

State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of
TARPON BAY RESIDENTS' ASSOCIATION, INC., a Florida corporation, filed on
January 12, 1998, as shown by the records of this office.

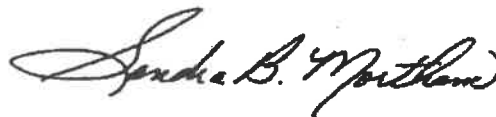
The document number of this corporation is N98000000136.

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Residential

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Twelfth day of January, 1998



CR2EO22 (2-95)



Sandra B. Northam
Secretary of State

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ARTICLES OF INCORPORATION

FOR

TARPON BAY RESIDENTS' ASSOCIATION, INC.

98 JAN 12 AM 11:03

In compliance with the requirements of Chapter 617, Florida Statutes, the undersigned who are of full age, do hereby certify:

ARTICLE I

~~The name of the corporation is TARPON BAY RESIDENTS' ASSOCIATION, INC.~~

The office of the association is located at 26210 Mira Way, Bonita Springs, Florida 34134.

The name and address of the Registered Agent is C. Perry Peeples, Esquire, 8889 Pelican Bay Blvd., Suite 300, Naples, Florida 34108.

The terms used in these Articles shall have the definitions as provided in Article I of Declaration of Covenants, Conditions and Restrictions for TARPON BAY (the "Declaration").

ARTICLE II

PURPOSE AND POWERS OF THE ASSOCIATION

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for maintenance and preservation of the Lots and Common Areas within that certain tract of property located in Lee County, Florida, known as "Tarpon Bay" pursuant to the provisions of the Declaration, and to promote the betterment of the above described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association and in furtherance of those purposes to:

A. Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration, applicable to the property, to be recorded in the Public Records of Lee County, Florida, and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein by reference as if set forth at length;

B. Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses in connection therewith and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

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C. Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

D. Borrow money, and with the consent of two-thirds (2/3) of the members entitled to vote, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

E. Dedicate, sell or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members;

F. Have and to exercise any and all powers, rights and privileges which a corporation organized under the not-for-profit Corporation Law of the State of Florida by law may now or hereafter have or exercise;

ARTICLE III MEMBERSHIP

Every person or entity who is a record owner of a Lot in Tarpon Bay, which Lot, pursuant to the Declaration, is subject to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of Lot which is subject to assessment by the Association.

ARTICLE IV VOTING RIGHTS

Members, including the Declarant, shall be entitled to voting rights as provided in the By-Laws of the Association.

ARTICLE V BOARD OF DIRECTORS

The affairs of this Association shall be managed by a Board of at least three (3) members who shall initially be appointed by the Developer. The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successors are:

Don Rubinton

26210 Mira Way
Bonita Springs, Florida 34134

George Rubinton

26210 Mira Way
Bonita Springs, Florida 34134

Bonnie S. Planting

26210 Mira Way
Bonita Springs, Florida 34134

Directors of the Association shall be elected by the members in the manner determined by the By-Laws.

ARTICLE VI INDEMNIFICATION

The Association shall indemnify every Director and every officer of the Association against all expenses and liabilities including attorney's fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Association. In the event of a settlement, indemnification shall apply only when the Board of Directors approves such settlement and indemnification as being in the best interests of the Association. The foregoing right of indemnification shall not apply to:

- A. Gross negligence or willful misconduct in office by any Director or officer.
- B. Any criminal action, unless the Director or officer acted in good faith and in a manner he reasonably believed was in, not opposed to, the best interest of the Association, and had no reasonable cause to believe his action was unlawful.

The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or officer may be entitled.

ARTICLE VII DURATION

The corporation shall exist perpetually. If this corporation shall ever be dissolved, the property owned by the corporation consisting of the surface water management system shall be conveyed to an appropriate agency of local government. If it is not accepted, then the surface water management system shall be dedicated to a similar non-profit corporation.

ARTICLE VIII AMENDMENTS

Subject to the rights of the Developer as provided in the By-Laws of the Corporation, amendments of these Articles shall require the consent of two-thirds (2/3) of the members entitled

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to vote, but no amendment shall be effective which is in contravention of the duties, responsibilities or obligations of the Association or the members as provided in the Declaration. Amendments to the By-Laws may be made at a regular or special meeting of the members.

ARTICLE IX
NOT FOR PROFIT STATUS

In compliance with the requirements of Chapter 617, the corporation shall issue no stock, and no dividends shall be paid and no part of the income of the corporation shall be distributed to the members, directors or officers.

ARTICLE X
OFFICERS

There shall initially be a President and Secretary/Treasurer of the Corporation. The initial officers of the corporation are as follows:

PRESIDENT	Jon Rubinton
SECRETARY/TREASURER	George Rubinton

After Declarant turns over control of the Association, the officers shall consist of a President, Vice President and Secretary/Treasurer.

ARTICLE XI
INCORPORATOR

The name and address of the incorporator is:

Jon Rubinton	26210 Mira Way
	Bonita Springs, Florida 34134

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Florida, the undersigned, constituting the incorporators of this Association, has executed these Articles of Incorporation this 9 day of January, 1992


Jon Rubinton

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 9 day of January, 1998, by Jon Rubinton, personally known to me.

(Seal)



BONNIE S. PLANTING
COMMISSION # CC 657723
EXPIRES JUN 22, 2001
BONDED THROUGH
ATLANTIC BONDING CO., INC.

Bonnie S. Planting
Notary Public
Printed Name: Bonnie S. Planting
My commission expires: 6-22-01

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**CERTIFICATE DESIGNATING PLACE OF BUSINESS
FOR THE SERVICE OF PROCESS WITHIN THIS STATE,
NAMING AGENT UPON WHOM PROCESS MAY BE SERVED.**

98 JAN 12 AM 11:03

In pursuance of Chapter 48.091, Florida Statutes, the following is submitted, in compliance with said Act:

That TARPON BAY RESIDENTS' ASSOCIATION, INC., desiring to organize under the laws of the State of Florida with its principal office, as indicated in the Articles of Incorporation, in County of Lee, State of Florida, has named C. PERRY PEEPLES, ESQUIRE, Annis, Mitchell, Cockey, Edwards & Roehn, 8889 Pelican Bay Boulevard, Suite 300, Naples, Florida 34108, State of Florida, as its agent to accept service of process within this State.

ACCEPTANCE

Having been named to accept service of process for the above corporation, at place designated in this certificate, I hereby accept to act in this capacity, and agree to comply with the provision of said Act relative to keeping open said office.

C. PERRY PEEPLES, ESQUIRE

BY-LAWS
OF
TARPON BAY RESIDENTS' ASSOCIATION, INC.
A NOT-FOR-PROFIT CORPORATION

ARTICLE I
NAME, LOCATION AND DEFINITIONS

The name of the corporation is TARPON BAY RESIDENTS' ASSOCIATION, INC., a Florida Corporation, not-for-profit, hereafter referred to as the "Association". The principal office of the corporation shall be located at 26210 Mira Way, Bonita Springs, Florida 34134, or at such other place as established by the Association but meetings of members and directors may be held at such places within the State of Florida, as may be designated by the Board of Directors.

The terms used in these By-Laws shall have the meanings as provided in Article I of the Declaration of Covenants, Conditions and Restrictions for Tarpon Bay (the "Declaration").

ARTICLE II
MEMBERS AND MEETINGS OF MEMBERS

Section 1. Qualification. Every person or entity who is a record fee simple Owner of a Lot including Declarant, at all times so long as it owns all or any part of the property subject to this Declaration, shall be a member of the Association, provided that any such person or entity who holds such interest only as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to, and may not be separated from ownership of any Lot which is subject to assessment. When any Lot is owned of record by two or more persons or other legal entity, all such persons or entities shall be members.

Section 2. Voting Rights. The members of the Association shall be entitled to one (1) vote for each Lot owned by them. The total votes shall not exceed the total number of Lots. The vote of a Lot shall not be divisible. If a Lot is owned by one natural person, his/her right to vote shall be established by the record title to the Lot. If a Lot is owned jointly by two or more natural persons and they cannot agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If the Owner of a Lot is not a natural person, the vote of that Lot shall be cast by the Lot's Primary Occupant designated as set forth in the Declaration.

A majority of votes cast shall be sufficient for corporate action except where provided otherwise in these By-Laws, the Articles or the Declaration.

Section 3. Change in Membership. A change in membership in the Association shall be established by the recording in the Public Records of Lee County, Florida, a deed or other instrument establishing record title to a Lot and forwarding a copy of same to the Association. Thereupon the grantee in such instrument will become a member of the Association and the membership of the prior owner shall thereby be automatically terminated. Upon such transfer of title, the grantee shall notify the Association of such transfer and provide to the Association an address to which all notices and correspondence should be sent. If the grantee fails to notify the Association of such transfer of title, the Association shall not be responsible to mail or deliver notices and correspondence to the new owner, and until notice of the transfer is given to the

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Association, the prior owner shall remain joint and severally liable for assessments with the new owner.

Section 4. Termination of Membership. The termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former owner or member arising out of, or in any way connected with, such ownership and membership and the covenants and obligations incident thereto.

Section 5. Annual Meetings. The first annual meeting of the members shall be held within one (1) year from the date of incorporation of the Association at a time as may be determined by the Board, and each subsequent regular annual meeting of the members shall be held yearly thereafter, at the hour and date to be determined by the Board.

Section 6. Special Meetings. Special meetings must be held when called by the Board of Directors or by at least 40 percent (40%) of the voting interests of the Association. Business conducted at a special meeting is limited to the purposes described in the notice of the meeting.

Section 7. Notice. Written notice of each meeting of the members shall be given by, or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and in the case of a special meeting the purpose of the meeting.

Section 8. Quorum. The presence at the meeting of at least thirty (30%) percent of the members entitled to vote, in person or by proxy, shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws.

Section 9. Proxies. At all meetings of members, each member entitled to vote may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot. In no event shall a proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given.

Section 10. Adjourned Meetings. If a quorum is not present at any duly called meeting of the members, the meeting shall be adjourned and rescheduled to a later date when a quorum may be obtained. Notice of said later date shall be given to members.

Section 11. Order of Business. The order of business at members' meetings shall be substantially as follows:

A. Call of the roll and certification of quorum.

- B. Proof of notice of meeting or waiver of notice.
- C. Reading and disposal of any unapproved minutes.
- D. Reports of Officers.
- E. Reports of Committees.
- F. Election of Directors.
- G. Unfinished Business.
- H. New Business.
- I. Adjournment.

Section 12. Minutes. Minutes of all meetings of the Association and of the Board of Directors shall be kept in a businesslike manner by the Association Secretary and shall be available for inspection by members or their authorized representatives at all reasonable times and for a period of seven (7) years after the meeting.

Section 13. Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, or with the Declaration or these By-Laws.

Section 14. Action by Members Without Meeting. Any action required or permitted to be taken at a meeting of the Association may be taken without a meeting if written consents, setting forth the action to be taken, are signed by the members entitled to vote having not less than the minimum number of votes that would be necessary to take such action at a meeting, or a majority of the members entitled to vote, whichever is greater. Upon receiving the required number of written consents, the Board of Directors shall take the authorized action upon adopting a resolution to that effect. Within ten (10) days after adopting the resolution, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph shall be construed in derogation of members' rights to call a special meeting of the membership as elsewhere provided in these By-Laws.

ARTICLE III

BOARD OF DIRECTORS: TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of at least three (3) members who shall initially be appointed by the Developer. The number of board members may be amended by a resolution of the Board of Directors. Until turnover the Developer shall have the right to appoint a majority of the Board.

Section 2. Term of Office. Each Director shall hold office for a term of one (1) year.

Section 3. Removal. Any Director, except a Director appointed by the Developer, may be removed from the Board, with or without cause, by a majority of the members entitled to vote.

Section 4. Replacement. Until turnover, if the office of any Director or Directors becomes vacant for any reason the Developer shall appoint a successor. After turnover, if the office of any Director or Directors becomes vacant for any reason, a majority of the remaining Directors, though less than a quorum, shall promptly choose a successor or successors who shall hold office until the next annual meeting. At the next annual meeting, the members shall elect a person or persons to fill the remaining unexpired term or terms, if any.

Section 5. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 6. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE IV NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made at the meeting at which the election occurs. A member may nominate himself as a candidate for the board at a meeting where the election is to be held.

Section 2. Election. Election to the Board of Directors shall be by either open ballot or by secret written ballot, if any member so chooses. The person receiving the largest number of votes shall be elected, except that a run-off shall be held to break a tie vote. Cumulative voting is not permitted.

ARTICLE V MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held as determined by the Board, at such place and hour as may be fixed from time to time by resolution of the Board. Notice of all meetings shall be posted conspicuously on the Association property at least forty-eight (48) hours in advance, except in an emergency. In the alternative, if notice is not posted in a conspicuous place on the Property, notice of each board meeting must be mailed to delivered to each member at least 7 days before the meeting, except in an emergency. Notice of any meeting in which assessments against Lot owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments. Directors may attend all meetings in person or by telephone conference call.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by a majority of the directors, after not less than three (3) days notice, unless waived, to each director.

Section 3. Quorum. A majority of the number of directors, either in person or by telephone conference call, shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Open Meetings. Meetings of the Board of Directors shall be open to members, but members shall not be entitled to participate at such meetings.

ARTICLE VI

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Power. In addition to powers granted by law, the Board of Directors shall have power to:

- A. Exercise for the Association all powers, duties and authorities vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation or the Declaration;
- B. Adopt and publish rules and regulations governing the use of the Common Areas and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;
- C. Employ a manager, an independent contractor, or such employees as they may deem necessary and to prescribe their duties; and
- D. Appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Association and as prescribed by these By-Laws and the Declaration.

Section 2. Duties. It shall be the duty of the Board of Directors to:

- A. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the members;
- B. Supervise all officers, agents and employees of this Association and to see that their duties are properly performed;
- C. As more fully provided in the Declaration to: (1) fix the date of commencement and the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period; (2) send written notice of each assessment to each

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member no later than fourteen (14) days after fixing the date of commencement and amount of assessments;

D. Issue, or to cause an appropriate officer to issue, upon demand by a person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

E. Procure and maintain adequate officers and directors liability insurance, if available; and hazard and other types of insurance on property owned or maintained by the Association;

F. Cause all officers or employees having fiscal responsibilities to be bonded, as and if they may deem appropriate;

G. Enforce the terms and provisions of the Declaration; and

H. Perform or act upon anything else required by law.

ARTICLE VII
OFFICERS AND THEIR DUTIES
COMMITTEES

Section 1. Enumeration of Officers. Prior to turnover, the officers of this Association shall be a President and Secretary/Treasurer. After turnover, the officers of this Association shall be a President, Vice President and Secretary/Treasurer, who shall at all times be members of the Association and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and shall hold office for one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

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Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article, however, no person shall simultaneously hold the office of President and Secretary.

Section 8. Duties. The duties of the officers are as follows:

PRESIDENT

A. The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all promissory notes. He shall also be authorized to sign checks.

VICE-PRESIDENT

B. The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act; and shall exercise and discharge such other duties as may be required of him by the Board.

SECRETARY

C. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members, keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of members; keep appropriate current records showing the members of the Association together with their addresses and shall perform such other duties as required by the Board.

TREASURER

D. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account, cause an annual audit of the Association books to be made at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting; and deliver a copy of each to the members, pursuant to the provisions of the Declaration and these By-Laws.

ARTICLE VIII
BOOKS AND RECORDS

Section 1. Inspection by Members. The books, records and papers of the Association shall at all times during reasonable hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at actual cost.

ARTICLE IX
FISCAL MATTERS AND ASSESSMENTS

Section 1. Assessments. As more fully provided in the Declaration, each member is obligated to pay to the Association assessments which are secured by a continuing lien upon the property against which the assessment is made. Assessments shall be paid quarterly, unless otherwise determined by the Board of Directors. Assessments shall be collected against Unit Owners in the proportions as provided in the Declaration. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the highest rate as allowed by law. In addition, the Association may charge an administrative late fee, not to exceed the greater of \$25.00 or 5% of each delinquent installment. Payments on account of delinquent assessments shall first be applied to interest, then to late fees, then to costs and attorneys fees and then to the delinquent payment. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Areas or abandonment of his Lot.

Section 2. Bank Accounts. The Association shall maintain its accounts in such financial institutions in the State of Florida as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles.

Section 3. Budget. The Board of Directors shall, prior to the end of the fiscal year, adopt an annual budget for common expenses for the next fiscal year for the Association as more fully provided in the Declaration. The budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications. The Association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member.

Section 4. Financial Reporting. The Board of Directors shall prepare an annual financial report within 60 days after the close of the fiscal year. The Association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member.

Section 5. Reserves for Capital Expenditures and Maintenance. In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance. The amount to be reserved shall be computed by a formula based upon estimated life and replacement cost of each item, and such formula shall be set forth in the proposed budget. These reserves shall be funded unless the members subsequently determine by majority vote of the total voting interests voting in person or by limited proxy at a duly called meeting to fund no reserves or less than adequate reserves for a fiscal year. Reserves funded under this section shall be used only for the specific purpose for which they were reserved unless their use for other purposes is first approved by a majority of the voting interests present in person or by limited proxy and voting at a duly called members' meeting.

Section 6. General Maintenance Reserves. In addition to the reserves provided above, or in place of them if the members so vote, the Board may establish one or more additional reserve accounts for general operating expenses, repairs, minor improvements or deferred maintenance. The purpose of the reserves is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget each year. These funds may be spent for any purpose approved by the Board.

Section 7. Fidelity Bonds. The Association shall obtain and maintain adequate fidelity bonding of all persons who control or disburse funds of the Association in the principal sum of not less than \$50,000.00 for each such person. The premiums on such bonds shall be paid by the Association.

Section 8. Fiscal Year. The fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December of every year.

Section 9. Application of Payments and Co-Mingling of Funds. All sums collected by the Association may be co-mingled in a single fund or divided into two or more funds, as determined by the Board of Directors. All payments on account by a Lot Owner shall be applied first to interest, then to any administrative late fee, then to costs and attorney's fees incurred in collection and then to the delinquent assessment.

Section 10. Fines. In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, the Association may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities and may levy reasonable fines, not to exceed \$50 per violation, against any member or any tenant, guest, or invitee. Each day the violation continues after notice of such violation by the Board shall constitute a new and distinct violation.

A. A fine or suspension may not be imposed without notice of at least 14 days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

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B. The requirements of this subsection do not apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments or other charges when due.

C. Suspension of common-area-use rights shall not impair the right of an Owner or tenant of a Lot to have vehicular and pedestrian ingress to and egress from the Lot, including, but not limited to, the right to park.

D. The Association may not suspend the voting rights of a member.

ARTICLE X
CORPORATE SEAL

Section 1. Form. The Association shall have a seal in circular form having within its circumference the words TARPON BAY RESIDENTS' ASSOCIATION, INC., a Florida Corporation, not-for-profit.

ARTICLE XI
AMENDMENTS

Section 1. Vote. These By-Laws may be amended at a regular or special meeting of the members, by a vote of a majority of the total members of the Association.

Section 2. Conflict. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE XII
DEVELOPER'S RIGHT

Section 1. Developer's Rights. So long as the Developer holds one or more Lots for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer.

A. Any amendment to the Association documents which, in the opinion of the Developer, would adversely affect the rights of the Developer, its successors or assigns.

B. Any action by the Association that would be detrimental to the sale of Lots by the Developer. However, an increase in assessments for common expenses shall not be deemed to be detrimental to the sale of Lots.

ARTICLE XIII
TRANSFER OF ASSOCIATION CONTROL

Section 1. Election. Members other than the Developer are entitled to elect at least a majority of the members of the Board of Directors of the Association when the following event occurs:

Three months after 90 percent of all of the Lots that will ultimately be operated by the Association have been conveyed to members other than the Developer. For purposes of this Section, the term "members other than the Developer" shall not include builders, contractors, or others who purchase a Lot for the purpose of constructing improvements thereon for resale.

Section 2. Developer's Rights. The Developer is entitled to elect at least one member of the Board of Directors of the Association as long as the Developer holds for sale in the ordinary course of business at least 5 percent of the Lots. After the Developer relinquishes control of the Association, the Developer may exercise the right to vote any developer-owned voting interests in the same manner as any other member, except for purposes of reacquiring control of the Association or selecting the majority of the members of the Board of Directors.

IN WITNESS WHEREOF, we, being all of the directors of TARPON BAY RESIDENTS' ASSOCIATION, INC., a Florida corporation not for profit have hereunto set our hands this 27 day of February, 1998.



Jon Rubinton



George Rubinton



Bonnie S. Planting

CERTIFICATION

I, THE UNDERSIGNED, DO HEREBY CERTIFY:

THAT I am the duly elected and acting Secretary of TARPON BAY RESIDENTS' ASSOCIATION, INC., a Florida Corporation, not-for-profit, and

THAT the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 27 day of February, 1998.



George Rubinton

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

TARPON BAY

THIS DECLARATION, is made this 6 day of March, 1998, by R & D of Captiva, Inc., a Florida Corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Lee County, Florida, which is more particularly described in "Exhibit A" attached hereto, and desires to create a residential community on platted Lots which shall contain single family residences, known as Tarpon Bay, and

WHEREAS, Declarant wishes to provide for the preservation and maintenance of the appearance, values and amenities of Tarpon Bay and to this end, desires to subject the real property described in Exhibit "A" to the terms, conditions, rights and obligations of this Declaration of Covenants, Conditions and Restrictions for Tarpon Bay, herein called the "Declaration" and has created a non-profit membership corporation, herein called the "Association" to be given the power and duty of maintaining and administering the Common Areas and enforcing this Declaration of Covenants, Conditions and Restrictions for Tarpon Bay.

NOW, THEREFORE, Declarant hereby declares that all of the properties in Exhibit "A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of such Owner thereof.

RECORDED BY
TRENT VOGES, D.C.

ARTICLE I
DEFINITIONS

1.1 "Assessments" shall mean a sum or sums of money for common expenses provided for herein or by any subsequent amendment which shall be used for the purposes of promoting the recreation, common benefit, and enjoyment of the Owners and occupants of Tarpon Bay and of maintaining the Property or Common Areas within Tarpon Bay, all as may be specifically authorized from time to time by the Board of Directors of the Tarpon Bay Residents' Association, Inc., which if not paid by an Owner can result in a lien against the Lot.

1.2 "Association" shall mean and refer to Tarpon Bay Residents' Association, Inc., its successors and assigns.

1.3 "Board of Directors" or "Board" shall mean and refer to the representative body which is responsible for the administration of the Association.

1.4 "Common Areas" shall mean all real property to be owned or leased by the Association for the common use and enjoyment of the Owners, their agents, assigns, employees and invitees, as well as all real property which is dedicated to the Association or its members by recorded plat or other document. Common Areas shall specifically include the tennis court and Dock area. The Common Areas include all land which is subject to this Declaration less and excepting the platted Lots which have been reserved by Declarant for sale to Owners. The Common Areas specifically include the stormwater management system and all buffer areas dedicated by plat.

* 1.5 "Declarant" shall mean and refer to R & D of Captiva, Inc., a Florida corporation, its successors and assigns. It shall not include any person or entity who purchases a Lot unless such purchaser is specifically assigned some or all rights of Declarant by a separate recorded instrument. Declarant shall specifically include the purchase money mortgagee of the Declarant who takes title to any portion of the Properties, by foreclosure or deed in lieu of foreclosure, provided the purchase money mortgagee of the Declarant records a partial or complete assumption of Declarant's rights, executed solely by the purchase money mortgagee of the Declarant, in the Public Records of Lee County, Florida, to the extent of the Declarant's rights so assumed.

1.6 "Dwelling" shall mean and refer to a single family residence and ancillary structures such as garages, decks, swimming pools, screen enclosures and outbuildings.

1.7 "Guest" means any person who is physically present in, or occupies a Lot at the invitation of the Owner without the payment of consideration or rent.

1.8 "Institutional Mortgagee" shall mean and refer to the holder of a first mortgage against a Lot which holder is a bank, savings and loan association, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans

Administration or any agency of the United States of America, and their successors and assigns, or any entity recognized in the community as an institutional lender. The mortgage may be placed through and closed in the name of a mortgage broker.

1.9 "Lease" means the grant by a Lot Owner of a temporary right of use of the Owner's Lot for valuable consideration.

✱ 1.10 "Lot" shall mean a platted residential Lot as shown on the Plat of Tarpon Bay, to be recorded in the Public Records of Lee County, Florida.

1.11 "Member" shall mean and refer to all Lot Owners.

1.12 "Occupant" when used in connection with the Lot, means any person who is physically present in a Lot on two (2) or more consecutive days, including staying overnight.

1.13 "Owner or Lot Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Properties but shall not mean or refer to any mortgagee unless and until any such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

1.14 "Primary Occupant" shall mean the natural person approved for occupancy when title to the Lot is held in the name of a trustee or a corporation or other entity which is not a natural person.

1.15 "Properties" or "Property" shall mean and refer to that certain real property described in "Exhibit A", known as Tarpon Bay and such additions thereto as may hereafter be brought within the jurisdiction of the Association and submitted to this Declaration.

1.16 "Single Family" shall mean a family unit comprised of the Owner, spouse, children, parents, brothers, sisters, grandchildren and other persons permanently cohabiting with the Owner as or together with the Owner as a Primary Occupant.

ARTICLE II PROPERTY RIGHTS

2.1 Every Owner shall have a right and easement of enjoyment in and to the Common Areas together with a nonexclusive easement of ingress and egress over the roadways in the properties which right and easement of enjoyment shall be appurtenant to and shall pass with title to every Lot subject to the following provisions:

A. The right of the Association to charge all Owners reasonable fees for the upkeep, maintenance and repair of the Common Areas, equipment or structures situated upon the Common Areas.

B. The right of the Association to dedicate, transfer or grant an easement or property rights to all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members.

C. The right of the Board to promulgate, modify, amend and enforce reasonable rules and regulations relating to the use and enjoyment of the Properties.

D. The right of individual Lot Owners to the exclusive use of docks assigned to a particular Lot.

E. Ownership of each Lot shall entitle the Owner thereof to an easement over any portion of their driveway located beyond their Lot line.

F. Utility easements are hereby reserved throughout the properties as may be required to adequately serve the Properties.

G. Easements for ingress and egress and right-of-way are reserved for pedestrian traffic over, through, on and across all Common Areas and upon all sidewalks, paths, walkways, lanes, streets and avenues, as the same from time to time exist upon the Common Areas; and for vehicular traffic over, through and across such portions of the Common Areas as from time to time may be installed for such purposes.

H. There shall be an easement for encroachment in favor of the Declarant, Owners and the Association where any portion of the Common Areas encroaches upon any portion of the Properties or any Lot therein.

I. An easement for pedestrian ingress and egress is reserved across lots 3 and 4 for the Association and all Owners over, through, on and across a walkway located on the boundary of Lots 3 and 4, as such lots are shown the plat of Tarpon Bay, and along the wetland line, as shown on the plat, for the purpose of gaining access to the Dock area located at the water line of Lots 2, 3 and 4.

J. An easement for the construction, maintenance, use of and access to a tennis court is reserved over the west portion of Lot 4 and the east portion of Lot 5 for the Association and all Owners. The Declarant shall record a document defining the boundaries of such easement in the Public Records of Lee County, Florida.

K. Any portion of the Property which is designated as open space, landscape buffer, preserve area, or words of similar import on any plat, declaration of restrictions, site plan, permit

or other document shall be preserved and maintained by the owner of such land as such open space. If such land or an easement over such land has been conveyed or dedicated to the Association, the Association shall preserve and maintain such land. No development may occur on such land except structures and improvements which promote the use and enjoyment thereof for open space purposes. The Association shall own and maintain all buffer areas as set forth on the plat.

2.2 Any Owner may delegate, in accordance with and subject to the By-Laws and this Declaration, his right of enjoyment to the Common Areas and facilities to the members of his family, his tenants, invitees or contract purchasers who reside on the Property.

2.3 The Declarant shall not be required to convey the legal and equitable title and ownership to the Common Areas or any part thereof until the time the Declarant no longer owns any Lot in the Properties. Declarant may convey title, and the Association shall accept title, at any time prior to the Declarant's conveyance of the last Lot owned by the Declarant, at Declarant's sole option.

2.4 There shall be no judicial partition of the Common Areas, nor shall Declarant, or any Owner or any other person acquiring any interest in the Properties, or any part thereof, seek judicial partition thereof.

2.5 Within the easements for installation and maintenance of utilities and any drainage facilities, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere with, or change the direction of flow of drainage facilities in the easements.

2.6 The Common Areas include boat docks for the use and enjoyment of Lot Owners in Tarpon Bay, as well as the Association's interest as Lessee under a submerged land lease with the State of Florida. The docks are a Limited Common Area and each dock will be assigned to the exclusive use of a particular Lot within Tarpon Bay. This right of exclusive use of a dock shall be appurtenant to the ownership of the Lot to which the dock is assigned and such use right shall automatically pass with the title to the Lot. The exclusive use rights to a dock may not be separated or partitioned from the fee simple title of the Lot to which the dock is assigned.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS
IN THE ASSOCIATION

3.1 Every person or entity who is a record fee simple Owner of a Lot, including Declarant, at all times so long as it owns all or any part of the Property, shall be a Member of the Association, provided that any such person or entity who holds such interest only as security for the performance of an obligation shall not be a Member. If any such Owner is not a natural

person, the subject entity shall designate a natural person who shall be the Primary Occupant and such natural person shall exercise the Lot's membership rights. Membership shall be appurtenant to, and may not be separated from ownership of any Lot which is subject to assessment. When any Lot is owned of record by two or more persons or other legal entity, all such persons or entities shall be Members.

3.2 The Members of the Association shall be entitled to one (1) vote for each Lot owned by them. The total votes shall not exceed the total number of Lots. The vote of a Lot shall not be divisible. If a Lot is owned by one natural person, his right to vote shall be established by the record title to the Lot. If a Lot is owned jointly by two or more natural persons, that Lot's vote may be cast by any Owner present at the meeting at which the vote is taken. If two or more Owners of a Lot are present and cannot agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If the Owner of a Lot is not a natural person, the vote of that Lot shall be cast by the Lot's Primary Occupant designated as set forth above.

ARTICLE IV COVENANTS FOR MAINTENANCE ASSESSMENT

4.1 Subject to the provisions of Article IV, Sections 4.11 and 4.12 herein, the Declarant, for each Lot owned by it within the Properties hereby covenants and agrees, and each Owner of any Lot (by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance) including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association maintenance assessments or charges, and any special assessments to be fixed, established and collected from time to time as hereinafter provided. All such assessments, together with interest thereon from thirty (30) days after the due date at the highest rate as allowed by law, costs of collection and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot(s) against which each such assessment is made, and shall also be the personal obligation of the Owner. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or by abandonment, or otherwise.

4.2 The annual and special assessments levied by the Association shall be collected by the Board and shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Properties including but not limited to the following:

A. Improvements, maintenance and repair of the Common Areas, including but not limited to the cost of maintaining:

1. the operation and maintenance of the stormwater management system;
2. all streets, driveways, parking areas and sidewalks, to the extent that such improvements are a part of the Common Areas;

3. all landscaped areas including lawns, shrubs, trees and other planting located on Common Areas;

4. all equipment and facilities owned by or acquired by the Association located on the Common Areas or recreation areas, if any;

5. all sewer utility facilities, including pipes, lines, grinder stations and lift stations in the Common Areas;

6. fences, signs, street lights and fountains located on the Common Areas;

7. all storm drains, drainage courses, drainage easements, sprinkler systems in the Common Areas and utility easements;

8. entry gates that are part of or appurtenant to improvements constructed on the Common Areas;

9. docks, pilings, dock area and walkways.

B. Maintenance or repair of automatic entry system and gates into the Properties, electrical lighting, and other necessary utility services for the Common Areas and non-potable water to service the sprinkler system in the Common Areas and on the Lots;

C. Hiring professional advisors, management companies and payment of management fees and charges;

D. Fire insurance covering the full insurable replacement value of the Common Areas with extended coverage;

E. Liability insurance insuring the Association against any and all liability to the public, to any Owner, or to the invitees, or tenants of any Owner arising out of their occupation or use of the Common Areas. The policy limits shall be set by the Association, and shall be reviewed at least annually and increased or decreased in the discretion of the Association;

F. Worker's compensation insurance to the extent necessary to comply with the Florida Statutes, and any other insurance deemed necessary by the Board;

G. Acquisition of equipment for the Common Areas as may be determined by the Board, including without limitation, all equipment and personnel necessary or proper for use or maintenance of the Common Areas;

H. Any other materials, supplies, equipment, labor, management, supervision, services, personnel, repairs, structural alterations, insurance, taxes or assessments which the

Association is required to secure or pay pursuant to the terms of this Declaration or by law, or which shall be necessary or proper in the opinion of the Board for the operation of the Common Areas, for the benefit of the Owners, or for the enforcement of these restrictions;

I. Establishment of reserve accounts for capital expenditures and deferred maintenance for the Common Areas;

J. Payment of real property taxes, personal property taxes and other assessments levied against the Common Areas.

4.3 All regular and special assessments for items pertaining to the Common Areas shall be at a uniform rate for each Lot in the Properties and each Lot's proportionate share shall be 1/5, except as set forth in Article V Section 5.3 below.

4.4 In addition to the annual assessments, the Association may levy in any assessment year a special assessment applicable to that year only, for reconstruction, unexpected repair or replacement of a capital improvement as approved by the Board, including the necessary fixtures and personal property related thereto, or for any other expenditure approved by the Board.

4.5 The annual assessment for which provision is herein made shall be paid quarterly, in advance. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year.

4.6 The Board shall fix the date of commencement, and the amount of the assessments against each Lot for each assessment at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lot Owners and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member. Not later than fourteen (14) days after fixing the date of commencement and amount of assessments, the Association shall notify Lot Owners by sending written notice of such commencement date and amount to said Lot Owners at the address as shown on the current roster of members, which notice shall be conclusive as to delivery to Lot Owners. The Association shall, on demand, and for a reasonable charge, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

4.7 If any assessment is not paid within thirty (30) days from its due date as determined by the Board pursuant to this Declaration, the Association may, at any time thereafter, record a lien against said Lot in the Public Records of Lee County, Florida, and bring an action to foreclose the lien in a like manner as a foreclosure of a mortgage on real property and/or a suit on the personal obligation against the Owner(s), and there shall be added to the amount of such assessment the cost of any such action (including a reasonable attorney's fee), and in the event a

judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the Court, together with costs of the action.

4.8 Liens for delinquent assessments shall be recorded in the Public Records of Lee County, Florida, and shall be prior to and superior to the creation of any homestead status on the property and any subsequently recorded liens or encumbrances.

4.9 The lien of the assessment for which provision is herein made as well as in any other Article of this Declaration shall be subordinate to the lien of any first mortgage to an Institutional Mortgagee unless the claim of lien is recorded prior to the mortgage. Such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Lot(s) pursuant to a decree of foreclosure, and in any other proceeding in lieu of foreclosure and shall relieve any Lot(s) neither from liability for any assessments thereafter becoming due, nor from the lien of any subsequent assessment.

4.10 The following property subject to this Declaration shall be exempted from the assessments charges and liens created herein:

A. All properties to the extent of any easement or other interest therein dedicated and accepted by Lee County and devoted to public use.

B. All Common Areas as defined in Article I, Section 1.4.

4.11 Notwithstanding any provisions of this Declaration or the Association's Articles of By-Laws to the contrary, the Declarant shall be excused from payment of its share of the annual assessment as to the Lots owned by the Declarant during the "Guaranty Period" which is a period commencing upon the recording of this Declaration until the Declarant turns over the control of the Association to Lot Owners. During the period of time when the Declarant is excused from paying its share of the Common Expense, the Declarant shall be obligated to pay the difference between the Association's expenses of operation and the sums collected for annual assessments from Lot Owners other than the Declarant. Such difference, herein called the "deficiency," shall not include any reserve for replacements, operating reserves, depreciation reserves, capital expenditures or special assessments. The Declarant shall not be responsible for any of said reserves.

The Declarant may, at any time, give sixty (60) days written notice to the Association of its intention to terminate its responsibility for the deficiency, and waiving its rights to exclusion from annual assessments. Upon the conclusion of the sixty (60) day period, each Lot owned by the Declarant shall thereafter be assessed at twenty-five percent of the annual assessment established for Lots owned by members other than the Declarant. Upon transfer of title of a Lot owned by the Declarant, the Lot shall be assessed in the amount established for Lots owned by Owners other than the Declarant, prorated as of, and commencing with, the date of transfer of title.

4.12 Notwithstanding any provisions of this Declaration, the Articles or By-Laws to the contrary, neither the purchase money mortgagee of the Declarant who takes title to any portion of the Properties, by foreclosure or deed in lieu of foreclosure, nor the property to which the purchase money mortgagee of the Declarant takes title, shall be subject to any assessments against any portion of the Properties, so long as the purchase money mortgagee of Declarant holds title thereto. This shall include all past due assessments against the Declarant, as well as all future assessments against any Lot or Lots to which Declarant's mortgagee takes title.

ARTICLE V MAINTENANCE OF LOTS

5.1 Lot Owners shall be responsible for the cleaning and general maintenance of the exterior and interior of their residence. Lot Owners shall also be responsible for repairs to the swimming pool, if any, on their Lot and any pool enclosures, decks, patios, planters or walkways in the rear or side yards of their Lot.

5.2 The Association shall be responsible for maintenance of Common Areas, painting of the exterior of the residence of each Lot, for maintenance of the lawns and landscaping on the Lots, and for irrigation, cable t.v. and other maintenance responsibilities determined by the Board.

5.3 In addition to maintenance of the Common Areas and lawns and landscaping on the Lots, the Association may provide upon any Lot requiring same, when necessary in the opinion of the Board of Directors, to preserve the beauty, quality and value of the Neighborhood, any maintenance, repair or replacement that is otherwise the responsibility of the Lot Owner hereunder and which the Lot Owner fails to replace, restore, repair or perform after thirty (30) days written notice to the Lot Owner of the need of such replacement, restoration, repair or maintenance.

The cost of such maintenance shall be assessed against the Lot upon which such maintenance is performed, or, at the option of the Board of Directors, against the Lot or Lots benefiting from the maintenance. The assessment shall be apportioned among the Lots involved in the manner determined to be appropriate by the Board. Any such maintenance assessments shall not be considered a part of the annual or special assessment. Any such maintenance assessment shall be a lien on the Lots affected and the personal obligation of the Owners and shall become due and payable in all respects, together with interest, reasonable attorneys fees, and cost of collection, in the same manner and under the same conditions as provided for the other assessments of the Association.

5.4 In the event that any of the improvements located on any Lot are destroyed or damaged as a result of any cause, including, but not limited to aging, fire, windstorm, flood or tornado, the Owner of such improvements shall cause repair or replacement of such improvements to be commenced within thirty (30) days from the date of insurance settlement, and to complete the repair or replacement within one (1) year thereafter.

All such repairs or replacement must be performed in accordance with standards approved by the Developer, or by the Association after turnover of control of the Association.

5.5 In the event that the Owner of any Lot fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for herein, then in that event, the Association shall be deemed to have been granted the right by the Owner to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements.

5.6 In the event that the Association exercises the rights afforded to it in this section, the Owner of the subject Lot shall be deemed to have assigned to the Association any right the Owner may have to insurance proceeds that may be available to the Owner arising from the damage or destruction of the improvements.

For this purpose, the Owners of the Lots agree to provide for the Association to be named as an additional insured under any hazard and flood insurance policies relating to their Lots and the improvements constructed thereon. Further, the Association may require that all such policies be in an amount sufficient to finance the repair or replacement of the improvements provided for above, taking into account local construction costs and property values as they may, from time to time, exist. In the event that an Owner refuses to increase such insurance coverage deemed reasonably necessary to replace the residence by the Association, or if the Owner allows the required insurance coverage to lapse, or for some other reason, causes the same to become null and void, the Association may purchase whatever coverage it deems reasonably necessary for the Association's benefit. The costs so incurred by the Association shall become due and payable in all respects, together with interest, reasonable attorneys' fees and cost of collection, as provided for in connection with and under the same terms and conditions as the other assessments of the Association.

5.7 Any and all costs incurred by the Association in effectuating the repair or replacement of damaged or destroyed improvements shall become due and payable in all respects, together with interest, reasonable attorneys' fees and costs of collection, as provided for in connection with and under the same terms and conditions as other assessments of the Association.

ARTICLE VI ARCHITECTURAL CONTROL AND RECONSTRUCTION

6.1 No improvement, addition or deletion of structure of any kind, including without limitation, any building, fence, wall, screen enclosure, awning, drain, disposal system, or other improvement shall be commenced, erected, placed or maintained upon any Lot, nor shall any addition, change, alteration, repair or replacement therein or thereof be made, unless and until the plans, specifications and location of the same shall have been submitted to, and approved in

writing by the Association Board of Directors. All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography.

ARTICLE VII
USE RESTRICTIONS

The use of Lots shall be in accordance with the following provisions:

7.1 The Property may be used for single-family residential living and for no other purpose. No trade, business, profession or other type of commercial activity may be conducted on any part thereof.

7.2 No tents, trailers, shacks, tanks or temporary or accessory buildings or structures shall be erected or permitted to remain on any Lot or the Common Areas without the written consent of the Declarant or of the Association after Declarant has conveyed the last Lot which Declarant owns in the Property.

7.3 No aerial, antenna, antenna poles, antenna masts, citizen band or amateur band antennas, or satellite dish shall be placed or erected upon any Lot, or affixed in any manner to the exterior of any building in the Property, without the prior written consent of the Board.

7.4 No boats, commercial vehicles, trailers, recreational vehicles or other motor vehicles, except four-wheel passenger automobiles, non-commercial trucks or vans, as determined by the Board, shall be placed, parked or stored upon any Lot (except in the garage) or in the Common Areas, other than a boat moored at a boat dock, for a period of more than eight hours unless such vehicle is necessary in the actual construction or repair of a structure or for ground maintenance, nor shall any maintenance or repair be performed upon any boat or motor vehicle not owned or controlled by the Association or the Declarant in the properties, except within a building where totally isolated from public view. All garage doors must remain closed except upon entering or exiting the garage.

7.5 All areas not covered by structures, walkways, or paved parking facilities shall be maintained as a lawn or landscape areas with underground sprinkler systems to the pavement edge of any abutting streets and to the waterline of any abutting lakes or water management areas. No stones, gravel or paving or any types shall be used as a lawn.

7.6 Nothing shall be done or maintained on any Lot, or the Common Areas which may be or become unsightly or a nuisance to Tarpon Bay. In the event of a dispute or question as to what may be or become unsightly or a nuisance, such dispute or question shall be submitted in writing to the Board whose decision shall be dispositive of such dispute or question.

7.7 No sign of any kind, including "For Sale" signs, shall be displayed to public view on any Lot or Common Area, except a sign identifying Tarpon Bay, street or traffic control signs, or except as placed by the Declarant or approved by the Board or the Association. After Declarant no longer owns any portion of the Properties, Lot Owners may maintain one "For Sale" sign which meets Board approval.

7.8 No weed underbrush or other unsightly growth shall be permitted to grow or remain upon any Lot and no refuse or unsightly object shall be placed or allowed to remain on any Lot. Any property, structure, improvements and appurtenances shall be kept in a safe, clean, orderly and attractive condition and all structures shall be maintained in a finished, painted and attractive condition. All lawns, landscaping and sprinkler systems shall be installed and maintained in a neat, orderly and live condition.

7.9 The sale, rental or other disposition of Lots in the Property is essential to the establishment and welfare of the Properties as an on-going residential community. In order that the development of the Properties be completed and the Property established as a fully occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to prevent the Declarant, Declarant's transferees or employees, agents and assigns, contractor or subcontractors of Declarant, or of Declarant's transferees, from doing whatever they may determine to be reasonable, necessary or advisable for the completion of the work and the sale and establishment of the Properties as a residential community including, but not limited to, constructing, maintaining and operating a construction office and a sales facility or model home, together with appropriate signage. As used in this section, the words "its transferees" specifically exclude purchasers of Lots.

7.10 No automobile garage shall be permanently enclosed or converted to other use without the written permission of the Board of Directors.

7.11 No rubbish, trash, garbage or other waste materials shall be kept or permitted at the driveway area of any Lot. Waste shall be kept in sanitary containers which shall be kept in a neat condition and screened from view of neighboring Lots. Sanitary containers may not be placed outside the driveway area of any Lot except for a reasonable period for refuse pickup to be accomplished.

7.12 All gas tanks for swimming pool heaters must be stored below ground.

7.13 No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot. The Owner of each Lot may keep pets of a normal domesticated household type such as a cat or dog on the Lot. The pets must be leashed at all times while on any of the Common Areas outside the Lot. No pets are permitted in the recreation areas, if any. Each pet Owner shall be responsible for the removal and disposal of their pet's body waste. The Board of Directors is empowered to order and enforce the removal of any pet which becomes a reasonable source of

annoyance to other residents in the Property. No reptiles, amphibians or livestock may be kept in or on any Lot.

7.14 No Lot shall be increased in size by filling in any water retention or drainage area on which it abuts. Lot Owners shall not fill, dike, rip rap, block, divert or change the established water retention and drainage areas that have been or may be created by easement.

7.15 All utility lines and lead-in wires, including but not limited to, electrical lines, cable television lines, telephone lines, water and sewerage located within the confines of any Lot or Lots shall be located underground.

ARTICLE VIII

EASEMENTS FOR MAINTENANCE, CONSTRUCTION AND REPAIR

8.1 The Declarant hereby reserves unto itself, its agents, employees, invitees and assigns, and for the benefit of the Association, and the Association's agents, employees, invitees and assigns, and for other Owners, as necessary, a non-exclusive easement for ingress and egress over any Lot located in the Properties in order to gain access to the Common Areas, including the tennis court and Dock area, or any Lot for the Association to discharge its duties to construct, maintain and repair the Common Areas, including tennis court and Dock area, and for the purpose of maintaining the Properties and the Lots by the Association in a manner consistent with the Association's maintenance obligations of the Common Areas and Lots or rights provided herein, together with an easement for the maintenance of sprinkler systems owned by the Association.

8.2 Each Lot and the Common Areas shall be and hereby are made subject to easements for construction, development, repair and maintenance of utilities, systems and facilities (including, but not limited to, fire and police protection, garbage and trash removal, water and sewage system, electric and gas service drainage and telephone), and roadways and driveways and the utilities and applicable governmental agencies having jurisdiction thereover and their employees and agents shall have the right of access to any Lot or the Common Areas in furtherance of such easements. No structure, planting, fill or other material shall be placed or permitted to remain which may damage or interfere with the use of such easements.

8.3 The Declarant reserves the right, for itself and its designee (so long as Declarant or said designee owns any Lot) and for the Board, without joinder or consent of any person or entity whatsoever, to create and/or grant such additional easements of construction, maintenance, repair and use of, as an illustration, but not limited to, irrigation, wells and pumps, cable television, television antennas, electric, gas, water drainage or other utility easement, or to relocate any easement in any portion of the property as the Declarant, its designee, or the said Board shall deem necessary or desirable for the proper development, operation and maintenance of the Properties, or any portion thereof, or for the general health or welfare of the Lot, provided

that such additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with the use of the Lot for permitted purposes.

ARTICLE IX
ENFORCEMENT OF COVENANTS

9.1 Every Lot Owner and his tenants, guests, invitees and agents shall comply with all of the terms and conditions of this Declaration, the Articles of Incorporation and By-Laws for Tarpon Bay Residents' Association, Inc. and rules and regulations as same exist and as may be amended or adopted in the future.

9.2 Failure to comply herewith or with such rules and regulations shall be grounds for immediate action which may include, without limitation, an action to recover sums for damages, an action for injunctive relief, or any combination thereof.

ARTICLE X
TRANSFER OF OWNERSHIP AND LEASING OF LOTS

10.1 In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the Lots and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of Ownership and leasing of a Lot by an Owner shall be subject to the following provisions, which provisions each Owner covenants to observe.

10.2 Forms of Ownership.

- A. A Lot may be owned by an individual person.
- B. Co-Ownership of Lots is permitted, but all Owners must be members of a single family or living together as a single family housekeeping unit. If co-Ownership is to be by more than two persons, Owner shall designate one natural person as "Primary Occupant," and the use of the Lot by other persons shall be as if the Primary Occupant is the actual Owner.
- C. A Lot may be owned in trust or by a corporation, partnership, or other entity which is not a natural person. However, the intent of this provision is to allow flexibility in estate or tax planning, and not to create circumstances in which the Lot may be used as short term transient accommodations for several individuals or families. Said corporation, trustee or any entity which is not a natural person shall designate one natural person to be the "Primary Occupant," and the use of the Lot by other persons shall be as lessee's and as if the Primary Occupant is the only actual Owner.

D. A Lot may become subject to a life estate, either by operation of law or by approved voluntary conveyance. In that event, during said life estate the life tenant shall be the only member in the Association from such Lot and occupancy of the Lot shall be as if the life tenant was the only Owner. The life tenant and remaindermen shall be jointly and severally liable for all assessment and charges against the Lot. The life tenant may, by signed agreement, transfer the right to vote in all Association matters to any one remainderman, subject to approval by the Association of such arrangement. If there is more than one life tenant, they shall be treated as if they were co-Owners for purposes of voting and occupancy rights.

10.3 Transfers.

A. There shall be no restrictions on transfers of Lots, however, the Association must be notified of any transfer of title to a Lot as provided in the By-Laws.

B. There shall be no restrictions on the mortgaging of Lots. All mortgages, other than a first mortgage of record, shall be subject to and inferior to the Association lien for assessments as hereafter provided, regardless of when recorded.

10.4 Leases.

A. All leases of Lots must be in writing and a copy of any lease shall be delivered to the Board upon commencement of the said Lease.

B. No Lot may be leased for a period of less than one (1) week. No subleasing or assignment of lease rights is allowed unless approved by the Board. No individual rooms may be rented.

C. If a Lot is leased, no one but the lessee, his family within the first degree of relationship by blood, adoption or marriage, and their guests may occupy the Lot.

ARTICLE XI GENERAL PROVISIONS

11.1 The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Declarant, the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants and restrictions shall automatically be extended for successive periods of ten (10) years unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots has been recorded, agreeing to change or terminate said covenants and restrictions in whole or in part. Violation or breach of any conditions, covenants or restrictions herein contained shall give the Declarant and/or Association and/or Owner(s), in addition to all other remedies, the right to proceed at law or in equity to compel a compliance with the terms of said conditions, covenants or restrictions and to prevent the violation or breach of any of them,

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and the expense of such litigation shall be borne by the then Owner or Owners of the subject property, provided such proceeding results in a finding that such Owner was in violation of said covenants or restrictions. Expenses of litigation shall include reasonable attorneys' fees incurred by Declarant and/or the Association in seeking such enforcement.

11.2 Any awards for the taking of all or any part of the Association Common Areas by condemnation or eminent domain shall be used to make the remaining portion of the Common Areas usable in the manner approved by Board of Directors. The balance of such awards, if any, shall be distributed to the Lot Owners equally.

11.3 Any notices required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the address of the party to which the notice is directed.

11.4 Invalidation of any one or more of these covenants and restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

11.5 Declarant reserves the right unilaterally to amend this Declaration and to do so at any time or times upon such conditions, in such form and for such purposes as it shall in its sole discretion deem appropriate by preparing and recording amendments hereto, provided however, that this right of unilateral amendment shall expire after all of the Lots covered by this Declaration have been sold. Declarant's rights shall include, without limitation the right to amend this instrument at any time prior to the conveyance of the last Lot in the Properties in order to correct any errors or omissions, or the dimensions of any Lots, or Common Areas not previously conveyed, so long as any such amendment(s) does not purport to limit or alter the rights afforded any Owners then holding title to Lots in the Properties, purport to change the dimensions of any Lot, or Common Areas previously conveyed or purport to restrict the integrity of the lien of any institutional lender who holds a mortgage on any previously conveyed Lot. Any amendment shall relate back to and become effective as of the date of recording of this Declaration. Provided, however, that any amendment that will affect the stormwater system, including water management portions of Common Areas, must have prior approval of the South Florida Water Management District, or its successor. Provided further, that any amendment which affects the Declarant's mortgagee, or the quality or value of their security, must be consented to and joined by the Declarant's mortgagee.

After the last Lot has been sold, this Declaration may be amended at any time upon the execution and recordation of an instrument executed by Owners holding not less than two-thirds (2/3) of the voting interest of the membership.

11.6 The purchase money mortgagee of the Declarant who takes title to any portion of the Properties, by foreclosure or deed in lieu of foreclosure, whether or not such mortgagee records a partial or complete assumption of Declarant's rights, shall not be liable for, nor succeed to, any of the Declarant's preexisting or future liabilities arising under this Declaration or the Association's Articles or By-Laws.

11.7 Notwithstanding any of the provisions contained in this Declaration, Declarant, its successors or assigns, shall not be obligated to develop all of the property submitted to this Declaration, and as described in Exhibit "A", and Declarant may, in its sole discretion, release any of the property submitted in this Declaration from the terms and conditions hereof, except any properties conveyed to the Association or Owners. Such deletions shall be made by the Declarant filing in the Public Records of Lee County, an amendment to this Declaration providing for the release of the property from this Declaration. Such amendment need only to be executed by the Declarant and shall not require the joinder or the consent of the Association or its members.

11.8 So long as the Declarant owns any portion of the Properties, Declarant shall have the exclusive right to maintain a sales center, model homes or signs on the Properties.

11.9 Whenever the singular is used it shall include the plural and the singular, and the use of any gender shall include all genders.

11.10 This Declaration shall become effective upon its recording in the Public Records of Lee County, Florida.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed as of this 6 day of March, 1998.

Witnesses:

R & D of Captiva, Inc., a Florida corporation

Wenke O Brandes
Printed Name: Wenke O Brandes

By: [Signature]
Jon Rubinton, President

Thomas B Gault
Printed Name: THOMAS B GAULT

STATE OF FLORIDA)
COUNTY OF COLLIER) SS:

The foregoing instrument was acknowledged before me this 6 day of March, 1998, by Jon Rubinton, as President of R & D of Captiva, Inc., a Florida corporation, on behalf of the corporation. Jon Rubinton is personally known to me or has produced _____ as identification.

Wenke O Brandes
Notary Public

(Seal)

Printed Name
My Commission expires: _____

This Instrument Prepared By:
C. PERRY PEEPLES, ESQ.
ANNIS, MITCHELL, COCKEY, EDWARDS & ROEHN
8889 Pelican Bay Blvd., Suite 300
Naples, Florida 34108

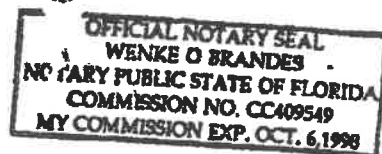


EXHIBIT "A"

Parcel II:

Lot 1 and the North Half of Lot 2, in Block A, of that certain subdivision known as FROW'S SUBDIVISION on Captiva Island, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 3 at pages 13 and 41.

TOGETHER WITH:

**DESCRIPTION
PARCEL IN FROW'S SUBDIVISION
GOVERNMENT LOT 2
SECTION 3, T. 46 S., R. 21 E.
CAPTIVA ISLAND
LEE COUNTY, FLORIDA**

A tract or parcel of land lying in Government Lot 2 of Section 3, Township 46 South, Range 21 East Captiva Island, Lee County, Florida, being part of East Avenue as shown on the plat of "Frow's Subdivision" as recorded in Plat Book 3 at pages 13 and 41 of the Public Records of Lee County, Florida being described as follows:

All that portion of East Avenue (100 feet wide) as shown on said plats being bounded on the North by the easterly extension of the North line of Lot 1, Block A of said Subdivision, on the East by the westerly shoreline of Roosevelt Channel (Pine Island Sound per said plats), on the South by the easterly extension of the South line of the North half (N-1/2) of Lot 2, Block A of said Subdivision, and on the West by a line parallel with and 100 feet westerly of aforementioned westerly shoreline of Roosevelt Channel.

AND:

Parcel I:

Lot 1 of JOHN R. DICKEY SUBDIVISION, as recorded in Plat Book 4 at page 6, Public Records of Lee County, Florida, together with the land lying on the West side between said Lot 1 and the Gulf of Mexico, less road rights of way of record.

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