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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE MERCATO

This Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Mercato (the "Declaration") is made this 26 day of April, 2007, by The Mercato, LLP, a Florida limited liability partnership ("Mercato Ltd."), and The Residences at the Mercato, Inc., a Florida corporation ("Residences"), both collectively called the "Declarant."

RECITALS

1. The Mercato is a mixed-use planned unit development ("MPUD") in Collier County, Florida ("The Mercato"). Mercato Ltd. is the owner of the real property more particularly described in Exhibit "A-1" attached hereto and hereby incorporated by reference (the "Mixed-Use Property") upon which Mercato Ltd. intends to construct a mixed-use commercial and residential development. Residences is the owner of the real property more particularly described in Exhibit "A-2" attached hereto and hereby incorporated by reference (the "Residential Property") upon which Residences intends to construct a residential development known as "The Residences at Mercato." The Mixed-Use Property and the Residential Property are contiguous and constitute The Mercato.
2. The Mercato, as presently contemplated, will consist of four primary components: The Residences at Mercato, a Condominium; The Strada, a Condominium; the Commercial Parcel; and, the Hotel Parcel. This is Declarant's intention only, subject to substantial variation and revision, including, but not limited to, the elimination or reconstitution of these contemplated components.
 - A. The Residences at Mercato, a Condominium ("The Residences at Mercato") will contain not more than eighty-three (83) residential condominium units and appurtenant common elements and limited common elements, all as more fully described in the Declaration of Condominium for The Residences at Mercato intended to be recorded in the Public Records of Collier County, Florida. It is planned that The Residences at Mercato will be located on the Residential Property, and not the Mixed-Use Property.
 - B. The Strada, a Condominium ("The Strada"), will be located within the Mixed-Use Property and contain not more than ninety-two (92) residential condominium units and appurtenant common elements and limited common elements, all as more fully described in the Declaration of

Condominium for The Strada to be recorded in the Public Records of Collier County, Florida.

- C. The Commercial Parcel will be located within the Mixed-Use Property and contain a maximum of three hundred ninety-five thousand (395,000) square feet of gross leasable retail commercial, one hundred thousand (100,000) square feet of gross leasable office space, and open spaces, parking areas, parking garages, entry features, signage and accessory structures. These may be adjusted pursuant to The Mercato MPUD. The Commercial Parcel or portions thereof may be owned by one or more Persons, leased to various Persons and may or may not be subjected to the condominium form of ownership.
- D. The Hotel Parcel will be located within the Mixed-Use Property and may contain not more than eighty (80) hotel units and appurtenances. The Hotel Parcel or portions thereof may be owned by one or more Persons, leased to various Persons, and may or may not be subjected to the condominium form of ownership. Should the Hotel Parcel be eventually utilized for uses currently contemplated for the Commercial Parcel (e.g. retail commercial or office) or otherwise, and not for hotel units, the Hotel Parcel shall nevertheless continue to constitute and be referred to as the Hotel Parcel for purposes of this Declaration.

The Mercato, as presently contemplated, will also contain conservation/preservation areas designated or to be designated and identified as Preserves ("Preserves" or "Preserve Parcels") which will be specifically identified and designated and subject to protective covenants and easements in accordance with The Mercato MPUD. The Preserve Parcels are, or are intended to be, within the Mixed-Use Property, and shall be deemed part of the Mixed-Use Property for the purposes of this Declaration.

- 3. Declarant deems it in the mutual best interests of all future owners within The Mercato: (i) to protect property values, and contribute to the general safety and welfare of the Owners and Occupants, (ii) to delegate certain obligations, including, but not limited to, the responsibility to maintain and preserve the character, quality and appearance of The Mercato and the Shared Facilities; and (iii) to establish certain rights, easements, appurtenances, interests and benefits applicable to the Owners and Occupants, and other hereinafter defined users of the Property; and to that end, hereby subjects the Mixed-Use Property to the covenants, conditions and restrictions and other provisions of this Declaration. The Residential Property is also subjected to the covenants, conditions and restrictions and other provisions of this Declaration, but only to the extent they are made specifically applicable to the Residential Property by the express terms herein.
- 4. The Residential Property or portions thereof may be made subject to this Declaration at some future time to a broader extent than as provided herein by

public filing by Declarant and then to the extent provided in such public filing. Until such time, this Declaration shall not apply to the Residential Property except to the extent present application is expressly specified herein. In this regard, use of "The Mercato" herein does not imply or suggest application of this Declaration to the Residential Property; rather, application of this Declaration or portions thereof must be made specifically applicable to the Residential Property to be applicable thereto.

Now therefore, in consideration of the premises, Declarant and any other person who joins in the execution of or consents to this Declaration, hereby declares that the Mixed-Use Property and the Residential Property, but only to the extent this Declaration is made expressly binding on and applicable to the Residential Property, shall be owned, used and conveyed subject to the easements, covenants, conditions, restrictions and all other provisions of this Declaration as it may be lawfully amended from time to time, and all such easements, covenants, conditions, restrictions and other provisions shall run with the land and bind, and also inure to the benefit of and be enforceable by, all Persons having any right, title or interest therein, or any part thereof, and their heirs, successors or assigns, however title is specified or determined.

I. Definitions: The following terms when used in this Declaration shall have the following meaning, unless the context requires otherwise. Additional terms may be defined elsewhere within the text of this Declaration. The singular and plural of all terms shall be so defined.

- A. "Architectural Control Committee" shall mean the committee established in accordance with Section IV, C, and whose functions include, among others, perpetual maintenance of Shared Facilities, the protection and maintenance of Preserves and responsibility for the Surface Water Management System of The Mercato.
- B. "Assessment" shall mean any charges which may be levied from time to time by the Commercial Owner or any other party having authority under this Declaration, consisting of the following which are more fully described within this Declaration:
 - 1. Capital Improvement Assessments.
 - 2. Shared Expenses Assessments.
 - 3. Reconstruction Assessments.
 - 4. Special Assessments.
- C. "Building" shall mean any structural improvement constructed or to be constructed within The Mercato, such as residential and commercial buildings, mixed-use buildings and parking garages.
- D. "Building Plans" shall mean the plans and specifications for the Buildings and other improvements as they may be changed from time to time to

reflect changes during the course of construction and other permissible alterations. Upon completion of the construction of each of the Buildings, the Building Plans shall be certified by the architect or general contractor as "as-built" plans, whereupon the as-built plans shall serve as the "Building Plans."

- E. "Commercial Owner" shall initially mean Mercato, Ltd., as the owner of the Commercial Parcel. Upon the conveyance of any portion of the Commercial Parcel to another Person, the obligations and rights of the Commercial Owner under this Declaration may be assigned to that Person. The assignment, if any, may be a full assignment, whereupon Mercato, Ltd. shall be completely released from all obligations imposed upon the Commercial Owner pursuant to this Declaration, or may be partial whereupon the assignee and Mercato, Ltd. shall be jointly and severally liable for performance of the obligations imposed upon the Commercial Owner pursuant to this Declaration, and each shall enjoy such rights as are provided by the assignment. Any assignment shall take effect only upon recordation thereof in the Public Records of Collier County, Florida. To the extent rights and obligations are not previously assigned, upon the conveyance of the last of the Commercial Parcel owned by Mercato, Ltd., the grantee pursuant to that conveyance shall become the Commercial Owner and assume all obligations imposed upon the Commercial Owner and enjoy all rights of the Commercial Owner pursuant to this Declaration.
- F. "Commercial Parcel" or "Commercial Property" shall mean all portions of the Mixed-Use Property which are not a part of the Hotel Parcel or The Strada. The Commercial Parcel or portions thereof may be subjected to the condominium or other form of ownership by Mercato, Ltd.
- G. "Condominiums" shall mean The Residences at Mercato, a Condominium ("The Residences at Mercato") and The Strada, a Condominium ("The Strada"), and portion or portions of the Mixed-Use Property which may become subject to the condominium form of ownership by action of Mercato, Ltd.
- H. "Condominium Associations" shall mean the corporations, not for profit, established pursuant to Chapter 617, Florida Statutes, or any successor thereto, to maintain and operate the Condominium Common Areas for The Residences ("The Residences at Mercato Condominium Association"), The Strada ("The Strada Condominium Association") or any other condominiums located within The Mercato and to serve all other functions of an Association under Chapter 718, Florida Statutes, or any successor thereto.
- I. "Condominium Common Elements" shall mean those common elements and limited common elements as defined in Chapter 718, Florida Statutes, or any successor thereto, and as described in the Condominium

Declarations, and whose ownership is appurtenant to the Condominium Units.

- J. "Condominium Declarations" shall mean the Declarations of Condominium filed in accordance with Chapter 718, Florida Statutes, or any successor thereto, to create either The Residences at Mercato ("The Residences Declaration"), The Strada ("The Strada Declaration") or any other Condominiums to be created by Declarants and to serve all other functions of a Declaration of Condominium under Chapter 718, Florida Statutes, or any successor thereto, including the full and fair disclosure of all facts and conditions related to condominium ownership in the Condominiums.
- K. "Condominium Parcel" shall mean any Parcel submitted or to be submitted to the condominium form of ownership.
- L. "Condominium Unit Owner" shall mean the fee simple owner of any Condominium Unit.
- M. "Condominium Units" shall mean those portions of the Condominiums subject to individual ownership and defined as "Units" in Chapter 718, Florida Statutes, or successor thereto, and more fully described in the Condominium Declarations.
- N. "Declaration" shall mean this Declaration as it may be lawfully amended from time to time.
- O. "Declarant" shall mean The Mercato, LLP, a Florida limited liability partnership, and The Residences at the Mercato, Inc., a Florida corporation, their successors and assigns pursuant to an instrument that expressly conveys and/or assigns to the named assignee all or any portion of the rights of the Declarant hereunder. Any assignment or conveyance may be partial, in which event Declarant's rights so conveyed shall be limited as provided in the instrument, or the same may be a complete conveyance and assignment, in which case said assignee shall be vested with all of the rights of the Declarant hereunder, at which time Declarant will be released of all liability hereunder.
- P. "Hotel Owner" shall mean the fee simple owner(s) of the Hotel Parcel. If the Hotel Parcel becomes subjected to the condominium form of ownership, "Hotel Owner" shall mean, collectively, the owners of the Condominium Units therein and any owner of any portion of the Hotel Parcel which is not subject to condominium form of ownership.
- Q. "Hotel Parcel" shall mean that portion of the Mixed-Use Property designated as such by the Declarants.

- R. "Insurance Committee" shall mean the committee formed to receive insurance proceeds in the instances provided for in this Declaration, administer the distribution thereof and exercise such other powers as described in Section XI hereof.
- S. "Manager" shall mean the entity formed or hired to conduct the maintenance responsibilities of the Commercial Owner as described more fully in this Declaration.
- T. "Mixed-Use Property" shall mean that real property described in Exhibit "A-1."
- U. "Occupant" shall mean any Person occupying any portion of the Mixed-Use Property or Residential Property.
- V. "Owner" shall mean collectively, the Commercial Owner, the Hotel Owner, and all Condominium Unit Owners. Whenever rights or obligations are granted to or imposed on Condominium Unit Owners, such rights and obligations shall also be those of the Condominium Association of the Condominium in which the Condominium Unit Owner owns a Unit unless the context would otherwise require.
- W. "Parcel" shall mean a portion of The Mercato capable of being described with such definiteness that its location and boundaries may be established, which is designated by Declarant as a Parcel or Unit to be used, developed and conveyed separately and includes Condominium Units.
- X. "Person" shall mean any individual, partnership, corporation, trust, estate or other legal entity.
- Y. "Property" shall mean all property within The Mercato, i.e. the Mixed-Use Property and the Residential Property.
- Z. "Residential Property" shall mean that real property described in Exhibit "A-2."
- AA. "Shared Building Components" shall mean those portions of a Building intended to serve both (i) a Condominium Parcel or the Hotel Parcel and (ii) a Commercial Parcel located therein.
- BB. "Shared Expenses" shall mean those expenses incurred by the Commercial Owner or Manager in the performance of its duties under this Declaration that are paid by the Owners in accordance with this Declaration. They include, without limitation: the costs of maintaining, repairing, operating, replacing and insuring the Shared Facilities and Shared Building Components; the costs of commonly metered utilities; any other common charges for the Shared Facilities and Shared Building Components; and

any other expense identified as a Shared Expense elsewhere in this Declaration.

- CC. "Shared Facilities" shall mean those areas, components and parts of the Mixed-Use Property which by their purpose, nature, intent or function, afford benefits to or serve more than one Parcel therein, excluding Shared Building Components which are separately governed by other provisions. The Shared Facilities need not be legally described because ownership is not determinative of their designation. Shared Facilities consist of, but are not limited to, landscaping (including fountains), parking areas, roadways, pedestrian walkway systems, recreational areas and the Preserve Parcel(s). Notwithstanding anything to the contrary otherwise contained herein, for purposes of this Declaration, the swimming pool facilities, community meeting room facilities, and identified facilities located in Condominium Parcels or the Hotel Parcel shall not be considered "Shared Facilities" for purposes of this Declaration.
- DD. "Site Plan" shall mean the plan of development submitted to and approved amendments by the appropriate general purpose local government with land use jurisdiction over The Mercato, as same may be lawfully amended from time to time.
- EE. "Supplemental Declaration" shall mean any document recorded by Declarant in the Public Record of Collier County, Florida, which has the effect of supplementing or amending this Declaration.
- FF. "Surface Water Management System" shall mean any portion of real property within The Mercato for improvement, work or feature such as swales, ditches, canals, impoundments, berms, ponds, lakes, retention/detention areas, conservation areas, culverts and pumps required or described in any permits issued by South Florida Water Management District and any other applicable governmental agency for the management and storage of surface waters, drainage and flood protection for The Mercato MPUD and adjacent areas and identified as an element or component of the Surface Water Management System by the Declarant. The Surface Water Management System may be divided into one or more categories, including without limitation, to Units, Unimproved Units and Unimproved Parcels.
- GG. "Unimproved Unit" or "Unimproved Parcel": A Unit or Parcel upon which no building has been substantially completed for use.
- HH. "Unit": A portion of the Residential Property or Mixed-Use Property, including the Commercial, Condominium and Hotel Parcels therein, whether improved or unimproved, which may be independently owned and is intended for use and occupancy as an attached or detached residence or commercial premises. The term shall refer to the land, if any,

which is part of the Unit as well as any improvements thereon. In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to be a single Unit until such time as a subdivision plat, condominium plat or other document is recorded on all or a portion of the parcel identifying the Units thereon. Thereafter, the portion encompassed by such document shall contain the number of Units as set forth therein and any portion not encompassed shall continue to be treated in accordance with this paragraph.

II. Ratification of Existing Easements in Favor of Governmental Agencies and Public Utilities; Reservation of Temporary Easements for the Benefit of Declarant; Grant of Easements for the Benefit of Condominium Associations and Unit Owners; Grant of Easements for the Benefit of the Commercial Owner; Grant of Easements for the Benefit of the Hotel Owner; Grant of Easement for the Benefit of the Insurance Committee; Grant of Easement for the Benefit of the General Public; Grant of Encroachment Easements; Grant of Drainage Easements; Owners' Consent to Future Easements; No Merger; No Abandonment; Regulation of Easements.

- A. Ratification of Existing Easements in Favor of Governmental Agencies and Public Utilities: Declarant hereby ratifies those rights and easements (in perpetuity or otherwise) which have been granted by Declarant, or its predecessor in interest, to governmental agencies and public and private utilities, including, without limitation, easements for drainage, water management, sewer, water, gas, cable and electrical power lines, which easements may affect the Property and/or all or some of the Parcels and are recorded or shown in the Public Records of Collier County Florida prior to the date hereof. Each Owner and Occupant shall fully and faithfully comply with all requirements of said governmental agencies and public and private utilities in connection with the easements hereby ratified.
- B. Reservation of Temporary Easements for the Benefit of Declarant: In addition to any rights of entry and any other rights given to Declarant in this Declaration, Declarant hereby reserves temporary, non-exclusive easements over, under, upon, through and across any Parcel within the Property, for the benefit of Declarant, and its agents, employees and contractors, for the following purposes and to terminate on occurrence of the event indicated:
1. Ingress, egress and for the installation and/or emplacement of electric, telephone, cable television, water, gas, sanitary sewer lines, surface water drainage facilities and other drainage facilities, or any other utilities, together with the right to enter upon the property (without unreasonably interfering with the Owner's or Occupant's reasonable use and enjoyment thereof) in order to service, maintain, repair, reconstruct, relocate or replace any such improvements.

2. Ingress and egress over any public or private pedestrian walkways, or other specifically designated use areas, if any, to inspect, without any obligation do so, any Parcel to ascertain whether such Parcel, the improvements thereon, and the uses thereof, are in compliance with the provisions of this Declaration and any applicable regulatory permits, including the development approvals issued by Collier County; and, after reasonable notice and opportunity to cure, to abate and remove any improvement, thing or condition that may exist thereon in violation of or contrary to the intent and meaning of this Declaration and any applicable permits, and to do any other matter required or mandated by any governmental authority with jurisdiction.
 3. For so long as Declarant owns any Parcel for sale or lease in the ordinary course of business, for ingress, egress and any other purpose which, in the sole discretion of Declarant, is reasonably necessary for the sales and marketing activities of Declarant; provided that such easements shall not substantially or materially interfere with the reasonable development and use of any Parcel.
 4. With respect to the Commercial Parcel, the easements reserved pursuant to subparagraphs B.1. and B.2. of this Section shall terminate upon the issuance of Certificates of Occupancy for the Buildings comprising the Commercial Parcel or the completion of construction, whichever is later. With respect to the Condominium Parcels, these easements will terminate upon recording of the Surveyor's Certificate as required by Section 718.104(4)(e), Florida Statutes (2006) or the completion of construction, whichever is later. The termination of the easements shall be automatic upon occurrence of the termination event, and shall not require the recording of any document within the Public Records of Collier County, Florida. However, Declarant hereby covenants for itself, its successors and assigns, to fully cooperate with any Owner, any lender or Title Insurance Company and do all acts required by either to confirm the termination of the easements. Termination of these easements shall not adversely affect in any manner any other rights or easements accorded Declarant in this Declaration.
- C. Grant of Easements for the Benefit of Condominium Associations, Unit Owners and the Hotel Owner: The Declarant hereby grants and creates in favor of all Condominium Associations and Condominium Unit Owners and the Hotel Owner and their families, guests, contractors, agents, tenants and their successors and assigns, the following permanent, non-exclusive easements under, over, upon, across and through the Mixed-Use Property, subject to reasonable regulation of the use of the easements, it being the intent of this Section to create, grant or otherwise establish all easements

necessary to create a condominium under Section 718.104, Florida Statutes, or any successor thereto:

1. For pedestrian and vehicular ingress and egress over, across and through all areas of the driveways, parking lots and parking garages intended and designated for general pedestrian and vehicular use, and for pedestrian ingress and egress through the public entrances, service entrances, escalators, paths, walkways, stairways, lobbies and elevator lobbies located in the Commercial Parcel that are at any point in time intended and designated for general pedestrian use, all parts of the Commercial Parcel required to afford reasonable access from each Condominium Unit and all parts of the Condominium Parcels and the Hotel Parcel to the public rights-of-way, and for use in common with the Commercial Owner, its tenants, invitees and agents, of the facilities and areas on the Commercial Parcel for the other uses for which the facilities and other areas are intended to be used.
2. For parking in areas within the Commercial Parcel in locations that the Commercial Owner may designate in its reasonable discretion from time to time, and that are not otherwise exclusively reserved for the use of a specific Owner or Occupant pursuant to the terms of a separate written agreement with the Commercial Owner.
3. For ingress and egress through, access to and use of and for placement, installation, maintenance and repair of the facilities, improvements, fixtures and equipment located within the Commercial Parcel but which serve any Condominium Parcel or the Hotel Parcel, including but not limited to, mechanical rooms, electrical equipment rooms, machine rooms, stairways, air conditioning compressors and related equipment, telecommunications equipment and utility lines, pipes, chases, conduits, ducts and cables and Condominium Common Elements located adjacent to the Commercial Parcel, all as shown on the Building Plans.
4. For support in and to all structural members, footings, exterior walls, roof and foundations shown on the Building Plans as located within the Commercial Parcel and which are necessary for the support of the improvements on the Condominium Parcels or the Hotel Parcel; however, nothing herein shall be construed to require the Commercial Owner to erect or permit the erection of additional columns, bearing walls or other structures on the Commercial Parcel for the support of the Condominium Parcels or the Hotel Parcel beyond those shown on the Building Plans.

5. For utility service vaults, meters, cables, pipes and conduits, valves, traps and clean-outs located on the Commercial Parcel as shown on the Site Plan, through which electric power, gas or other fuels, cable television, telecommunications, telephone, water, sewer, and other similar utility services are supplied to the Condominium Parcels or the Hotel Parcel.
6. For trash and garbage removal, including locating dumpsters and other containers serving the Condominium Parcels or the Hotel Parcel.
7. Subject to the terms of any separate written agreement between an Owner or Occupant and the Commercial Owner, the easements granted in section II C 1 and 2 above are subject to the rights and privileges of the Commercial Owner to impose parking charges, whether by meter or otherwise, and to block off portions of parking and the Mixed-Use Property for festivals or other reasons. Moreover, skate boarding, roller blading, roller skating and similar activities are prohibited within such easements; bicycling is permitted but only at Declarant's discretion. Declarant reserves the right to impose additional restrictions on use as Declarant deems necessary to ensure or further health, safety and general welfare.

D. Grant of Easements for the Benefit of the Commercial Owner: The Declarant hereby grants and creates in favor of the Commercial Owner, its guests, contractors, agents, tenants, and successors and assigns, and the guests, contractors, agents, and tenants of its successors and assigns, the following easements:

1. Subject to the terms of any separate written agreement between an Owner or Occupant and the Commercial Owner, a non-exclusive easement over, across, through and upon the Condominium Parcels within the Mixed-Use Property including The Strada, and the Hotel Parcel for:
 - a. Access to, ingress and egress through, and use of the stairways, elevators and elevator shafts within The Strada or any Condominium Parcel within the Mixed-Use Property and the Hotel Parcel and the roof and exteriors of the Buildings in which they are located, for the placement, installation, maintenance and repair of the facilities, fixtures and equipment located there which serve the Commercial Parcel, including, but not limited to, mechanical rooms, electrical equipment rooms, elevator rooms, machine rooms, stairways, air conditioning compressors and related equipment, telecommunications

equipment and utility lines, pipes, chases, conduits, ducts and cables as shown on the Building Plans.

Notwithstanding the Commercial Owner's right to place, install, maintain and repair all such facilities, fixtures and equipment at no charge, except as otherwise shown on the Building Plans, the equipment placed upon the roof of the Hotel Parcel or the Buildings in which a condominium is located must first be approved by the Hotel Owner or the applicable Condominium Association, which approval shall not be unreasonably withheld or delayed and for which no charge shall be imposed, so long as there is space and load capacity available on the roof for such equipment.

- b. For support in and to, and maintaining and preserving all, structural members, footings, exterior walls, roof and foundations shown on the Building Plans; however, nothing herein shall be construed to require Condominium Associations or the Hotel Owner to erect or permit the erection of additional columns, bearing walls or other structures for the support of the Commercial Parcel beyond those shown on the Building Plans.
- c. For entry onto any Parcel for maintenance, repair or reconstruction of any Shared Facilities or Shared Building Components which are located within the Property and for which the Commercial Owner has maintenance responsibility, or for which the Condominium Associations and the Commercial Owner have otherwise agreed that the Commercial Owner shall have maintenance responsibility. Entry under this easement shall be limited to reasonable hours and is granted only to the extent reasonably necessary for performance of the maintenance, repair or reconstruction of the Shared Facilities or Shared Building Components.

- 2. Notwithstanding anything to the contrary otherwise contained in this Declaration, the Commercial Owner shall have the right to finally determine matters pertaining to the easement area.

- E. Grant of Easement for the Benefit of the Insurance Committee: The Insurance Committee is hereby granted a non-exclusive easement over, under and through the Property in favor of itself, its contractors, sub-contractors, material men, laborers, agents and assigns for ingress and egress in order to repair, reconstruct, relocate or replace any improvements damaged as a result of a casualty, or to otherwise fulfill its responsibilities as set forth in the Declaration. Entry shall be limited in scope and time only to that reasonably necessary to restore the improvements pursuant to

the obligations imposed on the Insurance Committee by Section XI F and other relevant provisions of this Declaration.

- F. Grant of Easement for the Benefit of the General Public: There shall be a limited, non-exclusive easement in favor of the general public for pedestrian and vehicular purposes in those areas of the Mixed-Use Property designated by Declarant for public access. Skate boarding, roller blading, roller skating and similar such activities are prohibited within this Easement; bicycling is permitted but only at Declarant's reasonable discretion. Declarant reserves the right, for itself and the Commercial Owner, to limit the hours during which access to the easement is permitted, and impose additional reasonable restrictions on use as either deems necessary to insure the health, safety and general welfare of the public, or the Owners and Occupants.
- G. Grant of Encroachment Easements: In the event that any improvement located on one Parcel encroaches upon another, as a result of minor engineering variances, or as a result of construction, reconstruction, repair, shifting, settlement or movement of any improvement or portion of the Property, there shall exist a valid easement for minor encroachment and for the maintenance of same, so long as the minor encroachment exists. Declarant and the Owner of each Parcel on which improvements are constructed along or adjacent to such Parcel line shall have an easement appurtenant to such Parcel over the Parcel line to and over the adjacent Parcel, for the purposes of accommodating any natural movement or settling of any improvement located on such Parcel, any encroachment of such improvement due to minor engineering or construction variances, any encroachment of walls and architectural features comprising parts of the original construction of any improvement located on such Parcel, and for maintenance thereof. The foregoing notwithstanding, no Owner shall have any easement for an encroachment resulting from the willful misconduct of such Owner.
- H. Grant of Drainage Easements: Declarant hereby reserves, for itself, governmental agencies, and all Owners, nonexclusive easements for the natural drainage and established drainage of surface waters over, across, under, and through all Parcels within The Mercato in accordance with drainage plans approved by Declarant and/or those public agencies having jurisdiction thereof. The drainage easement shall include the right, but not the obligation, of such benefitted parties to enter upon any Parcel to construct, maintain, and/or repair any drainage ways or facilities identified on such drainage plans. Any entry under this provision shall be limited to the extent as is absolutely reasonably necessary to perform the maintenance or repair of the system, and after completion of the work, the entity performing the work shall return the Parcel to the condition it was in prior to the work, to the extent reasonably possible.

- I. Owners' Consent to Future Easements: Each Owner of a Parcel, by acceptance of a deed thereto (whether or not it shall be so expressed in such deed) is hereby conclusively deemed to have fully agreed with and consented to all of the provisions set forth in this Section II. Subject to the terms of any separate written agreement between an Owner or Occupant and the Commercial Owner, Declarant shall be entitled, without the consent of any Owner, to grant any such future easements as it determines are in the best interests of the Property; provided, however, that such easements shall be limited only to the location, scope and size reasonably necessary to accomplish the stated purpose of such easement or to comply with any relevant requirements of the grantee of the easement. By acceptance of a deed to its Parcel, each Owner appoints Declarant as attorney in fact of such Owner and its successors, assigns and representatives, to grant such easements. Each Owner's acceptance of its Deed is an acknowledgment that such appointment is a power coupled with an interest, is irrevocable, and shall not be affected by the disability of the Owner, or its successors or assigns. The Declarant's right to grant future easements shall terminate with respect to each Parcel when the Certificate of Occupancy is issued for the improvements constructed on that Parcel.
- J. No Merger: Notwithstanding the union of (i) the fee simple title to the Property or any portion thereof or any other real property of Declarant with (ii) any right, title or interest in the easements granted by or reserved to Declarant pursuant to this Declaration, it is the intention of Declarant that the separation of such fee simple estate and such right, title or interest in such easements shall be maintained, and that a merger shall not take place without the express prior written consent of Declarant.
- K. No Abandonment: Notwithstanding any applicable law, it is the intent of Declarant that no easement granted or reserved hereunder shall be deemed abandoned or terminated merely by disuse or incompatible acts; rather, that the easements granted hereunder shall continue in full force and effect unless (i) terminated by a writing, duly acknowledged and recorded, executed by the Person or Persons entitled to the benefit thereof; or (ii) in the case of the Owners, terminated by approval of all of the Owners and certified in a document executed, acknowledged and recorded in the Public Record of Collier County.
- L. Regulation of Easements: Any easements created by Section II are subject to the following:
1. The right of the Commercial Owner to impose and enforce reasonable rules limiting the number of guests, invitees, tenants, customers, and other persons using the Shared Facilities.

2. The right of the Commercial Owner to establish and enforce reasonable rules and regulations pertaining to the use of the Shared Facilities located within the Commercial Parcel, such as the right to control the hours of business and the right to limit access to the Commercial Parcel, and the Shared Facilities therein, during non-business hours; provided however, nothing herein shall be deemed to state or imply the Commercial Owner may restrict in full access to a Parcel, by the Owner thereof, and that Owner's guests, invitees, tenants, customers, and other persons using the Parcel.
3. The right of the Commercial Owner to borrow money for the purpose of making capital improvements to the Shared Facilities and, in furtherance thereof, to mortgage, pledge or hypothecate any or all of the Shared Facilities as security for money borrowed or debts incurred; provided that the rights and easements of the mortgagee or secured party in any case shall always be subordinate to the rights and easements of the Owners and Occupants under this Declaration, including their rights in the Shared Facilities.
4. The right of Declarant to non-exclusive use of the Shared Facilities for the purposes of sales, leasing, promotional displays or exhibits, access, construction, ingress and egress, for so long as the easements benefiting Declarant are in effect.
5. The right and duty of the Commercial Owner to plant and replace trees, shrubs, ground cover, other vegetation and landscaping upon any part of the Shared Facilities and to maintain such landscaping.
6. Other rights and easement provided elsewhere in this Declaration.
7. All plats, restrictions, covenants, conditions, reservations, limitations, easements and other matters of record affecting the Shared Facilities or the Buildings.
8. The right of the Commercial Owner to repair, change, reconstruct, replace, remove, maintain, or refinish any improvements on or in the Shared Facilities or Shared Building Components.
9. The right of any Owner to mortgage, pledge or hypothecate its interest in its Parcel or Unit (including the title to any Shared Facilities or Shared Building Components therein) in order to finance the purchase of or make improvements to the Parcel or Unit, without the consent of any other party, provided that the rights of any mortgagee or secured party are subject and subordinate to the rights of the Owners or Occupants under this Declaration, including their rights in the Shared Facilities or Shared Building Components.

III. Condominium Associations' Rights if Commercial Owner Fails to Maintain Shared Facilities, Parking Areas or Landscape Areas; The Strada Condominium Association's Rights and The Hotel Owner's Rights if Commercial Owner Fails to Maintain Shared Building Components; Commercial Owner's Rights if The Residences or The Strada Condominium Associations Fail to Maintain Landscaping on their Condominium Parcel, Shared Building Components and Exterior Appearance of Buildings; Commercial Owner's Rights if The Hotel Owner fails to Maintain Landscaping, Other Improvements or General Appearance of Hotel Parcel; The Hotel Owner's Rights if Commercial Owner Fails to Maintain Landscaping, Parking Areas or Shared Facilities on the Commercial Parcel; Costs to be a Lien Against Property.

- A. Condominium Associations' Rights if Commercial Owner Fails to Maintain Shared Facilities, Parking Areas or Landscape Areas: Should the Commercial Owner fail to maintain the Shared Facilities, parking areas, landscape areas or exterior appearance of the Buildings for which the Commercial Owner is responsible, after reasonable notice and opportunity to cure, the Condominium Associations, or any of them, may enter onto the Commercial Parcel to maintain, repair or reconstruct such improvements to the condition required by the provisions of Section V A of this Declaration. Each Association, its agents or employees, is hereby granted an easement for ingress and egress over any public or private pedestrian walkways, or other specific designated public use areas, if any, the Shared Facilities, parking areas, landscape areas or exterior portions of the Buildings for which the Commercial Owner is responsible, and the portions of the Commercial Parcel contiguous thereto, to inspect, at their sole risk and expense, without any obligation to inspect, such areas to ascertain that they are in compliance with the provisions of this Declaration, and, after reasonable notice and opportunity to cure, to abate any deficiency in the maintenance of such property. Entry under this easement shall be limited to reasonable hours, except in instances of emergency, and granted only to the extent reasonably necessary for performance of the inspection, maintenance, repair or reconstruction of such improvements, and is subject to the terms of any separate written agreement between an Owner or Occupant and the Commercial Owner.
- B. A Condominium Association's Right and The Hotel Owner's Rights if Commercial Owner Fails to Maintain Shared Building Components: Should the Commercial Owner fail to maintain the Shared Building Components, after reasonable notice and opportunity to cure, a Condominium Association or The Hotel Owner in the Building where such Shared Building Components are located may enter onto the Commercial Parcel to maintain, repair or reconstruct Shared Building Components to the condition required by this Declaration. The Strada Condominium Association and The Hotel Owner, their agents or employees, are hereby granted an easement for ingress and egress over any public or private pedestrian walkways, or other specific designated public use areas, if any, the Shared Building Components and portions of

the Commercial Parcel contiguous thereto, to inspect, at their sole risk and expense, without any obligation to inspect, such areas to ascertain whether they are in compliance with the provisions of Section VA of this Declaration, and, after reasonable notice and opportunity to cure, to abate any deficiency in the maintenance of such property. Entry under this easement shall be limited to reasonable hours and granted only to the extent reasonably necessary for performance of the inspection, maintenance, repair or reconstruction of such improvements.

- C. Commercial Owner's Rights if The Residences or The Strada Condominium Associations Fail to Maintain Landscaping on their Condominium Parcel, Shared Building Components and Exterior Appearance of Buildings: Should either The Residences at Mercato Condominium Association or The Strada Condominium Association fail to maintain the Shared Building Components for which they have the duty to maintain, landscaping or exterior appearance of the portions of the Buildings subject to Condominium Declarations, after reasonable notice and opportunity to cure, the Commercial Owner may enter onto the Condominium Parcel to maintain, repair or reconstruct such improvements to the condition required in Section V A of this Declaration. The Commercial Owner, its agents or employees, are hereby granted an easement for ingress and egress over any public or private pedestrian walkways, or other specific designated public use areas, if any, the landscaping and exterior portions of such Buildings, and those portions of such areas contiguous thereto, to inspect, at their sole risk and expense, without any obligation to inspect, such areas to ascertain they are in compliance with the provisions of Section V A of this Declaration, and, after reasonable notice and opportunity to cure, to abate any deficiency in the maintenance of such property. Entry under this easement shall be limited to reasonable hours and granted only to the extent reasonably necessary for performance of the inspection, maintenance, repair or reconstruction of such improvements.
- D. Commercial Owner's Rights if The Hotel Owner Fails to Maintain Landscaping, Shared Building Components, Improvements or General Appearance of Hotel Parcel: Should The Hotel Owner fail to maintain the Shared Building Components for which it has the duty to maintain, or the landscaping, general appearance and all other improvements of the Hotel Parcel, after reasonable notice and opportunity to cure, the Commercial Owner, may enter onto the Hotel Parcel to maintain, repair or reconstruct the landscaping, general appearance and all other improvements of the Hotel Parcel to the condition required by this Declaration. The Commercial Owner, its agents and employees, are hereby granted an easement for ingress and egress over any public or private pedestrian walkways, or other specific designated public use areas, if any, and all other areas of the Hotel Parcel, to inspect, without any obligation to inspect, such areas to ascertain whether they are in compliance with the

provisions of Section V A of this Declaration, and, after reasonable notice and opportunity to cure, to abate any deficiency in the maintenance of such property. Entry under this easement shall be limited to reasonable hours and granted only to the extent reasonably necessary for performance of the inspection, maintenance, repair or reconstruction of such improvements.

- E. The Hotel Owner's Rights if Commercial Owner Fails to Maintain Landscaping, Parking Areas or Shared Facilities on the Commercial Parcel: Should the Commercial Owner fail to maintain the landscape areas, parking areas or Shared Facilities located on the Commercial Parcel, or exterior appearance of the Buildings for which the Commercial Owner is responsible, after reasonable notice and opportunity to cure, The Hotel Owner may enter onto the Commercial Parcel to maintain, repair or reconstruct such improvements to the condition required by this Declaration. The Hotel Owner, its agents and employees, are hereby granted an easement for ingress and egress over any public or private pedestrian walkways, or other specific designated public use areas, if any, landscaping, Shared Facilities, parking areas and those portions of the Commercial Parcel contiguous thereto, to inspect, without any obligation to inspect, such areas to ascertain whether they are in compliance with the provisions of Section V A of this Declaration, and, after notice and opportunity to cure, to abate any deficiency in the maintenance of such property. Entry under this easement shall be limited to and granted only to the extent reasonably necessary for performance of the inspection, maintenance, repair or reconstruction of such improvements, and is subject to the terms of any separate written agreement between an Owner or Occupant and the Commercial Owner.
- F. Costs to be a Lien Against Property: Should any Owner fail to cure any defect in maintenance of the portions of the Property for which it is responsible, after reasonable notice and opportunity to cure, the Commercial Owner, The Hotel Owner, The Residences at Mercato Condominium Association or The Strada Condominium Association exercising its rights under this Section, shall have a right to a lien against the offending Owner's Parcel for the costs incurred in curing the deficiency. Such lien shall be a Special Assessment against the Parcel of the offending Owner and shall be perfected and enforced as provided in Section X of this Declaration.
- G. Successor to The Hotel Owner. Should the Hotel Parcel become subject to the condominium form of ownership, the rights and obligations given and imposed upon the Hotel Owner pursuant to this Section III shall pass automatically to the Condominium Association created to maintain and operate the Hotel Parcel.

IV. Unified Plan of Development; Responsibility for Maintenance of Landscaping, Including Fountains, Parking Areas, Roadways, and Pedestrian Walkway System; Architectural Control Committee; Amendment to Unified Plan of Development.

- A. Unified Plan of Development: The development of The Mercato is in accordance with a unified plan of development, and its success relies on unity of landscaping design, exterior building appearance and parking areas. Therefore, the Declarant and all future Owners within The Mercato commit to maintaining the landscaping, exterior building appearance and parking areas in accordance with the unified plan, to be modified only as permitted by this Declaration.
- B. Responsibility for Maintenance of Landscaping, Including Fountains, Parking Areas, Roadways, and Pedestrian Walkway System. Landscaping and parking areas located within lands or parcel subject to the Declarations of Condominium shall be maintained by the respective Condominium Associations. All other landscaping, including fountains, parking areas, Preserves, roadways and pedestrian walkway system shall be maintained by the Commercial Owner, the expense of which shall be a Shared Expense.
- C. Architectural Control Committee and Votes. There is hereby established the Architectural Control Committee. The Architectural Control Committee shall have four (4) members who shall be the president of The Strada Condominium Association, the president of The Residences at Mercato Condominium Association, an officer of The Hotel Owner and a representative of the Commercial Owner. The Strada Condominium Association, The Residences at Mercato Condominium Association, and The Hotel Owner shall have one (1) vote each, and the Commercial Owner shall have four (4) votes. Each Member of the Architectural Control Committee shall have the right to cast votes on all matters on which the Committee has authority to act regardless of interests that member may represent and the matter under consideration. All decisions require a majority of seven (7) votes; in the event that any vote of the Committee results in a tie, the status quo shall be maintained. Should the Commercial Owner convey or lease any Parcel or Unit it may, but is under no obligation to, assign or delegate any voting or membership rights it may have in the Architectural Control Committee, either in whole or fractionally. Should such assignment or delegation occur, membership shall increase accordingly but such new member shall be entitled to cast votes only as specifically assigned or delegated, including a fractional vote. In no event shall there be more than 7 votes.
- D. Authority. The Unified Plan of Development for The Mercato provides that Declarant shall create an entity whose functions shall include provision for the perpetual maintenance of common facilities and open spaces in The Mercato and responsibility for the operation, maintenance

and management of the Surface Water Management Systems and Preserves serving The Mercato. The Declarant has delegated certain obligations and established certain rights with respect to the foregoing in this Declaration, and the Architectural Control Committee is created and established as the entity to perform these functions as well as to determine and adjudicate all matters and disputes regarding common facilities and open spaces in The Mercato, including but not limited to landscaping, parking areas, Preserves, roadways, pedestrian walkway systems, exterior building appearances and Shared Facilities within The Mercato and the Surface Water Management System. The Architectural Control Committee, may, in its discretion, delegate or assign such authority, in whole or in part, to a property owners' association or similar entity established by the Architectural Control Committee.

- E. Amendment to Unified Plan of Development: Should any of the Condominium Associations or the Commercial Owner or the Hotel Owner desire to modify the landscaping, exterior building appearance or parking areas located within its Parcel, or should any Condominium Unit Owner (excluding a Condominium Unit Owner in The Residences at Mercato) desire to modify the exterior surface of any window coverings visible from the outside of any Unit, the Owner shall present the proposed plans for the modifications to the Architectural Control Committee for review and approval. No alteration to the landscaping, exterior building appearance or parking areas is permitted without the approval of the Architectural Control Committee. In the event of unapproved alterations, the Commercial Owner may take action to restore the landscaping, exterior building appearance or parking area to the condition that existed prior to the unapproved alteration, and is hereby granted an easement to enter upon the Parcel whereon unapproved alterations have been made, for the purpose of restoring the affected area. The costs for restoring the affected area shall be collectable as a Special Assessment against the offending Owner, in accordance with the provisions of Section VIII hereof.

- V. Maintenance of Parcels, Standard of Care Imposed; No Nuisances; Powers and Duties of the Commercial Owner with Respect to the Shared Facilities; Standard of Care Imposed, Release of Liability and Indemnification; Duty Established; Costs to be Shared Expenses; Non-Abatement of Obligation to Pay Shared Expenses; Commercial Owner Authorized to Hire Manager.

- A. Maintenance of Parcels, Standard of Care Imposed: Responsibility for maintaining, repairing, replacing and insuring Condominium Parcels is as provided for in the Condominium Act and the Declarations of Condominium. Each Owner is responsible for maintaining, repairing and replacing all parts of the Parcel it owns or operates that are not part of the Shared Facilities, and all fixtures and equipment that serve only its Parcel, including but not limited to heating, ventilating and air conditioning

equipment, plumbing fixtures and connections thereto, and electric panels, outlets and wiring, whether located in Buildings or not and whether or not located on its Parcel. Each Owner shall maintain its Parcel in first class condition.

- B. No Nuisance: No Owner shall cause or allow noxious odor, noise or vibration to emanate from its Parcel or the Shared Facilities which unreasonably damages or disturbs the occupancy or use of any other Parcel or the enjoyment of any Shared Facility. All activities by any Owner, Occupant, or user of a Parcel must be reasonable, and must be conducted in such a manner as to minimize or prevent interference with the rights of others. It is understood and accepted, however, that there will be noise, odors or vibrations emanating from grocery stores, restaurants, bars, retail stores or other businesses located upon one or more Parcels. Portions of the Commercial Parcel will be occupied by tenants engaged in the food, beverage and entertainment industry and that these businesses may operate well into the evening including after midnight. Condominium Units and the Hotel Parcel are located above and in close proximity to restaurants, bars, retail stores or other businesses which may operate at unusually late or early hours. Unavoidably, such Condominium Units and the Hotel Parcel will be exposed to noise, odors, activities and lights associated with live entertainment, cooking and other business related activities both within and without the Buildings. These noises and odors shall not be deemed objectionable or a nuisance.
- C. Powers and Duties of the Commercial Owner with Respect to the Shared Facilities: The Commercial Owner shall utilize its reasonable best efforts to:
1. Operate, maintain, repair, replace and otherwise manage all the Shared Facilities in accordance with the provisions of this Declaration, except those that may be expressly required herein to be maintained, repaired or replaced by the Owner of the Parcel in which they are located, or the Condominium Associations.
 2. Clean, or cause the Shared Facilities to be cleaned, on a regular basis in accordance with the standards of first class business facilities, and to perform or cause to be performed other customary and necessary janitorial services.
 3. Obtain, for the benefit of the Owners, and provide for distribution through the Shared Facilities, all commonly metered water, sanitary sewage, trash removal, and other utility services for the Buildings designed for common provision and metering services, and provide for distribution through the Buildings, the Commercial Parcel and the Shared Facilities, of all utility services, as necessary, to be metered as determined in the Building Plans.

4. Take whatever other actions the Commercial Owner reasonably deems necessary or advisable with respect to the operation, maintenance, repair and replacements of the Shared Facilities as may be permitted or required under this Declaration or by law.
- D. Standard of Care Imposed, Release of Liability and Indemnification: The Commercial Owner shall make a good faith effort to provide the services described above with regard to Shared Facilities and with respect to the Shared Building Components hereafter described at appropriate levels comparable with practices in other similar mixed-use commercial and residential developments, subject to the Commercial Owner's reasonable discretion, and subject to possible temporary interruptions due to necessary repairs, alterations or improvements of the Shared Facilities and Shared Building Components, or due to strikes or other labor disputes, hurricanes or other severe weather, fire, flood, explosion, civil disturbances, war, acts, proceedings or regulations of any governmental authority, rationing, interruption of transportation, or any other similar cause not the fault of, and beyond the reasonable control of, the Commercial Owner. So long as the Commercial Owner has contracted with reputable firms with experience in the nature of the work to be performed to maintain, repair, replace or provide services and use of the Shared Facilities and Shared Building Components, the Commercial Owner will be deemed to have acted reasonably and completely fulfilled and met the standard of care imposed by this Declaration. Except as may be limited or conditioned by separate written agreement between an Owner or Occupant and the Commercial Owner, all Owners and Occupants, for themselves, their tenants, invitees, guests and customers do hereby generally and unconditionally release the Commercial Owner and its affiliates, employees, representatives, successors and assigns from any and all losses, damages, injuries to persons or property of any kind or nature arising out of the performance by the Commercial Owner of its duties with respect to the Shared Facilities and Shared Building Components, so long as the Standard of Care has been met.
- E. Duty Established: In planning, budgeting, providing services and carrying out the duties it may have with respect to the Shared Facilities and the Shared Building Components located within the Condominium Parcels and the Hotel Parcel, the Commercial Owner owes a duty to the Condominium Unit Owners, Hotel Owner and to the Condominium Associations to provide such services in accordance with the Standard of Care referenced in Section V D hereof.
- F. Costs to Be Shared Expenses: Costs and expenses properly incurred by the Commercial Owner in performing its duties under this Section with respect to the Shared Facilities and Shared Building Components for which it is responsible shall be Shared Expenses.

- G. Non-Abatement of Obligation to pay Shared Expenses: The obligation of the Owners to pay Assessments does not abate because of any interruption in the availability of any utility or service, or interruption in the use of the Shared Facilities or Shared Building Components, or the failure of the Commercial Owner to restore service, as long as the Commercial Owner pursues restoration of services and takes actions with reasonable due diligence that are properly intended to restore service and use of the Shared Facilities and Shared Building Components.
- H. Commercial Owner Authorized to Hire Manager: The Commercial Owner may contract or hire a Manager to perform the obligations of the Commercial Owner under this Section or any other Section of this Declaration which imposes responsibilities on the Commercial Owner. The Commercial Owner shall be responsible for the costs and expenses of the Manager, which shall be reimbursed to the Commercial Owner as a Shared Expense in accordance with the remaining provisions of this Declaration.

VI. Commercial Owner, the Hotel Owner and Condominium Association to Share in Maintaining Certain Shared Building Components; Commercial Owner to Share Costs of Roof Repair and Replacement; Architectural Control Committee to Settle Certain Disputes.

- A. Commercial Owner, the Hotel Owner and Condominium Association to Share in Maintaining Certain Shared Building Components: The Commercial Owner shall be responsible for the maintenance, repair and replacement of Shared Building Components. However, this responsibility does not include elevators and related equipment, stairs and stairwells, roof and exterior portions of the Buildings (i) in which a Condominium may be located and which are a part of those Condominiums, or (ii) which are part of the Hotel Parcel. Such excepted Shared Building Components shall be maintained by the applicable Condominium Associations or the Hotel Owner as to the Buildings in which they are located. The Condominium Association and the Hotel Owner shall have reasonable discretion, but not unfettered discretion, in determining when the roof or other Shared Building Components for which it has responsibility shall be repaired or replaced, subject to resolution of any dispute by the Architectural Control Committee. The Commercial Owner shall have reasonable discretion, but not unfettered discretion, in determining when Shared Building Components for which it has responsibility shall be repaired or replaced, subject to resolution of any dispute by the Architectural Control Committee.
- B. Commercial Owner to Share Costs of Roof Repair and Replacement: Notwithstanding anything to the contrary otherwise contained herein, the Commercial Owner shall share in the cost of roof repair, exterior painting and replacement of the Buildings in which a Condominium or the Hotel

Parcel is or may be located together with Commercial Property, but not any other items the Condominium Association or the Hotel Owner maintains as referenced in Section VI A. The Owners of the Commercial Parcel shall pay to the applicable Condominium Association or the Hotel Owner for roof repair and replacement within fifteen (15) days of billing, as determined in accordance with Section VIII G.

- C. Architectural Control Committee to Settle Certain Disputes: In the event that the Commercial Owner or the Condominium Association or the Commercial Owner and the Hotel Owner disputes the other's determination that it is necessary to complete the work delegated to it in Section VI, the dispute shall first be submitted to the Architectural Control Committee for resolution. The Architectural Control Committee shall determine whether the party responsible is acting reasonably, in its determination that the disputed repair or replacement is necessary. If less than a majority of the Architectural Control Committee agrees that the work is necessary, the disputing party may submit that determination to arbitration as further described in Section XIV, with the requirement that the arbitrators shall be selected from a pool of candidates with experience in management of buildings of a similar nature to those within The Mercato.

VII. Commercial Owner to Maintain Landscaping (Including Fountains) Parking Areas, Roadways and Pedestrian Walkways; Commercial Owner's Right to Assign and Regulate Use of Parking Spaces, Landscaping (Including Fountains) Parking Areas, Roadways and Pedestrian Walkways Are Shared Facilities.

- A. Commercial Owner to Maintain Landscaping (Including Fountains) Parking Areas, Roadways and Pedestrian Walkways: The Commercial Owner shall be responsible for the maintenance of the landscaping (including fountains), parking areas, Preserves, roadways and pedestrian walkways which are not appurtenant to the Condominium Units.
- B. Commercial Owner's Right to Assign and Regulate Use of Parking Spaces: With respect to all parking spaces not appurtenant to Condominium Units but subject to the terms of any separate agreement that may exist between an Owner or Occupant and the Commercial Owner, the Commercial Owner shall have the right to assign, with or without consideration, the exclusive use of any parking space to either the Commercial Owner, any commercial Occupant or tenant, guest or invitee of the Commercial Owner, or a Condominium Unit Owner, and the Declarant shall also have the right to establish, amend and enforce rules and regulations for the use of parking spaces.
- C. Landscaping (Including Fountains) Parking Areas, Roadways and Pedestrian Walkways Are Shared Facilities: The landscaping (including fountains), parking areas, Preserves, roadways and pedestrian walkways

on the Commercial Parcel shall be deemed to be Shared Facilities, and the Condominium Unit Owners and Condominium Associations and the Hotel Owner shall be responsible for sharing in the costs of maintaining the Shared Facilities.

VIII. Covenant to Pay Assessments; Covenant to Pay Insurance Committee Assessments; Covenant to Pay Costs and Expenses Incurred Pursuant to the Provisions of Section III of this Declaration; Creation of Lien; Late Charges and Interest; Liability for Assessments; Allocation of Assessments.

- A. Covenant to Pay Assessments: The Declarant for each Parcel hereby covenants, and each subsequent Owner of each Parcel by acceptance of a deed therefor, whether so expressed in the deed or not, is hereby deemed to have affirmatively covenanted and agreed to pay the following:
1. Capital Improvement Assessments for the costs of Shared Facilities and Shared Building Components within any new building, structure, installation or other improvement, not presently called for or shown in the Building Plans, which shall be allocated as determined by agreement of the Owners, or if the Owners fail to agree, by arbitration. Such assessments shall be levied by and be payable to the Commercial Owner. However, notwithstanding the foregoing, the Commercial Owner has the right, but not the obligation, to make any of said Capital Improvements at its cost without assessment.
 2. Shared Expenses Assessments based upon an annual budget shall be levied by the Commercial Owner and paid, with respect to the Parcels, in the percentages or proportions shown in Table 1 in Section VIII of this Declaration, in amounts anticipated to be sufficient to pay the Shared Expenses, provide funds for performance by the Commercial Owner of its duties under Sections V, VI and VII, and other provisions of this Declaration, which are performed for the benefit of all Owners, and to improve and maintain the Shared Facilities and Shared Building Components as provided herein.
 3. Assessments Levied By The Strada Condominium Association and The Hotel Owner respectively for roof repairs and replacement of Buildings that contain either The Strada or The Hotel at Mercato, and Parcels or Units owned by other Owners.
 4. Special Assessments. Special Assessments may be levied by the Commercial Owner upon an Owner for the cost of maintenance, repair or replacement of the Shared Facilities or Shared Building Components made necessary by the willful or negligent act of that Owner, or a person for whom that Owner is responsible and shall

be paid to the Commercial Owner to the extent insurance proceeds that may have been actually received by the Commercial Owner are insufficient to cover the damage, and such Owner shall also be responsible for payment of any deductible. For the purpose of this Section, the Commercial Owner is considered to be responsible for its own employees and agents, and its Occupants, lessees, licensees and invitees; the Condominium Association is considered to be responsible for its own employees and agents; the Condominium Unit Owners are considered responsible for their resident family members and tenants, and for its and their employees, licensees, lessees, invitees and guests; and the Hotel Owner is considered responsible for its own employees and agents and its Occupants, invitees and guests. A Special Assessment may also be levied in any other instance authorized and as provided elsewhere in this Declaration.

- B. Covenant to Pay Insurance Committee Assessments: The Declarant for each Parcel hereby covenants, and each subsequent Owner of each Parcel by acceptance of a deed therefor whether so expressed in the deed or not is hereby deemed to have affirmatively covenanted and agreed, to pay Reconstruction Assessments to the Insurance Committee as may be levied by the Insurance Committee in such circumstances, for such purposes and amounts and in such proportions as are authorized in and determined pursuant to Section XI H or as may be authorized elsewhere in this Declaration. Not less than thirty (30) days in advance of the levying of a Reconstruction Assessment, written notice shall be sent to all Owners who would be required to pay the Assessment. The notice must disclose the Reconstruction Assessment's specific purpose or purposes, the amount owed by each Parcel, and the date on which payment is due. Should any Owner dispute its share of the Reconstruction Assessment, the Insurance Committee will convene to hear the dispute, and if unable to resolve the dispute to the satisfaction of the complaining Owner, the dispute shall be submitted to arbitration pursuant to Section XIV herein.
- C. Covenant to Pay Costs and Expenses Incurred Pursuant to the Provisions of Section III of this Declaration: The Declarant for each Parcel hereby covenants, and each subsequent Owner of each Parcel by acceptance of a deed therefor whether so expressed in the deed or not is hereby deemed to have affirmatively covenanted and agreed to pay to the Owner to whom such costs and expenses should be reimbursed, those charges incurred in accordance with the provisions of Section III of this Declaration.
- D. Creation of Lien: Any Owner with assessment authority in those instances provided for herein or the Insurance Committee shall have the right to a lien on each Parcel, enforceable by that Owner or committee, as the case may be, to secure payment of all Assessments now or hereafter imposed in accordance with this Declaration. The lien shall also secure payment of

all late charges and interest on delinquent Assessments, reasonable attorney's fees and other costs through any appeals incurred by the Owner or committee, as the case may be, in connection with the claims relating to unpaid Assessments.

- E. Late Charges and Interest: If all or any part of any installment of any Assessment is not paid within ten (10) days after its due date, the Owner responsible therefor may be required to pay a late charge equal to five percent (5%) of the unpaid Assessment. If all or any part of any installation of an Assessment or any other amount due hereunder is not paid within thirty (30) days after it is due, the Owner responsible therefor shall owe interest on the unpaid amount from its due date at the highest lawful rate then applicable to loans of that amount.
- F. Liability for Assessments: Each Assessment, together with interest, costs and reasonable attorney's fees through any appeals, shall also be the non-delegable, personal obligation of the Owner of record legal title to the Parcel at the time when the Assessment is levied. Subject to the provisions hereof protecting mortgagees, successors-in-title to the Owner of the Parcel against which the Assessments were levied shall be jointly and severally liable with the Owner for payment of any unpaid Assessments at the time title to the Parcel is transferred. If a Parcel is owned by more than one individual or entity, the obligation to pay Assessments is the joint and several obligation of all Owners. No Owner may avoid or be exempt from personal liability for paying Assessments, or release or excuse the Parcel or Unit owned by him from the Assessment, liens and charges provided for herein, by waiver of the use and enjoyment of the Shared Facilities or by abandonment of his Parcel.
- G. Allocation of Assessments: The Assessments shall be allocated among the Parcels employing the Basic Assumptions set forth herein. Any reallocation of Assessments as a result of the combination or subdivision of any Parcel(s) shall be as provided in this Section.
 - 1. *Basic Assumptions:* The following form the assumptions on which the methodology for allocation of votes and Assessments is based:
 - a. It is appropriate to allocate the Assessments for maintenance of the Shared Facilities on the expected percentage of use of the Shared Facilities.
 - b. It is appropriate to base the Assessments for maintenance of the Shared Building Components on the expected benefit therefrom.
 - c. The Commercial Owner may modify the allocation of Assessments, in order to account for unforeseen changes in

development plans, or to maintain an equitable system of Assessment allocation, but no change which would increase the allocation to the Condominium Parcels for any type of expense, or for the total expense, by more than five percent (5%) over the then current allocation shall be made without written consent of the Condominium Associations.

2. *Allocation of Assessments for Shared Facilities:* Each Parcel is hereby allocated the percentage shown in Table 1 as its proportionate share of the Assessments for Shared Facilities:

Table 1: Allocation of Assessments for Shared Facilities	
Commercial Parcel	88%
The Strada, a Condominium	4%
The Residences at Mercato, a Condominium ¹	3%
The Hotel Parcel	5%

3. *Allocation of Assessments for Shared Building Components:* Each Parcel is hereby allocated the percentage shown in Table 2 as its proportionate share of the Assessments for Shared Building Components:

Table 2Ai: Allocation of Assessments for Shared Building Components for Buildings in Which Residential Units of The Strada are Located	
Commercial Parcel	20%
The Strada, a Condominium	80%

Table 2Aii: Allocation of Assessments for Shared Building Components for Buildings Containing Parking Garage for The Strada	
Commercial Parcel	0%

¹ While contemplated, there is no obligation by Declarant or successors or assigns to create The Residences at Mercato or to make this Declaration effective as to the Residential Property except as specifically provided herein. Until such time as The Residences at Mercato, a Condominium, is created by recording the Declaration of Condominium in the Public Record of Collier County, Florida, or the Residential Property is otherwise developed or sold and this Declaration is made binding thereon in which event the Owner of the Residential Property shall be responsible for the percentage, the Commercial Owner shall be responsible for payment of allocation of Assessments attributed to The Residences at Mercato herein..

The Strada, a Condominium	100%

Table 2B: Allocation of Assessments for Shared Building Components for Buildings in Which The Hotel at Mercato is Located	
Commercial Parcel	25%
The Hotel Parcel	75%

4. *Combination of Parcels:* Should any Parcels be combined for development or any other purpose, the allocation of Assessments shall be the sum of the Assessments allocated to each separate Parcel.
5. *Subdivision of Parcels:* Condominium Units may not be subdivided. The effect of the subdivision of a Parcel on allocation of Assessments is dependent on the use permitted for the Parcel.

Should the Commercial Parcel ever be subdivided or subjected to the condominium form of ownership, the Commercial Owner and the purchaser of the subdivided portion of the subdivided portion of the Commercial Parcel shall agree to a mutually satisfactory reallocation of the Assessments allocated to the Commercial Parcel in a manner that does not affect the Owner of any other Parcel's proportionate share of the Assessments.

IX. Annual Budget; Dispute Resolution; Payment Schedule; Collection of Assessments.

- A. Annual Budget. At least thirty (30) days prior to the beginning of each calendar year, the Commercial Owner shall prepare and distribute to all Owners a written, detailed estimate (the "Budget") of the Shared Expenses anticipated to be incurred during that year for maintenance of the Shared Facilities and the Shared Building Components. The Budget shall include provisions for reasonable reserves for capital expenditures and deferred maintenance (computed by means of a formula based upon the estimated life and estimated repair and replacement costs) and may (but need not) include reserves for contingencies. Assessments for Shared Expenses shall be based on that Budget. If for any reason the Budget and the funds received from Assessments based on that budget prove inadequate, and additional sums are needed, written notice of any change in the amount of the annual Assessment shall be sent to every Owner at least thirty (30) days prior to the effective date of the change. At the end of any fiscal year all excess funds over and above the amounts used or required to reserve

for Shared Expenses shall be retained by the Commercial Owner and used to reduce the following year's Assessments. If a Budget for a fiscal year has not yet been adopted at the beginning of that year, Owners shall continue to pay installments at the same intervals and in the same amounts as the most recent previously due installments.

- B. Dispute Resolution: In the event that the any Owner disputes the amounts of an Assessment, the Commercial Owner, committee or other entity by whom the Assessment was levied shall provide a detailed explanation of the method used to derive the amount of the Assessment. If the disputing party is still not satisfied, the matter will be submitted to arbitration under the provisions of Section XIV.
- C. Payment Schedule: Assessments for Shared Expenses shall be payable in quarterly installments, in advance, due on the first day of each calendar quarter. Capital Improvement, Reconstruction and Special Assessments shall be due within thirty (30) days after notice of the Assessments is duly given, except as may be otherwise specifically provided in this Declaration or the notice of the Assessment.
- D. Collection of Assessments: The Condominium Associations shall include the respective Condominium's proportionate share of the Assessment for Shared Expenses in its annual budget, and allocate that Assessment among the Condominium Units in accordance with the Condominium Declarations, in the same percentage or proportion as the allocated undivided ownership share of the common elements of the Condominium appurtenant to that Unit or, should no percentage or proportion be allocated, equally among Unit Owners. The Condominium Associations shall collect the Condominium Unit Owners' shares of the Assessments and remit them to the Commercial Owner, along with a roster of all Condominium Unit Owners identifying any Owner who has failed to pay its Assessment share. Should the Condominium Associations fail to undertake their respective responsibility to collect the Assessments, the Commercial Owner may take such reasonable steps as are necessary to assess and collect the assessments, and any costs incurred by the Commercial Owner in so doing shall be assessed against the Condominium Association as a Special Assessment payable as provided herein.

X. Remedies for Default; Foreclosure of Lien; Curing of Default; Cumulative Remedies; Subordination of Lien to First Mortgages; Estoppel Information.

- A. Remedies for Default: Any Assessments which are not paid when due shall be delinquent. Any Assessment delinquent for more than ten (10) days shall incur a late charge imposed and as determined by the assessing authority, not to exceed five percent (5%) of the delinquent assessment or the highest amount allowed by law, whichever is less. The Commercial

Owner, committee or other entity, which has imposed the assessment, shall cause a notice of delinquency to be given to any Owner or other party who has not paid within ten (10) days following the due date. If the Assessment has not been paid within thirty (30) days of the notice of delinquency, a lien as herein provided for shall attach and in addition the lien shall secure the late charge, interest on the amount of the Assessment itself at the maximum allowable rate by law from the date the Assessment was first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. No action shall be brought to foreclose any Assessment lien herein unless at least thirty (30) days after the notice of delinquency or similar type document, a Claim of Lien is recorded in the Public Records of Collier County Florida, and a Notice of Claim of Lien is deposited in the United States Mail, certified or registered, postage prepaid, addressed to the Defaulting Owner. To be valid, a Claim of Lien must include the legal description of the Parcel, the name of the record Owner, the amount claimed (which may include late charges, interest on the unpaid Assessment at the rates and in the amounts described in this Section, reasonable attorney's fees and the expenses of collection efforts in connection with the debt secured by the lien, and late charges), and the name and address of the claimant; and must be signed and acknowledged by an officer or authorized agent of the claimant.

B. Foreclosure of Lien.

1. In the event the Assessment remains unpaid after sixty (60) days from the date when due and so long as the relevant procedures of Section X A are complied with, the Commercial Owner, committee or entity imposing the Assessment may institute suit to collect such amounts or to foreclose its lien. Each Owner, by his or her acceptance of the deed to a parcel, vests in the Commercial Owner, committee or entity imposing the assessment, the right and power to bring all actions against him or her personally for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as a mortgage lien may be foreclosed in Florida. The lien for Assessments provided for in this Section shall be in favor of the Commercial Owner, committee or entity imposing the Assessment.
2. In the event a Reconstruction Assessment is levied and it is necessary to foreclose the lien, the funds from the sale of the Parcel shall be held in trust by the Insurance Committee and shall be used to complete the reconstruction obligations of the Owner of the Parcel foreclosed. In the event there are not sufficient proceeds from the sale to complete the reconstruction required pursuant to this Declaration, the new Owner of the Parcel foreclosed shall be under an obligation to complete the reconstruction as required by

this Declaration. In the event the new Owner fails to fulfill his obligations in that regard, the other Owners shall have the same enforcement rights as provided for under Section III, with respect to maintenance of Parcels, except that such enforcement rights shall also apply with respect to the reconstruction required on the Parcel foreclosed, including the right to assess the Parcel for the cost of the work.

- C. Curing of Default. Upon the timely cure of any default for which a Claim of Lien was recorded by the Commercial Owner, committee or entity imposing the assessment, an officer thereof shall record an appropriate Release of Lien.
- D. Cumulative Remedies: The liens and the rights of foreclosure and sale hereunder shall be in addition to, and not substitute for, all other rights and remedies the Commercial Owner, committee or entity imposing the Assessment, and other Owners and their assigns may have hereunder and under law, including a suit to recover a money judgment.
- E. Subordination of the Lien to First Mortgages: Priority of Lien to Lease: The lien to secure payment of Assessments authorized and provided for in this Declaration shall be subordinate to the lien of a bona fide mortgage(s) created in good faith and for value and recorded before the Notice of Claim of Lien is recorded (a "Prior Recorded Mortgage"). A lease of a Parcel is subordinate and inferior to a Claim of Lien, regardless of when the lease was executed, excepting only such leases that may exist between the Commercial Owner and a tenant and for which a memorandum of lease or similar document has been recorded in the Public Records of Collier County, Florida, prior to the Claim of Lien. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under any of them, shall hold title subject to the liability and lien of any Assessments or charge.
- F. Estoppel Information: Within fifteen (15) days after receipt of a written request from an Owner, or a prospective purchaser including prospective purchasers or mortgage lenders of Condominium Units, the Commercial Owner, any entity or other Owner who has assessment authority shall provide upon reasonable charge for doing so, written certification (commonly referred to as an "estoppel letter") to the person making the request, stating whether all Assessments and other monies owed by the Owner with respect to the Parcel have been paid.

XI. Owners' Responsibility to Insure Property; Commercial Owner's Responsibility to Insure Against Liabilities; Insurance Committee Established; Responsibility to Reconstruct in the Event of Casualty; Effect of Decision not to Reconstruct; Insurance Committee

Enforcement Rights; Repair and Reconstruction Procedures; Reconstruction Assessments
Authorized; Distribution of Excess Insurance Proceeds.

- A. Owners' Responsibility to Insure Property: Each Condominium Unit Owner shall insure his individual Unit and each Condominium Association shall insure the Association's Property in accordance with the Declarations of Condominium and Florida law. The Hotel Owner shall insure the Hotel Parcel, and all Owners shall insure the Parcel or Unit owned by such Owner. The Commercial Owner shall insure the Commercial Parcel and the Shared Facilities. The Owner of a Parcel in which Shared Building Components are located shall insure the Shared Building Components located within that Parcel. The cost to insure the Shared Facilities and Shared Building Components shall be borne by the Owner of the Parcel in which they are located. All policies shall insure against loss or damage caused by fire, water, lightening, flood, hurricane, windstorm, hail, explosion, riot, damage from aircraft, collapse, and smoke damage, and such other risks, casualties and hazards as may from time to time be carried by prudent owners of similar buildings, with "all risk," extended coverage, vandalism and malicious mischief endorsements in an amount equal to the full insurable replacement value thereof excluding the cost of excavation and of foundations. Each Policy shall provide to the extent possible that proceeds paid as a result of a casualty that damages more than one Parcel or any portion of the Shared Facilities or Shared Building Components shall be paid to the Insurance Committee. If any such proceeds are paid directly to an Owner, the Owner hereby agrees such proceeds are held in trust and such Owner shall promptly pay over all such proceeds, along with the applicable insurance deductible, to the Insurance Committee. In the event a Building is owned by one or more Owners, the Owners shall to the extent reasonable, necessary or practical, secure one policy to insure the Building, all Owners shall be named as insureds, and the cost of such insurance shall be allocated in the same percentage as if an assessment for Shared Building Components. Should any Owner fail to cooperate in securing such insurance, the other Owner shall notify the Insurance Committee and cooperate therewith so insurance for the Building is obtained and the Insurance Committee may take all steps necessary to secure payment, including imposing and foreclosing a lien on the Parcel or Unit owned by the Owner failing to cooperate and pay for the policy applicable to a Building.
- B. Commercial Owner's Responsibility to Insure Against Liabilities: The Commercial Owner shall maintain comprehensive general liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Shared Facilities, and on, in or about the streets, sidewalks and passageways within and adjoining the Commercial Parcel. In no event shall the comprehensive general liability insurance afford protection in amounts less than \$1,000,000.00 in respect to any occurrence regarding personal injury including death and less than

\$100,000.00 in respect to property damage, and an excess policy in a minimum amount of \$5,000,000.00 (or greater, if required by separate written agreement between the Commercial Owner and an Owner or Occupant) shall also be maintained, and shall include all parties with an interest in the Shared Facilities as additional insureds. The Policy shall include provisions that it cannot be cancelled except upon forty-five (45) days written notice to the Commercial Owner, the Hotel Owner and the Condominium Associations, except that cancellation for non-payment of premiums need only require ten (10) days notice. Failure to maintain the liability insurance required herein shall be a breach of the Commercial Owner's duty to the Owners.

- C. General Requirements. All insurance policies required by this Declaration shall be obtained from and provided by companies authorized to insure in Florida, having a minimum Standard & Poor's or similar-type rating as may be established by the Insurance Committee from time-to-time. The Insurance Committee shall also establish from time-to-time maximum allowable deductibles and may establish minimum required coverages in excess of those provided in this Declaration if deemed appropriate in the Insurance Committee's reasonable discretion. Underlying and excess policies may be utilized to meet required minimum coverages. Moreover, in the event coverages or required coverage amounts for certain risks are not reasonably obtainable in the then available insurance market, the Person having the obligation to secure insurance may request the Insurance Committee to relieve certain insurance obligations, to permit lesser coverage limits, or to fashion some accommodation as the Insurance Committee may determine in its reasonable discretion.
- D. Insurance Committee Established: There is hereby established the Insurance Committee, consisting of four (4) members who shall be the president of The Strada Condominium Association, the president of The Residences at Mercato Condominium Association, a representative of the Hotel Owner and a representative of the Commercial Owner. Members may designate substitutes to act for them at specific meetings. In addition to the other responsibilities delegated to the Insurance Committee in this Declaration, the Committee will have the responsibility for receiving, managing, disbursing and accounting for any proceeds of insurance paid as a result of a casualty which damages more than one Parcel. Proceeds paid as a result of a casualty that only damages Condominium Units within one Condominium shall be received, managed, disbursed and accounted for in accordance with the Condominium Act and the Declarations of Condominium. All decisions on matters before the Insurance Committee shall require a majority of the seven (7) votes provided for herein. The Strada Condominium Association, The Residences at Mercato Condominium Association and the Hotel Owner shall have one (1) vote each, and the Commercial Owner shall have four (4) votes. Each member shall have the right to cast votes

on all matters on which the Committee has authority to act regardless of interests that the member may represent and the matter under consideration. In the event that any vote of the Committee results in a tie, the status quo shall be maintained. Should the Commercial Owner convey or lease any Parcel or Unit it may, but is under no obligation to, assign or delegate any voting or membership rights it may have in the Insurance Committee either in whole or fractionally. Should such assignments or delegations occur, membership shall increase accordingly, but such new members shall be entitled to cast votes only as specifically assigned or delegated, including a fractional vote. In no event shall there be more than seven (7) votes.

E. Responsibility to Reconstruct in the Event of Casualty: The responsibility to reconstruct in the event of a casualty depends on the nature of the Parcel affected by the casualty and the extent of damage to the Parcel.

1. "Substantial Damage" as applied to a Condominium Parcel means:
 - (i) property damage resulting from a casualty which renders at least twenty-five percent (25%) of the Units in that condominium not habitable for at least thirty (30) days after the casualty, or property damage where the estimated cost of rebuilding in accordance with the Building Plans will likely exceed the total of insurance proceeds, applicable deductibles and any reserves available for repairs. "Substantial Damage" as applied to the Commercial Parcel or the Hotel Parcel means property damage resulting from a casualty which renders at least fifty (50%) of the gross leasable square footage of such Parcel unusable or where the estimated cost of rebuilding in accordance with the Building Plans will likely exceed the total of insurance proceeds, applicable deductibles and any reserves available for repairs.
2. In the event of a casualty involving less than Substantial Damage, the Owner shall commence reconstruction within thirty (30) days of receipt by the Insurance Committee or the party otherwise receiving same of the insurance proceeds payable as a result of the casualty. Reconstruction shall substantially comply with the Building Plans and shall proceed at a diligent pace.
3. In the event of a casualty involving Substantial Damage, the Owners of the Parcel shall determine whether or not to reconstruct the damaged facilities. Written notice shall be given to the Insurance Committee and all Owners, except that notice shall be given to any applicable Condominium Association instead of individual Condominium Unit Owners, of the Owner's intention concerning reconstruction within thirty (30) days of the casualty. Failure to give timely notice shall obligate the Owner of the

affected Parcel to reconstruct in compliance with the Building Plans. If the Owner determines to reconstruct, all proceeds of insurance shall be held by the Insurance Committee for use by that Owner in reconstructing the improvements on the Parcel. If the Owner determines not to reconstruct, all proceeds of insurance shall be held by the Insurance Committee for use in fulfilling the Owner's obligations as set forth in Section XI F hereof. Reconstruction shall substantially conform with the Building Plans, and shall proceed at a diligent pace.

- F. Effect of Decision Not to Reconstruct: If the Commercial Parcel is damaged in a casualty and the Commercial Owner decides not to reconstruct, certain rights and obligations arise. If The Strada or The Hotel Parcel or other Parcel or Unit within the Mixed-Use Property is damaged in a casualty and the Owners thereof or the applicable Condominium Associations (under the provisions of the Declaration of Condominium) decide not to reconstruct, certain rights arise on behalf of the Commercial Owner. If and when the Declaration is made applicable to the Residential Property and if The Residences at Mercato is created and should The Residences at Mercato Condominium be damaged by a casualty and The Residences at Mercato Condominium Association decides not to reconstruct, certain rights arise on behalf of the Condominium Associations responsible for Condominiums within the Mixed-Use Property and the Commercial Owner. Those rights are as follows:

1. *Commercial Owner's Decision not to Reconstruct*: In the event the Commercial Owner decides not to reconstruct, the Insurance Committee shall cause the Shared Facilities and Shared Building Components within the Commercial Parcel and the exterior appearance and building facade of the portion of the Buildings owned by the Commercial Owner to be restored to the condition that existed prior to the casualty. The Commercial Owner shall be entitled to all insurance proceeds remaining after payment of all restoration costs and all other liabilities owed as otherwise provided in this Declaration. In the event the insurance proceeds are insufficient to fully fund the restoration, the Commercial Owner shall fully fund the deficit within fifteen (15) days after notification of the deficit. If the Commercial Owner fails to do so, a Reconstruction Assessment shall be levied against the Commercial Owner, and the Insurance Committee shall have a lien against the Commercial Parcel for the full amount of the Reconstruction Assessment.
2. *A Condominium's Decision not to Reconstruct*: In the event a Condominium within the Mixed-Use Property or the Hotel Owner decides not to reconstruct, the Insurance Committee shall cause the

Shared Facilities and Shared Building Components including the roof and building façade within the Condominium Parcel or The Hotel Parcel, as the case may be, and the swimming pool facilities and community meeting room facilities located within the Condominium Parcel to be restored to the condition that existed prior to the casualty. The Condominium Association or The Hotel Owner shall be entitled to all insurance proceeds remaining after payment is deducted for all restoration costs and all other liabilities owed as otherwise provided in this Declaration. In the event the insurance proceeds are insufficient to fully fund the restoration, the applicable Condominium Association or The Hotel Owner shall fully fund the deficit within fifteen (15) days after notification of the deficit. If the Condominium Association or The Hotel Owner fails to do so, a Reconstruction Assessment shall be levied against the Condominium Association or The Hotel Owner, as the case may be and the Insurance Committee shall have a lien against the Condominium Parcel or the Hotel Parcel for the full amount of the Reconstruction Assessment. Further, in that event, the Commercial Owner shall have a freely assignable option to purchase the Condominium Parcel or the Hotel Parcel, for the fair market value of the Parcel as determined by an appraisal as of the day after the casualty, and the amount of insurance proceeds actually received by the Insurance Committee, (which will be used for reconstruction to the extent required by this Declaration and to the extent not required, remitted to the Commercial Owner), less ten percent (10%) of the sum of these amounts and also less the amount of any liens on the Parcel. If the Commercial Owner decides to exercise its option, it shall give notice to the Condominium Association or the Hotel Owner, as the case may be, within ninety (90) days of receiving written notice from the applicable Condominium Association or the Hotel Owner of its intent not to reconstruct; otherwise, the Condominium Association or the Hotel Owner, as the case may be, shall be entitled to place the applicable Condominium Parcel or the Hotel Parcel on the open market. If the option is exercised by giving written notice to the Owner of the affected Parcel, closing shall be held within forty-five (45) days thereafter. The purchase price shall be paid in cash, and closing costs shall be allocated as customarily done in Collier County, Florida. Until sold, the Owners and Condominium Associations shall continue to be responsible for all obligations imposed on them and their owned Parcels pursuant to this Declaration.

3. *The Residence's Decision not to Reconstruct:* In the event the Residences decides not to reconstruct, the Insurance Committee, at the direction of the Commercial Owner shall either (i) cause the buildings to be restored to the condition that existed prior to the

casualty, or (ii) demolish the buildings. The Residences at Mercato Condominium Association shall be entitled to all insurance proceeds remaining after payment of all costs of restoration or demolition and all other liabilities owed as otherwise provided in this Declaration. In the event the insurance proceeds are insufficient to fully fund the restoration, The Residences at Mercato Condominium Association shall fully fund the deficit within fifteen (15) days after notification of the deficit. If The Residences at Mercato Condominium Association fails to do so, a Reconstruction Assessment shall be levied against The Residences at Mercato Condominium Association, and the Insurance Committee shall have a lien against The Residences at Mercato Condominium Parcel for the full amount of the Reconstruction Assessment. Further, in that event, Commercial Owner shall have a freely assignable option to purchase The Residences at Mercato Condominium Parcel for the fair market value of the Parcel as determined by an appraisal as of the day after the casualty and the amount of insurance proceeds actually received by the Insurance Committee, (which will be used for reconstruction to the extent required by this Declaration and to the extent not required, remitted to the Commercial Owner), less ten percent (10%) of the sum of these two amounts and also less the amount of any liens on the Parcel. If the Commercial Owner decides to exercise its option, it shall give notice to The Residences at Mercato Condominium Association within ninety (90) days of receiving notice from The Residences at Mercato Condominium Association of its intent not to reconstruct; otherwise The Residences at Mercato Condominium Association shall be entitled to place The Residences Condominium Parcel on the open market. If the option is exercised by giving written notice to the Owner of the affected Parcel, closing shall be held within forty-five (45) days thereafter. The purchase price shall be paid in cash, and closing costs shall be allocated as customarily done in Collier County, Florida. Until sold, The Residences at Mercato Condominium Association shall continue to be responsible for all obligations imposed on it and the Condominium Parcel, pursuant to this Declaration.

- G. Insurance Committee Enforcement Rights: If at any time an Owner fails to undertake and complete any work, repairs, reconstruction or demolition required of it ("Defaulting Owner"), the Insurance Committee shall give written notice to that effect to the Defaulting Owner and to any other affected Owner, specifying how required work is not proceeding. If ten (10) days after the giving of notice the work is not proceeding diligently, then, subject to the Defaulting Owner's right to dispute, the Insurance Committee shall cause the work to be completed in accordance with the then existing Building Plans and may take all appropriate steps to carry out the same, including without limitation, entry onto the Parcel of any

Owner to the extent necessary to perform the work. The Insurance Committee shall be entitled to use any insurance proceeds held by the Insurance Committee by reason of the damage, for application to the cost and expense of the work. If at any time the Owners disagree as to whether the work is proceeding diligently or properly, the dispute shall be settled by arbitration in accordance with Section XIV, and the Insurance Committee shall suspend work until the dispute is settled unless the Insurance Committee determines that work needs to proceed under the circumstances. Any Owner who is diligently negotiating in good faith the settlement of any insurance claim under a policy held by it, from which the proceeds are required to fund repair of a casualty insured by the policy in question, shall not be regarded as failing to proceed diligently with any work required of it.

- H. Repair and Reconstruction Procedures: The plans and specifications for repair or reconstruction (if necessary) shall be prepared by the Owner of the affected Parcel, and must be approved in writing by the Architectural Control Committee prior to commencement of work. Unless the Owners shall otherwise agree, plans and specifications for any repair or reconstruction shall be developed consistent with the then existing Building Plans. The Architectural Control Committee shall assist the Owner responsible for performing the repair or reconstruction in questions related to bids from responsible contractors. The contractor shall work under the administration of the Architectural Control Committee and the Owner responsible for causing the repair and reconstruction to be performed, however the Architectural Control Committee shall have no responsibility for payment of the contractor or assuring that all payments to the contractor are "proper payments" as defined by Florida law.
- I. Reconstruction Assessments Authorized: In the event that the proceeds of insurance held by the Insurance Committee are insufficient to pay all costs of the repair and reconstruction, any amounts not paid from the insurance policy shall be assessed against the Owners (the "Reconstruction Assessment") and Parcel benefitted by the repair and reconstruction, and the Insurance Committee shall have a lien against the Parcel enforceable as provided in this Declaration.
- J. Distribution of Excess Insurance Proceeds: Upon completion of repairs and reconstruction of damage to the Buildings, Shared Facilities or Shared Building Components, any funds still held by the Insurance Committee after payment for all work and all other liabilities owed as otherwise provided in this Declaration, shall be distributed to the appropriate Owners or as otherwise provided herein. The share of each Owner, if any, in the total excess funds shall be proportional to the share of the total funds received from whatever source paid by or on account of the Owner.

XII. Owners' Responsibility to Cooperate in Obtaining Governmental Permits; Costs of Permits to be Paid by the Owner Responsible for Carrying out the Repair and Reconstruction; Adjustments to Plans and Specifications if Permits to Reconstruct in accordance with Building Plans Cannot be Obtained.

- A. Owners' Responsibility to Cooperate in Obtaining Governmental Permits:
If it shall be necessary to obtain a variance, special permit or exception ("Permit") to except or change zoning or other laws, rules, regulations or to comply therewith in order to repair or restore the Buildings to their condition as described in the Building Plans immediately prior to the damage, then the Owners shall cooperate to obtain the Permit, by among other things, executing any petition to obtain the Permit which requires the Owner's signature.
- B. Costs of Permits to be Paid by Owner Responsible for Carrying out the Repair and Reconstruction: If the services of architects, engineers, surveyors, legal or other professionals are necessary to obtain the Permits, the Owner responsible for carrying out the repair and reconstruction shall retain the appropriate professionals to perform the services. The legal, architectural and/or other fees and all other costs and expenses of applying for the Permits, shall be considered a part of the cost and expenses of carrying out the repair and reconstruction. The Owner responsible for carrying out the repair and reconstruction may apply to the Insurance Committee for reimbursement of the costs incurred in obtaining the Permits from the proceeds of insurance held by the Insurance Committee. While the Permits are being diligently sought, there shall be no obligation to commence any repair or reconstruction until they are obtained, except to the extent necessary to correct any safety hazards and secure the Parcel and improvements thereon.
- C. Adjustments to Plans and Specifications if Permits to Reconstruct in accordance with Building Plans Cannot be Obtained: If any repair or reconstruction cannot be carried out in compliance with the Building Plans due to changes in the law, or if the Permits cannot otherwise be obtained pursuant to this Section within six (6) months of the date of the casualty although diligently pursued, then necessary adjustments shall be made in the plans and specifications for the repair and reconstruction so that the Buildings, as repaired and restored, shall meet all requirements of law. If the adjustments to the plans and specifications requires a reduction in floor area, to the extent possible, all Owners within the affected Building shall suffer a proportionate reduction in floor area. If a proportionate reduction in floor area is not possible, or if any portion of the Parcel cannot be reconstructed under any adjustment to the plans and specifications, the Owner of the disproportionately affected Parcel or Unit which cannot be reconstructed shall be entitled to recover the fair market value of the floor space or Parcel or Unit lost as a result of the adjustments to the plans and specifications from the proceeds of insurance held by the Insurance

Committee. If the proceeds of insurance held by the Insurance Committee are insufficient to compensate the Owner, the Insurance Committee shall levy a Reconstruction Assessment for the deficiency against all non-disproportionately affected Owners of the Parcel.

XIII. Insurance Committee to Hold Funds in Separate Account; Proceeds Held in Trust; Costs of Insurance Committee to be Paid from Insurance Proceeds; Insurance Committee not Liable for Disbursements Made in Good Faith; Disbursal of Funds by Insurance Committee.

- A. Insurance Committee to Hold Funds in Separate Account: The Insurance Committee shall deposit all proceeds of insurance it actually receives in an insured account at a depository institution duly constituted and authorized to conduct business in the State of Florida. The Insurance Committee shall have no obligation to earn interest on any monies held by it unless the Owner on whose behalf the funds are held directs it to do so. If the Owner so directs the Insurance Committee, the Insurance Committee, within thirty (30) days after request from the Owner, shall purchase with such monies to the extent deemed reasonable in the Insurance Committee's judgment, securities of practicable maturities, not in excess of one year, unless in the good faith judgment of the Insurance Committee, it would be impracticable to invest in such securities with monies the Insurance Committee expects to have to distribute shortly thereafter.
- B. Proceeds held in Trust: The Insurance Committee shall hold all insurance proceeds in trust to be used and released for the purposes required herein. To the extent there are any remaining proceeds, they shall be held or released as otherwise required by this Declaration. Any interest paid or received by the Insurance Committee on monies or securities held in trust, and any gain on the redemption or sale of securities, shall be added to the monies or securities so held in trust by the Insurance Committee. Monies received by the Insurance Committee pursuant to any of the provisions of this Declaration shall not be commingled with the Insurance Committee's own funds and shall be held by the Insurance Committee in trust for the use and purposes herein provided. No contractor, subcontractor, mechanic, materialman, laborer or any other person whatsoever, other than the Owners of the affected Parcels, or those given a specific right thereto by this Declaration, shall have any interest in, or right to impose a lien upon, any funds held by the Insurance Committee.
- C. Costs of Insurance Committee to be Paid from Insurance Proceeds: The Insurance Committee may retain from the monies held by it in trust the Committee's reasonable fees and expenses for acting as Insurance Committee.
- D. Insurance Committee not Liable for Disbursements Made in Good Faith: The Insurance Committee shall have the authority and duty to disburse

funds held by it pursuant to this Declaration in the manner, to the persons, and at the times provided in this Declaration. The Insurance Committee shall not be liable or accountable for any action taken or for any disbursement of monies in good faith and in reliance on advice of legal counsel or pursuant to the Architect's Certificate (defined below). The Insurance Committee shall have no affirmative obligation to make a determination of the amount of, or to effect the collecting of, any insurance proceeds unless the Insurance Committee shall have given an express written undertaking to do so, which shall otherwise be the obligation of the Owners. If at any time the Owners, and such mortgagees and lessees, if any, shall jointly instruct the Insurance Committee with regard to the disbursement of any funds held by the Insurance Committee, then the Insurance Committee shall disburse the funds in accordance with those instructions, so long as those instructions are not in contravention of any of the terms of this Declaration or contrary to law or binding obligations. The Insurance Committee shall have no liability to anyone for having disbursed funds in accordance with the instructions.

E. Disbursal of Funds by Insurance Committee: If the Insurance Committee is required to disburse or authorize disbursement of insurance proceeds, or other funds to pay the costs of repair, reconstruction and/or demolition, the Insurance Committee shall not be required to make such disbursements more often than at thirty (30) day intervals, and each request for disbursement shall be made in writing at least five (5) days in advance of when payment is requested. As a condition of disbursement, the Insurance Committee may, but is not required to, insist upon proof of compliance with Florida lien law as to the appropriateness of payment. Moreover, each request for disbursement shall be accompanied by a certificate of the project architect directing the reconstruction ("Architect's Certificate"), dated not more than ten (10) days prior to the request for disbursement, setting for the following:

1. That the sum then requested to be disbursed has already been paid by or on behalf of an Owner or Owners and should be reimbursed to it or them (in which case the certificate shall name the Owner or Owners), or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons whose names and addresses shall be stated, who have rendered or furnished, or agreed to render or furnish, certain services, equipment, and materials, and the principal subdivisions or categories thereof, and the respective amounts so paid or due to each person in respect thereof;
2. That the sums then requested to be withdrawn, plus all sums previously withdrawn, do not exceed the cost of the work actually accomplished up to the date of the Architect's certificate plus the cost of materials supplied and actually stored on-site, which

materials shall be adequately insured against fire, theft and other casualties for the benefit of all Owners;

3. That no part of the cost of the services and materials which is being counted as a basis for the then pending application has been the basis of the withdrawal of any funds in any previous application; and
4. That following the making of the requested advance, the funds remaining with the Insurance Committee will be sufficient to complete the repair and restoration based upon the Architect's estimate of the cost to complete the repair and restoration.
5. Upon compliance with the foregoing provisions of this Section, the Insurance Committee shall, out of the moneys held by the Committee, pay or cause to be paid to the Owners, contractors, subcontractors, materialmen, engineers, architects and other persons named in the Architect's Certificate, the respective amounts stated in the certificate to be due them.

XIV. Disputes to be Settled by Binding Arbitration; Appointment of Arbitrators; Costs of Arbitration; Proceedings.

- A. Disputes to be Settled by Binding Arbitration: If a dispute arises between or among any of the Owners, or between any Owner and any committee established pursuant to this Declaration, regarding the interpretation of any provisions in this Declaration or the performance of any obligation under this Declaration, the dispute is to be settled by binding arbitration conducted in accordance with the rules of the American Arbitration Association, or any successor agency thereto ("AAA Rules") and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.
- B. Appointment of Arbitrators: The arbitrators shall be appointed pursuant to the AAA Rules. There shall be a panel of arbitrators consisting of three persons one appointed by each party to the dispute and the third being appointed by agreement of the two. If there are more than two parties to the dispute, the parties with similar interests shall appoint one arbitrator collectively. If none of the parties share collective interests, the arbitrators shall be selected by the American Arbitration Association.
- C. Costs of Arbitration: The costs of arbitration shall be equally born by the parties. Notwithstanding the foregoing, the arbitrators are not prohibited from assessing the full costs of the arbitration against any party that the arbitrators have determined is proceeding in bad faith or who has failed to negotiate a good faith resolution of the dispute.

- D. Proceedings: The proceeding shall follow the AAA Rules and shall take place in Collier County, Florida. Judgment upon the determination rendered by the arbitrators may be entered in any court having jurisdiction thereof pursuant to Florida law. In reaching their decision, the arbitrators may rely on such evidence as is relevant and material to the dispute and the parties shall produce such evidence as the arbitrators may deem necessary to an understanding and determination of the dispute. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent, in default or has waived the right to be present. Each Owner by acceptance of its deed hereby consents to the subpoena power of the arbitrators.

XV. SECURITY; NON-LIABILITY OF DECLARANT.

- A. NEITHER THE DECLARANT NOR THE OWNERS ARE INSURERS OR GUARANTORS OF THE SAFETY AND SECURITY OF PERSONS OR PROPERTY WITHIN THE MERCATO. ALL PERSONS USING OR OCCUPYING ANY PORTION OF THE MERCATO ARE RESPONSIBLE FOR THEIR OWN SECURITY AND THE PROTECTION OF THEIR OWN PROPERTY.
- B. THE DECLARANT IS NOT LIABLE IN ANY WAY FOR LOSS, DAMAGE OR INJURY RESULTING FROM ALLEGED LACK OF SECURITY, OR THE LACK OF EFFECTIVENESS OF ANY SECURITY MEASURES UNDERTAKEN. THE DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE PROTECTION SYSTEM AND/OR BURGLAR ALARM SYSTEM, AND/OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE MERCATO.

XVI. Miscellaneous.

- A. Waiver and Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and not exclusive. No provision in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce it, irrespective of the number of failures to enforce which may have occurred previously.
- B. Gender, Number. The use of any gender in this Declaration shall be deemed to include all other genders and the use of the singular shall be deemed to include the plural, and vice versa, unless the context otherwise requires.

C. Annexation.

1. Declarant shall have the right from time to time to add such property contiguous to the Mixed-Use Property as it deems appropriate and to bring such property within the general plan and scheme of this Declaration, without the approval of any other person or entity. Such right of Declarant shall terminate upon the expiration of the term of this Declaration as provided herein. The additions authorized under this Section XVI C shall be made by recording in the Public Records of Collier County, Florida, a Notice of Annexation (or other similar instrument) with respect to the additional property, which instrument shall be executed by Declarant. Recordation of such instrument shall extend the terms, conditions, covenants, restrictions, easements and other provisions contained in this Declaration (the "Restrictions") to such property, and thereupon such property shall become and constitute a part of The Mercato, and become subject to this Declaration, including, without limitation, the obligation herein to pay assessments.
2. Such instrument of annexation may contain such complementary additions and modifications of the Restrictions as may, in Declarant's sole discretion, be necessary to reflect the different character, if any, of the property being annexed thereby or as Declarant may deem appropriate in the development thereof, and as are not inconsistent with the general plan and scheme of this Declaration.
3. Declarant may delete all or any portion of The Mercato from the coverage of this Declaration, so long as Declarant is the Owner of all of such property being deleted and provided that a Notice of Deannexation is recorded in the Public Records of Collier County, Florida.

D. Amendments.

1. Except as otherwise provided in this Declaration and without in any way limiting Declarant's rights to add or delete property as set forth in section XVI C above, neither this Declaration nor any provision hereof or any covenant, condition or restriction herein contained, may be terminated, extended, modified or amended, as to the whole of The Mercato or any portion thereof (including any annexed lands, if any), other than by agreement in writing, signed by the Commercial Owner, the Hotel Owner and the Condominium Associations, and thereafter recorded in the Public Records of Collier County, Florida. Notwithstanding the foregoing or any other language to the contrary, Declarant may amend this Declaration unilaterally as long as it is offering property in The

Mercato for sale or lease in the ordinary course of business, and the amendment does not result in a material, adverse effect on any Owner. The annexation of all or any portion of property shall not change, extend or modify the term of this Declaration.

2. Notwithstanding the foregoing, and in addition to any other rights to amend this Declaration as provided elsewhere herein, (i) before the close of the first conveyance of a Parcel to a purchaser other than Declarant or a Condominium Association, this Declaration may be unilaterally amended in any respect or revoked by the execution by Declarant of an instrument amending or revoking the Declaration; (ii) the Declarant may, without the vote or consent of any Owners, make and record additions, deletions or amendments to this Declaration for the purpose of correcting ambiguities or technical errors or for the purpose of clarification; and (iii) Declarant may record a Supplemental Declaration to impose additional covenants, conditions, restrictions, reservations and/or easements upon one or more Parcels. Declarant shall have the power, but not the obligation, to execute such Supplemental Declaration(s) encumbering such Parcel prior to conveyance thereof to Owner(s) thereof; after such conveyance, any Supplemental Declaration pertaining to the Parcel(s) conveyed and which results in a material adverse effect upon the Owner(s) of such Parcel(s) must be executed by both Declarant and the Owner(s) of such Parcel(s). In the event of inconsistency between any Supplemental Declaration and this Declaration, the Supplemental Declaration shall control.
 3. Notwithstanding any language to the contrary, Declarant's rights pursuant to this Section XVI D.1. and 2. are conditioned upon Declarant securing any required or necessary consent or joinder of any lender to Declarant or if required by the terms of a written agreement between the Declarant and an Owner or Occupant.
 4. Any document recorded in accordance with this Section XVI D shall be conclusive in favor of all persons and entities who rely upon it in good faith.
- E. Term: The covenants, conditions and restrictions contained in this Declaration shall run with, burden the Property and shall inure to the benefit of each Parcel and each Owner thereof and be enforceable by each Owner and its heirs, successors and assigns for a term commencing as of the date this Declaration is recorded and terminating fifty (50) years from such date, after which said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years unless prior to commencement of any such ten (10) year period, an amendment made in accordance with Section XVI D hereof has been recorded which

terminates this Declaration or modifies the automatic extension provisions of this section.

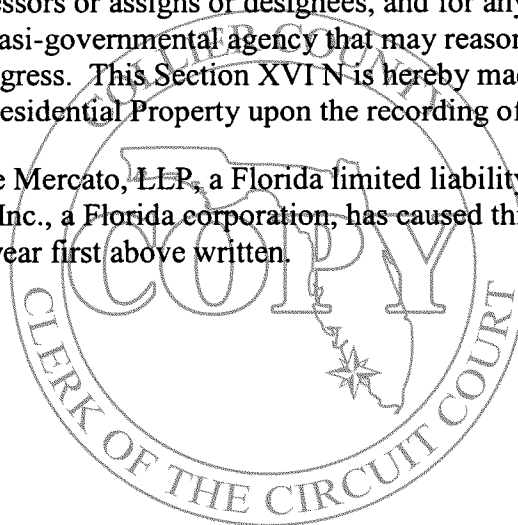
- F. Governing Law. This Declaration shall be governed, construed, applied and enforced in accordance with the laws of Florida including matters affecting title to all real property described herein.
- G. Limitation on Powers: Anything in this Declaration to the contrary notwithstanding, the existence or exercise of any easement, right, power, authority, privilege or duty of the Commercial Owner as it pertains to any condominium located in the Condominium Parcel which would require the Condominium Owner to violate an applicable provision of Chapter 718, Florida Statutes, or successor thereto, shall be void and of no effect, but only to the limited extent necessary to avoid subjecting the Commercial Owner or Commercial Parcel to the contrary provisions of Chapter 718 or its successor. The Commercial Owner shall not be deemed to be a condominium association, and the Shared Facilities and Shared Building Components not physically located within a Condominium shall not be deemed to be a part of any condominium, within the meaning of applicable laws or administrative rules for any purpose.
- H. Interpretation: The Commercial Owner is responsible for interpreting the provisions of this Declaration and its exhibits, and its interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Commercial Owner is not wholly unreasonable shall conclusively establish the validity of the interpretation.
- I. Name of Condominium Parcels: The proposed Condominium Parcels shall be known as "The Strada, a Condominium" and "The Residences at Mercato, a Condominium." The Condominium Unit Owners shall not alter the name of, or refer to the Condominium Parcels, by any other name, without the prior consent of the Commercial Owner, which consent may be withheld in the sole discretion of the Commercial Owner.
- J. Constructive Notice and Acceptance: Every person or party who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property, including a Condominium Unit, is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and provision contained in this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such person or party acquired an interest in the Property.
- K. Notices: Except as otherwise expressly provided in this Declaration or required by law, all notices, consents, requests, demands, approvals, authorizations and other communications provided for herein shall be in writing and shall be deemed to have been duly given if and when

personally served or seventy-two (72) hours after being sent by United States first class mail, postage prepaid, to the intended party at its last known address. For purposes of this Declaration, "last known address" with respect to any Owner shall mean such Owner's address appearing on the roster of all Owners maintained by the Commercial Owner in accordance with this Declaration. The Commercial Owner shall maintain a roster of all Owners and their addresses of record. The Condominium Associations shall provide to the Commercial Owner an accurate list, updated periodically, of an unit owners in the Condominiums, for the Commercial Owner's use in maintaining the roster of all Owners. If no address is supplied, then such Owner's address shall be deemed to be the address of any Parcel owned by such Owner.

- L. Effect of Invalidation: Each covenant, condition, restriction and easement of this Declaration is intended to be, and shall be construed as, independent and severable from each other provision. If any such provision of this Declaration, or application thereof, is held to be invalid by any court, the invalidity of such provision or application thereof shall not affect the validity or the remaining provisions or application thereof.
- M. Appraisal: In any instances found in this Declaration where it is necessary to obtain an appraisal, the appraisal shall be made by three (3) competent appraisers. In a timely manner, one (1) shall be appointed by the selling party, one (1) by the purchasing party and the third selected by the two appraisers appointed by the parties. If the appraisers are unable to agree on value, an average of the three (3) shall be used for final valuation purposes.
- N. Surface Water Management System: The Architectural Control Committee, or its successor designee or assigns, shall have the right and the power, but neither the duty nor the obligation, to amend the design of the Surface Water Management System to add or delete features of the Surface Water Management System, and to seek and obtain modifications to any permits issued for the Surface Water Management System that it deems necessary to reflect changes in the development plans, changed conditions, governmental requirements or for any other reason it deems appropriate. All surface water drainage and management including but not limited to stormwater treatment and storage capacity, shall conform to the overall Surface Water Management System requirements of The Mercato MPUD and the permit issued by South Florida Water Management District. The Architectural Control Committee, or its successor designee or assigns shall be the primary entity responsible for the maintenance, operation and repair of the Surface Water Management System throughout The Mercato and shall have the right of entry to carry out its obligations to maintain the Surface Water Management System. All costs involved with the maintenance or replacement of the Surface Water Management System shall be considered a Shared Facility allocated

as set forth in Table I, under Section VIII, G 2 above. No Owner nor Condominium Association nor any Condominium Unit Owner in any way, shall change, alter, revise or otherwise interfere with the flow and volume of water at any portion of the Surface Water Management System or any drainage area reserved for, or intended by Declarant to be reserved for, drainage ways, sluices, or for the accumulation of runoff waters, as described in The Mercato MPUD recorded in Collier County, Florida and the permit issued by South Florida Water Management District or any recorded instrument without the special written permission of the Commercial Owner or its successors or assigns or designees. Further, no Owner nor Condominium Association nor any Condominium Unit Owner shall in any way deny, frustrate, or prevent ingress or egress by the Commercial Owner to service, maintain, operate and repair such Surface Water Management System and drainage areas and to landscape same. The right of ingress and egress, and easements thereof, are hereby reserved and created in favor of the Declarant, Commercial Owner or its successors or assigns or designees, and for any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress. This Section XVI N is hereby made expressly applicable to the Residential Property upon the recording of this Declaration.

WHEREUPON, The Mercato, LLP, a Florida limited liability partnership, and The Residences at the Mercato, Inc., a Florida corporation, has caused this Declaration to be executed in its name on the day and year first above written.



WITNESSES:

K. Samuelson
Signature

Kimberly Samuelson
Printed Name

Delores J. Rich
Signature

Delores J. Rich
Printed Name

THE MERCATO, LLP, a Florida limited liability partnership, by its Managing Partner, Collier Lutgert Commercial Properties, LLP, a Florida limited liability partnership, by its Partner, Promenade at Bonita Bay, Inc., a Florida corporation

By: [Signature]
Printed Name: Harold B Gorman
Its: VP

K. Samuelson
Signature

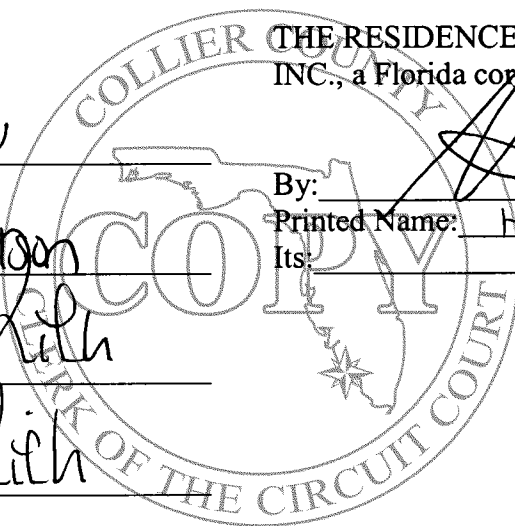
Kimberly Samuelson
Printed Name

Delores J. Rich
Signature

Delores J. Rich
Printed Name

THE RESIDENCES AT THE MERCATO, INC., a Florida corporation

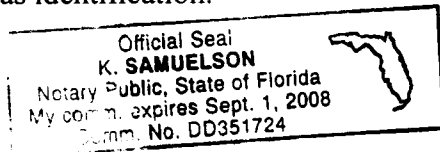
By: [Signature]
Printed Name: Harold B Gorman
Its: President



STATE OF FLORIDA §

COUNTY OF COLLIER §

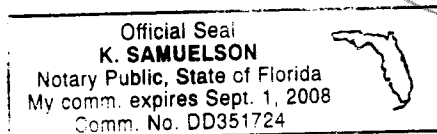
The foregoing instrument was acknowledged before me this 26 day of April, 2007, by Howard B. Gutman, as VP of Promenade at Bonita Bay, Inc., a Florida corporation, Partner of Collier Lutgert Commercial Properties, LLP, a Florida limited liability partnership, as Managing Partner of The Mercato, LLP, a Florida limited liability partnership. He (☒) is personally known to me or (☐) has produced _____ as identification.

K. SamuelsonPrint Name: K. SamuelsonCommission Number: DD351724

STATE OF FLORIDA §

COUNTY OF COLLIER §

The foregoing instrument was acknowledged before me this 26 day of April, 2007, by Howard B. Gutman, as VP of The Residences at the Mercato, Inc., a Florida corporation. He (☒) is personally known to me or (☐) has produced _____ as identification.

K. SamuelsonPrint Name: K. SamuelsonCommission Number: DD351724

DESCRIPTION OF TRACT "C"
 PART OF
 SECTION 34, TOWNSHIP 48 SOUTH, RANGE 25 EAST AND
 PART OF PELICAN MARSH, UNIT FIVE (P.B. 22, PGS. 88-89)
 COLLIER COUNTY, FLORIDA
 (REVISED 06/22/06)

BEGINNING AT THE SOUTHWEST CORNER OF PELICAN MARSH UNIT TWO AS RECORDED IN PLAT BOOK 22, PAGES 41-48, INCLUSIVE OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA ALSO BEING A POINT ON THE EASTERLY RIGHT-OF-WAY OF U.S. 41, TAMiami TRAIL NORTH;
 THENCE SOUTH 00°39'30" EAST ALONG SAID RIGHT-OF-WAY LINE 1291.06 FEET;
 THENCE LEAVING SAID RIGHT-OF-WAY LINE NORTH 89°20'57" EAST 80.00 FEET;
 THENCE SOUTH 00°39'03" EAST 200.80 FEET;
 THENCE NORTH 89° 20'57" EAST 420.00 FEET;
 THENCE SOUTH 48°22'47" EAST 297.34 FEET;
 THENCE SOUTH 00°39'03" EAST 254.61 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF VANDERBILT BEACH ROAD
 THENCE EASTERLY 74.44 FEET ALONG THE ARC OF A CIRCULAR CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 6860.68 FEET THROUGH A CENTRAL ANGLE OF 00°37'18" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 83°32'47" EAST 74.44 FEET; TO A POINT OF COMPOUND CURVATURE;
 THENCE CONTINUE ALONG SAID RIGHT-OF-WAY EASTERLY 368.67 FEET ALONG THE ARC OF A CIRCULAR CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 101,934.54 FEET THROUGH A CENTRAL ANGLE OF 00°12'26" AND SUBTENDED BY A CHORD WHICH BEARS NORTH 83°07'55" EAST 368.67 FEET TO A POINT OF REVERSE CURVATURE;
 THENCE CONTINUE ALONG SAID RIGHT-OF-WAY EASTERLY 374.83 FEET ALONG THE ARC OF A CIRCULAR CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 2430.00 FEET THROUGH A CENTRAL ANGLE OF 08°50'17" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 87°26'51" EAST 374.46 FEET TO GRAND ISLE AT PELICAN MARSH AS RECORDED IN PLAT BOOK 24, PAGES 67-70, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA;
 THENCE NORTH 00°00'00" WEST ALONG SAID GRAND ISLE 481.18 FEET;
 THENCE SOUTH 89°33'32" EAST 30.25 FEET;
 THENCE NORTH 00°26'28" EAST 180.64 FEET TO THE BEGINNING OF A CIRCULAR CURVE CONCAVE EASTERLY HAVING A RADIUS OF 130.00 FEET THENCE NORTHERLY 37.60 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 16°34'19" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 08°43'37" EAST 37.46 FEET;
 THENCE NORTH 17°00'47" EAST 181.41 FEET TO THE BEGINNING OF A CIRCULAR CURVE CONCAVE WESTERLY HAVING A RADIUS OF 395.00 FEET THENCE NORTHERLY 56.91 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 08°15'15" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 12°53'09" EAST 56.86 FEET;
 THENCE SOUTH 76°39'52" WEST 20.28 FEET TO THE BEGINNING OF A CIRCULAR CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 105.00 FEET THENCE WESTERLY 53.57 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 29°14'04" AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 62°02'50" WEST 53.00 FEET;
 THENCE SOUTH 47°25'48" WEST 46.46 FEET TO THE BEGINNING OF A CIRCULAR CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 44.00 FEET THENCE WESTERLY 44.25 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 57°37'18" AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 76°14'26" WEST 42.41 FEET;
 THENCE NORTH 74°56'55" WEST 20.83 FEET TO THE BEGINNING OF A CIRCULAR CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 55.00 FEET THENCE WESTERLY 45.16 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 47°02'47" AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 81°31'41" WEST 43.90 FEET;
 THENCE NORTH 55°16'18" WEST 1122.32 FEET TO THE BEGINNING OF A CIRCULAR CURVE CONCAVE WESTERLY HAVING A RADIUS OF 282.76 FEET THENCE NORTHERLY 39.06 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 07°54'53" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 16°03'09" WEST 39.03 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 180.98 FEET THENCE NORTHWESTERLY 175.25 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 55°28'46" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 47°44'43" WEST 168.48 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE SOUTHERLY HAVING A RADIUS OF 465.01 FEET THENCE WESTERLY 77.61 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 09°33'47" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 80°15'54" WEST 77.52 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE NORTHERLY HAVING A RADIUS OF 393.00 FEET THENCE WESTERLY 55.61 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 08°06'30" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 80°59'33" WEST 55.57 FEET;
 THENCE NORTH 19°22'52" WEST 26.39 FEET TO THE BEGINNING OF A CIRCULAR CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 371.00 FEET THENCE NORTHERLY 122.00 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 18°50'29" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 65°19'52" WEST 121.45 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE NORTHEASTERLY HAVING A RADIUS OF 50.99 FEET THENCE WESTERLY 49.76 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 55°54'25" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 27°57'25" WEST 47.81 FEET;
 THENCE NORTH 00°00'12" WEST 85.23 FEET TO PELICAN MARSH UNIT TWO;
 THENCE SOUTH 89°20'48" WEST A DISTANCE OF 123.21 FEET TO THE POINT OF BEGINNING OF TRACT "C" HEREIN DESCRIBED;

CONTAINING 42.07 ACRES OF LAND MORE OR LESS;
 SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

REVISED: JUNE 22, 2006

NOT A SURVEY

EXHIBIT C
 SHEET 2 OF 2


for: BARRON COLLIER PARTNERSHIP		project: MERCATO	
title: SKETCH AND DESCRIPTION OF PART OF SECTION 34, TOWNSHIP 48 SOUTH, RANGE 25 EAST, COLLIER COUNTY, FLORIDA		date: APRIL 12, 2005	
 <p>AGNOLI BARBER & BRUNDAGE, INC.</p>	Certificate of Authorization Nos. LB 3664 and EB 3664 Fax: (239)566-2203		scale: N.T.S.
			book: page:
			project no.: 04-0047
			view: PLOT1
Professional engineers, planners, & land surveyors Collier County: Suite 200, 7400 Tamiami Trail, North; Naples, FL 34108 (239)597-3111 Lee County: 9990 Coconut Road, Suite 103, Bonita Springs, FL 34135 (239)948-8663		acad: 8953-SD-C	file no: 8953

EXHIBIT A-2 - RESIDENTIAL PROPERTY

DESCRIPTION OF TRACT "R"
PART OF
SECTION 34, TOWNSHIP 48 SOUTH, RANGE 25 EAST
COLLIER COUNTY, FLORIDA
(REVISED 6/22/06)

COMMENCING AT THE SOUTHWEST CORNER OF PELICAN MARSH UNIT TWO AS
RECORDED IN PLAT BOOK 22, PAGES 41-48, INCLUSIVE OF THE PUBLIC RECORDS OF
COLLIER COUNTY, FLORIDA, ALSO BEING A POINT ON THE EASTERLY RIGHT-OF-WAY OF
U.S. 41, TAMiami TRAIL NORTH;
THENCE NORTH 89°20'48" EAST ALONG THE BOUNDARY OF SAID PLAT A DISTANCE OF
123.21 FEET TO THE POINT OF BEGINNING OF TRACT "R" HEREIN BEING DESCRIBED;

THENCE CONTINUE NORTH 89°20'48" EAST A DISTANCE OF 81.34 FEET TO THE BEGINNING
OF A CURVE THENCE EASTERLY 615.18 FEET ALONG THE ARC OF A SAID CURVE
CONCAVE SOUTHERLY HAVING A RADIUS OF 826.09 FEET THROUGH A CENTRAL ANGLE
OF 42°40'04" AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 69°19'10" EAST
601.07 FEET;
THENCE SOUTH 47°59'08" EAST 100.03 FEET TO THE BEGINNING OF A CIRCULAR CURVE
CONCAVE NORTHEASTERLY HAVING A RADIUS OF 800.00 FEET THENCE
SOUTHEASTERLY 418.87 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL
ANGLE OF 29°59'57" AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 62°59'07"
EAST 414.10 FEET;
THENCE SOUTH 77°59'05" EAST 144.30 FEET TO THE BEGINNING OF A CIRCULAR CURVE
CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 395.00 FEET THENCE
SOUTHEASTERLY 598.01 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL
ANGLE OF 86°44'36" AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 34°36'47"
EAST 542.51 FEET;
THENCE SOUTH 76°39'52" WEST 20.28 FEET TO THE BEGINNING OF A CIRCULAR CURVE
CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 105.00 FEET THENCE WESTERLY 53.57 FEET
ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 29°14'04" AND BEING
SUBTENDED BY A CHORD WHICH BEARS SOUTH 62°02'50" WEST 53.00 FEET;
THENCE SOUTH 47°25'48" WEST 46.46 FEET TO THE BEGINNING OF A CIRCULAR CURVE
CONCAVE NORTHERLY HAVING A RADIUS OF 44.00 FEET THENCE WESTERLY 44.25 FEET
ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 57°37'18" AND BEING
SUBTENDED BY A CHORD WHICH BEARS SOUTH 76°14'26" WEST 42.41 FEET;
THENCE NORTH 74°56'55" WEST 20.83 FEET TO THE BEGINNING OF A CIRCULAR CURVE
CONCAVE SOUTHERLY HAVING A RADIUS OF 55.00 FEET THENCE WESTERLY 45.16 FEET
ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 47°02'47" AND BEING
SUBTENDED BY A CHORD WHICH BEARS SOUTH 81°31'41" WEST 43.90 FEET;
THENCE NORTH 55°16'18" WEST 1122.32 FEET TO THE BEGINNING OF A CIRCULAR CURVE
CONCAVE WESTERLY HAVING A RADIUS OF 282.76 FEET THENCE NORTHERLY 39.06 FEET
ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 07°54'53" AND BEING
SUBTENDED BY A CHORD WHICH BEARS NORTH 16°03'09" WEST 39.03 FEET
TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE SOUTHWESTERLY
HAVING A RADIUS OF 180.98 FEET THENCE NORTHWESTERLY 175.25 FEET
ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 55°28'46" AND BEING
SUBTENDED BY A CHORD WHICH BEARS NORTH 47°44'43" WEST 168.48 FEET
TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE SOUTHERLY
HAVING A RADIUS OF 485.01 FEET THENCE WESTERLY 77.61 FEET
ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 09°33'47" AND BEING
SUBTENDED BY A CHORD WHICH BEARS NORTH 80°15'54" WEST 77.52 FEET
TO THE BEGINNING OF A REVERSE CURVE, CONCAVE NORTHERLY
HAVING A RADIUS OF 393.00 FEET THENCE WESTERLY 55.61 FEET
ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 08°06'30" AND BEING
SUBTENDED BY A CHORD WHICH BEARS NORTH 80°59'33" WEST 55.57 FEET;
THENCE NORTH 19°22'52" WEST 26.39 FEET TO THE BEGINNING OF A CIRCULAR CURVE
CONCAVE NORTHERLY HAVING A RADIUS OF 371.00 FEET THENCE NORTHERLY 122.00 FEET
ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 18°50'29" AND BEING
SUBTENDED BY A CHORD WHICH BEARS NORTH 55°19'52" WEST 121.45 FEET
TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE NORTHEASTERLY
HAVING A RADIUS OF 50.99 FEET THENCE WESTERLY 49.76 FEET
ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 55°54'25" AND BEING
SUBTENDED BY A CHORD WHICH BEARS NORTH 27°57'25" WEST 47.81 FEET;
THENCE NORTH 00°00'12" WEST 85.23 FEET TO PELICAN MARSH UNIT TWO AND THE
POINT OF BEGINNING OF TRACT "R" HEREIN DESCRIBED;

CONTAINING 11.06 ACRES OF LAND MORE OR LESS;
SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

AGNOLI, BARBER & BRUNDAGE, INC.
PROFESSIONAL ENGINEERS, PLANNERS & SURVEYORS

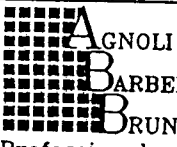
GUY P. ADAMS P.E.M. No. 4390

DATE

NOT A SURVEY

SHEET 2 OF 2

REVISED: JUNE 22, 2006

for: BARRON COLLIER PARTNERSHIP		project: MERCATO	
title: SKETCH AND DESCRIPTION OF PART OF SECTION 34, TOWNSHIP 48 SOUTH, RANGE 25 EAST, COLLIER COUNTY, FLORIDA		date: APRIL 15, 2005	
 <p>AGNOLI BARBER & BRUNDAGE, INC.</p> <p>Professional engineers, planners, & land surveyors Collier County: Suite 200, 7400 Tamiami Trail, North, Naples, FL 34108 (239)597-3111 Lee County: 9990 Coconut Road, Suite 103, Bonita Springs, FL 34135 (239)948-8663</p>	Certificate of Authorization Nos. LB 3664 and EB 3664 Fax: (239)566-2203		scale: N.T.S. book: page:
	project no.: 04-0047		view: PLOT1
	acad: 8953-SD-R		file no: 8953

CONSENT

WELLS FARGO BANK, NATIONAL ASSOCIATION, the owner and holder of the following mortgage:

Construction Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing in the sum of \$16,699,800.00 from The Mercato, LLP, a Florida limited liability partnership, to Wells Fargo Bank, National Association recorded on July 7, 2006 at 3:52 p.m. in Official Records Book 4068, Page 1002, of the Public Records of Collier County, Florida.

which encumbers the property therein described including the land subject to Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Mercato, hereby consents to the submission of the land to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Mercato. Nothing herein shall be construed to alter, diminish, or otherwise affect the mortgage held by the undersigned mortgagee or to change its priority.

Executed this 30th day of April, 2007.

Witnesses:

WELLS FARGO BANK, NATIONAL ASSOCIATION

Suzanne H. Hicks
Printed Name: Suzanne H. Hicks

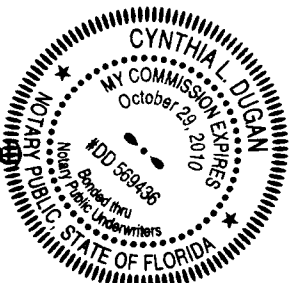
By: [Signature]
Printed Name: Brandon A. Granai
Title: Vice President

Cynthia L. Dugan
Printed Name: CYNTHIA L. DUGAN

(Corporate Seal)

STATE OF Florida
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 30th day of April, 2007, by BRANDON GRANAI, VICE PRESIDENT of WELLS FARGO BANK, NATIONAL ASSOCIATION, on behalf of the corporation, who is personally known to me or who has produced as identification.

(Notary Seal) 

Cynthia L. Dugan
Printed Name: CYNTHIA L. DUGAN
Notary Public
My commission expires: 10-29-10

CONSENT

WHOLE FOODS MARKET GROUP, INC., a Delaware corporation, the Tenant described in the Memorandum of Lease recorded in the Official Records of Collier County, Florida in Official Records Book 3891, Page 3522, which encumbers the property therein described including a portion of the land subject to Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Mercato, hereby consents to the submission of the land to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Mercato.

Executed this 1 day of May, 2007.

Witnesses:

WHOLE FOODS MARKET GROUP, INC.,
A Delaware Corporation

[Signature]
Printed Name: Frank Centley
[Signature]
Printed Name: LINDA DURNIN

By: [Signature]
Printed Name: Juan Nunez
Title: President, Florida Region

(Corporate Seal)

STATE OF Florida
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 1 day of May, 2007, by Juan Nunez of WHOLE FOODS MARKET GROUP, INC., a Delaware corporation, on behalf of the corporation, who is personally known to me or who has produced personally known as identification.

(Notary Seal)

ANNETTE INGUI
Printed Name: Annette Ingui
Notary Public
My commission expires: July 10, 2009

