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DECLARATION OF CONDOMINIUM

OF

THE HERON AT PELICAN BAY

a condominium
Naples, Florida

Made this 10 day of JUNE, 1983, by BRAR ASSOCIATES OF NAPLES, LTD., a Florida limited partnership, herein called the Developer, for itself, its successors, grantees and assigns.

WHEREIN, the Developer makes the following declarations:

1. SUBMISSION TO CONDOMINIUM OWNERSHIP: Developer hereby submits to the condominium form of ownership and uses the lands described in this instrument and improvements now and hereafter on such lands pursuant to Chapter 718, Florida Statutes, herein called the Condominium Act.

(1) Name and Address: The name by which this condominium is to be identified is THE HERON AT PELICAN BAY, a condominium, and its address is 5555 Crayton Road, Naples, Florida.

(2) The Land: The lands owned by Developer, which, by this instrument, are submitted to the condominium form of ownership, are the following described lands lying in Collier County, Florida, described on Exhibit A, which lands are subject to easements, restrictions and reservations of record. Also submitted to the condominium form of ownership is the Grant of Easement recorded at O.R. Book 940, Pages 268-270, Public Records of Collier County, Florida.

2. DEFINITIONS: The terms used in this Declaration and in its exhibits have the meanings stated in the Condominium Act and as follows unless the context otherwise requires:

(1) Unit means a part of the condominium property which is subject to exclusive ownership.

(2) Unit owner means the owner of a condominium parcel.

(3) Association means The Heron at Pelican Bay Condominium Association, a Florida non-profit corporation and its successors.

(4) Common elements means the portions of the condominium property not included in the apartments.

Condominium Exhibit Filed in Condo. Book 22 Pages 69-73

June 10, 1983

William J. Reagan, Clerk
By: Mary Finlay, DC.

Collier Planning Dept. & Recorder
3177
7/17/83

Limited common elements means and includes those common elements which are reserved for the use of a certain apartment or apartments, to the exclusion of other apartments as specified in the Declaration of Condominium.

The term "common elements" when used throughout this Declaration shall mean both common elements and limited common elements unless the context otherwise specifically requires.

(5) Common expenses include:

(a) Expenses of administration, expenses of insurance, maintenance, operation, repair, replacement and betterment of the common elements, and of the portions of apartments to be maintained by the Association.

(b) Expenses declared common expenses by provisions of this Declaration or the By-Laws.

(c) Any valid charge against the condominium as a whole.

(6) Condominium means all of the condominium property as a whole when the context so permits, as well as the meaning stated in the Condominium Act.

(7) Singular, plural, gender: Whenever the context so permits, the use of the plural shall include the singular, the singular the plural, and the use of any gender shall be deemed to include all genders.

(8) Utility services as used in the Condominium Act and construed with reference to this condominium, and as used in the Declaration and By-Laws, shall include but not be limited to electric power, gas, hot and cold water, heating, refrigeration, air-conditioning, garbage and sewage disposal, telephone and cablevision.

3. DEVELOPMENT PLAN: The condominium is described and established as follows:

(1) Survey: A survey of the land showing the improvements to be constructed is attached as Exhibit B (Sheet 1).

(2) Plans: The improvements upon the land are to be constructed substantially in accordance with the plans and specifications for said improvements attached as Exhibit B (Sheets 1 through 5).

(3) Easements: Easements are reserved through the condominium property as may be required for utility and maintenance services in order to adequately serve the condominium; provided, however, such easements through an apartment shall be only according to the plans and specifications for the apartment building, or as the building is constructed, unless approved in writing by the apartment owner.

Each apartment owner shall have a non-exclusive easement for ingress and egress over streets, walks and other rights-of-way serving the apartments of the condominium as part of the common elements necessary to provide reasonable access to public ways.

There is specifically and respectively granted and reserved cross easements for ingress and egress for walkway and vehicular traffic over and across the drive areas surrounding the buildings as shown on Exhibit B.

Every portion of an apartment contributing to the support of the apartment or building shall be burdened with an easement of support for the benefit of all other apartments and common elements in that building.

(4) Amendment of Plans: (a) Alteration of apartment plans: The Developer reserves the right to change the interior design, arrangement and location of all apartments and to alter the boundaries between apartments, so long as the Developer owns the apartments so altered. No such change shall increase the number of apartments nor alter the boundaries of the common elements without amendment of this Declaration by approval of the Association. If Developer shall make any changes in apartments so authorized, such changes shall be reflected by an amendment of this Declaration. If more than one apartment is concerned, the Developer shall apportion between the apartments the shares in common elements appurtenant to the apartments concerned.

(b) Amendment of Declaration: An amendment of this Declaration reflecting such authorized alteration of

apartments by Developer need be signed and acknowledged by the Developer and need not be approved by the Association, apartment owners or lienors or mortgagees of apartments or of the condominium, whether or not elsewhere required for an amendment.

(5) **Apartment Boundaries:** Each apartment shall include that part of the building containing the apartment that lies within the boundaries of the apartment, which boundaries are as follows:

(a) **Upper and Lower Boundaries:** The upper and lower boundaries of the apartment shall be the following boundaries extended to an intersection with the perimetrical boundaries:

(1) Upper boundary - the plane of the undecorated finished ceiling.

(2) Lower boundary - the horizontal plane of the undecorated finished floor.

(b) **Perimetrical Boundaries:** The perimetrical boundaries of the apartment shall be the vertical planes of the undecorated finished interior of the walls bounding the apartment extended to intersections with each other and with the upper and lower boundaries.

Included in the apartment is the adjoining enclosed screened balcony as well as all glass and other transparent material in the walls of the apartment, insect screens and screening in windows and doors and the materials covering other openings in the exterior of the apartments.

Not included in the apartments are all pipes, ducts, vents, wires, conduits, and other facilities, equipment or fixtures running through any interior wall, or horizontal or vertical portion of an apartment for the furnishing of utility services, heating, cooling, or ventilation to apartments, common elements or limited common elements.

(6) **Common Elements:** The common elements include the land and all other parts of the condominium which are not part of apartments.

4. **THE APARTMENTS:** The apartments of the condominium are described more particularly and the rights and obligations of their owners established as follows:

(1) The Apartment Numbers: There is one building in THE HERON AT PELICAN BAY, consisting of forty (40) apartments numbered as follows:

| | | | |
|-----|------|------|------|
| 201 | 701 | 1201 | 1801 |
| 202 | 702 | 1202 | 1802 |
| 301 | 801 | 1401 | 1901 |
| 302 | 802 | 1402 | 1902 |
| 401 | 901 | 1501 | 2001 |
| 402 | 902 | 1502 | 2002 |
| 501 | 1001 | 1601 | 2101 |
| 502 | 1002 | 1602 | 2102 |
| 601 | 1101 | 1701 | PH01 |
| 602 | 1102 | 1702 | PH02 |

(2) Typical Apartment Plans: The plans for each floor of the apartment building containing apartments are represented by typical apartment floor plans which are set forth on Exhibit B.

(3) Appurtenances to Apartments: The owner of each apartment shall own a share and certain interest in the condominium property, which share and interests are appurtenant, and pass with title, to his apartment, including but not limited to, the following items that are appurtenant to the several apartments as indicated:

(a) Common elements and common surplus: The undivided share in the land, common elements and common surplus appurtenant to each apartment is as set forth in Exhibit C.

(b) Automobile parking space: The condominium includes parking areas. Some of these parking areas are limited common elements for exclusive use of apartment owners.

The Developer reserves unto itself the right to identify and to assign any or all automobile parking spaces to apartment owners within THE HERON AT PELICAN BAY until all apartments within THE HERON AT PELICAN BAY have been sold and conveyed by the Developer. Thereafter, the Association may assign any parking space which then remains unassigned or which it may subsequently acquire.

Assignment of parking spaces by the Developer, and subsequently by the Association, shall be by the adoption of a parking plan which shall make reference to the overall Development Plan, Exhibit B, as finally amended by the Developer. Thereon the Developer, and subsequently the Association, shall identify each parking space and the apartment to which it is assigned.

The exclusive use of a parking space shall constitute an appurtenance to the apartment to which it is assigned. No transfer, conveyance or encumbrance of a parking space shall be effective unless such transaction shall be incident to the transfer, conveyance or encumbrance of an apartment, and shall be recorded by the Association as an amendment to the parking plan.

The cost and expense of the covered parking spaces, parking areas and driveways shall be a common expense.

(c) Association Membership: The membership of each apartment owner in the Association and the interest of each apartment owner in the funds and assets held by the Association.

(d) The right to use exclusively, or in common with certain other apartments where so specified, those portions of the common elements designated and/or reserved herein and/or granted elsewhere to a certain apartment or apartments as limited common elements; and

(e) An exclusive easement for the use of the air space occupied by the apartment as it exists at any particular time and as it may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is permanently vacated from time to time;

(f) Non-exclusive easements, to be used and enjoyed in common with the owners of all apartments in the Condominium, for use of those common elements not designated elsewhere herein as limited common elements, including, without limitation, easements for:

(i) The furnishing and maintenance of public utility services to all parts of the real property of the condominium over, across in and through the land, buildings and other improvements, as the fixtures and equipment therefor now exist and/or may be modified or relocated; and

(ii) Vehicular and pedestrian access over, across, upon, in and through the drives, entries, gates, walks, grounds, and other portions, if any, of the common elements as are intended and/or provided for pedestrian and vehicular traffic throughout the Condominium; and

(iii) Recreational purposes, in and to all recreational facilities and related fixtures and equipment.

(g) An exclusive easement for unintentional and non-negligent encroachment by any apartment upon any other

apartment or common element, or vice versa, for any reason not caused by or resulting from the willful negligent act of Developer or any apartment owner or owners, including without limitation, encroachments caused by or resulting from the original construction of improvements, which exclusive easement shall exist at all times during the continuance of such encroachment, as an easement appurtenant to the encroaching apartment or other improvement, to the extent of such encroachment; and:

(h) An exclusive easement for the use of the area of land and air space occupied by the air conditioning compressor, and the equipment and fixtures appurtenant thereto, situated in and/or on common elements of the condominium but exclusively serving and individually owned by the owner of the apartment, as the same exist in and on the condominium or the land, which exclusive easement shall be terminated automatically in any air space which is permanently vacated by such air conditioning compressor, and the equipment and fixtures appurtenant thereto; provided, that the removal of the same for repair and/or replacement shall not be construed to be a permanent vacation of the air space which it occupies.

(4) Liability for Common Expenses: Each apartment owner shall be liable for a proportionate share of the common expenses. Such expenses for the purpose of further improving or extending the common elements or for any other purpose, including but not limited to expenses of administration, insurance, maintenance, operation, repair or replacement of the common elements and of portions of apartments to be maintained by the Association, shall be the same as the undivided share in the common elements appurtenant to that owner's apartment.

5. MAINTENANCE, ALTERATION, AND IMPROVEMENTS:
Responsibility for the maintenance of the condominium property, and restrictions upon the alteration and improvement thereof, shall be as follows:

(1) Apartments: (a) By the Association: The Association shall maintain, repair and replace at the Association's expense all common elements including all recreational and related facilities and parking areas.

(b) By the Apartment Owners: The responsibility of the apartment owner shall be as follows:

(i) To maintain, repair and replace at his expense all portions of his apartment including screened in areas

and balconies. Such shall be done without disturbing the rights of other apartment owners.

(ii) To maintain, repair and replace any electrical, heating and air conditioning equipment, plumbing or other utility specifically serving the individual condominium apartment.

(iii) Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the apartment building.

(iv) Not to install any curtain, screen, blind, awning, or glass on any porch or balcony without the prior approval of the board of directors.

(v) To promptly report to the Association any defect or need for repairs for which the Association is responsible.

(c) Alteration and Improvement: Neither an apartment owner nor the Association shall make any alterations in the portions of an apartment that are to be maintained by the Association, or remove any portion of such, or make any additions to them, or do anything that would jeopardize the safety or soundness of the apartment building, or impair any easement, without first obtaining approval in writing of owners of all apartments in which such work is to be done and the approval of the board of directors of the Association. A copy of plans for all of such work prepared by an architect licensed to practice in this state shall be filed with the Association prior to the start of the work.

(2) Common Elements: (a) By the Association: The maintenance and operation of the common elements shall be the responsibility and the expense of the Association.

(b) Alteration and Improvement: There shall be no alteration nor further improvement of common elements without prior approval in writing by the record owners of not less than 75% of the common elements. Any such alteration or improvement shall not interfere with the rights of any apartment owners without their consent. The cost of such work shall not be assessed against a bank, life insurance company or savings and loan association which acquires its title as the result of owning a mortgage upon the apartment owned unless such owner shall approve the alteration or improvement, and this shall be so whether the title is acquired by deed from the mortgagor or through foreclosure proceedings. The shares of any cost not so assessed shall be assessed to the other apartment owners in the

shares that their shares in the common elements bear to each other. There shall be no change in the shares and rights of an apartment owner in the common elements which are altered or further improved, nor in his share of common expense, whether or not the apartment owner contributes to the cost thereof.

6. ASSESSMENTS: The making and collection of assessments against apartment owners for common expenses shall be pursuant to the By-Laws and subject to the following provisions:

(1) Share of Common Expense: Each apartment owner shall be liable for a proportionate share of the common expenses, and shall share in the common surplus, such share being as set forth in Exhibit C. However, any expenses attributable to limited common elements shall be borne by the owner(s) of the apartment to which said limited common elements are appurtenant; except with respect to parking areas. No assessment shall be made against a bank, life insurance company or savings and loan association that acquires its title as a result of owning a first mortgage upon an apartment, and this shall be so whether the title is acquired by deed from the mortgagor or through foreclosure proceedings; but this shall not preclude such an assessment against an occupant of an apartment owned by such an institution. The shares of any cost not so assessed shall be assessed to the other apartment owners in the shares that their shares in the common elements bear to each other.

(2) Interest and Application of Payments: Assessments and installments on such assessments paid on or before ten (10) days after the date when due shall not bear interest; but all sums not paid on or before ten (10) days after the date when due shall bear interest at the highest rate allowable under the law from the date when due until paid. All payments upon account shall be first applied to interest and then to the assessment payment first due.

(3) Lien for Assessments: The lien for unpaid assessments shall also secure reasonable attorney's fees incurred by the Association incident to the collection of such assessment or enforcement of such lien.

(4) All liens for assessments regardless of the period of assessment shall be subordinate to first mortgages of record and shall not be payable by first mortgagees if title is passed either by a deed in lieu of foreclosure or as a result of foreclosure proceedings.

(5) Rental Pending Foreclosure: In any foreclosure of a lien for assessments the owner of the apartment subject to the lien shall be required to pay a reasonable rental for the

apartment, and the Association shall be entitled to the appointment of a receiver to collect the same.

(6) The Developer, as the owner of any apartments, shall be excused from the payment of a share of the common expenses and assessments related to those apartments for a period which shall terminate not later than the first day of the fourth calendar month following the month in which the closing of the first condominium apartment occurs. Provided, however, that in such event, the Developer shall be responsible for and pay the portion of common expenses incurred during that period which exceeds the amount assessed against other apartment owners.

7. ASSOCIATION: The operation of the condominium shall be by The Heron at Pelican Bay Condominium Association, a corporation not for profit under the laws of Florida, which shall fulfill its functions pursuant to the following provisions:

(1) Articles of Incorporation: A copy of the Articles of Incorporation of the Association is attached as Exhibit D.

(2) By-Laws: The By-Laws of the Association shall be the By-Laws of the Condominium, a copy of which is attached as Exhibit E.

(3) Limitation upon Liability of Association: Notwithstanding the duty of the Association to maintain and repair parts of the Condominium property, the Association shall not be liable to apartment owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or other owners or persons.

(4) Roster of Apartment Owners: The Association shall maintain a roster of apartment owners from the evidence of owner furnished to the Association, which roster shall include the mailing address of apartment owners which shall be furnished by them from time to time.

(5) Restraint upon Assignment of Shares in Assets: The share of an apartment owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his apartment.

(6) Approval or Disapproval of Matters: Whenever the decision of an apartment owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such owner if in an Association meeting, unless the

joinder of record owners is specifically required by this Declaration.

(7) **Membership and Voting Rights:** The owner or owners of each apartment shall become a member or members of the Association automatically upon and simultaneously with delivery of a deed of conveyance of fee title thereto from Developer or, in a conveyance by a grantee or a remote grantee of Developer, a deed which complies with the terms and conditions of this Declaration, the Articles of Incorporation, and By-Laws of the Association. There shall be appurtenant, and pass with title, to each apartment one (1) vote as a member of the Association, which may be exercised by the owner(s), or the duly constituted proxy of the owners(s), from time to time, of each apartment at all meetings of members and in connection with all matters upon which members of the Association are entitled to vote. The qualifications of members and manner of admission to membership in the Association, the termination of such membership and voting by members shall be as provided for in the Articles of Incorporation and By-Laws of the Association.

8. **INSURANCE:** The insurance other than title insurance which shall be carried upon the condominium property and the property of the apartment owners shall be governed by the following provisions:

(1) **Purchase and Named Insured:** (a) **Purchase:** All insurance policies upon the Condominium property shall be purchased by the Association through an agent having a place of business in Florida and shall be issued by an insurance company authorized to do business in Florida.

(b) **Named Insured:** The named insured shall be the Association individually and as agent for the apartment owners without naming them, and as agent for their mortgagees. Provision shall be made for the issuance of mortgagee endorsements and memorandum of insurance to the mortgagees for losses thereunder by the insurer shall be paid to the Insurance Trustee hereinafter designated, and all policies and endorsements thereon shall be deposited with the Insurance Trustee. Apartment owners may obtain insurance coverage at their own expense upon their own personal property and furnishings and for the personal liability and living expense.

(2) **Coverage:** (a) **Casualty:** All buildings and improvements upon the land shall be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, and all personal property included in the common elements shall be insured for its value, all as determined

annually by the board of directors of the Association. Such coverage shall afford protection against:

(i) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land, including, but not limited to, vandalism and malicious mischief.

The policies shall state whether the following items are included within the coverage in order that apartment owners may insure themselves if the items are not insured by the Association: air conditioning equipment; service equipment such as dishwasher, laundry, refrigerator, oven, stove, water heater, whether or not such items are built-in equipment; interior fixtures such as electrical and plumbing fixtures; floor coverings except the floor slab; inside paint; and other inside wall finishes.

(b) Public liability in such amounts and with such coverage as shall be required by the board of directors of the Association, including, but not limited to, hired automobile and non-owned automobile coverages, and with cross-liability endorsement to cover liabilities of the apartment owners as a group to an apartment owner.

(c) Workmen's compensation policy to meet the requirements of law.

(d) Such other insurance as the board of directors of the Association shall determine from time to time to be desirable.

(3) Premiums: Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense, except that the amount of increase over the annual premium occasioned by the use, misuse, occupancy or abandonment of an apartment or its appurtenances or of the common elements by an apartment owner shall be assessed against that owner.

(4) Insurance Trustee and Shares of Proceeds: All insurance policies purchased by the Association shall be for the benefit of the Association and the apartment owners and their mortgagees as their interests may appear and shall provide that all proceeds covering property losses shall be paid to such bank in Florida with trust powers as may be designated as Insurance Trustee by the board of directors of the Association, which trustee is herein referred to as the Insurance Trustee. The

Insurance Trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated in this instrument and for the benefit of the apartment owners and their mortgagees in the following shares, but which shares need not be set forth on the records of the Insurance Trustee:

(a) Apartment Owners: An undivided share for each apartment owner, such share being the same as the undivided share in the common elements appurtenant to his apartment.

(b) Mortgagees: In the event a mortgage endorsement has been issued as to an apartment, the share of the apartment owner shall be held in trust for the mortgagee and the apartment owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the apartment owner and mortgagee pursuant to the provisions of this Declaration.

(5) Distribution of Proceeds: Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

(a) Expense of the Trust: All expenses of the Insurance Trustee shall be first paid or provision made therefor.

(b) Reconstruction or Repair: If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to apartment owners and their mortgagees being payable jointly to them.

(c) Failure to Reconstruct or Repair: If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to apartment owners and other mortgagees being payable jointly to them.

(d) Certificate: In making distribution to apartment owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association made by its president

and secretary as to the names of the apartment owners and their respective shares of the distribution.

(6) Association as Agent: The Association is irrevocably appointed agent for each apartment owner and for each owner of a mortgage or other lien upon an apartment and for each owner of any other interest in the condominium property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

(7) Benefit of Mortgagees: Certain provisions in this Section 8 entitled "Insurance" are for the benefit of mortgagees of condominium apartments, and all of such provisions are covenants for the benefit of any mortgagee of an apartment and may be enforced by such mortgagee.

9. RECONSTRUCTION OR REPAIR AFTER CASUALTY: (1)
 Determination to Reconstruct or Repair: If any part of the Condominium Property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

(a) Lesser Damage: If apartments to which fifty percent (50%) of the common elements are appurtenant are found by the board of directors of the Association to be tenantable after the casualty, the damaged property shall be reconstructed or repaired.

(b) Major Damage: If apartments to which more than fifty percent (50%) of the common elements are appurtenant are found by the board of directors to be not tenantable after the casualty, whether the damaged property will be reconstructed and repaired or the Condominium terminated shall be determined in the following manner:

(i) Immediately after the casualty, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

(ii) Immediately after the determination of the amount of insurance proceeds, the Association shall give notice to all apartment owners of the casualty, the extent of the damage, the estimated cost to rebuild or repair, the amount of insurance proceeds, and the estimated amount of assessments required to pay the excess of the cost of reconstruction or repair over the amount of insurance proceeds. Such notice shall call a meeting of apartment owners to be held within thirty (30) days from the mailing of such notice. If the reconstruction and repair is approved at such meeting by the owners of 75% of the common

elements, the damaged property will be reconstructed or repaired; but if not so approved, the Condominium shall be terminated without agreement as elsewhere provided. Such approval may be expressed by vote or in writing filed with the Association at or prior to the meeting. The expense of such determination shall be assessed against all apartment owners in proportion to their shares in the common elements.

(c) Certificate: The Insurance Trustee may rely upon a certificate of the Association made by its president and secretary to determine whether or not the damaged property is to be reconstructed or repaired.

(2) Plans and Specifications: Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original improvements, portions of which are attached hereto as exhibits; or if not, then according to plans and specifications approved by the board of directors of the Association and by the owners of not less than 75% of the common elements, including the owners of all damaged apartments the plans of which are to be altered, which approvals shall not be unreasonably withheld.

(3) Responsibility: If the damage is only to those parts of one apartment for which the responsibility of maintenance and repair is that of the apartment owner, then the apartment owner shall be responsible for reconstruction and repair after casualty. In all other instances the responsibility of reconstruction and repair after casualty shall be that of the Association.

(4) Assessments: If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all apartment owners in sufficient amounts to provide funds for the payment of such costs. Such assessments shall be in proportion to the owner's shares in the common elements.

(5) Construction Funds: The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from assessments against apartment owners, shall be disbursed in payment of such costs in the following manner:

(a) Association: If the estimated cost of reconstruction and repair is more than \$10,000.00, the sums paid

upon assessments to defray such costs shall be deposited by the Association with the Insurance Trustee. In all other cases, the Association shall hold the sums paid upon such assessments and disburse the same in payment of the costs of reconstruction and repair.

(b) Insurance Trustee: The proceeds of insurance collected on account of a casualty, and the sums deposited with the Insurance Trustee by the Association from collections of assessments against apartment owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of costs of reconstruction and repair in the following manner and order:

(i) Association - lesser damage: If the amount of the estimated costs of reconstruction and repair is less than \$10,000.00, the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, such funds shall be disbursed in the manner hereafter provided for the construction and repair of major damage upon request to the Insurance Trustee by a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, or if the damaged property includes structural parts of the building.

(ii) Association - major damage: If the amount of the estimated costs of reconstruction and repair is more than \$10,000.00, the construction fund shall be disbursed in payment of such costs in the manner required by the board of directors of the Association and upon approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.

(iii) Apartment Owner: The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with an apartment owner shall be paid by the Insurance Trustee to the apartment owner, or if there is a mortgagee endorsement as to such apartment, then to the apartment owner and the mortgagee jointly, who may use such proceeds as they may be advised.

(iv) Surplus: It shall be presumed that the first moneys disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial owner that is not in excess of

assessments paid by such owner into the construction fund shall not be made payable to any mortgagee.

(v) Certificate: Notwithstanding the provisions of this instrument, the Insurance Trustee shall not be required to determine whether or not sums paid by the apartment owners upon assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund nor to determine the payee nor the amount to be paid. Instead, the Insurance Trustee may rely upon a certificate of the Association made by its president and secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided that when a mortgagee is required by this instrument to be named as payee, the Insurance Trustee shall also name the mortgagee as payee of any distribution of insurance proceeds to a apartment owner; and further provided that when the Association, or a mortgagee that is the beneficiary of an insurance policy the proceeds of which are included in the construction fund, so requires, the approval of an architect named by the Association shall be first obtained by the Association upon disbursements in payments of costs of reconstruction and repair.

10. USE RESTRICTIONS: The use of the condominium property shall be in accordance with the following provisions so long as the condominium exists and the apartment building in useful condition exists upon the land:

(1) Apartments: Each of the apartments shall be occupied only by the owner or his family, its servants and guests, as a resident and for no other purposes; provided no children under sixteen (16) years of age may reside in an apartment except children under that age may visit and temporarily reside for not more than thirty (30) days per year, unless otherwise authorized in writing by the Association. Provided, however, that such children shall be under adult supervision at all times while upon the premises of the condominium. No apartment may be divided or subdivided into a smaller apartment nor any portion thereof sold or otherwise transferred without first amending this Declaration to show the changes in the apartments to be effected.

(2) Pets: Animals, birds, fish, or live pets of any nature and description shall be raised, bred, kept or permitted in any apartment or the common elements or the common facilities only as expressly permitted in writing by the Association, which permission shall be subject to rules and regulations from time to time adopted by the Association.

(3) Signs: No signs, advertisements or notices of any type and no exterior antennae or aerials shall be erected upon the common elements. Provided, however, the board of directors in their regulations may vary this requirement.

(4) Common Elements: The common elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the apartments by the occupants.

(5) Nuisances: No nuisances shall be allowed upon the condominium property, nor any use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No apartment owner shall permit any use of his apartment or make any use of the common elements which will increase the rate of insurance upon the condominium property.

(6) Lawful Use: No immoral, improper, offensive or unlawful use shall be made of the condominium property nor any part of it; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned.

(7) Leasing: After approval of the Association elsewhere required, entire apartments may be rented. However, the apartment may not be leased more often than two (2) times per calendar year. The rental periods shall not be shorter than three months or longer than one year, and occupancy is only by the lessee and his family, servants and guests. Furthermore, no children under eighteen (18) years of age may reside in an apartment as lessee's family or guest except temporarily, for not more than thirty (30) days per year, unless otherwise authorized in writing by the Association. Provided, however, that such children shall be under adult supervision at all times while upon the premises of the condominium. No rooms may be rented, and no transient tenants may be accommodated.

(8) Regulations: Reasonable regulations concerning the use of the Condominium property may be made and amended from time to time by the Association in the manner provided by its Articles of Incorporation and By-Laws. Copies of such regulations and amendments shall be furnished by the Association to all apartment owners and residents of the condominium upon request. The first regulations established by the Developer are attached hereto and marked Exhibit F.

(9) Proviso: Provided, however, that until developer has completed all of the contemplated improvements and closed the sales of all of the apartments, neither the apartment owners nor the Association nor the use of the condominium property shall interfere with the completion of the contemplated improvements and the sale of the apartments. Developer may make such use of unsold apartments and common areas as may facilitate such completion and sale, including but not limited to maintenance of a sales office, the showing of the property, and the display of signs. All approved mortgagees holding title to an apartment shall be similarly exempted from all of the foregoing provisions entitled "Use Restrictions."

11. DEVELOPER RIGHTS DURING CONSTRUCTION: During such time as the Developer, and his successors and assigns, is in the process of construction on any portion of THE HERON AT PELICAN BAY, Developer, his successors or assigns, reserve the right to prohibit access to any portion of the common elements to any of the occupants of the building, and to utilize various portions of the common elements in connection with such construction and development. No apartment owner or his guests, tenants or invitees, shall in any way interfere with the Developer, his successors or assigns, in connection with the construction.

The Developer, his successors and assigns, reserve the right to use any apartments which it owns as a sales office and/or model center and shall have the right, including its agents, employees, successors and assigns, to enter upon the various portions of the common elements and to erect on said apartments or common elements such signs and advertising and sales promotional materials as it deems necessary.

12. MAINTENANCE OF COMMUNITY INTERESTS: In order to protect the interests of the apartment owners in the condominium, the sale of apartments by any owner shall be subject to the following provisions so long as the condominium exists and the apartment building in useful condition exists upon the land, which provisions each apartment owner covenants to observe:

(1) Transfers Subject to Approval: (a) Sale: No apartment owner may dispose of an apartment or any interest therein by sale without approval of the Association except to an owner of another apartment.

(b) Lease: No apartment owner or lessee of an apartment may dispose of an apartment or any interest therein by lease without the approval of the Association except to an owner of another apartment. The Association may, from time to time, limit the frequency of leases.

(c) Gift: If any apartment owner shall acquire his title by gift, the continuance of his ownership of his apartment shall be subject to the approval of the Association.

(d) Devise or Inheritance: If any apartment owner shall acquire his title by devise or inheritance, the continuance of his ownership of his apartment shall be subject to the approval of the Association.

(e) Other Transfers: If any apartment owner shall acquire his title by any manner not considered in the foregoing subsections, the continuance of his ownership of his apartment shall be subject to the approval of the Association.

(2) Approval by the Association: The approval of the Association that is required for the transfer of ownership of apartments shall be obtained in the following manner:

(a) Notice to Association: (i) Sale: An apartment owner intending to make a bonafide sale of his apartment or any interest in it shall give to the Association notice of such intention, together with the name and address of the intended purchaser and such other information concerning the intended purchaser as the Association may reasonably require. Such notice at the apartment owner's option may include a demand by the apartment owner that the Association furnish a purchaser if the proposed purchaser is not approved; and if such demand is made, the notice shall be accompanied by an executed copy of the proposed contract to sell.

(ii) Lease: An apartment owner intending to make a bonafide lease of his apartment, or any interest in it, shall give to the Association notice of such intention, together with the name and address of the intended lessee, such other information concerning the intended lessee as the Association may reasonably require, and an executed copy of the proposed lease.

(iii) Gift, Devise or Inheritance, and Other Transfers: An apartment owner who has obtained his title by gift, devise or inheritance, or by any other manner not heretofore considered, shall give to the Association notice of the acquiring of his title, together with such information concerning the apartment owner as the Association may reasonably require and a certified copy of the instrument evidencing the owner's title.

(iv) Failure to Give Notice: If the above required notice to the Association is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of an apartment, the Association at its election and without notice may approve or disapprove the

transaction or ownership. If the Association disapproves the transaction or ownership, the Association shall proceed as if it had received the required notice on the date of such disapproval.

(v) Transfer Fee: The Association is authorized to charge a fee in connection with the approvals or disapprovals of apartment transfers or leases not to exceed \$50.00 for each transaction.

(b) Certificate of Approval: (i) Sale: If the proposed transaction is a sale, then within thirty (30) days after receipt of such notice and information the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the president and secretary of the Association which shall be recorded in the Public Records of Collier County, Florida, at the expense of the purchaser.

(ii) Lease: If the proposed transaction is a lease, then within ten (10) days after receipt of such notice and information the Association must either approve or disapprove the proposed transaction. If the lease is not disapproved, in writing, by the Association within ten (10) days after receipt thereof, it shall be considered as approved. If approved, the approval shall be stated in a certificate executed by the president and secretary of the Association in recordable form.

(iii) Gift, Devise or Inheritance, and Other Transfers: If the apartment owner giving notice has acquired his title by gift, devise or inheritance or in any other manner, then within thirty (30) days after the receipt of such notice and information the Association must either approve or disapprove the continuance of the apartment owner's ownership of his apartment. If approved, the approval shall be stated in a certificate executed by the president and secretary of the Association which shall be recorded in the Public Records of Collier County, Florida, at the expense of the apartment owner.

(3) Disapproval by Association: If the Association shall disapprove a transfer of ownership of an apartment, the matter shall be disposed of in the following manner:

(a) Sale: If the proposed transaction is a sale and if the notice of sale given by the apartment owner shall so demand, then within thirty (30) days after receipt of such notice and information the Association shall deliver or mail by certified mail to the apartment owner an agreement to purchase the apartment concerned by a purchaser approved by the Association who will purchase and to whom the apartment owner must sell the apartment upon the following terms:

(i) At the option of the purchaser to be stated in the agreement, the price to be paid shall be that stated in the disapproved contract to sell or shall be the fair market value determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the apartment; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

(ii) The purchase price shall be paid in cash or upon the terms approved by the seller.

(iii) The sale shall be closed within thirty (30) days after delivery or mailing of said agreement to purchase, or within ten (10) days after the determination of the sales price if such is by arbitration, whichever is the later.

(iv) A certificate of the Association executed by its president and secretary and approving the purchaser shall be recorded in the Public Records of Collier County, Florida, at the expense of the purchaser.

(v) If the Association shall fail to provide a purchaser upon the demand of the apartment owner in the manner provided, or if a purchaser furnished by the Association shall default in his agreement to purchase, then, notwithstanding the disapproval, the proposed transaction shall be deemed to have been approved and the Association shall furnish a Certificate of Approval as elsewhere provided which shall be recorded in the Public Records of Collier, County, Florida, at the expense of the purchaser.

(b) Lease: If the proposed transaction is a lease and is not approved by the Association, the apartment owner shall be advised of the disapproval in writing within ten (10) days after receipt thereof by the Association, and the lease shall not be made.

(c) Gift, Devise or Inheritance, and Other Transfers: If the apartment owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within thirty (30) days after receipt from the apartment owner of the notice and information required to be furnished, the Association shall deliver or mail by certified mail to the apartment owner an agreement to purchase the apartment concerned by a purchaser approved by the Association who will purchase and

to whom the apartment owner must sell the apartment upon the following terms:

(i) The sales price shall be the fair market value determined by agreement between the seller and the purchaser within thirty (30) days from the delivery or mailing of such agreement. In the absence of such agreement, the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the apartment; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

(ii) The purchase price shall be paid in cash or upon terms approved by the seller.

(iii) The sale shall be closed within ten (10) days following the determination of the sales price.

(iv) A certificate of the Association executed by its president and secretary and approving the purchaser shall be recorded in the Public Records of Collier County, Florida, at the expense of the purchaser.

(v) If the Association shall fail to provide a purchaser as required by this instrument, or if a purchaser furnished by the Association shall default in his agreement to purchase, then, notwithstanding the disapproval, such ownership shall be deemed to have been approved, and the Association shall furnish a Certificate of Approval as elsewhere provided which shall be recorded in the Public Records of Collier County, Florida.

(4) Mortgage: No apartment owner may mortgage his apartment nor any interest therein without the approval of the Association except to a bank, life insurance company, or a savings and loan association, or to a vendor to secure a portion or all of the purchase price. The approval of any other mortgagee may be upon conditions determined by the Association or may be arbitrarily withheld.

(5) Exceptions: The foregoing provisions of this section entitled "Maintenance of Community Interests" shall not apply to a transfer to or purchase by a bank, life insurance company, or savings and loan association that acquires title as the result of owning a mortgage upon the apartment concerned, and this shall be so whether the title is acquired by deed from the

mortgagor, his successors or assigns, or through foreclosure proceedings; nor shall such provisions apply to a transfer, sale, or lease by a bank, life insurance company or savings and loan association that so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires the title to an apartment at a duly advertised public sale with open bidding which is provided by law, such as, but not limited to, execution sale, foreclosure sale, judicial sale or tax sale.

(6) **Rights of Developer to Sell or Lease Apartments:** So long as Developer, or any mortgagee succeeding Developer in title, shall own any apartment, it shall have the absolute right to lease or sell any such apartment to any person, firm or corporation, upon any terms and conditions as it shall deem to be in its own best interests, and as to the lease or sale of such apartment, the foregoing provisions, any right of first refusal, and any right of redemption herein granted to the Association shall not be operative or effective in any manner.

(7) **Unauthorized Transactions:** Any sale, mortgage, transfer, or lease not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association.

13. COMPLIANCE AND DEFAULT: Each apartment owner shall be governed by and shall comply with the terms of the Declaration of Condominium, Articles of Incorporation of the Association, and the By-Laws and the regulations adopted pursuant to those documents, and all of such documents and regulations as they may be amended from time to time. Failure of an apartment owner to comply with such shall entitle the Association or other apartment owners to the following relief in addition to the remedies provided by the Condominium Act:

(1) **Negligence:** An apartment owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association.

(2) **Costs and Attorney's Fees:** In any proceeding arising because of an alleged failure of an apartment owner or the Association to comply with the terms of the Declaration, Articles of Incorporation of the Association, the By-Laws, or the regulations adopted pursuant to them, and such documents and regulations as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the court.

(3) No Waiver of Rights: The failure of the Association or any apartment owner to enforce any covenant, restriction or other provisions of the Condominium Act, this Declaration, the Articles of Incorporation of the Association, the By-Laws or the regulations shall not constitute a waiver of the right to do so thereafter.

14. AMENDMENTS OF DECLARATION OF CONDOMINIUM BY DEVELOPER:
The Developer, so long as it owns at least one (1) condominium apartment, reserves the right at any time to amend the Declaration of Condominium in such manner as the Developer may determine to be necessary to carry out the purposes of the development. Provided, however, that such amendment shall not change the proportion of common expenses or surplus or the ownership of common elements or expenses borne by the condominium apartment owners, and shall not change the configuration or size of any condominium apartment in any material fashion or materially after the appurtenances of such apartment without the consent of the apartment owners as required under Paragraph 15.

15. AMENDMENTS OF DECLARATION OF CONDOMINIUM BY APARTMENT OWNERS: Except as elsewhere provided otherwise, this Declaration of Condominium may be amended by the apartment owners in the following manner:

(1) Notice: Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

(2) Approval: An amendment shall be approved by all of the apartment owners. Owners not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the secretary at or prior to the meeting.

(3) Proviso: Provided, however, that no amendment shall discriminate against any apartment owner nor against any apartment or class or group of apartments, unless the apartment owners so affected shall consent; and no amendment shall change any apartment nor the share in the common elements appurtenant to it, nor increase the owner's share of the common expense, unless the record owner of the apartment shall join in the execution of the amendment. Neither shall an amendment make any change in the section entitled "Insurance" unless the record owners of all mortgages upon the Condominium shall join in the execution of the amendment.

(4) Execution and Recording: An amendment adopted in any manner shall be evidenced by attaching a copy of the amendment to a certificate certifying that the amendment was duly adopted,

which certificate shall be executed by the officers of the Association and such certificate and copy of the amendment shall be recorded in the Public Records of Collier County, Florida.

16. TERMINATION: The Condominium may be terminated in the following manner in addition to the manner provided by the Condominium Act:

(1) Destruction: If it is determined in the manner elsewhere provided that the apartment building shall not be reconstructed because of major damage, the Condominium plan of ownership will be thereby terminated without agreement.

(2) Agreement: The Condominium may be terminated at any time by approval in writing by all record owners of apartments and by all record owners of mortgages on the apartments. If the proposed termination is submitted to a meeting of the members of the Association and the notice of the meeting gives notice of the proposed termination, and if approvals of owners of not less than two-thirds (2/3) of the common elements and by the record owners of all mortgages upon the apartments are obtained in writing not later than thirty (30) days from the date of such meeting, then the approving owners shall have an option to buy all of the apartments of the other apartment owners for the period ending on the sixtieth (60) day from the date of such meeting. Such approvals shall be irrevocable. The option shall be upon the following terms:

(a) Exercise of Option: The option shall be exercised by the delivery or mailing by certified mail to each of the record owners of the apartments to be purchased the following instruments:

(i) A certificate executed by the president and secretary of the Association certifying that the option to purchase apartments owned by the owners not approving termination has been exercised as to all of such apartments. Such certificate shall state the names of the apartment owners exercising the option, the apartments owned by them, and the apartments being purchased by each of them.

(ii) An agreement to purchase upon the terms herein stated the apartment of the owner receiving the notice, which agreement shall be signed by the purchasing apartment owner.

(b) Price: The sales price for each apartment shall be the fair market value determined by agreement between the seller and purchaser within thirty (30) days from the delivery or mailing of such agreement. In the absence of such agreement, the

price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the apartment; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

(c) Payment: The purchase price shall be paid in cash or upon terms approved by the seller and the Association.

(d) Closing: The sale shall be closed within ten (10) days following the determination of the sales price.

(e) Termination: The closing of the purchase of all of the apartments subject to such option shall effect a termination of the Condominium without further act except the filing of the certificate hereafter required.

(f) Failure to Purchase: If the option to purchase all of the apartments owned by apartment owners who do not approve the termination of the Condominium is not exercised, and if all of the sales under the option are not closed within a reasonable time after the closing date provided above, the proposed termination of the Condominium shall fail. The failure shall be evidenced by a certificate of the Association, and thereafter the offers and agreements to purchase under this provision that have not resulted in closed sales shall be void.

(3) Certificate: The termination of the Condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by its president and secretary certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the Public Records of Collier County, Florida.

(4) Shares of Owners After Termination: After termination of the Condominium, the apartment owners shall own the Condominium property and all assets of the Association as tenants in common in undivided shares that shall be the same as the undivided shares in the common elements appurtenant to the owners' apartments to the termination.

(5) Amendment: This section concerning termination cannot be amended without consent of all apartment owners and of all record owners of mortgages upon the apartments.

17. SEVERABILITY: The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration of Condominium, Articles of Incorporation of the Association, the By-Laws, and regulations of the Association shall not affect the validity of the remaining portions.

IN WITNESS WHEREOF, the Developer has executed this Declaration the day and year first above written.

Signed, Sealed and Delivered in the Presence of

Anthony G. Lewis
Domenico J. Medugno

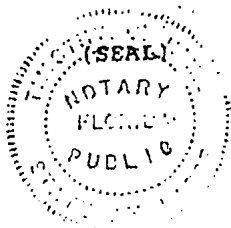
BRAR ASSOCIATES OF NAPLES, LTD.,
a Florida limited partnership

By *Balbir S. Brar*
Balbir Brar,
General Partner

STATE OF
COUNTY OF

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Balbir Brar, General Partner of BRAR ASSOCIATES OF NAPLES, LTD., a Florida limited partnership, well known to me to be the person named in the foregoing Declaration of Condominium, and that he acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily, and that they affixed thereto their hands and seals the day and year first above written.

WITNESS my hand and official seal in the County and State last aforesaid this 10 day of JUNE, 1983.



Anthony G. Lewis
Notary Public

My commission expires:

Notary Public, State of Florida
My Commission Expires May 20, 1986
Revised Notary Public - Insurance, Inc.