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**INSTR # 5284297**  
**OR BK 03520 PG 4719**

Instrument prepared by and  
after recording return to:

Steven M. Falk, Esq.  
Roetzel & Andress  
850 Park Shore Drive, Third Floor  
Naples, FL 34103

RECORDED 11/16/01 12:40 PM  
CHARLIE GREEN CLERK OF COURT  
LEE COUNTY  
RECORDING FEE 24.00  
DEPUTY CLERK K Cartwright

**CERTIFICATE OF AMENDMENT TO DECLARATION AND  
GENERAL PROTECTIVE COVENANTS FOR PELICAN LANDING**

This Certificate is made this 15 day of NOVEMBER, 2001, by WCI Communities, Inc., a Delaware corporation, successor by merger to Pelican Landing Communities, Inc., formerly known as Westinghouse Bayside Communities, Inc., (the "Declarant").

WHEREAS, on November 17, 1988, the Declarant recorded a certain document entitled "Declaration and General Protective Covenants for Pelican's Nest" in O.R. Book 2030, page 663 et seq., Public Records of Lee County, Florida; and

WHEREAS, the Document, as it was amended, was subsequently amended and restated in its entirety and was recorded on January 18, 1991 as the "Amended and Restated Declaration and General Protective Covenants for Pelican Landing" in O.R. Book 2198, page 1878 et seq., Public Records of Lee County, Florida (the "Declaration"); and

WHEREAS, in Article 13 of the Declaration, the Declarant reserved the right to make amendments to the Declaration and its recorded exhibits by Declarant's sole act until determination of the Class "B" control period; and

WHEREAS, the Class "B" control period has not been terminated; and the Declarant wishes to amend the Declaration; and

WHEREAS, unless otherwise provided below to the contrary, all capitalized terms shall have the same meaning as set forth in the Declaration, or the Articles of Incorporation and the Bylaws of Pelican Landing Community Association, Inc. ("PLCA"); and

WHEREAS, Declarant, PLCA, Community Action Fund, Inc. ("CAF"), The Residential Association, Inc. ("RA"), Hyatt Equities, LLC ("Hyatt"), Pelican Landing Golf Resort Ventures Limited Partnership ("Golf Ventures"), Pelican Landing Timeshare Ventures Limited Partnership ("Timeshare Developer") have entered into a certain Settlement Agreement, which authorizes, according to certain conditions, termination of the Class "B" Control Period and recordation of this

amendment ("Unit Count Amendment"); and

WHEREAS, the seventh paragraph of Article X, Section 1 of the Declaration currently permits Declarant, prior to termination of the Class "B" Control Period, to elect to either: (a) pay assessments on all of its unsold Units; or (2) pay the difference between the total amount of Common Assessments levied on all Units and Business Properties subject to assessment and the amount of actual expenditures required to operate the Association during the fiscal year ("Guaranty"); and

WHEREAS, Article X, Section 8 of the Declaration currently states that the obligation to pay assessments commences as to each Unit upon the conveyance of a Unit by Declarant to an Owner, and further provides that upon termination of the Class "B" Control Period, Declarant shall commence paying assessments on all Units and Business Properties which it owns and which are subject to the Declaration; and

WHEREAS, given the number of its unsold Units, Declarant would not elect to either pay assessments on its unsold Units or permit the termination of the Class "B" Control Period, in the absence of the Unit Count Amendment ; and

WHEREAS, Declarant, CAF, RA, the Class "A" representatives on the PLCA Board of Directors, the Unit Owner's Committee and the Voting Representatives of the Class "A" members of PLCA, have negotiated the terms and conditions upon which the Class "B" Control Period may terminate, as well as the provisions of the Unit Count Amendment; and

WHEREAS, Declarant, CAF, RA, the Class "A" representatives on the PLCA Board of Directors, the Unit Owner's Committee and the Voting Representatives of the Class "A" member of PLCA all consider the Unit Count Amendment as an acceptable compromise with respect to Declarant's assessment obligations under the Declaration, which compromise will permit the termination of the Class "B" Control Period prior to the date upon which it would otherwise occur under the Declaration, Articles and Bylaws of PLCA; and

WHEREAS, Declarant, CAF, RA, the Class "A" representatives on the PLCA Board of Directors, the Unit Owner's Committee and the Voting Representatives of the Class "A" member of PLCA all consider the Unit Count Amendment to be reasonable; and

WHEREAS, Voting Representatives representing not less than a majority of a quorum of the Class "A" members of PLCA have approved the Unit Count Amendment in accordance with the Settlement Agreement and the procedures set forth in the Declaration, Articles and Bylaws of PLCA.

NOW THEREFORE, the Declarant hereby amends the Declaration and the Amendment is adopted in the form attached hereto and made a part hereof as Exhibit "A".

IN WITNESS WHEREOF, the Declarant has caused this Certificate to be duly executed this 15 day of NOV., 2001.

WITNESSES:

WCI COMMUNITIES, INC., AS SUCCESSOR TO PELICAN LANDING COMMUNITIES, INC., FORMERLY KNOWN AS WESTINGHOUSE BAYSIDE COMMUNITIES, INC., (SEAL)

By: Laurely Y. Sitterly  
Name: LAURELY Y. SITTERLY

By: Milton G. Flinn  
Milton G. Flinn  
Senior Vice President

By: Joan Roth  
Name: JOAN ROTH

STATE OF FLORIDA )  
COUNTY OF LEE )

The foregoing instrument was executed before this 15 day of NOVEMBER, 2001, by Milton G. Flinn, as Senior Vice President of WCI Communities, Inc. as successor to Pelican Landing Communities, Inc., formerly known as Westinghouse Bayside Communities, Inc. He is personally known to me and did not take an oath.

By: Laurely Sitterly  
Printed Name: LAURELY Y. SITTERLY  
Notary Public  
My commission expires \_\_\_\_\_

(seal)



Rev. 1/22/01

EXHIBIT "A"  
AMENDMENT TO AMENDED AND RESTATED DECLARATION

1. The seventh paragraph of Section 1 of Article X (the paragraph beginning with "Until termination of the Class "B" Control Period or until such earlier time..."); is amended to read in its entirety as follows:

*Subject to the provisions of Article X, Declarant "shall pay assessments as any other Member pays for Units and portions of the Business Properties it owns. Notwithstanding the foregoing provisions to the contrary, it is the intent of the Declarant and the Association that the provisions of the Seventy-Third Supplement to the Declaration and General Protective Covenants for Pelican Landing (the Seventy-Third Supplement) govern the obligations of Declarant, its affiliates and Owner(s) with respect to the property and improvements (the "Excepted Property") described in the Excepted Property Legal Description attached hereto and incorporated herein. Therefore, notwithstanding the foregoing, the provisions of this paragraph shall not apply to the Excepted Property and the Owner(s) (including, without limitation, Declarant and its affiliates) thereof. Instead, as to such subject matter, the Excepted Property and the Owners thereof shall be governed by the provisions of the Seventy-Third Supplement.*

2. The second and third paragraphs of Section 2 of Article X are amended to read in their entirety as follows:

*The Common Assessment to be levied for the coming year shall be set at a level which is reasonably expected to produce total income to the Association equal to the total budgeted Common Expenses, including reserves. In determining the amount of the Common Assessment, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units obligated to pay assessments on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to be obligated to pay assessments during the fiscal year.*

*In addition, the following provisions shall apply for building permits issued to Declarant and plats recorded subsequent to the Board's formal adoption of the Association's budget:*

(a) *If a building permit is issued to Declarant or a plat is recorded after adoption of the Association's budget, but before the Association has mailed or delivered Common Assessment invoices to the Owners, then the assessment for all Units*

*and Business Properties subject to assessment shall be recalculated based upon those additional, permitted or platted Units or Business Properties owned by Declarant.*

*(b) If a building permit is issued to Declarant or a plat is recorded after adoption of the Association's budget, and after the Association has mailed or delivered Common Assessment invoices to the Owners, then Declarant's Common Assessment obligation will be increased by multiplying the assessment amount adopted by the Board by the number of those additional, permitted or platted Units or Business Properties owned by Declarant.*

3. Section 8 of Article X of the Declaration is amended to read in its entirety as follows:

*Section 8. Date of Commencement of Assessments.*

*(a) Declarant's obligations to pay Common Assessments shall not commence until:*

*(i) With respect to the property described in the attached Description of Excepted Property and any and all improvements now or hereafter existing thereon, and any Owner thereof (including, without limitation, Declarant and its affiliates), the obligation to pay assessments thereon shall commence and be payable in accordance with the provisions of the Seventy-Third Supplement. If Declarant conveys any Unit or property located within the Excepted Property to a subsidiary or affiliate of Declarant, then assessments as to such portions of the Properties will not commence until such time as designated by Declarant in a Supplemental Declaration.*

*(ii) With respect to condominiums located upon other than the Excepted Property, Declarant's assessment obligation shall not commence until January 1<sup>st</sup> of the calendar year immediately following the calendar year in which a building permit for a condominium building is issued. For example, if a building permit is issued for a 100 unit condominium building in 2001, then Declarant shall pay Common Assessments for 100 Units on January 1, 2002.*

*(iii) With respect to single family detached homes, villas or other improvements constructed on individually platted lots (as opposed to condominium buildings) located upon other than the Excepted Property, Declarant's assessment obligation shall not commence until recordation of a plat for the applicable lots.*

*Notwithstanding the foregoing provisions to the contrary, it is the intent of the*

*Declarant and the Association that the provisions of the Seventy-Third Supplement govern the obligations of Declarant, its affiliates and Owner(s) with respect to the Excepted Property. Therefore, notwithstanding the foregoing, the provisions of subparagraphs "(ii)" and "(iii)" shall not apply to the Excepted Property and the Owner(s) (including, without limitation, Declarant and its affiliates) thereof. Instead, as to such subject matter, the Excepted Property and the Owners thereof shall be governed by the provisions of the Seventy-Third Supplement.*

*(b) Except for any Unit or portion of the Business Properties owned by Declarant or its subsidiaries or affiliates or except with respect to the Excepted Property, the obligation to pay Common Assessments shall commence upon conveyance of the Unit or portion of the Business Properties by Declarant to an Owner.*

4. Notwithstanding anything provided herein or Section 7 of Article X, Declarant shall not be responsible under any circumstances to fund any portion of reserve contributions.
5. References to Declarant shall also be deemed to include Declarant's affiliates, subsidiaries and assigns.
6. In the event of any conflict or variance between the foregoing and the Seventy-Third Supplement, the terms of the Seventy-Third Supplement shall prevail.

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