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## <u>TWENTY-EIGHTH SUPPLEMENT</u> <u>TO THE</u> <u>DECLARATION AND GENERAL PROTECTIVE COVENANTS</u> <u>FOR</u> <u>PELICAN LANDING</u> (PORTION OF PROPOSED UNIT 7)

THIS SUPPLEMENT is made this <u>30</u> day of June, 1994, by PELICAN LANDING COMMUNITIES, INC., formerly Westinghouse Bayside Communities, Inc., a Florida corporation, which was Declarant of that particular AMENDED AND RESTATED DECLARATION AND GENERAL PROTECTIVE COVENANTS FOR PELICAN LANDING and is hereinafter referred to as DECLARANT, joined by WCN COMMUNITIES, INC., a Florida corporation ("WCN") and PELICAN'S NEST ASSOCIATES, LTD., a Florida limited partnership.

#### WITNESSETH:

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

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

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

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

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● RECORD VERIFIED - CHARLIE GREEM。 ● BJ: KAY TANNER, D.C. ●

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

## ARTICLE I DEFINITIONS

1. "BUILDING HEIGHT" shall mean the vertical distance measured from the finished grade of the LOT or minimum base flood elevation, whichever is greater, to the mean high level between eaves and ridge of gable, hip and gambrel roofs.

2. "DECLARANT" shall mean and refer to PELICAN LANDING COMMUNITIES, INC., a Florida corporation, presently having its principal place of business in Lee County, Florida, its successors or assigns of any or all of its rights under the DECLARATION.

3. "DECLARATION" shall mean and refer to the AMENDED AND RESTATED GENERAL COVENANTS AND GENERAL PROTECTIVE COVENANTS FOR PELICAN LANDING as recorded in Official Records Book 2198 at Pages 1873 through 2026, inclusive, of the Public Records of Lee County, Florida, as amended, and as may be amended from time to time.

4. "DWELLING UNIT" shall mean and refer to any residential unit intended for occupancy by one family or household.

5. "LOT" or "LOTS" shall mean any one of or all of those platted lots in the NEIGHBORHOOD.

6. "MASTER ASSOCIATION" shall mean Pelican Landing Community Association, Inc., a Florida not-for-profit corporation and the master unit owners' association for Pelican Landing, its successors and assigns.

7. "NEIGHBORHOOD" shall mean and refer to the real property, or any portion thereof, as more particularly described in Exhibit "A" attached hereto.

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

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

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10. "SUPPLEMENT" shall mean this Twenty-eighth Supplement to the DECLARATION.

## ARTICLE II RESTRICTIONS

### 1. <u>USE RESTRICTIONS</u>

a. The NEIGHBORHOOD may be used for detached single family DWELLING UNITS and for no other purposes. No business buildings may be erected in the NEIGHBORHOOD and no business may be conducted on any part thereof, nor shall any building or portion thereof be used or maintained as a professional office. No structures shall be erected or placed in or on any lakes or water management areas in or adjacent to the NEIGHBORHOOD without the prior written consent of the DECLARANT. 0R2518 P62917

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

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

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

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

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

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

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h. No garbage, trash or refuse containers shall be placed within the front yard of any LOT or in any right-of-way or street abutting any LOT, and all LOTS must provide for garbage, trash and refuse removal to be made from the side or rear of any LOT. Provided however, that garbage, trash and refuse removal shall be permitted to be made from the front yard if side or rear yard removal service is unavailable.

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

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

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

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

i.	Front LOT line:	20 feet	
ii.	Side LOT line:	One Story Two Story	5 feet 7.5 feet

Rear LOT line: Block "A" LOTS 1-23, inclusive, 10 feet. Setback for screen enclosure may be reduced to 5 feet.

Block "A" LOTS 24-30, and Block "B" LOTS 3-20, 25-26 and 29-32, inclusive, 20 feet.

Block "B" LOTS 1-2, 21-24, 27-28, and 33, inclusive, 20 feet. Setback for screen enclosures may be reduced to 5 feet.

Provided, however, that no easement is encroached upon.

b. Minimal screens or walls for privacy and enclosures for mechanical equipment may be erected within the side and/or rear setback lines upon the prior written approval of DECLARANT.

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c. All yards abutting a street shall be front yards. Four-sided corner LOTS shall have two front and two side yards. Setback lines for corner LOTS and odd-shaped LOTS shall be as near as possible as set out above, except that variation may be authorized by DECLARANT at the time plans for buildings are approved, and a copy of such plans, including the plot plan, or a record of the determination shall be kept on file by the DECLARANT to establish the setback lines as approved.

d. Minimum floor area per DWELLING UNIT shall be 1,450 square feet of living area. The method of determining square foot area of proposed buildings and structures or additions and enlargement thereto, shall be to multiply the outside horizontal dimensions of the building or structure at each floor level. Garages, porches, patios, terraces and other similar areas and structures shall not be taken into account in calculating the minimum area required.

e. No building or structure of any kind shall exceed thirty (30) feet in height.

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

# 3. <u>SPAS, HOT TUBS AND SWIMMING POOLS, ENCLOSURES, FENCES AND WALLS</u>

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

b. The erection and use of walls and fences is discouraged. If a wall and/or fence is approved in writing by DECLARANT it shall be located in a manner to limit the area enclosed to that necessary to afford privacy to outdoor activity areas. No wall or fence shall be constructed with a height of more than six (6) feet above the existing ground level of adjoining property. No walls or fence shall be erected or placed on any property line. All LOTS with fences or walls shall have a landscape buffer between the wall or fence and the adjacent LOT property line.

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

## 4. <u>LANDSCAPING</u>

No later than thirty (30) days after each OWNER'S submittal of construction plans a. and specifications for the DWELLING UNIT on the LOT, such OWNER shall submit to DECLARANT, for its review and approval, a conceptual master landscape and irrigation plan for the LOT (including adjacent rights-of-way, and area between the property line of a LOT and any abutting road or water's edge) ("Landscape Plan"). Such Landscape Plan shall be prepared by a Florida Registered Landscape Architect, who shall utilize a similar plant palette and theme as used throughout the NEIGHBORHOOD. It is DECLARANT'S intent that the existing native vegetation be retained to the maximum extent possible. Clearing shall be done selectively. retaining wherever possible the native vegetation. Each OWNER'S Landscape Plan shall indicate OWNER'S plan for the retention and/or clearing of any existing native vegetation, in accordance with Article II, Section 14 of this SUPPLEMENT. DECLARANT reserves the right to comment and require changes for individual LOTS should special conditions or situations exist. A final Landscape Plan shall be submitted by OWNER to DECLARANT no later than thirty (30) days thereafter. Each OWNER shall be solely responsible for the cost and expense to prepare the Landscape Plan, the Final Landscape Plan, the installation of all landscape materials and irrigation and the maintenance and repair with respect thereto.

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

c. OWNER shall be responsible for the repair and replacement of all landscaping within the NEIGHBORHOOD and which abuts the NEIGHBORHOOD, which is damaged or destroyed as a result of the acts of the OWNER or its agents.

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

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

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

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## 5. GARAGE, CARPORTS AND STORAGE AREAS

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

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

c. No unenclosed storage area shall be permitted. No enclosed storage area shall be erected which is separated from a principal structure. Fully enclosed storage facilities for garbage and trash containers shall be required for each DWELLING UNIT.

#### 6. MAIL BOXES

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

#### 7. ROOFS

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

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

#### 8. <u>COLORS</u>

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

#### 9. NEIGHBORHOOD DRIVEWAYS

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

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b. Driveways shall be constructed in such a manner so that the flare of the driveway at the adjoining street pavement does not extend beyond a straight line projection of the side lot line of the LOT served by the driveway. In no event shall the driveway surface be less than five (5) feet from the side LOT line unless a variance is granted by the DECLARANT.

## 10. LEASE

No DWELLING UNIT shall be leased except on an annual basis. No DWELLING UNIT shall be used or sold on a "time-share" basis.

### 11. CONSTRUCTION

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

## 12. LIGHTING

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

13. SIGNS

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

#### 14. NATIVE VEGETATION

To the extent possible, OWNER shall protect suitable native vegetation to be integrated into the final landscape plan. The design review process and construction activities shall include these steps:

- a. Submittal of a vegetation survey prepared by a surveyor, which accurately locates existing trees 6" in diameter at breast height (DBH) or greater and significant shrub masses.
- b. Site-by-site review by OWNER or builder with DECLARANT of existing native vegetation.
- c. Review by DECLARANT of tree-clearing plans.

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- 6R2518 P62923
- d. Review by DECLARANT of building placement so as to minimize disturbance and removal of existing native vegetation.
- e. Installation of protective identification of native vegetation during construction.
- f. Transplanting of suitable trees removed from construction areas.
- g. Any substantial changes to the approved landscaping plan following installation of the landscaping on a LOT shall be resubmitted to DECLARANT for its prior written approval.

## ARTICLE III GENERAL PROVISIONS

## 1. **PROPERTY UNITS**

In accordance with Article 1, Section 34 of the DECLARATION, DECLARANT hereby assigns one (1) PROPERTY UNIT to the NEIGHBORHOOD for a total of sixty-three (63) PROPERTY UNITS assigned to the NEIGHBORHOOD.

## 2. <u>CONFLICT</u>

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

## 3. AMENDMENT

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

## 4. <u>SUPPLEMENT TO GENERAL COVENANTS RUNS WITH THE LAND</u>

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

## 5. WAIVER

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

## 6. <u>SEVERABILITY</u>

If any section, subsection, sentence, clause, phrase or portion of this TWENTY-EIGHTH SUPPLEMENT TO THE DECLARATION AND GENERAL AND PROTECTIVE COVENANTS FOR PELICAN LANDING (PORTION OF PROPOSED UNIT 7) is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portion thereof. 0R2518 P62924

IN WITNESS WHEREOF, PELICAN LANDING COMMUNITIES, INC., a Florida corporation, joined by WCN COMMUNITIES, INC., a Florida corporation, and PELICAN'S NEST ASSOCIATES, LTD., a Florida limited partnership, do hereby execute this TWENTY-EIGHTH SUPPLEMENT TO THE DECLARATION AND GENERAL AND PROTECTIVE COVENANTS FOR PELICAN LANDING (PORTION OF PROPOSED UNIT 7), in their names by their undersigned, authorized officers and affix the corporate seals hereto, this <u>30</u> day of June, 1994, at Bonita Springs, Florida.

(SEAL)

WITNESSES:

Print name: (

PELICAN LANDING COMMUNITIE

Schmover ve Vice-President

Joined by: (SEAL) え N N い WCN COMMUNITIES, INC., a 18 P62925 Florida corporation Schmover President Print name: PELICAN'S NEST ASSOCIATES, LTD Florida limited partnership BY: Pelican's Nest Investments, Inc., a Florida corporation, its general-partoer BY Print name: chmoyer resident

## STATE OF FLORIDA ) COUNTY OF LEE )

The foregoing instrument was acknowledged before me this 30 day of June, 1994 by Jerry H. Schmoyer, Executive Vice-President, of Pelican Landing Communities, Inc., a Florida corporation, Vice President of WCN Communities, Inc., a Florida corporation, and Vice President of Pelican's Nest Investments, Inc., a Florida corporation and the general partner of Pelican's Nest Associates, Ltd., on behalf of the corporations. He is personally known to me and did not take an oath.

Prepared by: Vivien N. Hastings, Esq. 801 Laurel Oak Drive, Suite 500 Naples, Florida 33963

Notary Pub Print: 1 ALIPE My Comm. Expires:



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## JOHNSON ENGINE TING, INC.

2158 JOHNSON STREET TELEPHONE (813) 334-0045 TELECOPICE (813) 334-364 NOST OFFICE 804 1550 FORT WYERS, FLORICA 33902-1550

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## December 7, 1993

## DESCRIPTION PROPOSED PELICAN LANDING UNIT 7 SECTION 17, T. 47 S., R. 25 E. LEE COUNTY, FLORIDA

A tract or parcel of land lying in the northeast quarter (NE-1/4) and southeast quarter (SE-1/4) of Section 17, Township 47 South, Range 25 East including part of Tract "C" and Lots 31 through 34 of Replat of Pelican Landing Unit 6 as recorded in Plat Book 50 at pages 9 through 13 of the Lee County Records being more particularly described as follows:

From the northwest corner of the southeast quarter (SE-1/4) of said Section 17 run S 89° 58' 35" E along the north line of said fraction for 1115.15 feet; thence run N 00° 41' 04" W for 70.44 feet to the Point of Beginning.

From said Point of Beginning run S 00° 41' 04" E for 240.42 feet; thence run S 47° 47' 02" W for S81.44 feet; thence run S 66" 54' 00" W for 177.34 feet to an intersection with the southeasterly boundary of said Replat of Pelican Landing Unit 6; thence continue S 66° 54' 00" W along the south line of Lots 32 and 31 of said Replat of Pelican Landing Unit 6 for 271.87 feet to the westerly line of said Lot 31; thence run N 17° 12' 40" W along said west line for 17.11 fect to a point of curvature; thence run Northwesterly and Northerly along the arc of a curve to the right of radius 180.00 feet (chord bearing N 04° 52' 45" W) (chord 76.89 feet) (delta 24° 39' 50") for 77.48 feet to a point of reverse curvature; thence run Northerly and Northwesterly along the arc of a curve to the left of radius 222.50 feet (chord bearing N 22" 31' 29" W) (chord 222.35 feet) (delta 59" 57' 18") for 232.83 feet to a point of reverse curvature; thence run Northwesterly, Northerly, and Northeasterly along the arc of a curve to the right of radius 277.50 feet (chord bearing N 03° 58' 16" E) (chord 462.67 feet) (delta 112° 56' 50") for 547.04 feet to a point of reverse curvature; thence run Nonheasterly along the arc of a curve to the left of radius 1200.00 feet (chord bearing N 41° 54' 39" E) (chord 762.87 feet) (delta 37° 04' 03") for 776.34 feet; thence run S 58 35' 57" E for 191.75 feet; thence run S 82° 14' 14" E for 154.52 feel; thence run S 53° 01' 04" E for 80.72 feel; thence run S 31° 15' 10" E for 69.44 feet; thence run S 08° 01' 04" E for 66.21 feet; thence run S 06' 09' 39" W for 66.26 feet; thence run S 21° 58' 56" W for 65.41 feet; thence run S 00° 41' 04" E for 99.51 feet to the Point of Beginning.

> EXHIBIT "A" Page 1 of 2

ARCHIE T. GRANT, JR.

FORREST H. BANKS

JOSEPH W. EBNER STEVENK, MORRISON ANDREW D. TILTON JEFFREY C. COONER

DAN W. DICKEY KENTON R. KEILING GEORGE J. KALAL MICHAEL L HARMON THOMAS L. FENOLEY W. DAVID KEY. JR. W GRITT FOMEROY CARL A. BARRACO GARY R. BULL KEVIN M. WINTER STEFHEN W ADAMS FATRICIA H NEWTON

LESTER L. BULSON

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## JOHNSON ENGINEERING. INC

CHU" "F. GREEN LEE CTY, AL.

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Proposed Pelican Landing Unit 7 December 7, 1993 Page 2

Containing 19.17 acres, more or less.

Bearings hereinabove mentioned are based on the north line of the southeast quarter (SE-1/4) of Section 17 to bear S 89° 58' 35" E.

W. Britt Pomeroy, Jr. Professional Land Surveyor Florida Certificate No. 4448

Revised 12/13/93

WBP/kc 20069



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EXHIBIT "A" Page 2 of 2