

RRC FEE 456.00
COPIES 101.00
MISC 1.00

PREPARED BY:
RICHARD D. DeBOEST, Sr., ESQ.
ATTORNEY AT LAW
POST OFFICE BOX 1470
FORT MYERS, FL 33902
Tel: (941) 334-1381

Retn:
WCI COMMUNITIS INC
24301 WALDEN CENTER DR
BONITA SPRINGS FL 34134

DECLARATION OF CONDOMINIUM

OF

WINDWARD BAY 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 48 single family residential units and associated improvements in three, three story, sixteen unit buildings designated "Windward Bay at Tarpon Bay, A Condominium."

3. **NAME — ASSOCIATION** — The name of the Condominium Association is "Windward Bay 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 Windward 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 — Where a limited common element consists of a lanai 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. FLOORING — All units shall always have the floors covered with wall-to-wall carpeting installed over high quality padding, except carpeting is not required in entry foyer, kitchens, bathrooms or utility 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 of such kind and quality equivalent or superior to Jamo sound isolation material, all installed in accordance with the Rules and Regulations, as amended from time to time, so as to reduce the transmission of noise to adjoining units. The unit owner shall obtain written approval of the Board of Directors 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 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 of the date of this Declaration, any such warranty and claims for loss or damages resulting

from sound or impact noise transmission. The structural integrity of lanais constructed of steel reinforced concrete is adversely affected by water intrusion and rusting aggravated by the water retention qualities of indoor-outdoor carpet, river rock and unglazed ceramic tile and its grout. For this reason no indoor-outdoor carpet or river rock may be used on lanais, and all tile and its bedding and grout must be of such materials and so applied as to be waterproof. Any flooring installed on the lanais of a unit shall be installed so as to insure proper drainage.

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.

** TOTAL PAGE. 02 **

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, cable television or security systems: 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 $1/48^{\text{th}}$ 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 judgement 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

