

RRC FEE 424.50  
COPIES 94.00  
MISC 1.00

PREPARED BY AND TO BE RETURNED:  
Stephen C. Pierce, Esquire  
Associate General Counsel and Vice President  
WCI Communities, Inc.  
24301 Walden Center Drive  
Bonita Springs, FL 34134

Retn:  
WCI COMMUNITIES  
24301 WALDEN CENTER DR #300  
BONITA SPRINGS FL 34134

**DECLARATION OF CONDOMINIUM**

**OF**

**BIMINI BAY III AT TARPON BAY, A CONDOMINIUM**

**NAPLES, FLORIDA**

WCI COMMUNITIES, INC., herein called "developer," on behalf of itself and its successors, grantees, and assigns, hereby makes this Declaration of Condominium:

1. **SUBMISSION TO CONDOMINIUM** — The fee simple title or easement interests, as noted, to the lands located in Collier County, Florida, and described in attached Exhibit "E" are submitted to the condominium form of ownership.

2. **NAME — PLAN OF DEVELOPMENT** — Developer has or will construct a total of 64 single family residential units and associated improvements in sixteen two story, four unit buildings designated "Bimini Bay III at Tarpon Bay, A Condominium."

3. **NAME — ASSOCIATION** — The name of the Condominium Association is "Bimini Bay III at Tarpon Bay Condominium Association, Inc." This Association is incorporated as a not-for-profit Florida corporation.

4. **DEFINITIONS** — The terms used herein will have the meanings stated in Florida Statutes Chapter 718 (Condominium Act) and as follows, unless the context otherwise requires:

4.1. **ASSESSMENT** — The share of the funds required for the payment of common expenses that is assessed against a unit owner from time to time.

4.2. **ASSOCIATION** — The corporation responsible for the operation of the Condominium.

**4.3. ASSOCIATION PROPERTY** — All real or personal property owned or leased by the Association.

**4.4. BOARD OF DIRECTORS or DIRECTORS or BOARD** — The Board of directors responsible for the administration of the Association.

**4.5. CHARGE or SPECIAL CHARGE** — The obligation of a unit owner to pay or reimburse money to the Association that cannot be secured as an assessment pursuant to F.S. 718.116, but which will, if the charge is not paid, give rise to a cause of action against the unit owner pursuant to this Declaration.

**4.6. COMMON ELEMENTS** — The portions of the property submitted to condominium ownership and not included in the units including:

**4.6.1. Land**

**4.6.2. All parts of improvements that are not included within the units**  
(Note: chases and load bearing columns within units are common elements but are not shown on Exhibit "B" the Condominium Plot Plan.)

**4.6.3. Easements**

**4.6.4. Installations for the furnishing of services to more than one unit or to the common elements, such as cable television, electricity, water and sewer.**

**4.7. COMMON EXPENSES** — All expenses properly incurred by the Association in the performance of its duties, including expenses specified in F.S. 718.115 and such expenses as may be declared to be common expenses by this Declaration. The cost of water and sewer service to the units shall be a common expense.

**4.8. COMMON SURPLUS** — The amount of all receipts or revenues including assessments, rents, or profits collected by the Condominium Association which exceeds common expenses.

**4.9. CONDOMINIUM DOCUMENTS** — This Declaration and the attached exhibits setting forth the nature of the property rights in the Condominium and the covenants running with the land that govern these rights. All the other Condominium documents will be subject to the provisions of the Declaration. The order of priority of the documents will be as follows: (1) Declaration; (2) Association Articles of Incorporation; (3) By-laws; and (4) Rules and Regulations.

**4.10. CONDOMINIUM PARCEL** — A unit together with the undivided share in the common elements which is appurtenant to the unit.

**4.11. CONDOMINIUM PROPERTY** — The real and personal property, both tangible and intangible, subject to condominium ownership, whether or not contiguous; all improvements thereon; and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

**4.12. DEVELOPER** — WCI COMMUNITIES, INC., the company that has established this Condominium, and the successors and assigns of the company's development rights.

**4.13. EXHIBITS:**

- A. Association Articles of Incorporation
- B. Condominium Plot Plan
- C. Association By-laws
- D. Rules and Regulations
- E. Legal description of the Condominium Property

**4.14. FAMILY** — One natural person or a group of two or more natural persons, each of whom is related to each of the others by blood, marriage, or adoption (exclusive of household employees); or not more than two adult persons not so related and the children of either

or both of them who reside together as a single not-for-profit housekeeping unit.

**4.15. GUEST** — Any person who is physically present in or occupies a unit on a temporary basis at the invitation of the unit owner without the payment of consideration.

**4.16. INSTITUTIONAL FIRST MORTGAGEE** — The mortgagee or its assignee of a first mortgage on a condominium parcel. The mortgagee may be a bank, a savings and loan association, a mortgage banker, a life insurance company, a real estate or mortgage investment trust, a pension or profit sharing trust, the Federal Housing Administration, the Department of Veterans Affairs, Fannie Mae, Freddie Mac or any agency of the United States of America, or the Developer. The term also refers to any holder of a first mortgage against a condominium parcel which mortgage is guaranteed or insured, as evidenced by a recorded instrument, by the Federal Housing Administration, the Department of Veterans Affairs, any agency of the United States of America, or any other public or private corporation engaged in the business of guaranteeing or insuring residential first mortgage loans, and their successors and assigns.

**4.17. LEASE** — The grant by a unit owner of a temporary right of use of the owner's unit for a valuable consideration.

**4.18. LIMITED COMMON ELEMENTS** — Those portions of the common elements that are reserved for the use of a certain unit or units to the exclusion of the other units.

**4.19. OCCUPY** — The act of being physically present in a unit on two or more consecutive days, including staying overnight. An occupant is one who occupies a unit.

**4.20. OPERATION** — The administration and management of the Condominium Property.

**4.21. PERSON** — An individual, corporation, trust, or other legal entity capable of holding title to real property.

**4.22. SINGULAR, PLURAL, GENDER** — Whenever the context permits, use

of the plural includes the singular, use of the singular includes the plural, and use of any gender includes all genders.

**4.23. TARPON BAY** — The name given to the master planned community within which this Condominium is located.

**4.24. TARPON BAY COMMUNITY ASSOCIATION, INC.** — This is the Association which pursuant to the Declaration of Covenants and Restrictions for Tarpon Bay owns, administers and maintains the roads, landscaped areas, entrance, freshwater lakes and retention area, swimming pool, deck and clubhouse within Tarpon Bay, and of which Bimini Bay owners are automatically members.

**4.25. UNIT** — A part of the Condominium Property that is subject to exclusive ownership as described in this declaration.

**4.26. UNIT NUMBER** — The letter, number, or combination thereof that is designated on the Condominium Plot Plan and is used as the identification of a unit.

**4.27. UNIT OWNER** — The owner of record legal title to a condominium parcel.

**4.28. VOTING INTEREST** — The voting rights distributed to the Association members pursuant to F.S. 718.104(4)(i).

**5. CONDOMINIUM UNITS, BOUNDARIES, AND APPURTENANCES** — Each unit and its appurtenances constitute a separate parcel of real property that may be owned in fee simple. The unit may be conveyed, transferred, and encumbered like any other parcel of real property, independently of all other parts of the Condominium Property, subject only to the provisions of the condominium documents and applicable laws.

**5.1. BOUNDARIES** — Each unit will have boundaries as defined below. The boundaries may exist now or may be created by construction, settlement, or movement of the buildings; or by permissible repairs, reconstruction, or alterations.

**5.1.1. HORIZONTAL BOUNDARIES** — The upper and lower boundaries of the units will be:

**5.1.1.1. UPPER BOUNDARY** — The planes of the underside of the finished and undecorated ceilings of the unit, extended to meet the perimeter boundaries.

**5.1.1.2. LOWER BOUNDARY** — The planes of the upperside of the finished and undecorated surface of the floors of the unit, extended to meet the perimeter boundaries.

**5.1.2. PERIMETER BOUNDARIES** — The perimeter boundaries will be both the finished and undecorated interior surfaces of the perimeter walls of the unit as shown on the Condominium Plot Plan, and the planes of the interior surfaces of the unit's windows, doors, and other openings that abut the exterior of the building or common elements, including limited common elements.

**5.2. EXCLUSIVE USE** — Each unit owner will have the exclusive use of such owner's unit.

**5.3. OWNERSHIP** — The ownership of each unit will carry with it, as appropriate, and whether or not separately described, all of the rights, title, and interest of a unit owner in the Condominium Property which will include, but not be limited to:

**5.3.1. COMMON ELEMENTS AND COMMON SURPLUS** — An undivided share of ownership of the common elements and common surplus.

**5.3.2. LIMITED COMMON ELEMENTS** — Either the exclusive use or use in common with one or more other designated units of the limited common elements that may exist. Such elements include the garage(s), lanais and all items set forth in Section 6. that are exterior to a unit and are expressly required to be maintained by the unit owner.

**5.3.3. ASSOCIATION MEMBERSHIP** — Membership in the

Association and voting rights.

**5.3.4. EASEMENT FOR AIR SPACE** — 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 be lawfully altered or reconstructed from time to time. The easement will be terminated automatically in any air space that is vacated from time to time.

**5.4. EASEMENTS** — The following non-exclusive easements are created and granted from the developer to each unit owner; to the Association; the Tarpon Bay Community Association, Inc. and their employees, agents, and hired contractors; to utility companies; to unit owners' families in residence, guests, and invitees; and to governmental and emergency services, as applicable.

**5.4.1. INGRESS AND EGRESS** — Easements over the common elements for ingress and egress to units and public ways.

**5.4.2. MAINTENANCE, REPAIR, AND REPLACEMENT** — Easements through the units and common elements for maintenance, repair, and replacement.

**5.4.3. UTILITIES** — Easements through the Common Elements and units for conduits, ducts, plumbing, and wiring, and other facilities for the furnishing of services and utilities to other units, the Common Elements, and other utility customers, both existing and future.

**5.4.4. PUBLIC SERVICES** — Access to both the Condominium Property and the units for lawfully performed emergency, regulatory, law enforcement, and other public services.

**6. MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS** — The responsibility for protection, maintenance, repair and replacement of the Condominium Property, and restrictions on its alteration and improvement shall be as follows:

**6.1. ASSOCIATION MAINTENANCE** — The Association is responsible for

the protection, maintenance, repair and replacement of all Common Elements and Association property (other than the limited common elements that are required elsewhere herein to be maintained by the unit owner). The cost is a common expense. The Association's responsibilities include, without limitation:

- 6.1.1. Electrical wiring up to the circuit breaker panel in each unit.
- 6.1.2. Water pipes up to the individual unit cut-off valve within the unit.
- 6.1.3. Cable television lines up to the wall outlets in the units.
- 6.1.4. Air conditioning condensation drain lines, up to the point where they enter each unit.
- 6.1.5. Sewer lines, up to the point where they enter the unit.
- 6.1.6. All installations, fixtures and equipment located within one unit but serving another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements.
- 6.1.7. The exterior surface of the main entrance doors to the units.
- 6.1.8. All exterior building walls, including painting, waterproofing, and caulking.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a unit and serving only that unit. All incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense, except the Association shall not be responsible for the damage to any alteration or addition to the common elements made by a unit owner or his predecessor in title or for damage to paint, wallpaper, paneling, flooring or carpet



which, of necessity, must be cut or removed to gain access to work areas located behind them.

**6.2. UNIT OWNER MAINTENANCE** — Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit and certain limited common elements. The owner's responsibilities include, without limitation:

**6.2.1.** Maintenance, repair and replacement of screens, windows and window glass.

**6.2.2.** The main entrance door to the unit and its interior surfaces.

**6.2.3.** All other doors within or affording access to the unit.

**6.2.4.** The electrical, mechanical and plumbing lines, pipes, fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the unit or serving only the unit.

**6.2.5.** The circuit breaker panel and all electrical wiring going into the unit from the panel.

**6.2.6.** Appliances, water heaters, smoke alarms and vent fans.

**6.2.7.** All air conditioning, and heating equipment, thermostats, ducts and installations serving the unit exclusively, except as otherwise provided in Section 6.4. below.

**6.2.8.** Carpeting and other floor coverings.

**6.2.9.** Door and window hardware and locks.

**6.2.10.** Shower pans.

**6.2.11.** The main water supply shut-off valve for the unit.

**6.2.12.** Other facilities or fixtures which are located or contained entirely within the unit and serve only the unit.

**6.2.13.** All interior, partition walls which do not form part of the boundary of the unit.

**6.3. OTHER UNIT OWNER RESPONSIBILITIES —**

**6.3.1. LANAIS, GARAGES —** Where a limited common element consists of a lanai or garage the unit owner who has the right of exclusive use of the area shall be responsible for the day-to-day cleaning and care of the walls, floor and ceiling bounding said area, if any; and all fixed glass and sliding glass doors in portions of the entrance way to said area, if any; and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the building, support columns and the concrete slabs. The unit owner shall be responsible for day-to-day cleaning and care, but all painting and maintenance of the exterior surfaces and structures of the building shall be the responsibility of the Association and shall be a common expense. The maintenance, repair, replacement and insurance of approved lanai floor covering shall be the responsibility of the unit owner.

**6.3.2. INTERIOR DECORATING —** Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtain, lamps and other light fixtures, and other furnishings and interior decorating.

**6.3.3. SOUND TRANSMISSION.** All units shall always have the floors covered with wall-to-wall carpeting installed over padding, except carpeting is not required in entry foyer, kitchens, bathrooms, grand salon or laundry rooms, subject to the exceptions set forth below. A unit owner who desires to install in place of carpeting any hard-surface floor covering (e.g., marble, slate, ceramic tile, parquet) shall also install a sound absorbent underlayment beneath it such as padding or a resilient sound absorbing underlayment of fiber board, cork or other acceptable material in accordance with the rules and regulations promulgated by the Association; as amended from time to time. The unit owner shall obtain

written approval of the Board prior to any such installation. If the installation is made without such prior written approval, the Board may, in addition to exercising all the other remedies provided in this Declaration, require the offending unit owner to cover all such hard-surface flooring with carpeting, or require the removal of such hard-surface flooring at the expense of the offending unit owner. Each unit owner, by acceptance of a deed or other conveyance of their unit, hereby acknowledges and agrees that sound and impact noise transmission in a building such as within the Condominium is very difficult to control, and that noises from adjoining or nearby units and/or mechanical equipment can be heard in another unit. The Developer does not make any representation or warranty as to the level of sound or impact noise transmission between and among units and the other portion of the Condominium property, and each unit owner hereby waives and expressly releases, to the extent not prohibited by applicable law as to the date of this Declaration, any such warranty and claims for loss or damages resulting from sound or impact noise transmission.

**6.3.4. WINDOW COVERINGS** — The covering and appearance of the windows and doors, whether by draperies, shades, reflective film or other items, whether installed within or outside of the unit, visible from the exterior of the unit, shall be subject to the Rules and Regulations of the Association.

**6.3.5. MODIFICATIONS AND ALTERATIONS OR NEGLECT** — If a unit owner makes any modifications, installations or additions to his unit or the common elements or neglects to maintain, repair and replace as required by this Section 6, the unit owner, and his successors in title, shall be financially responsible for:

**6.3.5.1.** Maintenance, repair and replacement of the modifications, installations or additions;

**6.3.5.2.** The costs of repairing any damage to the common

elements or other units resulting from the existence of such modifications, installations or additions;  
and

**6.3.5.3.** The costs of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other parts of the Condominium Property for which the Association is responsible.

**6.3.6. USE OF LICENSED AND INSURED CONTRACTORS —**

Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the unit or common elements, whether with or without Association approval, such owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and fully insured, and that the owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance.

**6.4. SERVICE AND MAINTENANCE CONTRACTS —** If there shall become available to the Association:

**6.4.1.** A program of contract maintenance for items which are located within the units and otherwise the responsibility of the unit owner, such as water heaters and/or air-conditioning compressors and/or air handlers and related equipment serving individual units; or

**6.4.2.** certain contract services to be delivered within the units for items otherwise the responsibility of the unit owner, such as pest control or cable television: the Board may enter into any such contracts which the Board determines are to the benefit of the owners generally. The expenses of such contractual undertakings to the Association shall be a common expense. All maintenance, repairs and replacements not covered by the contracts shall remain the responsibility of the unit owner. Because the expenses are common expenses, an election by a unit owner not to take advantage of the services or maintenance provided by such contracts shall not

excuse the owner from paying his share of the cost.

#### **6.5. OWNER ALTERATION OF COMMON ELEMENTS RESTRICTED**

— No unit owner may make any alterations, add to, or remove any part of the portions of the improvements that are to be maintained by the Association without the prior written approval of the Board of Directors. The Board has the authority to approve, disapprove, or require modifications to the proposed work. The Board's decision will be determinative of the matter. The owner must obtain all necessary approvals and permits from applicable government entities. The Association may require approval from engineers or other professionals as a prerequisite. The entire expense must be borne by the owner, including any subsequent maintenance and restoration. No owner will do any work that would jeopardize the safety or soundness of the building, increase insurance requirements or premiums or impair any easements. If approved by the Board, two units owned by the same owner that are adjacent horizontally, may be connected by doorways through common element walls. Such Board approved work is declared not to constitute material alterations or substantial additions to the common elements.

### **7. COMMON ELEMENTS**

**7.1. SHARE OF** — The common elements will be owned by the unit owners in equal undivided shares of  $1/64^{\text{th}}$  part of the whole per unit.

**7.2. USE** — Each unit owner and the Association will be entitled to use the common elements in accordance with the purposes for which the elements are intended; however, no such use may hinder or encroach upon the lawful rights of other unit owners.

**7.3. MATERIAL ALTERATIONS AND ADDITIONS** — Except for changes made by an owner with Association approval as provided in Section 6.5. above, or by the Board of Directors alone for the integrity of the condominium property, material alteration of or substantial additions to the common elements including the purchase acquisition, sale, conveyance, or

mortgaging of such property may be effectuated only by vote of 67% of the voting interests of the Association at a meeting called for that purpose. The Board of Directors, without any vote of the membership, is authorized to lease or grant easements or licenses for the use of the common elements to unit owners or other persons, if in the judgment of the Board, the use will benefit the members of the Association, even where the lease, easement, or license would result in a material alteration or substantial addition to the common elements or Association property. The Association may charge for such use.

**8. FISCAL MANAGEMENT** — The fiscal management of the Condominium including budget, fiscal year, charges, assessments, and collection of assessments shall be as set forth herein and in the By-laws (Exhibit C).

**9. ADMINISTRATION** — The administration of the Condominium shall be by the Board of Directors and its powers and duties shall be as set forth herein and in the Articles of Incorporation and the By-Laws.

**10. INSURANCE** — In order to adequately protect the unit owners, the Association, and all parts of the Condominium Property and Association property that are required to be insured by the Association, insurance shall be carried and kept in force at all times in accordance with the following provisions:

**10.1. DUTY AND AUTHORITY TO OBTAIN** — The Board of Directors shall use its best efforts to obtain and maintain adequate insurance. In all insurance purchased by the Association, the name of the insured shall be the Association and the unit owners and their mortgagees (without naming them), as their interests shall appear and shall provide for the issuance of certificates of insurance and mortgagee endorsements to any or all of the holders of institutional first mortgages. In the event that the Tarpon Bay Community Association, Inc. requests the Association to name it as an additional insured as its interests may appear, the Association shall do so.

**10.2. BASIC INSURANCE** — The Board will procure insurance covering the buildings and improvements as well as all insurable Association property, in an amount determined annually by the Board of Directors. Pursuant to F. S. 718.111(11)(b) the word "building" does not include floor coverings, wall coverings, ceiling coverings nor electrical fixtures, appliances, air conditioning or heating equipment, water heaters or built-in cabinets located within a unit. Such insurance shall afford the following protection:

**10.2.1. PROPERTY** — The policy must include replacement cost coverage for loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by the standard "All Risk" property contract.

**10.2.2. FLOOD** — The policy may include up to the replacement cost for the buildings and insurable improvements, as available.

**10.2.3. LIABILITY** — The policy must include premises and operations liability endorsements for bodily injury and property damage in such limits of protection and with such coverage as required by the Board of Directors of the Association, with cross liability endorsements to cover liabilities of the unit owners as a group to a unit owner.

**10.2.4. AUTOMOBILE** — The policy must include automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles used in Association business in such limits of protection and with such coverage as may be required by the Board of Directors of the Association.

**10.2.5. WORKERS' COMPENSATION** — The Association shall maintain worker's compensation insurance to meet the requirements of law.

**10.2.6. INSURANCE OR FIDELITY BONDING** — The Association shall obtain and maintain adequate insurance or fidelity bonding for all person who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum

funds that will be in the custody of the Association or its management agent at any one time. The term "persons who control or disburse funds of the Association" includes, but is not limited to, those individuals authorized to sign checks and the president, secretary, and treasurer of the Association. The Association shall bear the cost of bonding.

**10.2.7. DIRECTORS AND OFFICERS LIABILITY INSURANCE —**

The Association shall obtain and maintain adequate Directors and officers liability insurance utilizing the broad form of policy coverage for all Directors and officers and, if available, committee members of the Association.

**10.2.8. OPTIONAL COVERAGE —** The Association may purchase and carry such other insurance coverage as the Board of Directors may determine from time to time to be in the best interests of the Association and unit owners.

**10.3. DESCRIPTION OF COVERAGE —** A detailed summary of the coverage included in the master policies shall be available for inspection by unit owners upon request.

**10.4. WAIVER OF SUBROGATION —** If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its rights to subrogation as to any claim against unit owners, the Association, or their respective servants, agents or guests.

**10.5. SHARES OF INSURANCE PROCEEDS —** All proceeds of insurance policies purchased by the Association shall be payable to the Association. The duty of the Association shall be to receive such proceeds and hold and disburse them for the purposes stated herein in the following shares:

**10.5.1. COMMON ELEMENTS —** Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.



**10.5.2. UNITS** — Proceeds on account of damage to units shall be held in as many undivided shares as there are damaged units, the share of each owner being in proportion to the cost of restoring the damage suffered by each such unit.

**10.5.3. MORTGAGEES** — If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests may appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against units except to the extent that insurance proceeds exceed the actual costs of repair or restoration of the damaged improvements, and no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty. The Association shall pay all policy deductible amounts on Association policies.

**10.6. DISTRIBUTION OF INSURANCE PROCEEDS** — Proceeds of insurance policies received by the Association shall be distributed for the benefit of the unit owners in the following manner:

**10.6.1. COST OF RECONSTRUCTION OR REPAIR** — If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the proceeds shall first be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be retained by to the Association.

**10.6.2. FAILURE TO RECONSTRUCT OR REPAIR** — If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds after expenses shall be distributed to the beneficial owners. The remittances to unit owners and their mortgagees shall be payable jointly to them. This is a covenant for the benefit of mortgagees and may be enforced by them.

**10.7. ASSOCIATION AS AGENT** — The Association is hereby irrevocably

appointed agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association.

**11. RECONSTRUCTION OR REPAIR AFTER CASUALTY** — If any part of the Condominium Property is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

**11.1. DAMAGE TO UNITS** — Where loss or damage is only to those parts of a unit for which the responsibility of maintenance and repair is that of the unit owner, any Association insurance proceeds on account of the damage, less the deductible, shall be distributed to such contractors, suppliers and personnel for work done, materials supplied or services required for reconstruction or repair. Payments shall be in such amounts and at such times as the unit owners may direct. The owners of damaged units shall be responsible for reconstruction and repair and shall bear the cost thereof, if any, in excess of the insurance proceeds.

**11.2. DAMAGE TO COMMON ELEMENTS — LESS THAN “VERY SUBSTANTIAL”** — Where loss or damage occurs to the common elements, but the loss is less than “very substantial”, as hereinafter defined, it shall be mandatory for the Association to repair, restore or rebuild the damage caused by the loss, and the following procedures shall apply:

**11.2.1. ESTIMATES** — The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of reconstruction and repair, and shall negotiate and contract for the work.

**11.2.2. INSURANCE INSUFFICIENT** — If the net proceeds of insurance plus available reserves are insufficient to pay for the cost of reconstruction and repair of the common elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners. Such special assessments need not be approved by the

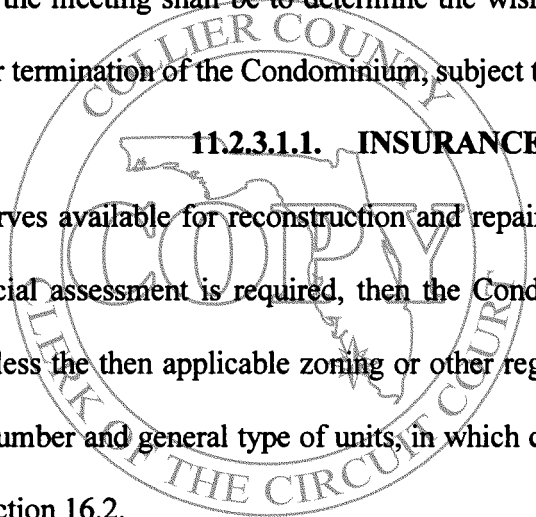
unit owners. The special assessments shall be added to the proceeds available for reconstruction and repair of the property.

**11.2.3. "VERY SUBSTANTIAL" DAMAGE** — As used in this Declaration, the term "very substantial" damage shall mean loss or damage whereby 3/4ths or more of the total units are rendered uninhabitable. Should such "very substantial" damage occur, then:

**11.2.3.1. OWNERS' MEETING** — A meeting of the Association shall be called by the Board of Directors to be held within a reasonable time after the casualty. A determination by the Board of Directors as to what is a reasonable time shall be conclusive. The purpose of the meeting shall be to determine the wishes of the membership with reference to reconstruction or termination of the Condominium, subject to the following:

**11.2.3.1.1. INSURANCE SUFFICIENT** — If the insurance proceeds and reserves available for reconstruction and repair are sufficient to cover the cost thereof, so that no special assessment is required, then the Condominium Property shall be reconstructed or repaired unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general type of units, in which case the Condominium shall be terminated pursuant to Section 16.2.

**11.2.3.1.2. INSURANCE INSUFFICIENT** — If the insurance proceeds and reserves available for reconstruction and repair are not sufficient to cover the cost thereof so that a special assessment will be required, then unless at least 67% of the voting interests of the Association vote in favor of such special assessment and against termination of the Condominium, it shall be terminated pursuant to Section 16.2. If 67% of the voting interests of the Association approve the special assessment, the Association, through its Board, shall levy



such assessment and shall proceed to negotiate and contract for such reconstruction and repairs. The special assessment shall be added to the proceeds of insurance and reserves available for reconstruction and repair of the property.

**11.2.4. DISPUTES** — If any dispute shall arise as to whether "very substantial" damage has occurred, a determination by the Board of Directors shall be binding upon all unit owners.

**11.3. APPLICATION OF INSURANCE PROCEEDS** — It shall be presumed that the first monies disbursed for reconstruction and repair shall be from the insurance proceeds and they shall first be applied to reconstruction of the common elements and Association property and then to the units; if there is a balance in the funds held by the Association after the payment of all costs of reconstruction and repair, such balance shall be retained by the Association. However, if special assessments were made pursuant to Section 11.2.3.1.2. hereof, then all or a part of the remaining money shall be returned to the unit owners paying said assessments pro-rata, according to the amount each paid, up to the full amount each paid, and then to the Association.

**11.4. EQUITABLE RELIEF** — In the event of substantial damage to the Condominium Property, and if the property is not reconstructed or repaired within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be conclusively presumed that reconstruction or repair has occurred within a reasonable period of time if substantial work is commenced within such time following the damage or destruction as is determined by the Board of Directors to be reasonable and the work proceeds without intentional and unwarranted delay to completion.

**11.5. PLANS AND SPECIFICATIONS** — Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original buildings, or in lieu

thereof, according to plans and specifications approved by the Board of Directors and by the owners of 67% of the voting interests of the Association.

**12. USE RESTRICTIONS** — The use of the property of the Condominium shall be in accordance with the Rules and Regulations attached hereto and incorporated herein as Exhibit "D" and the following provisions:

**12.1. LAWFUL USE** — 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 upon Condominium Property shall be the same as the responsibility for the repair and maintenance of the property as expressed earlier in this Declaration.

**12.2. RULES AND REGULATIONS** — The Rules and Regulations attached hereto as Exhibit "D" and made a part hereof by reference concerning the use of the Condominium Property including the units may be amended from time to time by the Board of Directors. Copies of the regulations and amendments shall be furnished by the Association to all unit owners. No new or amended regulation may be enforced prior to distribution to the owners. Changes in the Rules and Regulations must be recorded in the Public Records of Collier County.

**12.3. USE AND OCCUPANCY OF THE UNITS** — is restricted to one family and their guests per unit only. Occupancy by guests in the absence of the unit owner is limited to two times per calendar year for maximum periods of 14 days. These use restrictions shall not be construed in such a manner as to prohibit a unit owner from maintaining his personal professional library, keeping his personal business or professional records or accounts or handling his personal, business or professional telephone calls or correspondence in and from his unit. Such uses are expressly declared customarily incident to the principal residential use. All guests must be

registered with the Association upon arrival and unregistered guests may be denied use of recreational facilities and amenities.

**12.4. ACCESS TO UNITS** — The Association has an irrevocable right of access to the units during reasonable hours when necessary for the purpose of maintenance, repair and replacement of the common elements or of any portion of a unit to be maintained by the Association pursuant to this Declaration or for making emergency repairs which are necessary to prevent damage to the common elements or to another unit or units. The right of access to a unit shall be exercised after reasonable notice to the unit owners, unless such notice is not possible or practical under the circumstances, and with due respect for the occupants' rights to privacy and freedom from unreasonable annoyance, with reasonable precautions to protect the personal property within the unit. The Association requires and shall retain a pass-key to all units. No unit owner shall install or alter any lock that prevents access while the unit is unoccupied without providing the Association with a key.

**12.5. PARKING** — Each unit shall always have the exclusive use of its garage.

**12.6. PETS — TENANTS AND GUESTS** — Pets shall be as allowed and regulated in the Rules and Regulations (Exhibit "D"). However, tenants and guests shall not be permitted to have pets.

**12.7. NUISANCES PROHIBITED** — No person shall engage in any practice, exhibit any behavior nor permit any condition to exist that will constitute a nuisance or become a reasonable source of annoyance or disturbance to any occupant of the Condominium.

**13. LEASE, CONVEYANCE, DISPOSITION** — The purpose and object of this Section is to maintain a quiet, tranquil, non-transient and single-family oriented atmosphere with the residents living in compatible coexistence with other financially responsible persons who are of like-mind and acceptable both in character and comportment. This objective is considered to be

both important and justified because of the necessity of sharing facilities and because of the large personal financial investment of each owner. Therefore, the lease, conveyance, disposal and financing of the units by owners (subject to the exceptions provided in Section 18.1) shall be subject to the following provisions:

**13.1. ASSOCIATION APPROVAL REQUIRED** – Except for Developer sales no owner may sell, lease, give or otherwise transfer ownership of a unit or any interest therein in any manner without the prior written approval of the Association. The approval shall be a written instrument in recordable form (except for leases) which shall include, without limitation, the nature of the transfer (sale, lease, etc.), the parties to the transaction (sellers, purchasers, etc.), the unit number, the name of the Condominium and the Official Record Book (O. R. Book) and Page numbers in which this Declaration was originally recorded. For all unit transfers of title other than from the Developer, the approval must be recorded simultaneously in the Collier County, Florida Public Records with the Deed or other instrument transferring title to the unit.

**13.1.1. DEVISE OR INHERITANCE** If any unit owner shall acquire title by devise or inheritance or in any other manner not heretofore considered, the continuance of his ownership shall be subject to the approval of the Association. Such owner shall give the Association notice of the acquisition of his title together with such additional information concerning the unit owner as the Association may reasonably require together with a copy of the instrument evidencing the owner's title. If such notice is not given, the Association at any time after receiving knowledge of such transfer, may approve or disapprove the transfer of ownership.

**13.1.2. LEASES** — Approvals of leases need not be recorded. Only entire units may be leased. All leases must provide, and if they do not, shall be deemed to provide the agreement of the lessee(s) to abide by all of the Covenants of the Condominium and Community Association documents and that a violation of the documents is a material breach of the lease and is

grounds for damages, termination and eviction and that the lessee and the owner agree that the Association may proceed directly against such lessee(s) and that the lessee(s) shall be responsible for the Association's costs and expenses, including attorney's fees, at all trial and appellate levels. If such costs and fees are not immediately paid by the lessee(s), the unit owner shall pay them and such funds shall be secured as a charge. Each unit owner irrevocably appoints the Association as owner's agent authorized to bring actions in owner's name and at owner's expense including injunction, damages, termination and eviction. The Rules and Regulations must be provided to the lessee(s) by or on the behalf of the unit owner at or before the commencement of the lease term. The minimum leasing period is 30 consecutive days and the maximum lease period is one year.

**13.1.3. MULTIPLE OWNERS** — Consistent with Section 13 above, de facto time sharing of units is not permitted and approval will not be given for the sale of a unit or an interest in a unit to multiple persons such as (e.g. siblings or business associates), who may intend that they and their families would split occupancy of the unit into different time periods during the year;

**13.2. APPROVAL PROCEDURE** — The approval of the Association shall be obtained as follows:

**13.2.1. WRITTEN NOTICE** — Not later than 15 days before the transfer of ownership occurs, or the first day of occupancy under a lease, legal written notice shall be given the Association by the owner of his intention to sell or transfer his interest in any fashion. The notice shall include the name and address of the proposed acquirer and a correct and complete copy of the proposed documents to be executed to effectuate the transaction. The Association may require such other and further information as it deems reasonably necessary and may impose a transfer fee not to exceed \$100.00 or as permitted by law from time to time.

**13.2.2. ASSOCIATION'S OPTIONS** — The Association must, within



15 days after receipt of all the information required above, either approve, disapprove for cause, or, upon the written demand of the owner, furnish an alternate purchaser it approves or the Association may itself elect to purchase, and the owner must sell to such alternate or to the Association upon the same terms set forth in the proposal given the Association or the owner may withdraw his proposed sale. In exercising its power of disapproval the Association must act in a manner that is neither arbitrary nor unlawfully discriminatory and withhold approval only for a reason or reasons rationally related to the protection, preservation and proper operation of the Condominium and the purposes as set forth at the beginning of this Section 13. If the Association fails or refuses within the allotted time to notify the owner of either approval or disapproval in writing, or if it fails to provide an alternate purchaser or make an election to purchase the unit itself when required to do so, then the Association shall conclusively be presumed to have approved the transaction, and the Association shall, upon demand, provide a recordable certificate of approval;

**13.2.3. CLOSING DATE** — The sale shall be closed within 60 days after an alternate purchaser has been furnished or the Association has elected to purchase;

**13.2.4. NOTICE OF DISAPPROVAL** — If the Association disapproves the proposed transaction (subject to the qualifications contained in Section 13.2.2.) notice of disapproval shall be promptly sent in writing to the owner or interest holder, and the transaction shall not be made. The Association need not approve a proposed lease until such time as all unpaid assessments and all court costs and attorneys fees (if any) incurred by the Association and due and owing for the unit at the time approval is sought have been paid. Other appropriate grounds for disapproval are as follows:

1. The unit owner has a history of leasing his unit without obtaining approval, or leasing to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his unit;

2. The real estate company or rental agent handling the leasing transaction on behalf of the unit owner has a history of screening lessee applicants inadequately, recommending undesirable lessees or entering into leases without prior Association approval;

3. The application on its face indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium and the Tarpon Bay Community.

4. The prospective lessee has been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;

5. The prospective lessee has a history of conduct which evidences disregard for the rights and property of others;

6. The prospective lessee evidences a strong possibility of financial irresponsibility;

7. The prospective lessee, during previous occupancy in this Condominium or elsewhere, has evidenced an attitude of disregard for the Association rules.

**13.3. JUDICIAL SALES** — are exempt from this Section.

**13.4. UNAPPROVED TRANSACTIONS** — Any transaction which is not approved pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association.

**14. COMPLIANCE AND DEFAULT** — Each unit owner, each tenant and other invitee shall be governed by, and shall comply with the provisions of, the Condominium Act as amended from time to time, this Declaration, including its exhibits, the Association Articles of Incorporation and the Association By-laws.

**14.1. REMEDIES** — Failure to comply shall be grounds for relief, which relief

may include, but shall not be limited to, an action to recover damages or injunctive relief or both. Actions may be maintained by the Association or by any unit owner.

**14.2. COSTS AND FEES** — In any such proceeding, including appeals, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorney fees.

**14.3. OWNER INQUIRIES** — When a unit owner files a written inquiry by certified mail with the Board of Directors, the Board shall respond in writing to the unit owner within 30 days of the receipt of the inquiry. The Board's response shall either give a substantive response, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the Bureau of Condominiums. If the Board requests advice from the Bureau of Condominiums, the Board shall, within 10 days of receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the Board shall, within 60 days of the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to act as above set forth precludes the Association from recovering attorney's fees and costs in any subsequent litigation, administrative proceedings, or arbitration arising out of the inquiry. If unresolved, a dispute as defined in *F.S. 718.1255(1)* must be arbitrated in mandatory non-binding arbitration proceedings prior to commencing litigation. The Board of Directors may adopt reasonable rules and regulations governing the frequency and manner of responding to unit owner inquiries, including a limit of one unit owner inquiry in any 30 day period.

**14.4. NO WAIVER OF RIGHTS** — The failure of the Association or any owner to enforce any covenant, restriction or other provision of the Condominium Documents shall not constitute a waiver of the right to do so thereafter as to subsequent or other instances.

**15. AMENDMENTS** — Amendments to any of the Condominium documents shall be in accordance with the following:

**15.1. REQUIREMENTS** — An Amendment may be proposed either by the

Board of Directors or by 25% of the voting interests of the Association, and may be considered at any meeting of the owners, regular or special, of which due notice has been given according to the By-Laws, which notice includes notice of the substance of the proposed amendment. Passage shall be evidenced by a certificate executed in recordable form signed by the President or Vice President of the Association that it has been enacted by the affirmative vote of the required percentage of the voting interests (which vote may include later written approval of voters not present), and the separate written joinder of mortgagees where required and shall include the recording data identifying the location of the Declaration as originally recorded and which shall become effective when recorded in the public records. In addition, any amendment that would affect the surface water management system, including the water management portions of the common elements, if any, must have the prior approval of South Florida Water Management District.

**15.2. CORRECTIVE AMENDMENT** — Whenever it shall appear that there is a defect, error or omission in any of the Condominium documents or in order to comply with applicable laws or requirements of government entities, the amendment may be adopted by the Board of Directors alone;

**15.3. REGULAR AMENDMENTS** — Amendments may be enacted by a favorable vote of the owners of sixty-seven percent (67%) of the voting interests in the Association;

**15.4. DEVELOPER AMENDMENTS** — Until relinquishment of Developer control of the Association (Turnover) and except as otherwise provided by law in F.S. 718.110(2), the Developer specifically reserves the right, without the joinder of any person, to make such amendments to the Declaration and its exhibits or to the plan of development, as may be required by any lender, governmental authority or as may be, in its judgment, necessary or desirable. This paragraph shall take precedence over any other provision of the Declaration or its exhibits.

**15.5. MORTGAGEE CONSENT** — Amendments materially affecting the rights

or interests of mortgagees must have the consent of the holders of institutional first mortgages of record representing 51% of the votes of units subject to such mortgages who have requested the Association to notify them on any proposed action specified in this Section. Such consent shall not be unreasonably withheld. Implied consent shall be assumed when such holder fails to respond to any written request for consent within 30 days after the mortgage holder receives proper notice of the proposal provided the notice was delivered certified or registered mail, with a "Return Receipt" requested. In the event that mortgagee consent is provided other than by properly recorded joinder, such consent shall be evidenced by affidavit of the Association and recorded in the Public Records of Collier County, Florida. A change to any of the following shall be considered as material:

- any change in the proportion or percentage by which the owner of the unit shares the common expenses and owns the common surplus.
- reallocation of interests or use rights in the common elements;
- redefinition of any unit boundaries;
- convertibility of units into common elements or vice versa;
- expansion or contraction of the Condominium;

**15.6. DEVELOPER'S RIGHTS** — No amendment to this Declaration or any of the Condominium documents shall change the rights and privileges of the Developer without the Developer's written approval so long as the Developer holds any units for sale in the ordinary course of business;

**15.7. WRITTEN AGREEMENTS** — Any approval of unit owners on any matter called for by this Declaration, its Exhibits or any statute to be taken at a meeting of unit owners is hereby expressly allowed to be taken instead by written agreement, without a meeting

(which agreement may be in counterparts), subject to F.S. 718.112(2)(d)(4) and F.S. 617.0701.

**16. TERMINATION** — The termination of the Condominium shall be carried out in accordance with the following:

**16.1. BY AGREEMENT** — The Condominium may be caused to be terminated at any time by written agreement of the owners of at least three-fourths (3/4ths) of the units, and of the holders of institutional first mortgages as provided for in Section 15.5. above.

**16.2. WITHOUT AGREEMENT, ON ACCOUNT OF VERY SUBSTANTIAL DAMAGE** — If the Condominium suffers “very substantial damage” to the extent defined in Section 11.2.3. above, and it is not decided as therein provided that the Condominium will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will be terminated.

**16.3. PROCESS OF TERMINATION** — Termination of the Condominium occurs when a Certificate of Termination meeting the requirements of this Section is recorded in the Public Records of Collier County, Florida.

**16.3.1.** The termination of the Condominium by either of the foregoing methods shall be evidenced by a Certificate of Termination, executed by the President or Vice-President with the formalities of a deed, and certifying as to the facts effecting the termination. The Certificate shall also include the name and address of a Florida financial institution with trust powers, or a licensed Florida attorney, who is designated by the Association to act as Termination Trustee, and shall be signed by the Trustee indicating willingness to serve in that capacity.

**16.3.2.** The recording of that Certificate of Termination automatically divests the Association of title to all Association property, and divests all unit owners of legal title to their respective Condominium parcels, and vests legal title in the Termination Trustee named in the Certificate of Termination, to all real and personal property which was formerly the Condominium

Property or Association property, without need for further conveyance. Beneficial title to the former Condominium and Association property shall be transferred to the former unit owners as tenants in common, in the same undivided shares as each owner previously owned in the common elements, without further conveyance. Each lien encumbering a Condominium parcel shall be automatically transferred to the equitable interest in the former Condominium Property and Association property attributable to the unit encumbered by the lien, with the same priority.

**16.4. WIND-UP OF ASSOCIATION AFFAIRS** — The termination of the Condominium does not, by itself, terminate the Association. The former unit owners and their successors and assigns shall continue to be members of the Association, and the members of the Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration, and in the Articles of Incorporation and By-laws, to the extent necessary to, and for the sole purpose of, winding up the affairs of the Association in accordance with this Section.

**16.5. TRUSTEE'S POWERS AND DUTIES** — The Termination Trustee shall hold legal title to the property for the benefit of the former unit owners and their successors, assigns, heirs, devisees, mortgagees and other lien holders, as their interests shall appear. If the former unit owners approve a sale of the property as provided in this Section, the Termination Trustee shall have the power and authority to convey title to the purchaser, and to distribute the proceeds in accordance with the provisions of this Section. The Termination Trustee may charge a reasonable fee for acting in such capacity, and such fee as well as all costs and expenses incurred by the Termination Trustee in the performance of its duties, shall be paid by the Association or taken from the proceeds of the sale of the former Condominium and Association property, and shall constitute a lien on the property superior to any other lien. The Trustee shall be entitled to indemnification by the Association from any and all liabilities and costs incurred by virtue of acting as Termination Trustee unless such liabilities are the result of gross negligence or malfeasance. The Termination

Trustee may rely upon the written instructions and information provided to it by the officers, Directors and agents of the Association, and shall not be required to inquire beyond such information and instructions.

**16.6. PARTITION; SALE** — Following termination, the former Condominium Property and Association property may be partitioned and sold upon the application of any unit owner. If following a termination, at least seventy-five percent (75%) of the voting interests agree to accept an offer for the sale of the property, the Board of Directors shall notify the Termination Trustee, and the Trustee shall complete the transaction. In that event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto. If the unit owners have not authorized a sale of the former Condominium and Association property within 1 year after the recording of the Certificate of Termination, the Trustee may proceed to sell the property without agreement by the Association or the former unit owners. The net proceeds of the sale of any of the property or assets of the Association shall be distributed by the Termination Trustee to the beneficial owners thereof, as their interests shall appear.

**16.7. NEW CONDOMINIUM** — The termination of the Condominium does not bar creation of another Condominium including all or any portion of the property.

**16.8. PROVISIONS SURVIVE TERMINATION** — The provisions of this Section 16 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed. The Board of Directors shall continue to function in accordance with the By-laws and Articles of Incorporation, and shall have the power to levy assessments to pay the costs and expenses of the Trustee and of maintaining the property until it is sold. The costs of termination, the fees and expenses of the Termination Trustee, as well as post-termination costs of maintaining the former Condominium



Property, are common expenses, the payment of which shall be secured by a lien on the beneficial interest owned by each former unit owner, which to the maximum extent permitted by law, shall be superior to, and take priority over, all other liens.

**17. PROVISIONS PERTAINING TO THE DEVELOPER** — So long as the Developer holds any unit for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

**17.1.** Assessment of the Developer as a unit owner for capital improvements.

**17.2.** Any action by the Association that would be detrimental to the sale of units or the completion of the project by the Developer including such use of unsold units and common elements and Association property as may facilitate completion, sale, maintenance of a sales office, showing of the property and display of signs.

**18. RIGHTS OF MORTGAGEES:**

**18.1. PARTIAL EXCUSAL FROM PRIOR ASSESSMENTS** — A first mortgagee who acquires title to a unit by purchase at a foreclosure sale, or by deed in lieu of foreclosure is liable for the unpaid assessments that became due prior to the mortgagee's receipt of the deed, but in no event shall the mortgagee be liable for more than 6 months of the unit's unpaid common expenses or assessments accrued before the acquisition of the title to the unit by the mortgagee or 1 percent of the original mortgage debt, whichever amount is less. This provision shall not apply unless the first mortgagee joined the Association as a defendant in the foreclosure action. Such mortgagee may obtain title, own, occupy, lease, sell or otherwise dispose of such unit without the approval of the Association. This Section shall be deemed amended so as to remain in conformity with the provisions of F.S. 718.116 as it is amended from time to time.

**18.2. RIGHTS TO INFORMATION** — Upon receipt by the Association from any institutional mortgagee, Guarantor or Insurer of a copy of the mortgage held by such

mortgagee, Guarantor or Insurer on a Unit, together with a written request from such mortgagee or an Insurer or Guarantor of such mortgagee specifying the address to which the following items are to be sent, the Association shall timely send to such mortgagee, Insurer or Guarantor the following, and for which the Association may charge a reasonable fee:

**18.2.1. FINANCIAL STATEMENTS** — A copy of a financial statement of the Association for the immediately preceding fiscal year; and

**18.2.2. INSURANCE CANCELLATION** — Written notice of the cancellation or termination by the Association of any policies of insurance covering the Condominium or Association property or any improvements thereon, or any fidelity bonds of the Association except when the reason for the termination or cancellation of the insurance policy or bond is to change insurance companies or because the policy or bond is not needed or is not available; and

**18.2.3. DAMAGE TO CONDOMINIUM** — Written notice of any damage or destruction to the improvements located on the Common Elements or Association property which affects a material portion of the common elements or Association property or the unit securing its mortgage; and

**18.2.4. EMINENT DOMAIN** — Written notice of a condemnation or eminent domain proceeding affecting a material portion of the Condominium Property or the unit securing its mortgage; and

**18.2.5. DELINQUENT ASSESSMENTS** — Written notice of failure by the Owner of a Unit encumbered by a first mortgage held by such institutional mortgagee, Guarantor or Insurer to pay any Assessments when such failure or delinquency has continued for a period of sixty (60) days or longer.

**18.2.6. FAILURE TO NOTIFY** — The failure of the Association to send

any such notice to any such mortgagee, Guarantor or Insurer shall have no effect on any meeting, action or thing which was to have been the subject of such notice nor affect the validity thereof and shall not be the basis for liability on the part of the Association.

**19. ENFORCEMENT OF ASSESSMENT LIENS** — Liens for assessments may be foreclosed by suit brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property and the Association may also bring an action to recover a money judgment. After a judgment of foreclosure has been entered the unit owner during his occupancy, if so ordered by the Court, shall be required to pay a reasonable rental. If the unit is rented or leased during the pendency of a foreclosure action, the Association shall be entitled to the appointment of a receiver to collect the rent. The Association shall have all the powers provided in F.S. 718.116 and shall be entitled to collect interest at the highest lawful rate (currently 18% per annum) on unpaid assessments and reasonable attorneys' fees, including appeals, and costs incident to the collection of such assessment or enforcement of such lien, with or without suit.

**19.1. CREATION AND ENFORCEMENT OF CHARGES** — The Association shall have a cause of action against unit owners to secure payment to the Association by unit owners of all charges, costs and expenses to the Association which cannot be secured as assessments, regular or special, under F. S. 718.116. The charge shall bear interest at the highest lawful rate, and shall carry with it costs and attorney's fees, including appeals, incurred in collection.

**20. ASSOCIATION AGREEMENTS** — The Association is authorized to enter into agreements to acquire leaseholds, memberships, and other possessory or use interest in lands or facilities such as country clubs, golf courses, marinas, and other facilities. Such interests need not be contiguous to the lands of the Condominium if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners.

**21. COMMON EXPENSES AND COMMON SURPLUS** — Each unit's share shall be 1/64<sup>th</sup> part of the whole.

**22. CONDEMNATION:**

**22.1. DEPOSIT OF AWARDS WITH ASSOCIATION** — The taking of all or any part of the Condominium Property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that owner.

**22.2. DETERMINATION WHETHER TO CONTINUE CONDOMINIUM** — Whether the Condominium will be continued after condemnation will be determined in the manner provided in Section 11 above for determining whether damaged property will be reconstructed and repaired after a casualty.

**22.3. DISBURSEMENT OF FUNDS** — If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will be deemed to be Condominium property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the owners of condemned units, if any, will be paid the fair market value of their unit as provided in 22.6.1 below, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special charges shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

**22.4. ASSOCIATION AS AGENT** — The Association is hereby irrevocably

appointed as each unit owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation for the taking.

**22.5. UNITS REDUCED BUT TENANTABLE** — If the taking reduces the size of a unit and the remaining portion of the unit can be made tenantable, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

**22.5.1. RESTORATION OF UNIT** — The unit shall be made tenantable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit;

**22.5.2. DISTRIBUTION OF SURPLUS** — The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.

**22.6. UNIT MADE UNTENANTABLE** — If the taking is of any entire unit or so reduces the size of a unit that it cannot be made tenantable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

**22.6.1. PAYMENT OF AWARD** — The fair market value of the unit immediately prior to the taking, as determined by agreement between the unit owner and the Association or by arbitration in accordance with Section 22.6.4. following, shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and the mortgagee(s);

**22.6.2. ADDITION TO COMMON ELEMENTS** — If possible and practical, the remaining portion of the unit shall become a part of the common elements and shall be placed in condition for use by all unit owners in the manner approved by the Board of Directors;

**22.6.3. ADJUSTMENT OF SHARES IN COMMON ELEMENTS —**

The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements in equal fractions among the reduced number of unit owners.

**22.6.4. ARBITRATION —** If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The unit owner, the first mortgagee, if any, and the Association shall each appoint one M.A.I. appraiser, who shall appraise the unit and shall determine the fair market value by computing the arithmetic average of their appraisals of the unit. A judgment of specific performance upon the value arrived at by the appraisers may be entered in any court of competent jurisdiction. The cost of appraisals shall be paid by the party selecting the appraiser.

**22.7. TAKING OF COMMON ELEMENTS —** Awards for the taking of common elements shall be used to make the remaining portion of the common elements useable in the manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the unit owners in the shares in which they own the common elements after adjustment of these shares on account of the condemnation. If a unit is mortgaged, the remittance shall be paid jointly to the owner and mortgagee(s) of the unit.

**22.8. AMENDMENT OF DECLARATION —** Changes in the units, in the common elements and in the ownership of the common elements that are necessitated by condemnation, shall be evidenced by an amendment of the Declaration of Condominium as ordered by a court or approved by a majority of unit owners (voting interests) of this Condominium, without the consent of any mortgagee being required for any such amendment.

**23. VOTING —** Each unit shall have one full indivisible vote in all matters.

**24. FUTURE DEVELOPMENT EASEMENTS** — Developer, for itself and its successors and assigns, reserves easements over the Condominium Property as necessary to complete future development, if any, including construction access and utilities.

**25. COMMUNITY ASSOCIATION MEMBERSHIP AND OBLIGATIONS** — Bimini Bay III is located within the Tarpon Bay Community which is administered by the Tarpon Bay Community Association, Inc. according to a recorded Declaration of Covenants and Restrictions and which operates the Common Areas and Facilities. Each Bimini Bay owner is automatically a member of the Community Association and must pay assessments.

**26. SEVERABILITY AND NON-WAIVER** — If any provision of this Declaration or its exhibits as now constituted or as later amended or any section, sentence, clause, phrase or word, or the application thereof in any circumstances is held invalid, the validity of the remainder and of the application of any such provision, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby. The failure of the Association or the Declarant in any instance, to enforce any covenant or provision of this Declaration or any of the Condominium documents shall not constitute a waiver of its right to do so thereafter in other instances.

**27. DEVELOPER'S GUARANTEE.** Developer guarantees that the assessment for common expenses shall not exceed \$386.00 per unit per month (or \$1,158.00 per unit per quarter) beginning from the time of recordation of the Declaration and continuing until December 31, 2003. Commencing January 1, 2004, and continuing until December 31, 2004, Developer guarantees that the assessment for common expenses shall not exceed \$443.00 per unit per month (or \$1,329.00 per unit per quarter). Commencing January 1, 2005, Developer, in its discretion, shall have the option of extending the guarantee for one-month periods of time; provided, however, that notwithstanding any provision to the contrary, the guarantee shall automatically terminate on the date of the meeting of unit owners at which transfer of control of

the Association to unit owners other than Developer occurs. During the guarantee period, Developer shall be excused from the payment of its pro-rata share of the assessments for all units it owns; however, Developer shall pay any amount of common expenses incurred which exceeds assessments collected from unit owners other than Developer while the guaranty period is in effect.

**THIS DECLARATION OF CONDOMINIUM** and exhibits hereto made and entered into this 23<sup>rd</sup> day of October, 2003.

**WITNESSES:**

**WCI COMMUNITIES, INC.,  
a Delaware corporation**

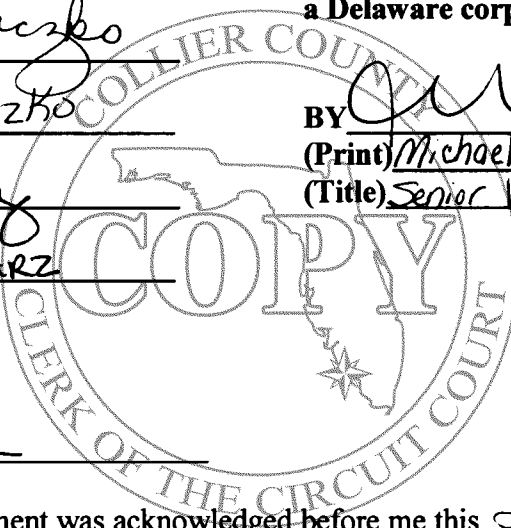
(Sign) Ann C. Roczeko

(Print) Ann C. Roczeko

(Sign) Kathie Owarz

(Print) Kathie Owarz

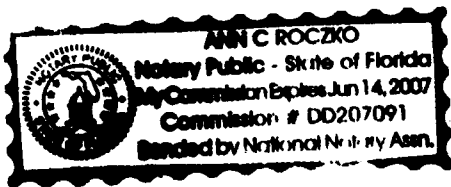
BY [Signature]  
(Print) Michael R. Greenberg  
(Title) Senior Vice President



**STATE OF FLORIDA**

**COUNTY OF** Lee

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of October, 2003, by Michael R. Greenberg, as Senior Vice President of **WCI COMMUNITIES, INC., a Delaware corporation**, on behalf of said corporation. He  is personally known to me or  has produced \_\_\_\_\_ as identification.



My Commission Expires: 6/14/07

**NOTARY PUBLIC:**

(Sign) Ann C. Roczeko

(Print) Ann C. Roczeko

**STATE OF FLORIDA AT LARGE (SEAL)**  
My Commission # DD 207901



# State of Florida

OR: 3449 PG: 2769



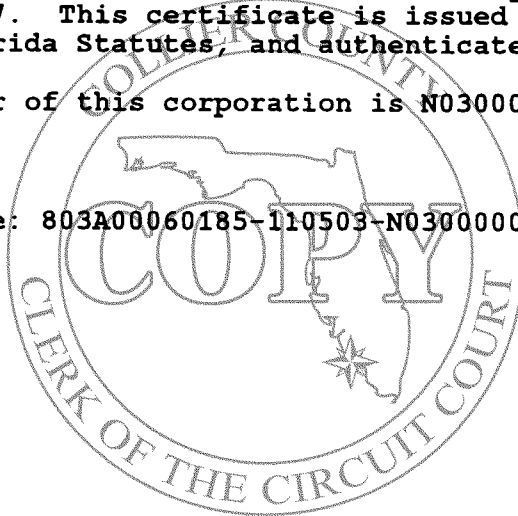
## Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of BIMINI BAY III AT TARPON BAY CONDOMINIUM ASSOCIATION, INC., a Florida corporation, filed on November 4, 2003, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H03000310197. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below

The document number of this corporation is N03000009596.

Authentication Code: 803A00060185-110503-N03000009596-1/1



Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the Fifth day of November, 2003



*Glenda E. Hood*  
Glenda E. Hood  
Secretary of State



OR: 3449 PG: 2770

FLORIDA DEPARTMENT OF STATE

Glenda E. Hood  
Secretary of State

November 5, 2003

BIMINI BAY III AT TARPON BAY CONDOMINIUM ASSOCIATION, I  
24301 WALDEN CENTER DR., SUITE 300  
BONITA SPRINGS, FL 34134

The Articles of Incorporation for BIMINI BAY III AT TARPON BAY CONDOMINIUM ASSOCIATION, INC. were filed on November 4, 2003, and assigned document number N0300009596. Please refer to this number whenever corresponding with this office.

Enclosed is the certification requested. To be official, the certification for a certified copy must be attached to the original document that was electronically submitted and filed under FAX audit number H03000310197.

A corporation annual report/uniform business report will be due this office between January 1 and May 1 of the year following the calendar year of the file date year. A Federal Employer Identification (FEI) number will be required before this report can be filed. Please apply NOW with the Internal Revenue Service by calling 1-800-829-3676 and requesting form SS-4.

Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

Should you have questions regarding corporations, please contact this office at the address given below.

Robert A Brown  
Data Processing Control Specialist  
New Filings Section  
Division of Corporations

Letter Number: 803A00060185

Division of Corporations - P.O. BOX 6327 -Tallahassee, Florida 32314

**ARTICLES OF INCORPORATION**

**OF**

**BIMINI BAY III AT TARPON BAY CONDOMINIUM ASSOCIATION, INC.**

(A NON-PROFIT FLORIDA CORPORATION)

**ARTICLE I**

The name of this corporation is **Bimini Bay III at Tarpon Bay Condominium Association, Inc.**

**ARTICLE II**

The purpose for which this corporation is organized is to act as the governing association of the proposed Bimini Bay III at Tarpon Bay, A Condominium, located in Naples, Collier County, Florida (the "Condominium") according to the Declaration of Condominium for Bimini Bay III at Tarpon Bay to be recorded in the Public Records of Collier County, Florida (the "Declaration"). The initial principal office of the Corporation is 24301 Walden Center Drive, Suite 300, Bonita Springs, Florida 34134.

**ARTICLE III**

The qualification of members and the manner of their admission shall be as follows: Any approved person or persons who hold title in fee simple to a condominium unit in the Condominium shall by virtue of such ownership be a member of this corporation. Provided however, that transfer of membership shall be made only as a part of and incident to the transfer of ownership of a condominium unit with such transfers being subject to and controlled by the transfer procedures set forth in the Declaration of Condominium. After receiving approval of the Association required by the Declaration of Condominium, change of membership in the Association shall be established by recording in the Public Records of Collier County, Florida, a deed or other instrument establishing record title to a unit in the Condominium and the delivery of a copy of the recorded instrument to the Association within a reasonable time following such recordation. Such delivery is not required for initial conveyances by the Developer. The owner designated by such instrument thereby becomes a member of the Association and the membership of the previous owner is thereby terminated.

**ARTICLE IV**

This corporation shall exist perpetually.

**ARTICLE V**

The name and residence of the Incorporator is as follows:

**Robert S. Freedman  
Carlton Fields, P.A.  
One Harbour Place  
Tampa, Florida 33602**

The rights and interests of the Incorporator shall automatically terminate when these Articles are filed with the Secretary of State.

**ARTICLE VI**

The affairs of this corporation are to be managed initially by a Board of three Directors (which may be expanded to five) who will be appointed by the Developer as provided for in the By-laws. Subsequent Boards may be composed of either three or five Directors.

**ARTICLE VII**

The names of the Officers who are to serve until the first election or appointment under the Articles of Incorporation are:

<b>MICHAEL HESSEL</b>		<b>President</b>
<b>IAN BENEDICT</b>	-	<b>Vice President</b>
<b>SYLVIA KEITH</b>	-	<b>Secretary / Treasurer</b>

**ARTICLE VIII**

The number of persons constituting the first Board of Directors shall be three, and their names and addresses are as follows:

**MICHAEL HESSEL  
24301 Walden Center Drive, Suite 300  
Bonita Springs, Florida 34134**

**IAN BENEDICT**

**24301 Walden Center Drive, Suite 300  
Bonita Springs, Florida 34134**

**SYLVIA KEITH**

**24301 Walden Center Drive, Suite 300  
Bonita Springs, Florida 34134**

**ARTICLE IX**

After turnover, the By-laws of this corporation are to be made, altered or rescinded by 67% of the voting interests of this corporation; prior to turnover by a majority of the Directors alone.

**ARTICLE X**

Amendments to these Articles of Incorporation may be proposed and adopted as follows:

After turnover, an amendment may be proposed by either the Board of Directors or by twenty-five percent (25%) of the voting interests and may be considered at any meeting of the owners, regular or special, of which due notice has been given according to the By-laws, which includes a notice of the substance of the proposed amendment; prior to turnover, by a majority of the Directors alone.

After turnover, the amendment must be approved by a vote of 67% of the voting interests of this corporation; prior to turnover, by the Directors alone.

**ARTICLE XI**

Each unit in the Condominium shall have one full indivisible vote.

**ARTICLE XII**

This corporation reserves the right to amend or repeal any provisions contained in these Articles of Incorporation.

**ARTICLE XIII**

This corporation shall have all the powers permitted by law together with such additional specific powers as are contained in the Declarations and By-laws.

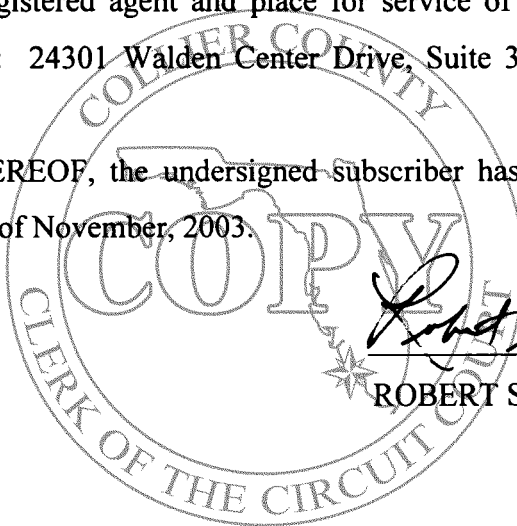
**ARTICLE XIV**

No part of the net earnings of this corporation shall inure to the benefit of any member or individual, except through the acquisition, construction, management, maintenance or care of Association property or through the rebate of the excess membership dues, fees or assessments.

**ARTICLE XV**

The name of the registered agent and place for service of process shall be Vivien N. Hastings, whose address is: 24301 Walden Center Drive, Suite 300, Bonita Springs, Florida 34134.

IN WITNESS WHEREOF, the undersigned subscriber has executed these Articles of Incorporation this 3<sup>rd</sup> day of November, 2003.



Robert S. Freedman (SEAL)  
ROBERT S. FREEDMAN

**STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH**

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of November, 2003, by Robert S. Freedman, who is personally known to me.

NOTARY PUBLIC:

(Sign) Margaret R. Keenan  
(Print) \_\_\_\_\_

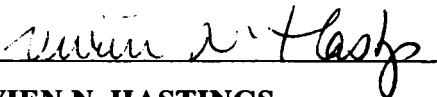


STATE OF FLORIDA AT LARGE (SEAL)

My Commission # \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

ACCEPTANCE OF REGISTERED AGENT

Having been named to accept service of process for the above stated corporation, at the place designated in these Articles of Incorporation, I hereby agree to act in this capacity, and I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties.

  
VIVIEN N. HASTINGS



**Q. GRADY MINOR & ASSOCIATES, P.A.**

**Civil Engineers ■ Land Surveyors ■ Planners**

Q. GRADY MINOR, P.E.  
MARK W. MINOR, P.E.  
C. DEAN SMITH, P.E.  
DAVID W. SCHMITT, P.E.  
MICHAEL J. DELATE, P.E.  
NORMAN J. TREBILCOCK, A.I.C.P., P.E.  
MATTHEW J. HERMANSON, P.E.

D. WAYNE ARNOLD, A.I.C.P.  
ROBERT "BOB" THINNES, A.I.C.P.  
THOMAS JACKSON GARRIS, P.S.M.  
STEPHEN V. BURGESS, P.S.M.  
MICHAEL L. HARMON, P.S.M.  
ALAN V. ROSEMAN

EXHIBIT: "B"

OR: 3449 PG: 2776

**SURVEYOR CERTIFICATE OF SUBSTANTIAL COMPLETION**  
**Bimini Bay III at Tarpon Bay, A Condominium**

As to Buildings 17 thru 32 of Bimini Bay III at Tarpon Bay, a Condominium, being a part of land located in Tract 'N' of Tarpon Bay, as recorded in Plat Book 36, at pages 28 thru 31 of the Public Records Of Collier County, Florida:

I, Stephen Burgess, of Lee County, Florida, hereby certify as follows:

1. That I am a Professional Surveyor and Mapper holding certificate number 6408, authorized to practice in the State of Florida, as provided by the laws of said State.
2. That this certificate is made as to Buildings 17 thru 32 of Bimini Bay III at Tarpon Bay, A Condominium, being a parcel of land located in Tract 'N' of Tarpon Bay, as recorded in Plat Book 36, at Pages 28 thru 31 of the Public Records of Collier County, Florida, in order to represent the extent at which said units are in compliance with Section 718.104(4)(e), Florida Statutes.
3. That the construction of the improvements for Buildings 17 thru 32 comprising Bimini Bay III at Tarpon Bay, A Condominium, as described on Exhibit B and Exhibit C to the Declaration of Condominium are not substantially complete, however, said exhibits, together with the provisions for the Declaration of Condominium describing the condominium property are an accurate representation of the location and dimension of said planned improvements as they are being constructed and so that the identification, location and dimensions of the common elements, limited common elements and of each unit can be determined from these materials.
4. That all planned improvements serving said condominium Buildings 17 thru 32, including utility services, common element facilities and access to each unit, have not been located and are not substantially completed; and are currently under construction.
5. This certificate of substantial completion is made in reference to Section 718.104, of the Florida Statutes, regarding the completion of Buildings 17 thru 32, and with the

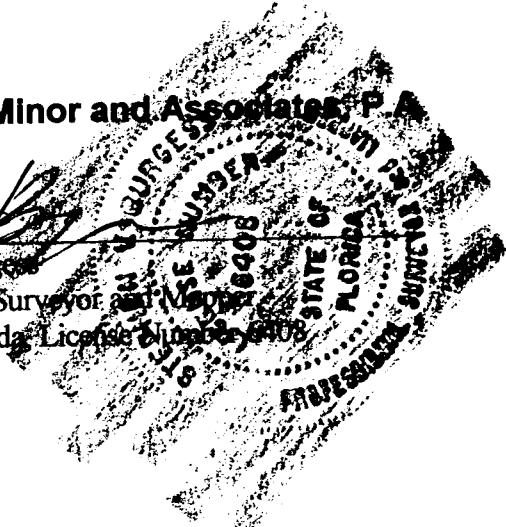


exception of said units there are no other units substantially completed as of the date hereof.

**Q. Grady Minor and Associates, P.A.**

By: \_\_\_\_\_

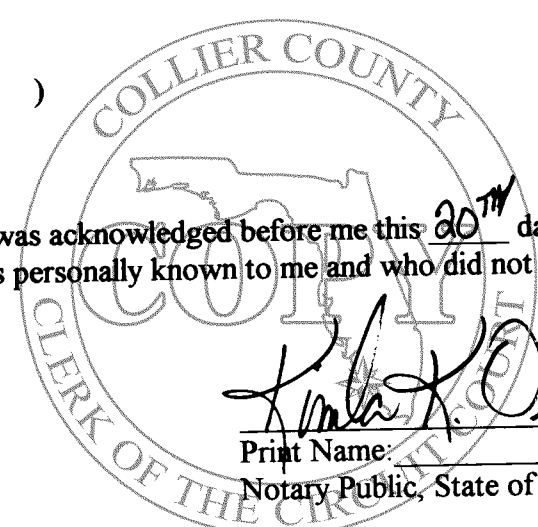
Stephen Burgess  
Professional Surveyor  
State of Florida License Number 4908



[Surveyor's Seal]

STATE OF FLORIDA )  
COUNTY OF LEE )

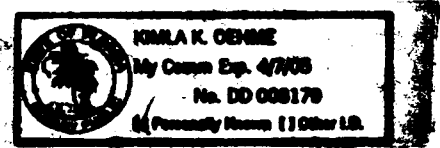
The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of November, 2003, by Stephen V. Burgess who is personally known to me and who did not take an oath.



*Kimla K. Oehme*

Print Name: \_\_\_\_\_  
Notary Public, State of Florida

(Notary Seal)

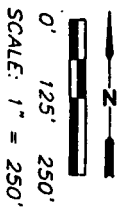


# BIMINI BAY III AT TARPON BAY, A CONDOMINIUM

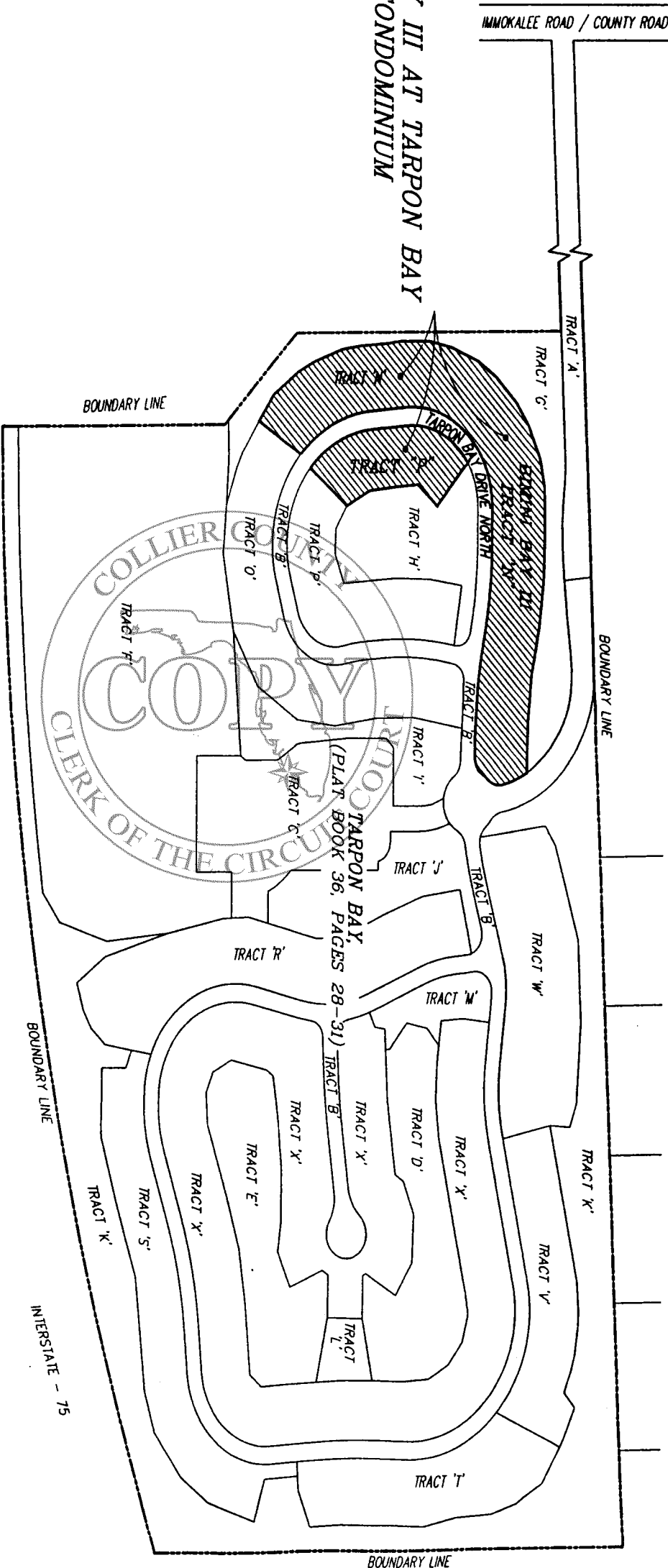
CONDOMINIUM PLAT BOOK

PAGE

EXHIBIT: "B" SHEET: 1



IMMOKALEE ROAD / COUNTY ROAD 846



## BIMINI BAY III AT TARPON BAY A CONDOMINIUM

### BIMINI BAY III AT TARPON BAY, A CONDOMINIUM

SECTION 30, TOWNSHIP 48 SOUTH, RANGE 26 EAST,  
COLLIER COUNTY, FLORIDA

WCI COMMUNITIES INC.



**Q. GRADY MINOR AND ASSOCIATES, P.A.**  
 CIVIL ENGINEERS ■ LAND SURVEYORS ■ PLANNERS  
 3800 VIA DEL REY  
 BONITA SPRINGS, FLORIDA 34134  
 PHONE: (239) 947-1144 FAX: (239) 947-0375  
 CERTIFICATE OF AUTHORIZATION NUMBER LB 5151

CONDOMINIUM TRACT SKETCH

LOCATION MAP

DATE: MARCH, 2003

JOB CODE: TB2R

DRAWING: B-1884-A

**BIMINI BAY III AT TARPON BAY, A CONDOMINIUM**

CONDOMINIUM PLAT BOOK

PAGE

EXHIBIT: "B" SHEET: 2

**PROPERTY DESCRIPTION**

**BIMINI BAY III AT TARPON BAY, A CONDOMINIUM**

TWO PARCELS OF LAND IN THE EAST 1/2 NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 48 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
 TRACT 'N' OF TARPON BAY, AS RECORDED IN PLAT BOOK 36, AT PAGES 28 THRU 31 ACCORDING TO THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, CONTAINING 4.890 ACRES, MORE OR LESS.

**AND**

A PORTION OF TRACT "P" OF TARPON BAY AS RECORDED IN PLAT BOOK 36 AT PAGES 28 THRU 31 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGIN** AT THE NORTHEASTERLY MOST CORNER OF SAID TRACT "P"; THENCE RUN SOUTH 41°26'26" WEST FOR A DISTANCE OF 126.96 FEET; THENCE RUN NORTH 48°33'34" WEST FOR A DISTANCE OF 70.62 FEET; THENCE RUN SOUTH 85°06'04" WEST FOR A DISTANCE OF 63.07 FEET; THENCE RUN SOUTH 83°26'33" WEST FOR A DISTANCE OF 70.74 FEET; THENCE RUN SOUTH 62°39'37" WEST FOR A DISTANCE OF 71.16 FEET; THENCE RUN NORTH 50°44'11" WEST FOR A DISTANCE OF 130.31 FEET TO A POINT ON A CIRCULAR CURVE CONCAVE SOUTHEAST WHOSE RADIUS POINT BEARS SOUTH 48°41'54" EAST, A DISTANCE OF 255.00 FEET THEREFROM; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 255.00 FEET, THROUGH A CENTRAL ANGLE OF 43°47'57" SUBTENDED BY A CHORD OF 190.22 FEET AT A BEARING OF NORTH 63°12'04" EAST, FOR AN ARC LENGTH OF 194.93 FEET TO THE END OF SAID CURVE; THENCE RUN NORTH 85°06'03" EAST FOR A DISTANCE OF 97.96 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE CONCAVE SOUTHWEST; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 180.00 FEET; THROUGH A CENTRAL ANGLE OF 62°10'00"; SUBTENDED BY A CHORD OF 185.86 FEET AT A BEARING OF SOUTH 63°48'57" EAST FOR AN ARC LENGTH OF 195.30 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED.  
 CONTAINING 1.163 ACRES, MORE OR LESS. OVERALL PARCEL EQUALS 6.053 ACRES MORE OR LESS.

**NOTES**

1. BEARINGS SHOWN HEREON REFER TO THE EAST LINE OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 48 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA, AS BEING N 02°34'39" W.
2. THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS AND OR RESTRICTIONS OF RECORD.
3. IMPROVEMENTS OTHER THAN THOSE SHOWN WERE NOT LOCATED.
4. THIS SURVEY IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
5. DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
6. ENVIRONMENTAL CONCERNS, ENDANGERED WILDLIFE AND JURISDICTIONAL WETLANDS, IF ANY, ARE NOT SHOWN ON THIS SURVEY.
7. THIS PROPERTY IS LOCATED WITHIN FLOOD ZONE X, HAVING NO BASE FLOOD ELEVATION PER THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP # 120067-0215 D, DATED JUNE 3, 1986.
8. THIS CERTIFICATION IS ONLY FOR THE LANDS DESCRIBED HEREON. IT IS NOT A CERTIFICATION OF TITLE, ZONING, SETBACKS, OR FREEDOM OF ENCUMBRANCES.
9. THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT OF TITLE AND ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW.

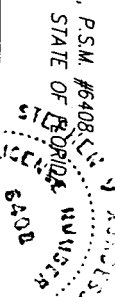
**CERTIFIED TO:**

WCI COMMUNITIES INC.

O. GRADY MINOR AND ASSOCIATES, P.A.

SIGNED **9-3-03**

*Stephen V. Burgess*  
 STEPHEN V. BURGESS



**CONDOMINIUM PROPERTY DESCRIPTION**

**LEGAL DESCRIPTION/NOTES**

**BIMINI BAY III AT TARPON BAY,**

**A CONDOMINIUM**

SECTION 30, TOWNSHIP 48 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA

WCI COMMUNITIES INC.

**O. GRADY MINOR AND ASSOCIATES, P.A.**

CIVIL ENGINEERS ■ LAND SURVEYORS ■ PLANNERS  
 3800 VIA DEL REY  
 BONITA SPRINGS, FLORIDA 34134

PHONE: (239) 947-1144 FAX: (239) 947-0375  
 CERTIFICATE OF AUTHORIZATION NUMBER LB 5151

DATE: MARCH 2003

JOB CODE: TB2R

DRAWING: B-1884-A

BIMINI BAY III AT TARPON BAY, A CONDOMINIUM

CONDOMINIUM PLAT BOOK

PAGE

TRACT "G"

BIMINI BAY III AT TARPON BAY A CONDOMINIUM TRACT "N"

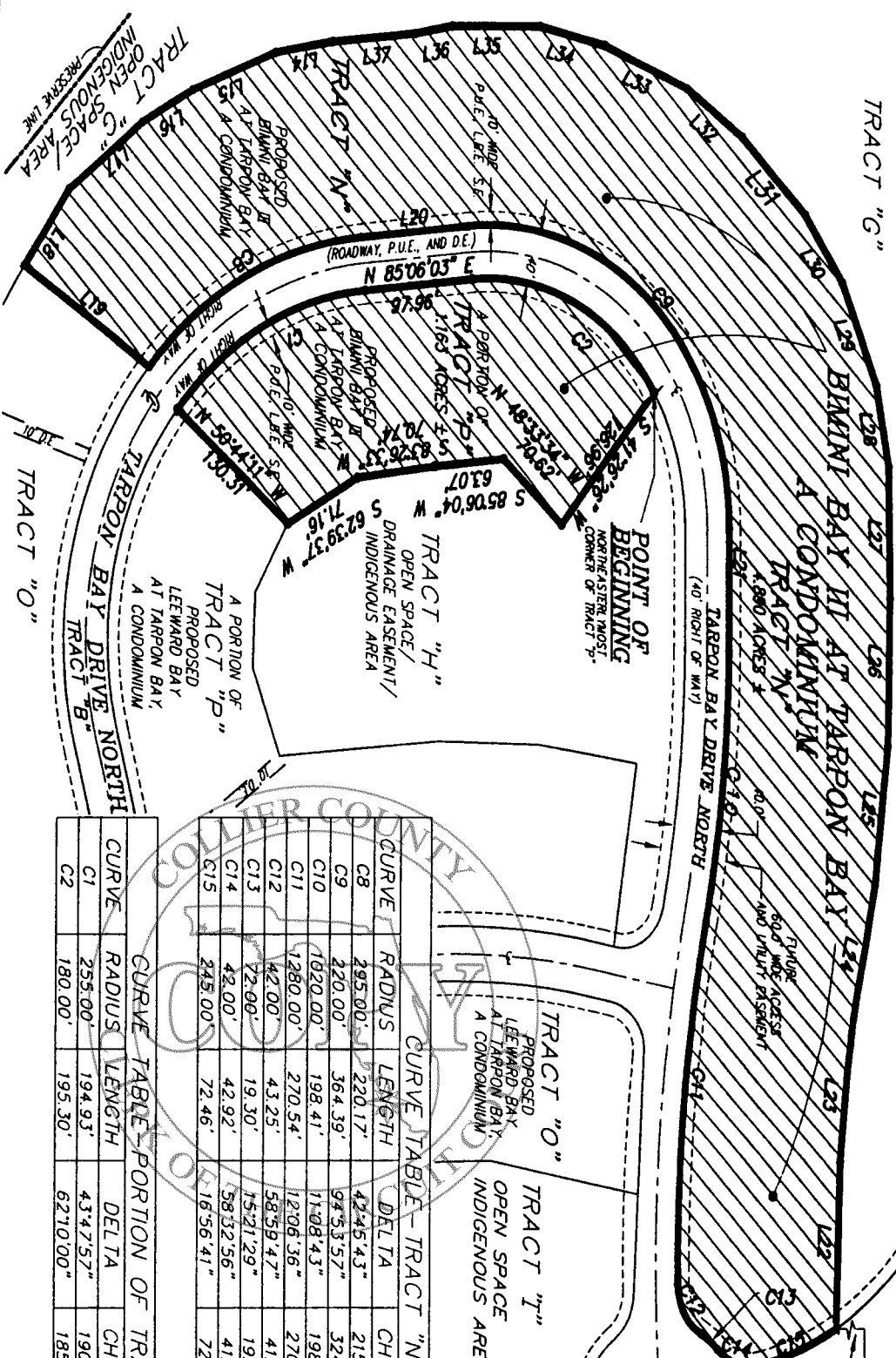
TARPON BAY DRIVE NORTH (40' RIGHT OF WAY)

POINT OF BEGINNING  
NORTHERLY 85°06'03" E  
NORTHWEST CORNER OF TRACT "G"

TRACT "H"  
OPEN SPACE/  
DRAINAGE EASEMENT/  
INDIGENOUS AREA

TRACT "O"  
PROPOSED  
LETWARD BAY  
AT TARPON BAY  
A CONDOMINIUM

TRACT "I"  
OPEN SPACE  
INDIGENOUS AREA



CURVE TABLE - TRACT "N"

CURVE	RADIUS	LENGTH	DELTA	CHORD	BEARING
C8	295.00'	220.17'	42°45'43"	215.09'	S 63°43'12" W
C9	220.00'	364.39'	94°53'57"	324.14'	N 47°26'58" W
C10	1620.00'	198.41'	11°08'43"	198.10'	N 05°34'21" E
C11	1280.00'	270.54'	12°06'36"	270.03'	S 05°05'25" W
C12	42.00'	43.25'	58°59'47"	41.36'	S 30°27'46" E
C13	72.00'	19.30'	15°21'29"	19.24'	N 52°16'55" W
C14	42.00'	42.92'	58°32'56"	41.08'	S 73°52'38" E
C15	245.00'	72.46'	16°56'41"	72.19'	N 68°22'33" E

LINE TABLE - TRACT "N"

LINE	BEARING	LENGTH
L14	S 81°38'09" W	51.77'
L15	S 70°22'05" W	80.08'
L16	S 63°14'21" W	51.58'
L17	S 53°41'41" W	82.36'
L18	S 34°39'37" W	70.61'
L19	S 57°13'20" E	135.89'
L20	N 85°06'03" E	97.96'
L21	S 00°00'00" W	89.99'
L22	N 01°19'23" E	121.94'
L23	N 05°51'39" E	98.15'
L24	N 10°34'02" E	109.93'
L25	N 06°07'07" E	100.72'
L26	N 00°44'01" E	109.13'
L27	N 00°51'02" W	95.20'
L28	N 10°58'54" W	60.26'
L29	N 22°44'13" W	81.02'
L30	N 33°38'11" W	60.63'
L31	N 44°54'10" W	80.82'
L32	N 55°22'41" W	61.44'
L33	N 67°44'20" W	80.86'
L34	N 77°16'39" W	60.50'
L35	N 89°52'34" W	80.76'
L36	S 81°14'29" W	33.65'
L37	S 85°46'20" W	75.91'

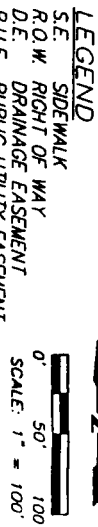
CURVE TABLE - PORTION OF TRACT "P"

CURVE	RADIUS	LENGTH	DELTA	CHORD	BEARING
C1	255.00'	194.93'	43°47'57"	190.22'	N 63°12'04" E
C2	180.00'	195.30'	62°10'00"	185.86'	S 63°48'57" E

BIMINI BAY III AT TARPON BAY,  
A CONDOMINIUM  
SECTION 30, TOWNSHIP 48 SOUTH, RANGE 26 EAST,  
COLLER COUNTY, FLORIDA  
WCI COMMUNITIES INC.

**Q. GRADY MINOR AND ASSOCIATES, P.A.**  
CIVIL ENGINEERS ■ LAND SURVEYORS ■ PLANNERS  
3800 VIA DEL REY  
BONITA SPRINGS, FLORIDA 34134  
PHONE: (239) 947-1144 FAX: (239) 947-0375  
CERTIFICATE OF AUTHORIZATION NUMBER LB 5151

CONDOMINIUM BOUNDARY SURVEY  
BOUNDARY SURVEY  
DATE: MARCH 2003  
JOB CODE: TB2R  
DRAWING: B-1884-A

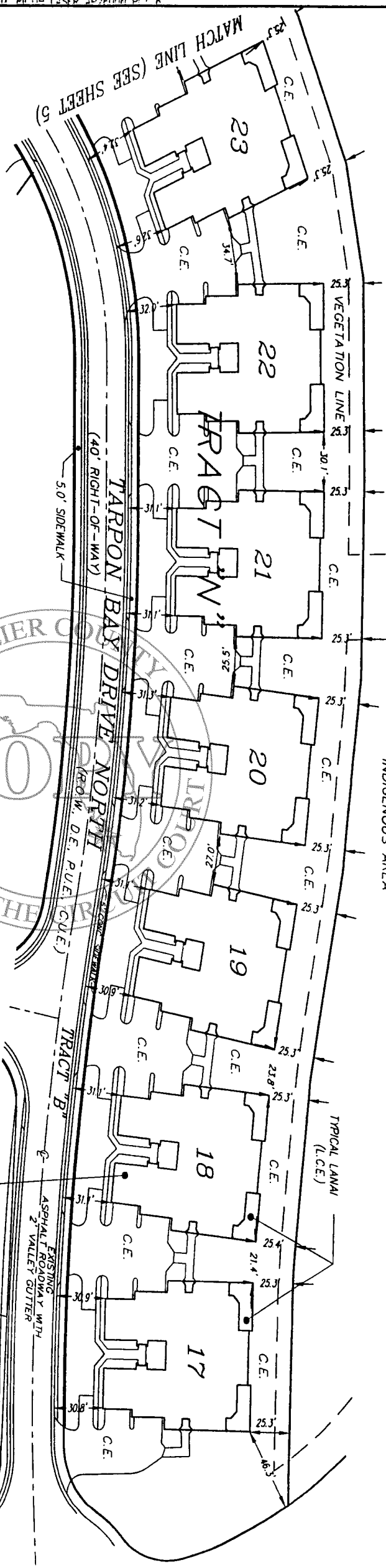
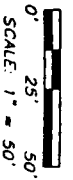


BIMINI BAY III AT TARPON BAY, A CONDOMINIUM

CONDOMINIUM PLOT BOOK

PAGE

EXHIBIT: "B" SHEET: 4



- LEGEND**
- CO SEWER CLEANOUT
  - R/W RIGHT OF WAY
  - MH MANHOLE
  - CB CATCH BASIN
  - FH FIRE HYDRANT
  - EOP EDGE OF PAVEMENT
  - C.E. COMMON ELEMENT
  - L.C.E. LIMITED COMMON ELEMENT
  - U.E. UTILITY EASEMENT

**GENERAL NOTES**

THE USE OF THIS PROPERTY IS RESIDENTIAL.  
 IMPROVEMENTS ARE PROPOSED UNLESS OTHERWISE NOTED.  
 DISTANCES ARE IN FEET AND DECIMALS THEREOF.  
 DRAWN BY: S.B.  
 THIS INSTRUMENT PREPARED BY: Q. GRADY MINOR AND ASSOCIATES, P.A.

**BIMINI BAY III AT TARPON BAY  
 A CONDOMINIUM**

SECTION 30, TOWNSHIP 48 SOUTH, RANGE 26 EAST,  
 COLLIER COUNTY, FLORIDA

WCI COMMUNITIES INC.

**Q. GRADY MINOR AND ASSOCIATES, P.A.**  
 CIVIL ENGINEERS • LAND SURVEYORS • PLANNERS  
 BONITA SPRINGS, FLORIDA 34134

PHONE: (239) 947-1144 FAX: (239) 947-0375  
 CERTIFICATE OF AUTHORIZATION NUMBER LB 5151

**CONDOMINIUM PLOT PLAN**

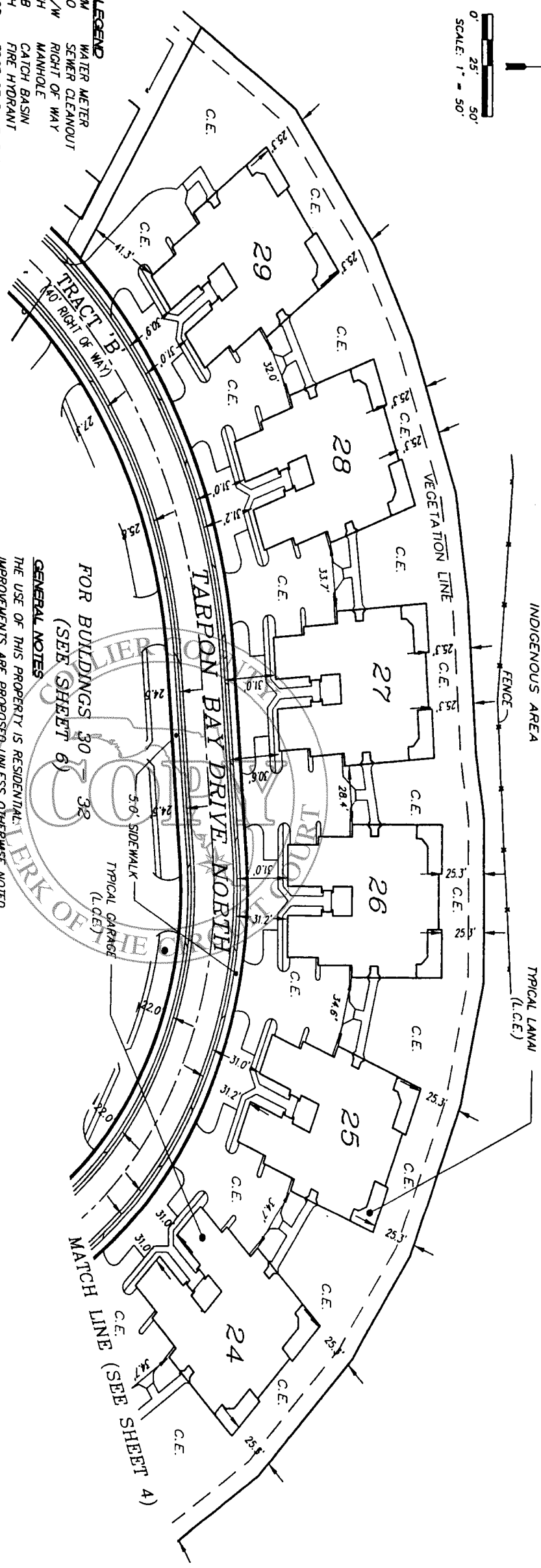
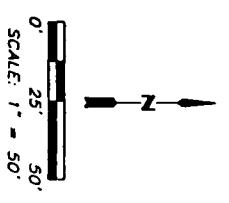
**BIMINI BAY III AT TARPON BAY  
 A CONDOMINIUM**

DATE: MARCH, 2003 JOB CODE: TB2R DRAWING: B-1884-A

BIMINI BAY III AT TARPON BAY, A CONDOMINIUM

CONDOMINIUM PLAT BOOK PAGE

EXHIBIT: "B" SHEET: 5



- LEGEND**
- WM WATER METER
  - CO SEWER CLEANOUT
  - R/W RIGHT OF WAY
  - MH MANHOLE
  - CB CATCH BASIN
  - FH FIRE HYDRANT
  - EOP EDGE OF PAVEMENT
  - C.E. COMMON ELEMENT
  - L.C.E. LIMITED COMMON ELEMENT
  - U.E. UTILITY EASEMENT

FOR BUILDINGS 30 32  
(SEE SHEET 6)

**GENERAL NOTES**

THE USE OF THIS PROPERTY IS RESIDENTIAL.  
IMPROVEMENTS ARE PROPOSED UNLESS OTHERWISE NOTED.  
DISTANCES ARE IN FEET AND DECIMALS THEREOF.  
DRAWN BY: SB

THIS INSTRUMENT PREPARED BY: Q. GRADY MINOR AND ASSOCIATES, P.A.

**BIMINI BAY III AT TARPON BAY**  
**A CONDOMINIUM**

SECTION 30, TOWNSHIP 48 SOUTH, RANGE 26 EAST,  
COLLER COUNTY, FLORIDA

WCI COMMUNITIES INC.

**Q. GRADY MINOR AND ASSOCIATES, P.A.**  
CIVIL ENGINEERS ■ LAND SURVEYORS ■ PLANNERS

3800 VIA DEL REY  
BONITA SPRINGS, FLORIDA 34134

PHONE: (239) 947-1144 FAX: (239) 947-0375  
CERTIFICATE OF AUTHORIZATION NUMBER LB 5151

**CONDOMINIUM PLOT PLAN**

**BIMINI BAY III AT TARPON BAY**  
**A CONDOMINIUM**

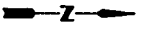
DATE: MARCH, 2003      JOB CODE: TB2R      DRAWING: B-1884-A

# BIMINI BAY III AT TARPON BAY, A CONDOMINIUM

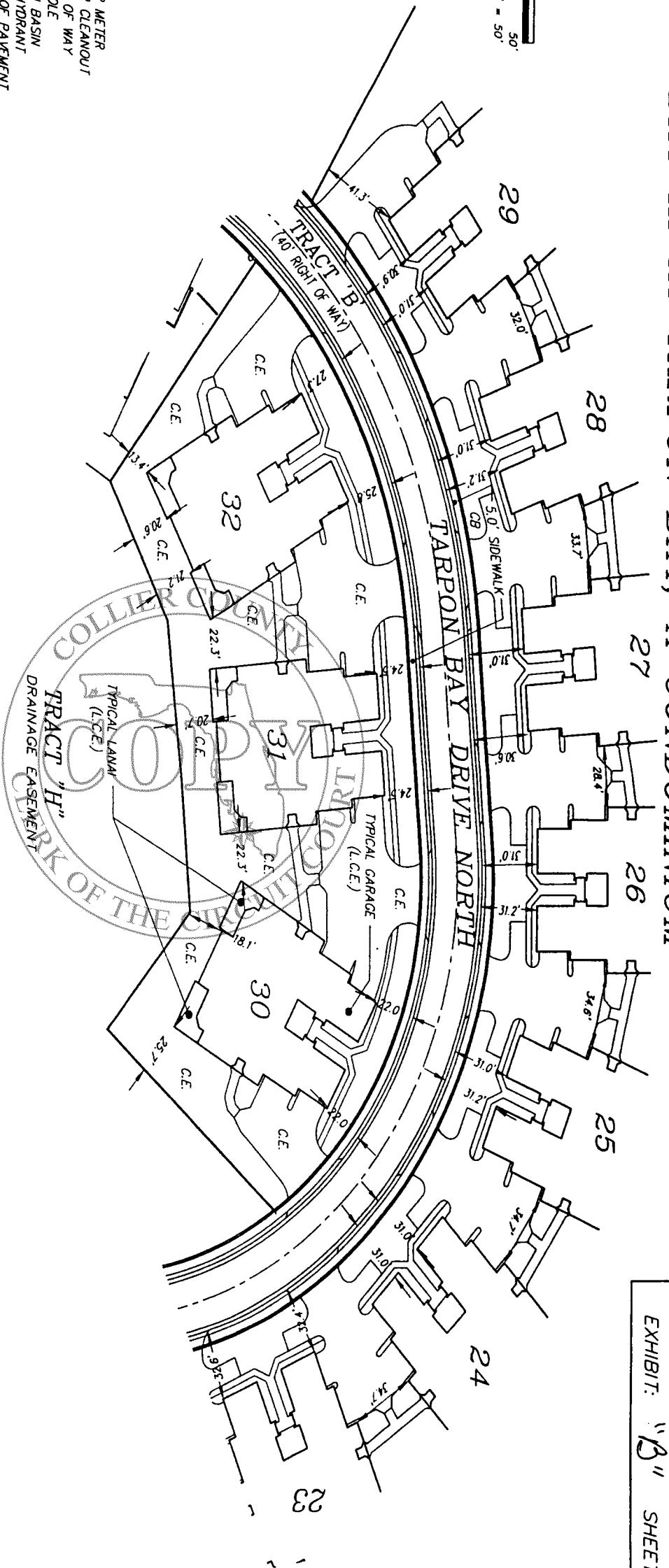
CONDOMINIUM PLAT BOOK

PAGE

EXHIBIT: "B" SHEET: 6



SCALE: 1" = 50'



- LEGEND**
- WM WATER METER
  - CO SEWER CLEANOUT
  - R/W RIGHT OF WAY
  - MH MANHOLE
  - CB CATCH BASIN
  - FH FIRE HYDRANT
  - EOP EDGE OF PAVEMENT
  - C.E. COMMON ELEMENT
  - L.C.E. LIMITED COMMON ELEMENT
  - U.E. UTILITY EASEMENT

## BIMINI BAY III AT TARPON BAY

### A CONDOMINIUM

SECTION 30, TOWNSHIP 48 SOUTH, RANGE 26 EAST,  
COLLIER COUNTY, FLORIDA

WCI COMMUNITIES INC.



Q. GRADY MINOR AND ASSOCIATES, P.A.  
CIVIL ENGINEERS ■ LAND SURVEYORS ■ PLANNERS  
BONITA SPRINGS, FLORIDA 34134

PHONE: (239) 947-1144 FAX: (239) 947-0375  
CERTIFICATE OF AUTHORIZATION NUMBER LB 5151

## CONDOMINIUM PLOT PLAN

### BIMINI BAY III AT TARPON BAY A CONDOMINIUM

DATE: MARCH, 2003

JOB CODE: TB2R

DRAWING: B-1884-A

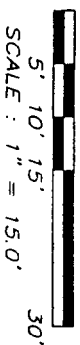
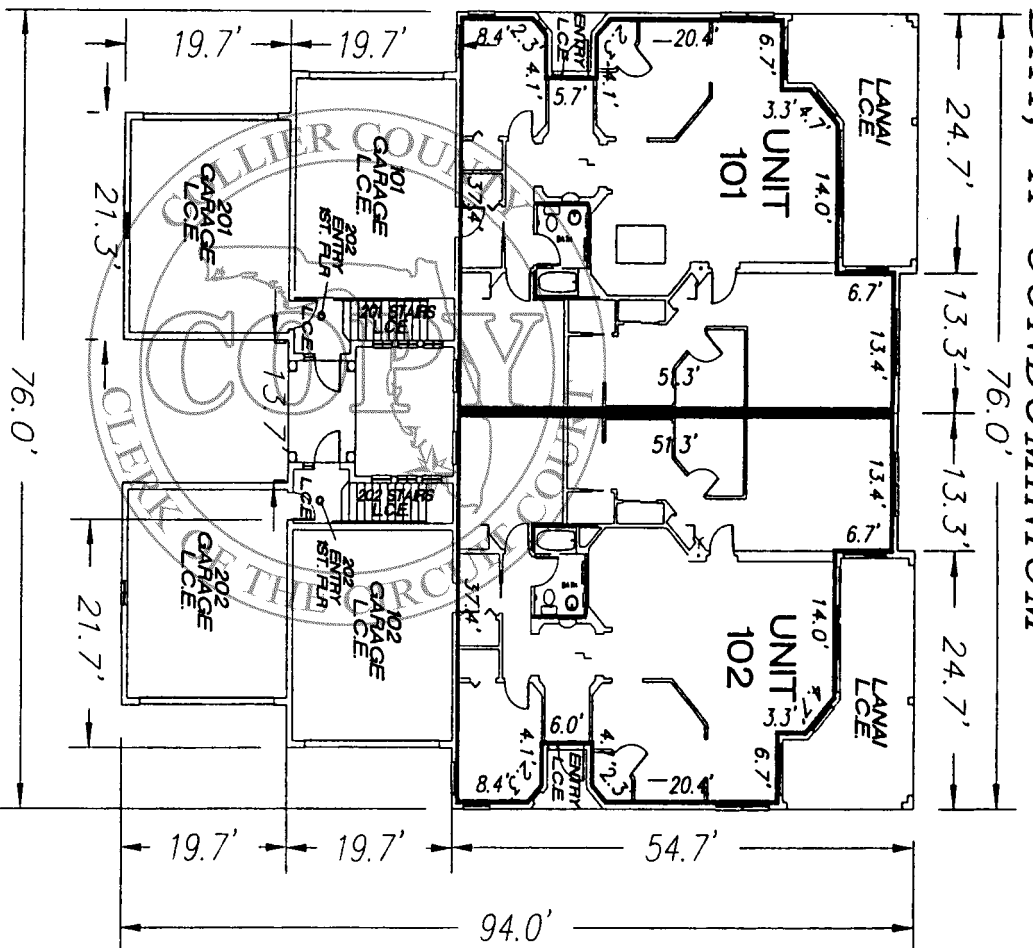
# BIMINI BAY III AT TARPON BAY, A CONDOMINIUM

CONDOMINIUM PLAT BOOK

PAGE

EXHIBIT: "B" SHEET: 7

## PROPOSED TYPICAL FIRST FLOOR PLAN BUILDINGS # 17 THRU 32



**GENERAL NOTES**  
 C.E. COMMON ELEMENT  
 L.C.E. LIMITED COMMON ELEMENT  
 HEAVY LINE INDICATE UNIT BOUNDARIES  
 INSIDE WALL DIMENSIONS ARE CALCULATED FROM DRYWALL TO DRYWALL.  
 TYPICAL EXTERIOR WALL THICKNESS IS 0.67' UNLESS OTHERWISE NOTED.  
 DISTANCES ARE IN FEET AND DECIMALS THEREOF.  
 DRAWN BY: S.B.  
 THIS INSTRUMENT PREPARED BY: Q. GRADY MINOR AND ASSOCIATES, P.A.

**BIMINI BAY III AT TARPON BAY,  
 A CONDOMINIUM**  
 SECTION 30, TOWNSHIP 48 SOUTH, RANGE 26 EAST,  
 COLLIER COUNTY, FLORIDA  
 WCI COMMUNITIES INC.



**Q. GRADY MINOR AND ASSOCIATES, P.A.**  
 CIVIL ENGINEERS • LAND SURVEYORS • PLANNERS  
 3800 VIA DEL REY  
 BONITA SPRINGS, FLORIDA 34134  
 PHONE: (239) 947-1144 FAX: (239) 947-0375  
 CERTIFICATE OF AUTHORIZATION NUMBER LB 5151

**UNIT BOUNDARY PLAN**  
**PROPOSED FIRST FLOOR UNIT BOUNDARY**  
**BUILDINGS # 17 THRU 32**  
 DATE: MARCH, 2003 JOB CODE: TB2R DRAWING: B-1884-A



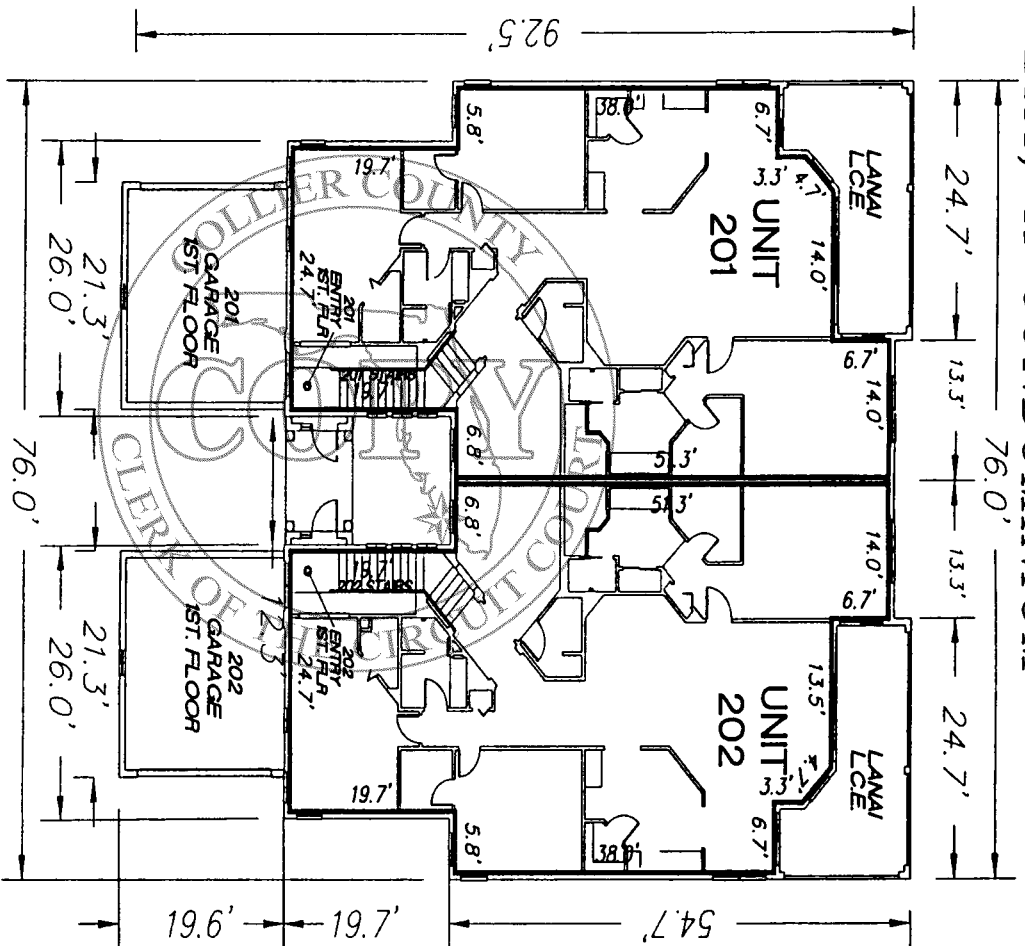
BIMINI BAY III AT TARPON BAY, A CONDOMINIUM

CONDOMINIUM PLAT BOOK

PAGE

EXHIBIT: "B" SHEET: 8

PROPOSED  
TYPICAL SECOND FLOOR PLAN  
BUILDINGS # 17 THRU 32



**GENERAL NOTES**  
 C.E. COMMON ELEMENT  
 L.C.E. LIMITED COMMON ELEMENT  
 HEADLINE INDICATE UNIT BOUNDARIES  
 INSIDE WALL DIMENSIONS ARE CALCULATED FROM DRYWALL TO DRYWALL.  
 TYPICAL EXTERIOR WALL THICKNESS IS 0.67' UNLESS OTHERWISE NOTED.  
 DISTANCES ARE IN FEET AND DECIMALS THEREOF.  
 DRAWN BY: S.B.  
 THIS INSTRUMENT PREPARED BY: Q. GRADY MINOR AND ASSOCIATES, P.A.

**BIMINI BAY III AT TARPON BAY,  
 A CONDOMINIUM**  
 SECTION 30, TOWNSHIP 48 SOUTH, RANGE 26 EAST,  
 COLLIER COUNTY, FLORIDA  
 WCI COMMUNITIES INC.

**Q. GRADY MINOR AND ASSOCIATES, P.A.**  
 CIVIL ENGINEERS • LAND SURVEYORS • PLANNERS  
 BONITA SPRINGS, FLORIDA 34134  
 3800 VIA DEL REY  
 PHONE: (239) 947-1144 FAX: (239) 947-0375  
 CERTIFICATE OF AUTHORIZATION NUMBER LB 5151

**UNIT BOUNDARY PLAN**  
**PROPOSED SECOND FLOOR UNIT BOUNDARY**  
**BUILDINGS # 17 THRU 32**  
 DATE: MARCH, 2003 JOB CODE: TB2R DRAWING: B-1884-A

# BIMINI BAY III AT TARPON BAY, A CONDOMINIUM

CONDOMINIUM PLAT BOOK

PAGE

EXHIBIT: "B" SHEET: 9

ROOF PEAK ELEVATION = 29.9'

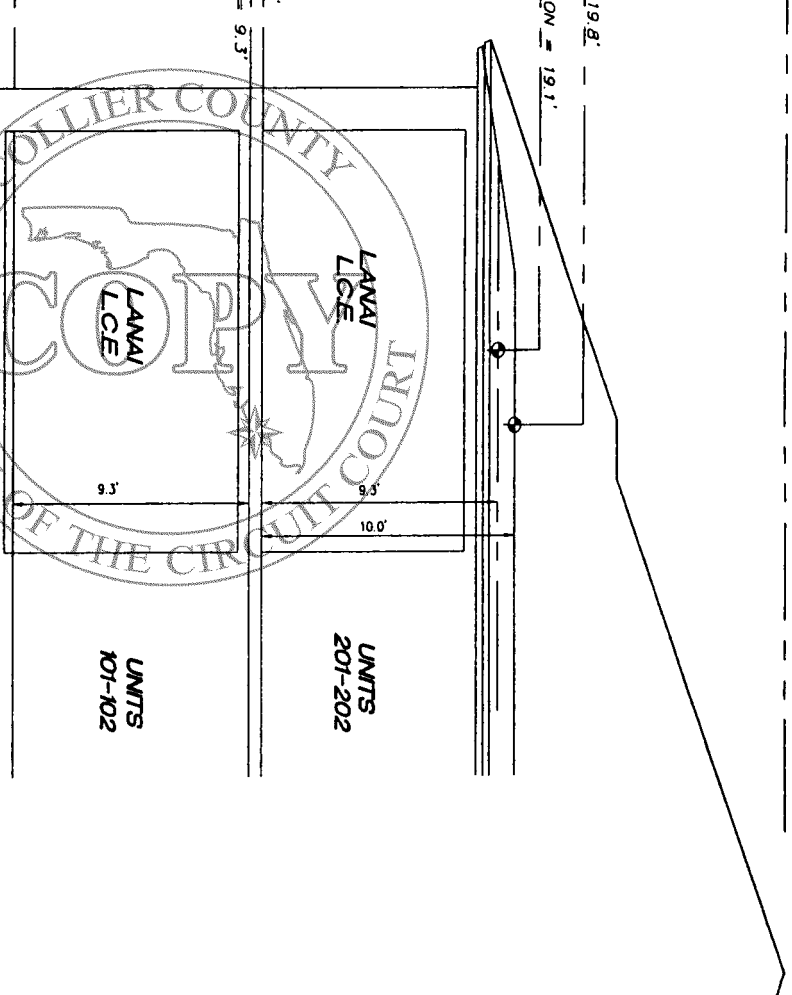
VAULTED CEILING ELEVATION = 19.8'

SECOND FLOOR CEILING ELEVATION = 19.1'

SECOND FLOOR ELEVATION = 9.8'

FIRST FLOOR CEILING ELEVATION = 9.3'

FIRST FLOOR ELEVATION = 0.0'



### GENERAL NOTES

TWO STORY CONCRETE BLOCK STRUCTURE  
 ELEVATIONS REFER TO THE FIRST FLOOR AS 0.0'  
 C.E. COMMON ELEMENT  
 L.C.E. LIMITED COMMON ELEMENT  
 DISTANCES ARE IN FEET AND DECIMALS THEREOF.  
 DRAWN BY: S.B.  
 THIS INSTRUMENT PREPARED BY: Q. GRADY MINOR AND ASSOCIATES, P.A.

## BIMINI BAY III AT TARPON BAY,

### A CONDOMINIUM

SECTION 30, TOWNSHIP 48 SOUTH, RANGE 26 EAST,  
 COLLIER COUNTY, FLORIDA

WCI COMMUNITIES INC.



Q. GRADY MINOR AND ASSOCIATES, P.A.  
 CIVIL ENGINEERS • LAND SURVEYORS • PLANNERS  
 BONITA SPRINGS, FLORIDA 34134  
 PHONE: (239) 947-1144 FAX: (239) 947-0375  
 CERTIFICATE OF AUTHORIZATION NUMBER LB 5151

BUILDINGS # 17 THRU 32

NOT TO SCALE

PROPOSED TYPICAL LONGITUDINAL SECTION

ELEVATION PLAN

PROPOSED LONGITUDINAL SECTION BUILDINGS # 17 THRU 32

DATE: MARCH, 2003

JOB CODE: TB2R

DRAWING: B-1884-A

**EXHIBIT "C" TO DECLARATION**

**BY-LAWS**

**OF**

**BIMINI BAY III AT TARPON BAY CONDOMINIUM ASSOCIATION, INC.**

**1. IDENTITY** — These are the By-Laws of **Bimini Bay III at Tarpon Bay Condominium Association, Inc.**, a nonprofit Florida corporation formed for the purpose of administering **Bimini Bay III at Tarpon Bay**, A Condominium which will be located at Naples, Collier County, Florida, upon the land described in the Declaration of Condominium. (The corporation shall hereafter be referred to as the "Association.")

**1.1. OFFICE** — The office of the Association shall be at the Condominium or such other location within Collier County, Florida as may from time to time be determined by the Board of Directors.

**1.2. FISCAL YEAR** — The fiscal year of the Association shall be the calendar year, unless otherwise determined by the Board of Directors.

**1.3. SEAL** — The seal of the Association shall be circular in shape, bear the abbreviated name of the Association, the word "Florida," and the year of establishment, 2000.

**2. MEMBERS' MEETINGS**

**2.1. ANNUAL MEETINGS** — Annual members' meetings shall be held at the Condominium or at such other convenient location as may be determined by the Board of Directors, no later than the month of April each year, in conjunction with the election of Directors and for transacting any business authorized to be transacted by the members.

**2.2. SPECIAL MEETINGS** — Special member's meetings shall be held

whenever called by the President, Vice President or by a majority of the Board of Directors and when requested by written petition signed and dated from at least 25% of the total voting interests. Such petition shall state the purpose(s) of the meeting. The business at a special meeting requested by petition shall be limited to the items specified in the petition and contained in the notice of the meeting. In the event that the Board of Directors adopts a budget requiring assessments exceeding 115% of the assessments for the preceding year, the Board upon written application of 10% of the voting interests shall call a special meeting of the unit owners to consider and enact an alternate budget. The determination as to whether the assessments exceed 115% shall be made in accordance with F.S. 718.112 (2)(e). Members meetings to recall a member or members of the Board of Directors may be called by 10% of the Association voting interests.

**2.3. NOTICE OF MEMBERS' MEETINGS** — Notice of members meetings including a recall meeting and the annual meeting, which must include an identification of agenda items, shall be delivered or mailed to each unit owner by United States mail, unless waived in writing, at least 14 days prior to the meeting, provided however, that any election at which one or more Directors are to be elected must be noticed as provided for in Section 2.4. next following. An officer of the Association shall execute an affidavit of mailing or delivery per F. S. 718.112(2)(d)(2) or provide a United States Postal Certificate of Mailing which shall be retained in the official records of the Association as proof of such mailing or delivery. Written notice of the meeting shall also be posted in a conspicuous place on the Condominium property at least 14 continuous days prior to the annual meeting. The Board, upon notice to unit owners shall by duly adopted rule designate a specific location on the Condominium property upon which all notices of unit owner meetings shall be posted.

**2.4. BOARD ELECTION MEETINGS — NOTICE AND PROCEDURE —**

The regular or general election shall occur at the time and place at which the annual meeting is scheduled to occur, regardless of whether a quorum is present.

**2.4.1.** Not less than 60 days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery, including regularly published newsletters, to each unit owner entitled to vote, the first notice of the date of the election. It must contain the name and correct mailing address of the Association. Any unit owner or other eligible person desiring to be a candidate for the board of administration must give written notice to the Association not less than 40 days before a scheduled election. The Association shall then mail or deliver a second notice of the election to all unit owners entitled to vote therein not less than 14 days before the scheduled election, together with a written ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet which must be furnished by the candidate not less than 35 days before the election, on one side of a sheet, no larger than 8 1/2 inches by 11 inches, with the costs of copying and mailing to be borne by the Association. The Association shall not edit, alter, or otherwise modify the content of the information sheet and shall have no liability for its contents.

**2.4.2.** A voting machine may also be used by those attending the meeting in person, and a unit owner who needs assistance in voting due to blindness, disability or inability to read or write may obtain assistance from a member of the Board of Directors or other unit owner but no unit owner shall permit another person to cast his ballot and any such ballots improperly cast shall be deemed invalid.

**2.4.3.** There is no quorum requirement; however at least 20 percent of the eligible voting interests must cast a valid ballot to have a valid election and elections shall be decided by a plurality of those votes cast.

**2.4.4.** An election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the Board.

**2.4.5.** Notwithstanding anything in this paragraph 2., the Association may, by the affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in these By-laws which vote may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

**2.5. NOTICE — OWNERS BUDGET MEETING** — Notice of a special meeting called by the Board at the written request of 10% of the owners because of a budget exceeding 115% of that of the preceding year requires not less than 10 days' written notice to each unit owner.

**2.6. NOTICES SPECIFIC** — All notices of meetings shall state clearly and particularly the time, place, and purpose or purposes of the meeting and shall incorporate an identification of agenda items.

**2.7. QUORUM** — A quorum at members' meetings shall consist of persons entitled to cast a majority of the voting interests of the entire membership. Decisions made by a majority of the voting interests represented at a meeting at which a quorum is present in person or by proxy shall be binding and sufficient for all purposes except such decisions as may by F.S. 718 or the documents require a larger percentage in which case the percentage required in F.S. 718 or the Documents shall govern.

**2.8. OWNER PARTICIPATION** — Unit owners shall have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the Association may adopt reasonable rules governing the frequency, duration and manner of unit

owner participation. Such rules must be adopted in advance and in written form. Any unit owner may tape record or videotape a meeting of the unit owners subject and pursuant to Rules adopted from time to time by the Division of Florida Land Sales, Condominiums and Mobile Homes.

**2.9. OWNER VOTING — INDIVISIBLE VOTE** — Each unit shall have one indivisible vote. All officers of a corporation, trust, partnership or other such owner shall be eligible to cast the vote for such a unit. If multiple owners of a unit cannot agree on a vote, the vote shall not be counted. Voting certificates are not authorized.

**2.10. PROXIES** — Votes may be cast in person or by proxy. Proxies shall be in writing, signed and dated and shall be valid only for the particular meeting designated therein or an adjournment thereof, but in no event for more than 90 days, and must be filed with the Secretary before or at the voter registration immediately preceding the meeting. A photographic, photostatic or equivalent reproduction of a proxy is a sufficient proxy pursuant to F.S. 607.0722(2). Except as specifically otherwise provided in this paragraph, or by the Condominium Act from time to time, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to the limited proxy form adopted by the Division of Florida Land Sales, Condominiums and Mobile Homes. Both limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves; for votes taken to waive financial statement requirements; for votes taken to amend the Declaration; for votes taken to amend the Articles of Incorporation or By-Laws; and for any other matter which F.S. 718 requires or permits a vote of the unit owners. No proxy, limited or general, shall be used in the election of Board members unless an alternate election procedure is adopted pursuant to Section 2.4.5. above. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for non-substantive changes to items for which a limited

proxy is required and given.

**2.11. NO QUORUM** — If any meeting of members cannot be organized because a quorum is not present, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

**2.12. ORDER OF BUSINESS** — The order of business at annual members' meetings and, as far as applicable at all other members' meetings, may be:

- (a) Election of a Chairman of the meeting, unless the President or Vice President of the Association is present, in which case he (or she) shall preside.
- (b) Collection of ballots.
- (c) Checking of signatures and unit identifications on ballot outer envelopes against the eligible voter lists.
- (d) Registering proxies and counting votes.
- (e) Proof of Notice of meeting or waiver of notice.
- (f) Calling of the roll.
- (g) Reading and disposal of any unapproved minutes.
- (h) Reports of Directors.
- (i) Reports of Committees.
- (j) Announcement of the results of the election of Directors.
- (k) Unfinished business.
- (l) New business.
- (m) Adjournment.

### **3. BOARD OF DIRECTORS**

**3.1. NUMBER, TERM, AND QUALIFICATIONS.** The affairs of the



Corporation shall be governed initially by a Board composed of three persons appointed by the Developer, which may at the Developer's option be expanded to five. The Board, after turnover of control by the Developer, shall consist of three, five or seven Directors as may be determined from time to time by the voting interests of the Association, and in the absence of such a determination shall consist of five Directors. All non-Developer Directors shall be members or spouses of members. All officers of a corporation, trust, partnership or other such owner shall be deemed to be members so as to be eligible for Board membership. A person who has been convicted of any felony by any Court of Record in the United States and who has not had his or her right to vote restored pursuant to law in the jurisdiction of his or her residence is not eligible for the Board. The validity of an action by the Board is not affected if it is later determined that a member of the Board is ineligible for Board membership due to having been convicted of a felony. Directors shall be elected by the Voting Interests as to regular or general elections at the time and place at which the annual meeting is scheduled to occur regardless of whether a quorum is present, except for Developer-appointed Directors. At and after turnover, members of the Board shall be elected for staggered two years terms. At the election held in conjunction with turnover, a majority shall be elected for two (2) years and the balance elected for one (1) year to provide continuity. Those persons receiving the highest number of votes shall serve the two year terms. In the event of a tie, for a designated position on the Board the tie shall be resolved by agreement of the candidates, if possible; otherwise the winning Director shall be chosen in a blind drawing.

**3.2. TERM OF SERVICE** — The term of each Director's service, except in the case of a vacancy caused by recall, shall extend until their elected term is completed and thereafter until their successor is duly elected and qualified or until the Director is recalled in the manner provided in the Condominium Act by a majority of the voting interests. A Board member appointed

by the Board to replace a recalled Board member shall fill the vacancy until the next regularly scheduled election for any position. Provided that a seat held by a Director who ceases to be an owner shall thereby automatically become vacant.

**3.3. BOARD VACANCIES** — Vacancies in the Board of Directors occurring between annual meetings of members shall be filled by appointment by a majority vote of the remaining Directors; provided, however, that if a majority or more of the Board members are removed by recall the vacancies shall be filled in accordance with Rule 61B-23.0027 (if at a meeting) or with Rule 61B-23.0028 (if by written agreement), Florida Administrative Code; provided further that a Director who has been recalled by the membership may not be appointed to fill the vacancy created by his removal; and further provided that following relinquishment of Developer control during the time that both the Developer and unit owners other than the Developer have representation on the Board, pursuant to F. S. 718.301(1)(e), the Developer Directors may not vote for a majority of the Board. A Director elected or appointed to fill a vacancy shall be elected or appointed for the remaining term of the seat being filled.

**3.4. ORGANIZATIONAL MEETING** — The organizational meeting of each newly elected Board of Directors to elect officers shall be held at such place and time as shall be fixed by the Directors, provided a quorum shall be present. Unless otherwise noticed, it shall be held immediately following the annual meeting. Election of officers may be by secret ballot.

**3.5. REGULAR MEETINGS** — Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of regular meetings, unless noticed previously, shall be given to each Director personally or by mail, telephone or telecopier at least three days prior to the day named for such meeting.

**3.6. SPECIAL MEETINGS** — Special meetings of the Directors may be called by the President and must be called by the Secretary at the written request of any two (2) Directors. Not less than three day's notice of the meeting (except in an emergency) shall be given personally or by mail, telephone or telecopier, which notice shall state the time, place and purpose of the meeting.

**3.7. WAIVER OF NOTICE** — Any Director may waive notice of a meeting before, at or after the meeting and such waiver shall be deemed equivalent to the giving of notice. Attendance by a Director at a meeting shall constitute waiver of notice of the meeting.

**3.8. NOTICE TO OWNERS** — Notices of Directors meetings, and meetings of committees to make recommendations regarding the Association budget or which have the authority to take action on behalf of the Board shall be posted conspicuously on the Condominium property at least 48 continuous hours in advance for the attention of unit owners, except in an emergency. Notices shall specifically incorporate an identification of agenda items. All other committee meetings are exempt from this section. Meetings at which a regular assessment is to be considered shall contain a statement that assessments will be considered and the nature of such assessments. However, written notice of any meeting at which non-emergency special assessments, or at which amendment to rules regarding unit use will be proposed, discussed, or approved, shall be mailed or delivered to the unit owners and posted conspicuously on the Condominium property not less than 14 continuous days prior to the meeting. Evidence of compliance with this 14-day notice shall be by an affidavit executed by the Secretary and filed among the official records of the Association. Upon prior notice to the unit owners, the Board shall by duly adopted rule designate a specific location on the Condominium property upon which all notices of Board meetings shall be posted.

**3.9. OWNER PARTICIPATION** — Meetings of the Board of Directors and any committee thereof required to give notice pursuant to 3.8 above, at which a quorum of the

members of that committee are present shall be open to all unit owners except that unit owners shall not be privileged to attend meetings between the Board or a committee and the Association's attorney with respect to proposed or pending litigation when the meeting is held for the purpose of seeking or rendering legal advice. The right to attend such meetings includes the right to speak with reference to all identified agenda items provided however, the Association may adopt reasonable rules governing the frequency, duration and manner of unit owner participation. Such rules must be adopted in advance and in written form. Unit owners shall have the right to tape record or videotape the meetings of the Board of Administration or Committee subject and pursuant to Rules adopted from time to time by the Division of Florida Land Sales, Condominiums and Mobile Homes.

**3.10. BOARD MEETINGS, QUORUM AND VOTING** — A quorum at Directors' Meetings shall consist of a majority of the Directors. The acts approved by a majority of Directors present at a meeting at which a quorum is present shall constitute the acts of the Board. Directors may not vote by proxy or by secret ballot at Board meetings, except as may be provided by the Condominium Act from time to time, and a vote or abstention for each member present shall be recorded in the minutes. If at any meeting of the Board there be less than a quorum present, the Director(s) present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting, which must be properly noticed, any business which might have been transacted at the meeting as originally called may be transacted. Absent Directors may later sign written concurrence in Board actions, but such joinders may not be used as a vote for or against the action taken or for purposes of creating a quorum.

**3.11. PRESIDING OFFICER** — The presiding officer at Directors' meetings shall be the President if such an officer has been elected; and if none, then the Vice President shall preside. In the absence of the presiding officer, the Directors present shall designate one of their

number to preside.

**3.12. DIRECTOR COMPENSATION** — Directors shall serve without pay unless the voting interests annually authorize Director's fees, but shall be entitled to reimbursement for expenses reasonably incurred.

**4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS** — All of the powers and duties of the Association existing under the Florida Not-For-Profit Corporation Statute, the Condominium Act, the Declaration of Condominium, the Corporate Charter and these By-laws shall be exercised exclusively by the Board of Directors, or its duly authorized agents, contractors, or employees subject only to the approval by unit owners when such is specifically required. Such powers and duties of the Directors shall include, but shall not be limited to, the following:

**4.1. TO ADOPT BUDGETS, BORROW MONEY AND MAKE AND COLLECT ASSESSMENTS AND FEES** from and against owners and users to defray the expenses of the Association.

**4.2. TO USE THE PROCEEDS OF ASSESSMENTS** in the exercise of its powers and duties.

**4.3. THE MAINTENANCE, REPAIR, REPLACEMENT AND OPERATION** of the Condominium property.

**4.4. TO ENACT RULES AND REGULATIONS** concerning the use of the common elements and the units subject to any limitations contained in the Condominium Act and the Declaration of Condominium.

**4.5. TO RECONSTRUCT COMMON ELEMENT IMPROVEMENTS AFTER CASUALTY** and the further improvement of the properties.

**4.6. TO APPROVE OR DISAPPROVE PROPOSED ACTIONS** in the

manner provided by the Condominium Declaration.

4.7. **TO ENFORCE** by legal means the provisions of applicable laws and the Condominium documents.

4.8. **TO CONTRACT FOR MANAGEMENT** of the Condominium.

4.9. **TO CARRY INSURANCE** for the protection of the unit owners, users and the Association.

4.10. **TO PAY THE COST OF ALL UTILITY SERVICES** rendered to the Condominium and not billed to owners of individual units or users.

4.11. **TO EMPLOY PERSONNEL** and designate other officers for reasonable compensation and grant them such duties as seem appropriate for proper administration of the purposes of the Association.

4.12. **TO BRING AND DEFEND SUITS, MAKE AND EXECUTE CONTRACTS, DEEDS, MORTGAGES, LEASES, LICENSES** and other instruments by its officers and to purchase, own, lease, convey and encumber real and personal property. To grant easements and licenses over the Condominium property necessary or desirable for proper operation of the Condominium.

4.13. **TO COMPLY WITH REQUIREMENTS FOR ENTERING CONTRACTS FOR PRODUCTS AND SERVICES** — All contracts for the purchase, lease or renting of materials or equipment or for services, or which are not to be fully performed within one year, shall be in writing. As to any such contract which requires payment exceeding 5 percent of the total annual budget of the Association including reserves except for contracts with employees of the Association, and for attorneys, accountants, community association managers, architects, engineers and landscape architects, the Association shall obtain competitive bids unless the products

and services are needed as the result of an emergency or unless the desired supplier is the only source of supply within Collier County. The Association need not accept the lowest bid. This Paragraph shall be deemed to incorporate the provisions of the Condominium Act as it exists from time to time.

**4.14. TO LEVY FINES** — The Directors may, pursuant to F.S. 718.303, impose fines not to exceed \$100.00 per violation, for failure to comply with the provisions of the Condominium documents, including the rules and regulations, by owners, occupants, licensees, tenants and invitees. A fine may be imposed for each day of continuing violation with a single notice and opportunity for hearing, provided that no fine shall in the aggregate exceed \$1,000.00.

**4.14.1. HEARING NOTICE** — The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen (14) days and said notice shall include:

1. A statement of the date, time and place of the hearing;
2. A statement of the provisions of the Declaration, Articles of Incorporation, By-laws, or Rules and Regulations which have allegedly been violated; and
3. A short and plain statement of the matters asserted by the association.

**4.14.2. RESPONDENT'S RIGHTS** — The party against whom the fine or sanction may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the association.

**4.14.3. HEARING COMMITTEE** — The hearing must be held before a committee of other unit owners, none of whom are members or spouses of the Board of Directors. If the committee does not agree with the fine, the fine may not be levied.

**4.15. TO APPOINT COMMITTEES** — The Directors may appoint committees except that committees for the purpose of nominating candidates for election to the Board of Directors are prohibited. The Board may, however, appoint a search committee to encourage qualified persons to become candidates for the Board. All committees and committee members shall serve at the pleasure of the Board.

**4.16. TO MAINTAIN FIRE SAFETY COMPLIANCE** — The Directors may accept a Certificate of Compliance from a licensed electrical contractor or electrician as evidence of compliance of the Condominium units with the applicable Fire and Life Safety Code.

**4.17. TO ADOPT SPECIFICATIONS FOR HURRICANE SHUTTERS** — The Board of Directors shall adopt hurricane shutter specifications for the buildings which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code. The Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the Board. Where laminated glass or window film architecturally designed to function as hurricane protection which complies with the applicable building code has been installed, hurricane shutters shall not be installed.

**4.18. EMERGENCY POWERS** — In the event of any "emergency" as defined in Paragraph 4.18.7. below, the Board of Directors may exercise the emergency powers described in this section, and any other emergency powers authorized by F.S. 617.0207, as amended from time to time.

**4.18.1** To accommodate the incapacity of any officer of the association, the Board, in advance, may name as assistant officers persons who are not directors, which assistant



officers shall have the same authority as the executive officers to whom they are assistant during the period of the emergency.

**4.18.2.** The Board may relocate the principal office or designate alternative principal offices or authorize the officers to do so.

**4.18.3.** During any emergency the Board may hold meetings with notice given only to those directors with whom it is practicable to communicate, and the notice may be given in any practicable manner, including publication or radio. The director or directors in attendance at such a meeting shall constitute a quorum.

**4.18.4.** Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the association shall bind the association and shall have the rebuttable presumption of being reasonable and necessary.

**4.18.5.** Any officer, director, agent, employee, or member of the association acting with a reasonable belief that his or her actions are lawful in accordance with these emergency bylaws shall incur no liability for doing so except in the case of willful misconduct.

**4.18.6.** These emergency bylaws supersede any inconsistent or contrary provisions of the bylaws during the period of the emergency.

**4.18.7.** For purposes of this section, an "emergency" exists during any period of time that the condominium, or the immediate geographic area in which the condominium is located, is subjected to:

- (a) a state of emergency declared by local civil or law enforcement authorities;
- (b) a hurricane warning;
- (c) a partial or complete evacuation order;

(d) federal or state "disaster area" status; or

(e) a catastrophic occurrence, whether natural or manmade,

that seriously damages or threatens to seriously damage the physical existence of the condominium, such as an earthquake, a tidal wave, a fire, a hurricane, a tornado, a war, civil unrest, or acts of terrorism.

**4.19. TO CONVEY TO CONDEMNING AUTHORITIES** — To convey a portion of the common elements to a condemning authority for the purpose of providing utility easements, right of way expansion, or other public purposes, whether negotiated or as the result of eminent domain proceedings.

**5. OFFICERS**

**5.1. EXECUTIVE OFFICERS** — After turnover, the executive officers of the Association shall be the President, one or more Vice Presidents, a Secretary, a Treasurer, and such assistant officers as may be desired, all of whom shall be elected annually by and from the Board of Directors and who may be peremptorily removed by a majority vote of the Directors at any meeting. Any person may hold two or more offices except that the President shall not also be the Secretary.

**5.2. PRESIDENT — POWERS AND DUTIES** — The President shall be the chief executive officer of the Association and shall have all of the powers and duties which are usually vested in the office of President of a corporation.

**5.3. VICE PRESIDENT — POWERS AND DUTIES** — The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. The Vice President shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

**5.4. SECRETARY — POWERS AND DUTIES** — The Secretary shall keep the minutes of all proceedings of the Directors and the members; shall attend to the giving and serving of all notices to the members and Directors and other notices required by law; shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed; shall keep and have custody of the records of the Association, except those of the Treasurer; and shall perform all other duties incident to the office of Secretary of the Association and as may be required by the Directors or the President.

**5.5. TREASURER — POWERS AND DUTIES** — The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness; shall keep the assessment rolls and accounts of the members; shall keep the books of the Association in accordance with good accounting practices; and shall perform all other duties incident to the office of the Treasurer of a corporation.

**5.6. EMPLOYEE COMPENSATION** — The compensation of all employees of the Association shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Association.

**5.7. INDEMNIFICATION** — Every Director and every officer and committee member of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees through all trial and appellate levels, reasonably incurred by or imposed in connection with any proceeding, arbitration, or settlement to which such person may be a party, or in which they may become involved, by reason of being or having been a Director, officer, or committee member of the Association. Notwithstanding the foregoing, in the event of a voluntary settlement, the indemnification provisions herein shall not be automatic and shall apply only when the Board approves such settlement. Notwithstanding anything contained herein to the

contrary, in instances where the Director, officer, or committee member admits or is adjudged guilty of willful malfeasance, misfeasance or nonfeasance in the performance of their duties, the indemnification provisions contained herein shall not apply. Otherwise, the foregoing right of indemnification shall be in addition to and not exclusive of any and all rights of indemnification to which such Director, officer or committee member may be entitled by common law or statute.

**5.8. DELEGATION** — To the extent permitted by law, the powers and duties of the directors and officers may be delegated for the purpose of management.

**6. MINUTES AND INSPECTION OF RECORDS** — Minutes of all meetings of unit owners and of the Board of Directors shall be kept in a businesslike manner and shall be reduced to written form within thirty (30) days and these, plus records of all receipts and expenditures and all other official records, as defined in F.S. 718.111, except those which are exempted by Section 718.111(12) of the Condominium Act and/or the Rules of the Division of Florida Land Sales, Condominiums and Mobile Homes from time to time, shall be available for inspection by unit owners and Board members within 5 working days after receipt of a written request by the Board a member, its designee or a unit owner. This provision shall be deemed to have been complied with by having a copy of the official records available for inspection or copying on the Condominium or Association property. Provided, however, that the Directors may adopt, in advance and in written form, reasonable rules regarding the frequency, time, location, notice and manner of record inspections and copying.

**7. FISCAL MANAGEMENT** — Shall be in accordance with the following provisions:

**7.1. BUDGET** — A proposed annual budget of common expenses shall be prepared by the Board of Directors which shall include all anticipated expenses for operation,

maintenance and administration of the Condominium including insurance and management fees, if any, and for all of the unpaid operating expenses previously incurred. It shall accrue reserves per F.S. 718.112(2)(F)(2) which may later be waived or reduced by a majority vote at a duly called meeting of the Association. Reserve funds and any accrued interest on the funds shall remain in the reserve account for authorized reserve expenditures, unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the Association. The budget will contain a reasonable allowance for contingencies and provide funds for all unpaid operating expenses previously incurred. If at any time a budget shall prove insufficient, it may be amended by the Board of Directors for the remaining portion of the fiscal year.

**7.2. MAILING** — A copy of the proposed annual budget together with a notice of the meeting shall be mailed or delivered to the unit owners not less than 14 days prior to the meeting of the directors at which the budget will be adopted.

**7.3. ASSESSMENTS** — The shares of the unit owners of the common expenses may be made payable in installments of from one to three months in advance and shall become due on the first day of each such period and which shall become delinquent 10 days thereafter. The Association shall have the right to accelerate assessments of an owner delinquent in the payment of common expenses. Accelerated assessments shall be due and payable on the date a claim of lien is filed in the Public Records of Collier County, Florida and may include the amounts due for the remainder of the fiscal year for which the claim of lien was filed.

**7.4. SPECIAL ASSESSMENTS AND CHARGES** — Assessments and charges for expenses which are not provided for and funded in the Budget shall be made by the Board of Directors, and the time of payment shall likewise be determined by them.

**7.5. ASSESSMENT ROLL** — The assessments for common expenses and charges shall be set forth upon a roll of the units which shall be available for inspection at all reasonable times by unit owners. Such roll shall indicate for each unit the name and address of the owner, and the assessments and charges paid and unpaid. A certificate made by a duly authorized representative of or by the Board of Directors as to the status of a unit's account may be relied upon for all purposes by any person for whom made.

**7.6. LIABILITY FOR ASSESSMENTS AND CHARGES** — A unit owner regardless of how his title has been acquired including by purchase at a foreclosure sale or by deed in lieu of foreclosure shall be liable for all assessments and charges coming due while the owner of a unit. Additionally a unit owner shall be jointly and severally liable with the previous owner for all unpaid assessments and charges due and payable up to the time of transfer of title. Liability may not be avoided by waiver of the use or enjoyment of any common elements or Association property or by abandonment of the unit for which the assessments are made. The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due prior to the mortgagee's acquisition of title is limited to the lesser of: (1) The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 6 months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or (2) One percent of the original mortgage debt. This partial excusal shall not apply unless the first mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to, or reasonably discoverable by the mortgagee. The person acquiring title shall pay the amount owed to the Association within 30 days

after transfer of title. Failure to pay the full amount when due shall entitle the Association to record a claim of lien against the parcel and proceed in the same manner as provided in this section for the collection of unpaid assessments. This paragraph shall be deemed amended so as to incorporate the provisions of F.S. 718.116 as amended from time to time.

**7.7. LIENS FOR ASSESSMENTS** — The unpaid portion of an assessment including an accelerated assessment which is due, together with costs, interest and reasonable attorneys' fees for collection, shall be secured by a lien upon the unit and all appurtenances thereto when a notice claiming the lien has been recorded by the Association in accordance with the requirements of Florida Statute 718.116.

**7.8. UNPAID CHARGES** — Unpaid charges which are due together with costs, interest and reasonable attorney's fees including appeals for collection shall be the basis for an action at law by the Association against the unit owner.

**7.9. COLLECTION — INTEREST; ADMINISTRATIVE LATE FEE; APPLICATION OF PAYMENTS** — Assessments paid on or before ten days after the date due shall not bear interest, but all sums not paid on or before ten days shall bear interest at the highest lawful rate from time to time (now 18% per annum) from the date due until paid. In addition to such interest the Association may charge an administrative late fee in an amount not to exceed the greater of \$25.00 or 5% of each installment of the assessment for which payment is late. All payments upon account shall be first applied to interest, then the late fee, then to any costs and reasonable attorney's fees and then to the assessment payment first due. All interest collected shall be credited to the common expense account.

**7.10. COLLECTION — SUIT** — The Association, at its option, may enforce collection of delinquent assessments by suit at law, by foreclosure of the lien securing the

assessments, or by any other remedy available under the laws of the State of Florida, and in any event the Association shall be entitled to recover the payments which are delinquent at the time of collection, judgment or decree, together with those which have become due by acceleration plus interest thereon and all costs incident to the collection and the proceedings, including reasonable attorneys' fees, including appeals. The Association must deliver or mail by certified mail to the unit owner a written notice of its intention to foreclose the assessment lien 30 days before commencing foreclosure, unless Notice of Contest of Lien has been filed. The lien created by F.S. 718.116(5)(a) shall secure only assessments, interest, costs and attorneys fees and not fines, charges or other fees.

**7.11. ACCOUNTS** — All sums collected from assessments or charges shall be credited to accounts from which shall be paid the expenses for which the respective assessments or charges are made.

**7.12. ASSOCIATION DEPOSITORY** — The depository of the Association shall be a bank or banks or state or federal savings and loan associations or a member firm of the New York Stock Exchange with offices in Florida and as shall be designated from time to time by the Directors and in which the monies for the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

**7.13. COMMINGLING OF FUNDS** — All funds shall be maintained separately in the Association's name. Reserve and operating funds shall not be commingled unless combined for investment purposes. This is not meant to prohibit prudent investment of Association funds even if combined with operating or other reserve fund, but such funds must be accounted for separately, and the combined account balance may not, at any time, be less than the amount identified as reserve funds in the combined account. No manager or business entity required to be



licensed or registered under F.S. 468.432, and no agent, employee, officer, or Director of the Association shall commingle any Association funds with his funds or with the funds of any other condominium association or community association as defined in F.S. 468.431.

**7.14. ANNUAL FINANCIAL REPORTING** — Financial reports meeting the requirements of Section 718.111(13), F.S. as amended by Chapter 2000-302, Laws of Florida, and Rule 61B-22.006 Florida Administration Code, as amended from time to time, shall be made annually within 90 days following the end of the previous Fiscal Year or at the annual meeting. Within 21 days after the financial report is completed or received by the Association from a third party, the Association shall mail to each unit owner at the address last furnished to the Association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner.

**7.15. INSURANCE OR FIDELITY BONDING** — The Association shall obtain and maintain adequate insurance or fidelity bonding for all person who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. The term “persons who control or disburse funds of the Association” includes, but is not limited to, those individuals authorized to sign checks and the president, secretary, and treasurer of the Association. The Association shall bear the cost of bonding.

**8. PARLIAMENTARY RULES** — A parliamentary procedure such as Robert's Rules of Order uniformly applied shall govern the conduct of corporate proceedings when not in conflict with the Declaration, the Articles of Incorporation or By-Laws of the Association or with the laws of the State of Florida.

**9. BY- LAW AMENDMENTS** — After turnover, amendments to the By-Laws shall be adopted in the following manner:

**9.1. NOTICE** of the subject matter of a proposed amendment shall be included in the notice of any meeting or the text of any written agreement at which or by which a proposed amendment is considered.

**9.2. PROPOSAL OF AMENDMENTS** — An amendment may be proposed by either a majority of the Directors or by Twenty-five Percent (25%) of the voting interests of the Association.

**9.3. ADOPTION OF AMENDMENTS** — A resolution or written agreement adopting a proposed amendment must receive approval of sixty-seven percent (67%) of the voting interests of the Association. Prior to turnover, amendments may be adopted by the Board alone.

**9.4. EFFECTIVE DATE** — An amendment when adopted shall become effective only after being recorded in the Public Records of Collier County, Florida.

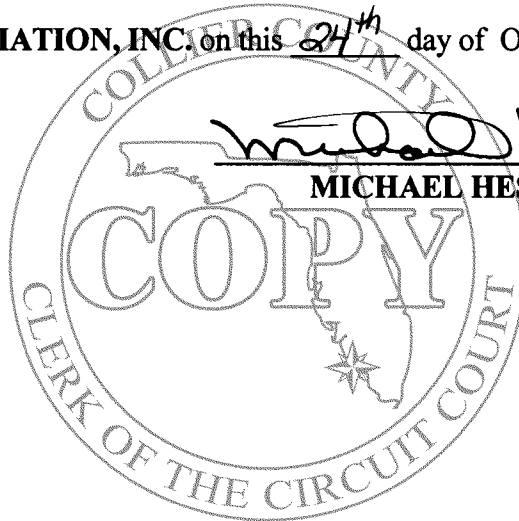
**9.5. AUTOMATIC AMENDMENT** — These By-Laws shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Condominium, the Association Articles of Incorporation, or the Condominium Act as amended from time to time.

**9.6. PROPOSED AMENDMENT FORMAT** — Proposals to amend existing By-Laws shall contain the full text of the By-Laws to be amended. New words shall be underlined and words to be deleted shall be ~~lined through~~ with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF BY-LAW. SEE BY-LAW NUMBER \_\_\_\_\_ FOR PRESENT TEXT."

**10. DELIVERY OF NOTICES TO OWNERS** — Notices to owners for meetings and for all other purposes shall be mailed to each unit owner at the address last furnished to the Association by the unit owner. Such notices may alternatively be hand delivered to unit owners.

**11. MANDATORY ARBITRATION OF DISPUTES** — If unresolved, disputes between the Board and unit owners as defined in F.S. 718.1255(1) must be arbitrated in mandatory non-binding arbitration proceedings as provided in the Condominium Act prior to commencing litigation.

The foregoing were adopted as the By-Laws of **BIMINI BAY III AT TARPON BAY CONDOMINIUM ASSOCIATION, INC.** on this 24<sup>th</sup> day of October, 2003.



*Michael Hessel*

**MICHAEL HESSEL, PRESIDENT**

**EXHIBIT "D"****BIMINI BAY III AT TARPON BAY, A CONDOMINIUM****RULES AND REGULATIONS****A. GENERAL RULES**

1. Passenger automobiles, sport/utility vehicles, mini-trucks, vans and street-legal motorcycles (used for personal transportation and not commercially) that do not exceed the size of a garage are authorized. Commercial vehicles, trucks, campers, motor homes, trailers, boats and boat trailers are prohibited unless parked in garages with the door closed. For uniform appearance, garage doors shall be kept closed when not in use for ingress and egress. Vehicle maintenance outside garages, except car washing in designated areas, if any, is not permitted on the Condominium property. All vehicles must be currently licensed and no inoperable or unsightly vehicles may be kept on condominium property. Provided that the Developer shall be exempt from this regulation for vehicles which are engaged in any activity relating to construction, maintenance or marketing of residences, as are commercial vehicles used by vendors of the Association while engaged in work at the Condominium.

2. No exterior radio, television or data reception antenna or any exterior wiring for any purpose may be installed without the written consent of the Directors. Consent shall be given in accordance with Federal Communications Commission Guidelines applicable to condominiums.

3. To maintain harmony of exterior appearance no one shall make any changes to, place anything upon, affix anything to or exhibit anything from any part of the Condominium property visible from the exterior of the buildings or from common elements on Tarpon Bay Common Property without the prior written consent of the Directors. All curtains, shades, drapes and blinds shall be white or off-white in color or lined with material of these colors.

4. All common elements inside and outside the buildings will be used for their designated purposes only, and nothing belonging to owners, their family, tenants or guests shall be kept therein or thereon without the approval of the Directors, and such areas shall at all times be kept free of obstruction. Owners are financially responsible to the Association for damage to the common elements caused by themselves, their tenants, guests and family members.

5. No more than two commonly accepted household pets such as a dog or cat and no more than 2 caged birds, and a reasonable number of tropical fish; not being kept or raised for commercial purposes shall be permitted upon the following conditions:

a. On the common elements and Tarpon Bay Common Property, pets shall be under hand-held leash or carried at all times.

b. Messes made by pets must be removed by owners or handlers immediately. The Directors shall designate the portions of the property which shall be used to accommodate the reasonable requirements of owners who keep pets.

c. Pets that are vicious, noisy or otherwise unpleasant will not be permitted in the Condominium. In the event that a pet has become a nuisance or unreasonably disturbing in the opinion of the Board of Directors, written notice shall be given to the owner or other person responsible for the pet and the pet must be removed from the condominium property within four (4) days.

d. Guests and tenants are not permitted to have pets.

e. The Board of Directors has the authority and discretion to make exceptions to the limitations in this regulation in individual cases and to impose conditions concerning the exceptions.

6. Disposition of garbage and trash shall be only by use of receptacles approved by the

Association or by use of garbage disposal units. Specifically, trash must be securely bagged and newspapers are required to be bundled. Food and vegetable scraps are to be disposed of in the individual residence garbage disposal.

7. All persons occupying residences other than the owners shall be registered with the Manager or other designate of the Association at or before the time of their occupancy of the residence. This includes renters and house guests.

Residences may not be rented for periods of less than thirty (30) consecutive days nor for longer than one (1) year. A copy of these Rules and Regulations must be given to the tenants and guests by the owner, or the owner's agent. No residence may be permanently occupied by more persons than the number of bedrooms times two, nor may more persons, including guests, occupy a residence overnight than the number of bedrooms times two, plus two.

This regulation may not be amended in a way that would be detrimental to the sales of residences by the developer so long as the developer holds residences for sale in the ordinary course of business.

8. The Association shall retain a pass key to the residences, and the owners shall provide the Association with a new or extra key whenever locks are changed or added for the use of the Association pursuant to its statutory right of access to the residences.

9. Children under the age of 12 shall be under the direct control of a responsible adult. Children shall not be permitted to act boisterously on the condominium or Tarpon Bay Common Property. Skateboarding, and loud or obnoxious toys are prohibited. Children may be removed from the common elements for misbehavior by or on the instructions of the Directors.

10. Loud and disturbing noises are prohibited. All radios, televisions, tape machines, compact disc players, stereos, singing and playing of musical instruments, etc. shall be regulated to

sound levels that will not disturb others and if used at or in the vicinity of a swimming pool shall be used only with earphones. No vocal or instrumental practice is permitted after 10:00 p.m. or before 9:00 a.m.

11. Use of barbecue grills shall only be allowed in areas designated as safe and appropriate by the Directors, if any. Grills shall not be used on lanais.

12. Illegal and immoral practices are prohibited.

13. Lawns, shrubbery or other exterior plantings shall not be altered, moved or added to without permission of the Association.

14. Laundry, bathing apparel, beach and porch accessories shall not be maintained outside of the residences or limited common elements (lanais), and such apparel and accessories shall not be exposed to view.

15. No nuisance of any type or kind shall be maintained upon the condominium property.

16. Nothing shall be done or kept in any residence or in the common elements which will increase the rate of insurance on the buildings or contents thereof, without the prior written consent of the Directors. No owner shall permit anything to be done or kept in his residence or in the common elements which will result in the cancellation of insurance on the buildings, or contents thereof, or which would be in violation of any law or building code.

17. Persons moving furniture and other property into and out of residences must do so only Mondays through Saturdays between the hours of 8:00 A. M. and 5:00 P. M. Moving vans and trucks used for this purpose shall only remain on condominium property when actually in use.

18. Repair, construction, decorating or re-modeling work shall only be carried on Mondays through Saturdays between the hours of 8:00 A. M. and 5:00 P. M. and the rules for

decorators and subcontractors set forth herein must be complied with.

19. These Rules and Regulations shall apply equally to owners, their families, guests, staff, invitees and lessees.

20. The Board of Directors of the Association may impose up to a \$100.00 fine for each violation of these Rules and Regulations or any of the condominium documents.

21. The Board of Directors has adopted hurricane shutter and protection specifications for the Condominium which are available from the manager and which must be adhered to.

22. These Rules and Regulations do not purport to constitute all of the restrictions affecting the condominium and Tarpon Bay Common Property. Reference should be made to the Condominium and Community Association Documents.

**B. RULES FOR DECORATORS, CONTRACTORS AND SUB-CONTRACTORS**

1. The unit owner must pre-register with the Manager giving him the name, address, telephone number and fax number of the unit owner's representative who will be overseeing the work being done in the unit whether it be the interior decorator, the general contractor or the unit owner.

2. Prior to commencing work, the unit owner's representative must submit to the Manager, a list of names, addresses and telephone numbers of all sub-contractors who will be working in the unit, together with a schedule for their work.

3. Work hours are 8:00 a.m. to 5:00 p.m., Monday through Saturday.

4. The contractor and all sub-contractors must have Type "B" licenses in Collier County and submit proof of same for the Manager's file.

5. Prior to authorization for access, the contractors and all sub-contractors must produce from their insurance carrier a Certificate of Insurance of general liability of no less than



\$250,000 per occurrence and no less than \$500,000 aggregate, and provide proof of Worker's Compensation coverage for the Manager's file.

6. All trash and debris shall be hauled off by the workers on a daily basis.
7. Grout, paint, wall mud or any other material may not be poured down building drains, sinks, toilets or bathtubs.
8. Breaks and lunches, if taken inside the building, should be confined to the owner's unit.
9. No radios will be allowed in the building unless used with headphones.
10. Do not tamper with or hang extension cords from any of the sprinkler heads.
11. Unit smoke alarms are to be left in place. They are to be properly protected during the interior finish work which generates heavy airborne particles, i.e. sanding and painting.
12. Workers are not to wander around in areas other than the specific area or unit they are assigned to.
13. **FLOORING** - Each unit owner in other than ground floor units who elects to install in any portion of his unit hard surface flooring materials (i.e., tile, marble, wood) shall first be required to submit for approval to the Board of Directors or its representative the proposed hard surface floor. Written approval for the proposed materials is required prior to installation of hard surface flooring.
14. The unit owner is responsible for his decorator's contractor's and sub-contractor's action and inaction's while on the premises. Decorators, contractors, and sub-contractors are on the premises at their own risk and agree to indemnify and hold harmless the Condominium Association and WCI Communities for any liability or damages which might arise in connection with their activities on the premises.

15. Should a decorator, contractor or sub-contractor discover a defect in a unit, they must notify the Manager immediately so the defect may be verified and corrected prior to doing any work which might be impacted by the defect.

16. Smoking, while discouraged, will only be allowed in the individual units with the owner's permission.

17. Please help us keep the buildings clean.  
Activities will be monitored during the day. Non-compliance may result in your decorator, contractor or sub-contractor being barred from the building.

If you have any questions please contact the Manager.

**C. RULES FOR OWNER PARTICIPATION IN BOARD OF DIRECTORS MEETINGS, A BUDGET COMMITTEE MEETING AND A MEETING OF ANY COMMITTEE AUTHORIZED TO TAKE ACTION ON BEHALF OF THE BOARD; AND OF THE LOCATION FOR POSTING NOTICES OF MEETINGS**

**I. THE RIGHT TO SPEAK:**

1. To the maximum extent practical, the posted Board meeting agenda for each meeting shall list the substance of the matters and actions to be considered by the Board.

2. Roberts Rules of Order (latest edition) shall govern the conduct of the Association meeting when not in conflict with the Declaration of Condominium, the Articles of Incorporation or the By-laws.

3. After each motion is made and seconded by the Board members the meeting Chairperson will permit owner participation regarding the motion on the floor, which time may be limited depending on the complexity and effect on the Association.

4. Owner participation will not be permitted after reports of officers or

committees unless a motion is made to act upon the report, or the Chair determines that it is appropriate or is in the best interest of the Association.

5. An owner wishing to speak must first raise his or her hand and wait to be recognized by the Chair.

6. While an owner is speaking he or she must address only the Chair, no one else is permitted to speak at the same time.

7. An owner may speak only once for not more than three (3) minutes and only on the subject or motion on the floor.

8. The Chair may, by asking if there be any objection and hearing none, permit an owner to speak for longer than three (3) minutes, or to speak more than once on the same subject. The objection, if any, may be that of a Board member only and if there is an objection then the question will be decided by a vote of the Board.

9. The Chair will have the sole authority and responsibility to see to it that all owner participation is relevant to the subject or motion on the floor.

**II. THE RIGHT TO VIDEO OR AUDIOTAPE:**

1. The audio and video equipment and devices which owners are authorized to utilize at any such meeting must not produce distracting sound or light emissions.

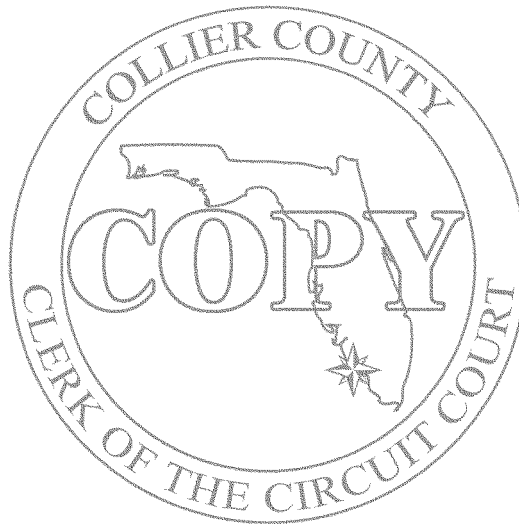
2. Audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting in a location that is acceptable to the Board or the Committee.

3. Anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording.

4. At least 24 hours advance written notice shall be given to the Board by any

owner desiring to utilize any audio and/or video equipment to record a meeting.

- III. **LIMITATION ON THE ASSOCIATION'S OBLIGATION TO RESPOND TO WRITTEN INQUIRIES — THE ASSOCIATION SHALL NOT BE OBLIGATED TO RESPOND TO MORE THAN ONE WRITTEN INQUIRY FROM A UNIT OWNER FILED BY CERTIFIED MAIL IN ANY GIVEN 30 DAY PERIOD. IN SUCH CASE, ANY ADDITIONAL INQUIRY OR INQUIRIES MUST BE RESPONDED TO IN THE SUBSEQUENT 30 DAY PERIOD OR PERIODS.**
  
- IV. **ALL NOTICES OF MEMBERSHIP, DIRECTORS AND COMMITTEE MEETINGS AT WHICH OWNERS ARE ENTITLED TO PARTICIPATE WILL BE POSTED IN A LOCKED, CLEAR FRONTED BULLETIN BOARD AT A LOCATION DESIGNATED FROM TIME TO TIME BY THE BOARD OF DIRECTORS.**



**Q. GRADY MINOR & ASSOCIATES, P.A.**  
Civil Engineers ■ Land Surveyors ■ Planners

Q. GRADY MINOR, P.E.  
MARK W. MINOR, P.E.  
C. DEAN SMITH, P.E.  
DAVID W. SCHMITT, P.E.  
MICHAEL J. DELATE, P.E.  
NORMAN J. TREBILCOCK, A.I.C.P., P.E.

D. WAYNE ARNOLD, A.I.C.  
ERIC V. SANDOVAL, P.S.  
ALAN V. ROSEMA

OR: 3449 PG: 2821

EXHIBIT "E"  
LANDS SUBMITTED TO CONDOMINIUM OWNERSHIP

**PROPERTY DESCRIPTION**  
**BIMINI BAY III AT TARPON BAY, A CONDOMINIUM**

TWO PARCELS OF LAND IN THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 48 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT 'N' OF TARPON BAY, AS RECORDED IN PLAT BOOK 36, AT PAGES 28 THRU 31 ACCORDING TO THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, CONTAINING 4.890 ACRES, MORE OR LESS.

**AND**

A PORTION OF TRACT "P" OF TARPON BAY AS RECORDED IN PLAT BOOK 36 AT PAGES 28 THRU 31 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;  
**BEGIN AT THE NORTHEASTERLY MOST CORNER OF SAID TRACT "P";**  
**THENCE RUN SOUTH 41°26'26" WEST FOR A DISTANCE OF 126.96 FEET;**  
**THENCE RUN NORTH 48°33'34" WEST FOR A DISTANCE OF 70.62 FEET;**  
**THENCE RUN SOUTH 85°06'04" WEST FOR A DISTANCE OF 63.07 FEET;**  
**THENCE RUN SOUTH 83°26'33" WEST FOR A DISTANCE OF 70.74 FEET;**  
**THENCE RUN SOUTH 62°39'37" WEST FOR A DISTANCE OF 71.16 FEET;**  
**THENCE RUN NORTH 50°44'11" WEST FOR A DISTANCE OF 130.31 FEET TO A POINT ON A CIRCULAR CURVE CONCAVE SOUTHEAST WHOSE RADIUS POINT BEARS SOUTH 48°41'54" EAST, A DISTANCE OF 255.00 FEET THEREFROM;**  
**THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 255.00 FEET, THROUGH A CENTRAL ANGLE OF 43°47'57", SUBTENDED BY A CHORD OF 190.22 FEET AT A BEARING OF NORTH 63°12'04" EAST, FOR AN ARC LENGTH OF 194.93 FEET TO THE END OF SAID CURVE;**  
**THENCE RUN NORTH 85°06'03" EAST FOR A DISTANCE OF 97.96 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE CONCAVE SOUTHWEST;**  
**THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 180.00 FEET; THROUGH A CENTRAL ANGLE OF 62°10'00"; SUBTENDED BY A CHORD OF 185.86 FEET AT A BEARING OF SOUTH 63°48'57" EAST FOR AN ARC LENGTH OF 195.30 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED.**

(239) 947-1144 ■ FAX (239) 947-0375 ■ E-Mail: [engineering@gradymenor.com](mailto:engineering@gradymenor.com)  
3800 Via Del Rey ■ Bonita Springs, Florida 34134-7569

CONTAINING 1.163 ACRES, MORE OR LESS. OVERALL PARCEL EQUALS 6.053 ACRES MORE OR LESS.

BEARINGS SHOWN HEREON REFER TO THE EAST LINE OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 48 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA, AS BEING N 02°34'39" W.

THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS AND OR RESTRICTIONS OF RECORD.



*Michael L. Harmon*

Michael L. Harmon (for the firm) #5151  
Professional Land Surveyor  
Florida Certificate No. 2904

