

WCI Communities, Inc., a Delaware corporation, hereby declares as follows:

**Section 1: Introduction and Submission**

1.1 The Land. The Developer owns the fee title to certain land located in Lee County, Florida, as more particularly described in Exhibit No. 1 hereto (the "Land").

1.2 Submission Statement. The Developer hereby submits that the Land together with all improvements from time to time erected or to be installed thereon to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof, subject to the reservations, easements and restrictions of record.

1.3 Property Subject to Certain Restrictions and Easements. The Condominium Property (as defined hereinafter) is subject to the covenants, conditions, restrictions, and reserved rights of the Developer contained in this Declaration. The Condominium Property also is subject to (a) the covenants, conditions, restrictions, easements and reserved rights contained in that certain Amended and Restated Declaration and Protective Covenants for Pelican Landings, as recorded in Official Records Book 2198, Page 1873, public records of Lee County, Florida, as has been and may be amended from time to time ("Community Declaration"); (b) the covenants, conditions, restrictions, easements and reserved rights contained in that certain Declaration and General Protective Covenants for The Colony at Pelican Landing as recorded in Official Records Book 2775, Page 3845, public records of Lee County, Florida, as has been and may be amended from time to time; (c) the terms and provisions of that certain Broadband Service Easement as recorded in Official Records Book 3202, Page 1881, public records of Lee County, Florida; (d) those certain easements granted to the Bayside Improvement Community Development District for maintenance of certain conservation areas located on the Condominium Property, pursuant to that certain Grant of Easement recorded in Official Records Book 3958, Page 36, public records of Lee County, Florida; (e) those certain easements granted to Florida Power & Light Company pursuant to that certain Grant of Easement recorded in Official Records Book 3958, Page 31, public records of Lee County, Florida; (f) those certain easements granted to Bonita Springs Utilities, Inc. pursuant to that certain Grant of Utility Easement recorded in Official Records Book 3965, Page 2482, public records of Lee County, Florida; (g) the terms and provisions of that certain Interlocal Agreement between Pelican Marsh Community Development District, Bay Creek Community Development District, and Bayside Improvement Community Development District recorded in Official Records Book 2651, Page 3626, public records of Lee County, Florida; (h) the terms and provisions of that certain Agreement between the Florida Department of Community Affairs and Pelican Landing Communities, Inc. recorded in Official Records Book 2552, Page 1815, public records of Lee County, Florida; (i) the easements granted pursuant to that certain Conservation Easement to State of Florida Department of Environmental Protection recorded in Official Records Book 2679, Page 1917, public records of Lee County, Florida; (j) the terms and provisions of that certain Agreement between David Sexton and State of Florida Department of Environmental Protection recorded in Official Records Book 2679, Page 1937, public records of Lee County, Florida; (i) the terms and provisions of that certain Declaration of Restrictive Covenants recorded in Official Records Book 2679, Page 2039, public records of Lee County, Florida; (j) the terms and provisions of that certain Agreement between State of Florida Department of Community Affairs and Pelican Landings Communities, Inc. recorded in Official Records Book 2552, Page 1815, public records of Lee County, Florida; (k) those certain easements declared and/or granted pursuant to that certain Declaration and Grant of Easements recorded in Official Records Book 3598, Page 3899, public records of Lee County, Florida; (l) such other easements as shown on the Condominium Plat, on any subdivision plat which impacts the Condominium Property, as contained in any future amendments to this Declaration, or as declared by the Developer pursuant to reserved rights contained herein; and (m) all other instruments of record which were in existence prior to recording of this Declaration.

1.4 Name. The name by which this condominium is to be identified is LA SCALA AT THE COLONY, A CONDOMINIUM (the "Condominium").

**Section 2: Definitions**

For purposes of this Declaration and the exhibits attached hereto, the following terms shall have the respective meanings ascribed to them in this Section, except where the context clearly indicates a different meaning or a specific limited meaning is detailed:

2.1 "Act" or "Condominium Act" or "Florida Condominium Act" means the Florida Condominium Act (Chapter 718, Florida Statutes) as it exists on the date hereof.

2.2 "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association, as amended from time to time. A certified copy of the original Articles of Incorporation are attached hereto as Exhibit No. 2.

2.3 "Assessment," as further described and defined in Sections 13 and 14 hereof, means a share of the funds required for the payment of Common Expenses as provided in this Declaration and which from time to time is assessed against the Unit Owner.

2.4 "Association" or "Condominium Association" means LA SCALA AT THE COLONY CONDOMINIUM ASSOCIATION, INC., a Florida corporation not-for-profit, the sole entity responsible for the operation of the Condominium. Where utilized herein or in the exhibits attached hereto, the term "Corporation" shall be deemed to be synonymous with the term "Association." The Association is and shall be considered to be a "Neighborhood Association" (as such term is defined) under the Community Declaration.

2.5 "Association Property" means the property, real and personal, in which title or ownership is vested in, or which is dedicated on a recorded plat or leased to, the Association for the use and benefit of its members.

2.6 "Building" means the structure in which the Units and certain of the Common Elements are located on the Condominium Property.

2.7 "Board of Directors" or "Board" means the board of directors of the Association.

2.8 "By-Laws" mean the By-Laws of the Association, as amended from time to time. A copy of the original By-Laws is attached hereto as Exhibit No. 3.

2.9 "Common Elements" mean and include:

(a) The portions of the Condominium Property which are not included within the Units;

(b) Easements over, under, across, and through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to the Units and the Common Elements;

(c) An easement of support in every portion of a Unit which contributes to the support of the Unit and the Dwelling or other improvements on all other Units, Common Elements or Limited Common Elements;

(d) The property and installations required for the furnishing of utilities and other services to more than one (1) Unit or to the Common Elements;

(e) Any hallways, foyers, doors, elevators, stairwells, alarm systems, access systems, or security systems not contained within a specific Unit;

(f) The guest suites located within the Building;

(g) The manager's residence contained within the Building;

(h) All portions of the stormwater management system for the Condominium as described more fully in the Development Order; and

(i) Any other parts of the Condominium Property designated as Common Elements pursuant to this Declaration or the Act.

2.10 "Common Expenses" mean all expenses incurred by the Association to accomplish its duties as contemplated by this Declaration and the Act which shall be assessed or imposed against Units in the Condominium by the Association as authorized by the Act. If approved by the Board of Directors, "Common Expenses" shall include the cost of any mangrove trimming and the cost of a master television antenna system or duly franchised cable television service obtained pursuant to a bulk contract. For all purposes of this Declaration, "Common Expenses" also shall include all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended.

2.11 "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over and above the amount of Common Expenses.

2.12 "Community Association" means and refers to the Pelican Landing Community Association, Inc., a Florida corporation not-for-profit, and its successors and assigns. The Community Association is the operational entity responsible for certain obligations and duties prescribed in the Community Declaration and the exhibits attached thereto, as well as any rules and regulations duly promulgated by the Community Association.

2.13 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit.

2.14 "Condominium Plat" means the condominium drawings required by Section 718.104 of the Act and constituting Exhibit No. 1 hereto.

2.15 "Condominium Property" means those portions of the Land and improvements constructed thereon which have been submitted to condominium ownership under this Declaration, subject to the limitations thereof and exclusions therefrom.

2.16 "County" means Lee County, State of Florida.

2.17 "Declaration" or "Declaration of Condominium" means this instrument, as it may be amended from time to time.

2.18 "Developer" means WCI Communities, Inc., a Delaware corporation, and its successors and such of its assigns as to which its rights hereunder are assigned by written instrument recorded in the public records of the County. Such assignment may be made on an exclusive or non-exclusive basis and may be an assignment of all or only portions of its rights of Developer hereunder; provided, however, that no such assignment shall make any assignee the "Developer" for purposes hereof unless such assignment is an assignment of all of Developer's rights hereunder and is exclusive, except as to any previously assigned rights.

2.19 "Development Order" means Lee County Development Order No. DOS95120680D A12/A03/PO3, as has been or may be amended from time to time, together with any other development order(s) as may be issued from time to time by the County for the Property.

2.20 "Foundation" means The Colony at Pelican Landing Foundation, Inc., a Florida corporation not-for-profit, and its successors and assigns. The Foundation is the operational entity responsible for certain obligations and duties prescribed in the Community Declaration and the exhibits attached thereto, as well as any rules and regulations duly promulgated by the Foundation.

2.21 "General Common Expenses" mean all expenses incurred by the Association to accomplish its duties as contemplated by this Declaration and the Act which shall be assessed or imposed against all Units in the Condominium by the Association as authorized by the Act.

2.22 "General Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association in connection with all Units or all Common Elements, including, but not limited to, General Assessments, rents, profits and revenues on account of the Common Elements, over and above the amount of General Common Expenses.

2.23 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, credit union, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagee(s) of Units with regard to at least 51% of the voting interests which are appurtenant to Units subject to mortgages held by Institutional First Mortgagees.

2.24 "Limited Common Elements" mean those Common Elements, the use of which is reserved to a certain Unit or Units to the exclusion of other Units and as shown on the Condominium Plat or otherwise specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.

2.25 "Limited Common Expenses" mean all expenses incurred by the Association to accomplish its duties as contemplated by this Declaration and the Act in connection with the maintenance of the Limited Common Elements or other portions of the Condominium Property which shall be assessed or imposed against certain of the Units in the Condominium by the Association as authorized by the Act and as provided for in this Declaration.

2.26 "Limited Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association in connection with certain of the Units or the Limited Common Elements in whole or in part, including, but not limited to, Limited Common Element Assessments, rents, profits and revenues on account of the Limited Common Elements, over and above the amount of Limited Common Expenses.

2.27 "Management Agreement" means and refers to any agreement entered into by the Association from time to time for the operation and administration of the Condominium and the management of the Condominium Property.

2.28 "Management Firm" means and refers to any entity undertaking management services on or pertaining to the Condominium Property pursuant to a Management Agreement. Any Management Firm must be a professional community association manager duly licensed under Florida law to provide management services to condominium projects.

2.29 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.

2.30 "Resident Manager" means the employee of the Association that resides in certain living quarters within the Building, and whose primary responsibility is the day-to-day operation of the Condominium Property. The Resident Manager is not considered to be a Management Firm under this Declaration, but the Resident Manager may in the future be an employee of a Management Firm if so agreed upon by the Association.

2.31 "Rules and Regulations" means those certain rules and regulations promulgated by the Board of Directors from time to time pertaining to use of the Condominium Property. The initial Rules and Regulations constitute Exhibit No. 5 attached hereto and made a part hereof. Any amendments or modifications to the Rules and Regulations subsequent to the recording of this Declaration need not be recorded in the public records of the County, but shall be maintained in the official records of the Association.

2.32 "Unit" or "Condominium Unit" means and refers to that portion of the Condominium Property which is subject to exclusive ownership and is referred herein to each of the separate and identified Units delineated in the Condominium Plat. The physical boundaries of each Unit are as delineated in the Condominium Plat and are as more particularly described in Section 3.2 of this Declaration. The term "Unit" is often used synonymously herein with "Condominium Parcel" when meaning the sum total of an Owner's ownership interest in the Condominium.

2.33 "Unit Owner" or "Owner of a Unit" or "Owner" means the record owner of legal title to a Condominium Parcel.

**Section 3: Description of Condominium**

3.1 Identification of Units. The Condominium shall contain 64 Units. Each Unit in the Condominium shall be identified by a separate numerical designation as shown on the Condominium Plat, which exists as Exhibit No. 1 hereto, and which consists of a survey of the Land, a graphic description of the improvements located thereon (including the Units and the Building in which the Units are located), and a plot plan thereof. The Condominium Plat, together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions, in accordance with the requirements of Section 718.104(4)(e), Florida Statutes. There shall pass with a Unit as appurtenances thereto: (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be the Limited Common Elements for such Unit; (c) an exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in air space which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration or the Act.

Time-share estates or interests will not be created with respect to any of the Units in the Condominium.

3.2 Unit Boundaries. Each Unit shall include that part of the Building that lies within the following boundaries:

(a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their intersections with the perimeter boundaries:

(i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling of the Unit.

(ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Unit.

(b) Perimeter Boundaries. The perimeter boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the drywall walls bounding the Unit as depicted on the Condominium Plat extended to their intersections with each other and with the upper and lower boundaries.

(c) Interior Walls. No portion of the non-structural interior partition walls within a Unit shall be considered part of the boundary of a Unit.

(d) Additional Items Included within the Units. To the extent the following items exist for the use of a Unit, such items shall be considered to be a part of the Unit, regardless of whether or not such item in whole or in part exists within the physical boundaries described above:

(i) all kitchen items and fixtures, including, but not necessarily limited to, ovens, refrigerators, freezers, trash compactors, sinks, ranges, cabinets, dishwashers and exhaust fans;

(ii) all bathroom and plumbing fixtures, including, but not necessarily limited to, sinks, tubs, showers, toilets, vanities, bidets, exhaust fans and medicine or other related storage cabinets;

(iii) all electrical and lighting fixtures, including, but not necessarily limited to, outlets, switches, lamps, bulbs, outlet, switch and control boxes, telephone outlets, circuit breakers, cable television or other communications jacks or outlets, circuit breakers and circuit breaker panels;

(iv) all clothes washers and dryers, water heaters, heating equipment and air conditioning equipment which serve a Unit; and