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Re:

QUARLES & BRADY

4501 TAHIANI TR W #300

NAPLES FL 34103 3060

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
THE PELICAN STRAND SINGLE FAMILY COMMUNITY**

NAP 100220.00

This instrument prepared by and  
after recording return to:

John D. Humphreys, Esq.  
Overton & Bundy  
4501 Tamiami Trail North  
Suite 300  
Naples, Florida 34103

**DECLARATION OF COVENANTS  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
THE PELICAN STRAND SINGLE FAMILY COMMUNITY**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS is made this 7th day of October, 1997, by PELICAN STRAND, LTD., a Florida limited partnership, hereinafter referred to as Declarant.

**STATEMENT OF BACKGROUND**

WHEREAS, Declarant is the owner of the Property as described in Exhibit "A" attached hereto and made a part hereof.

WHEREAS, Declarant intends, but is not obligated, to develop the Property as single family residential lots.

NOW, THEREFORE, Declarant declares that the Property and any and all additional property which is hereinafter subjected to this Declaration shall be held, transferred, sold, conveyed, leased, mortgaged and otherwise dealt with subject to the following covenants, conditions, restrictions and easements set forth in this Declaration, which shall run with the Property, be part of such Property and inure to the benefit of, and be enforceable by, each Owner and their successors in title.

**1. INTENT OF DECLARATION AND DISCLOSURES**

1.1 **Binding Effect.** This Declaration shall be binding on the Property.

1.2 **Purpose.** This Declaration is intended to provide for the preservation and enhancement of the value, desirability and attractiveness of the Property by imposing mutually beneficial covenants, conditions, restrictions and easements on the Property. This Declaration provides a reasonable and flexible procedure for the overall development of the Property and establishes a method of administration, maintenance, preservation, use and enjoyment of the Property.

1.3 **PUD.** The Property is part of the larger Pelican Strand community, which includes commercial, retail, residential properties, and recreational and other attendant facilities developed in accordance with the Planned Unit Development Ordinance for Pelican Strand, known as Ordinance No. 97-24, of the Board of County Commissioners, of Collier County, Florida, as the same may be amended from time to time ("PUD").

1.4 **Master Declaration.** The Property is further subject to the covenants, conditions, restrictions and easements set forth in the Master Declaration of Covenants, Conditions, Restrictions and Easements for Pelican Strand, being recorded in the Public Records of Collier County, Florida at Official Record Book 2292, page 1637, et seq.

1.5 **Declarant's Right to Amend.** The Declarant intends, but is not obligated, to develop the lands more particularly described in the PUD in accordance with the development plan set forth in the PUD. However, Declarant is not obligated to develop the lands in accordance with the existing development plan and has the right to alter, amend, modify or terminate the development plan at any time.

## 2. DEFINITIONS

2.1 **"Amendment"** shall mean a written amendment to this Declaration executed by or consented to by Declarant for the purpose of subjecting additional property to or deleting all or some portion of the Property from, this Declaration; or for assigning or designating a portion of the Property for a particular use or value; or for such other purpose or purposes permitted elsewhere in this Declaration; in order to modify these restrictions as they apply to the Property; or in order to impose, expressly or by reference, additional restrictions and obligations on all or any portion of the Property.

2.2 **"Articles"** shall mean and refer to the Articles of Incorporation of Pelican Strand Homeowners' Association, Inc., which are filed with the Secretary of State of Florida, as same may be amended from time to time.

2.3 **"Assessments"** shall mean the Regular, Special and Individual Assessments, collectively.

2.4 **"Board of Directors" or "Board"** shall mean and refer to the governing body of the Pelican Strand Homeowners' Association.

2.5 **"Common Areas"** shall mean and refer to those areas of land within the Property which are dedicated to or owned by the Homeowners' Association, or any other property which is dedicated, conveyed, leased or licensed to the Homeowners' Association, and which are intended to be devoted to the common use and enjoyment of the Members. Common Areas may be dedicated by Amendment. The term "Common Areas" shall also include any personal property acquired by the Homeowners' Association if said property is designated as Common Areas in the bill of sale or instrument transferring same or subsequently declared by the Association or the Declarant to be Common Areas. Any land

or personal property leased by the Homeowners' Association shall lose its character as Common Areas upon the expiration of such lease. Common Areas shall include, but not be limited to, streets, walls, lighting, landscaping and entry features.

2.6 "Community Wide Standards" shall mean the standards of conduct, maintenance, or other activity generally prevailing throughout the Pelican Strand community.

2.7 "County" shall mean Collier County, Florida.

2.8 "Declarant" shall mean and refer to PELICAN STRAND, LTD., a Florida limited partnership, and its successors or assigns in interest. A person or entity shall be deemed an assignee or successor in interest of the Declarant only if specifically so designated in a duly recorded Amendment to the Declaration, which Amendment shall specifically state that the rights of the said PELICAN STRAND, LTD. under the aforementioned Agreement have expired, and shall be deemed an assignee successor in interest of Declarant only as to the particular rights or interests specifically designated in the recorded Amendment.

2.9 "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for the Pelican Strand Single Family Community.

2.10 "Director" shall mean a member of the Board of Directors elected or designated as such in the Articles or By-Laws.

2.11 "Governing Documents" shall mean and refer to the Homeowner's Documents, the Master Association Documents and the development plan.

2.12 "Homeowners' Association" shall mean and refer to Pelican Strand Homeowners' Association, Inc., a Florida not-for-profit corporation, or any successor thereof by whatever name, charged with the duties and obligations set forth in this Declaration.

*Amended  
to:  
The  
Strand  
HOA, Inc.*

2.13 "Homeowners' Documents" shall mean any and all documents, instruments and agreements established by Declarant creating and governing the Homeowners' Association, including, but not limited to, this Declaration, Articles of Incorporation, By-Laws, and any procedures, rules, regulations or policies adopted by the Homeowners' Association, as amended from time to time.

2.14 "Homeowners' Expenses" and/or "Common Expenses" shall mean and include those actual and estimated common expenses incurred by the Homeowners' Association to benefit primarily the Owners of Lots.

2.15 "Individual Assessment" shall mean an assessment levied in accordance with Section 9.6 of this Declaration.

2.16 **"Institutional Mortgagee"** shall mean (a) any generally recognized lending institution having a first mortgage lien upon a Lot including, but not limited to, any of the following institutions: a Federal or state savings and loan or building and loan association; a national, state or other bank or real estate investment trust; or mortgage banking company doing business in the State of Florida; or a life insurance company; or a subsidiary of a holding company owning any of the foregoing; or (b) any secondary mortgage market institution: including the Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), Federal Housing Administration (FHA), and Veterans Administration (VA) and such other secondary mortgage market institutions as the Board shall hereafter approve in writing which have acquired a first mortgage upon a Lot; or (c) any and all investors or lenders, or the successors and assigns of such investors or lenders, which have loaned money to Declarant to acquire or to construct improvements upon the Property and who have a mortgage lien of any priority on all or a portion of the Property securing such loan; or (d) such other lenders as the Board shall hereafter approve in writing which have acquired a first mortgage lien upon a Lot; or (e) Declarant.

2.17 **"Lot"** shall mean and refer to any single platted lot within the Property upon which a single family residence ("Residence") including without limitation, a detached single family home, may be constructed. The term "Lot" includes lots improved by the construction of a residence and lots that have not been improved by the construction of a residence, so long as it is likely that a residence will be constructed upon it in the future. If more than one Lot has been used for the construction of one residence, such Lots shall be considered as one Lot for purposes of this Declaration.

2.18 **"Master Association"** shall mean and refer to Pelican Strand Master Property Owners' Association, Inc., a Florida not-for-profit corporation, or any successor thereof by whatever name, charged with the duties and obligations set forth in the Declaration of Covenants, Conditions, Restrictions and Easements for Pelican Strand (the "Master Declaration").

2.19 **"Master Association Documents"** shall mean any and all documents, instruments and agreements established by Declarant creating and governing the Pelican Strand Master Association, Inc., including, but not limited to, the Master Declaration, the Articles of Incorporation and Bylaws of the Master Association, and any procedures, rules, regulations or policies adopted by the Master Association, as amended from time to time.

2.20 **"Members"** shall mean and refer to any person or entity holding memberships in the Homeowners' Association. All Owners of Lots shall be Members; provided, however, that there shall be no more than one (1) Member for each Lot.

2.21 **"Neighborhood"** shall mean and refer to any detached single family home, attached townhouse, condominium, villa or other sub-area development located anywhere within Pelican Strand.

2.22 **"Neighborhood Association"** shall mean and refer to a Florida not for profit corporation which is the property owners association, homeowners association, condominium

association or any other such entity, their successors and assigns for any particular Neighborhood within Pelican Strand.

2.23 **"Owners"** shall mean and refer to the record Owner(s) of fee simple title in a Lot (including Declarant, but specifically excluding any party holding an interest merely as a security for the performance of an obligation). If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner. If a Lot is subject to a written lease with a term in excess of one year and the lease specifically so provides, then upon filing a copy of the lease with the Board of Directors, the lessee (rather than the fee owner) will be considered the Owner for the purpose of exercising all privileges of membership in the Homeowners' Association.

2.24 **"Pelican Strand"** shall mean that project developed by Declarant or others on the lands as more particularly described in the PUD, including commercial, retail, residential properties and recreational and other attendant facilities.

2.25 **"Property"** shall mean and refer to the real property subject to this Declaration.

2.26 **"Regular Assessment"** shall mean and refer to the assessments levied in accordance with Section 9.2 of this Declaration.

2.27 **"Residence"** shall mean and refer to a single family residence, including without limitation, a detached single family home constructed upon a Lot.

2.28 **"Special Assessments"** shall mean an assessment levied in accordance with Section 9.5 of this Declaration.

2.29 **"Turnover"** shall mean the time at which Owners, other than the Declarant, assume control of the Homeowners' Association.

### 3. DEVELOPMENT OF THE PROPERTY

3.1 **Declaration.** This Declaration is not a declaration of condominium. No portion of the Property is submitted by this Declaration to the condominium form of ownership. Declarant has caused the Homeowners' Association to be formed to perform certain administrative and operational functions regarding the Property as set forth more fully in the Homeowners' Documents. The Homeowners' Association is not a condominium association and therefore shall not be governed by the provisions of Chapter 718, Florida Statutes. The expressed intent of the Homeowners' Documents is that the substantive rights hereunder shall not be affected by legislation prior to Turnover and subsequent to the date of the execution of the Homeowners' Documents, without the express written consent of the Declarant, which consent may be withheld for any reason.

**3.2 Property.** Declarant shall have the right by a Amendment to change the use of any portion of the Property subject only to the approval of the Owner of the Property.

**3.3 Amendments.** Declarant shall have the right, alone and in its sole discretion, to execute and record in the office of the Clerk of the Circuit Court of Collier County, Florida, an Amendment containing provisions which (a) assign a specific use to any portion of the Property; (b) modify the provisions of this Declaration as they apply to all or any portion of the Property; (c) create new provision to this Declaration as they apply to all or any portion of the Property; (d) withdraw the applicability of any or all of the provisions of this Declaration; (e) add or withdraw properties encumbered by this Declaration; and (f) do anything else permitted by this Declaration.

#### **4. LAND USE WITHIN THE PROPERTY AND COMMON AREAS**

**4.1 Land Use within the Property.** In general, Declarant may, in its sole and absolute discretion, establish any use for the Property which is consistent with the terms of this Declaration, the Master Declaration and the PUD. The Property shall be subject to the use restrictions set forth in this Declaration, the Master Declaration, the PUD, and the design standards and guidelines adopted by either the Master Association or the Homeowners' Association. All replacements, repairs and other alterations to any Residence must be consistent with the original design of the Residence, this Declaration, the Master Declaration, the PUD and any design standards and guidelines established by either the Master Association or the Homeowners' Association.

**4.2 Common Areas.** The Common Areas shall be those areas specifically designated by Declarant as exclusively or primarily for use by Owners, other than those Common Areas conveyed to the Master Association, or other Neighborhood Association, if any. Declarant shall, no later than sixty (60) days after termination of its Class B Membership, convey and transfer (or cause to be conveyed or transferred) to the Homeowners' Association, and the Homeowners' Association shall accept, all of the Common Areas not conveyed to the Master Association, unconditionally and "as is".

**THE HOMEOWNERS' ASSOCIATION SHALL ACCEPT "WHERE IS, AS IS" THE CONVEYANCE OF SUCH COMMON AREAS WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, WITH RESPECT THERETO, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR THE ORDINARY OR ANY PARTICULAR PURPOSE, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES REGARDING FUTURE REPAIRS OR REGARDING THE CONDITION, CONSTRUCTION, ACCURACY, COMPLETENESS, DESIGN, ADEQUACY OF THE SIZE OR CAPACITY IN RELATIONS TO THE UTILIZATION, DATE OF COMPLETION OR THE FUTURE ECONOMIC PERFORMANCE OR OPERATIONS OF, OR THE MATERIALS OR FURNITURE WHICH HAS BEEN OR WILL BE USED IN SUCH COMMON AREAS, EXCEPT AS**

SET FORTH HEREIN. BY ACCEPTANCE OF AN INTEREST IN ANY COMMON AREAS OR THE DEED TO ANY LOT, THE HOMEOWNERS' ASSOCIATION AND ALL OWNERS RELEASE DECLARANT FROM ANY CLAIMS AND WARRANT THAT NO CLAIM SHALL BE MADE BY THE HOMEOWNERS' ASSOCIATION OR ANY OWNER RELATING TO THE CONDITION, OR COMPLETENESS OF COMMON AREAS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING THEREFROM. ALL COSTS AND EXPENSES OF ANY CONVEYANCE OF ANY PROPERTY BY DECLARANT TO THE HOMEOWNERS' ASSOCIATION SHALL BE PAID FOR BY THE HOMEOWNERS' ASSOCIATION.

## 5. MEMBERSHIP AND VOTING RIGHTS

5.1 Membership. Every Owner and the Declarant shall be Members of the Homeowners' Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot which is subject to Assessment by the Homeowners' Association. Members' rights, powers, duties and privileges shall be as set forth in the Articles of Incorporation, By-Laws, this Declaration and any Amendment thereto.

The Homeowners' Association shall have two (2) classes of membership: (A) Class "A" Members, and (B) Class "B" Members as follows:

(A) Class "A". Class "A" Members shall be all Owners of Lots within the Property other than the Class "B" Member.

(B) Class "B". The Class "B" Member shall be the Declarant. Unless the Declarant earlier terminates this membership, the Class "B" membership shall terminate upon Turnover or Declarant's earlier termination, and be converted to Class "A" membership.

## 5.2 Voting.

(A) Class "A" Members. Upon Turnover, Class "A" Members shall be entitled to one (1) vote for each Lot owned by the respective Class "A" Member.

(B) Class "B" Member. The Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve action taken under this Declaration and the By-laws, are specified throughout this Declaration and the By-laws. The Class "B" Member shall be entitled to appoint all members of the Board of Directors prior to Turnover. The Class "B" Member shall have two times the number of votes held collectively by all Class "A" Members, plus one vote. After Turnover, Declarant shall have the right to disapprove actions of the Board and any committee established by the Homeowners Association, as well as those committees (if any) which may be established pursuant to the By-laws; and shall be a Class "A" Member entitled to one (1) vote for each Lot owned by Declarant.



(C) Joint Ownership Corporations. Voting rights may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the By-Laws. In any situation where more than one person holds an interest in a Lot, the vote for the respective Lot shall be exercised by any such person; provided, however, the persons holding the interest in the Lot can notify the secretary of the Homeowners' Association, in writing, prior to or during any meeting of the manner in which the vote is to be exercised, and in the absence of such notice, the Lot's vote shall be suspended if more than one person seeks to exercise it. The voting rights of a Member that is a corporation, partnership or other entity shall be exercised by the individual designee from time to time by the owner in a written instrument provided to the secretary, subject to the laws of the State of Florida.

**5.3 Turnover.** Members other than the Declarant are entitled to elect at least a majority of the members of the Board of Directors of the Homeowners' Association when the earlier of the following events occurs:

(A) Three months after ninety percent (90%) of the Lots have been conveyed to Members; or

(B) Sooner, at the sole and absolute discretion of the Declarant.

The Association shall give notice to all Members of the Turnover meeting at least thirty (30) days before such meeting. The purpose of the Turnover meeting shall be to elect the new members of the Board of Directors, as well as to conduct such other business as shall properly come before the meeting. The Declarant is entitled to appoint at least one (1) member of the Board of Directors of the Pelican Strand Homeowners' Association as long as the Declarant holds for sale, in the ordinary course of business, at least five percent (5%) of the Lots within the Property. Further, after Declarant has relinquished control of the Association, the Declarant may exercise the right to vote any Declarant owned voting interest in the same manner as any other Member, except for the purpose of reacquiring control of the Association or selecting the majority of the members of the Board of Directors.

**5.4 Section 5 Amendment.** This Section 5 may not be amended without the express written consent of the Declarant.

**5.5 Neighborhood Representative.** As provided in the Master Declaration, no Member shall have the power to vote at Master Association meetings other than as set forth herein. After Turnover, the Neighborhood Representative shall be an officer of the Homeowners' Association, appointed by the President. The Neighborhood Representative shall, on behalf of the Members, cast the votes of all Members in the Neighborhood on Master Association matters. The Neighborhood Representative shall cast such votes as a block in the manner as the Neighborhood Representative may, in the Neighborhood Representative's sole and reasonable discretion, deem appropriate, acting on behalf of all of the Members. However, in the event that at least fifty-one percent (51%) of the voting power in attendance at any duly constituted meeting of the Members shall instruct the Neighborhood Representative as to the manner in which such Neighborhood Representative

is to vote on a specified issue at a Master Association meeting, then such Neighborhood Representative shall cast all of the voting power of the Members not as a block, but in the same proportion, as nearly as possible without counting fractional votes, as the Members shall have, in person or by proxy, cast their voting power in favor of or in opposition to such issue. The Neighborhood Representative shall have the authority, but not the obligation, in his sole discretion, to call a special meeting of the Members in the manner provided in the By-Laws for the purpose of obtaining instructions as to the manner in which such representative is to vote on any issue to be voted on by the Members of the Master Association. It shall be conclusively presumed for all purposes of Master Association business that the actions of the Neighborhood Representative are within the authority and consent of the Members.

## 6. MAINTENANCE

6.1 **Homeowners' Association's Responsibility for Common Area Maintenance.** The Homeowners' Association, subject to the rights and obligations of the Owners set forth in this Declaration, shall be responsible for the management, operation, maintenance and control of the Common Areas (unless the same have been transferred or assigned to the Master Association or other Neighborhood Association). The foregoing obligations include, but are not limited to, the following:

(A) Maintenance, repair, and replacement of landscaping and entry features on all Common Areas.

(B) Common Areas swimming pool maintenance, repair and replacement.

(C) Painting of any improvements located within Common Areas.

(D) Maintenance, repair and replacement of all drainage and irrigation facilities (unless said responsibilities have been transferred to the Master Association).

(E) Maintenance, repair and replacement of any and all other improvements located within the Common Area.

6.2 **Lot Maintenance.** In addition to the maintenance of the Common Areas as described above, the Homeowners' Association shall be responsible for the maintenance of lawns and landscaping on all Lots, excluding the installation and/or replacement of annuals, perennials, or specialized or exotic vegetation. The Homeowners' Association shall also be responsible for the maintenance, repair and replacement of all irrigation facilities, including but not limited to, sprinkler pumps, piping, and sprinkler heads. It is intended that the Homeowners' Association be responsible for the general care and maintenance of all landscaping on all Lots, except as excluded herein. Owner shall be responsible for the maintenance of their residence and any other improvements constructed upon the Lot, and all components thereof.

**6.3 Entry Rights and Liability.** The Homeowners' Association shall have the right, but not the obligation, for itself, its designee, or any agent or employee, to enter upon any Lot to carry out the provisions of this Declaration and same shall not constitute a trespass. The Homeowners' Association shall not be liable for any action taken under this Section and each Owner of a Lot agrees for itself and its family members to hold the Homeowners' Association harmless, from any action undertaken pursuant to this Section.

**6.4 Owners' Responsibility.** Subject to the Homeowners' Association responsibilities outlined above, each Owner shall maintain his or her Lot and Residence in good repair and in a neat and attractive condition in accordance with the Community Wide Standards and the Governing Documents. Said maintenance responsibilities shall include, but not be limited to, maintenance of all specialized exotic or "high need" landscaping not maintained by the Homeowners' Association. No Owner shall take any action which (a) increases the maintenance responsibility of the Homeowners' Association, (b) causes the Homeowners' Association's insurance premiums to increase, or (c) interferes with the Homeowners' Association's maintenance or operational responsibilities. If any owner fails to perform his or her maintenance responsibility in accordance with this Section, the Homeowners' Association may perform it and assess all costs incurred against the Lot, and further assess the Owner thereof as an Individual Assessment. Prior to entry, the Homeowners' Association shall afford the Owner reasonable notice and an opportunity to remedy the situation, except when entry is required due to an emergency.

**6.5 Rules and Regulations.** The Homeowners' Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines which shall constitute a lien upon the Owner's Lot, and suspension of the right to use any recreational facilities (if any) on the Common Areas, and exclusion from the Property of any contractor, subcontractor, agent or other invitee who fails to comply with the provisions of such rules and regulations. The Board shall, in addition, have the power to seek relief in any court for violations or to abate unreasonable disturbances. Imposition of sanctions shall be subject to the procedures for disciplinary action provided in the By-Laws of the Homeowners' Association. Fines shall constitute Individual Assessments subject to the lien rights provided in this Declaration.

**6.6 Implied Rights.** The Homeowners' Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles of Incorporation, or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**6.7 Cooperation with Master Association.** The Board shall have the power to assist the Master Association in the performance of their respective duties and obligations under the Master Declaration, and shall cooperate with the Master Association so all can most efficiently and economically provide their respective services to the Owners. If the Homeowners' Association fails, neglects, or is unable to perform a duty or obligation

required by the Governing Documents, including without limitation, maintenance responsibilities, then the Master Association may, after reasonable notice and an opportunity to cure given to the Homeowners' Association, perform such duties or obligations until such time as the Homeowners' Association is able and/or willing to resume such functions, and charge the Homeowners' Association a reasonable fee for the performance of such functions and assess the costs thereof against all of the Lots and Owners thereof.

6.8 **Irrigation.** If permitted by Declarant, the Master Association may act as a water provider with respect to providing irrigation services to all or some portions of the Property at rates to be set by the Master Association. The Master Association reserves the right to determine the costs of providing and maintaining such services. Such services and the costs thereof shall be a Neighborhood Association expense. Each Owner acknowledges that any water provided for irrigation purposes may be untreated water or treated effluent. Neither Declarant nor the Association shall be responsible for the quality of water provided for such irrigation purposes. Any use of such water shall be at the user's own risk.

## 7. EASEMENTS AND OTHER RIGHTS

7.1 **Easements to Use.** All Owners shall have a non-exclusive easement to use and enjoy the Common Areas, subject to the terms of the Governing Documents, including parking and traffic regulations adopted by the Homeowners' Association, payment of use or access fees or other charges reasonably imposed by the Homeowners' Association and subject to any restrictions or limitations contained in any instrument conveying such property to the Homeowners' Association. Any Owner may delegate his or her right of enjoyment to the members of his or her family, lessees and social invitees, as applicable, subject to the Governing Documents. An Owner who leases his or her Lot shall be deemed to have delegated all such rights to the lessee of the Lot. All Common Areas shall be maintained by the Homeowners' Association in such manner that its use and enjoyment as open space will not be diminished or destroyed. No Common Areas shall be developed except for use by Owners as open space, or by Declarant to assist Declarant's sales and promotion of Pelican Strand.

7.2 **Easements for Utilities, Etc.** There is hereby reserved unto Declarant so long as the Declarant owns any Lot within the Property, and further reserved unto the Homeowners' Association, and the designees of each (which may include, without limitation, Collier County and/or any utility company), easements upon, over, across, and under all of the Property for ingress and egress, dispensing pesticides, installation, replacing, repairing, relocating and maintaining walkways, bicycle pathways, cart paths, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including but not limited to water, sewer, meter boxes, telephones, gas, electricity and irrigation; provided, the exercise of this easement shall not unreasonably interfere with the use of any Lot or Residence.

7.3 **Sales Activity.** While Declarant holds one or more Lots for sale in the ordinary course of business, Declarant and its designees shall have the right to use those Lots and the Common Areas to establish, modify, maintain and utilize, as it and they deem

*Irrigation easement*

appropriate, model living units, sales facilities, sales offices, or other offices for use in selling any part of Pelican Strand. Without limiting the generality of the foregoing, the Declarant and its designees may show model living units or the Common Areas to prospective purchasers or tenants, erect signs and other promotional material to advertise, and take all other action helpful for sales, leases and promotion of Pelican Strand.

**7.4** Assignment of Rights to Subsequent Developer. Declarant reserves the right and the power to delegate or assign, either exclusively or non-exclusively, partially or completely, to any person or entity, any or all of its development rights, powers, duties, privileges created or provided for by this Declaration or by any other recorded instrument. Such assignments shall not in any way lessen the Developer's rights herein.

**7.5** Easement for Construction Maintenance. Declarant (including its designees and contractors) shall have the right to enter any part of the Property and take any action reasonably necessary or convenient for the purpose of completing the construction thereof, or any part thereon, and for repair, replacement and maintenance purposes provided such activity does not prevent or unreasonably interfere with the use or enjoyment of Lots by Owners.

**7.6** Additional Easements. The Declarant, and after Turnover, the Board of Directors, shall have the right to execute, without further authorization, such grants of easement or other instruments as may from time to time be desirable for the development of Pelican Strand.

## **8. INSURANCE AND CASUALTY LOSSES**

**8.1** Insurance. The Board of Directors, or its duly authorized agent, shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the Common Areas, if any, and at the election of the Board of Directors, upon any other property or improvements maintained by the Homeowners' Association. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Areas, the Homeowners' Association and its Members for all damage or injury caused by the negligence of the Homeowners' Association or any of its Members or agents. The public liability policy shall have the liability limits established by the Board from time to time.

The Board may also obtain such other insurance policies as it deems appropriate, including, without limitation, Directors and Officers liability insurance and fidelity coverage.

**8.2** Duty to Maintain Fidelity Insurance. Following Turnover, the Homeowners' Association shall, to the extent available at a reasonable cost, obtain fidelity

bonds to protect against dishonest acts on the part of its officers, directors, employees and agents and on the part of all others who handle or are responsible for handling the funds of, or funds administered by, the Homeowners' Association. In addition, if responsibility for handling funds is delegated to a manager, such bonds shall be required for the manager and its officers, employees, and agents. Such fidelity coverage shall name the Homeowners' Association as an obligee and shall be written in an amount equal to at least one hundred percent (100%) of the estimated annual operating expenses of the Homeowners' Association, including reserves. Such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.

**8.3 Duty to Maintain Officers' and Directors' Personal Liability Insurance.** The Board may, in its sole and absolute discretion, purchase officers' and directors' personal liability insurance at the expense of the Homeowners' Association to protect the officers, directors and all committee members from personal liability in relation to their duties and responsibilities on behalf of the Homeowners' Association.

**8.4 Duty to Maintain Workers' Compensation Insurance.** The Homeowners' Association shall obtain workers' compensation or similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

**8.5 Other Insurance.** The Homeowners' Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to its responsibilities and duties.

**8.6 Individual Insurance.** By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Homeowners' Association that each Owner shall carry blanket all-risk casualty insurance on their Lot and Residence. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of his Residence, the Owner shall remove all debris within sixty (60) days and complete repair or reconstruction of the damaged structure within one (1) year. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds; provided, however, Homeowners' Association shall be responsible for any expenses incurred for roof repair or replacement on any Residence that is not covered by the Owner's insurance. In the event that the Residence is totally destroyed, the Owner may decide not to rebuild or not to reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. Thereafter, the Homeowners' Association shall continue to maintain the Lot in a neat and attractive condition.

**8.7 Damage and Destruction.**

**(A) Filing Claims.** Immediately after damage or destruction by fire or other casualty to all or any part of the Property covered by insurance written in the name of the Homeowners' Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain

reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

**(B) Repair and Reconstruction.** Any damage or destruction to the Common Areas shall be repaired or reconstructed unless (i) the Class B Member (so long as it exists); and thereafter (ii) at least seventy-five percent (75%) of the total votes eligible to be cast by the Class A Members shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Homeowners' Association within said period, then the period shall be extended until such funds or information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Institutional Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Areas shall be repaired or reconstructed. In the event that it should be determined in the manner described above that the damage or destruction to the Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of Pelican Strand shall be restored to their natural state and maintained by the Homeowners' Association in a neat and attractive condition.

**8.8 Disbursement of Proceeds.** If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Areas or, if no repair or reconstruction is made, shall be retained by and for the benefit of the Homeowners' Association and placed in a capital improvements account.

**8.9 Insufficient Proceeds.** If the damage or destruction to the Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment against Members on the same basis as provided for Regular Assessments. Additional Special Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

## **9. ASSESSMENTS**

**9.1 Affirmative Covenant to Pay Assessments.** There is hereby imposed upon each Owner and his or her Lot, the affirmative covenant and obligation to pay to the Homeowners' Association all Regular, Special and Individual Assessments, together with any other assessments imposed by the Homeowners' Association. Each Owner, by acceptance

of a deed or other instrument of conveyance conveying a Lot, whether or not it is so expressed in such deed or instrument, shall be obligated and agrees to pay all Assessments provided for in this Declaration.

**9.2 Creation of Regular Assessments.** There are hereby created Regular Assessments for Homeowners' Common Expenses as the Board of Directors may authorize from time to time.

**9.3 Payment of Regular Assessments.** Regular Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the Regular Assessments for the entire fiscal year for delinquent Owners. Unless the Board otherwise provides, the Regular Assessment shall be paid on a quarterly basis, in advance.

**9.4 Computation of Regular Assessments.** It shall be the duty of the Board of Directors of the Homeowners' Association annually to prepare a budget covering the estimated Homeowners' Expenses, to be allocated equally among all Owners of Lots, except as otherwise set forth herein. The Board of Directors shall cause a copy of such budget and notice of the amount of the Regular Assessment to be levied on each Lot for the coming year to be delivered at least fourteen (14) days prior to the beginning of the fiscal year to each Owner of a Lot. The Regular Assessment to be levied for the coming year against each Lot subject to Assessments shall be computed by dividing the budgeted Homeowner Association Common Expenses by the total number of Lots then subject to Assessment and reasonably anticipated to become subject to Assessment during the fiscal year.

**9.5 Special Assessments.** In addition to the Regular Assessments, the Board of Directors may levy, in any Assessment year, without the requirement of a Member vote, a Special Assessment. Notice in writing of the amount of any Special Assessment and the time for payment thereof shall be given promptly to the Owners. Special Assessments pursuant to this Section shall be payable by Owners in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the Assessment year in which the Special Assessment is approved, if the Board so determines. In no event shall Declarant ever have any liability to pay any Special Assessment, and Lots owned by Declarant shall never be assessed for the same.

Special Assessments may be levied by the Board in the following circumstances, among others:

- (a) Upon all Lots and the Owners thereof, upon Board action alone in cases of:
- (i) operating shortfalls,
  - (ii) insurance coverage shortfalls,
  - (iii) repairs and replacements not covered by reserves,



- (iv) casualties not covered by insurance,
- (v) necessary capital purchases not covered by capital funds, or,
- (vi) other emergencies.

(b) Upon all Lots and the owners thereof, for desired capital improvements or additions to the Common Areas.

(c) Upon one or a group of Owners, upon Board action alone, in such cases where

(i) only one or a group of Owners will benefit from the expenditure, or

(ii) where the Special Assessment is to compensate the Master Association or Homeowners' Association, or both, for costs incurred in self help or correcting violations or as otherwise provided in the Governing Documents.

Special assessments shall be paid in such installments or in a lump sum, as the Board may determine from time to time.

**9.6 Individual Assessments.** All monetary fines assessed against an Owner pursuant to the Homeowners' Documents, or any expense of the Homeowners' Association which is the obligation of an Owner or which is incurred by the Homeowners' Association on behalf of the Owner pursuant to the Homeowners' Documents, or any expense incurred by the Homeowners' Association for the care of maintenance of high-need or exotic vegetation on a Lot, shall be an Individual Assessment and shall become a lien against such Lot which may be foreclosed or otherwise collected as provided herein. Notice of the amount and due date of such Individual Assessments shall be sent to the Owner subject to such Assessment.

**9.7 Declarant's Obligation for Assessments.** Beginning on the date of the recordation hereof, and continuing until termination of the Class B Membership at Turnover, Declarant may, in its sole discretion, elect not to pay Regular Assessments on Lots it owns, but pay the difference, if any, between the amount of Regular Assessments payable by Owners other than Declarant and the actual Homeowners' Expenses. If Declarant determines not to pay the difference between the amount of Regular Assessments payable by Owners other than Declarant and the actual Homeowners' Expenses, then Declarant shall pay Regular Assessments as any other Owner.

Declarant's obligations hereunder may be satisfied in the form of a cash subsidy, or by "in kind" contributions of goods and/or services, or a combination of these. Homeowners' Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials, or a combination of services and

materials, with Declarant or other entities for the payment of some portion of Homeowners' Expenses. The payment of any such subsidy or "in kind" contribution by Declarant shall under no circumstances obligate Declarant to continue payment of such subsidy in future years, or obligate Declarant to pay any particular sum of such subsidy. In no event shall Declarant have any responsibility or obligation to fund any portion of reserve contributions, and Declarant's Lots shall never be assessed for the same.

**9.8 Establishment of Lien.** Any and all Assessments, together with interest at a rate not to exceed the lesser of (a) the highest rate allowed by applicable usury law, or (b) eighteen percent (18%) per annum, as computed from the date the delinquency first occurs, and such late charges and fines as may be established by the Board of Directors and costs and reasonable attorneys' fees shall be a charge on the Lot, and shall be a continuing lien upon the Lot, against which such Assessment is made. Each Assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time the Assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance.

Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid Assessments prior and superior to all other liens, except (1) all taxes, bonds, assessments and other levies which by law would be superior thereto, and (2) the lien or charge of any mortgage of record (meaning any recorded Mortgage with first priority over other mortgages) made in good faith, for value, and prior to the date of recordation of the notice of lien, with an Institutional Mortgagee. Such lien, when delinquent, may be enforced by suit, judgment and foreclosure. The Homeowners' Association, acting on behalf of its Members, shall have the power to bid for the Lot, as applicable, at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period in which a Lot is owned by the Homeowners' Association following foreclosure; (a) no right to vote shall be exercised on its behalf; (b) no Assessments shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessments that would have been charged such Lot had it not been acquired by the Homeowners' Association as a result of foreclosure. Suit to recover a money judgment for unpaid Assessments and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

**9.9 Reserve Budget.** The Board of Directors may but is not obligated to annually prepare a reserve budget to take into account the number and nature of replaceable assets, owned, controlled or maintained by the Homeowners' Association, the expected life of each such asset, and the expected repair or replacement cost thereof. In no event shall Declarant have any obligation to pay any monies for reserves, and Declarant's Lot shall never be assessed for the same.

**9.10 Date of Commencement of Assessments.** The obligation to pay the Assessments provided for herein shall commence as to each Lot on the day the initial Owner acquires title to the Lot from the Declarant, and continuing thereafter.

**9.11 Statement of Status of Assessments.** Upon ten (10) days' written notice to the Treasurer of the Homeowners' Association or the manager and payment of a processing fee set by the Homeowners' Association from time to time, not to exceed fifty dollars (\$50), any Owner or Institutional Mortgagee of a Lot may request confirmation from the Homeowners' Association setting forth:

(A) The amount of any unpaid Assessments (whether Regular, Special, or Individual), interest, late charges, costs, expenses, and attorneys' fees then existing against a particular Lot;

(B) The amount of the current periodic installments of the Regular Assessment and the date through which they are paid; and

(C) Any other information deemed proper by the Homeowners' Association.

The information contained in such statement, when signed by an officer of the Homeowners' Association, shall be conclusive upon the Homeowners' Association as to the person or persons to whom such statement is issued and who rely on it in good faith.

Prior to the issuance of such a statement, the Homeowners' Association may request the name of any proposed transferee of the Lot and the scheduled closing date, so as to permit the records of the Homeowners' Association to accurately identify Members.

**9.12 Exempt Property.** Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Assessments:

(A) Common Areas; and

(B) All property (if any) dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets and public parks, if any; and

(C) All property owned, leased, managed, maintained and/or controlled by Master Association.

**9.13 Assessments Levied By The Master Association and General Association.** The Homeowners' Association shall collect assessments and other monies owed to the Master Association by its respective Owners. The Homeowners' Association shall remit this amount to the Master Association within ten (10) days of its receipt along with an accounting of the Owners who have made payments and the amounts thereof. In the event any amount owed the Master Association is not timely paid to the Master Association, the Master Association shall have the right to enforce its rights against the Owner(s) whose payment is not received by the Master Association, or against the Homeowners' Association. The Homeowners' Association shall have no right of set-off or diminution or abatement with respect to assessments collected on behalf of the Master Association.

**9.14 Working Capital Contribution.** A working capital contribution in such amounts as the Board may from time to time determine per Lot shall be collected by the Homeowners' Association at the time of the transfer of title of any Lot to the purchaser thereof. This contribution may be used by the Board for any purpose it deems necessary or appropriate, including the funding of the day-to-day operational expenses of the Homeowners' Association or the acquisition of additional equipment and/or services. Amounts paid into this fund are not Assessments and shall not be considered as an advance payment of Assessments, nor a reserve.

**9.15 Non-Waiver.** No Owner may waive or otherwise exempt itself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by non-use of the Common Area, or by abandonment of the Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Homeowners' Association or Board to take some action or perform some function required or to be taken or performed by the Homeowners' Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Homeowners' Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

**9.16 Indemnification.** Subsequent to Turnover, the Homeowners' Association covenants and agrees that it shall indemnify, defend and hold harmless Declarant, and any related corporations, including, but not limited to, parent corporations and their employees, from and against any and all claims, suits, actions, causes of action and/or damages arising from any personal injury, loss of life and/or damage to property sustained on or about Common Area, or any other property controlled by the Homeowners' Association or other property serving the Homeowners' Association, or resulting or arising out of the operation of the Homeowners' Association and improvements thereof and thereon, or resulting from or arising out of activities or operation of the Homeowners' Association, even if caused by Declarant's negligence, except for matters involving Declarant's own gross negligence. Such indemnification shall include, but not be limited to: (i) all costs, expenses, counsel fees (including, but not limited to, all investigative, trial and appellate levels and whether or not suit be instituted), expenses and liabilities incurred by Declarant arising from any such claim, the investigation thereof, or the defense of any action or proceedings brought thereon, and from and against any orders, judgments and/or decrees which may be entered thereon, and (ii) costs, expenses, and attorney's fees which the Declarant may be compelled to incur in bringing suit for the purpose of compelling the specific enforcement of the provisions, conditions, covenants and restrictions contained in this Declaration to be kept and performed by the Homeowners' and/or the Owners, including the payment of Homeowners' Expenses. The costs and expense of fulfilling this covenant of indemnification shall be a Homeowners Expense.

## 10. USE RESTRICTIONS

**10.1 Residential Use Only.** All Lots shall be used only for residential purposes as permitted by applicable law, and in accordance with the Governing Documents. The Homeowners' Association may add to, delete or modify these use restrictions pursuant to an amendment to this Declaration, or any rules and regulations.

**10.2 Partition Lots.** No part of a Lot may be partitioned or separated from any other part thereof except as provided herein. Whether partitioned, combined, or unchanged, each Lot shall be conveyed, transferred, gifted, devised, bequeathed, encumbered, or otherwise disposed of, as the case may be, with all appurtenant rights, obligations and interests created by law or by this Declaration, including the Owner's membership in the Homeowners' Association, and the liability for all Assessments. No Lot may be subdivided into two (2) or more Lots and no Lot may be combined with one (1) or more additional Lot to form one (1) or more Lot without the written consent of the Board of Directors and after full compliance with all zoning and subdivision regulations.

**10.3 Compliance With Insurance Requirements.** It shall be the responsibility of the individual Owners, and at their expense, to make arrangements in regard to hazard insurance on their own improvements, personal property and furnishings, and for public liability insurance covering their Lot. In addition, each Owner may obtain such other and additional insurance coverage on and in relation to his Lot as such owner concludes to be desirable.

**10.4 Abandoned, Inoperable, Commercial or Oversized Vehicles.** Abandoned or inoperable automobiles or oversized vehicles of any kind shall not be stored or parked on any portion of the Property. "Abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own propulsion for a period of three (3) weeks or longer; provided, however, this shall not include vehicles parked in an enclosed garage or operable vehicles left on the Lot by Owners while on vacation. A written notice describing the "abandoned or inoperable vehicle" and requesting removal thereof may be personally served upon the Owner or posted on the unused vehicle; and if such vehicle has not been removed within seventy-two (72) hours thereafter, the Homeowners' Association shall have the right to remove the same without liability to it, and the expense thereof shall be charged against the Owner. "Oversized" vehicles, for purposes of this Section, shall be vehicles which are too high to clear the entrance to a residential garage.

No commercial vehicles, or campers, mobile homes, motorhomes, house trailers or trailers of every other description, recreational vehicles, boats, boat trailers, house trailers or vans shall be permitted to be parked or to be stored on any portion of the Property except for those areas (if any) specifically designated by the Homeowners' Association for those types of vehicles. For the purpose of this Section, "commercial vehicles" shall mean those which are not designed and used for customary personal/family purposes. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether it is a commercial vehicle. The prohibitions on parking contained above in this Section shall not apply to temporary parking of commercial vehicles such as for construction use or providing pick-up and delivery and other commercial services. No parking on lawns shall be permitted.

Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the rules and regulations may be towed by the Homeowners' Association at the sole expense of the owner of such vehicle if such vehicle remains in violation for a period of twenty-four (24) hours from the time a notice of violation is placed on the vehicle. The Homeowners' Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such towing and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind.

All garage doors shall be kept closed at all times except when needed to be left open for ingress and egress to the garage.

10.5 Trash. Each Owner shall provide suitable receptacles for the temporary storage and collection of such refuse and all such receptacles shall be screened from the public view and from the wind and protected from animal and other disturbances.

10.6 Compliance with Laws. Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations.

10.7 Annoying Lights, Sounds, or Odors. No light, sound or odor shall be emitted from any Lot which is obnoxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices or lights, other than devices used exclusively for security, fire prevention or fire control purposes, shall be permitted.

10.8 Pools. No above-ground pools shall be erected, constructed or installed on any Lot.

10.9 Fences.

(A) No dog runs, animal pen or fences of any kind will be permitted on any Lot except as approved by the Board of Directors.

(B) Where walls and fences are approved, the same shall not unreasonably block lake, golf course, or natural preserve views of adjacent Parcels. The decision regarding what is an unreasonable obstruction of such a view shall be made by Declarant, in its sole discretion. If a wall or fence is approved, it shall be located in a manner to limit the area enclosed to that necessary to afford privacy or for landscaping accents or for Neighborhood signage. No wall or fence shall be constructed with a height of more than six (6) feet above the existing ground level of adjoining property unless specifically approved. No wall or fence shall be constructed on a property line or within any utility easement unless specifically approved by Declarant. Any Parcel on which a wall or fence has been constructed shall have and maintain a landscape buffer between the wall or fence and the adjacent property line.

(C) A wall, fence or enclosure shall only be constructed of materials and with a design and color as approved by the Construction Committee. No chain link fencing shall be allowed unless specifically approved for good cause and with adequate landscape screening.

10.10 **Playground and Basketball Equipment.** No jungle gyms, swing sets, or other playground equipment including, but not limited to, basketball hoops and backboards shall be permitted on any Lot, without the express written consent of the Homeowners' Association.

10.11 **Window Coverings.** All windows in any building shall have window coverings. Reflective window coverings are prohibited.

10.12 **Nuisance.** No obnoxious or offensive activity or nuisance shall be carried on or be permitted to exist within the Property nor shall anything be done or permitted which is or may become offensive or detrimental or cause a disturbance or annoyance to any other Lot or its occupants.

10.13 **Leasing.** The Owner of a Lot shall have the right to lease such Lot subject to the terms hereof, and subject to the following conditions and the terms of any Homeowners' Association rules and regulations:

(A) All leases shall be in writing and for a term no less than thirty (30) days;

(B) The lease shall be specifically subject to the Homeowners' Documents and any failure of the tenant to comply with the Homeowners' Documents shall be a default under the lease; and

(C) The Owner shall be liable for any violation of the Homeowners' Documents committed by such Owner's tenant, without prejudice to such Owner's right to collect any sums paid from the tenant.

(D) The Owner shall provide the Association, through its Board of Directors, with a copy of any lease on a Lot at least one (1) week before the tenant(s) commence occupancy.

10.14 **Hazardous Materials.** Each Owner shall comply with all federal, state and local statutes, regulations, ordinances, or other rules intended to protect the public health and welfare as related to land, water, groundwater, air or other aspects of the natural environment (the "Environmental Laws"). Environmental Laws shall include, but are not limited to, those laws regulating the use, generation, storage or disposal of hazardous substances, wastes and materials (collectively, the "Hazardous Materials"). No Owner or his tenants, guests, invitees, or permittees shall knowingly use, generate, manufacture, store,

release, dispose of or knowingly permit to exist in, on, under or about his or her Lot any Hazardous Materials except in compliance with the Environmental Laws.

**10.15 Signs.** No sign or advertisement of any kind, including, without limitation, those of realtors, contractors and subcontractors, shall be erected on any Lot unless the same complies with the standards and guidelines established pursuant to the Master Declaration and has been approved by the Homeowners' Association, except as may be required by legal proceedings. The Homeowners' Association reserves the right to restrict the size, color, lettering, height, material and location of signs. The Homeowners' Association shall have the right to remove signs which fail to comply with standards set by the Homeowners' Association and upon prior approval of the Homeowners' Association may set more stringent sign requirements for the Lots.

**10.16 Wells, Laundry Lines and Commercial Offices.** Private wells are strictly prohibited. No laundry lines or poles shall be permitted except for those which are retractable, and which shall remain retracted except when in use. Permitted exterior laundry lines and poles, shall be located only as permitted by the Master Association, and screened by landscaping or other features so as to not be readily seen by others. No Lot may be used for commercial office purposes.

**10.17 Antennas and Electronic Devices.** Except as may be specifically permitted by law in effect as of the date of recording of this Declaration (and in such event, only to the extent permitted by such law), and so long as the same does not imperil the safety of Owners (as determined by the Board), no outside antennas, antenna poles, antenna masts, electronic devices, satellite dishes or antenna towers shall be permitted. If such device is permitted by such law(s), adequate screening of same from off-site view shall be required, and the plans, location, and method of screening shall be submitted for approval prior to installation. Placement of the aforesaid items within any screened enclosure on the Parcel shall be permitted so long as there is appropriate landscaping and/or other screening. The decision of what constitutes adequate landscaping and/or screening shall be made by Declarant, whose decision shall be final.

**10.18 Pets and Animals.** Commonly accepted household pets such as dogs, cats or birds may be kept on any Parcel. All animals shall be leashed while outdoors, and contained within the Owner's residence and shall not be permitted to roam freely. Any Owner whose pet defecates on any Common Areas or Lot shall immediately clean up the pet's waste. Pets may not be left unattended or leashed on porches, lanais, patios, on Common Areas, outside, or in garages. In the event that any pet shall, in the opinion of the Board of Directors, constitute a nuisance, the Owner shall remove said pet from the premises within two (2) days of the Board of Directors' notifying the Owner. Failure of an Owner to do so shall entitle the Homeowners' Association to obtain an order from a court of competent jurisdiction enforcing the decision of the Board of Directors. All costs incurred by the Homeowners' Association incident to all such actions, including reasonable attorneys fees, shall be recoverable against the offending Owner as an Individual Assessment or otherwise. Failure to abide by the restrictions may result in a fine being levied by the



Homeowners' Association. No horses, cows, hogs, pigs, swine, goats, chickens, pigeons or any other such animal, fowl or reptile shall be kept on any of the Property.

10.19 Lakes/Canals/Drainage Areas. In connection with the use of any lake, canal or drainage area, the restrictions set forth in the Master Declaration shall apply.

10.20 Landscaping: Sprinkler Systems. All areas not covered by structures, walkways or paved parking facilities shall be maintained as lawn or landscaped areas to the pavement edge of any abutting streets and to the waterline of any abutting lakes, canals or water management areas. No stone, gravel, or paving of any type shall be used as a substitute for grass in a lawn. Certain areas as determined by the Declarant may remain in a natural or unimproved state. All lawns and landscaping shall be completed at the time of completion of the structure as evidenced by the issuance of a Certificate of Occupancy by the appropriate governmental agency, and shall thereafter be kept in good condition by the Homeowners' Association in which the Parcel is located regardless of how title to the landscaped area is held. In the event that the Homeowners' Association does not properly maintain any landscaped area, the Master Association may undertake such maintenance and charge the cost thereof back to the Homeowners' Association and/or Owner.

10.21 Outdoor Equipment. All garbage and trash containers, oil tanks, bottled gas tanks, swimming pool equipment and housing and sprinkler pumps and other such outdoor equipment must be underground or placed in areas so that they shall not be readily visible from adjacent streets, or adequate landscaping used as screening shall be installed around these facilities and maintained by the Owner or Neighborhood Association.

10.22 Air Conditioners. Wall and window air conditioning or heating units shall not be permitted.

10.23 Solar Collectors: Roof Vents. Solar collectors, roof vents and other installations on the roofs of structures, shall be permitted only at locations approved in writing by Declarant.

10.24 Clothes Drying Area. No outdoor clothes drying area shall be allowed unless the location of the same is approved in writing by the Declarant and shielded from view, which approval may later be revoked by the Declarant.

10.25 Outside Lighting. Except as may be initially installed by Declarant, no spotlights, floodlights, or similar type high intensity lighting shall be placed or utilized upon any Parcel which in any way will allow light to be reflected on any other Parcel or the improvements thereon without the written authorization of the Declarant. Other types of low intensity lighting which do not unreasonably disturb the Owners or other occupants of the Property may be allowed.

10.26 Declarant's Exculpation. Declarant may grant, withhold or deny its permission or approval in any instance where its permission or approval is permitted or required without any liability of any nature or kind to Owner or Homeowners' Association

or any other person for any reason whatsoever, and any permission or approval granted shall be binding upon all persons.

**10.27 Business Use.** No trade or business may be conducted in or from any Parcel, except that an Owner or occupant residing in a residence may conduct business activities within the residence so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the residence; (ii) the business activity conforms to all zoning requirements for the Property and all applicable county ordinances; (iii) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of other residents of the Property; and (iv) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does not generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Parcel shall not be considered a trade or business within the meaning of this section. This section shall not apply to any activity conducted by Declarant or a builder or developer approved by Declarant with respect to its development and sale of the Property or its use of any Parcels which Declarant or a builder or developer owns within the Property, or to property designated by Declarant as a sales or other office. As to the this latter area, Declarant or any purchaser of such property shall have the right, subject to applicable governmental ordinances, to use same for office/professional business uses.

**10.28 On-Site Fuel Storage.** No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Property except that on-site underground storage of heating fuel, stored in a tank which is designated for the type of pool constructed on a Lot and which meets applicable governmental requirements for swimming pool heaters shall be permitted. Up to five (5) gallons of fuel may be stored on each Parcel for emergency purposes and operating of lawn mowers, barbecue gas grills and similar tools or equipment; provided, however, all such tanks must meet applicable governmental requirements and must be approved as to location and screening from off-site view by the Construction Committee. The foregoing provisions shall not apply to any portion of the Property owned by Declarant or the Master Association.

**10.29 Golf Carts.** Golf carts shall be operated within the Property only pursuant to the terms and conditions contained in the Master Association documents.

**10.30 Golf Nuisance.** No person shall, during a golf and/or tennis tournament on any Country Club Property, engage in any activity whatsoever which shall interfere with

the players' performance during the tournament. Further, no obnoxious, unpleasant, unsightly or offensive activity shall be carried on which shall interfere with the play of such tournament. Declarant shall have, in its sole discretion, the absolute right to temporarily suspend as a distraction any and all construction activity on the Property during tournaments. Declarant shall have no liability for any additional construction costs incurred by Owners or their contractors during such temporary suspension of construction.

## 11. GENERAL PROVISIONS

11.1 **Term.** The covenants and restrictions of this Declaration shall run with and bind the property subjected to this Declaration, and shall inure to the benefit of and shall be enforceable by Declarant, the Homeowners' Association, or the Owner of any portion of the Property subjected to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by the majority of the then current Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

11.2 **Amendment.** Until the termination of the Class B Membership, Declarant may unilaterally amend this Declaration. After such termination, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) required by an Institutional Mortgagee to enable such lender or purchaser to make or purchase mortgage loans on the Lots; or (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner thereof shall consent thereto in writing. So long as it still owns any of the Property, the Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner. Thereafter or otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing sixty-seven percent (67%) of the total votes in the Homeowners' Association, including sixty-seven (67%) of the votes held by the Class A Members, and the vote of the Declarant, so long as Declarant owns any Lot or portion of the Property; provided, however, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of Collier County, Florida.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and to contrary

provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

Notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of the Declarant under this Declaration or any other of the Governing Documents, without specific written approval from the Declarant.

**11.3 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**11.4 Independent Builders.** The Property is being developed by the Declarant. Individual Residences may be constructed by the Declarant, or by independent contractors. If the Residence is constructed by a person or entity other than the Declarant, the Declarant shall have no liability whatsoever for the builder's activities, whether direct or indirect, including, without limitation, marketing or construction of the unit or actions of any principal, officer, director, partner, agent or subcontractor.

**11.5 Litigation.** No judicial or administrative proceeding shall be commenced by the Homeowners' Association unless approved by a vote of seventy-five percent (75%) of the votes eligible to be cast. This Section shall not apply, however, to: (a) actions brought by the Homeowners' Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of Assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Homeowners' Association in proceedings instituted against it. In the event any claim is made against Declarant or any litigation is instituted against Declarant, then the Homeowners' Association shall assess all Members, other than the Declarant, for the costs of claim or litigation, including without limitation attorneys' fees incurred, and funds from any Assessments shall not be used for any such claim or litigation. The prevailing party shall be entitled to recover as part of the award all such advanced costs and reasonable attorneys' fees and related costs, fees or expenses of such claim or litigation. In the event the Declarant is the prevailing party, the Homeowners' Association shall levy a Special Assessment against all Owners, other than the Declarant, for the Declarant's cost for any such claim or litigation. This provision shall not be amended unless such amendment is made by the Declarant or is approved by the percentage of votes and pursuant to the same procedures necessary to institute proceedings as provided above.

**11.6 Declarant's Sales Activities.** Nothing herein shall be construed to restrict, prohibit or in any way inhibit Declarant's efforts to promote, market and sell the Property, or any portion thereof. In particular and without limitation, Declarant shall be entitled to operate sales trailers and model homes, sponsor promotional events, and make such other use of the Property as Declarant deems appropriate to promote the use or sale of the

**Property.** This provision may not be modified nor deleted without the express written consent of Declarant, which consent may be withheld for any reason.

**11.7 Declarant's Rights.**

(A) Declarant, its successors, designees and assigns shall have the right to make such use of the Property as Declarant shall, from time to time, determine. In recognition of the fact that Declarant will have a continuing and substantial interest in the development and administration of the Property, Declarant hereby reserves for itself, its successors, designees, and assigns, the non-exclusive right to use all Common Area and all other portions of the Property in conjunction with and as part of its program of sale, leasing, construction, marketing, and development including, but not limited to, the right to carry on construction and to enter and transact business; maintain models and sales and rental offices; employ sales and rental personnel; show Parcels; use on-site transportation systems; and use portions of the Property and Parcels and improvements owned by Declarant or the Master Association for purposes set forth above, for storage of construction materials, and for construction and assembling construction component without any cost to Declarant and its successors, nominees and assigns. In addition to its other rights to the Common Area, Declarant, its successors, designees, and assigns, shall have the non-exclusive right to use all or any portion of any buildings thereon as a sales, rental, or construction office. Any models, sales areas, sales or rental office(s), parking areas, construction office(s), signs and any other designated areas or property pertaining to the sale, construction, marketing, maintenance and repair efforts of Declarant shall not be part of the Common Area, and shall remain the property of Declarant or its nominees, as the case may be. Declarant shall have the non-exclusive right to construct, maintain and repair structures and landscaping and other improvements to be located on the Property as Declarant deems necessary or appropriate for the development of the Property. Declarant's use of any portion of the Property as provided in this subparagraph shall not be a violation of this Declaration.

(B) Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have the right to retain and use, in connection with any Parcels it owns, any and all of the rights and privileges it has reserved in this Declaration.

(C) The Declarant shall not in any way or manner be held liable or responsible for any person's violation of this Declaration or the Governing Documents, other than those committed by itself. Any provision of the Governing Documents which requires the consent of Declarant shall be subject to Declarant's right to withhold its consent in its sole discretion.

The rights and privileges of Declarant, its successors, designees and assigns, as herein set forth the paragraph above are in addition to and in no way limit any other rights or privileges of Declarant, its successor, designees and assigns, under this Declaration, the Articles or the By-Laws. The provisions of the paragraph above, like other provisions of this Declaration, grant or reserve rights to and for Declarant and may not be suspended, superseded or modified in any manner unless same is consented to by Declarant. This right

of use and transaction of business as set forth herein, like Declarant's other rights herein, may be assigned in writing by Declarant in whole or in part as Declarant deems appropriate.

**11.8 Design Review Process and Construction.** Each Owner does hereby agree that it is beneficial for the community that construction of Residences take place on Lots promptly following the Owners' acquisition of said Lot. As such, each Owner does hereby agree as follows:

**A) Each Owner shall submit to the Construction Committee of the Master Association proposed plans and specifications for the construction of a Residence upon said Lot, no later than 10 months following the initial conveyance of the Lot by Declarant, in such detail as Construction Committee may then require. Such plans and specifications shall conform with the design review specifications and guidelines as established by Declarant from time to time.**

**B) Each Owner does hereby agree that each Owner shall work with the Construction Committee to meet reasonable objections of the Construction Committee to the proposed plans and specifications.**

**C) Each Owner shall obtain final approval of plans and specifications for the Residence to be constructed on any Lot, no later than 12 months from the initial conveyance of said Lot by Declarant.**

**D) Each Owner does hereby agree that each Owner shall commence construction of a Residence upon the Owner's Lot, no later than 14 months following initial conveyance of said Lot by Declarant.**

**E) Each Owner does hereby agree that each Owner shall diligently pursue completion of construction of said Residence, and cause the same to be completed, no later than 22 months following initial conveyance of said Lot by Declarant.**

**F) All such construction shall take place in accordance with all applicable building codes and regulations, and permits issued therefor; and strictly in conformity with plans and specifications for the same which have been approved by the Construction Committee.**

**G) In the event that an Owner fails to timely submit plans and specifications, or timely fails to obtain approval thereof, or fails to timely commence construction or diligently continue construction within the time parameter set forth herein, Declarant shall have the right, but not the obligation, to repurchase the Lot upon payment to the Owner thereof 100% of the purchase price paid by the initial Owner of said Lot to Declarant, less any closing costs and expenses incurred by Declarant incident to said conveyance including but not limited to, transfer fees, documentary stamps, Declarant's attorney's fees, and similar and related costs. In the event that Declarant should exercise Declarant's option to repurchase the Lot, Declarant shall pay the Owner of said Lot the purchase price in cash at closing, and the Owner shall deliver clear title thereto by general**

warranty deed. All liens and encumbrances then outstanding against the subject Lot shall be paid from the proceeds to be paid by Declarant to Owner.

H) The time periods set forth herein for the submission of plans and specifications, the approval thereof, and the time to commence and/or complete construction of residence, may be extended by Declarant for good reason shown by the Owner thereof, and/or to benefit the community as a whole.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Covenants, Conditions, Restrictions and Easements for the Pelican Strand Single Family Community on this 30<sup>th</sup> of August, 1997.

Signed, sealed and delivered in the presence of:

DECLARANT:

PELICAN STRAND, LTD., a Florida limited partnership

By: (Corporate Seal)  
PELICAN STRAND DEVELOPMENT CORPORATION, a Florida corporation, as General Partner

Margaret Straub  
WITNESS #1  
Robert Paul Hardy  
WITNESS #2

By: [Signature]  
Robert Paul Hardy, as Vice President

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was sworn to and acknowledged before me this 30<sup>th</sup> day of August, 1997, by Robert Paul Hardy, as Vice President of PELICAN STRAND DEVELOPMENT CORPORATION, a Florida corporation, as General Partner of PELICAN STRAND, LTD., a Florida limited partnership, who is personally known to me.

[Signature]  
NOTARY PUBLIC [NOTARY SEAL]  
PLEASE PRINT OR TYPE NAME OF NOTARY  
My Commission Expires:

**JOINDER**

HUNTINGTON NATIONAL BANK, as the holder of mortgages encumbering the Property, hereby joins in this Declaration of Covenants, Conditions, Restrictions and Easements for the Pelican Strand Single Family Community on this 29th day of September, 1997.

Signed, sealed and delivered in the presence of:

(Corporate Seal)  
HUNTINGTON NATIONAL BANK

W. Jeffrey Cecil  
Witness #1  
Print Name Below:  
W. JEFFREY CECIL

By: Curt E. Wells  
Name: CURT E. WELLS  
Title: S.V.P.


Print Name Below:  
\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF COLLIER

THE FOREGOING INSTRUMENT was acknowledged before me this 29th day of September, 1997, by CURT E. WELLS, as VICE PRESIDENT of HUNTINGTON NATIONAL BANK, who is personally known to me or who has produced a current driver's license as identification, on behalf of said corporation.

W. Jeffrey Cecil  
NOTARY PUBLIC [NOTARY SEAL]

PLEASE PRINT OR TYPE NAME OF NOTARY  
My Commission Expires:

 W. JEFFREY CECIL  
My Commission CC078008  
Expires Jun. 05, 1999  
Bonded by H&H  
800-422-1555



**EXHIBIT "A"**

**All of Pelican Strand, Replat Unit 1-B, according to the plat thereof recorded in Plat Book 29, Pages 23 through 27, of the Public Records of Collier County, Florida.**

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL  
07/11/2002 at 07:50AM DWIGHT B. BROCK, CLERK  
REC FEE 15.50

Retr:  
RGBTGBL & ADDRESS  
650 PARK SHORE DR 3RD FLOOR  
NAPLES FL 34103

This instrument prepared by and after recording  
return to:

John D. Humphreville, Esq.  
Quarles & Brady LLP  
4501 Tamiami Trail North, Ste 300  
Naples, Florida 34103

**AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE  
STRAND SINGLE FAMILY COMMUNITY**  
(f/k/a Pelican Strand Single Family Community)

This Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for the Strand Single Family Community is made and entered into this 25 day of June, 2002, by The Strand, Ltd., f/k/a Pelican Strand, Ltd., a Florida limited partnership, hereinafter referred to as Declarant.

**WITNESSETH:**

WHEREAS, the Declarant is the Declarant under that certain Declaration of Covenants, Conditions, Restrictions and Easement for the Pelican Strand Single Family Community, recorded in Official Records Book 2353, Page 463, of the Public Records of Collier County, Florida (the "Declaration"); and

WHEREAS, the Declarant has the right to unilaterally amend the Declaration pursuant to Section 11.2 of the Declaration.

NOW, THEREFORE, Declarant does hereby amend the Declaration as shown on Exhibit "A" attached hereto.

**DECLARANT:**

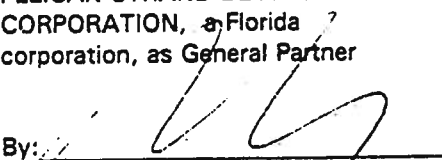
**THE STRAND, LTD. f/k/a PELICAN STRAND, LTD.,** a Florida limited partnership

Signed, sealed and delivered  
in the presence of:

  
\_\_\_\_\_  
WITNESS #1

  
\_\_\_\_\_  
WITNESS #2

By: (Corporate Seal)  
THE STRAND DEVELOPMENT  
CORPORATION OF NAPLES, f/k/a  
PELICAN STRAND DEVELOPMENT  
CORPORATION, a Florida  
corporation, as General Partner

By:   
\_\_\_\_\_  
Robert Paul Hardy, as  
President

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was sworn to and acknowledged before me this 3<sup>rd</sup> day of July, 2002, by ROBERT PAUL HARDY, as President of THE STRAND DEVELOPMENT CORPORATION OF NAPLES f/k/a PELICAN STRAND DEVELOPMENT CORPORATION, a Florida corporation, as General Partner of THE STRAND, LTD. f/k/a PELICAN STRAND, LTD., a Florida limited partnership, who is personally known to me.

*Beth A. Weber*  
\_\_\_\_\_  
NOTARY PUBLIC (NOTARY SEAL)  
*Beth A. Weber*  
\_\_\_\_\_  
PRINTED/TYPED NAME OF NOTARY  
My Commission Expires:



AMENDMENTS TO DECLARATION OF COVENANTS, CONDITIONS  
RESTRICTIONS AND EASEMENTS

Additions indicated by underlining.

Deletions indicated by ~~hyphens~~.

Amendment No. 1: Sections 8.3, 8.6 and 8.10.

8.3 Duty to Maintain Officers' and Directors' Personal Liability Insurance. The Board ~~may~~ shall, in its sole and absolute discretion, purchase officers' and directors' personal liability insurance at the expense of the Homeowners' Association to protect the officers, directors and all committee members from personal liability in relation to their duties and responsibilities on behalf of the Homeowners' Association.

8.6 Individual Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Homeowners' Association that each Owner shall carry blanket all-risk casualty insurance on their Lot and Residence. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of his Residence, the Owner shall remove all debris within sixty (60) days and complete repair or reconstruction of the damaged structure within one (1) year. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds; ~~provided, however, Homeowners' Association shall be responsible for any expenses incurred for roof repair or replacement on any Residence that is not covered by the Owner's insurance.~~ In the event that the Residence is totally destroyed, the Owner may decide not to rebuild or not to reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. Thereafter, the Homeowners' Association shall continue to maintain the Lot in a neat and attractive condition.

8.10 (new subsection)

8.10 Deductibles. All insurance policies purchased by the Board of Directors may contain provision for a reasonable deductible in the discretion of the Board of Directors.

Amendment No. 2: Section 9.14.

9.14 Working Capital Contribution. A Working capital contribution in such amounts as the Board may from time to time determine per Lot shall be collected by the Homeowners' Association at the time of the transfer of title of any Lot to the purchaser thereof. This contribution may be used by the Board for any purpose it deems necessary or appropriate, including the funding of the day-to-day operational expenses of the

Homeowners' Association or the acquisition of additional equipment and/or services. Amounts paid into this fund are ~~not~~ Assessments and but shall not be considered as an advance payment of Assessments, nor a reserve.

Amendment No. 3: Section 11.2

11.2 Amendment. Until the termination of the Class B Membership, Declarant may unilaterally amend this Declaration. After such termination, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) required by an Institutional Mortgagee to enable such lender or purchaser to make or purchase mortgage loans on the Lots; or (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner thereof shall consent thereto in writing. So long as it still owns any of the Property, the Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner. Notwithstanding anything to the contrary contained elsewhere in this Declaration, the Articles and the Bylaws thereafter or otherwise, this Declaration, the Articles of Incorporation and the Bylaws may be amended only by the affirmative vote or written consent or any combination thereof, of Members representing sixty-seven percent (67%) of the total votes Members voting in person or by proxy at a duly called meeting of the Members at which a quorum has been established, or 67% of the votes cast if the Members vote by written consents in lieu of a meeting, as long as the total number of votes cast would constitute a quorum at a meeting; in the Homeowners' Association, including sixty-seven (67%) of the votes held by the Class A Members, and regardless of the method of voting used the vote of the Declarant, so long as Declarant owns any Lot or portion of the Property; provided, however, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of Collier County, Florida.

Retn:  
QUARLES & BRADY  
4501 TAMiami TR N #300  
NAPLES FL 34103 3060

This instrument prepared by and after recording  
return to:

Leo J. Salvatori, Esq.  
Quarles & Brady  
4501 Tamiami Trail North  
Suite 300  
Naples, Florida 34103

**FIRST AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE  
PELICAN STRAND SINGLE FAMILY COMMUNITY**

This First Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for the Pelican Strand Single Family Community is made and entered into this 27<sup>th</sup> day of January, 1998, by Pelican Strand, Ltd., a Florida limited partnership, hereinafter referred to as Declarant.

**WITNESSETH:**

WHEREAS, the Declarant is the Declarant under that certain Declaration of Covenants, Conditions, Restrictions and Easement for the Pelican Strand Single Family Community, recorded in Official Records Book 2353, Page 463, of the Public Records of Collier County, Florida (the "Declaration").

WHEREAS, paragraph 3.3 (e) of the Declaration allows Declarant to add additional properties to be encumbered by the Declaration.

WHEREAS, Declarant wishes to encumber the premises described in Exhibit A-1 attached hereto with the lien and operation of said Declaration.

NOW, THEREFORE, Declarant does hereby state as follows:

1. That the premises described on Exhibit A-1 attached hereto and incorporated hereto by virtue of this reference shall henceforth be held, transferred, sold, conveyed, leased, mortgaged and otherwise dealt with subject to the Declaration, as the same may be amended from time to time.
2. That the premises described on Exhibit A-1 attached hereto shall henceforth be deemed to be a portion of the Property as that term is defined in the Declaration.

3. In all respects, said Declaration shall remain unchanged and of full force and effect.

Signed, sealed and delivered  
in the presence of:

DECLARANT:

PELICAN STRAND, LTD., a Florida  
limited partnership


By: (Corporate Seal)  
PELICAN STRAND  
DEVELOPMENT CORPORATION,  
a Florida corporation, as its sole  
General Partner

[Signature]  
WITNESS #1  
[Signature]  
WITNESS #2

By: [Signature]  
W. Neil Dorrill, as  
President

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was sworn to and acknowledged before me this 27<sup>th</sup> day of January, 1998, by W. Neil Dorrill, as President of PELICAN STRAND DEVELOPMENT CORPORATION, a Florida corporation, as General Partner of PELICAN STRAND, LTD., a Florida limited partnership, who is personally known to me.

 MARGARET A. STRAUB  
Notary Public  
My Comm. Exp. 11/05/2000  
Bonded By Service Ins  
No. CC597944  
I Personally Report 11 Other I.D.

[Signature]  
NOTARY PUBLIC [NOTARY SEAL]  
Margaret Straub  
PLEASE PRINT OR TYPE NAME OF NOTARY  
My Commission Expires:

**JOINDER**

**HUNTINGTON NATIONAL BANK**, as the holder of mortgages encumbering the Property, hereby joins in this First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for the Pelican Strand Single Family Community on this 29<sup>th</sup> day of January, 1998.

Signed, sealed and delivered  
in the presence of:

(Corporate Seal)

**HUNTINGTON NATIONAL BANK**

Sandra K Logue  
Witness #1

Print Name Below:  
Sandra K Logue

Renee J. Fridley  
Witness #2

Print Name Below:  
Renee J. Fridley

By: [Signature]  
Name: CHARLES A. GUSKA  
Title: VICE PRESIDENT

STATE OF Ohio  
COUNTY OF Franklin

THE FOREGOING INSTRUMENT was acknowledged before me this 29<sup>th</sup> day of January, 1998, by Charles A. Guska, as Vice President of **HUNTINGTON NATIONAL BANK**, who is personally known to me or who has produced a current driver's license as identification, on behalf of said corporation.

Renee J. Fridley  
NOTARY PUBLIC [NOTARY SEAL]

PLEASE PRINT OFFICIAL NAME OF NOTARY  
My Commission Expires:



**RENEE J. FRIDLEY**  
NOTARY PUBLIC, STATE OF OHIO  
My Commission Expires Oct. 28, 1999



**EXHIBIT A-1**

All of Pelican Strand Replat-4, according to the plat thereof recorded in Plat Book 29, Pages 68 through 70, inclusive, of the Public Records of Collier County, Florida.

Re: **QUARLES & BRADY**  
4501 TAMiami TR N #300  
NAPLES FL 34109 3060

This instrument prepared by and returned after recording to:

Leo J. Salvatori, Esquire  
Quarles & Brady  
4501 Tamiami Trail North  
Suite 300  
Naples, Florida 34103

**FIRST AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
THE PELICAN STRAND SINGLE FAMILY COMMUNITY**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS for the Pelican Strand Single Family Community is made and entered into this 15<sup>th</sup> day of June, 1998, by PELICAN STRAND, LTD., a Florida limited partnership, hereinafter referred to as Declarant.

**WITNESSETH**

**WHEREAS**, Declarant is the Declarant under the terms of the Declaration of Covenants, Conditions, Restrictions, and Easements for the Pelican Strand Single Family Community (the "Declaration"), which Declaration is recorded in Official Record Book 2353, Page 463, of the Public Records of Collier County, Florida.

**WHEREAS**, Paragraph 11.2 of the Declaration provides that for so long as Declarant is the Class "B" member, the Declarant may unilaterally amend the declaration at any time.

**WHEREAS**, Declarant is the Class "B" member under the terms of said Declaration, and wishes to amend the Declaration.

**NOW, THEREFORE**, Declarant does hereby amend the Declaration as follows:

1. Paragraph 11.8 of the Declaration is hereby amended to add a new subparagraph (I) thereof, which shall read as follows:

(I) By accepting title to a Lot, each Owner acknowledges, consents to any Preferred

Builders Program that Declarant may establish within Pelican Strand, as the same may be amended by Declarant from time to time; and agrees to be bound by the terms and provisions thereof. In particular, and without limitation, all Owners agree that each Owner shall utilize the services of a Preferred Builder, and no other contractor, for the construction of a Residence on a Lot. Each Owner acknowledges that the identity of said Preferred Builders may change from time to time as Declarant amends Declarant's criteria for the same, and agrees that each Owner shall be responsible for confirming that any general contractor the Owner wishes to utilize to construct a Residence on Owner's Lot is a Preferred Builder. In the event that any Owner elects to utilize a general contractor to construct Owner's Residence that is not a Preferred Builder, then the Owner agrees that the Owner shall pay the following:

(i) Owner should pay Declarant Five Thousand (\$5,000.00) Dollars, as compensation to the Declarant for time and effort expended reviewing the plans and workmanship of the proposed non-preferred builder general contractor. Owner acknowledges that Declarant owes no duty to Owner to ascertain that said plans and specifications have been properly prepared, or that any construction has been performed in a good and workmanlike manner.

(ii) Each Owner shall further pay to any common marketing fund established by Declarant for Pelican Strand, an amount equal to ten (10%) percent of the gross construction contract at full retail rates (without discount or premium), all as reasonably determined by Declarant. Said funds shall be utilized in the common Pelican Strand marketing fund that has been established by Declarant and the Preferred Builders.



2. In all other respects, said Declaration shall remain unchanged and of full force and effect.

Signed, sealed and delivered  
in the presence of:

DECLARANT:

PELICAN STRAND, LTD., a Florida limited  
partnership.

By: (Corporate Seal)  
PELICAN STRAND DEVELOPMENT  
CORPORATION, a Florida corporation, as  
General Partner

  
WITNESS #1  
  
WITNESS #2

By:   
W. NEIL DORRILL, as President

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was sworn to and acknowledged before me this 5<sup>th</sup> day of July, 1998, by W. NEIL DORRILL, as President of PELICAN STRAND DEVELOPMENT CORPORATION, a Florida corporation, as General Partner of PELICAN STRAND, LTD., a Florida limited partnership, who is personally known to me.

My Commission Expires:



Deborah A. Nelson  
Signature of Notary (SEAL)  
Deborah A. Nelson  
Name of Notary Printed

CONSENT

The undersigned, PELICAN STRAND HOMEOWNERS' ASSOCIATION, INC., a not-for-profit corporation does hereby join into this First Amendment to Declaration of Covenants, Conditions, Restrictions, and Easements for the Pelican Strand Single Family Community, and consents to the terms thereof.

(Corporate Seal)

PELICAN STRAND HOMEOWNERS' ASSOCIATION, INC., a not-for-profit corporation

By:

Robert P. Hardy  
ROBERT P. HARDY, as President

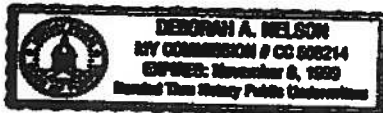
Deborah A. Nelson  
WITNESS #1

Deborah A. Nelson  
WITNESS #2

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was sworn to and acknowledged before me this 18<sup>th</sup> day of July, 1998, by ROBERT P. HARDY, as President of PELICAN STRAND HOMEOWNERS' ASSOCIATION, INC., a not-for-profit corporation, who is personally known to me.

My Commission Expires:



Deborah A. Nelson  
Signature of Notary (SEAL)  
Deborah A. Nelson  
Name of Notary Printed

**JOINDER**

HUNTINGTON NATIONAL BANK, as the holder of mortgages encumbering the Property, hereby joins in this First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for the Pelican Strand Single Family Community on this 10<sup>th</sup> day of June, 1998.

Signed, sealed and delivered in the presence of:

(Corporate Seal)

HUNTINGTON NATIONAL BANK

Michelle Rose

WITNESS #1

Patricia S. Uhlig

WITNESS #2

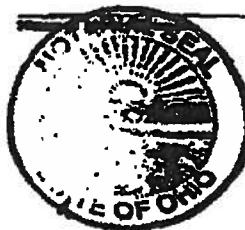
By: [Signature]  
Name: CHARLES A. GUSKA  
Title: VICE PRESIDENT

STATE OF Ohio  
COUNTY OF Franklin

THE FOREGOING INSTRUMENT was acknowledged before me this 10 day of June, 1998, by Charles A. Guska as Vice President of HUNTINGTON NATIONAL BANK, who is personally known to me or who has produced a current driver's license as identification, on behalf of said corporation.

My Commission Expires:

Patricia S. Uhlig  
Signature of Notary (SEAL)



PATRICIA S. UHLIG  
NOTARY PUBLIC, STATE OF OHIO  
My Commission Expires Dec. 31, 1998