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This instrument was prepared by:
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Naples, Florida 33963

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THIRTY EIGHTH SUPPLEMENT
TO THE
DECLARATION AND GENERAL PROTECTIVE COVENANTS
FOR
PELICAN LANDING

THIS SUPPLEMENT is made this 28th day of December, by WCI COMMUNITIES LIMITED PARTNERSHIP, a Delaware limited partnership, successor of 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.

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, Article VIII, Section 1, of the DECLARATION provides that Declarant shall have the unilateral right, privilege and option, from time to time at any time until all property described therein has been subjected to the DECLARATION or December 31, 2020, whichever is earlier, to subject to the provisions of the DECLARATION and the jurisdiction of the Association any portion of real property 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 desires 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

WHEREAS, DECLARANT has 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 hereby declares that real property described in Exhibit "A" attached 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.

RECORDED & FILED CLARENCE GREEN, CLERK BY: G. SHERWOOD, D.C.

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 WCI COMMUNITIES LIMITED PARTNERSHIP, a Delaware limited partnership, 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. "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.
4. "DWELLING UNIT" shall mean and refer to any residential unit intended for occupancy by one family or household.
5. "LOT" or "LOTS" shall mean any one of or all of the lots in the NEIGHBORHOOD to be platted in the future.
6. "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.
7. "NEIGHBORHOOD" shall mean and refer to the real property, or any portion thereof, as more particularly described in Exhibit "A" attached hereto.
8. "NEIGHBORHOOD ASSOCIATION" shall mean the property owners' association, homeowners' association, or other entity, their successors and assigns, for the NEIGHBORHOOD.
9. "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.
10. "SUPPLEMENT" shall mean this Thirty-Eighth Supplement to the DECLARATION.

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ARTICLE II
RESTRICTIONS

1. USE RESTRICTIONS

a. The NEIGHBORHOOD may be used for detached single family DWELLING UNITS 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. Garbage, trash or refuse containers may be placed within the side yard or garage of any DWELLING UNIT, but shall not be permanently placed in the front yard of any LOT. All LOTS must provide for garbage, trash and refuse removal to be made from the front yard of any LOT.

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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. No DWELLING UNITS, structure or building shall be erected within the following building setback lines:

- i. Front LOT line: 20 feet (except for Lot 15, which maybe reduced to 15 feet)
- ii. Side LOT line: One Story: 5 feet
Two Story: 5 feet
- iii. Rear LOT line: 15 feet (20 feet from preserve area)

b. However, all yards abutting Burnt Pine Drive and/or Pennyroyal Drive shall be rear yards, and all yards abutting the NEIGHBORHOOD's internal roads shall be front yards. Four-sided corner LOTS shall have two front yards, one of which front yards may have a setback of fifteen (15) feet, and two side yards with setbacks as noted above. Setback lines for corner LOTS and odd-shaped LOTS shall be as near as possible as provided above, except that variations may be authorized by DECLARANT in writing at the time plans for buildings are approved, and a copy of such plans, including the plot plan, or a record of the determination shall be kept on file by the DECLARANT to establish the setback lines as approved.

c. The minimum floor area per DWELLING UNIT shall be Fifteen Hundred (1,500) 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. No building or structure of any kind shall exceed 35 feet above finished grade.

e. When two or more LOTS are acquired and used as a single building site under a single OWNER, the site LOT lines shall refer only to the lines bordering on the adjoining property.

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3. SPAS, HOT TUBS AND SWIMMING POOLS, ENCLOSURES, FENCES AND WALLS

a. All enclosures, including, spa, hot tub and swimming pool enclosures (screen or otherwise), must be approved in writing by DECLARANT prior to construction. No flat screen enclosures, unless part of an approved mansard screen enclosure, are permitted, and the sloped portions of the screen enclosure shall have a pitch compatible with the pitch of the roof of the DWELLING UNIT to which it is attached. Bare aluminum screening and screen enclosures will not be permitted. Bronze colored screen enclosures are required for LOT 1 and LOTS 9 through 15, inclusive, and encouraged on LOTS 2 through 8, inclusive.

b. 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.

c. A wall, fence or enclosure required to screen air-conditioning, pool equipment or trash shall only be constructed of materials and with a design and color as approved by DECLARANT in writing and such materials and colors shall be identical or complimentary to the structure. No chain link fencing shall be allowed except as an approved enclosure for an approved tennis court.

d. 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.

e. No structure of any kind shall be erected within the 25 foot berm easement on LOT 1 and LOTS 9 through 15, inclusive, nor shall the berm/landscape buffer be altered in any way.

4. LANDSCAPING

a. OWNER shall be solely responsible for installation and maintenance of 25' landscape buffers along the portions of the NEIGHBORHOOD which parallel the Burnt Pine Drive and Pennyroyal Drive rights-of-way. 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 14 of this SUPPLEMENT.

OR 2663 PG 3961

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.

- i. Provided, however, OWNERS of LOT 1 and LOTS 9 through 15, inclusive, which LOTS include a 25 foot berm/buffer easement, shall conform their landscape and irrigation plan for the portion of the berm on their LOT from the rear of their DWELLING UNIT to the top of the berm, to DECLARANT's Burnt Pine Drive/Pennyroyal Drive Streetscape Plan, including approved plant list.
- 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. Each 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.
- i. OWNERS of LOT 1 and LOTS 9 through 15, inclusive, shall install and maintain the landscaping and irrigation system in the portion of the 25 foot berm easement on their LOT from the rear of their DWELLING UNIT to the top of the berm. The Bayside Improvement Community Development District shall install and maintain the landscaping and irrigation system along Burnt Pine Drive and Pennyroyal Drive from the right-of-way to the top of the berm.
- e. The OWNER of a LOT 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 wetland's edge.
- f. 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 Bay Creek Community Development District.

5. GARAGE AND STORAGE AREAS

- a. No garage shall be erected which is separated from the DWELLING UNIT. Each DWELLING UNIT shall have a garage which shall accommodate no less than two (2) automobiles. Repair of vehicles shall be permitted only inside a garage. All garages must be constructed with doors that are equipped with operating, automatic door openers and closers. The garage doors shall remain closed except upon entering or exiting the garage.

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b. Carports shall not be permitted or erected within the NEIGHBORHOOD.

c. No unenclosed storage area shall be permitted. No enclosed storage area shall be erected which is separated from a principal structure. Any storage facilities for garbage and trash containers permanently placed outside any DWELLING UNIT shall be screened such that they are not visible from roadways.

6. MAIL BOXES

All mail boxes must be installed and maintained in accordance with the standards established by DECLARANT. The design, material and location of all mail boxes must first be approved in writing by DECLARANT.

7. ROOFS

a. No flat roofs or mansard roofs are permitted on any DWELLING UNITS. The major roof form of a DWELLING UNIT shall have a minimum pitch of 6:12.

b. Due to the unique character of the NEIGHBORHOOD, only natural wood split shakes, natural wood sawn shingles, concrete tile in dark or neutral earth-tone colors, dark or neutral earth-tone clay tile or slate shall be permitted.

8. COLORS

No exterior colors on any structure shall be permitted other than natural or neutral earth-tone colors. All exterior colors, including original and future color changes proposed by OWNER, must be approved first by DECLARANT in writing. In addition, DECLARANT reserves the right to require that a color sample be painted by OWNER on the residence before written approval is granted.

9. NEIGHBORHOOD DRIVEWAYS

a. All driveways shall be designed and constructed only in accordance with the design and with the materials as approved by DECLARANT in writing and must be maintained in a clean, neat and attractive manner. Driveway surfaces may consist only of approved materials with neutral colors. No asphalt, plain concrete or gravel driveways shall be permitted.

b. Driveways shall be constructed in such a manner so that the flare of the driveway at the adjoining street pavement does not extend beyond a straight line projection of the side lot line of the LOT served by the driveway. In no event shall the driveway surface be less than one (1) foot from the side LOT line unless a variance is granted by the DECLARANT.

10. 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.

11. 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.

12. 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.

13. 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.

14. NATIVE VEGETATION

To the extent applicable to the NEIGHBORHOOD, and subject to the provisions of Article II, 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. Submittal of a vegetation survey prepared by a surveyor, which accurately locates existing trees 6" in diameter at breast height (DBH) or greater and significant shrub masses.
- b. Site review by OWNER or builder with DECLARANT of existing native vegetation.
- c. Review by DECLARANT of tree-clearing plans.
- d. Review by DECLARANT of building placement so as to minimize disturbance and removal of existing native vegetation.
- e. Installation of protective barriers and identification of native vegetation before commencement of construction.
- f. Transplanting of suitable trees removed from construction areas.

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- g. Any substantial changes to the approved landscape plan following installation of the landscaping on a LOT shall be resubmitted to DECLARANT for its prior written approval.

15. ACCESS

Permanent access to the NEIGHBORHOOD shall be via no more than one (1) access point on Pennyroyal Drive. There shall be no access from the PROPERTY to the adjoining Burnt Pine Drive except for emergency vehicles, if required by Lee County.

16. 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 Bay Creek Community Development District.

ARTICLE III
GENERAL PROVISIONS

1. PROPERTY UNITS

In accordance with Article 1, Section 34 of the DECLARATION, DECLARANT hereby assigns a total of fifteen (15) 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.

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-EIGHTH SUPPLEMENT TO THE DECLARATION AND GENERAL AND PROTECTIVE COVENANTS FOR PELICAN LANDING (South Swing Parcel) 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, WCI COMMUNITIES LIMITED PARTNERSHIP, a Delaware limited partnership, does hereby execute this THIRTY-EIGHTH SUPPLEMENT TO THE DECLARATION AND GENERAL AND PROTECTIVE COVENANTS FOR PELICAN LANDING (South Swing Parcel), in its name by its undersigned, authorized officer and affixes its corporate seal hereto, this 28 day of December, 1995.

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WITNESSES:

[Signature]
Name: WCI COMMUNITIES LIMITED PARTNERSHIP

[Signature]
Name: Robin Martin

WCI COMMUNITIES LIMITED PARTNERSHIP
a Delaware limited partnership

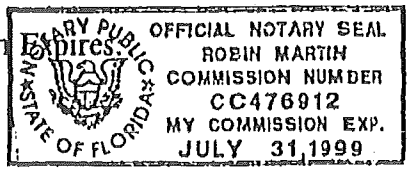
BY: [Signature]
Jerry H. Schmoyer, Senior Vice President
as Authorized Agent and Attorney-in-Fact *

*Executed pursuant to authority granted in that certain Certificate of Authority/Power of Attorney recorded at O.R. Book 2636, Page 0577, of the Public Records of Lee County, Florida

STATE OF FLORIDA)
COUNTY OF COLLIER)

The foregoing instrument was acknowledged before me this 28 day of December, 1995, by Jerry H. Schmoyer, Senior Vice President, as Authorized Agent of and Attorney-in-Fact for WCI Communities Limited Partnership, a Delaware limited partnership, pursuant to that certain Certificate of Authority/Power of Attorney recorded in O.R. Book 2636, Page 0577, of the Public Records of Lee County, Florida, on behalf of the limited partnership. He is personally known to me.

[Signature]
Notary Public
My Commission Expires



DESCRIPTION
PARCEL IN
SECTIONS 9 & 16, T. 47 S., R. 25 E.
LEE COUNTY, FLORIDA

Portions of Tract "H" and Tract "G" of Pelican Landing, Unit Nineteen, as recorded in Plat Book 56 at Pages 36 through 38 of the Public Records of Lee County, Florida lying in Sections 9 and 16, Township 47 South, Range 25 East, Lee County, Florida being more particularly described as follows:

Beginning at the Southeast corner of Tract "H" of said Pelican Landing, Unit Nineteen run N 00° 02' 54" E along the East line of said tract for 622.73 feet; thence run N 88° 50' 38" W for 113.89 feet; thence run N 35° 32' 25" W for 239.01 feet; thence run S 53° 27' 35" W for 513.20 feet to an intersection with a non-tangent curve and the Southwesterly line of Tract "G"; thence run Southeasterly along the arc of a curve to the left of radius 277.50 feet (chord bearing S 52° 55' 08" E) (chord 156.50 feet) (delta 32° 45' 24") for 158.65 feet to a point of tangency; thence run S 69° 17' 50" E along the Southwesterly line of said Tract "H" for 332.74 feet to a point of curvature; thence run Southeasterly and Southerly along the arc of a curve to the right of radius 322.50 feet (chord bearing S 34° 37' 28" E) (chord 366.93 feet) (delta 69° 20' 44") for 390.32 feet to an intersection with the South line of said Tract "H"; thence run S 89° 57' 06" E for 20.00 feet to the Point of Beginning.

Bearings hereinabove mentioned are based on the South line of Section 9 to bear S 89° 23' 00" W.

EXHIBIT "A"

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MARKEL GREEN L.L.C. CITY FL
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