the county where the Premises is located. **The Seller will cooperate in obtaining an Industrial Revenue Bond to finance the purchase and construction, at the election of Purchaser.** Upon obtaining a loan commitment letter, PURCHASER shall use reasonable diligence to obtain a loan commitment. If PURCHASER, after using

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reasonable diligence fails to satisfy such loan conditions on or before the Closing Date or the lender fails or refuses to close on or before the Closing Date without fault on PURCHASER'S part, PURCHASER may elect to terminate this Agreement by giving notice to SELLER within one business day before the Closing Date. In the event PURCHASER elects to terminate this Agreement pursuant to this Section, the Deposit shall be returned to PURCHASER, whereupon both parties shall be released from all further obligations under this Agreement, except for the obligations under this Agreement that expressly survive termination of this Agreement.

**3. CONVEYANCE:** The SELLER agrees to convey title to the Premises, to the PURCHASER by Warranty Deed, free and clear of all liens and encumbrances except: prorated taxes and assessments, per this agreement; restrictions and easements of record, if any; zoning regulations and ordinances of the municipality and county in which the premises lie; and Declaration of Protective Covenants and Restrictions.

PURCHASER agrees to abide by the terms, provisions and conditions of the "Second Amended and Restated Declaration of Protective Covenants and Restrictions for the Airport Industrial Park: Unit I, Unit II, and Unit III", a copy of which is attached as Exhibit "B" and recorded in the Public Records of Alachua County, Florida, Book 2605, Page 499. This covenant shall survive the closing and conveyance of the Premises to the PURCHASER.

**4. PRORATION OF TAXES:** At closing, all ad valorem real estate taxes shall be prorated between SELLER and PURCHASER as of the date of closing. If and as applicable, SELLER shall pay all delinquent taxes, penalties and interest, and all special assessments now a lien incurred as of the date of closing, both current and reassessed and whether due or to become due. SELLER shall pay or credit on the purchase price all real estate taxes for years prior to the closing, and a portion of such taxes for the year of closing, prorated through the date of closing. The proration of undetermined taxes shall be based on 365 days in a year and on the last available tax rate and valuation. The amounts so computed and adjusted to reflect the prorations shall be final. **Any impact fees will be waived.**

**5. TITLE INSURANCE/TITLE AND ENCUMBRANCE CERTIFICATE:** SELLER shall obtain at SELLER'S expense an ALTA Owner's Title Insurance Binder Form A and Policy insuring title or a Title and Encumbrance Certificate from a recognized title insurance company or abstract company doing business in this area.

**6. EXAMINATION OF TITLE:** The PURCHASER or his Attorney shall have 20 days from receipt of the binder described in paragraph 5 within which to examine the title information acquired and to signify its willingness to accept the title, whereupon the transaction shall be concluded by the closing date as stated in paragraph 2. If the title is unmarketable or uninsurable, the SELLER shall have 30 days or a reasonable period of time within which to cure the designated defects in the title that render same unmarketable or uninsurable in the opinion of the PURCHASER or his said Agent, and the SELLER hereby agrees to use reasonable diligence in curing said defects, and upon the defects being cured and notice of that fact being given to the PURCHASER or his said Agent, this transaction shall be closed within 5 days of delivery of said notice or the closing date stated herein, whichever is later. Upon SELLER'S failure or inability to correct the unmarketability of the title within the time limit or a reasonable period of time, at the option of the PURCHASER, the SELLER shall deliver the title in its existing condition, otherwise the SELLER, holding the deposit shall return same to the PURCHASER upon demand therefore, and all rights and liabilities on the part of the PURCHASER arising hereunder shall terminate. Provided, however, that in the event of disagreement between the SELLER and PURCHASER as to the marketability of the title, the SELLER may offer a binder from a reputable and solvent title insurance company in this area, agreeing to insure said title against all exceptions other than those mentioned in this agreement and the standard printed exception, which binder shall be paid for by the SELLER.

**7. SURVEY AND ENVIRONMENTAL REPORT:** A. SURVEY: The PURCHASER shall have 30 days from the date of execution of this Contract to have the property surveyed at its expense. If the

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survey shows any encroachments upon or shortages in the land herein described or that the improvements located on the land herein described encroach on the land of others, a copy of such survey shall be furnished to the other party and the SELLER shall have the time to cure such defect as the Contract allows to cure defects of title. Failure to so eliminate such encroachments shall be regarded as a default by the SELLER.

B. ENVIRONMENTAL REPORT: (1.) Within 30 days of the execution date of this Contract, the PURCHASER may cause a Phase I environmental study to be conducted on the premises by a qualified engineer. Within 60 days of the execution date of this Contract, the PURCHASER may cause a Phase II environmental study to be conducted on the premises if the Phase I indicates the need. If the Phase I or Phase II environmental study conducted on the premises by a qualified engineer indicates the presence of environmental contamination, the PURCHASER shall have the option to rescind this agreement within 5 days of said 60 day period.

(2.) The City will provide PURCHASER with copies of all environmental studies, if any, it currently has on file with respect to the premises. However, the City makes no representation of warranty as to the accuracy of any of the information provided in said reports. The City will further provide information to PURCHASER concerning any environmental conditions known at this time with respect to the premises and will represent and warrant to the best of its knowledge that the City is unaware of any other known environmental conditions. The City is unwilling to assume responsibility for contracting directly for a Phase I or Phase II environmental study of the premises, as the PURCHASER is more capable of determining what scope of work will be necessary to meet its needs. The PURCHASER shall confer with the Alachua County Environmental Protection Department as to the required scope of work. The Phase I or Phase II environmental study shall be undertaken by the PURCHASER on its own initiative and shall be done at the PURCHASER'S own expense.

#### 8. WARRANTIES AND COVENANTS OF SELLER:

A. LITIGATION: SELLER covenants and warrants that, to the best of its knowledge, there are no suits, actions, or proceedings pending, whether involving governmental authority or private party, to which SELLER is a party and relating to the ownership or operation of the Premises, nor has SELLER any knowledge of any contemplated actions; and SELLER agrees to give PURCHASER prompt notice of any suits instituted between the date hereof and the closing date.

B. SELLER'S OWNERSHIP: SELLER warrants and covenants that SELLER has title to the exclusion of all other persons or entities to the fee simple interest in the Premises, and the same shall be conveyed by SELLER to PURCHASER at the closing; that SELLER has an unrestricted right to so transfer, subject to approval, if required, by the Gainesville-Alachua County Regional Airport Authority; that there are no agreements, leases or understandings affecting the Premises or improvements thereon other than those that have been or will be disclosed by provisions of this agreement.

C. COMPLIANCE WITH LAW: SELLER warrants and covenants that, to the best of its knowledge, there are no violations of federal, state, or local law, regulations or ordinances affecting the Premises and SELLER covenants to cure any and all such violations, if such are found to exist, prior to closing.

D. ZONING: SELLER warrants and covenants that the Premises are presently zoned Industrial 2 (I-2). SELLER further warrants and covenants that it has no knowledge or information of any existing or anticipated federal, state, or county, municipal or other orders or actions which might adversely affect PURCHASER'S construction or proposed use, as applicable.

E. CONDEMNATION: SELLER warrants and covenants that it has not received any written or official notice or otherwise been notified or have any knowledge of any condemnation proceedings against the whole or any part of the Premises.

9. POSSESSION OF THE PREMISES: Possession of the Premises shall be delivered to PURCHASER at the time of closing.

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### 10. RISK OF LOSS:

Damage or Destruction to Premises: Risk of loss to the Premises, the subject matter of this Agreement, from fire or other casualty shall be borne by SELLER until closing. If the premises is substantially damaged or destroyed by fire or other casualty prior to the closing of this transaction, the PURCHASER may: (1.) Elect to proceed with the transaction, in which event the PURCHASER shall be entitled to all insurance money, if any, payable to the SELLER under any and all policies of insurance covering property so damaged or destroyed; or (2.) Elect to rescind this agreement in which event all parties hereto shall be released from all liability hereunder and total consideration (including interest) paid by Purchase shall be forthwith returned. If the PURCHASER elects to rescind this Agreement, PURCHASER shall notify SELLER in writing within 30 days after the PURCHASER has received written notice of such damage or destruction.

**11. EMINENT DOMAIN:** If, prior to the closing date, all or any part of the Premises shall be taken by any governmental authority under its power of eminent domain, PURCHASER shall notify SELLER in writing not later than 5 business days following such taking that PURCHASER will either:

- (1.) Take possession of the Premises on the closing date without any abatement or adjustments on the purchase price in which event SELLER shall assign its right to the condemnation award before the closing date; or
- (2.) To cancel this Agreement and in that event, any consideration or down payment, however held shall be refunded to PURCHASER and this Agreement shall be void and neither party shall have any further loss, cost, damage, and right or remedy against the other.

**12. SELLER'S DOCUMENTS AT CLOSING:** The SELLER shall deliver to the PURCHASER at the closing, the following documents: (1.) Warranty Deed, conveying the Premises, executed and acknowledged as required by law, and with all documentary and revenue stamps (if any) in the proper amounts affixed thereto, at the SELLER'S expense, and (2.) No Lien Affidavit.

### 13. SPECIAL CONDITIONS:

- Zoning: The parties acknowledge that the Premises are presently zoned Industrial 2 (I-2). It is an essential condition to the purchase of the Premises that this zoning for the Premises be suitable for the PURCHASER'S proposed development and use of the Premises, and that the governmental permits necessary for said development and use be secured by the PURCHASER with no guarantee given by the SELLER. **This is a pre-condition to closing and a contingency of this contract.**
- Nothing contained in this Agreement, or execution of the same, shall be deemed to either grant to or secure for PURCHASER any development rights, nor constitute approval of any structures or facilities PURCHASER intends to construct on the Premises. PURCHASER, at its own cost and expense, shall secure any necessary rights under applicable federal, state, county and municipal zoning, environmental, and land-use laws, regulations, and ordinances to develop and use the Premises. In the event that: (1.) A final determination disapproving or otherwise preventing PURCHASER from securing the Use Rights; or (2.) The Premises are suitably zoned for PURCHASER'S intended development and use and prior to the closing there is any change in the zoning of the Premises whereby the Premises cannot reasonably be used for said intended purposes; or (3) The Use Rights are secured and prior to the closing there is any change in the Use Rights whereby the premises cannot reasonably be used for PURCHASER'S intended development and use; then and in any such event the PURCHASER shall have the option to rescind the Agreement without further liability or obligation and receive the return of all deposits and any other sums paid to the date of such rescission. PURCHASER agrees to abide by all federal, state, and local laws, rules regulations and ordinances with regard to the development of this land, including but not limited to Federal regulations regarding height restrictions.
- **OTHER REQUIREMENTS:** It is further understood and agreed that PURCHASER shall have the right to rescind this Agreement for any of the reasons set forth in the following provisions:
  - (1) **SOIL LOAD REQUIREMENTS:** The soil is determined by PURCHASER to be unsuitable for the support and construction of a facility within the PURCHASER'S project specifications and parameters.
  - (2) **UTILITIES:** PURCHASER is unable to obtain legally binding commitments satisfactory to

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PURCHASER from the appropriate private entities and city, county, state or other governmental authorities for the procurement of and access to natural gas, electricity, water, sewer and other utility services necessary for the present and future requirements for the construction and operation of PURCHASER'S use. **Available Utilities shall consist of the following at a minimum, water, sewer, electric (1200 amp, 3 phase, 208 volt), and high speed optic access – all within the right of way of public roads immediately adjacent to the premises, between property line and back of curb on premises side of road.**

(3) **EASEMENTS:** Any drainage, utility or other easements adversely affecting the lay out and construction or PURCHASER'S proposed use.

In the event PURCHASER should rescind this Agreement for any reasons set forth above, then PURCHASER shall, without any further liability or obligation, receive a return of all deposits and any sums paid to date of such rescission.

**14. NOTICE:** Any and all notices or demands by or from SELLER to PURCHASER, or PURCHASER to SELLER, shall be in writing. They will be served by certified mail. If served by certified mail, service shall be conclusively deemed made forty-eight (48) hours after the deposit thereof in the United States Mail, postage prepaid, addressed to the party to whom such notice or demand is to be given, as hereinafter provided, and the issuance of the registry receipt therefore.

A. Any notice or demand to SELLER may be given at the following address:

AS TO CITY: Attention: City Manager  
City of Gainesville  
P.O. Box 490, MS 6  
Gainesville, Florida 32602-0490

COPY TO: Attention: City Attorney  
City of Gainesville  
P.O. Box 490, MS 46  
Gainesville, Florida 32602-0490

B. Any notice or demand to the Gainesville-Alachua County Regional Airport Authority (GACRAA) may be given to the following address:

AS TO GACRAA: Attention: Chairman of the Board  
Gainesville-Alachua County Regional  
Airport Authority  
3880 N.E. 39<sup>th</sup> Avenue  
Gainesville, Florida 32609

C. Any notice or demand to PURCHASER may be given to the following address:

AS TO PURCHASER:  
Trachtenberg Enterprise Group, Inc.  
  
10858 Southeast County Road 221  
  
Starke, Florida 32091

*Handwritten signatures and dates:*  
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JLS 1/5/05

15. **X (Check If Applicable) REAL ESTATE COMMISSION:** SELLER and PURCHASER each represent that they have dealt with no broker or finder in connection with this Agreement.

16. **PARTIAL INVALIDITY:** If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, shall not be affected thereby, and all other terms, covenants, conditions and provisions of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

17. **CLOSING DATE:** Closing of the purchase and sale of the Premises (the "Closing") shall occur at Alachua County Abstract Company in Gainesville, Florida on or before November 25<sup>th</sup>, 2005 (the "Closing Date"), as stated in paragraph 2, unless extended in writing by the parties.

18. **DEFAULT:** If PURCHASER fails to perform this Contract within the time hereinabove specified, time being of the essence of this Contract, the SELLER shall have the right and option upon 5 days written notice to the PURCHASER to terminate this Contract, and the SELLER shall be relieved of all obligations under this contract.

19. **ENTIRE AGREEMENT:** This Agreement and exhibits A and B thereto, constitute the entire understanding between the parties hereto with respect to the subject matter hereof and cannot be changed, modified, amended, terminated or any provision hereof waived except by an instrument in writing signed by the parties hereto.

20. **CAPTIONS:** The parties mutually agree that the headings and captions contained in this Agreement are inserted for convenience of reference only and are not to be deemed part of or to be used in construing this Agreement.

21. **COUNTERPARTS:** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

22. **GOVERNING LAW:** The Laws of the State of Florida shall govern this Agreement, venue in Alachua County, Florida.


23. **ASSIGNABILITY:** Neither party shall assign its rights under this Agreement.

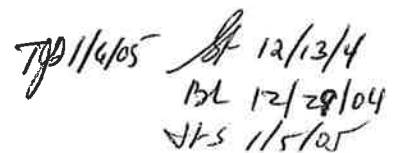
24. **APPROVALS:** This Agreement is contingent upon approval by the Gainesville City Commission and the concurrence of the Gainesville-Alachua County Regional Airport Authority.

IN WITNESS WHEREOF, the SELLER and PURCHASER have caused this Agreement to be duly executed by their authorized officers with their respective corporate seals affixed on the date first set forth above.

SELLER:

  
Barbara Lipscomb  
Interim City Manager

  
Date



City of Gainesville

STATE OF FLORIDA  
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of December, 2004, by Barbara Lipscomb who is personally known to me or who has produced \_\_\_\_\_ as identification and whom did not take an oath.



Betty A. Schille  
NOTARY PUBLIC  
Betty A. Schille  
(Notary Public print name)  
My Commission expires on: \_\_\_\_\_

WITNESSES:

Erin M. Lawrence  
Name

12/29/04  
Date

Carl A. Bell  
Name

12/29/04  
Date

APPROVED AS TO FORM AND LEGALITY

Marion Radson for  
Name

Marion Radson  
City Attorney  
City of Gainesville

\_\_\_\_\_  
Date

CONCURRED BY:

James F. Sturgis  
Name

Chairman of the Board  
Gainesville-Alachua County Regional Airport Authority

1-5-05  
Date

Judy  
Name

Secretary/Treasurer  
Gainesville-Alachua County Regional Airport Authority

1/5/05  
Date

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PSL 12/29/04  
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**PURCHASER:**

*Stephen Trachtenberg*

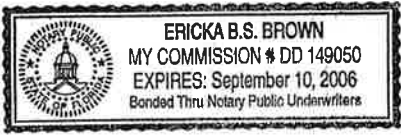
12/13/04  
Date

BY: \_\_\_\_\_  
Title President  
Company Trachtenberg Enterprise Group, Inc.

\_\_\_\_\_  
BY: \_\_\_\_\_ Date \_\_\_\_\_  
Title \_\_\_\_\_  
Company \_\_\_\_\_

STATE OF Florida )  
COUNTY OF Clay )

PERSONALLY appeared before me Stephen Trachtenberg who being duly sworn, says that (s) he saw the corporate seal of \_\_\_\_\_ affixed to the foregoing instrument and that (s) he also saw \_\_\_\_\_ (Assistant) Secretary of said corporation sign and attest the same and that (s) he with \_\_\_\_\_ witnessed the execution and delivery thereof as the act and deed of the said corporation.



*Ericka B.S. Brown*  
NOTARY PUBLIC  
Ericka B.S. Brown  
(Notary Public print name)  
My Commission expires on September 10, 2006

**WITNESSES:**

*Robin Jones*  
Name

12-13-04  
Date

*Melba S. Anderson*  
Name

12-13-04  
Date

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*12/28/04*  
*MS 1/5/05*



**EXHIBIT A**

**Legal Description**

**Lot Three (3), AIRPORT INDUSTRIAL PARK, UNIT I, as per plat thereof recorded in Plat Book "Q", Page 31, of the Public Records of Alachua County, Florida.**

# EXHIBIT B

RECORDED IN OFFICIAL RECORDS  
INSTRUMENT # 1908414 27 PGS  
2003 FEB 13 12:42 PM BK 2605 PG 4  
J. K. "BUDDY" IRBY  
CLERK OF CIRCUIT COURT  
ALACHUA COUNTY, FLORIDA  
CLERK2 Receipt#126526

**After Recording, please return to**  
Walter Mathews, IV, Assistant City Attorney  
Office of the City Attorney  
City of Gainesville  
200 East University Avenue, Suite 425  
Gainesville, Florida 32602

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## **SECOND AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS FOR THE AIRPORT INDUSTRIAL PARK: UNIT I, UNIT II, AND UNIT III LOCATED IN THE CITY OF GAINESVILLE, ALACHUA COUNTY, FLORIDA**

This Second Amended and Restated Declaration of Protective Covenants and Restrictions for the Airport Industrial Park: Unit I, Unit II, and Unit III (hereinafter Restated Declaration) is made this 16<sup>th</sup> day of January, 2003, by the CITY OF GAINESVILLE, FLORIDA, a municipal corporation of the State of Florida (hereinafter referred to as "Declarant").

### WITNESSETH:

**WHEREAS**, Declarant is the owner of the real property more particularly described as follows, to wit:

**Airport Industrial Park: Unit I** - This plat consists of 79.69 acres, as recorded in Plat Book Q, Pages 31 and 32, Public Records of Alachua County, Florida. For the purpose of this Restated Declaration, Unit I consists of Lots 1 through 7 inclusive, but excludes Lots 8 through 10 inclusive.

**Airport Industrial Park: Unit II** - This plat consists of 33.47 acres, as recorded in Plat Book T, Page 37, Public Records of Alachua County, Florida. For the purpose of this Restated Declaration, Unit II consists of Lots 12, 13, and 14 inclusive, but excludes Lot 11; and

**Airport Industrial Park: Unit III** - This plat consists of 45.80 acres, as recorded in Plat Book T, Page 88, Public Records of Alachua County, Florida. For the purpose of this Restated Declaration, Unit III consists of Lots 20 through 23.

(The property in Unit I, Unit II and Unit III are hereinafter collectively referred to as the "Property"); and

**WHEREAS**, the total acreage of the Property is 93.35 acres, less and except all roadways and rights-of-way; and

**WHEREAS**, the Declarant owns a total of 49.06 acres of Property in Unit I, Unit II and Unit III; and

**WHEREAS**, Nordstrom, Inc., a corporation of the State of Washington (hereinafter referred to as "Nordstrom"), owns a total of 24.65 acres of Property in Unit III; and

**WHEREAS**, Declarant and Nordstrom (herein collectively referred to as the "Aggregate Owners") own in the aggregate at least sixty-six and 2/3% (66 2/3%) of the total acreage of the Property (to the nearest one-hundredth of an acre), less and except all roadways and rights-of-way. Thus, pursuant to the Restated Declaration, Aggregate Owners shall have the right to establish and declare such amendments, modifications and supplements to this Restated Declaration, or to rescind this Restated Declaration, as such Aggregate Owners shall from time to time deem to be appropriate and which are in compliance with the restrictions and easements of record and the regulations of all agencies with appropriate governmental jurisdiction.

**WHEREAS**, This Restated Declaration for the Property is intended to, and shall, supersede and replace in its entirety the Amended Declaration of Protective Covenants and Restrictions for the Airport Industrial Park: Unit I and Unit II, recorded in Official Records Book 2107, Page 2049, of the Public Records of Alachua County, Florida and Addition of Airport Industrial Park: Unit III, recorded in Official Records Book 2166, Page 764, of the Public Records of Alachua County, Florida; and

**WHEREAS**, Declarant desires to develop a high quality light industrial and business park on the Property presently known as Airport Industrial Park; Unit I, Airport Industrial Park; Unit II, and Airport Industrial Park Unit III, and to provide for the maintenance, preservation, control and proper development of the Property, including, without limitation, provisions for the physical appearance and compatibility of individual building sites and improvements constructed thereon; and

**WHEREAS**, Declarant deems it desirable to protect the owners of building sites within the real property against improper development and use of surrounding sites and buildings as would impair or depreciate the value thereof; and

**WHEREAS**, Declarant desires to provide adequate setbacks, signage controls, landscaped areas, off-street parking and loading facilities in order to promote the general welfare of the Property; and

**WHEREAS**, Declarant desires to subject the Property to the covenants, restrictions, easements, agreements, charges and liens hereinafter set forth, each of which is for the protection and benefit of the Property and for the benefit of all subsequent owners of any part of the

Public Records of Alachua County, Florida.

Lots 20 through 23, of the Airport Industrial Park: Unit III, as recorded in Plat Book T, Page 88, Public Records of Alachua County, Florida.

**"Restated Declaration"** - shall mean this Second Amended and Restated Declaration of Protective Covenants and Restrictions for the Airport Industrial Park: Unit I, Unit II, and Unit III, located in the City Of Gainesville, Alachua County, as it may from time to time be amended or supplemented.

**"Restrictions"** - shall mean the covenants, conditions, and restrictions set forth in the Declaration.

**"Land Development Code"** - shall mean Chapter 30 of the Code of Ordinances of the City of Gainesville, Florida, or as may be amended from time to time.

## ARTICLE II GENERAL CHARACTER AND PURPOSES OF CONDITIONS

**Section 2.01.** It is the intent of these Protective Covenants to provide conditions, covenants, restrictions, reservations, standards and easements to insure that the Airport Industrial Park will always be maintained as an attractive park-like setting for industry with ample landscaped open areas; attractive high quality structures; proper and desirable uses and appropriate development and improvement of all property; to protect the Owners, lessees and sublessees of property against improper and undesirable use of surrounding property; to protect against depreciation in value of property, to guard against erection of structures built of improper or unsuitable materials or design, to encourage the erection of attractive improvements with appropriate locations; to prevent haphazard and inharmonious improvement of property; and to provide generally a quality development.

## ARTICLE III PERMITTED AND PROHIBITED USES AND ACTIVITIES

**Section 3.01.** The Property shall be used solely for the purposes of light industrial development, offices, research, display, warehousing, distribution, laboratories, assembly and processing, jobbing, wholesaling and other uses normally associated with the light manufacturing, assembly and distribution found in a high quality light industrial or business park. All uses shall additionally comply with the regulations of all agencies with appropriate governmental jurisdiction. If such permitted uses of this Declaration are inconsistent with the Declarant's Land Development Code, the standards herein contained shall be deemed cumulative and in addition to said Land Development Code, and not in lieu of any such regulations.

**Section 3.02.** Prohibited Uses and Activities. No noxious or offensive trades, services or

any building site until the building or other improvement plans, specifications and site plan showing the location of such building or improvements on the particular building site have been submitted to and approved in accordance with the City of Gainesville's Land Development Code. Additionally, prior to the issuance of any development order, GACRAA shall have the right to review and comment on any plans submitted to the Declarant as relates to compliance with this Declaration.

**Section 4.02.** GACRAA shall have the right to waive or vary the Restrictions in particular respects whenever in its opinion such waiver or variance will not be detrimental to the intent and purpose of this Declaration. In reviewing an application for waiver or variance GACRAA shall apply the following criteria, as applicable:

- (a) Conformity and harmony of external design with existing or other proposed structures upon the Property and upon adjacent properties and uses;
- (b) The location of the improvements on the building site and the location of any building improvement on adjacent properties;
- (c) The effect of the anticipated use thereof upon adjacent structures, uses and operations;
- (d) The location of any proposed improvements, buildings or structures with respect to the topography, grade and finished ground elevation of the Property and adjacent properties; and
- (e) The general purpose and effect of the standards provided in this Declaration; provided, however, that GACRAA shall not be liable for damages by reason of mistaken judgment or negligence of itself, its agents or employees, arising out of or in connection with the approval or disapproval of any such waiver or variance.

**Section 4.03.** All improvements upon the Property shall be constructed in conformity with the regulatory requirements of all agencies with appropriate governmental jurisdiction.

**Section 4.04.** All construction work shall, upon approval by Declarant of the plans therefore, be commenced and completed with due diligence and dispatch, and upon completion the site shall be fully landscaped as provided in such plans.

**Section 4.05.** The terms and conditions of this ARTICLE IV, and all approval rights contained herein, shall remain in full force and effect notwithstanding the loss, damage or destruction, by whatever cause, of all or any portion of the improvements constructed in accordance with this ARTICLE IV. Any subsequent reconstruction, renovation, refurbishing or rebuilding of any such loss, damaged or destroyed improvements shall be performed and completed in accordance with the terms of this Declaration, including, without limitation, the terms and conditions of this ARTICLE IV.

on facilities which have access to and from NE 40th Terrace and NE 49th Terrace.

**Section 6.03.** Colors and textures of exterior building structures shall be harmonious and compatible with the colors of other buildings within the Property, subject to the approval of the Declarant's appropriate reviewing body.

**Section 6.04.** All exterior surfaces shall have a finished treatment. The use of two or more colors is strongly encouraged to enhance the building exterior and to create design accents. Building and architectural details (including flashing and down spouts) shall have a color that compliments or accents the main building.

**Section 6.05.** The use of fascias, canopies, and other multi-dimensional exterior features is encouraged in order to break up large, uniform wall surfaces. Such features should be in proportion to the wall heights and building mass.

**Section 6.06.** A parapet, fascia, or comparable architectural detail shall be provided to screen pitched roofs, roof-mounted utilities, and varying roof lines.

**Section 6.07.** The principal building on any lot shall cover a minimum ground area of ten thousand (10,000) square feet.

**Section 6.08.** All buildings shall be constructed in such a way as to be expandable, to the maximum building size permitted for the lot unless prohibitive due to restrictive easements or excessive topography.

**Section 6.09.** All utility service lines shall be underground. Service lines that must cross the right-of-way shall be perpendicular and shall be constructed by jack and bore.

## ARTICLE VII PARKING

**Section 7.01.** Parking on public right-of-way or on any public roadway is not permitted.

**Section 7.02.** Parking spaces, truck docks and curb cuts shall be so located that there shall be no maneuvering in any adjacent street or right-of-way. Driveways, parking areas and loading spaces shall be paved with concrete or asphalt and shall be curbed and guttered.

## ARTICLE VIII GRADING AND LANDSCAPING

**Section 8.01.** All open areas on any property not used for building, structures, parking, access roads and loading areas shall be suitably graded and drained and shall be seeded and maintained in

equipment, radio or television antenna, satellite dish, or any other devices which project vertically more than 1 1/2 feet above the roof or roof parapet shall be screened by a solid visual barrier which is detailed consistent with the building.

**ARTICLE XI  
SITE AND BUILDING MAINTENANCE, LIENS**

**Section 11.01.** Every Owner of a developed site within the Property shall maintain all buildings, landscaping, fences, drives, parking lots and other structures and improvements located thereon in good and sufficient repair, and said Owner shall keep such premises planted, the lawns cut, shrubbery trimmed, windows cleaned and glazed and otherwise maintain such sites in an aesthetically pleasing manner. All areas upon any such site shall be free at all times from debris, papers, excessive leaves, branches and trash of all kinds. Any structure, landscaping, driveway or parking lot in any site within the Property which is damaged by the elements, vehicles, fire or any other cause either:

- (a) Shall be repaired by the Owner of such site as promptly as the extent of damage will permit, or
- (b) Shall be removed by the Owner of such site so as to maintain an aesthetically pleasing appearance.

Any building or structure located upon any site within the Property, which should become vacant for any reason shall be locked and completely secured in order to prevent the entrance therein by unauthorized persons.

**Section 11.02.** Upon notification by Declarant or GACRAA to any Owner of any site within the Property that said building or site occupied or owned by such party does not conform with the requirements of this Declaration, such person or entity shall, within 5 business days after written notice for the grounds maintenance, and within fifteen (15) working days for building repair and maintenance, cause such site or building to conform with the requirements of this Declaration. In the event of noncompliance, Declarant or GACRAA may cause such building or site to conform herewith at the expense of the Owner of said property, and any monies expended by Declarant or GACRAA in so doing shall be:

- (a) The personal obligation of the Owner of said building site within the Property at the time when the expenses are incurred by Declarant or GACRAA, and
- (b) A charge and continuing lien on the building site in question against which each such expense is made.

Any monies expended by Declarant or GACRAA shall bear interest from date of disbursement until paid at the highest rate allowed by law and shall be paid by such owner or tenant to Declarant or

property, shall within 10 days after passage thereof be recorded upon the public records of Alachua County, Florida, and upon recording shall constitute prima facie evidence of the reversion of said property to Declarant.

Declarant may by appropriate resolution extend the aforesaid 2-year time limitation if in its discretion good cause therefore is shown by Owner.

Once having commenced construction, an Owner shall diligently proceed to complete such construction without delay.

Prior to construction and completion of the initial building and improvements, required herein and as approved by the Declarant, the property shall not be leased, sold, conveyed or otherwise transferred to any third party, and Owner hereby and by acceptance of deed agrees that no lease, sale, transfer or other conveyance shall be agreed to or consummated prior to completion of said building improvements, except that the property, with clear title thereto, may be returned to Declarant for refund in an amount equal to the purchase price paid the Owner less any real estate commissions paid by Declarant, and less any credits or refunds paid to Owner by the Declarant.

### ARTICLE XIII DIVISION OF LOTS

**Section 13.01:** Property may be further divided or subdivided, provided, however, Owner by acceptance of any deed or conveyance agrees not to divide, subdivide, sell, convey, or lease the property or any part thereof, in lesser size than 2 contiguous acres. Nothing herein contained shall be deemed to prohibit the consolidation of two or more lots into a larger building site under one ownership.

### ARTICLE XIV DURATION OF RESTRICTIONS

**Section 14.01.** The Restrictions of this Declaration shall run with the title to and bind the Property, and shall inure to the benefit of and be enforceable by Declarant, GACRAA, or the Owner of any portion of the Property, or the respective legal representatives, heirs, successors and assigns thereof, for a period of twenty (20) years from the date of recordation of this Declaration in the Circuit Court Clerk of Alachua County, Florida. Upon the expiration of said 20-year period, this Declaration shall be automatically renewed and extended, as permitted by the laws of the State of Florida, for successive renewal periods of ten (10) years each unless expressly terminated by an instrument executed by Declarant or its successors in interest and duly recorded in the aforesaid Records of Alachua County, Florida.



agree to restrict the height of buildings, structures, objects of nature growth and other obstructions on the property so as to comply with criteria or standards prescribed Federal Aviation Administration (FAA) Regulations, Part 77, or as it may be amended from time to time, and any other lawful authority having such jurisdiction over the property, and shall prevent any use of the property which would interfere with or adversely affect the landing or takeoff of aircraft at the Gainesville Regional Airport or interfere with air navigation or communication facilities serving the Gainesville Regional Airport, or otherwise constitute an airport hazard, or interfere with the operation or maintenance of the Gainesville Regional Airport, or shall in any way be in violation of or inconsistent with prevailing FAA regulations or other easements or restrictions of record.

**Section 16.04.** Nothing contained herein or in any conveyance deed or plat shall be construed to be a conveyance to an Owner of any right to property located in any public right-of-way, street or service road, or any other right-of-way property owned by the Declarant.

## ARTICLE XVII AMENDMENTS AND RESCISSION

**Section 17.01.** Owners, including Declarant and GACRAA, owning in the aggregate at least sixty-six and 2/3% (66 2/3%) of the total acreage of the Property (to the nearest one-hundredth of an acre), less and except all roadways and rights-of-way, shall have the right to establish and declare such amendments, modifications and supplements to this Declaration, or to rescind this Declaration, as such Owners shall from time to time deem to be appropriate and which are in compliance with the restrictions and easements of record and the regulations of all agencies with appropriate governmental jurisdiction. Any amendment, modification, supplement or rescission of this Declaration shall be evidenced by the recording of an appropriate instrument in the Public Records of Alachua County, Florida, which instrument

- (a) Shall be executed with the same formalities as are required for the execution of a deed;
- (b) Shall be signed by the owners of at least sixty-six and 2/3 percent (66 2/3%) of the total acreage of the Property, less and except all roadways and rights-of-way;
- (c) Shall set forth therein the total acreage of land owned by each signatory of said instrument; and
- (d) Shall set forth therein the total acreage of the Property less and except all roadways and rights-of-way.

Any Owner of a site within the Property may assign to any other Owner, or to any lessee of an owner under a lease, the right hereinabove granted to amend, modify, supplement or rescind, in conjunction with other Owners, this Declaration; provided, however, that each and every such assignment shall be evidenced by an appropriate written instrument recorded in the Public Records of Alachua

IN WITNESS WHEREOF, Declarant has caused this document to be executed in its behalf by its Mayor-Commissioner and its Clerk of the Commission, pursuant to proper Resolution, duly adopted and entered on the minutes of the Gainesville City Commission on this 16<sup>th</sup> day of

January, 2002 ~~5A~~  
(2003)

[Signature]  
THOMAS D. BUSSING, MAYOR

ATTEST:  
[Signature]  
Clerk of the Commission

Approved as to form and legality:  
[Signature]  
City Attorney

Reviewed and approved by the Gainesville - Alachua County Regional Airport Authority this 13<sup>th</sup> day of February, 2002.3

[Signature]  
CHAIR

ATTEST:  
[Signature]  
Secretary/Treasurer

Executed this 19<sup>th</sup> day of November, 2002.

**Property Description:**

**LOT Fourteen (14), AIRPORT INDUSTRIAL PARK : UNIT II, as per plat thereof recorded in Plat Book "T", Page 37, of the Public Records of Alachua County, Florida.  
Tax Parcel 08162-14-000  
5.23 acres**

Signed, sealed and delivered in the presence of:

**HEAT-PIPE TECHNOLOGY, INC.,  
a Florida Corporation,**

Sheron K. Johnson Dinh  
Witness

Print Name: SHERON K. JOHNSON

Mindy McBride  
Witness

Print Name: MINDY M<sup>C</sup>BRIDE

**STATE OF FLORIDA  
COUNTY OF ALACHUA**

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of November, 2002, by Khanh Dinh, who is personally known to me or has produced \_\_\_\_\_ as identification.



**Sheron K. Johnson**  
Commission #DD153154  
Expires: Oct 27, 2006  
Bonded Thru  
Atlantic Bonding Co., Inc.

Sheron K. Johnson  
Notary Public, State of Florida

My Commission Expires: \_\_\_\_\_

Executed this 18<sup>th</sup> day of December, 2002.

Property Description:

LOT Twenty-Three (23), AIRPORT INDUSTRIAL PARK: UNIT III, as per plat thereof recorded in Plat Book "T", Page 88, of the Public Records of Alachua County, Florida.  
Tax Parcel 08162-23-000  
24.65 acres

Signed, sealed and delivered in the presence of:

NORDSTROM, INC.,  
a State of Washington Corporation,

David L Mackie

Witness

Print Name:

Pat Jones

Witness

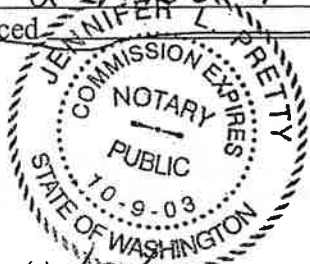
Print Name:

Yickie Shimada

STATE OF FLORIDA  
COUNTY OF ALACHUA

Washington  
King

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of December, 2002, by DAVID L. MACKIE, who is personally known to me or has produced \_\_\_\_\_ as identification:



Jennifer L Prettly  
Notary Public, State of Florida

My Commission Expires:

10/9/03



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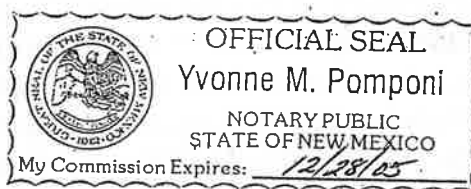
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STATE OF NM  
COUNTY OF Bernalillo

The foregoing instrument was acknowledged before me this 30 day of January, 2003, by **John Lance Berrenberg** as Trustee of the Berrenberg Revocable Trust, who is personally know to me or has produced \_\_\_\_\_ as identification.

Yvonne M. Pomponi  
Notary Public, State of NM

My commission Expires: 12/28/05

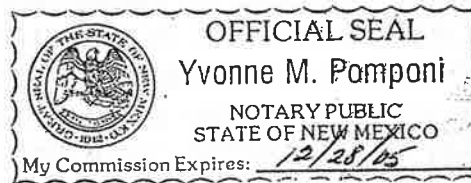


STATE OF NM  
COUNTY OF Bernalillo

The foregoing instrument was acknowledged before me this 30 day of January, 2003, by **Terri Worrell Berrenberg** as Trustee of the Berrenberg Revocable Trust, who is personally know to me or has produced \_\_\_\_\_ as identification.

Yvonne M. Pomponi  
Notary Public, State of NM

My commission Expires: 12/28/05



A PARCEL OF LAND LOCATED IN SECTION 24, TOWNSHIP 9 SOUTH, RANGE 20 EAST, ALACHUA COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A FOUND 4"X4" CONCRETE MONUMENT MARKING THE NORTHWEST CORNER OF SECTION 24, TOWNSHIP 9 SOUTH, RANGE 20 EAST, ALACHUA COUNTY, FLORIDA, THENCE ALONG THE NORTH LINE OF SAID SECTION 24 NORTH  $89^{\circ}18'20''$  EAST A DISTANCE OF 1986.00 FEET TO A FOUND 4"X4" CONCRETE MONUMENT MARKING THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 480.00 FEET, A DELTA OF  $37^{\circ}57'25''$ , AND A CHORD BEARING SOUTH  $03^{\circ}34'17''$  EAST 312.20 FEET, THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 317.99 FEET TO A FOUND 4"X4" CONCRETE MONUMENT (#3524) MARKING THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 50.00 FEET, A DELTA OF  $85^{\circ}49'40''$ , AND A CHORD BEARING SOUTH  $20^{\circ}22'16''$  WEST 68.09 FEET, THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 74.90 FEET TO A FOUND 4"X4" CONCRETE MONUMENT (#3524) MARKING THE NORTH RIGHT-OF-WAY LINE OF NORTHEAST 49<sup>TH</sup> AVENUE (80 FOOT RIGHT-OF-WAY), THENCE ALONG SAID RIGHT-OF-WAY LINE NORTH  $63^{\circ}17'06''$  EAST A DISTANCE OF 645.97 FEET TO A FOUND 4"X4" CONCRETE MONUMENT (#3524), THENCE SOUTH  $30^{\circ}06'54''$  WEST A DISTANCE OF 581.52 FEET TO A FOUND 4"X4" CONCRETE MONUMENT (#3524), THENCE NORTH  $59^{\circ}53'06''$  EAST A DISTANCE OF 425.58 TO A SET 5/8" REBAR & CAP (#3524) MARKING THE POINT OF BEGINNING, THENCE CONTINUE NORTH  $59^{\circ}53'06''$  EAST A DISTANCE OF 462.47 FEET TO A FOUND 4"X4" CONCRETE MONUMENT MARKING THE WEST RIGHT-OF-WAY LINE OF NORTHEAST 52<sup>ND</sup> DRIVE (80 FOOT RIGHT-OF-WAY), THENCE ALONG SAID RIGHT-OF-WAY LINE NORTH  $30^{\circ}06'54''$  WEST A DISTANCE OF 186.28 FEET TO A SET 5/8" REBAR AND CAP (#3524) MARKING THE INTERSECTION OF SAID RIGHT-OF-WAY LINE WITH THE NORTH LINE OF SECTION 24, TOWNSHIP 9 SOUTH, RANGE 20 EAST, THENCE ALONG SAID NORTH LINE SOUTH  $89^{\circ}18'20''$  WEST A DISTANCE OF 530.95 FEET TO A SET 5/8" REBAR AND CAP (#3524) MARKING THE INTERSECTION OF SAID NORTH LINE WITH THE WEST LINE OF LOT 21 OF THE AIRPORT INDUSTRIAL PARK, UNIT III, THENCE ALONG SAID WEST LINE SOUTH  $30^{\circ}06'54''$  EAST A DISTANCE OF 447.09 FEET TO THE POINT OF BEGINNING, CONTAINING 3.36 ACRES MORE OR LESS.

EXHIBIT

A



## DESCRIPTION AS PREPARED BY THIS FIRM:

A PARCEL OF LAND LOCATED IN THE NORTH ONE HALF OF SECTION 23, TOWNSHIP 9 SOUTH, RANGE 20 EAST, ALACHUA COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A FOUND 4"x4" CONCRETE MONUMENT MARKING THE NORTHEAST CORNER OF SECTION 23, TOWNSHIP 9 SOUTH, RANGE 20 EAST, ALACHUA COUNTY, FLORIDA; THENCE ALONG THE NORTH LINE OF SAID SECTION 23, S 88° 59' 23" W A DISTANCE OF 371.77 FEET TO A SET 5/8" REBAR AND CAP (#3524) MARKING THE EAST RIGHT-OF-WAY LINE OF N.E. 40th TERRACE (RIGHT-OF-WAY VARIES), THENCE ALONG SAID NORTH LINE OF SECTION 23, S 89° 04' 11" W A DISTANCE OF 78.80 FEET TO A SET 5/8" REBAR AND CAP (#3524) MARKING THE POINT OF BEGINNING, THENCE CONTINUE ALONG SAID NORTH LINE S 89° 01' 24" W A DISTANCE OF 731.00 FEET TO A SET 5/8" REBAR AND CAP (#3524), THENCE S 01° 03' 45" E A DISTANCE OF 651.34 FEET TO A SET 5/8" REBAR AND CAP (#3524), THENCE N 86° 00' 46" E A DISTANCE OF 6.45 FEET TO A FOUND 4"x4" CONCRETE MONUMENT, THENCE N 89° 09' 04" E A DISTANCE OF 41.94 FEET TO FOUND 4"x4" CONCRETE MONUMENT, THENCE N 89° 31' 46" E A DISTANCE OF 430.33 FEET TO A FOUND 4"x4" CONCRETE MONUMENT MARKING THE WEST RIGHT-OF-WAY LINE OF N.E. 40th TERRACE (RIGHT-OF-WAY VARIES) AND ALSO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A DELTA OF 24° 21' 07" A RADIUS OF 626.90 FEET AND A CHORD BEARING N 12° 24' 10" EAST 264.44 FEET, THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 266.44 FEET TO A SET 5/8" REBAR AND CAP (#3524), THENCE N 24° 34' 43" E A DISTANCE OF 440.75 FEET TO THE POINT OF BEGINNING, CONTAINING 8.73 ACRES MORE OR LESS.

