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This instrument was prepared by:
Vivien N. Hastings, Esq.
801 Laurel Oak Drive, #500
Naples, Florida 33963

3747032

OR2585 P60219

THIRTY-THIRD SUPPLEMENT
TO THE
DECLARATION AND GENERAL PROTECTIVE COVENANTS
FOR
PELICAN LANDING
(Parcel I)

THIS SUPPLEMENT is made this 15 day of March, 1995, by PELICAN LANDING COMMUNITIES, INC., formerly Westinghouse Bayside Communities, Inc., a Florida corporation, which was Declarant of that particular AMENDED AND RESTATED DECLARATION AND GENERAL PROTECTIVE COVENANTS FOR PELICAN LANDING and is hereinafter referred to as DECLARANT, joined by PELICAN'S NEST ASSOCIATES, LTD., a Florida limited partnership ("PNA"), and WCN COMMUNITIES, INC., a Florida corporation ("WCN").

WITNESSETH:

WHEREAS, DECLARANT has recorded the Amended and Restated Declaration and General Protective Covenants for Pelican Landing (hereinafter referred to as DECLARATION) at Official Records Book 2198, Pages 1873 through 2026, inclusive, of the Public Records of Lee County, Florida, as amended; and

WHEREAS, the DECLARATION provides in Article VIII, Section 1, thereof the "Declarant shall have the unilateral right, privilege and option, from time to time at any time until all property described on Exhibit "A" has been subjected to this DECLARATION or December 31, 2020, whichever is earlier, to subject to the provisions of this DECLARATION and the jurisdiction of the Association any portion of real property, including without limitation that described in Exhibit "A" attached hereto. Such annexation shall be accomplished by filing in the Public Records of Lee County, Florida, a Supplemental Declaration annexing such property"; and

WHEREAS, in accordance with the terms of the DECLARATION, DECLARANT, PNA and WCN desire to subject all of the real property described in Exhibit "A" attached hereto (hereinafter defined and referred to as the NEIGHBORHOOD) to the DECLARATION for those reasons set forth in the preamble to the DECLARATION; and

RECORD VERIFIED - CHARLIE GREEN, CLERK
BY: G. SHERWOOD, D.C.

WHEREAS, DECLARANT, PNA and WCN have determined that in order to create a quality development within the NEIGHBORHOOD, new provisions applicable to the NEIGHBORHOOD shall be imposed for the preservation of the property values of the owners therein.

NOW, THEREFORE, DECLARANT, PNA and WCN hereby declare that real property described in Exhibit "A" hereto shall be held, transferred, sold, conveyed and occupied subject to the DECLARATION, and the supplemental restrictions, covenants, servitudes, impositions, easements, charges and liens hereinafter set forth.

ARTICLE I
DEFINITIONS

1. "BUILDING HEIGHT" shall mean the vertical distance measured from the finished grade of the LOT or minimum base flood elevation, whichever is greater, to the mean high level between eaves and ridge of gable, hip and gambrel roofs.
2. "DECLARANT" shall mean and refer to PELICAN LANDING COMMUNITIES, INC., a Florida corporation, presently having its principal place of business in Lee County, Florida, its successors or assigns of any or all of its rights under the DECLARATION.
3. "PNA" shall mean and refer to PELICAN'S NEST ASSOCIATES, LTD., a Florida limited partnership, presently having its principal place of business in Lee County, Florida, its successors or assigns.
4. "WCN" shall mean and refer to WCN COMMUNITIES, INC., a Florida corporation, presently having its principal place of business in Collier County, Florida, its successors or assigns.
5. "DECLARATION" shall mean and refer to the AMENDED AND RESTATED GENERAL COVENANTS AND GENERAL PROTECTIVE COVENANTS FOR PELICAN LANDING as recorded in Official Records Book 2198 at Pages 1873 through 2026, inclusive, of the Public Records of Lee County, Florida, as amended, and as may be amended from time to time.
6. "DWELLING UNIT" shall mean and refer to any residential unit intended for occupancy by one family or household.
7. "MASTER ASSOCIATION" shall mean Pelican Landing Community Association, Inc., a Florida not-for-profit corporation and the master owners' association for Pelican Landing, its successors and assigns.
8. "NEIGHBORHOOD" shall mean and refer to the real property, or any portion thereof, as more particularly described in Exhibit "A" attached hereto.

9. "NEIGHBORHOOD ASSOCIATION" shall mean the property owners' association, homeowners' association, or other entity, their successors and assigns, for the NEIGHBORHOOD.

10. "OWNER" shall mean and refer to any person or persons, entity or entities, who are the record owner or owners of any fee interest in the NEIGHBORHOOD, their heirs, successors, legal representatives or assigns.

11. "SUPPLEMENT" shall mean this Thirty-eighth Supplement to the DECLARATION.

ARTICLE II
RESTRICTIONS

1. **USE RESTRICTIONS**

a. The NEIGHBORHOOD may be used for a multi-family residential development, associated amenities and uses, including a maximum of two (2) tennis courts, one (1) swimming pool, and other recreational facilities located in the common area as depicted in the site plan for the NEIGHBORHOOD and for no other purposes. No business buildings may be erected in the NEIGHBORHOOD and no business may be conducted on any part thereof, nor shall any building or portion thereof be used or maintained as a professional office. No structures shall be erected or placed in or on any lakes or water management areas in or adjacent to the NEIGHBORHOOD without the prior written consent of the DECLARANT.

b. Notwithstanding the above provisions, the DECLARANT may, in its sole discretion, permit one or more DWELLING UNITS to be used or maintained as a sales office or model for the promotion of real estate in Pelican Landing. Any such permission must be granted by DECLARANT in writing prior to such use and may include restrictions on the type and nature of sales, promotion activities and promotional materials that may be utilized.

c. No building, structure or other improvement shall be placed in or on the NEIGHBORHOOD unless and until DECLARANT has issued its written approval. In obtaining said written approval, OWNER or any other person applying shall comply with all the requirements and procedures of Article XI of the DECLARATION.

d. Except as approved by DECLARANT in writing, awnings, canopies, hurricane shutters, porch sun screens and similar additions shall not be attached or affixed to the exterior of any DWELLING UNIT or structure.

e. No decorative objects such as weather vanes, statuary, sculptures, birdbaths, fountains, flagpoles and the like shall be placed or installed in or on the NEIGHBORHOOD without the prior written approval of the DECLARANT.

f. No recreation equipment such as basketball goals and playground equipment shall be placed or installed in or on the NEIGHBORHOOD without the prior written approval of the DECLARANT.

g. Roof stacks and vents shall be placed so as not to be clearly or readily visible from the front of the DWELLING UNIT and shall be painted to match the approved roof color. Solar collectors or devices shall be located so as not to be readily visible from surrounding streets or other DWELLING UNITS and shall not be installed until such time as the DECLARANT has approved in writing the location of the solar collectors on the structure.

h. No garbage, trash or refuse containers shall be placed within the front yard of any building or in any driveway abutting any building and all garbage, trash and refuse removal shall be made from screened or enclosed areas.

i. Motor homes, trailers, boats, motorcycles, vans or trucks used for commercial purposes, shall not be permitted to be parked or stored in or on the NEIGHBORHOOD unless kept fully enclosed inside a structure.

j. No outside satellite receptor dish or device or any other type of electronic device now in existence or that may hereafter come into existence, that is utilized or designed to be utilized for the transmission or reception of electronic or other type of signal shall be allowed without the prior written approval of DECLARANT.

2. BUILDING SETBACK LINES, SIZE OF BUILDING AND BUILDING HEIGHT

a. The minimum distance between any two unattached principal structures shall be in accordance with the site plan for the NEIGHBORHOOD approved in writing by DECLARANT and Lee County.

b. The minimum setback for tract boundaries for principal structures, accessory structures or improvements shall be in accordance with the site plan for the NEIGHBORHOOD approved in writing by DECLARANT and Lee County.

c. The minimum floor area per DWELLING UNIT shall be sixteen hundred (1600) square feet of living area. The method of determining square foot area of proposed buildings and structures or additions and enlargement thereto, shall be to multiply the outside horizontal dimensions of the building or structure at each floor level. Garages, porches, patios, terraces and other similar areas and structures shall not be taken into account in calculating the minimum area required.

d. The maximum building height shall not exceed fifty-five (55') feet above finished grade (three (3) habitable floors over parking).

3. FENCES AND WALLS/GATES

a. The erection and use of walls and fences is discouraged. Any wall or fence shall be approved in writing by DECLARANT and shall be located in a manner to limit the area enclosed to that necessary to afford privacy to outdoor activity areas. No wall or fence shall be constructed with a height of more than six (6) feet above the existing ground level of adjoining

property. No walls or fence shall be erected or placed on any property line. Any fences or walls shall have a landscape buffer between the wall or fence and the adjacent property line.

b. A wall, fence or enclosure shall only be constructed of materials and with a design and color as approved by DECLARANT in writing. No chain link fencing shall be allowed except as an approved enclosure for an approved tennis court.

c. No privacy gate(s) shall be constructed or installed in the NEIGHBORHOOD unless the location and design of such gate(s) shall have been approved in writing by DECLARANT.

4. LANDSCAPING

a. No later than thirty (30) days after OWNER'S submittal of construction plans and specifications for the NEIGHBORHOOD, OWNER shall submit to DECLARANT, for its review and approval, a conceptual master landscape and irrigation plan for the NEIGHBORHOOD (including adjacent rights-of-way, and area between the property line and any abutting road or water's edge) ("Landscape Plan"). Such Landscape Concept Plan shall be prepared by a Florida Registered Landscape Architect, who shall utilize a similar plant palette and theme throughout the NEIGHBORHOOD. It is DECLARANT'S intent that the existing native vegetation be retained to the maximum extent possible. Clearing shall be done selectively, retaining wherever possible the native vegetation. OWNER'S Landscape Plan shall indicate OWNER'S plan for the retention and/or clearing of any existing native vegetation, in accordance with Article II, Section 12 of this SUPPLEMENT. DECLARANT reserves the right to comment and require changes should special conditions or situations exist. A final Landscape Planting Plan shall be submitted by OWNER to DECLARANT no later than thirty (30) days thereafter. OWNER shall be solely responsible for the cost and expense to prepare the Landscape Plan, the Final Landscape Plan, the installation of all landscape materials and irrigation and the maintenance and repair with respect thereto.

b. Prior to making any change, variation or deviation from the approved landscaping plan, OWNER shall first obtain DECLARANT'S written approval of the change, variation or deviation. Any additional landscaping to be installed after occupancy of any DWELLING UNITS requires written approval of DECLARANT prior to installation.

c. OWNER shall install or retain the landscape material as approved by DECLARANT. All landscaping, trees, shrubs and lawns shall be maintained by OWNER in good and living condition at all times.

d. The OWNER shall be responsible for maintaining and keeping in good working order the landscape irrigation system installed in or on the NEIGHBORHOOD and adjacent right-of-way and areas between the property line and any abutting road or water's edge.

e. Surface water runoff must be properly handled, and cause no ponding, erosion or unfavorable impact on adjacent property and must conform to water management system criteria as permitted by the Bayside Community Development District.

5. PARKING AND STORAGE AREAS

a. Repair of vehicles shall be permitted only inside covered parking areas. Covered parking areas shall be sight-screened so that they shall not be readily visible from any adjacent streets and properties, or adequate landscaping shall be installed around these facilities and maintained by the OWNER to the satisfaction of DECLARANT.

b. No unenclosed storage area shall be permitted. No enclosed storage area shall be erected which is separated from a principal structure. Storage facilities for garbage and trash containers shall be required for each building and shall be screened such that they are not visible from roadways.

6. WATER MANAGEMENT AREAS

Surface water drainage and management, including but not limited to storm water storage and capacity, shall conform to the overall water management requirements of the South Florida Water Management District and meet with the approval of DECLARANT, and, where applicable, the Bayside Community Development District.

7. LEASE

Any NEIGHBORHOOD ASSOCIATION documents prepared or filed by OWNER shall prohibit the leasing of any DWELLING UNIT more often than three (3) times per calendar year and shall prohibit the use or sale of any DWELLING UNIT on a "time-share" basis. No lease shall be for a period of time of less than twenty-one (21) days duration.

8. CONSTRUCTION

During any construction activity within the NEIGHBORHOOD, the construction area shall be maintained in a neat and orderly manner and OWNER shall provide for trash and debris containment and removal. No temporary trailers shall be placed in the NEIGHBORHOOD without the prior written approval of DECLARANT. Construction vehicles shall be parked so as not to block or interfere with the use of the streets or roads within the NEIGHBORHOOD. Construction vehicles shall not be stored in the NEIGHBORHOOD, except during the active construction of the NEIGHBORHOOD.

9. LIGHTING

No exterior lighting fixtures, structures or improvements shall be placed in, on or about the NEIGHBORHOOD, unless the written approval of DECLARANT has been obtained.

10. ACCESS

Permanent access to the NEIGHBORHOOD shall be via no more than one (1) access point on Pelican's Nest Drive. There shall be no access from the PROPERTY to the adjoining Pelican's Nest Golf Club.

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11. SIGNS

All signage in or on the NEIGHBORHOOD shall comply with DECLARANT'S sign standards and shall be approved in writing by DECLARANT prior to being installed.

12. NATIVE VEGETATION

To the extent applicable to the NEIGHBORHOOD, and subject to the provisions of Section 4 above, OWNER shall protect suitable native vegetation to be integrated into the final landscape plan. The design review process and construction activities shall include these steps:

- a. Site review by OWNER or builder with DECLARANT of existing native vegetation.
- b. Review by DECLARANT of tree-clearing plans.
- c. Review by DECLARANT of building placement so as to minimize disturbance and removal of existing native vegetation.
- d. Installation of protective identification of native vegetation during construction.
- e. Transplanting of suitable trees removed from construction areas.

ARTICLE III
GENERAL PROVISIONS

1. PROPERTY UNITS

In accordance with Article 1, Section 34 of the DECLARATION, DECLARANT hereby assigns a total of sixty (60) PROPERTY UNITS to the NEIGHBORHOOD.

2. CONFLICT

In the event of any conflict among the provisions of the DECLARATION and the provisions of this SUPPLEMENT, the DECLARANT reserves the right and the power to resolve any such conflict, and its decision shall be final.

3. AMENDMENT

The DECLARANT may, in its sole discretion, modify, amend, delete, waive or add to this SUPPLEMENT or any part thereof. The power of amendment, however, shall be limited to modification or enlargement of existing covenants which shall not substantially impair the general and uniform plan of development originally set forth herein.

OR2585 PG0226

4. SUPPLEMENT TO GENERAL COVENANTS RUNS WITH THE LAND

The covenants, conditions, restrictions and other provisions under the SUPPLEMENT shall run with the land and bind the property within the NEIGHBORHOOD and shall inure to the benefit of and be enforceable by the DECLARANT for a term of thirty (30) years from the date this SUPPLEMENT is recorded, after which time these provisions shall automatically be extended for successive periods of ten (10) years. Any time after the initial thirty (30) year period provided for in this Section, these provisions may be terminated or modified in whole or in part by the recordation of a written instrument providing for the termination or modifications executed by the OWNERS of two-thirds (2/3) of the DWELLING UNITS agreeing to the termination or modifications.

5. WAIVER

Any waiver by DECLARANT of any provision of this SUPPLEMENT or breach hereof must be in writing and shall not operate or be construed as a waiver of any other provision or subsequent breach.

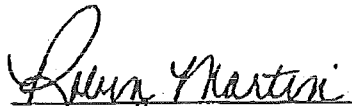
6. SEVERABILITY

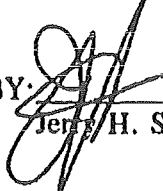
If any section, subsection, sentence, clause, phrase or portion of this THIRTY-THIRD SUPPLEMENT TO THE DECLARATION AND GENERAL AND PROTECTIVE COVENANTS FOR PELICAN LANDING (PARCEL I) is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portion thereof.


IN WITNESS WHEREOF, PELICAN LANDING COMMUNITIES, INC., a Florida corporation, joined by PELICAN'S NEST ASSOCIATES, LTD., a Florida limited partnership, and WCN COMMUNITIES, INC., a Florida corporation, do hereby execute this THIRTY-THIRD SUPPLEMENT TO THE DECLARATION AND GENERAL AND PROTECTIVE COVENANTS FOR PELICAN LANDING (PARCEL I), in their names by their undersigned, authorized officers and affix their corporate seals hereto, this 15 day of March, 1995.

WITNESSES:

PELICAN LANDING COMMUNITIES, INC., a Florida corporation


Name: Robin Martin

BY: 
Jerry H. Schmoyer, Executive Vice President


Name: Cynthia DeVito

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Joined by:

PELICAN'S NEST ASSOCIATES, LTD.,
a Florida limited partnership,
BY: Pelican's Nest Investments, Inc., a Florida
corporation, its sole General Partner

Robin Martin
Name: Robin Martin

BY: [Signature]
Jerry H. Schmoyer, Vice President

Cynthia DeVito
Name: Cynthia DeVito

Joined by:

WCN COMMUNITIES, INC.,
a Florida corporation

Robin Martin
Name: Robin Martin

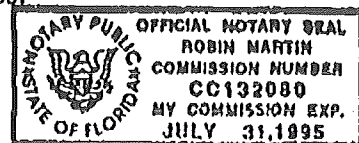
BY: [Signature]
Jerry H. Schmoyer, Vice President

Cynthia DeVito
Name: Cynthia DeVito

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 15 day of March, 1995, by Jerry H. Schmoyer, Executive Vice President, of PELICAN LANDING COMMUNITIES, INC., a Florida corporation, Vice President of Pelican's Nest Investments, Inc., a Florida corporation, General Partner of PELICAN'S NEST ASSOCIATES, LTD., a Florida limited partnership, and Vice President of WCN COMMUNITIES, INC., a Florida corporation, on behalf of the corporations. He is personally known to me.

Robin Martin
Notary Public
My Commission Expires:



95 MAR 21 PM 4:43

DESCRIPTION

Tract "I" of Pelican's Nest
 Being part of
 Section 20, Township 47 South, Range 25 East,
 Lee County, Florida

All that part of Section 20, Township 47 South, Range 25 East, Lee County, Florida, begin more particularly described as follows:

COMMENCING at the easterlymost corner of Tract "C", Pelican's Nest Unit Two, according to the plat thereof as recorded in Plat Book 44, pages 27 through 31 (inclusive), Public Records of Lee County, Florida;

thence along the east line of said Tract "C" N.22°30'00"W. 45.00 feet;
 thence along the north line of said Tract "C", S.67°30'00"W. 150.00 feet;
 thence continue along said north line, southwesterly 36.00 feet along the arc of a circular curve concave to the northwest, having a radius of 1517.45 feet, through a central angle of 01°21'34" and being subtended by a chord which bears S.68°10'47"W. 36.00 feet to a point on said curve and the POINT OF BEGINNING of the parcel herein described;

thence continue along said curve southwesterly and westerly 453.96 feet along the arc of a tangential circular curve concave to the northwest, having a radius of 1517.45 feet, through a central angle of 17°08'26" and being subtended by a chord which bears S.77°25'47"W. 452.27 feet to a point on said curve;

thence N.49°01'44"W. 110.81 feet;

thence N.08°59'22"E. 352.08 feet;

thence N.40°32'41"E. 259.11 feet;

thence N.86°54'53"E. 40.31 feet;

thence S.47°25'14"E. 230.23 feet;

thence S.42°34'46"W. 206.61 feet;

thence S.37°54'48"E. 73.14 feet;

thence N.77°02'51"E. 42.44 feet;

thence S.49°42'41"E. 198.39 feet;

thence S.09°14'03"W. 37.14 feet to the Point of Beginning of the parcel herein described.

Bearings are based on the north line of Tract "C", Pelican's Nest Unit Two as recorded in Plat Book 44, pages 27 through 31, Public Records of Lee County, Florida being S.67°30'00"W.

EXHIBIT "A"

OR2585 P60228