

Retn:
BAY COLONY GATEWAY INC
24301 WALDEN CENTER DR
BONITA SPRINGS FL 34134

2774495 OR: 2802 PG: 2862

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04/06/2001 at 09:31AM DWIGHT B. BROCK, CLERK

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TARPON BAY

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS TARPON BAY DECLARATION OF COVENANTS AND RESTRICTIONS is made this 2nd day of ^{April}~~March~~, 2001 by WCI COMMUNITIES, INC., a Delaware corporation, having a mailing address at 24301 Walden Center Drive, Suite 300, Bonita Springs, Florida 34134 (the "Developer").

PROPOSED PLAN OF DEVELOPMENT

It is the Developer's intention (although the Developer does not obligate itself to do so) to develop Tarpon Bay as seven (7) condominiums (comprised of varying numbers of buildings in each condominium and a varying number of "Units," as such term is defined below, in each such building) and associated improvements in the following manner:

A maximum of 352 Units, roadways, utilities and entrance, a recreation area with swimming pool and deck, fitness club, basketball court, two (2) tennis courts, shelter, practice putting green, canoe storage, gazebo, landscaped areas and fresh water lakes and retention area. Expenses of the operation and maintenance of the "Common Areas," as such term is defined below, improvements will be shared by all "Owners," as such term is defined below.

1. Definitions.

When used hereinafter, the words set forth below shall have the following meanings unless the context requires otherwise:

1.1. "Association" means and refers to the Tarpon Bay Community Association, Inc., a nonprofit Florida corporation, its successors and assigns.

1.2. "Board" or "Board of Directors" means and refers to the Board of Directors of the Association as it exists from time to time.

1.3. "Common Areas" means and refers to all properties within the Tarpon Bay Lands (including any and all improvements thereon) which are not parcels that are (or are intended to be) submitted to condominium ownership and include the lakes, swimming pool, clubhouse, the entrance and the roads, and landscaped areas including properties in or over which the Association or the owners have easements as well as those to which it has a fee interest.

1.4. "Institutional Lender" means and refers to a bank, savings and loan association, insurance company, mortgage company, credit union or pension fund authorized to do business in the United States of America, an agency of the United States Government, Fannie Mae, Freddie Mac, a real estate investment trust, a lender generally recognized in the community as an institutional lender, and if the Developer holds a mortgage on one or more of the units, the Developer.

15. "Owner" means and refers to the record owner (whether one or more than one person or entity) of a Unit.

1.6. "Tarpon Bay lands" means and refers to the lands legally described in Exhibit "A" hereto.

1.7. "Unit" means and refers to a constructed dwelling unit (together with any interests in commonly or individually owned real property appurtenant thereto) which is intended to be and may be used and occupied only as a single family residence.

2. Declaration.

2.1. General. All Units, the Tarpon Bay lands and the Common Areas shall be held, conveyed, leased, mortgaged, used, occupied and improved subject to the covenants, restrictions,

easements and servitudes set forth in this Declaration and the Charter, By-Laws and Rules and Regulations of the Tarpon Bay Community Association, Inc., all of which are for the purpose of uniformly enhancing and protecting the value and desirability of the Units, and which shall run with the land.

2.2. Effect and Duration. The covenants, restrictions, easements and servitudes shall run with, bind, benefit and burden all properties subject hereto, and shall benefit, burden and be enforceable by and against the Developer, the Association, the Owner of any unit, and the respective legal representatives, heirs, successors and assigns of each for a term of 30 years from their recordation in the Public Records, after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by the then Owners of two-thirds of the Units has been recorded, agreeing to terminate said covenants and restrictions in whole or in part; provided, however, that no such agreement shall be effective unless made and recorded three years in advance of the effective date of such termination and unless written notice of the proposed agreement is sent to every Owner at least 90 days in advance of any action taken. Termination will cause the then owners of units to become tenants in common of an equal fractional interest in the Common Areas of the then existing Subdivision as an appurtenance to their ownership of a unit.

3. The Common Areas.

3.1. General. The property located in Collier County, Florida, and which is defined in Section 1.3 of this Declaration is hereby declared to be Common Areas.

4. The Association.

4.1. Duties. The Association shall be responsible for the exclusive management, operation and maintenance of the Common Areas and the surface water management system in

accordance with its Articles of Incorporation, its Bylaws and this Declaration.

4.2. **Membership.** Every Owner as defined in section 1.5 of this Declaration shall be a member of the Association. 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 a record title to a Unit in Tarpon Bay and the delivery to the Association of a photocopy of such recorded instrument. The Association may charge the new owner an administrative fee established from time to time by the Board of Directors to cover the costs of changing its records and providing a set of the Documents to such owner, the payment of which shall be secured by a lien as an assessment. Membership in the Association shall be appurtenant to and inseparable from the ownership of a Unit.

4.3. **Voting.** Each Unit shall have one full, indivisible vote in all matters. When more than one person holds title to a Unit, all such persons shall be members, the vote for such Unit being exercisable as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Unit.

5. Property Rights in the Common Areas.

5.1. **Owners' Rights and Easements.** As long as this Declaration is in effect, each Owner shall have the following:

5.2. **Easement of Enjoyment.** All members of the Association shall, subject to the provisions herein, have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant and shall pass with title to every unit.

5.3. **Easement for Repair, Maintenance and Encroachment.** The Common Areas shall be subject to an easement for encroachment created by construction, settling and overhang of all buildings or portions thereof constructed by the developer. An easement for such encroachments as

well as for the repair and maintenance of the improvements shall exist over and across Common Areas. In the event that any structure is partially or totally destroyed, then rebuilt, the owners and the Association agree that minor encroachments on Common Areas due to construction shall be permitted and that an easement for such encroachments and the maintenance of the structure shall exist. The Association is granted a blanket easement over Common Areas, Condominium Property and units for repair and maintenance and for carrying out its responsibilities.

5.4. The Association shall maintain the water retention areas in a fashion consistent with the requirement for same imposed by any governmental body or authority with jurisdiction.

5.5. Other Persons Entitled to Use. Subject to reasonable regulations by the Association, the foregoing rights and easements of each Owner may be extended to the members of his immediate family, his lessees, invitees and his social guests residing in the Unit.

5.6. Other Easements.

(a) Fire, law enforcement, health, sanitation and other public service personnel and their vehicles shall have a perpetual non-exclusive easement into, out of and over the Common Areas for the purpose of performing their lawful functions.

(b) Easements over the Common Areas for drainage and public utilities may be granted from time to time by the Association.

(c) There is hereby reserved to the Declarant, its successors and assigns, a perpetual, non-exclusive easement to access all signage for the Community to install the phrase "A WCI Community" or words of similar import directly below, or in close proximity, to the name of the community or install additional signage identifying WCI Communities, Inc. in close proximity of the signage containing the community name. Further, Declarant shall have the right, but not the

obligation, to maintain, modify or remove said signage in its sole and absolute discretion, without the consent of the Community Association.

6. Maintenance.

The Association shall be responsible for maintaining and replacing, when necessary, all of the Common Areas including all furnishings, fixtures and equipment located thereon. In addition, this responsibility shall include properly maintaining the grass, trees and other vegetation located on the Common Areas and on Condominium Property exterior to the buildings. The Association specifically shall provide and maintain security lighting for the entrance and the recreation center. All of the maintenance shall be ordered by the vote of a majority of the Association's Directors, who may delegate the responsibility of ordering and/or performing the maintenance to one or more management companies.

7. Insurance.

7.1. **Coverage.** The Association shall at all times use its best efforts to obtain and maintain adequate insurance to protect the Association, and the Common Areas.

7.2. **Casualty.** The coverage shall afford protection as may be appropriate against:

7.2.1. Loss or damage by fire or other hazards covered by a standard extended coverage endorsement.

7.3. Such other risks as from time to time are customarily covered with respect to improvements similar in construction, location and use to the improvements on the Common Areas including, but not limited to, flood, vandalism and malicious mischief. All or any part of such coverage may be extended to include personal property of the Association as the Board may deem desirable. The coverage shall be written in the name of, and the proceeds shall be payable to, the

Association. The premiums shall be included as part of the periodic assessments provided for in Section 9.

7.4. Association's Public Liability. The Association shall at all times maintain policies of comprehensive liability insurance, including officers and directors liability insurance, insuring the Association and its agents, the Board and the Owners against liability in connection with the Common Areas in such amounts as the Board may deem desirable, which policy shall include, if obtainable, a cross-liability endorsement. The premiums for such insurance shall be included as part of the periodic assessments provided for in Section 9.

8. Damage to the Common Areas.

The repair and reconstruction of the Common Areas after casualty shall be governed by the following provisions:

8.1. If in the event of damage or destruction to the Common Areas, the insurance proceeds are sufficient to effect total restoration, then the Association shall cause the damaged Common Areas to be repaired and reconstructed substantially as they previously existed.

8.2. If the insurance proceeds are within \$25,000.00 of being sufficient to effect total restoration to the Common Areas, then the Association shall cause the damaged Common Areas to be repaired and reconstructed substantially as they previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as an assessment against each of the Owners in accordance with the formula set forth in Paragraph 9.5.

8.3. If the insurance proceeds are insufficient by more than \$25,000.00 to effect total restoration to the Common Areas, then by written consent or vote of a plurality of the Owners, they shall determine whether (1) to rebuild and restore damaged Common Areas in substantially the same manner as they existed prior to damage and to raise the necessary funds in excess of insurance

proceeds by levying special assessments against all the Owners pursuant to the formula set forth in Paragraph 9.5.; (2) to rebuild and restore the damaged Common Areas in a manner which utilizes all available insurance proceeds, as well as an additional amount, not in excess of \$25,000.00, assessable to all the Owners as aforesaid but which is less expensive than replacing the damaged Common Areas in substantially the same manner as they existed prior to being damaged; or (3) not to restore the damaged Common Areas and to distribute the available insurance proceeds to the Owners of the Units in proportion to their assessment shares as provided in Paragraph 9.5.

8.4. Each Owner shall be liable to the Association for any damage to the Common Areas which may be sustained by reason of the negligence or willful misconduct of such Owner or of his tenants, family or guests. Such liability may be collectible by the Association in the manner provided in Section 9 for the collection of special assessments. The Association reserves the right to charge a special assessment equal to the increase, if any, in insurance premiums directly attributable to the practices and damage caused by such Owner.

9. Assessments.

9.1. **Covenant to Pay.** Each Owner of a Unit by accepting a deed, covenants to pay to the Association, periodic and special assessments as hereinafter provided. The obligation to pay assessments shall commence initially as of the date the Declaration of each proposed Condominium is recorded in the Public Records of Collier County, Florida. The Developer may, but shall have no obligation to, subsidize a budget shortfall prior to turnover of the Association in such amounts as the Developer deems appropriate. For the purpose of securing the payment of such assessments, the Association shall have a continuing lien on each Unit. Provided that such liens upon Units shall be inferior to a first mortgage to an institutional lender on the Unit which was made in good faith and for value and which was recorded prior to the Association's filing a claim of

lien against the Unit. Each assessment levied upon an Owner shall also constitute a personal obligation of that Owner and, except as otherwise provided herein, an obligation of his successors and assigns.

9.2. Purpose. The assessments imposed pursuant to Paragraph 9.1. shall be used exclusively for the operation of the Association as provided in this Declaration and the operation, maintenance, restoration and improvement of the Common Areas as provided in this Declaration and the Association's Charter and Bylaws, provided that said purpose shall be liberally construed to promote effectively the welfare, safety and recreational opportunities of the Owners.

9.3. Periodic Assessments. The Board shall fix the amount of the periodic assessments for each fiscal year of the Association (or part thereof if assessments commence on other than the first day of such fiscal year) to be levied against each Owner subject to assessment at least 30 days in advance of such period. The Board may provide in its absolute discretion that the periodic assessments be payable either quarterly or monthly.

9.4. Special Assessments. Special assessments may at any time be levied by the Board upon all Owners subject to periodic assessments for the following described purposes and subject to the following conditions:

9.4.1. For restoration of the Common Areas after casualty, in accordance with Section 8.

9.4.2. For capital improvements upon the Common Areas (including appurtenant or related fixtures and personalty) provided that, except as provided in Paragraph 8.3., any such assessment that is in the aggregate in excess of \$25,000.00 shall also require the vote or written consent of a plurality of the Owners subject to such assessment.

9.4.3. To make up deficits in operating and maintenance accounts resulting from inadequate or uncollectible periodic assessments.

9.4.4. A special assessment may be levied against any Unit Owner to reimburse the Association for any expense incurred by it as a result of maintenance, repairs or replacements which were made or performed by it with respect to the Common Areas and which were caused or arose from the willful or negligent act or neglect of such Owner, his family, his tenants, guests or his invitees.

9.5. Share of Assessments. The periodic assessments provided for in Paragraph 9.3. and the special assessments provided for in Subparagraphs 9.4.1. through 9.4.3 shall be allocated to and assessed against each Unit in equal fractions of $1/352^{\text{nd}}$ of the whole.

9.6. Non-Use. No Owner may exempt himself from personal liability for periodic or special assessments levied by the Association or release his Unit from the liens imposed hereby, by his failure to use the Common Areas or abandonment of his unit.

9.7. Association's Remedies for Non-Payment. In addition to imposing liens and bringing actions, the Association shall have the right to accelerate assessments of an owner delinquent in the payment of Association expenses. Accelerated assessments shall be due and payable on the date a claim of lien is filed against the owners unit 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. The Association may also impose fines and/or suspend use rights in the Common Areas and facilities upon financially delinquent members without complying with the provisions of Section 4.14 of the Association By-Laws concerning failure to comply with the provisions of the Tarpon Bay Documents, and a member's voting rights in the Association may be suspended for a delinquency of regular annual assessments in excess of 90 days.

9.8. Interest. Periodic and special assessments that are unpaid for more than ten days after the date they are due shall bear interest at the highest lawful rate (now 18% per annum) from the due date until paid.

9.9. Enforcement of Lien.

9.9.1. Reasonable attorneys' fees incurred by the Association or its agent incident to the collection of an unpaid periodic or special assessment or the enforcement of any lien provided for herein. (including attorneys' fees in connection with any review of a judicial or administrative proceeding by appeal or otherwise), together with all sums advanced and paid by the Association or its agent for costs, taxes and payments on account of superior liens or encumbrances which may be required to be advanced by the Association or its agent in order to preserve and protect its lien, shall be payable by the Owner liable for the assessment and secured by said lien.

9.9.2. In addition, the Owner of any Unit with respect to which an assessment is overdue by more than 30 days may be required by the Board to pay the Association an administrative late fee of \$25.00 or 5% of the amount of the delinquent installment, whichever is greater.

9.9.3. The Association may bring an action in its name to foreclose any lien on a Unit in the manner in which mortgages of real property are foreclosed in Florida and may also bring an action to recover a money judgment for unpaid periodic or special assessments without waiving any claim of lien, provided that in either case the Association must give the delinquent Owner at least 30 days' written notice of its intentions, and in case of a foreclosure, must file in the Public Records of Collier County, Florida, a claim of lien containing the information required by Section 718.116, Florida Statutes (1997). Upon the timely curing of any default (including the payment of fees and costs secured by the Association's lien) for which a claim of lien was filed, the

Owner curing the default is entitled to have a satisfaction of lien recorded in the Official Records of Collier County, Florida.

9.9.4. The holder of an institutional first mortgage who acquires title to a unit by purchase at a foreclosure sale, or by deed in lieu of foreclosure is liable for the unpaid Association 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 Association 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. Any such shares of assessment for which the new Owner is not liable shall be collectible by periodic or special assessments from all the Owners, including the new Owner of the Unit in question. Except as expressly provided hereinabove, every grantee in a voluntary conveyance of a Unit shall be jointly and severally liable for all unpaid periodic or special assessments against the grantor for his share of the assessments including purchasers at a judicial sale, shall be liable for all periodic or special assessments coming due while he is the Owner of a Unit regardless of how his title was acquired.

9.9.5. The remedies provided in this paragraph (b) shall be cumulative and not mutually exclusive.

9.10. Association's Certificate. Each Owner of a Unit and every holder of a mortgage thereon shall have the right to require from the Association a certificate showing the amount of unpaid periodic or special assessments against the Owner with respect to his Unit upon payment to the Association of a reasonable fee not exceeding \$25.00. Any person other than the

Owner of the Unit in question who relies upon such certificate shall be protected thereby.

10. Amendments.

This Declaration may be amended by the Association by the affirmative vote or written consent of Owners holding not less than two-thirds of the voting interests; provided, however, that any amendment which would affect the surface water management system, including the water management portions of the Common Areas must have the prior approval of the South Florida Water Management District. Prior to turnover of Association control by the Developer as provided in the Association By-Laws, the Developer may amend this Declaration, the Charter, By-Laws and Rules and Regulations of the Association without the joinder of any other person; and during such time this paragraph may not be amended without the written joinder and consent of the Developer.

11. Restrictions.

11.1. **Boats and Motor Vehicles.** Passenger automobiles and vans and mini-trucks (used for personal transportation and not commercially) are permitted. No boats, boat trailers, commercial vehicles, full sized trucks, campers, motor homes, trailers, motorcycles or other non-passenger motor vehicles shall be placed, parked, or stored upon any portion of the Condominium Property or the Common Areas except where totally isolated from public view, such as in a garage.

11.2. **Signs.** No commercial signs of any kind including "For Rent" or "For Sale" may be erected on the Common Areas without written approval of the Association or as may be required by legal proceedings, and it being understood that the Association will not grant permission for any signs larger than six (6) square feet unless their erection is necessary to avert serious hardship to Owners. In addition, until Developer has sold and closed on all Units in the condominiums, all signs must have the prior written approval of the Developer. The provisions of this Section 11.2.

shall not be applicable to the Developer during the time it owns one (1) or more units in Tarpon Bay.

11.3. Building Exterior. All windows, porches, balconies, and exteriors of all buildings shall at all times be maintained in a neat and orderly manner.

11.4. Lakes. The two (2) smaller lakes are part of the surface water management system, and there shall be no boats, bathing or swimming allowed in such lakes. This provision shall not apply to boats used to maintain the lake areas.

12. Developer Agreements.

Developer has entered or may enter into a Developer Agreement (Natural Gas) (the "Developer Agreement") and a Redesign Agreement (the "Redesign Agreement") with Peoples Gas System, a division of Tampa Electric Company, a Florida corporation, a natural gas provider ("Peoples Gas"). The terms of the Developer Agreement will or may provide, among other things, for Peoples Gas to install natural gas distribution systems in the Tarpon Bay lands, and to make certain energy conservation allowance payments to Developer in accordance with Peoples Gas' tariff approved by the Florida Public Service Commission for those residences qualifying under the "Conservation Program," as such term is defined in the Developer Agreement. Additionally, the terms of the Redesign Agreement will or may provide, among other things, for Peoples Gas to reimburse Developer for a portion of certain costs associated with the redesign of existing residential plans and specifications to accommodate gas appliances.

13. Incentive Programs:

At various times, Developer adopts incentive programs with its affiliated brokerage entity, Prudential Florida WCI Realty under which the agents of such affiliated brokerage entity receive

bonuses in addition to commissions for sales of single family residences constructed by Developer or for sales of residences in condominiums constructed and/or developed by Developer.

14. Miscellaneous Provisions.

14.1. **Notice.** Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, first class postpaid, to the last known address of the person who appears as the Owner on the records of the Association at the time of such mailing.

14.2. **Enforcement.** These covenants and restrictions may be enforced by the Association or any owner by any proceeding at law or in equity against any person or persons including lessee and guests violating or attempting to violate any covenant or restriction, either to restrain the violation, to enjoin compliance, or to recover damages, and against the Units to enforce any lien created by these covenants; and failure by the Developer, the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party shall recover costs and reasonable attorneys' fees at all trial and appellate levels.

14.3. **Constructive Notice and Acceptance.** Every person who owns, occupies or acquires any right, title, estate or interest in or to any Unit shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in such property.

14.4. **Topical Headings.** The topical headings of the provisions herein are not a part of this Declaration, but are for convenience only, and do not define, enlarge, limit or construe any of the provisions hereof.

