

**DECLARATION OF CONDOMINIUM OF
PROGRESSIVE AUTO STORAGE CONDOMINIUM**

MADE this 24 day of August, 1999, by PROGRESSIVE AUTO STORAGE, L.L.C., a Florida Limited Liability Company, hereinafter called the "Developer", for itself and its successors, grantees, and assigns.

WHEREIN the Developer makes the following declarations:

1. **THE PROPERTY.** The Developer is owner of real property located in Collier County, Florida, as more particularly described in Exhibit "A" attached hereto (the "Property").

2. **SUBMISSION STATEMENT.** The Developer hereby submits all of the Property described in Exhibit "A", and appurtenances belonging thereto, and all other property, real, personal or mixed, located on and intended for use in connection therewith, to the condominium form of ownership and use in the manner provided by the Florida Condominium Act as it exists on the date of recording this Declaration; excluding therefrom, however, all public utility installations, cable television lines, and other similar equipment, if any, owned by a utility furnishing services to the Condominium.

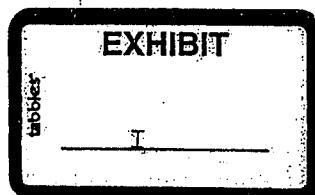
2(A) **COVENANTS RUN WITH PROPERTY.** The covenants and restrictions contained in this Declaration shall run with the property and be binding upon and inure to the benefit of all present and future owners of condominium parcels. The acquisition of title to a unit, or any interest in the condominium property, or the lease, occupancy, or use of any portion of the condominium property shall constitute an acceptance and ratification of all provisions of the Declaration as it shall be amended from time to time, and an agreement to be bound by its terms. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan of condominium ownership.

3. **NAME.** The name by which this Condominium shall be identified is Progressive Auto Storage Condominium, and it is located at 720 Bald Eagle Drive, Marco Island, Florida.

4. **DEFINITIONS.** The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, unless the context otherwise requires.

4(A). **"Unit Owner"** or **"Owner"** means any person who owns a record fee simple interest in a unit in this Condominium.

4(B) **"Assessment"** means a share of the funds required for the payment of common expenses which from time to time is assessed against the units.



4(C) "Association" means the Progressive Auto Storage Condominium Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

4(D) "Association Property" means all property, real or personal, owned or leased by the Association for the use and benefit of unit owners.

4(E) "Board of Directors" or "Board" means the representative body which is responsible for the administration of the Association's affairs, and is the same body referred to in the Condominium Act as the "Board of Administration".

4(F) "Common Elements" means the portion of the Condominium not included in the units as defined in Florida Statutes.

4(G) "Condominium Documents" means and includes this Declaration and all recorded exhibits hereto, as amended from time to time.

4(H) "Fixtures" means those items of tangible personal property which by being physically annexed or constructively affixed to the unit have become accessory to it and part and parcel of it, including but not limited to, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, ceiling or wall coverings.

4(I) "Institutional Mortgagees" means the mortgagee (or its assignee) of a first mortgage against a condominium parcel, which mortgagee is a bank, savings and loan association, private mortgage company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the government of the United States of America. The term also refers to any holder of a first mortgage against a condominium parcel, which mortgage is guaranteed or insured, as evidenced by a recorded instrument, by the Federal Housing Administration, the Veterans Administration, any agency of the government of the United States of America or by any other public or private corporation engaged in the business of guaranteeing or insuring residential first mortgage loans, and their successors and assigns.

4(J) "Lease" means the grant by a unit owner of temporary right of use of the owner's unit for valuable consideration.

4(K) "Limited Common Elements" means and includes those common elements which are reserved for the use of a certain unit or units to the exclusion of other units.

4(L) "Primary Institutional Mortgage" means that institutional mortgagee which, at the time a determination is made, holds more first mortgages on units in the Condominium than any other institutional mortgagee, such determination to be made by reference to the number of units encumbered, and not by the dollar amount of such mortgages.

4(M) "Rules and Regulations" means the rules and regulations promulgated by the Board of Directors concerning the use of the common elements and the operation of the Association.

4(N) "Sold" means closing on the sale of a unit.

5. DESCRIPTION OF IMPROVEMENTS: SURVEY AND PLANS.

5.1 Survey and Plot Plans. Attached hereto as Exhibits "B" and "C" are sufficient surveys of the Property being submitted to condominium ownership, plot plans and floor plans which graphically describe the improvements in which units are located, and which show all the units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, the exhibit is in sufficient detail to identify each unit, the common elements and limited common elements, and their relative locations and dimensions.

5.2 Unit Boundaries - Ground Floor. The ground floor shall be a single unit and shall include that part of the building that lies within the following boundaries, subject to subsection (D) below:

- (A) Upper and Lower Boundaries. The upper and lower boundaries of the unit shall be the following boundaries and as illustrated in Exhibits "B" and "C" extended to their planar intersections with perimeter boundaries:
- (1) Upper Boundaries. The horizontal plane of the interior unfinished lower surface of the ceiling (bottom of precast floor above).
 - (2) Lower Boundaries. The horizontal plane of the unfinished upper surface of the concrete floor of the unit.
- (B) Perimeter Boundaries. The perimeter boundaries of the unit shall be determined by the vertical plane formed by the unfinished interior surface of the exterior walls of the building connecting to the upper and lower boundaries of the unit.

- (C) Apertures. Where there are apertures in any boundary, including, but not limited to, windows and doors, the perimetrical boundaries shall extend to the interior unfinished surfaces of such apertures, and the frameworks thereof. Exterior surfaces made of glass or other transparent material, screens, and all framings, casings and hardware therefor, shall not be included in the unit.
- (D) Portico. The Portico, as referenced in Exhibits B and C, shall be part of the ground floor unit, where motor vehicles may be vacuumed, although use is not limited to motor vehicle vacuuming.
- (E) Storage units. The storage units at top of each elevator shaft shall be appurtenant to and a part of the ground floor unit.

5.3 Unit Boundaries - Top Five Floors. Each unit on the top 5 floors (floors 2-6) shall include that part of the building that lies within the following boundaries:

- (A) Upper and Lower Boundaries. The upper and lower boundaries of the unit shall be the following boundaries and as illustrated in Exhibits "B" and "C" extended to their planar intersections with perimeter boundaries:
 - (3) Upper Boundaries. The horizontal plane of the interior unfinished lower surface of the ceiling (bottom of precast floor above).
 - (4) Lower Boundaries. The horizontal plane of the unfinished upper surface of the concrete floor of the unit.
- (B) Perimeter Boundaries. The perimeter boundaries of the unit shall be determined by a vertical plane in air space connecting the side lines and termination of same with the upper and lower boundaries or, where applicable, the vertical plane formed by an unfinished interior wall of the building coinciding with the perimeter line of a unit.
- (C) Apertures. Where there are apertures in any boundary, including, but not limited to, windows and doors, the perimetrical boundaries shall extend to the interior unfinished surfaces of such apertures, and the frameworks thereof. Exterior surfaces made of glass or other transparent material, screens, and all framings, casings and hardware therefor, shall not be included in the unit.

In cases not specifically covered in Sections 5.1 and 5.2 and 5.3, or in any case of conflict or ambiguity, the graphic depictions of the unit boundaries set forth in Exhibits "B" and "C" hereto shall control in determining the boundaries of a unit.

5.4 Combination of Units and Enclosure: Combining of units and/or enclosing of units on floors 3 through 6 must be approved by the Association provided, however, the Developer shall have the right to enclose or combine units owned by the Developer without Association approval. Units on the second floor may be combined or enclosed at the owner's discretion, subject to all applicable building codes and that any enclosure does not detrimentally affect the structural support or integrity of the building. Enclosure shall become limited common elements appurtenant to the unit with maintenance, repair or replacement the responsibility of the association.

5.5 Enclosed Containers: Enclosed containers for storage of personal property may be placed in units in accordance with following specifications:

- (a) The association may enter into a service contract with a third party for the supply and movement of the containers, as the unit owners do not have direct access to units.
- (b) Unit owners may not supply their own containers, as they must be conformed to meet requirements of the service provider.

6. CONDOMINIUM PARCELS; APPURTENANCES AND USE.

- (A) Unit Identification. The identification of each unit shall be by number, or by letter and number, as indicated in Exhibits "B" and "C".
- (B) Appurtenances to Each Unit; Shares of Ownership. The owner of each unit shall have certain rights and own a certain interest in the condominium property, including without limitation the following:
 - (1) An undivided share in the Common Elements and in the "Common Surplus" (as that term is elsewhere herein defined). The undivided share in the Common Elements and the Common Surplus of the Condominium appurtenant to each Unit is as set forth on Exhibit "D".
 - (2) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and By-Laws of the Association, attached hereto as Exhibits "E" and "F" respectively.

- (3) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.
- (4) Other appurtenances as may be provided in this Declaration and its exhibits. Each unit, together with its appurtenances, constitutes a "condominium parcel".

6.3 Limited Common Elements.

- (A) Ground Floor Unit - The exterior parking and surrounding ground level paved area shall be limited common elements appurtenant to and for the exclusive use of the ground floor unit (except that units on floor 2-6 are granted an easement for access to their units). No restriction or limitation on use of this limited common element or modification of the limited common elements may be imposed or adopted without consent of the owner of the ground floor unit. The owner of the ground floor unit may stripe and paint the limited common element, but the Association shall otherwise pay for and agrees to maintain and repair same. The roof and right to place structures or lease same shall also be a limited common element appurtenant to the ground floor unit.
- (B) Floors 2 - 6. The Association shall arrange for a contractor to provide delivery and pick up of self propelled motor vehicles while stored on floors 3 - 6 within a ten mile radius of the condominium up to twice a month or driving of the motor vehicle in the owner's absence for up to 10 miles once a month. This service will be a limited common element appurtenant only to floors 3 - 6 and the expense of same shall be borne solely and separately by the owners of units on floors 3 - 6. The owners of unit or units on Floor 2 may arrange for direct contract for such service with the same service provider as contracted by the Association for service to floors 3 - 6, and shall pay direct the cost of same to the service provider.

6.4 Use and Possession. A unit owner is entitled to exclusive use and possession of his or her unit. He is entitled to use the common elements and Association property in accordance with the purposes for which they are intended, but no use may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. No unit may be divided nor may any fractional portion of a unit be sold, leased or otherwise transferred except that the first and second floors may be divided for purpose of lease or other occupancy. The use of the

units, common elements, limited common elements and Association property shall be governed by the condominium documents and (where appropriate) by rules and regulations adopted by the Board of Directors; provided, however, that no rule or amendment to the declaration, article of incorporation or by-laws may be adopted without the affirmative vote or written consent of the owners of the ground floor unit.

6.5 Incorporation into Leases. This Declaration, the documents creating the Association and the By-Laws of the Association shall govern each owner, tenant and invitee and the provisions of the foregoing together with all duly adopted rules and regulations of the Board of Directors are expressly incorporated into any lease of a unit.

6.6 No Access by Owners Floors 2 - 6. Owners of units on floors 2 - 6 shall not have access to their units except Rotors Over Paradise, Inc. and its agents shall have access to such units on floor 2 as are owned by it. Movement of items into and out of the units on floors 2-6 shall be solely through such third party contractor as is contracted by the Association (or otherwise approved by the Association as to floor 2). This restriction is intended to avoid personal injury and property damage.

7. COMMON ELEMENTS; EASEMENTS.

7(A). Definition. The term "common elements" means all portions of the condominium property not included within the units, and includes without limitation the following:

- A. All portions of the real property which have been submitted to condominium ownership by this Declaration or an amendment hereto.
- B. All portions of the buildings and other improvements not included within the units, including limited common elements.
- C. Easements through units for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to units and common elements and easements for access.
- D. An easement of support in every portion of the Condominium which contributes to the support of a building.
- E. The property and installations required for furnishing utilities and other services to more than one unit or to the common elements.

7(B) Easements. Each of the following easements and easement rights is reserved through the condominium property and is a covenant running with the real property of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any property from the Condominium. None of the easements specified in this section may be encumbered by any leasehold or lien other than those on the condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

- A. Utility and other Easements. The Association has the power, without the joinder of any unit owner, to grant easements such as electric, gas, cable television, or other utility or service easements, or relocate any existing easements, in any portion of the common elements, and to grant access easements or relocate any existing access easements in any portion of the common elements, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred.
- B. Encroachments. If any unit encroaches upon any of the common elements or upon any other unit for any reason other than the intentional act of the unit owner, or if any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.
- C. Construction; Maintenance. The Developer (including its designees and contractors) shall have the right to enter the condominium property and take any action reasonably necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or any improvements or units located thereon, warranty work or such other purposes as the Developer deems appropriate.
- D. Sales Activity. For as long as it holds any unit for sale in the ordinary course of business, the Developer and its successors, assignees and designees shall have the right to use, without charge, any units owned by it, and the common elements and Association property in order to

establish, modify, maintain and utilize, as it and they deem appropriate, models and sales and other offices. Without limiting the generality of the foregoing, the Developer and its designees may show units or the common elements to prospective purchasers or tenants, erect on the condominium property signs and other promotional material to advertise units for sale or lease, and take all other action helpful for sales and promotion of the Condominium. The easements and rights described in (D) above shall terminate 1 year after closing the sale of all units in the Condominium to purchasers other than a successor Developer.

- (E) Access. All units shall have an unrestricted easement for access across the paved exterior limited common elements appurtenant to the ground floor unit. All units shall also have an access across all other units on the same floor for movement of property, units and other units.

7(C) Restraint Upon Separation and Partition. The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be conveyed or encumbered separately from the unit and shall pass with the title to the unit, whether or not separately described. No action shall lie for partition of the common elements. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as an appurtenance to a unit.

8. ASSOCIATION: The operation of the Condominium is by Progressive Auto Storage Condominium Association, Inc., a Florida corporation not for profit, which shall perform its function pursuant to the following:

(A) Articles of Incorporation. A copy of the Articles of Incorporation of the Association is attached as Exhibit "E".

(B) By-Laws. The By-Laws of the Association shall be the By-Laws attached as Exhibit "F", as they shall be amended from time to time.

(C) Delegation of Management. The Association may contract for the management and maintenance of the condominium property and authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the common elements and Association property with funds made available by the Association for such purposes. All such agreements, arrangements and

contracts shall require approval of the owner of the ground floor unit. The Association and its officers shall, however, at all times retain the powers and duties required by the Condominium Act.

(D) Membership. The membership of the Association shall be comprised of owners of the units, as further provided in the By-Laws.

(E) Acts of the Association. Unless the approval or affirmative vote of the unit owners is specifically made necessary by some provision of the Condominium Act or the condominium documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the unit owners. The officers and directors of the Association have a fiduciary relationship to the unit owners. A unit owner does not have the authority to act for the Association by reason of being a unit owner.

(F) Powers and Duties. The powers and duties of the Association include those set forth in the Condominium Act and the Condominium documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the condominium property and Association property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other possessor or use interests in properties or facilities contiguous to the properties of the Condominium, for the use and enjoyment of the unit owners.

(G) Official Records. The Association shall maintain its Official Records as required by law. The records shall be open to inspection by members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

(H) Purchase of Units. The Association has the power to purchase units in the Condominium and to acquire, hold, lease, mortgage, and convey them.

(I) Roster. The Association shall maintain a current roster of names and mailing addresses of unit owners. A copy of the roster shall be made available to any member upon request.

(J) Limitation on Liability. Notwithstanding its duty to maintain and repair condominium or association property, the Association shall not be liable to unit owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or unit owners or other persons.

9. **ASSESSMENTS AND LIENS:** The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association. The power of the Association to levy and collect assessments includes regular assessments for each unit's share of the common expenses as set forth in the annual budget, and special assessments for unusual, non-recurring or unbudgeted common expenses. The Association may also levy special charges against any individual unit for any amounts other than common expenses which are properly chargeable against such unit under this Declaration or the Association's By-Laws. Assessments shall be levied and payment enforced as provided in the By-Laws as follows:

9(A) **Common Expenses.** Common expenses include all expenses of the operation, maintenance, repair or replacement of the common elements and Association property, the expenses of operating the Association and any other expenses properly incurred by the Association for the Condominium, including any amounts budgeted for the purpose of funding reserve accounts. The cost of utility service to the top 5 floors is metered and billed to Progressive Auto Storage Condominium Association, Inc. and is paid for as part of the assessments. The first floor is separately billed for water, sewer and electric and pays direct. The first floor shall not pay any part of the utility service, water or sewer bill into the Association, as the owner of the first floor unit will be separately billed by the utility for service to the first floor unit. If the Board so determines, interior pest control to the units shall be a common expense.

9(B) **Share of Common Expenses.** The common expenses of the Condominium shall be shared by the unit owners as set forth in "Exhibit D".

9(C) **Ownership.** Assessments collected by or on behalf of the Association become the property of the Association; no unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his unit. No owner has the right to withdraw or receive distribution of such owner's share of the common surplus, except as otherwise provided herein.

9(D) **Who is Liable for Assessments.** The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 10(G) below, whenever title to a condominium parcel is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments against the transferor, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee. This liability is personal.

9(E) **No Waiver or Excuse from Payment.** The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements or Association property, by abandonment of the unit for which the assessments are made, or by interruption in the

availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as provided below as to mortgagees and the Developer.

9(F) Application of Payments; Failure to Pay; Interest; Acceleration. Assessments and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, from due date until paid. Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date set by the Association for payment. All payments on account shall be applied as to interest, delinquencies, costs and attorney's fees, other charges, and regular or special assessments, in such manner and amounts as the Board of Directors may determine. Any partial payment which bears a restrictive endorsement may be accepted by the Association as a partial payment and the restrictive endorsement shall be of no force or effect. No payment by check is deemed received until the check has cleared. In any action to collect overdue assessments including but not limited to an action to enforce a lien, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's annual assessment for the fiscal year in which the action is brought as if said balance had originally been due on the date suit is brought. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, and subsequently accruing interest together with interest on the entire balance, attorneys fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. Before exercising the right to accelerate the Association shall send to the delinquent owner a notice of intent to do so, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose as required by Section 718.116 of the Condominium Act, or may be sent separately.

9(G) Liens. The Association has a lien on each condominium parcel securing payment of past due assessments, including interest and reasonable attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Collier County, Florida, stating the description of the condominium parcel, the name of the record owner, the name and address of the association, the amount due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments and charges coming due prior to a final judgment of foreclosure, including all sums due because of the Association's exercise of the right to accelerate, as provided above. Upon full payment, the person making the payment is entitled to a satisfaction of the lien, to be recorded at the owner's expense.

9(H) Priority of Lien. The Association's lien for unpaid assessments shall be superior and prior to any other lien or mortgage, except that such lien shall be subordinate and inferior to any recorded institutional first purchase money mortgage and any mortgage of which the Developer is the mortgagee, unless the Association's Claim of Lien was recorded before the mortgage. Subordination of the Association's lien shall in no event exceed an amount equal to three months assessments. Any lease of a unit shall be subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed.

9(I) Foreclosure of Lien. The Association may sue to foreclose its lien for unpaid assessments in the manner provided in the Condominium Act and may also seek to recover a money judgment for the unpaid assessments without waiving any lien rights. As part of such foreclosure, the Association shall be entitled to the appointment of a Receiver, with the costs of same, including all fees and charges of the Receiver, to be a charge against the unit owner.

9(J) Transfer of Ownership of Foreclosed Unit. If a foreclosure action is brought against the owner of a condominium parcel and the interest of the owner in the condominium parcel is sold, the owner's membership shall be canceled and membership shall be issued to the purchaser at the foreclosure sale.

9(K) Mortgage Foreclosure. If the mortgagee of an institutional first mortgage of record acquires title to a condominium parcel as a result of foreclosure of the first mortgage, or as the result of a deed given in lieu of foreclosure, such acquirer of title shall only be excused from the share of common expenses or assessments attributable to the condominium unit or the former owner of the unit as is set forth in this Declaration. No owner or acquirer of title to a condominium parcel by foreclosure (or by deed in lieu of foreclosure) may during the period of his ownership of such parcel, whether or not the parcel is occupied, be excused from the payment of any assessments coming due during the period of such ownership.

9(L) Certificate As to Assessments. Within fifteen (15) days after request by a unit owner or unit mortgagee, the Association shall provide a certificate stating whether all assessments and other monies owed to the Association by the unit owner with respect to the condominium parcel have been paid. Any person other than the owner who relies upon such certificate shall be protected thereby.

9(M) Developer Guarantee. The estimated operating budget for the condominium is attached as Exhibit "G" to the Declaration and contains the information required by Florida Statute.

- A. The developer shall be excused from the payment of the share of the common expenses and assessments relating to units it is offering for sale for a period

beginning with recording of the Declaration of Condominium for this condominium and ending on the earlier of the date control of the Association is turned over to unit owners other than the developer or one (1) year from the date of such recordation. However, the developer must pay the portion of common expenses incurred during that period which exceeds the amount assessed against other unit owners. During this maintenance guarantee period, the developer shall not be obligated to pay the share of the common expenses and assessments attributable to units it is offering for sale, provided that the monthly assessment for common expenses imposed on each unit owner other than the developer shall not increase during such period over the amount set forth herein; and, provided further that the developer shall be obligated to pay any amount of common expenses incurred during such period and not reimbursed by the assessments at the guaranteed level received from other unit owners. This guarantee may be extended annually for up to three (3) additional years by written notice to the Association from the developer at least thirty (30) days prior to the end of any year.

- (B) Developer guarantees that the assessments for common expenses will not increase above \$100.00 per month per unit beginning with recordation of the Declaration and continuing for one (1) year. The developer will fund any shortfall produced by the collection of assessments at the guaranteed level for as long as developer maintains control of the Association and the guarantee is effective; it being understood that in all events, the developer's guarantee of the Association shortfall shall terminate upon the turnover of the Association by the developer. In exchange for this guarantee, developer will not pay assessments on unsold units. Prior to turnover, the Developer intends to vote to waive reserves for the first year after recording of the Declaration of Condominium and to also vote to waive the second year in accordance with F.S. 718.112 (2) (f).

10. MAINTENANCE: LIMITATION UPON ALTERATION AND IMPROVEMENT.

Responsibility for the maintenance, repair and replacement of the condominium property and restriction on its alteration and improvements shall be as follows:

10(A) Association Maintenance. The maintenance, repair and replacement of all common elements and limited common elements and of the interior of units on the top 5 floors shall be performed by the Association, and the cost is a common expense, except as set forth in 11.2.

10(B) Unit Owner Maintenance. Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements to the condominium property or properties of another

owner resulting from or arising from or in connection with negligence or interaction of the owner, or the owner's agents, or employees, or which is caused by or arises from property stored in owners unit.

10(C) Signs. Except for the ground floor, no signs are permitted unless first approved in writing by the Board of Directors. The ground floor unit may post signs as it deems appropriate on limited common elements appurtenant to that unit, the common elements or the unit itself.

10(D) Alteration to Units or Common Elements. No owner of a unit on the top 4 floors shall make or cause the making of any structural modification or alteration to his unit or the common elements. The owner or owners of units on the ground floor and second floor may make alterations and modifications within the units that do not detrimentally impact upon the structural support of the building.

10(E) Negligence: Damage Caused by Condition in Unit. Each unit owner shall be liable to the Association and to other unit owners for the expenses of any maintenance, repair or replacement made necessary by his act or negligence, or by that of any member of his family or his guests, invitees, employees, agents, or lessees (and invitees, guests, employees, and agents of his lessees). If any condition, defect or malfunction existing within property stored in unit, whether caused by the owner's negligence or otherwise, shall cause damage to the common elements or to other units or property of other owners, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged areas and for all costs of repair or replacement not paid by insurance. The Association may, but is not obligated to, also repair the damage, with the consent of the owner, but the owner of the unit shall be responsible for code of same.

10(F) Association's Access to Units. The Association has an irrevocable right of access to the units for the purposes of maintaining, repairing and replacing the common elements and any other purpose permitted by law. The Association's right to access includes without limitation entry for purposes of safety. The Association may move the owner's motor vehicle as needed for maintenance of the condominium or to protect it or other motor vehicles from damage. Despite the foregoing, the Association shall have no duty or obligation to protect an owner's property or move same to avoid damage to it or the property of others.

10(G) Acquisition, Conveyance of Real Property. The Association may acquire, convey or mortgage real property upon approval of a majority of unit owners present in person or proxy at a duly called meeting of unit owners, provided, however, the Board of Directors may approve the acquisition, sale, mortgage or lease of any property on which an Association lien is foreclosed and further that the Board of Directors alone may also lease any property owned by the Association, including common elements.

10.8 Interior Pest Control. The Board of Directors may arrange for interior pest control as a common expense, in the discretion of the Board.

11. USE RESTRICTIONS: In order to maintain a community of congenial, financially responsible owners, with the objectives of protecting the value of the units, the use and occupancy of the units shall be subject to the following provisions, which each owner of a unit covenants to observe:

11.1 Units. Units may be used solely for non-residential purposes or uses. Units on the top four floors (floors 3-6) shall be occupied only by a motor vehicle, motorcycle or other motorized self propelled transportation device, motorized watercraft (with or without trailer) owned or leased by the unit owner, containerized storage in container supplied by the third party contractor as referred in Section 5.5 hereof or such other items as are otherwise authorized by the Developer (including the Developer's successors or assigns). The first two floors (floors 1 and 2) may be occupied and used by the owner, their successors, agents, lessees, and assigns for non-residential purpose or use, with floor 2 limited to storage. The developer reserves the right to amend the Declaration of Condominium to specifically allow other types of storage and change configuration of units (including but not limited to size, enclosure) on floors 3-6 at any time prior to sale of all units owned by developer.

11.2 Nuisances. No owner shall use his unit, or permit it to be used, in any manner which is unreasonably bothersome, disturbing or a nuisance to the owners of another unit nor permit the premises to be used in a disorderly or unlawful way. The use of each unit shall be consistent with existing laws and the condominium documents.

11.3 Limited Common Elements. Limited common elements may be leased or otherwise used for any purpose by the owner of the unit to which the limited common element is appurtenant.

12. TRANSFER OF OWNERSHIP OF UNITS. THE SALE, LEASE OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED. All purchasers or transferees must be approved by the condominium association. The transfer of ownership of the units shall be subject to the following provisions, which each owner agrees to observe:

12.1 Forms of Ownership.

A. Single Owner. A unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.

- B. Co-Ownership. Co-Ownership of units is permitted, provided such ownership is established by a document recorded in the Public Records of Collier County, Florida and is approved by the Association.
- C. Ownership by Corporations, Partnerships or Trusts. A unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the unit may be used commercially or for transient use by multiple vehicles. Use of the units on the upper or top four floors shall be limited to a single motor vehicle registered and owned by the owner of that unit.

12.2 Transfers.

- (A) Sale or Gift. No unit owner except the Developer may dispose of a unit or any interest therein by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.
- (B) Devise or Inheritance. If any unit owner acquires his title by devise or inheritance, his right to occupy or use the unit shall be subject to the approval of the Board of Directors. Approval shall not be denied to any devisee or heir who was the prior owner's lawful spouse at the time of death.
- (C) Other Transfer. If any person acquires title in any manner not other than as set forth in the foregoing subsections, that person shall have no right to occupy or use the unit without first being approved by the Board of Directors under the procedures outlined herein.
- (D) Approval by Manager or Committee. The Board of Directors may by resolution delegate its approval powers to the manager, or to any ad hoc committee, which shall consist of at least three (3) members of the Association. The Chairman of the committee shall be deemed a Vice-President, and as such shall be empowered to execute Certificates of Approval on behalf of the Association. A certificate signed by the President of the Association or by a Vice-President shall be executed with the formalities of a deed and recorded in the Public Records of Collier County, Florida to evidence the authority to so approve transfers under the delegation provided for in this sub-section.

- (E) No Approval for Developer Transfer. No approval shall be required for any sale or lease by the Developer. This section may not be amended without written approval of the Developer.
- (F) Developer Right of First Refusal. No unit may be transferred by a unit owner without first offering the unit for sale on identical terms to the Developer, as more specifically set forth in this subsection (F). This right of first refusal shall be assignable as to individual units or as to the entire condominium by the Developer, but shall not thereafter be assigned. This right of first refusal shall not apply to transfer by gift or devise. This right shall expire when the developer has sold all units in the condominium or ceases to actively market same for a period in excess of sixty (60) days.
- (1) If a unit owner desires to sell a unit in the condominium and receives from some third party a bona fide offer for the purchase thereof, the unit owner shall agree to disclose the terms of such offer to the Developer, in writing, within three days following receipt of the offer.
- (2) Developer shall have 3 days after receiving notice of terms of the offer within which to elect to purchase the unit on terms identical to those offered by the third party. Such election shall be made by written notice to the unit owner at the address set forth in the notice to Developer. Within 10 days thereafter, the parties shall enter into a formal contract of sale containing the provisions normally used in such contracts in Collier County, Florida, and expressly including all terms as the parties may mutually agree.
- (3) If Developer fails to give the notice and to tender the payments as provided in sub-paragraph (2), owner shall be relieved of all liability to developer and may dispose of the property as he or she sees fit.

12.3 Procedures.

(A) Notice to Association.

- (1) Sale or Gift. An owner intending to make a sale or gift of his unit or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days prior to the intended closing date together with the name and address of the proposed purchaser or donee, a copy of the sales contract, if any, and such other information about

the proposed purchaser as the Board may require. A personal interview with the prospective purchaser and his spouse, if any, may be required as part of the application process.

- (2) Devise, Inheritance or Other Transfer. The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy right unless approved by the Board, but may sell or lease the unit following the procedures in this Section or in Section 14.
 - (3) Failure to Give Notice. If no notice is given, the Board at its election may approve or disapprove the transfer without prior notice. If it disapproves, the Association shall proceed as if it received notice on the date of such disapproval; however, the proposed transferee may provide the Board with the required notice and request reconsideration.
- (B) Board Action. Within ten (10) days after receipt of the required notice and all appearances and information requested, or not later than sixty (60) days after the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or deny the application. If approved, the approval shall be stated in a Certificate of Approval in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the foregoing period, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee. Notwithstanding the foregoing, the Board shall act expeditiously as is reasonable in passing on application for approval.
- (C) Disapproval. Approval of the Association shall be withheld only if a majority of the whole Board so votes, after receiving a written opinion of legal counsel that such disapproval is for good cause. Good cause for disapproval shall include, without limitation, the following:
- (1) The person seeking approval has been convicted of a felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude;

- (2) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;
- (3) The application for approval on its face indicates a strong likelihood that the person seeking approval will conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
- (4) The person seeking approval has a history of disruptive behavior or disregard for the rights and property of other, as evidenced by his past conduct; or
- (5) The person seeking approval failed to provide the information or appearances required to process the application in a timely manner.
- (6) The current owner has unsatisfied obligations to the Association, which are not to be satisfied from proceeds of sale.

12.4 Exception. Approval will not be required for acquisition of title by a mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure.

12.5 Unapproved Transfers. Sales or transfers by the Developer require no approval. Any other sale or other transfer of ownership which is not approved pursuant to this Section shall be void unless subsequently approved in writing by the Board and may be changed from time to time. However, approval of a subsequent transfer of ownership by the Board shall serve as approval of all previous ownerships unless the Association is involved in litigation covering a prior ownership or specifically rejects such approval in the later approval.

12.6 Fees for Processing Application for Approval to Purchase or Lease. Whenever herein the Board's approval is required to allow the sale, lease, or other transfer of an interest in a unit, the Association may charge a preset fee for processing the application, such fee not to exceed \$100.00. This fee, if any, shall be set by the Board.

13. LEASING OF UNITS: The Developer may lease units as part of the development. The right of the Developer to lease units shall continue as long as the Developer owns a unit even if status as Developer terminates. Units or portion of the lower or first two floors may also be leased by the owner(s) thereof. Other unit owners may also lease their units, subject to approval by the Association. Amendment or modification of this section shall require affirmative vote of the Developer or, after all units are sold, 90% of the total voting interests.

14. **INSURANCE.** In order to adequately protect the Association, the Association property and the condominium property to be insured by the Association, insurance shall be carried and kept in force at all times in accordance with the following provisions:

14.1 **Duty and Authority to Obtain.** The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry, and may obtain and keep in force any or all additional insurance coverage it deems necessary. The name of the insured shall be the Association and the unit owners without naming them, and their mortgagees, as their interests shall appear.

14.2 **Required Coverage.** The Association shall maintain adequate insurance covering all the buildings, and the common elements as well as all Association property, in an amount determined annually by the Board of Directors, such insurance to afford at least the following protection, provided it is available:

- (A) **Property.** Loss or damage by fire, extended coverage (including windstorm), vandalism, malicious mischief, and all other hazards covered by the standard "All Risk" property contract.
- (B) **Flood.** Loss or damage caused by flood, if this property is in a flood zone for which lenders generally require flood insurance.
- (C) **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as required by the Board of Directors of the Association, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.
- (D) **Statutory Dishonesty Bond.** A dishonesty bond shall be maintained in no less than the minimum amount required by law.

14.3 **Optional Coverage.** The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and unit owners. Some of the more common options include:

- (A) Additional flood insurance.
- (B) Broad Form Comprehensive General Liability Endorsement.
- (C) Automobile Liability.
- (D) Directors and Officers Liability.

- (E) Medical Payments.
- (F) Leakage, Seepage and Wind-Driven Rain.
- (G) Worker's Compensation as appropriate.

14.4 Description of Coverage. A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection by unit owners upon request.

14.5 Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against unit owners, the Association, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

14.6 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the unit owners and payable to the Association. The duty of the Association shall be to receive such proceeds as are paid and hold and disburse the same in trust for the purposes stated herein and for the benefit of the unit owners and their respective mortgagees in the following shares:

- (A) Common Elements. Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.
- (B) Units. Proceeds on account of damage within units shall be held in shares based on the prorated amount of damage in each damaged unit as a percentage of the total damage in all units.

If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against units, except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings. No mortgagee shall have any right to participate in determining whether improvements will be rebuilt after casualty. The foregoing notwithstanding, insurance proceeds on account of any NFIP flood insurance policy on an individual unit purchased by the Association or by a unit owner shall be used only to repair or rebuild the unit to which the respective policy applies and that unit's appurtenant share of the common elements, and no other unit owner

or unit may directly benefit from said proceeds. If the Condominium is not to be restored or rebuilt, the proceeds shall accrue to the benefit of the respective unit owner and his mortgagees, if any.

14.7 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the unit owners in the following manner:

- (A) Cost of Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being paid jointly to them. This is a covenant for the benefit of mortgagees and may be enforced by them.
- (B) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of mortgagees and may be enforced by them.

14.8 Association as Agent. The Association is hereby irrevocably appointed agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the condominium property.

15. RECONSTRUCTION OR REPAIR AFTER CASUALTY: If any part of the condominium property is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

15.1 Damage to Units. Where loss or damage occurs within a single unit or several units, any Association insurance proceeds on account of the damage, in shares computed as provided above, shall be responsible for reconstruction and repair within their units.

15.2 Damage to Common Elements - Less Than One Half (1/2) of Square Footage of Units. Where loss or damage occurs to the common elements, but the loss renders less than one-half (1/2) of the total square footage of units unsuitable for use, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

- (A) The Board of Directors shall promptly obtain detailed estimates of the cost of repair and restoration, and shall negotiate and contract for the repair and reconstruction of the premises.

- (B) If the proceeds of insurance are insufficient to pay for the cost of repair and reconstruction of the common elements, the Association shall promptly, upon determination of the deficiency, and if other funds such as reserves are not available, levy a special assessment against all unit owners in proportion to their shares in the common elements for any deficiency. Such special assessments need not be approved by the unit owners. The special assessments shall be added to the proceeds available for repair and restoration of the property.

15.3 Damage to Half (1/2) or More of Square Footage of Units Rendering Them Unsuitable For Use. If one half (1/2) the total square footage or more of the units are rendered unsuitable by damage:

- (A) The Board of Directors shall promptly obtain detailed estimates of the cost of repair and restoration from appropriate sources.
- (B) An owners meeting shall be held not later than sixty (60) days after the casualty, to determine the wishes of the membership with reference to rebuilding or abandonment of the Condominium.
- (1) If the insurance proceeds and reserves available for restoration and repair are sufficient to cover the cost thereof, so that no special assessment is required, then the condominium property shall be restored or repaired unless two-thirds (2/3) of the voting interests and the owner of the ground floor unit shall vote for abandonment, or unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general type of unit, in which case the Condominium shall be terminated.
- (2) If the insurance proceeds and reserves available for restoration and repair are not sufficient to cover the cost thereof so that a special assessment will be required, then unless one-third (1/3) of the voting interests, plus the owner of the ground floor unit, vote in favor of such special assessment and against abandonment of the Condominium, it shall be abandoned and the property removed from the provisions of the Condominium Act. If the required voting interests approve the special assessment, the Association shall levy such assessment and shall contract for such repairs and restoration. The special assessment shall be added to the proceeds available for repair and restoration of the property.

- (C) If any dispute shall arise as to the number or square footage of the units that have been damaged to the extent that they are unsuitable for use, such dispute shall be submitted to binding arbitration.

15.4 Application of Insurance Proceeds. It shall be presumed that the first monies disbursed for repair and restoration shall be from insurance proceeds; if there is a balance in the funds after the payment of all costs of repair and restoration, such balance shall be distributed to the unit owners, except as otherwise provided herein.

15.4 Equitable Relief. In the event of damage to the condominium property which is to be repaired, and if the property is not repaired, reconstructed or rebuilt within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be conclusively presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within four (4) months following the damage or destruction and is completed within twelve (12) months thereafter.

15.5 Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plan and specifications for the original buildings, or according to different plans and specifications approved by the Board of Directors and by the owners of two-thirds (2/3) of total voting interests, the units, the owners of the ground floor unit and the Primary Institutional Mortgagee.

15.6 Personal Property of Owners. Owners must insure their own personal property. The Association will have no liability or responsibility for damage to personal property of a unit owner, nor any other personal property within the condominium that is not owned by the Association.

16. CONDEMNATION:

16.1 Deposit of Awards with Association. The taking of all or any part of the Condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards so: that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against the defaulting unit owner in the amount of his award, or the amount of that award shall be set off against sums payable to that owner. Funds must be deposited with the Association within thirty (30) days of receipt. If not timely deposited, the unpaid amount shall bear interest at the highest rate allowed by law from date of receipt by the owner until received by the Association.

16.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty.

16.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will be deemed to be Association property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced, the owners of condemned units, if any, will be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

16.4 Association as Agent. The Association is hereby irrevocably appointed as each unit owner's attorney in fact for purpose of negotiating or litigating with the condemning authority for the purpose of realizing just compensation for the taking.

16.5 Units Reduced but Tenatable. If the taking reduces the size of a unit and the remaining portion of the unit can be made suitable for use, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

- (A) Restoration of Unit. The unit shall be made suitable for use. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.
- (B) Distribution of Surplus. The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.

16.6 Unit Made Unsuitable For Use. If the taking is of any entire unit so reduces the size of a unit that it cannot be made suitable for use, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

- (A) Payment of Award. The fair market value of the unit immediately prior to the taking shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagee(s).

- (B) Addition to Common Elements. If possible and practical, the remaining portion of the unit shall become a part of the common elements and shall be placed in condition for use by some or all unit owners in the manner approved by the Board of Directors.
- (C) Adjustment of Shares in Common Elements. The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements among the reduced number of units. This shall be done by restating the shares of continuing unit owners in the common elements fractionally, with each unit owning an equal fraction.
- (D) Assessments. If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned unit to the unit owner and to condition the remaining portion of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by special assessment against all unit owners who will continue as owners of units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes affected by the taking.
- (1) Arbitration. If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association within (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The unit owner, the first mortgagee, if any, and the Association shall each appoint one M.A.I. appraiser, who shall appraise the unit and shall determine the fair market value by computing the arithmetic average of their appraisals of the unit; and a judgment of specific performance upon the value arrived at by the appraisers may be entered in any court of competent jurisdiction. The cost of appraisal shall be paid by the party selecting the appraiser.

16.7 Taking of Common Elements. Awards for the taking of common elements shall be used to make the remaining portion of the common elements usable in the manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the unit owners in the shares in which they own the common elements after adjustment of these shares on account of the condemnation. If a unit is mortgaged, the remittance shall be paid jointly to the owner and mortgagee(s) of the unit.

16.8 Amendment of Declaration. The changes in units, in the common elements and in the ownership of the common elements that are necessitated by condemnation, shall be evidenced by amending this Declaration and its Exhibits. The amendment must be approved only by a majority of the Board of Directors, and the consent of unit owners of mortgagees is not required for any such amendment.

17. TERMINATION: The Condominium may be terminated in the following manner:

17.1 Agreement. The Condominium may be terminated at any time by approval, in writing, of the owners of at least two thirds (2/3) of the units, the owner of the ground floor unit and of the Primary Institutional Mortgagee.

17.2 Very Substantial Damage. If the Condominium, as a result of casualty, suffers damage such that one half (1/2) or more of the square footage of all units are rendered unsuitable for use, and it is not decided as provided herein that it will be reconstructed or repaired, the Condominium form of ownership will thereby terminate without agreement.

17.3 General Provisions. Upon termination, the former unit owners shall become the owners, as tenants in common, of all condominium and association property and the assets of the Association. The shares of such tenants in common shall be the same as were their shares of the common elements. The mortgagee or lien of a unit owner shall have a mortgage or lien solely and exclusively upon the undivided share of such tenant in common in and to the properties and other properties and rights which he may receive by reason of such termination. The termination of the Condominium shall be evidenced by a certificate of the Association executed by its President and Secretary certifying as to facts affecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of Collier County, Florida.

17.4 New Condominium. At termination, the former condominium property and Association property may be partitioned and sold upon the application of any unit owner. If following a termination, the former owners of two-thirds (2/3) of the units, plus the owner of the first floor unit, determine to accept an offer for the sale of the property, all owners shall be bound to execute deeds and other documents reasonably required to effect the sale. In such event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto.

17.5 Last Board. The members of the last Board of Directors shall continue to have the powers granted in this Declaration for the purpose of winding up the affairs of the Association, notwithstanding the fact that the Association itself may be dissolved upon a termination.

17.6 Provisions Survive Termination. The provisions of this Section on Termination shall be deemed covenants running with the property, and shall survive the termination of the Condominium until all matters covered by the provisions governing termination are completed.

18. OBLIGATION OF OWNERS:

18.1 Duty to Comply; Right to Sue. Each unit owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, the Declaration, the documents creating the Association, the By-Laws and the Rules and Regulations. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a unit owner against:

- (A) The Association;
- (B) A unit owner;
- (C) Anyone who occupies a unit; or
- (D) Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.

18.2 Waiver of Rights. The failure of the Association or of a member to enforce any right, provision, covenant or condition which may be granted by the condominium documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived by a unit owner if the waiver would adversely affect the rights of the owner or defeat the purpose of the provision, except that unit owners or Directors may waive notice of specific meetings as provided in the By-Laws. Any written instrument or instruction given by a prospective purchaser or unit owner to an escrow agent may be relied upon by the escrow agent, whether or not such instruction and the payment of funds thereunder might otherwise constitute a waiver of any provision of the Condominium Act.

18.3 Attorney's Fees. In any legal proceeding arising out of an alleged failure of a tenant, unit owner or the Association to comply with the requirements of the Condominium Act or the condominium documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorney's fees, including costs and fees on appeal.

18.4 No Election of Remedies. All rights, remedies and privileges granted to the Association or unit owners under any terms, provisions, covenants, or conditions of the

condominium documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute a waiver of any additional rights, remedies, or privileges as may be granted by the condominium documents, or at law or in equity.

19. RIGHTS OF MORTGAGEES:

19.1 Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of, any unit or any part of the common elements, the record holder of any first mortgage on an affected unit shall be entitled to notice.

19.2 Redemption. If proceedings are instituted to foreclose any mortgage or lien on any unit, the Association, on behalf of one or more unit owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lien or's rights of action, or the Association may purchase the unit at the foreclosure sale. Any mortgagee shall have an unrestricted, absolute right to accept title to the unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the unit at the foreclosure sale. If the Association or any of its members redeems the mortgage or cures the default, it or they shall have a lien against the unit for all sums expended in connection therewith, and shall have the same rights to collect such sums as in the case of the past due assessment.

19.3 Right to Inspect Books. The Association shall make available to institutional mortgagees requesting same current copies of the condominium documents and the books, records and financial statements of the Association. "Available" shall mean ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies shall be provided at the expense of the person requesting them.

20. DEVELOPER'S RIGHTS AND DUTIES: So long as the Developer or any successor in interest to the Developer holds any units in the Condominium for sale in the ordinary course of business, the following shall apply:

20.1 Developer's Use. Until the Developer has completed all of the contemplated improvements and has sold all of the units in the Condominium neither the unit owners nor the Association, nor their use of the condominium property, shall unreasonably interfere with the completion of the contemplated improvements or the sale of units. The Developer may make any use of the unsold units and the common elements as may reasonably be expected to facilitate completion and sales, including, but not limited to, maintenance of a sales office, display of signs, leasing units, and showing the units for sale to prospective purchasers. No "For Sale" or "Lease" sign may be displayed upon the condominium property without the written consent of the Developer during this period.

20.2 Assignment. All or any of the rights, privileges, powers and immunities granted or reserved to the Developer in the condominium documents may be freely assigned by the Developer, in whole or in part, to any person, entity, or nominee without the consent of any other unit owner, the Association, or any holder of a mortgage secured by any unit. In the event of the foreclosure of any mortgage owed by the Developer, or deed in lieu of such foreclosure, the person first acquiring title to such interest by reason of such foreclosure, or deed in lieu of foreclosure, shall succeed to all rights, powers, privileges, and immunities of the Developer.

20.3 Amendment of Plans and Alteration of Boundaries and Apartment Dimensions. Developer reserves the right to modify the appointments, design or arrangements of any units, to add custom features requested by individual purchasers, or to alter the boundaries between units, so long as Developer owns the units so altered, provided no such change shall be made without amendment of the condominium documents where appropriate to reflect the changes. Any such amendment need be signed and acknowledged only by the Developer, and shall not require the approval of unit owners, unit purchasers, or the Association, subject to Article 22.5 of this Declaration.

20.4 Amendments by Developer. As long as the Developer holds any units in this Condominium for sale in the ordinary course of business, the Developer reserves the right to amend this Declaration and its exhibits for any purpose, including, but not limited to size, shape or enclosure of unit, allowed uses of units, deletion or addition of property or changes in the number of units subject to the Declaration. Said amendments may be made and executed solely by the Developer and recorded in the Public Records of Collier County, Florida, and without any requirement of securing the consent of any unit owner, the Association, or the owner and holder of any lien encumbering a condominium parcel. Provided, however, that no amendment may change the configuration or size of any condominium unit in any material fashion unless the record owner of the unit and all record owners of liens join in execution of the amendment and at least a majority of the record owners of all other units approve the amendment.

20.5 Sales or Leases of Units. To the extent permitted by law, the Developer shall have the right to sell or transfer ownership of any unit owned by it to any person, on such terms and conditions as the Developer deems in its own best interest. THE UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.

20.6 Turnover. The Developer may turn over control of the Association to unit owners other than the Developer prior to the statutory dates by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of unit owners other than the Developer to elect Directors and assume control of the Association. Provided at least thirty (30) days' notice of the Developer's decision to cause its appointees to resign is given to unit owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with such resignations, even if unit owners other than the Developer refuse or fail to assume control.

21. AMENDMENT OF DECLARATION. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted as follows:

21.1 Proposal. Amendments to this Declaration may be proposed by the Board of Directors or by written petition signed by the owners of at least one-third (1/3) of the units.

21.2 Procedure. Upon any amendment to this Declaration being proposed as provided above, the proposed amendment shall be submitted by the Board of Directors to a vote of the owners at a properly called special meeting or at an annual meeting, but not later than the next annual meeting for which proper notice can still be given.

21.3 Vote Required. Except as otherwise provided by law, or by specific provision of the condominium documents, this Declaration may be amended by concurrence of two-thirds (2/3) of the voting interests present in person or by limited proxy and voting at any annual or special meeting called for the purpose, provided that notice of each proposed amendment has been given to the members in accordance with law. Alternatively, amendments may be adopted without a meeting following the procedures set forth in the By-Laws. No amendment may be adopted without affirmative vote or written consent of the owner of the ground floor unit.

21.4 Certificate Recording. A copy of each amendment shall be attached to a certificate reciting facts showing that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida. If the certificate of amendment is not recorded within twelve (12) months of the date the amendment is adopted the amendment shall be null and void.

21.5 Proviso. No amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of a parcel shares the common expenses and owns the common surplus, unless the record owner of the unit and all record owners of liens on the unit join in execution of the amendment and unless at least a majority of the record owners of all other units approve the amendment. This proviso does not apply to changes caused by condemnation or a taking by eminent domain, which may be made as provided herein.

21.6 Correction of Errors. If there is an omission or error in this Declaration of Condominium or in other documents required by Florida law to establish the Condominium, the Association may correct the error or omission by following the procedures set forth in the Condominium Act.