

RECORD AND RETURN TO:
COURTHOUSE BOX 58

THIS INSTRUMENT PREPARED BY:
ANTHONY J. GARGANO, ESQ.
LEASURE, GARGANO & MARCHEWKA, P.A.
P.O. BOX 061169
FORT MYERS, FLORIDA 33906-1169

2992478

OR2208 Pg3579

DECLARATION
OF COVENANTS AND RESTRICTIONS OF
VANDERBILT OFFICE PARK

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made this 28th day of February, 1991, by JAMES COLOSIMO AND LAWRENCE HOFFMAN, TRUSTEES, as Owner of the real property hereinafter described, and Q&A DEVELOPERS, INC., as developer of the improvements thereon (hereafter collectively referred to as "Developer") for themselves, their successors, grantees, assignees and/or their transferees.

WHEREAS, the Owner as fee simple owner, makes the following declaration:

1. Introduction and Submission

1.1. The Owner owns fee simple title to certain real property located in Lee County, Florida, as more particularly described in Exhibit "1" attached hereto.

1.2. The real property described in Exhibit "1" is now, and shall hereafter, be held, transferred, sold, conveyed and occupied subject to the conditions, covenants, restrictions, limitations, easements, reservations, charges and liens set forth in this Declaration of Covenants and Restrictions, for the benefit of the Owners, of the real property described in Exhibit "1".

1.3. The name by which this development is to be identified is Vanderbilt Office Park.

1.4. All provisions of this Declaration of Covenants and Restrictions, including the Exhibits attached hereto shall be construed to be perpetual covenants running with the land and with every part thereof and interest therein, and every subsequent owner and claimant of the land or any part thereof or interest therein, and his heirs, executors and administrators, successors and assigns, shall be bound by all of the provisions of this Declaration of Covenants and Restrictions, including the exhibits attached hereto, unless this Declaration of Covenants and Restrictions shall be terminated pursuant to the provisions provided for herein. Both the burdens imposed and the benefits shall run with the land. The acceptance of a Deed of Conveyance, or entering into a lease, or entering into occupancy of the real property set forth in Exhibit "1" shall constitute an adoption and ratification of the provisions of this Declaration of Covenants and Restrictions and Exhibits attached hereto.

1.5. THIS DECLARATION OF COVENANTS AND RESTRICTIONS DOES NOT, AND IS NOT INTENDED TO CREATE A CONDOMINIUM. THIS DECLARATION OF COVENANTS AND RESTRICTIONS, THE ASSOCIATION AND RIGHTS AND DUTIES THEREUNDER SHALL NOT BE GOVERNED BY CHAPTER 718 FLORIDA STATUTES, AS IT EXISTS NOW OR IN THE FUTURE, OR ANY ADMINISTRATIVE RULES PROMULGATED THEREUNDER.

2. Definitions

The terms used in this Declaration of Covenants and Restrictions and the Exhibits attached hereto shall be defined as follows:

RECORD VERIFIED - GRANT CERT. CLERK
BY J. JUBER, D.C.

2.1. "Assessment" means a share of the funds required for the payment of common expenses, which, from time to time, is assessed by the Association.

2.2. "Association" means Vanderbilt Office Park Owners Association, Inc., a nonprofit corporation organized under the laws of the State of Florida, which is the entity responsible for the maintenance, operation and control of the property, services and facilities for the development, and includes any successor.

2.3. "By-Laws" means the by-laws of the Association as they exist from time to time.

2.4. "Capital Expenditures" means an expense that results from the purchase of an asset whose life is greater than one (1) year in length, or replacement of an asset whose life is greater than one (1) year in length or the addition of an asset which extends the life of the previously existing asset for a period of greater than one (1) year.

2.5. "Common Area" means the water management system and Via Del Rey, a 45 foot wide private road.

2.6. "Common Expenses" means expenses of administration, maintenance, operation, repair or replacement of the common area and improvements thereon, including, internal roadway (Via Del Rey), entrance sign, water management area, perimeter landscaping, irrigation, common area electric and water charges.

2.7. "Declaration" means this Declaration of Covenants and Restrictions, together with the Exhibits annexed hereto, as it may be amended from time to time in accordance herewith.

2.8. "Deferred Maintenance" means an expenditure for maintenance or repair that will result in extending the life of an asset for a period of greater than one (1) year.

2.9. "Development" means the property described in Exhibit "1" which may be developed pursuant hereto and as initially set forth in the "Development Plan" attached hereto as Exhibit "2".

2.10. "Development Plan" means the Zoning Resolution as set forth in Exhibit "2" attached hereto or as amended by the Developer.

2.11. "Lot" means a lot within the subdivision.

2.12. "Majority" means fifty-one percent (51%). References to other percentages of owners shall mean the stated percentage if other than the 51%.

2.13. "Owner" means the owner of a lot within the development.

2.14. "Surplus" means the excess of all receipts of the Association collected on behalf of the Association, including, but not limited to assessments, rents, profits and revenues on account of the common area, over the amount of the common expenses.

3. Purpose of Association

3.1. Developer, in order to provide that the common area, will be maintained in a manner that will contribute to the comfort and enjoyment of the owners and in order to provide for other matters described herein, has formed Vanderbilt Office Park Owners Association, Inc., a nonprofit corporation (hereinafter referred to as the "Association"). The purpose of the Association shall be to hold title, operate, maintain and control the common area, including, but not limited to, drainage easements, the surface water management system, street lighting (if any), the entrance way, upkeep of the entrance sign, perimeter landscaping and irrigation, and maintenance of 45 foot wide private road right of way, and to take all action necessary as authorized in this Declaration, the Articles of Incorporation, the By-Laws, and the Rules and Regulations. The Association shall operate, maintain and

control the common area, whether or not title to that area has been formerly conveyed to the Association.

3.2. Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain, operate and control the common area, the Association shall not be liable to an owner, its employees, guests, invitees, or others, for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the common area property to be maintained, operated and controlled by the Association, or caused by other owners, tenants or their invitees.

3.3. Initial Contribution. Each purchaser of a lot from Developer shall, at the closing of the lot, pay his first year assessments of \$1,000.00 in advance. The first year assessment shall be \$500.00 for expenses and \$500.00 for reserves.

4. Rights of Owners

4.1. Every owner, subject to the limitations, conditions and qualifications stated in this Declaration, and Exhibits thereto, shall have the non-exclusive right and a non-exclusive easement of enjoyment in and to the common area, which shall be appurtenant to, and shall pass with the conveyance of title, to every lot, subject to the following:

4.1.1. The right of the Association, from time to time, in accordance with its Articles and By-Laws to establish, modify, amend and rescind, reasonable rules and regulations regarding the use of the common area.

4.1.2. The right of the Association to suspend the voting rights and right to use the common area by an owner for any period during which any assessment levied under this Declaration against the unit owner's lot remains unpaid.

4.1.3. Except as limited in paragraph 4.3, the right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority or utility.

4.1.4. Except as limited in paragraph 4.3, the right of the Association to grant easements as to the common area, or any part thereof.

4.1.5. The right of the Association to otherwise deal with the common area.

4.2. Transferable Development Rights. Development rights are hereby created based on the amount of square feet of office space which may be constructed on a lot described in paragraph 5.2 Development Rights shall be severable from the underlying fee and shall be transferable to other lots within Vanderbilt Office Park. Development Rights can only be transferred as set forth herein. In order to transfer Development Rights, the transferor must present to the Architectural Review Board its building Permit which describes the amount of square feet of office space to be constructed on its lot. The remainder may be severed from transferor's lot and transferred to another lot by a recorded written assignment executed by the transferor, transferee and confirmed and consented to by the Architectural Review Board (the "Assignment"). The Assignment shall state the lot from which the Development Rights are severed; the amount of square feet of office space severed and transferred and the lot to which the Development Rights are transferred. The Assignment shall be effective upon recording in the Public Records of Lee County, Florida.

4.3. The owner of a lot shall be entitled to all compensation as a result of a taking by eminent domain, including, but not limited to, the proceeds attributable to a portion of an owner's lot within a water retention area.

5. Use Restrictions. The use of the property subject to this Declaration shall be restricted as follows:

OR2208 PG3581

5.1. No owner may damage the common area or any part thereof.

5.2. With the exception lot four (4) upon which a maximum of 7,200 square feet of office space may be constructed (unless increased in accordance with paragraph 4.2), no lot shall be allowed to have constructed upon it more than 5,700 square feet of office space.

5.3. The total square footage of office space within the development shall not exceed 70,000 square feet.

5.4. Building heights shall not exceed two (2) stories or twenty-five (25) feet above grade elevation.

5.5. Lots shall not be subdivided.

5.6. Uses shall be limited as to those described in Exhibit "2".

5.7. Outdoor storage of any kind is prohibited.

5.8 All outdoor dumpsters and parking areas shall be visually screened from surrounding residential areas.

5.9. Steel buildings, aluminum siding and asphalt or fiberglass shingle roofs are prohibited.

5.10. No owner shall conduct any activity in violation of the Declaration, Articles, By-Laws or Rules and Regulations, or which may become an unreasonable annoyance or nuisance to any other owner.

5.11. Rules and Regulations. No owner shall violate the Rules and Regulations for the use of the common areas, as may be promulgated from time to time by the Association.

6. Maintenance.

6.1. The owners of lots shall pay the expense of maintenance of their lots including regular mowing, edging, fertilizing, weeding and pest control. The Association shall maintain the 45 foot wide Via Del Rey Road right-of-way, including mowing.

6.2. Owners of lots shall maintain their lawn, landscaping and mailboxes. However, if any owner fails to maintain their lawn or mailboxes in good condition, then after reasonable notice to owner, the Association shall perform the maintenance at the owner's expense and shall charge the owner for that maintenance. The cost of said maintenance shall be borne by the lot owner and enforced by the Association in the same manner as assessments.

6.3. Signs. No signs, freestanding or otherwise installed, shall be erected or displayed on any lot or structure, unless the placement, character, form, size, lighting and time of placement of the sign is first approved in writing by the Architectural Review Board and subsequently permitted by Lee County. All signs must also conform with governmental codes and regulations and with any design plans as may be established by Architectural Review Board. Notwithstanding anything to the contrary herein, Developer shall have the exclusive right to maintain signs of any type and size on lots which it owns and on the common area, in connection with its development and sale of lots.

6.4. Water Retention Areas. The Association shall maintain the entire water management system including mowing.

6.5. Fences. No fences of any nature may be constructed on any lot, except those fences and buffers which are constructed by the Developer, unless approved in writing by the Association based on criteria promulgated by the Association and permitted by Lee County.

7. Membership and Voting Rights

7.1. Every owner of a lot shall be a member of the Association, subject to and bound by the Association's Articles of Incorporation, By-Laws, Rules and Regulations, and this Declaration. The foregoing does not include persons or entities who hold a leasehold interest or interest merely as security for the performance of an obligation. Ownership, as defined above, shall be the sole qualification for membership. When any lot is owned of record by two or more persons or other legal entity, all those persons or entities shall be members. An owner of more than one lot shall be entitled to one membership for each lot owned by him. Membership shall be appurtenant to, and may not be separated from, ownership of any lot, and it shall be automatically transferred by conveyance of that lot. The Developer shall also be a member so long as it owns one or more lots.

7.2. The Association shall have one class of voting membership. All votes shall be cast in the manner provided in the By-Laws. When more than one person or entity holds an interest in any lot, the vote for that lot shall be exercised as those persons determine, but in no event shall more than one vote hereinafter designated be cast with respect to any lot, nor shall any split vote be permitted with respect to a lot.

8. Rights and Duties of the Association

8.1. Duties. The Association, subject to the rights of the owners set forth in this Declaration, shall be responsible for the exclusive maintenance, operation and control of the common area. The Association shall be responsible for the payment of all costs, charges and expenses incurred in connection with the maintenance, operation and control of the common area and its performance of its other duties hereunder. The Association shall operate and maintain areas designated by Developer as a common area, whether or not title to that area has been formally conveyed to the Association.

8.2. Manager. The Association may obtain, employ and pay for the services of an entity or person, hereinafter called the "Manager", to assist in managing its affairs and carrying out its duties hereunder to the extent it deems advisable, as well as other personnel as the Association shall determine to be necessary or desirable, whether those personnel are furnished or employed directly by the Association or the Manager.

8.3. Personal Property for Common Use. The Association may acquire and hold tangible and intangible personal property and may dispose of it by sale or otherwise, subject to restrictions, if any, as from time to time may be provided in the Association's Articles or By-Laws.

8.4. Insurance. The Association at all times shall procure and maintain adequate policies of public liability and other insurance as it deems advisable or necessary. The Association additionally shall cause all persons responsible for collecting and disbursing Association funds to be insured or bonded with adequate fidelity insurance or bonds.

8.5. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, its Articles or By-Laws, or by law and every other right or privilege reasonably implied from the existence of any right or privilege granted herein or therein or reasonably necessary to effectuate the exercise of any right or privilege granted herein or therein.

9. Covenant for Maintenance Assessments

9.1. Creation of the Lien and Personal Obligation of Assessments. The owner of each lot, owned within the development, hereby covenants and agrees, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in the deed, is deemed to covenant and agree to pay, in a timely manner, to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements and

OR2208 Pg3583

unexpected operating costs, such as assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the lot against which each assessment is made. Each assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person or entity who was the owner of the property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to a successor in title unless expressly assumed by the successor.

9.2. Purpose of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the owners of lots within the development and for the improvement and maintenance of the common area and the carrying out of the other duties and obligations of the Association under this Declaration, the Articles and the By-Laws. Without limiting the generality of the foregoing, those funds may be used for the acquisition, improvement and maintenance of property, services and facilities related to the use and enjoyment of the common area, including the costs of repair, replacement and additions thereto; the cost of labor, equipment, materials, management and supervision thereof; the payment of taxes and assessments made or levied against the common area; the procurement and maintenance of insurance; the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful; and other needs as may arise.

9.3. Special Assessments for Capital Expenses. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto and for other purposes as designated by the Association, provided that the assessment shall have the assent of two-thirds (2/3) of all members at a meeting duly called for this purpose.

9.4. Notice and Quorum for any Action Authorized Under Section 9.3. Written notice of any meeting called for the purpose of taking any action authorized under Section 9.3 shall be sent to all members not less than thirty (30) days or more than sixty (60) days in advance of the meeting. At the meeting, the presence of two-thirds (2/3) of all members or of proxies entitled to cast votes shall constitute a quorum.

9.5. Assessment Rate. The annual assessment shall be fixed by the Board of Directors of the Association and shall be the same for each lot.

9.6. Special Assessment for Unexpected Common Expenses. The Board of Directors of the Association shall have the authority to vote and approve a special assessment to meet unexpected operating costs so as to insure that the Association does not operate at a deficit.

9.7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the recording of this Declaration in the Public Records of Lee County, Florida. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment to be paid annually against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors of the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association confirming whether the assessments on a specified lot have been paid. A properly executed certificate of the

OR2208 PG3584

Association as to the status of assessments on a lot shall be binding upon the Association as of the date of its issuance.

9.8. Lien for Assessments. All sums assessed to any lot pursuant to this Declaration, together with interest and all costs and expenses of collection, including reasonable attorney's fees, shall be secured by a continuing lien on the lot in favor of the Association.

9.9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum rate allowed by law. The Association may bring an action at law against the owner personally obligated to pay the assessment, or foreclose the lien against the lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area, or by abandonment of his lot.

9.10. Foreclosure. The lien for sums assessed pursuant to this Declaration may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in Florida. In a foreclosure, the owner shall be required to pay all costs and expenses of foreclosure, including reasonable attorneys' fees. All attorneys' fees, costs and expenses shall be secured by the lien being foreclosed. The owner shall also be required to pay to the Association any assessments against the lot which shall become due from the time of recording the lien being foreclosed, which shall be secured by the lien foreclosed and accounted for as of the date the owner's title is divested by foreclosure. The Association shall have the right and power to bid at the foreclosure or other legal sale to acquire the lot foreclosed, and thereafter to hold, convey, lease, rent, encumber, and otherwise deal with the lot as the owner thereof.

9.11. Subordination of the Lien to Mortgagees. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage unless the lien is secured by a claim of lien recorded prior to the recording of the first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to the sale or transfer. No sale or transfer shall relieve a lot from liability for any assessments thereafter becoming due or from the lien thereof.

10. General Provisions

10.1. Enforcement. The Association and Developer shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If a person or entity is found in the proceedings to be in violation of, or attempting to violate, the provisions of this Declaration, he shall bear all expenses of the litigation, including court costs and reasonable attorneys' fees, for all trial and appellate proceedings incurred by the party enforcing the provisions of this Declaration. Developer shall not be obligated to enforce this Declaration and shall not in any way or manner be held liable or responsible for any violation of this Declaration by any person other than itself.

11. Easements

11.1. Each lot and the common area shall be subject to existing easements for public or private utilities purposes (including, but not limited to, fire and police protection, garbage and trash removal, water, electric service, telephone service, cable television service), and the utilities and applicable governmental agencies having jurisdiction thereover and their employees and agents shall have the right of access to any lot or the common area in furtherance of those easements. Except as

OR2208 PG3585

described in paragraphs 6.1 and 6.4, the easement areas contained in any lot whether or not shown on any plat, shall at all times be properly maintained by the lot owner whether or not the utility company properly maintains the easement area.

11.2. The Developer and the Association, after the Developer transfers control of the Association to the lot owners pursuant to paragraph 13.2, reserves the right, for itself and its designee without joinder or consent of any person or entity whatsoever, to grant additional easements, including, but not limited to, irrigation, wells and pumps, cable television, electric, gas, water, sewer, telephone or other utility easements, or to relocate any existing utility easement in any portion of the property as the Developer, its designee, or the Association shall deem necessary or desirable for the proper operation and maintenance of the property, or any portion thereof, or for the general health or welfare of the lot owners, provided that additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with the use of the lots for permitted purposes.

12. Architectural Control

No construction of an improvement, exterior change or modification of an existing improvement, shall be made on a lot, nor shall any fences, walls, structures or improvements be added to a lot after it has been conveyed by the Developer, until the plans and specifications showing the Site Plan, Floor Plan, Elevations, Drainage Plan, Easements, Driveways, exterior, color schemes and materials, shall have been submitted to and approved in writing by the Board of Directors of the Association, or by an Architectural Review Board composed of three (3) or more representatives appointed by the Board of Directors of the Association. In the event the Board of Directors, or its designated committee, fails to approve or disapprove submitted plans within ten (10) days after the plans and specifications and other submittals described herein have been submitted to it, approval will not be required and this Section will be deemed to have been fully complied with. No approval shall be given by the Board of Directors of the Association or its designated Architectural Review Board pursuant to the provisions of this Section unless it determines, in its sole discretion, that approval shall (1) assure harmony of external design, materials and location in relation to surrounding buildings and topography within the development; (2) protect and conserve the value and desirability of the development as a professional office park; (3) be consistent with the provisions of this Declaration; and (4) conform to or enhance, in the sole opinion of the Board of Directors of the Association or its Architectural Review Board, the aesthetic appearance of the development. Neither the Association, the Board of Directors of the Association, nor any member of the Board of Directors or its Architectural Review Board, shall have any liability to anyone by reason of any acts or action taken in good faith pursuant to this Section. Architectural review is only for aesthetic purposes and shall not constitute an express or implied approval that the plans comply with governmental ordinances or codes or that the work shall be performed in a workmanlike manner. The Developer, and its successor developer, shall be exempt from the provision of this Section 12.

13. Developer's Lots and Privileges

13.1. Marketing. The Developer and its agents shall have the right to transact on the common area or lots owned by the Developer, any business necessary to consummate the sale or lease of lots, including, but not limited to, the right to maintain models, have signs, hire employees and to use the common area to show lots.

13.2. Transfer of Control. The Developer, at its sole option, may transfer control of the Association to the lot owners at any time but no later than upon the conveyance of its seventh lot.

14. Provisions Pertaining to Mortgagees

14.1. Liability for Assessments. Where the mortgagee of a first mortgage of record obtains title to a lot by foreclosure or as a result of a deed in lieu of foreclosure, the mortgagee, its successors or assigns, shall not be liable for the share of common expenses or assessments by the Association pertaining to the lot or chargeable to the former lot owner which became due prior to acquisition of the title unless that assessment of common expenses is secured by a claim of lien for assessments recorded prior to the recording of the foreclosed mortgage. However, during the mortgagee's period of ownership of the lot, it shall be liable for all assessments and expenses whether or not the lot is improved or occupied.

14.2. Mortgage or Lien Foreclosure Against a Lot. In the event proceedings are instituted or threatened for foreclosure of any mortgage or lien on any lot, the Association may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights or actions, take an assignment of the mortgage or lien, or purchase the lot at the foreclosure sale. A mortgagee shall have an unrestricted, absolute right to accept title to a lot in settlement and satisfaction of the mortgage or to foreclose the mortgage in accordance with its terms and to bid upon a lot at the foreclosure sale. If the Association redeems the mortgage or cures the default, it shall have a lien against the lot for all sums expended in connection therewith, and shall have the same right to collect those sums as in the case of a past due assessment.

14.3. Lender's Notices. Upon written request to the Association identifying the name and address of the holder, insurer, or guarantor and the legal description of the lot, any mortgagee, insurer or guarantor shall be entitled to timely response to the written request of the following:

- 14.3.1. Any condemnation or casualty loss that affects either a material portion of the development or the lot securing its mortgage.
- 14.3.2. Any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of any lot on which it holds a mortgage.
- 14.3.3. A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- 14.3.4. Any proposed action that requires the consent of a specified percentage of the mortgage holders.

15. Amendment of Declaration of Covenants and Restrictions. Except as elsewhere provided otherwise, this Declaration of Covenants and Restrictions may be amended by the Association in the following manner:

15.1. Notice. Notice of the subject matter of a proposed amendment shall be included in any notice of any meeting in which a proposed amendment is considered.

15.2. Resolution of Adoption. A resolution adopting a proposed amendment may be proposed by the Board of Directors of the Association or by the members of the Association. Directors and members not present in person or by proxy at the meeting considering amendment may express their approval in writing, providing approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, approvals must be not less than seventy-five percent (75%) of the votes of the Board of Directors and not less than fifty percent (50%) of the votes of the entire membership of the Association.

15.3. Until the Developer or its successors has sold and conveyed all of the lots in the development, any amendment adopted

OR2208PG3587

pursuant to this Section 14 must be approved and consented to in writing by the Developer.

15.4. Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, the certificate shall be executed by officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and a copy of the amendment is recorded in the Public Records of Lee County, Florida.

15.5. Proviso. No amendment of this Declaration of Covenants and Restrictions shall make any change which would in any way affect any of the rights, privileges, powers and options of the Developer unless the Developer joins in the execution of the amendment.

15.6. Exception.

15.6.1. Anything in this Declaration to the contrary notwithstanding, if any amendment to this Declaration is required at any time by an institutional mortgage, such as a bank, savings and loan association or insurance company, or any governmental agency, the amendment shall be effective upon recording of the amendment, as executed by the Developer, in the Public Records of Lee County, Florida, without the necessity of the approval or joinder of any owner, or the Association. No amendment under the paragraph may adversely affect the lien or priority of any institutional first mortgage recorded prior to the amendment.

15.6.2. Until the completion of the contemplated improvements on the property, and the conveyance of all lots, the Developer specifically reserves the right, without the joinder of any person or other legal entity, to make amendments to this Declaration and its exhibits or in the Development Plan, as may be required by any lender, governmental authority, or, as may in Developer's sole judgment, be necessary or desirable. This paragraph shall take precedence over any other provision of this Declaration or Exhibits. No amendment shall be effective to impair the security or priority of an institutional first mortgage.

15.6.3. Any amendment which affects the surface water management system, including the water management portions of the common areas, must have the prior approval of the South Florida Water Management District.

16. Severability and Invalidity

16.1. The invalidity, in whole or in part, of any covenant or restriction or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration of Covenants and Restrictions and the Articles of Incorporation, the By-Laws and the Rules and Regulations of the Association, shall not affect the validity of the remaining portions which shall remain in full force and effect.

16.2 In the event any court shall hereafter determine that any provisions of this Declaration of Covenants and Restrictions, as originally drafted, or as amended, violates the rule against perpetuities, or any other rule of law because of the duration of the period involved, the period specified in the Declaration of Covenants and Restrictions shall not thereby become invalid, but instead, shall be reduced to the maximum period allowed under the rule of law, and for that purpose measuring lives shall be those of the incorporators of the Association.

17. Developer's Rights and Duties. The rights and duties of the Developer as herein set forth shall be freely alienable by the Developer and may be assigned, transferred, hypothecated or otherwise disposed of, in whole or in part, on an exclusive or nonexclusive basis. Those rights, together with the duties of the Developer hereunder may be assigned to the Association. The Developer shall have the right at any time to approve in writing, substantial variances from the restrictions and requirements set

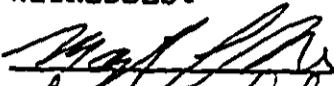
OR2208 PG3588

forth herein, as the Developer shall, in Developer's sole discretion, deem appropriate.

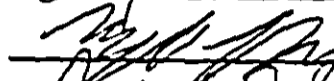
18. Interpretation. In the event of any dispute as to the precise meaning of any term contained herein, the interpretation given by the Developer unless wholly unreasonable, shall be final, and the principles of construction and interpretation that written documents are to be construed against the party preparing them shall not be applicable.

IN WITNESS WHEREOF, the undersigned parties have hereunto set their hands and seals as of the date first above written.

WITNESSES:

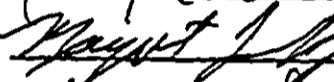


 Cathy C. DeSalvo

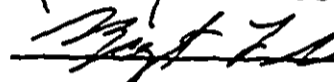


 Cathy C. DeSalvo


 Cathy C. DeSalvo




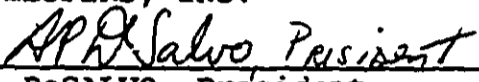
 Cathy C. DeSalvo




DEVELOPER:



 JAMES COLOSIMO, CO-TRUSTEE and
 INDIVIDUALLY


 LAWRENCE HOFFMAN, CO-TRUSTEE and
 INDIVIDUALLY
 Q&A DEVELOPERS, INC.
 By: 

 A.P. DeSALVO, President
 By: 

 Q. GRADY MINOR, Vice President

[SEAL]

[ACKNOWLEDGMENTS ON NEXT PAGE]

OR2208 PG3589

STATE OF FLORIDA)
)SS
COUNTY OF LEE)

BEFORE ME the undersigned authority, personally appeared JAMES COLOSIMO and LAWRENCE HOFFMAN, TRUSTEES, to me known to be the persons described in and who executed the foregoing Declaration of Covenants and Restrictions for Vanderbilt Office Park and severally acknowledged the execution thereof to be their free act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal at Fort Myers, in the State and County first above written on this 28th day of Feb., 1991.

Margaret J. R. [Signature]

NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. NOV. 2, 1994
BONDED THRU GENERAL INS. UND.

STATE OF FLORIDA)
)SS
COUNTY OF LEE)

BEFORE ME the undersigned authority, personally appeared A.P. DeSALVO, President of Q&A Developers, Inc., to me known to be the person described in and who executed the foregoing Declaration of Covenants and Restrictions for Vanderbilt Office Park and severally acknowledged the execution thereof to be his free act and deed as such officer, for the uses and purposes therein mentioned; and that he affixed hereto the official seal of said corporation and the said instrument is the act and deed of said corporation.

WITNESS my hand and official seal at Fort Myers, in the State and County first above written on this 26 day of Feb., 1991.

Margaret J. R. [Signature]

NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. NOV. 2, 1994
BONDED THRU GENERAL INS. UND.

STATE OF FLORIDA)
)SS
COUNTY OF LEE)

BEFORE ME the undersigned authority, personally appeared Q. GRADY MINOR, Vice President of Q&A Developers, Inc., to me known to be the person described in and who executed the foregoing Declaration of Covenants and Restrictions for Vanderbilt Office Park and severally acknowledged the execution thereof to be his free act and deed as such officer, for the uses and purposes therein mentioned; and that he affixed hereto the official seal of said corporation and the said instrument is the act and deed of said corporation.

WITNESS my hand and official seal at Fort Myers, in the State and County first above written on this 26th day of Feb., 1991.

Margaret J. R. [Signature]

NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. NOV. 2, 1994
BONDED THRU GENERAL INS. UND.

A:\DECLARATION
(VANDERBILTDISK/MCG)

EXHIBIT 1
TO
DECLARATION OF COVENANTS AND RESTRICTIONS
OF VANDERBILT OFFICE PARK

Legal Description:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and
Tract "A" of Vanderbilt Office Park, a
Subdivision as recorded in Plat Book 47, Page
48, Public Records of Lee County, Florida.

OR2208 PG3591

EXHIBIT 2
TO
DECLARATION OF COVENANTS AND RESTRICTIONS
OF VANDERBILT OFFICE PARK

RESOLUTION NUMBER Z-90-004

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, James Colosimo and Larry Hoffman, Trustees, in reference to Vanderbilt Office Park, have properly filed an application for a rezoning from AG-2 to Commercial Planned Development to permit 70,000 square feet of office space in a maximum of 12 building lots, with no building to exceed 25 feet above grade, on 8.3 acres of land.

NOTE: If approved, the Master Concept Plan will deviate from the following Lee County standards:

- (1) Requirement that access streets be constructed paralleling certain arterial streets [DSO Sections C.3.j.(2) and C.3.o.], to no access street; and
- (2) Requirement that intersections of streets, access streets or accessways with arterial streets shall not be less than six hundred and sixty (660) feet apart using a centerline measurement [DSO Section C.3.h.], to allow a 600 foot separation; and

WHEREAS, the subject property is located at 28314 Mango Drive, Bonita Springs, described more particularly as:

LEGAL DESCRIPTION: In Section 04, Township 48 South, Range 25 East, Lee County, Florida:

A parcel of land lying in Section 04, Township 48 South, Range 25 East, Lee County, Florida, more particularly described as follows:

Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of the Northwest Quarter (NW¼) of Section 04, Township 48 South, Range 25 East, Lee County, Florida, Less and Except the West 50 feet deeded to the State Road Department for State Road right-of-way per Deed Book 273, page 189-191, public records of Lee County, Florida, and Less and Except the North 30 feet for road right-of-way of Fourth Street and the East 25 feet for road right-of-way of Mango Drive.

WHEREAS, the applicant has indicated the property's current STRAP number is 04-48-25-00-00002.0040; and

WHEREAS, proper authorization has been given to A. P. DeSalvo, Inc., and Q. Grady Minor & Associates, P. A., by James Colosimo, Trustee of the subject parcel, to act as agents to pursue this zoning application; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Hearing Examiner, with full consideration of all the evidence available; and

WHEREAS, the Lee County Hearing Examiner fully reviewed the matter in a public hearing held on January 9, 1990, and the matter was heard by the Board of County Commissioners on February 26, 1990, and, subsequently, remanded to the Hearing Examiner for review on April 10, 1990; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Board of County Commissioners; and

WHEREAS, in the legislative process the Lee County Board of County Commissioners gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on file with the county, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, that the Board of County Commissioners does hereby APPROVE with conditions a Commercial Planned Development zoning.

This approval is subject to the following conditions:

1. The development of the subject property shall be in accordance with the one-page Master Concept Plan entitled "Master Concept Plan - Vanderbilt Park" (sheet 1 of 2 dated July, 1989, last revised 3/2/90, printed May 14, 1990), as prepared by Q. Grady Minor and Associates, P.A., except as modified herein.

2. Permitted uses are as follows:

Administrative Offices
Banks and Financial Establishments - Groups I and II
Business Services - Group I
Contractor's Office and Equipment Storage Shed (529.03)
Essential Services
Essential Service Facilities - Group I
Excavations, water retention
Health Care Facilities - Groups I, II, and III
Offices, Medical
Research and Development Laboratories - Group II
Schools, Commercial
Signs, in conformity with the Lee County Sign Ordinance
Social Services - Group I
Storage, Indoor only

3. The Vanderbilt Drive access is approved as a joint access with the church use to the south only. Prior to approval of a Final Development Order for the office park, the Division of Development Review shall be provided with written recorded evidence that the church has granted approval for said access. Should the church not grant such approval, alternative access must be approved by the Board of County Commissioners via an amendment to the CPD zoning, with proper public notice given. The Vanderbilt Drive access is also conditioned upon alignment with the centerline of Sixth Street in Collier County. Direct access to Mango Drive and Fourth Street by the project or individual parcels is prohibited.

4. Signage for this project shall be limited to project identification along Vanderbilt Drive and internal directory signs intended to direct business patrons to the appropriate offices.
5. No outdoor storage of any kind shall be permitted except during construction, nor shall any storage of hazardous or toxic wastes be permitted at any time.
6. All parking areas and dumpsters shall be located internal to the project and visually screened from the residential areas.
7. Deviation (1) is APPROVED.
Deviation (2) is APPROVED subject to Condition 3.

Site Plan 90-004 is attached hereto and incorporated herein by reference, as a reduced copy of the Master Concept Plan.

The following findings of fact were made in conjunction with this approval for Commercial Planned Development zoning:

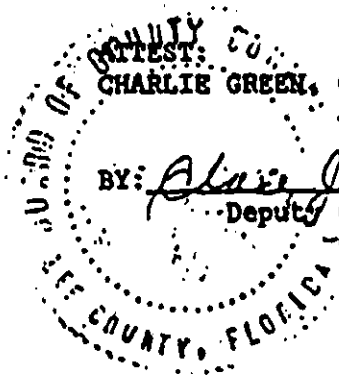
- A. There are changed or changing circumstances in the area incident to population growth, the expansion of Bonita Beach Road and the commercial development on Bonita Beach Road and Vanderbilt Road in the area near the subject real estate; and these changed or changing circumstances make it unlikely that the subject property is competitive and marketable for single family residential purposes.
- B. That the approval of the requested rezoning will have a neutral impact on the intent of the Zoning Ordinance to promote the public interest in a manner which is consistent with present and future needs and also consistent with the recognition and promotion of real property rights.
- C. That this case involves the direct confrontation between residential uses and commercial and office uses in an area which began as a residential area years ago but now appears to have little likelihood of filling in as a residential area in view of the development of adjacent roadways and nearby commercial uses.
- D. That development of this site in the manner contemplated by this application will create additional traffic impacts but it is not clear exactly how much more traffic would be created by the proposed use than by the development of this area for residential uses in a manner consistent with the existing zoning.
- E. That the church which owns a parcel of similar size adjoining this property to the south and which would appear to be significantly impacted by the proposed development has no objection to the project as proposed.
- F. That this request is consistent with the uses allowed in the Urban Community land use category of the Lee Plan and that the site location standards do not apply to the proposed office uses.
- G. That this request appears to be consistent with the directional policies of the Lee Plan, except for the absence of public sewer at the site.
- H. That the requested rezoning appears to be generally consistent with the densities, intensities and general uses of the Lee Plan.
- I. That the requested rezoning will be compatible with the neighboring commercial uses and incompatible with the neighboring single family uses although, of all possible commercial uses, the type of "office park" uses proposed here is the most compatible of the technically incompatible commercial uses.

- J. That the proposed rezoning is compatible with future land uses in this area.
- K. That there is an existing day care center in the area which demands special concern for traffic on Mango and on 4th.

The foregoing Resolution was adopted by the Lee County Board of County Commissioners upon a motion by Commissioner Fussell, and seconded by Commissioner St. Cerny and, upon being put to a vote, the result was as follows:

John E. Manning	<u>AYE</u>
Douglas St. Cerny	<u>AYE</u>
Ray Judah	<u>ABSENT</u>
Bill Fussell	<u>AYE</u>
Donald D. Slisher	<u>ABSENT</u>

DULY PASSED AND ADOPTED this 11th day of June, A.D., 1990.


 ATTEST:
 CHARLIE GREEN, CLERK
 BY: Steve Gibbuck
 Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: J. Manning
 Chairman

Approved as to form by:
[Signature]
 County Attorney's Office

FILED
 JUL 17 90
 CLERK CIRCUIT COURT
 BY C. [Signature], D.C.

CHARLIE GREEN LEE CTY FL
 91 MAR 15 PM 4:12

OR2208 PG3595