



**Return to: (enclose self-addressed stamped envelope)**

**Name:**

Atlantic Commons Associates, LLLP  
1600 Sawgrass Corporate Parkway, Suite 400  
Sunrise, Florida 33323  
Attn: Steven M. Helfman, Esq.

**This Instrument Prepared by:**

Mark F. Grant, Esq.  
Greenspoon Marder, P.A.  
200 East Broward Boulevard, Suite 1500  
Fort Lauderdale, Florida 33301

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, RESTRICTIONS  
AND EASEMENTS FOR**

**TUSCANY**

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, RESTRICTIONS  
AND EASEMENTS FOR TUSCANY**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR TUSCANY ("Declaration") is made as of the 1<sup>st</sup> day of July, 2014, by ATLANTIC COMMONS ASSOCIATES, LLLP, a Florida limited liability limited partnership, its successors and assigns ("Declarant"), and is joined in by TUSCANY PROPERTY OWNERS ASSOCIATION, INC., a Florida corporation not for profit ("Association")

WHEREAS, that certain Declaration of Covenants, Conditions, Restrictions and Easements for Atlantic Commons was recorded on January 28, 2013, in Official Records Book 25746, at Page 216 ("Initial Declaration"), amended by First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Atlantic Commons recorded June 20, 2014, in Official Records Book 26866, at Page 174 (the "First Amendment"), and supplemented by that certain First Supplemental to Declaration of Covenants, Conditions Restrictions and Easements for Atlantic Commons recorded July 11, 2013 in Official Records Book 26173, at Page 1941 ("First Supplemental"), and that certain Second Supplemental to Declaration of Covenants, Conditions Restrictions and Easements for Atlantic Commons recorded November 7, 2013 in Official Records Book 26435, at Page 837 ("Second Supplemental"), all of the Public Records of Palm Beach County, Florida (the Initial Declaration, as amended by the First Amendment and supplemented by the First Supplemental and Second Supplemental, is referred to herein as the "Original Declaration"), and

WHEREAS, by virtue of the First Amendment, the name of the planned community that was the subject of the Original Declaration was changed from Atlantic Commons to Tuscany; and

WHEREAS, by virtue of the First Supplemental: (a) certain real property as described therein was supplemented, added, subjected to, and encumbered by all of the covenants restrictions, easements, terms and conditions of the Original Declaration, and (b) certain other real property as described therein was withdrawn and forever released from all of the terms, covenants, conditions, restrictions, limitations, liens, easements and/or burdens set forth in the Original Declaration; and

WHEREAS, by virtue of the Second Supplemental, certain real property as described therein was withdrawn and forever released from all of the terms, covenants, conditions, restrictions, limitations, liens, easements and/or burdens set forth in the Original Declaration

WHEREAS, by virtue of the filing of a Second Amendment to Articles of Incorporation dated June 2, 2014 in the Office of the Secretary of State of the State of Florida, the name of the Association was changed from Atlantic Commons Homeowners Association, Inc. to Tuscany Property Owners Association, Inc.;

WHEREAS, by virtue of the filing Amended and Restated Articles of Incorporation dated concurrently herewith, the Articles of the Association were amended and restated in their entirety; and

WHEREAS, pursuant to Article XV, Section 8(A) of the Original Declaration, until the Turnover Date, all amendments or modifications shall be made by Declarant without the consent of the Owners so long as such amendments or modifications do not materially impair the common plan of development of Tuscany; and

WHEREAS, Declarant is desirous of amending and modifying the Original Declaration by restating in its entirety the provisions thereof, it being the intent hereof, that this Declaration shall replace the provisions of the Original Declaration thereto, in its entirety and this Declaration shall constitute the covenants, conditions, restrictions and easements for Tuscany; and

WHEREAS, Declarant desires to develop a planned community to be known as "Tuscany" (as hereinafter defined) on certain real property more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, in order to develop and maintain Tuscany as a planned community and to preserve the values and amenities of such community, it is necessary to declare, commit and subject the Property and the improvements now or hereafter constructed thereon to certain land use covenants, restrictions, reservations, regulations, burdens, liens, and easements; and to delegate and assign to the Association certain powers and duties of ownership, administration, operation, maintenance and enforcement; and

WHEREAS, the Association is joining in this Declaration in order to acknowledge its duties, responsibilities and obligations hereunder.

NOW, THEREFORE, in consideration of the premises and covenants herein contained, Declarant hereby declares that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth, all of which shall run with the Property and any part thereof and which shall be binding upon all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

## **ARTICLE I**

### **DEFINITIONS**

The terms used in this Declaration shall be defined as set forth herein unless expressly provided otherwise.

Section 1. "ADDITIONAL PLAT" shall mean the plat of any portion of the Property which is not included in the Plat, if any, and the plat of any Additional Property provided a Supplemental Declaration for such Additional Property is recorded amongst the Public Records of the County. "Additional Plat" shall also mean the replat of all or any portion of the Plat or any other plat of all or any portion of the Property.



Section 2. "ADDITIONAL PROPERTY" shall mean any real property (other than the Property) that may be submitted by Declarant to the terms and provisions of this Declaration by a Supplemental Declaration which shall be executed by the owner of the Additional Property and need not be joined in by any other person or Owner. No portion of any Additional Property shall be encumbered by this Declaration unless and until such property is added by a Supplemental Declaration executed by the fee owner thereof and Declarant. In the event any Additional Property becomes encumbered by this Declaration, then, and only then in such event, the term "Property" as used herein shall also mean the Additional Property.

Section 3. "AMENDMENT(S)" shall mean any and all amendments to this Declaration, all of which shall be consecutively numbered beginning with the "First Amendment to the Declaration of Covenants, Restrictions and Easements for Tuscany" and each of which shall be properly adopted pursuant to the terms of the Tuscany Documents and recorded in the Public Records of the County; provided, however, the failure to so consecutively number such amendments shall not impair their validity hereunder and such amendments to the extent not otherwise numbered will be deemed to have been numbered in chronological order of their appearance in the Public Records of the County. "Amendment(s)" shall also mean any and all amendments to any Supplemental Declaration, as recorded in the Public Records of the County.

Section 4. "APARTMENT SITE" shall mean that certain portion of the Property more particularly described on Exhibit "B" attached hereto and made a part hereof, upon which Apartment Units may be constructed, owned and operated thereon.

Section 5. "APARTMENT UNIT" shall mean a multi-family rental apartment unit contained within and part of a rental apartment building constructed or to be constructed on the Apartment Site in Tuscany, which is designed and intended for use and occupancy as a for-rent dwelling apartment.

Section 6. "ARCHITECTURAL CONTROL COMMITTEE" or "COMMITTEE" shall mean the committee created pursuant to Article VIII hereof.

Section 7. "ARTICLES" shall mean the Amended and Restated Articles of Incorporation of the Association which have been or will be filed in the Office of the Secretary of State of the State of Florida, a copy of which is attached hereto as Exhibit "D" and incorporated herein by this reference, as such Articles may be amended from time to time.

Section 8. "ASSESSMENT" shall mean assessments for which all Owners are obligated to pay to the Association and includes "Individual Lot Assessments" and "Special Assessments" (as such terms are defined herein) and any and all other assessments and monetary fines and charges which are or may be levied by the Association in accordance with the Tuscany Documents.

Section 9. "ASSOCIATION" shall mean and refer to TUSCANY PROPERTY OWNERS ASSOCIATION, INC., a not-for-profit Florida corporation, its successors and assigns, existing pursuant to the Articles, which Association is responsible for the ownership, administration, operation, maintenance, preservation, enforcement and architectural control of Tuscany as provided in this Declaration.

Section 10. "ASSOCIATION PROPERTY" shall mean such portions of the Property which are not included in any Lot, Parcel and/or the Apartment Site, except those areas dedicated to the public by the Plat or Additional Plat, if any, and which are or shall be owned or maintained by the Association, as set forth in this Declaration and/or the Plat or Additional Plat, if any, for the common use and enjoyment of some or all of the Owners within Tuscany, together with landscaping, personal property and any other Improvements thereon, including, without limitation, all of the following if and to the extent located thereon, all structures, gatehouse(s), the recreational tract(s) as more particularly described in Article II, Section 2(A) hereof, Lakes (as hereinafter defined), open space tracts and focal point tracts, private streets, bridges, asphalt bike paths, sidewalks, irrigation facilities, "Street Lights" and "Decorative Street Lights" (as those terms are hereinafter defined), perimeter fences and walls, entry or other lighting, entrance features, fountains, buffer tracts, monument walls, monument signs, site walls, retaining walls, littoral plantings and decorative street signs, if any, but specifically excluding any public utility installations thereon and all portions of any "Community Systems" (as hereinafter defined) not made Association Property pursuant to Article II, Section 8 hereof, and any other property of Declarant not intended to be made Association Property. "Association Property" shall also include such portions of the Property as are declared to be Association Property in any Supplemental Declaration, less whatever portions of the Property are declared to be withdrawn from the provisions of this Declaration in any Supplemental Declaration.

Section 11. "BOARD" shall mean the board of directors or other legally recognized governing body of the Association.

Section 12. "BYLAWS" shall mean the Amended and Restated Bylaws of the Association dated July 1, 2014, which have been or will be adopted by the Board, a copy of which is attached hereto as Exhibit "E" and incorporated herein by this reference, as such Bylaws may be amended from time to time.

Section 13. "CANAL LOT" shall mean a Lot within Tuscany abutting one of the canals (as described in Article II, Section 2(B) hereof).

Section 14. "COMMERCIAL PARCEL" shall mean that certain real property described in Exhibit "C" attached hereto and made a part hereof, which property is one and the same as the "Withdrawn Property" as defined in the Second Supplemental. Accordingly, the Commercial Parcel is not part of Tuscany and is not subject to or encumbered by any of the terms or conditions of the Tuscany Documents. Notwithstanding the foregoing, the Commercial Parcel (its owners and its owners' guests, invitees and tenants) shall have and benefit from the perpetual, non-exclusive easements granted in Section 6.O of Article IV below.

Section 15. "COMMUNITY SYSTEMS" shall mean any and all television (cable, satellite or otherwise), telecommunication, internet access, alarm/monitoring, utility or other lines, conduits, wires, satellites, amplifiers, towers, antennae, equipment, materials, installations and fixtures (including those based on, containing or serving future technological advances not now known) installed by Declarant, an affiliate of Declarant, any other entity in which Declarant or an affiliate of Declarant may have an interest (financial or otherwise), or any third party expressly granted the rights by Declarant or the Association to provide Community Systems within the Property, or pursuant to any grant of easement or authority by Declarant and serving the Association Property and/or more than one Lot.

Section 16. "COMPLETED LOT" shall mean a Lot on which the construction of a Home has been completed, for which Home a certificate of occupancy or equivalent therefor has been issued by the appropriate governmental agency, and the title to such Lot has been conveyed by Declarant.

Section 17. "COMPLETED LOT OWNER" shall mean the Owner of a Completed Lot.

Section 18. "COUNTY" shall mean Palm Beach County, Florida.

Section 19. "DECLARANT" shall mean Atlantic Commons Associates, LLLP, a Florida limited liability limited partnership, and any successor or assign thereof to which Atlantic Commons Associates, LLLP, specifically assigns all or part of the rights of Declarant hereunder by an express written assignment, whether recorded in the Public Records of the County or not. The written assignment may give notice as to which rights of Declarant are to be exercised and as to which portion of the Property. In any event, any subsequent declarant shall not be liable for any default or obligations incurred by any prior declarant, except as may be expressly assumed by the subsequent declarant. An Owner shall not, solely by the purchase of a Home and/or Lot, be deemed a successor or assign of Declarant under the Tuscany Documents unless such Owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or any other instrument executed by Declarant.

Section 20. "DECLARATION" shall mean this instrument as it may be amended from time to time, together with any Supplemental Declaration(s) or Amendments hereto, which may be recorded amongst the Public Records.

Section 21. "DIRECTOR" shall mean a member of the Board.

Section 22. "DOMINANT LOT" shall mean a Lot to which an easement over a Servient Lot created by Article IV of this Declaration is appurtenant (i.e., a Lot owned by an Owner entitled to access such Owner's Lot over certain portions of an adjoining Lot). A Lot may be both a Dominant Lot and a Servient Lot as to different easements created by Article IV hereof, but not as to the same easement.

Section 23. "DRAINAGE SYSTEM" shall mean a system of structures and other improvements, including, without limitation, control structures, culverts, headwalls and/or swales, which is designed, constructed and installed to collect and convey rainwater runoff from Tuscany to the water management tracts (i.e., "Lakes," as hereinafter defined) within the Property and/or canals adjacent to the Property. The Drainage System is located upon and designed to serve the Property and certain off-site roadways and other property as further described in Article II, Section 2(I) below. Except as set forth in this Declaration, the Drainage System is a private drainage system.

Section 24. "HOME" shall mean a residential dwelling unit constructed within Tuscany, which is designed and intended for use and occupancy as a single-family residence; provided, however, that no portion of any Community System, even if installed in a Home, shall be deemed to be a part of a Home unless and until same is made such pursuant to Article II, Section 8 hereof, if at all. Upon completion of construction of a Home on a Lot or Parcel, the Lot or

Parcel and the Improvements thereon are sometimes collectively referred to as a Home in this Declaration and the Tuscany Documents. Reference is made to Article XIII below. The Apartment Units to be constructed on the Apartment Site, however, are not and shall not be deemed Homes under this Declaration.

Section 25. "IMPROVEMENT" shall mean all structures or artificially created conditions and appurtenances thereto of every type and kind located within Tuscany, including, but not limited to, buildings, walkways, recreation areas and facilities, parking areas, berms, fountains, sprinkler systems, gatehouses, Streets, Drives, Roads, Roadways, driveways, bridges, fences, retaining walls, underground footers and other foundation supports, stairs, landscaping, trees, hedges, plantings, poles, swings, gym sets and play structures, tennis courts, swimming pools, covered patios, screen enclosures, jogging, bicycling and walking paths, basketball courts, backboards and hoops, signs, site and perimeter walls, gazebos, benches, mailboxes, Street Lights and Decorative Street Lights and signs.

Section 26. "INCOMPLETE LOT" shall mean a Lot which is not a Completed Lot.

Section 27. "INCOMPLETE LOT OWNER" shall mean the Owner of an Incomplete Lot.

Section 28. "INSTITUTIONAL MORTGAGE" shall mean a mortgage held by an Institutional Mortgagee on any property within Tuscany.

Section 29. "INSTITUTIONAL MORTGAGEE OR INSTITUTIONAL LENDER" shall mean any lending institution owning a first mortgage encumbering any Home or Lot or Parcel within Tuscany, which owner and holder of said mortgage shall either be a bank, life insurance company, federal or state savings and loan association, real estate or mortgage investment trust, building and loan association, mortgage banking company licensed to do business in the State of Florida, or any subsidiary thereof, licensed or qualified to make mortgage loans in the State of Florida or a national banking association chartered under the laws of the United States of America or any "secondary mortgage market institution," including the Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), Federal Home Loan Mortgage Corporation ("FHLMC") and such other secondary mortgage market institutions as the Board shall hereafter approve in writing; any and all lenders, and the successors and assigns of such lenders, which have loaned money to Declarant and which hold a mortgage on any portion of the Property securing any such loan; any pension or profit-sharing funds qualified under the Internal Revenue Code; the Veterans Administration, the Federal Housing Administration or the Department of Housing and Urban Development or such other lender as is generally recognized in the community as an institutional lender; or Declarant, its successors and assigns.

Section 30. "INTEREST" shall mean the maximum non-usurious interest rate allowed by law on the subject debt or obligation, and if no such rate is designated by law, then eighteen percent (18%) per annum.

Section 31. "LAKES" shall mean those portions of the Property designated on the Plat and/or Additional Plat, if any, as lakes, lake tracts or storm water management tracts.

Section 32. "LAKE LOT" shall mean a Lot within Tuscany abutting one of the Lakes.

Section 33. "LEGAL FEES" shall mean reasonable fees for attorney and paralegal services and all costs and court costs through and including all trial and appellate levels and post-judgment proceedings incurred in connection with: (i) negotiation and preparation for mediation, arbitration and/or litigation, whether or not an action is actually begun, and (ii) collection of past due Assessments including, but not limited to, preparation of notices and liens.

Section 34. "LOT" shall mean any parcel of land within Tuscany as shown on the Plat or any Additional Plat, if any, upon which a Home is permitted to be constructed, together with the Improvements thereon, and any portion of the Property within Tuscany that is declared to be a Lot by a Supplemental Declaration and is not subsequently withdrawn from the provisions of this Declaration by a Supplemental Declaration; provided, however, that no portion of any Community System shall be deemed to be part of a Lot unless and until such Community System (or portion thereof) is made a part of a Lot pursuant to Article II, Section 8 hereof, if at all. The term Lot as used herein shall be deemed to include a Single Family Lot (as defined herein). For purposes of Individual Lot Assessments, a Lot is either a Completed Lot or an Incomplete Lot. Upon completion of construction of a Home on a Lot, such Lot and the Improvements thereon are sometimes collectively referred to as a Lot in this Declaration and the Tuscany Documents.

Section 35. "MEMBERS" shall mean all of the Owners who are also members of the Association, as provided herein.

Section 36. "NOTICE AND HEARING" shall mean written notice and a public hearing before a tribunal appointed by the Board at which the Owner concerned shall have an opportunity to be heard in person or by counsel, at Owner's expense, in the manner set forth in Article X herein. In that regard, Owner shall have the right, but not the obligation, to have legal counsel of Owner's choice present at such hearing, at Owner's expense.

Section 37. "OPERATING EXPENSES" shall mean the expenses for which Owners are liable to the Association as described in this Declaration and any other Tuscany Documents and include, but are not limited to: (a) the costs and expenses incurred by the Association in owning, administering, operating, maintaining, financing, or repairing (but not reconstructing, replacing or improving) the Association Property or any portion thereof and Improvements thereon, all other property owned by the Association (including, without limitation, the Drainage System), and (b) all costs and expenses incurred by the Association in carrying out its powers and duties hereunder or under any other Tuscany Documents.

Section 38. "OWNER" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot within Tuscany, and includes Declarant for as long as Declarant owns fee simple title to a Lot, but excluding therefrom those having such interest as security for the performance of an obligation.

Section 39. "PARCEL" shall mean any parcel of land within Tuscany as shown on the Plat or any Additional Plat, if any, which is not a Lot or the Apartment Site and upon which rental apartments, condominium units, commercial building(s), congregate care retirement facilities and/or assisted care living facilities are permitted to be constructed, together with the Improvements thereon, and any portion of the Property within Tuscany that is declared to be a

Parcel by a Supplemental Declaration and is not subsequently withdrawn from the provisions of this Declaration by a Supplemental Declaration.

Section 40. "PLAT" shall mean the plat(s) of the Property recorded or to be recorded in the Public Records of the County. In the event an Additional Plat is recorded in the Public Records of the County, then the term "Plat" as used herein shall also mean and refer to the Additional Plat(s).

Section 41. "PROJECT CONCEPTUAL PLAN" shall mean that certain Project Conceptual Plan attached as Exhibit "G" to this Declaration, as same may be amended or modified from time to time by Declarant.

Section 42. "PROPERTY" shall initially mean that certain real property heretofore described in Exhibit "A" attached hereto and made a part hereof, and thereafter, as applicable, to such additions thereto as may hereafter be brought within the jurisdiction of this Declaration and/or the Association; provided, however, Declarant reserves the right to withdraw from the provisions hereof, subject to the prior written approval of the Palm Beach County Attorney's Office, if required, such portion or portions of the Property as Declarant from time to time elects, upon the execution by Declarant of a Supplemental Declaration.

Section 43. "SERVIENT LOT" shall mean a Lot within Tuscany over which an easement is created by Article IV of this Declaration in favor of a Dominant Lot (i.e., a Lot over certain portions of which the Owner of an adjoining Lot has a right of access). A Lot may be both a Servient Lot and a Dominant Lot as to different easements created by Article IV hereof, but not as to the same easement.

Section 44. "SINGLE FAMILY HOME" shall mean a single family residence constructed or to be constructed within Tuscany, which is designed and intended for use and occupancy as a single-family residence. Single Family Homes may also include zero lot line homes. Whenever the term Single Family Home is used in this Declaration, it shall also mean and refer to Single Family Lot, as applicable.

Section 45. "SINGLE FAMILY LOT" shall mean any parcel of land within Tuscany, as shown on the Plat or Additional Plat(s), if any, upon which a Single Family Home has or is permitted to be constructed, together with the Improvements thereon provided, however, that no portion of any Community System shall be deemed to be part of a Single Family Lot unless and until same is made such pursuant to the terms of this Declaration, if at all. Upon completion of construction of the Single Family Home on a Single Family Lot, such Single Family Lot and the Improvements thereon shall collectively be considered to be a Single Family Lot for purposes of this Declaration and the other Tuscany Documents.

Section 46. "SINGLE FAMILY OWNER" shall mean the Owner of a Single Family Home or Single Family Lot within Tuscany.

Section 47. "SUPPLEMENTAL DECLARATION" shall mean any instrument executed by Declarant which, when recorded in the Public Records of the County, shall: (a) commit Additional Property, if any, to the provisions of this Declaration, and shall be the only method of committing such property to the provisions of this Declaration, (b) withdraw any portion(s) of

the Property from the lien and effect of this Declaration, (c) designate portion(s) of the Property or Additional Property to be or not to be Association Property hereunder, and/or (d) be for such other purposes as are provided in this Declaration. A Supplemental Declaration may also be used to impose additional covenants, restrictions, reservations, regulations, burdens, liens, and easements upon the Property or any portion thereof and/or remove any of same. The Association shall join in the execution of any Supplemental Declaration at the request of Declarant but such joinder shall not be required to make any such Supplemental Declaration effective. The Owners shall not be required to join in the execution of any Supplemental Declaration but shall nevertheless be bound thereby.

Section 48. "TURNOVER DATE" shall mean the date upon which "Class A Members" (as defined in Article V.D.1 of the Articles), including Declarant, shall assume control of the Association and elect the Board, as more particularly described in Article V.E.2 of the Articles.

Section 49. "TUSCANY" shall mean that planned development located in Palm Beach County, Florida, which is intended to encompass the Property and Association Property. It is presently anticipated that Tuscany will or possibly may contain single-family homes, zero-lot line homes, rental apartments and/or commercial uses. Tuscany consists of the land set forth in Exhibit "A" attached hereto and made a part hereof, and may be expanded to include additional property or reduced by withdrawal of property, all by the recording of one or more Supplemental Declaration(s).

Section 50. "TUSCANY DOCUMENTS" shall mean in the aggregate this Declaration, the Articles, the Bylaws, the Rules and Regulations, the Plat, the Additional Plat, if any, and all of the instruments and documents referred to herein and therein, including, but not limited to, any Amendment(s) and Supplemental Declaration(s), all as may be further amended and/or supplemented from time to time.

Section 51. "WATER MANAGEMENT DISTRICT" shall mean the South Florida Water Management District.

Section 52. "WATER MANAGEMENT DISTRICT PERMIT" shall mean that certain permit issued by the Water Management District for the Property bearing Permit Number 50-08178-P, as same may be amended or modified from time to time, a copy of which is attached hereto as Exhibit "F" and made a part hereof.

Section 53. "WORKFORCE HOUSING REQUIREMENTS" shall mean requirements for "Required Workforce Housing Units" mandated by the County under and pursuant to the ULDC (as hereinafter defined), the Atlantic Commons PUD approved by the County and governing the Property (as such PUD may be amended from time to time), and other requirements of the County including, without limitation, those defined in any Master Declaration of Restrictive Covenants for Workforce Housing recorded against title to the Property, as same may be amended and/or substituted from time to time.

**ARTICLE II**  
**DESCRIPTION OF TUSCANY**

**Section 1. GENERAL PLAN OF DEVELOPMENT.** Tuscany comprises the Property encompassing, or which will encompass, Lots, Parcels, the Apartment Site and Association Property, as more particularly defined by this Declaration and, in addition, lands which Declarant may add, but shall in no way be obligated to add, by one or more Supplemental Declaration(s). The Property declared hereunder and burdened by this Declaration is described in Exhibit "A" attached hereto. It is presently anticipated that Tuscany will or may contain Single Family Homes, Apartment Units, commercial uses, congregate care retirement facilities, assisted care living facilities and/or other similar operations. Notwithstanding the foregoing, Declarant has reserved the right to modify the plan of development for Tuscany (including, without limitation, the right to modify the master plan and/or site plan of Tuscany, and the right to supplement, change or reduce the recreational facilities, amenities, the Home product types and the number of Homes and Apartment Units to be constructed within Tuscany) and/or the right to add land to Tuscany or to withdraw land from Tuscany, all in Declarant's sole discretion. Therefore, in the event Declarant modifies its plan of development of Tuscany, adds land to Tuscany and/or withdraws land from Tuscany, the number of Lots and Parcels, the layout of Lots and Parcels and/or the size of Lots and Parcels within Tuscany may change and the Assessments required to be paid pursuant to this Declaration, may increase or decrease, as applicable. Declarant's general plan of development further contemplates that such Homes shall be whatever types of structures Declarant may choose which are in conformance with this Declaration. Declarant's general plan of development of Tuscany may also include whatever facilities and amenities Declarant considers in its sole judgment to be appropriate to Tuscany, as well as any changes thereto.

Additional Property will become a part of Tuscany if, and only if, Declarant in its sole discretion adds Additional Property to Tuscany by recording a Supplemental Declaration to such effect. Declarant hereby reserves an easement for ingress and egress and for utilities and drainage over, under and across the Property for the benefit of any Additional Property; provided, however, no such easement may be granted upon any portion of the Property that lies directly beneath a Home.

Declarant expressly reserves the right as to the Property to (i) commence construction and development of the Property if and when Declarant desires; (ii) develop the Property (including, without limitation, the recreational facilities and amenities) upon such timetable as Declarant, in its sole discretion, chooses; and (iii) modify the plan of development of the Property (including, without limitation, the right to modify the site plan and/or the master plan of Tuscany, the right to change the recreational facilities and amenities, and the right to change the Home product types and number of Homes to be constructed within Tuscany) in such manner as Declarant, in its sole discretion, chooses. Nothing contained herein shall be construed as obligating Declarant to construct Tuscany according to the present plan of development or as obligating Declarant to declare any Additional Property to be Property.

Although it is intended that the Association shall be the only homeowners association within Tuscany, Declarant reserves the right to establish other associations within Tuscany to be responsible for certain areas and operations which benefit only a portion of Tuscany. For example, but not by way of limitation, Declarant might create a homeowners association to operate a particular Recreation Tract whose use is limited to only certain Lots and in which case



only the Owners of such Lots would be members of such homeowners association and only such Owners would be obligated to pay for the maintenance of such Recreation Tract. In the event Declarant determines to create any such additional homeowners association, Declarant shall cause a Supplemental Declaration to be recorded to address all relevant issues associated therewith.

Section 2. ASSOCIATION PROPERTY. The Association Property shall consist of: (a) the property indicated on the Plat and Additional Plat(s), if any, as Association Property or as property reserved for or dedicated to the Association, and (b) any other property designated as Association Property in this Declaration or any Supplemental Declaration. The Association Property shall be used for recreational and social purposes as well as other proper purposes by the Association and the Owners and their family members, guests, invitees and tenants in accordance with the Tuscany Documents. Association Property may not be altered, modified, removed or replaced by Owners or their family members, guests, invitees or tenants.

The portions of Tuscany described in this Section 2 shall constitute Association Property and shall be used solely in accordance with the covenants, restrictions, reservations, regulations and burdens imposed upon the Association Property including, without limitation, the following:

A. Recreation Tracts. Tuscany is planned to contain certain active and/or passive recreation tracts (the "Recreation Tracts") as designated on the Plat or Additional Plat(s), if any. Subject to Section 18 of Article 10 below, the Recreation Tracts (other than those located on the Apartment Site) shall be part of the Association Property and shall be used for recreational purposes by the Association, and the Owners and their family members, guests, invitees and tenants. Such portions, if any, of the Recreation Tracts upon which Declarant has constructed or hereafter constructs Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located or to be located thereon. The Recreation Tracts (other than those located on the Apartment Site) shall always be kept and maintained by the Association for recreational uses or beautification and attendant uses (e.g., parking spaces within the Recreation Tracts shall be used for proper purposes by those using the recreational facilities but only while using such facilities), and shall be used for such purposes and not for residential, commercial or industrial construction of any kind. The Recreation Tracts (other than any Recreation Tracts located on the Apartment Site) shall be maintained, administered, operated and ultimately owned by the Association.

As set forth in this Declaration (including, without limitation, Section 23 of Article X below), certain Recreation Tracts are reserved only for the use and enjoyment by certain Owners to the exclusion of others. Declarant reserves the right to record Supplemental Declarations, from time to time, which further limits the use of certain Recreation Tracts to certain Lots provided that Declarant owns all such Lots (or the land which will comprise such Lots) at the time of recording any such Supplemental Declaration. As set forth herein and as may be set forth in any such Supplemental Declaration, only the Lots entitled to use such Recreation Tracts shall be responsible for the costs and expenses associated with the operation, maintenance, repair and replacement thereof.

Declarant further reserves the right, but shall not be obligated, to construct additional recreational facilities upon the Recreation Tracts, and to modify or reduce the facilities

and amenities planned for the Recreation Tracts. Declarant, at its sole discretion, hereby expressly reserves the right to reduce and/or modify the planned facilities, and to determine the timing of construction of the recreational facilities and installation of amenities. The decision as to whether to construct additional recreational facilities or amenities, to modify the planned facilities or amenities, to reduce the planned facilities and/or the timing of the construction thereof shall be in the sole discretion of Declarant.

Notwithstanding anything contained herein, neither Declarant nor the Association makes any representations whatsoever to commence, complete or construct any of the recreational facilities within any specific time period.

B. Lakes and Canals. The "Lakes" are those portions of the Property designated on the Plat or Additional Plat, if any, as lakes, lake tracts or storm water management tracts and shall always be kept and maintained as lakes for water retention, drainage, irrigation, littoral plantings and water management purposes in compliance with all applicable governmental requirements including, without limitation, the Water Management District requirements. The Lakes (other than those located on the Apartment Site) shall be a part of the Association Property and shall be maintained, administered, operated and ultimately owned by the Association subject to the Association's rights to maintain and/or repair the drainage facilities connecting the Lakes on the Apartment Site to the other portions of Atlantic Commons as provided in Section 1.K of Article IX below. The Lakes located on the Apartment Site shall be maintained, administered, and operated by the owner(s) of the Apartment Site. In furtherance of the foregoing, Declarant hereby reserves and grants an easement in favor of the Association throughout all portions of Atlantic Commons as may be necessary for the purpose of accessing, maintaining and administering the Lakes, and no Owner shall do any act which may interfere with the performance by the Association of its obligations hereunder.

The "Canals" are those canals located adjacent to and/or within portions of the boundaries of the Property. The Canals are not part of, and are hereby expressly excluded from, the Property. The rights-of-way comprising the Canals are owned and maintained by the Lake Worth Drainage District ("LWDD"). Neither Declarant nor the Association have control over how and to what extent, if any, the LWDD will (i) install any improvements in the Canal rights-of-way, and/or (ii) maintain such Canal rights-of-way, including, without limitation, any sod planted therein.

Water levels in the Lakes and Canals within and adjacent to the Property may rise and fall significantly due to, among other things, certain natural causes including, without limitation, rain, sun, and fluctuations in ground water elevations within the surrounding areas. Accordingly, Declarant has no control over such water levels and/or ground water elevations. Each Owner, by acceptance of a deed or title to a Lot, hereby releases Declarant, the Association and the County from and against any and all losses, claims, demands, liabilities, damages, costs and expenses of whatever nature or kind (including, without limitation, Legal Fees), related to, arising out of and/or resulting from water levels in the Lakes and/or Canals regardless of the cause thereof.

DECLARANT AND THE ASSOCIATION SHALL NOT BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL, INCLUDING, BUT NOT LIMITED TO, LIFEGUARDS, FOR THE RECREATION TRACTS, THE LAKES, CANALS AND/OR ANY OTHER PORTIONS OF THE ASSOCIATION PROPERTY. ANY INDIVIDUAL USING

THE RECREATION TRACTS, THE LAKES, CANALS AND/OR ANY OTHER PORTIONS OF THE ASSOCIATION PROPERTY SHALL DO SO AT HIS OR HER OWN RISK AND HEREBY HOLDS DECLARANT AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS (INCLUDING, WITHOUT LIMITATION, THOSE FROM PROPERTY DAMAGE, INJURY AND/OR DEATH) ARISING FROM SUCH USE.

EACH OWNER, BY THE ACCEPTANCE OF A DEED OR TITLE TO A LOT OR PARCEL, ACKNOWLEDGES THAT THE LAKES AND CANALS ARE EXTREMELY DEEP AND DANGEROUS. NEITHER DECLARANT, THE ASSOCIATION NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY, WATER QUALITY OR WATER LEVEL OF/IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY WITHIN OR AROUND ATLANTIC COMMONS, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED FOR WITH, AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, NONE OF THE LISTED PARTIES SHALL BE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH OCCURRING IN, OR OTHERWISE RELATED TO, ANY WATER BODY, ALL PERSONS USING SAME DOING SO AT THEIR OWN RISK. ALL OWNERS AND USERS OF ANY PORTION OF ATLANTIC COMMONS SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF A DEED OR TITLE TO OR USE OF SUCH PROPERTY, TO HAVE AGREED TO RELEASE THE LISTED PARTIES FROM ALL CLAIMS FOR ANY AND ALL CHANGES IN THE SAFETY, QUALITY AND LEVEL OF THE WATER IN SUCH BODIES. ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES WITHIN OR NEARBY ATLANTIC COMMONS AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT OR INSURE AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

C. Streets, Drives, Roads and/or Roadways. The "Streets," "Drives," "Roads" and/or "Roadways" are those portions of the Property designated on the Plat or Additional Plat(s), if any, as a street, driveway, road or roadway, and which are reserved for or dedicated to the Association, but specifically excluding any street or roadway dedicated to the public on the Plat or Additional Plat, if any. The Streets, Drives, Roads and/or Roadways shall be used as private roads by Declarant, the Association and the Owners, their family members, guests, invitees and tenants in accordance with the provisions of this Declaration. The Streets, Drives, Roads and/or Roadways shall be maintained, administered, operated and ultimately owned by the Association. Notwithstanding anything to the contrary, each Owner shall be responsible for the maintenance, repair and replacement of: (a) the driveway serving his or her Lot or Parcel, including that portion of the driveway in a Street, Drive, Road and/or Roadway, if any, and (b) the sod and plantings, if any, located adjacent to a Lot or Parcel within a Street, Drive, Road and/or Roadway, unless the driveway and/or sod and/or plantings was damaged by the Association in the fulfillment of its obligations and duties under this Declaration. In the event that the Pod B-1 Bridge (as defined in Section 1(J) of Article IX below) is constructed and will not be maintained by any applicable governmental authorities, the Pod B-1 Bridge shall be

deemed a part of the Streets, Drives, Roads and/or Roadways to be maintained and repaired from time to time by the Association (this reference in no way constituting an agreement or obligation for construction of the Pod B-1 Bridge).

D. Landscaped Areas or Grassed Areas. The "Landscaped Areas" and "Grassed Areas" are those portions of the Property designated on the Plat or Additional Plat, if any, as "Focal Point" tracts, "OS" tracts or as open space, and are to be used, kept and maintained as such by Declarant, the Association, and the Owners within Tuscany, their family members, guests, invitees and tenants, in accordance with the provisions of this Declaration. No Improvement, landscaping or other addition or deletions are permitted to be made or installed by any Owner in a Landscaped Area or Grassed Area. The Landscaped Areas and Grassed Areas shall be ultimately owned by the Association and shall be maintained, administered and operated in accordance with the requirements of this Declaration and the appropriate governmental agencies. In that regard, except as otherwise provided below, an Owner whose Lot is adjacent to an "OS" tract (other than those "OS" tracts that are also designated as Focal Point tracts) shall be responsible for the maintenance and care of the sod located in such adjacent "OS" tract up to the centerline thereof. In addition, if the side property line of an Owner's Lot abuts an OS or open space tract which separates Owner's Lot from the rear of one or more other lots in the Community, such Owner shall be responsible for the maintenance and care of the sod located in such OS or open space tract that abuts the side property line of such Owner's Lot. Notwithstanding the foregoing, an Owner whose Lot is adjacent to an "OS" tract shall not be responsible for the care of the sod located on such adjacent "OS" tract where such "OS" tract is: (i) part of a Buffer Tract (as hereinafter defined), (ii) used as a passive park or focal point and/or (iii) adjacent to the intersection of two of the Streets, Drives, Roads and/or Roadways thereby creating an entry into a parcel located within the Community, all of which such "OS" tracts shall be maintained by the Association. Nothing shall be planted, constructed, stored, placed and/or altered in the "OS" or open space tract by any Owner other than sod.

E. Street Lights. The "Street Lights" and any associated facilities placed within the Property and any street lights and associated facilities placed within public rights of way by agreement between Declarant or the Association and the public utility responsible therefor, are or shall be installed by Declarant, and if installed, will be repaired, replaced, relocated, maintained and owned by the public utility responsible therefor, but the Association shall be responsible to pay all fees associated with such installation, repair, replacement, relocation and maintenance, and for the furnishing of electricity thereto, at a set rate pursuant to a street lighting agreement entered into or to be entered into with such public utility. Nothing in this Declaration shall be construed to require Declarant to install Street Lights within Tuscany.

F. Decorative Street Lights. Declarant reserves the right, but shall not be obligated, to install "Decorative Street Lights" in or near the entranceway and gatehouse to Tuscany. The Decorative Street Lights, if installed by Declarant, shall be repaired, replaced, relocated, maintained and owned by the Association. If installed, such Decorative Street Lights will not be typical of what may be installed around the Lots. Nothing in this Declaration shall be construed to require Declarant or the Association to install Decorative Street Lights within Tuscany.

G. Gatehouse, Entranceway and Entry Gate. Tuscany may include one or more gatehouses and entry gates installed by Declarant or the Association. Such gatehouses,

entranceways and/or entry gates shall be deemed Association Property and shall be administered, maintained, operated, repaired and/or replaced by the Association and the expense thereof shall be included as an Operating Expense but as set forth herein, shall be payable only by the Owners of Lots located behind and served by such gatehouses, entranceways and/or entry gates. The gatehouses, if any, may or may not be staffed, as determined in the sole discretion of the Association. All other portions of the entranceway shall also be owned and maintained by the Association. Neither Declarant nor the Association makes any representations whatsoever as to the security of the Property or the effectiveness of any gatehouse or entry gate. All Owners agree to hold Declarant and the Association harmless from any loss or claim arising within the Property from the occurrence of a crime or other act. The Owners acknowledge that the gatehouse and entry gate are designed only to restrict vehicular access to Tuscany, and will not be able to prevent crime. Notwithstanding anything herein to the contrary, neither Declarant nor the Association makes any representations whatsoever to commence, complete, construct or staff any gatehouse or entry gate within any specific time period. For as long as Declarant (or its assignees) are constructing or selling Homes within Tuscany the Association must obtain Declarant's approval of the hours of operation of any gates so that contractors and prospective buyers of Homes are not restricted access to the Property.

H. Buffers. The "Buffers" are those portions of the Property which run along the outer perimeter of the Property, or adjacent to certain Streets, Drives, Roads and/or Roadways, and are designated on the Plat or Additional Plat(s), if any, as "BT" tracts, "Buffer Tracts" or as buffers. Buffers shall be maintained by the Association in accordance with the provisions of this Declaration and the requirements of the appropriate governmental authorities. In order to preserve the aesthetic image of Tuscany and to help maximize the Owners' use and enjoyment thereof, no Improvements, landscaping or other additions and/or deletions are permitted within the Buffers without the prior written consent of the Association and appropriate governmental agencies, excepting any Improvements, landscaping or other additions made or installed by Declarant and/or the Association, such as, but not limited to, berms, landscaping, sod, signs, walkways, walls and light poles. Additionally, no Owner shall be permitted to attach their fence to any fence or wall within the Buffer or to otherwise fence in or enclose any portion of a Buffer or other Association Property.

I. Drainage System. The Association shall be responsible for all costs associated with all cleaning, maintenance, repair and replacement of any portion of the Drainage System necessary to maintain the system in its original condition and use. The County is not obligated to pay or reimburse the Association for any of the costs or expenses associated with the operation, maintenance and repair of the Drainage System.

J. Irrigation System. The central irrigation system (the "Irrigation System") is the system of pipes, pumps, sprinklers, control boxes and other associated facilities serving the Association Property, each of the individual Lots within Tuscany, and the Atlantic Avenue Improvements (as hereinafter defined), and as described in Article VI, Section 8 hereof. The Irrigation System does not, however, include any pipes, pumps, sprinklers, control boxes or other associated facilities installed on or serving the Apartment Site, all of which shall be owned, operated, maintained, repaired and replaced by the owner(s) of the Apartment Site. The Irrigation System will if and to the extent required or requested by the County, to also irrigate certain trees, sod, and other landscaping (if and to the extent installed) located in the median of Atlantic Avenue adjacent to Tuscany (collectively, the "Atlantic Avenue Improvements"). The

Association shall be responsible for all costs associated with operating, maintaining, repairing and replacing the Irrigation System except for damages to the Irrigation System caused by an Owner as provided in Section 1.B of Article IX below.

K. Conservation Areas, Preserve Areas. The "Conservation Areas" and "Preserve Areas" are those portions of the Property designated on the Plat or Additional Plat, if any, in this Declaration, any Supplemental Declaration, or in any conservation easement deed or other instrument now or hereafter recorded against any portion or portions of the Property, as conservation areas or tracts, preserve areas, tracts or buffers, wetland areas or tracts, or mitigation areas or tracts. The Conservation Areas and Preserve Areas, if any, shall be used, kept and maintained as such by Declarant, the Association, and the Owners within Tuscany, their family members, guests, invitees and tenants, in accordance with the requirements and restrictions contained in this Declaration or any Supplemental Declaration, and pursuant to any permit, conservation easement deed or other instrument now or hereafter recorded against any portion or portions of the Property, or as required by any appropriate governmental or quasi-governmental agency or entity having jurisdiction over the Property (collectively the "Conservation Documents and Requirements"). The Association shall be responsible for monitoring and maintaining all Conservation Areas and Preserve Areas in accordance with the Conservation Documents and Requirements.

L. Right to Add Additional Improvements. Such portions of the Association Property upon which Declarant has constructed, or Declarant or the Association hereafter constructs, Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located, or to be located, thereon. Declarant and the Association reserve the right, but shall not be obligated, to construct additional facilities upon the Association Property. Declarant's decision as to whether to construct additional facilities and the construction thereof shall be in the sole discretion of Declarant, and Association's decision as to whether to construct additional facilities and the construction thereof shall be in the sole discretion of the Association.

Section 3. LAKE LOTS AND CANAL LOTS. Notwithstanding anything contained herein to the contrary, and subject to the rights and obligations of the Association to maintain the Lakes as aforesaid for water retention, drainage, irrigation and water management purposes for all of Tuscany and the right of the Association to adopt rules from time to time with respect to the use of the Lakes for such purposes, the Lakes shall be reserved for the private use and enjoyment of all Owners, their family members, guests, invitees and tenants, but only in accordance with this Declaration.

Only "catch and release" fishing in the Lakes shall be permitted; however, notwithstanding anything contained herein to the contrary, an Owner shall only access the Lakes from the "Lake Maintenance Access Easement" or "Lake Maintenance Easement" shown on the Plat, or Additional Plat, if any, which immediately abuts such Owner's Lot if the Owner's Lot is a Lake Lot (a "Lake Lot Owner"). If an Owner is not a Lake Lot Owner, or if a Lake Lot Owner wishes to access a different Lake or another area of the same Lake, access to the Lake shall be exclusively from the Lake Maintenance Access Easement abutting a Landscaped Area or Grassed Area (as those terms are defined in Section 2(D) above) and such access shall be limited to the portion of the Lake Maintenance Access Easement or Lake Maintenance Easement and lake bank abutting the Landscaped Area or Grassed Area. If no portion of the Lake Maintenance

Access Easement or Lake Maintenance Easement and/or lake bank abuts a Landscaped Area or Grassed Area, Owners other than Lake Lot Owners whose Lots abut the Lake shall not be permitted access to that Lake. In addition, no Owner shall be permitted access to or to fish from any Lake Maintenance Easement or lake bank area which immediately abuts a Lake Lot owned by another Owner.

Lake Lot Owners and their family members, guests, invitees and tenants shall be permitted, at their sole risk, to operate non-motorized and electric watercraft in the Lakes. No other persons shall be entitled to operate watercraft in the Lakes. Notwithstanding the foregoing, the launching into and removal from a Lake of any permitted non-motorized or electric watercraft by a Lake Lot Owner shall be limited to such Lake Lot Owner's Lake Lot and the Lake Lot Owner shall only access the Lakes from the Lake Maintenance Easement or Lake Maintenance Access Easement which immediately abuts such Lake Lot Owner's Lake Lot. Watercraft shall be limited in size to eighteen feet (18') in length. No watercraft of any kind shall be permitted in the Canals.

No planting, fencing or other Improvements or additions to the Landscaped Area or Grassed Area surrounding a Lake and outside the Lot is permitted. Other than sod, no planting, fencing or other Improvements (including landscaping) or additions shall be permitted along the Lake banks or within a "Lake Bank Zone" (as hereinafter defined), the Lake Maintenance Easement or Lake Maintenance Access Easement of Lake Lots. No installation of sand or other materials intended to simulate a beach shall be permitted along the Lake banks or within the Lake Maintenance Easement or Lake Maintenance Access Easement or rear yards of Lake Lots; provided, however, Declarant shall have the right, but not the obligation, to install sand along the Lake banks (and/or within the Lake Maintenance Easements and/or Lake Maintenance Access Easements that are on or adjacent to the Recreation Tracts), and if Declarant installs such sand, it shall be the Association's obligation to maintain and replace same, and the expense thereof shall be included as an Operating Expense. Swimming and the operation of motorized watercraft, other than electrically operated watercraft, in the Lakes are prohibited. Watercraft and trailers shall not be stored on the Lake banks or the Lake Maintenance Easement. Only watercraft which are permitted to be used within the Lakes of Tuscany may be temporarily stored within the backyards of Lake Lots. In addition to the use of any Lake Maintenance Easement by any Lake Lot Owner, as described above, the Lake Maintenance Easement is for the use of the Association, the County, the Water Management District and any other governmental or quasi-governmental agency for access to the Lakes for maintenance of the Lakes and littoral plantings, and other proper purposes. No alteration, relocation, removal or damage to littoral plantings, wetland plantings or upland plantings located in Lake Maintenance Easements is permitted by an Owner.

An imaginary line will be extended from the side property lines at the back of each Lake Lot down to the water's edge (as such water's edge may fluctuate from time to time). The area encompassed between the rear property line and the water's edge between these imaginary lines shall be defined as the "Lake Bank Zone" as to each Lake Lot. The Association shall provide irrigation of sod, and the maintenance, repair and replacement of the irrigation system, located within the Lake Bank Zone. The Lake Lot Owner of each Lake Lot shall maintain and care for the sod located within his or her Lake Bank Zone. The Association shall be responsible for the maintenance, repair and replacement of the littoral plantings beyond the

water's edge in all Lakes. In no event shall any Owner cause any erosion or change in grade of any lake bank slopes from design grade.

Section 4. COSTS. All costs associated with operating, maintaining, repairing and replacing the Association Property shall be the obligation of the Association. The Association Property shall be conveyed to the Association in accordance with the provisions of Article III, Section 6 hereof.

Section 5. PRIVATE USE. For the term of this Declaration, the Association Property (except as otherwise specifically provided in this Declaration) is not for the use and enjoyment of the public, but is expressly reserved for the private use and enjoyment of Declarant, the Association, and the Owners, and their family members, guests, invitees and tenants, but only in accordance with this Declaration.

A. Notwithstanding anything in this Declaration to the contrary, however, Declarant hereby expressly reserves for itself and its affiliates the right to use the Association Property (including, without limitation, all parking spaces within or adjacent to the Recreation Tracts, if any) for such period of time as Declarant determines to be necessary in connection with the sale and marketing by Declarant and/or its affiliates of Homes in Tuscany and/or in any other communities developed or to be developed by Declarant or its affiliates, including, but not limited to, the holding of sales and marketing meetings, the use of "model row(s)" and design centers if one or more, and engaging in sales promotions and related sales and marketing activities for the general public.

B. Except to the extent provided herein and elsewhere in the Tuscany Documents, the Association Property shall be for the sole and exclusive use of the Owners and residents of Tuscany and their family members, guests, invitees and tenants who contribute to the maintenance, repair, replacement, insurance and administration of those portions of the Association Property.

C. The administration, management, operation and maintenance of the Association Property shall be the responsibility of the Association, as provided herein and in the Tuscany Documents.

D. The right to use the Association Property shall be subject to the rules and regulations established by the Association, as the same may be amended from time to time.

Section 6. PRIVACY FENCES AND HEDGES. Certain of the Lots within Tuscany on which zero lot line Single Family Homes may be constructed, as further described in Article IV, Section 6.C herein, may have privacy fences installed by Declarant ("Privacy Fences") on or along their rear and/or side lot lines (or portions thereof), with hedges planted by Declarant on either or both sides of such Privacy Fences ("Hedges"). The Privacy Fences and Hedges, if installed by Declarant (which Declarant shall have no obligation whatsoever to do), shall be the maintenance, repair and replacement obligation of the Owner of the Lot on which the same is or are installed, and may not be altered in any way or removed by the Owner of the Lot.

Section 7. MODEL ROW. Declarant hereby reserves the right to construct and/or operate a "model row(s)" in Tuscany. The "model row(s)" may contain models for Tuscany or other



communities being developed by Declarant or affiliate(s) of Declarant, as Declarant and/or any of Declarant's affiliates may so determine, in their sole discretion. The "model row(s)" may also contain parking, landscaping and fencing across Streets, Drives, Roads and/or Roadways as Declarant may determine in its sole discretion. In the event that Declarant and/or any of Declarant's affiliates constructs a "model row(s)" in Tuscany, such "model row(s)" may be used for such period of time that Declarant and/or any of Declarant's affiliates determine to be necessary in its or their sole discretion including, without limitation, after the Turnover Date. Each Owner, by acceptance of a deed or title to a Lot in Tuscany, acknowledges and agrees that: (i) Declarant and/or any of Declarant's affiliates have a right to construct and/or operate a "model row(s)" even after the Turnover Date; (ii) Declarant and/or any of Declarant's affiliates have an easement over Tuscany for ingress and egress to and from the "model row(s)" and to use and show the models to prospective purchasers in Tuscany or other communities being developed by Declarant and/or any of Declarant's affiliates, for so long as such "model row(s)" exists; and (iii) Owner shall not interfere in any manner whatsoever in the sales process by Declarant and/or any of Declarant's affiliates, including, without limitation, the carrying of signs, the posting of signs on Lots or Homes, or other types of demonstrations in or around Tuscany or any public right-of-way adjacent to the Property. Each Owner acknowledges and agrees that any such activities interfere with the quiet enjoyment of Tuscany by the other Owners, are detrimental to the value of the Homes within Tuscany, and interfere with Declarant's and/or its affiliates' ability to conduct their business.

**Section 8. COMMUNITY SYSTEMS.** Declarant shall have the right, but not the obligation, to convey, transfer, sell or assign all or any portion of the Community Systems located within the Property, or all or any portion of the rights, duties or obligations with respect thereto to the Association or any other person or entity (including an Owner, as to any portion of a Community System located on/in such Owner's Lot). Without limiting the generality of this Section, if and when any of the aforesaid persons and/or entities receive such a conveyance, sale, transfer or assignment, such person and/or entity shall automatically be deemed vested with such rights of Declarant with regard thereto as are assigned by Declarant in connection therewith; provided, however, that if the Association is the applicable entity, then any Community Systems or portions thereof shall be deemed Association Property hereunder and the Association's rights, duties and obligations with respect thereto shall be the same as those applicable to other Association Property unless otherwise provided by Declarant. Any conveyance, transfer, sale or assignment made by Declarant pursuant to this Section, (i) may be made with or without consideration, (ii) shall not require the consent or approval of the Association or any Owner, and (iii) if made to the Association, shall be deemed to have been automatically accepted (with all rights, duties, obligations and liabilities with respect thereto being deemed to have been automatically assumed). In recognition of the intended increased effectiveness and potentially reduced installation and maintenance costs and user fees arising from the connection of all Lots and Association Property within Tuscany to the applicable Community Systems, each Owner and occupant of a Home shall, by virtue of the acceptance of a deed or title to a Lot or other right of occupancy thereof, be deemed to have consented to and ratified any and all agreements to which the Association is a party which is based upon (in terms of pricing structure or otherwise) a requirement that all Lots be so connected. The foregoing shall not, however, prohibit the Association or Community Systems provider from making exceptions to any such 100% use requirement in its reasonable discretion. WITH RESPECT TO COMMUNITY SYSTEMS, ALL PERSONS ARE REFERRED TO ARTICLE VI, SECTION 7 HEREOF, WHICH SHALL AT ALL TIMES APPLY TO THIS SECTION.

**ARTICLE III**  
**ADDITIONS TO AND WITHDRAWALS FROM THE PROPERTY;**  
**CONVEYANCE OF ASSOCIATION PROPERTY**

**Section 1. ADDITIONS.** Declarant may from time to time, in its sole discretion, by recording appropriate Supplemental Declaration(s) in the Public Records of the County, add any Additional Property or any other real property to the Property governed by this Declaration, and may declare all or part of such Additional Property or other property (including any Improvements thereon) to be Lots, Parcels or Association Property. Upon the recording of a Supplemental Declaration, the property described therein shall be deemed part of the Property as if it were originally included therein and subject to this Declaration. Any such Supplemental Declaration may submit any Additional Property or any other real property to such modifications of the covenants, restrictions, reservations, regulations, burdens, liens and/or easements contained in this Declaration as may be necessary or convenient to reflect or adapt to any changes in circumstances or differences in the character of any such Additional Property or other property. Nothing contained in this Section 1 shall be construed to require the joinder by or consent of the Owners or the Association to any such Supplemental Declaration; provided, however, the Association shall join in the execution of any such Supplemental Declaration at the request of Declarant. In addition, nothing herein shall require Declarant to add any Additional Property.

**Section 2. DESIGNATION OF ADDITIONAL ASSOCIATION PROPERTY.** Declarant may, from time to time, by recording Supplemental Declarations in the County, designate additional portions of the then existing Property owned by it to be Association Property.

**Section 3. DISCLAIMER OF IMPLICATION.** Only the real property described in Exhibit "A" hereto is submitted and declared as the Property subject to this Declaration. Unless and until a Supplemental Declaration is recorded in the fashion required pursuant to this Declaration, no other property (including any Additional Property) shall in any way be deemed to constitute a portion of the Property or be affected by the covenants, restrictions, regulations, burdens, liens, and easements expressly binding the Property as provided by the terms of this Declaration. The attachment of the Project Conceptual Plan as Exhibit "G" to this Declaration shall not be construed to imply that Declarant will add all of the property shown thereon to the Property subject to this Declaration.

**Section 4. ABSENCE OF OBLIGATION.** Nothing in this Declaration shall be construed to require Declarant to add any Additional Property to the Property encumbered by this Declaration or to require Declarant to declare any portion of any properties added to the Property to be Association Property, nor shall anything in this Declaration be construed to require Declarant to declare any portion or portions of the existing Property as Association Property, except to the extent herein specifically provided.

**Section 5. WITHDRAWAL.** Notwithstanding anything herein to the contrary, Declarant reserves the absolute right at any time to withdraw portions of the Property from the provisions of this Declaration (including, without limitation, any Parcel used or to be used for commercial uses thereon) by recording an appropriate Supplemental Declaration in the County; provided, however, that such withdrawal of portions of the Property from the provisions of this Declaration

are subject to the prior written approval of the Palm Beach County Attorney's Office. Any such Supplemental Declaration must be executed by Declarant, the Owner of each Lot or Parcel located on the Property sought to be withdrawn (if any) and each holder of an Institutional Mortgage on a Lot or Parcel located on the Property sought to be withdrawn (if any), in order to be effective. Nothing contained in this Section shall be construed to require the joinder by or consent of the Owners of Lots or Parcels on the portion of the Property which is not withdrawn by such Supplemental Declaration, such Owners' Institutional Mortgagees holding mortgages on Lots or Parcels on the portion of the Property which is not withdrawn by such Supplemental Declaration or the Association.

Section 6. TITLE TO THE ASSOCIATION PROPERTY. To the extent herein provided, the Association Property is hereby dedicated to the joint and several use in common of the Owners of all Lots that may, from time to time, constitute part of the Property. When deeds and/or title to all Lots and Parcels subject to the provisions of this Declaration have been conveyed to non-Declarant purchasers (or earlier at Declarant's option, exercisable from time to time, as to any portions of the Association Property), Declarant or its successors and assigns shall convey and transfer to the Association, by quitclaim deed, the fee simple title to the Association Property free and clear of any mortgages and the Association shall accept such conveyance, holding title for the Owners as aforesaid. Such conveyance shall be subject to: (i) real estate taxes and assessments due with respect to the Association Property from and after the date of recording of this Declaration; (ii) all laws, ordinances, regulations, restrictions, prohibitions and other requirements imposed by governmental authorities, including, without limitation, all building, zoning, land use and environmental laws, ordinances, codes and regulations; (iii) matters which would be disclosed by an accurate survey of the Association Property; (iv) easements, covenants, conditions, restrictions, reservations, limitations and other matters of record; and (v) the terms and provisions of this Declaration, as the same may have been modified, amended and/or supplemented from time to time.

At the time of conveyance of the Association Property or any portion thereof, the Association shall be required to accept the Association Property, together with the personal property and Improvements appurtenant thereto, if any. The Association hereby agrees to accept the Association Property and the personal property and Improvements appurtenant thereto in "AS IS" "WHERE IS" condition, without any representation or warranty, expressed or implied, in fact or by law, as to the condition or fitness of the Association Property or any portion thereof, and the personal property and Improvements appurtenant thereto being conveyed. IN THAT REGARD, THE ASSOCIATION AND EACH OWNER KNOWINGLY AND VOLUNTARILY RELINQUISHES AND WAIVES, AND DECLARANT EXPRESSLY DISCLAIMS, ANY AND ALL WARRANTIES (EXPRESS OR IMPLIED) AS TO THE ASSOCIATION PROPERTY AND PERSONAL PROPERTY AND IMPROVEMENTS WHETHER ARISING FROM CUSTOM, USAGE OR TRADE, COURSE OF CONDUCT, COURSE OF DEALING, CASE LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF HABITABILITY, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR ANY IMPLIED WARRANTY OF FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE.

TO THE EXTENT THAT BY LAW OR OTHERWISE ANY OF THE WARRANTIES RELINQUISHED, WAIVED OR DISCLAIMED CANNOT BE RELINQUISHED, WAIVED OR DISCLAIMED, IN WHOLE OR IN PART, ALL

SECONDARY, INCIDENTAL AND CONSEQUENTIAL DAMAGES ARE SPECIFICALLY EXCLUDED AND DISCLAIMED (INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM CLAIMS OF PROPERTY DAMAGE, LOSS OF USE, PERSONAL INJURY OR EMOTIONAL DISTRESS). Without limitation, the Association shall accept all Streets, Drives, Roads, Roadways, bridges and sidewalks, including, without limitation, all gutters, curbs and paver bricks located within and adjacent to the Streets, Drives, Road, Roadways, bridges and sidewalks, all as installed by Declarant, provided such Streets, Drives, Roads, Roadways, bridges, sidewalks, gutters, curbs and paver bricks perform their intended purposes. The Association and all Owners hereby further acknowledge and agree that small cracks in the Streets, Drives, Roads, Roadways, bridges, sidewalks, gutters, curbs and paver bricks as well as the ponding or collection of water following periods of rain thereon are normal and shall not be considered to be defects or deficiencies of any kind whatsoever.

The Association and each Owner acknowledges and agrees that Declarant has or will install trees, shrubs, plants and other landscaping in Tuscany consistent with a landscape plan that meets or exceeds the requirements of the County Unified Land Development Code ("ULDC") and that from the time of such initial installation, such trees, shrubs, plants and other landscaping may mature, expand, decay and/or die from time to time. The Association shall have no claim whatsoever against Declarant, and Association hereby releases any and all claims whatsoever against Declarant, for any trees, shrubs, plants and other landscaping that has decayed or died and not been replaced regardless of the reasons there for so long as all of the remaining trees, shrubs, plants and other landscaping, when looked at as a whole, meet or exceed the minimum requirements of the ULDC.

The Association shall accept this conveyance of the Association Property (together with the personal property and Improvements appurtenant thereto) and shall pay all costs of such conveyance including documentary stamps and other taxes of conveyance, recording charges, title insurance expenses and insurance fees. The conveyance shall not, however, impair in any way Declarant's rights and easements as set forth in this Declaration.

Commencing upon the date this Declaration is recorded, and notwithstanding that title thereto has not yet been conveyed to the Association, the Association shall be responsible for the maintenance of the Association Property in a continuous and satisfactory manner without cost to the general taxpayers of the County. The Association shall be responsible for the payment of real estate taxes, if any, against the Association Property including taxes on any Improvements and any personal property thereon accruing from and after the date this Declaration is recorded.

The Owners (including Declarant as to Lots and Parcels owned by it) shall have no personal liability for any damages: (i) for which the Association is legally liable, or (ii) arising out of, relating to, or in connection with the existence or use of any Association Property or any other property required to be maintained by the Association.

Subject to the foregoing, Declarant may mortgage any or all portions of the Association Property to finance construction and development expenses provided that the mortgagee recognizes the rights of Owners under this Declaration and neither the Association nor any Owner (other than Declarant) is personally liable for paying the mortgage. In such event, neither the Association nor the Owners shall be required to join in or be entitled to consent

to such mortgage. The Association Property shall be released from any such mortgage no later than the date same is conveyed to the Association.

Section 7. PARKING RIGHTS. The Association may maintain upon the Association Property parking spaces for Owners, occupants, visitors and guests. The use of such parking spaces by Owners, occupants, visitors and guests shall be subject to duly adopted rules and regulations of the Association, as the same may be amended from time to time.

#### **ARTICLE IV**

#### **OWNERS' PROPERTY RIGHTS**

Section 1. OWNERS' EASEMENTS OF ENJOYMENT. Every Owner and family member, guest, tenant, agent or invitee of an Owner shall, except as may otherwise be provided in this Declaration, have a permanent and perpetual, nonexclusive easement for ingress and egress over, enjoyment in, and use of Association Property within the Property (except as may be otherwise specifically provided elsewhere in this Declaration) in common with all other Owners, their family members, guests, tenants, agents and invitees, which easement shall be appurtenant to, and shall pass with a deed and/or title to, each Owner's Lot. This right shall be subject to the following conditions and limitations:

A. The right and duty of the Association to reasonably limit the number of guests, visitors, invitees or tenants of an Owner using the Association Property.

B. The right and duty of the Association to levy Assessments against each Lot for the purpose of operating, maintaining, repairing and replacing the Association Property and Improvements thereon in compliance with the provisions of this Declaration and the restrictions on portions of the Property from time to time recorded by Declarant.

C. The right of the Association to establish, amend and/or abolish from time to time, uniform rules and regulations pertaining to the use of the Association Property.

D. The right of the Association to establish, amend and/or abolish from time to time, uniform rules and regulations pertaining to the Lots for the purposes of enhancing the aesthetic uniformity of the Property.

E. The right of the Association in accordance with its Articles, Bylaws, and this Declaration, with the vote or written assent of two-thirds (2/3) of the total voting interests, except as provided to the contrary in this Declaration, to borrow money for the purpose of improving the Association Property and Improvements thereon, and, in aid thereof, to mortgage, pledge, or hypothecate any or all of its real or personal property, or assign the right to collect Assessments levied to repay any such borrowed money, as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the use rights of the Owners in the Association Property. Notwithstanding the foregoing, such two-thirds (2/3) vote or written consent of total voting interests shall not be required for such Improvements made for the sole purpose of preservation of, or prevention of damage to Association Property.

F. The right of the Association to dedicate, release, alienate, or transfer all or any part of the Association Property owned by the Association to any public agency, authority,

or utility; and to grant any covenant, restriction or reservation against the Association Property in favor of any such public agency, authority or utility; provided, however, no such dedication, release, alienation, or transfer shall be effective unless Members entitled to cast two-thirds (2/3) of the total voting interests agree to such dedication, release, alienation or transfer.

G. The right of the Association, without any vote of the Owners, to grant easements and rights-of-way where necessary or desirable, for utilities, water and sewer facilities, cable television, and other services over the Association Property to serve the Association Property and other portions of the Property without vote of the Owners.

H. The right of Declarant, Declarant's affiliates, and each of their respective officers, directors, partners, employees, agents, licensees, and invitees to the nonexclusive use of the Association Property and the Improvements thereon, without charge, for sales, marketing, display, access, ingress, egress, construction, and exhibit purposes, and to grant (without consent of the Association and/or vote of the Owners) easements and rights-of-way as provided in this Declaration.

I. The right of the Association, by action of the Board, to reconstruct, replace, or refinish any improvement or portion thereof upon the Association Property, in accordance with the original design, finish, or standard of construction of such Improvement.

J. The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs, and ground cover upon any portion of the Association Property.

K. The right, however not the duty, of the Association by action of the Board to seek the vacation of publicly dedicated streets, if any, upon the Property.

L. The right, however not the duty, of the Association, following a tropical storm, hurricane or other Act of God, to upright and/or remove any fallen or dislodged trees on: (i) any Lot, and/or (ii) any grassed areas located between the front and/or side of such Owner's Lot and the Street; all as more particularly set forth in Article IX below.

M. The easements provided elsewhere in this Declaration, designated on the Plat, or on the Additional Plat(s), if any, including, but not limited to, those set forth in this Article IV.

N. The right of the Association to provide for the maintenance, preservation and architectural control of Lots, Improvements and other properties as set forth in this Declaration.

O. The right of the Association and Declarant and their respective employees, agents, licensees, and invitees to come upon the Property (including, without limitation, Association Property as well as a Lot even after the same has been conveyed to an Owner) as may be necessary or convenient for the Association and/or Declarant to carry on their respective duties, obligations, responsibilities under, and all other work referred to in, this Declaration (including, without limitation, Declarant's development and construction of Tuscany and Homes therein).

P. The right of the Association to suspend the rights of Owners and their tenants, guests and invitees to use the Association Property (except for legal access) and common facilities when such Owners are more than ninety (90) days delinquent in the payment of any monetary obligation due to the Association. The Association shall also have the right to levy fines and impose suspensions against Owners or any tenants, guests or invitees for violations of the Tuscan Documents, including, but not limited to, the Association's Rules and Regulations.

Q. The right of the Association to suspend voting rights of Owners that are more than ninety (90) days delinquent in the payment of Assessments.

R. The right of the Water Management District to use the Streets, Drives, Roads and/or Roadways for access to and from drainage, easements, lake maintenance easements, boat ramps, lake access easements, the Lakes, and the rights of the County to use the Streets, Drives, Roads and/or Roadways for access purposes by emergency vehicles and for the maintenance of utilities.

Section 2. DELEGATION OF USE. Any Owner may delegate, in accordance with the Bylaws, such Owner's right of enjoyment to the Association Property to the members of such Owner's family, or to the tenants who reside in such Owner's Home, subject to this Declaration, all of the rules and regulations presently in effect and any which may become effective in the future, and subject further to reasonable regulation by the Board.

Section 3. RECOGNITION OF EASEMENTS. Each Owner, by acceptance of a deed or other instrument of conveyance, recognizes and consents to the easements reserved and/or granted with respect to the Property under this Declaration.

Section 4. EASEMENTS FOR VEHICULAR TRAFFIC. In addition to the general easements for use of the Association Property reserved herein, there shall be, and Declarant hereby reserves, grants, and covenants for itself and all future Owners, their family members, guests, invitees and tenants, Institutional Mortgagees of the Property (or portions thereof), and to the Association, that all of the foregoing shall have a perpetual nonexclusive easement for vehicular traffic over (i) all streets within or upon the Property dedicated to the public use, if any (as well as alcoves, cul de sacs, and other private, paved areas abutting or serving the same), and (ii) any private Streets, Drives, Roads and/or Roadways within or upon the Property.

Section 5. ACCESS EASEMENT. Declarant hereby reserves perpetual, nonexclusive easements of ingress and egress over and across: (i) any and all streets within or upon the Property dedicated to the public use, if any (as well as alcoves, cul de sacs, and other private, paved areas abutting or serving the same), (ii) any private Streets, Drives, Roads and/or Roadways and driveways within or upon the Property, and (iii) all other portions of the Property, any of the foregoing of which are necessary or convenient for enabling Declarant to carry on and complete the work and/or exercise its rights referred to in this Declaration. All of the foregoing easements shall be for the use of Declarant, Declarant's employees, contractors and agents, Declarant's successors and assigns, Owners, and the respective tenants, employees, agents, invitees, and licensees of Declarant and Owners.

Section 6. GRANT AND RESERVATION OF EASEMENTS. Declarant hereby reserves and grants the following perpetual, nonexclusive easements over and across the Property as covenants running with the Property for the benefit of the Owners, the Association, and Declarant as hereinafter specified for the following purposes:

A. **Utility and Services Easements.** All of the Property shall be subject to an easement or easements to provide for: (i) installation, service, repair and maintenance of the equipment required to provide utility services other than Community Systems to the Association Property and the Lots and Parcels, including, but not limited to, power, lights, telephone, gas, water, sewer, irrigation and drainage, and (ii) governmental services, including, but not limited to, police, fire, mail, health, sanitation and other public service personnel, including reasonable rights of access for persons and equipment necessary for such purposes for the benefit of the appropriate utility companies, agencies, franchises or governmental agencies.

B. **Easement for Encroachment.** All of the Property shall be subject to an easement or easements for encroachment in favor of each Owner in the event any portion of such Owner's Home or appurtenant Improvements installed by Declarant such as stucco, a fence or underground footer now or hereafter encroaches upon any of the Lots as a result of minor inaccuracies in survey or construction, by design, or due to settlement or movement. Such encroaching Improvements installed by Declarant shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching Improvements in favor of the Owner thereof or such Owner's designees.

C. **Zero Lot Line Maintenance Easements.**

(1) **Preamble:** A portion of the Homes in Tuscany may be designed and site planned as "zero lot line" Single Family Homes, such that each zero lot line Single Family Home is constructed so that all or portions of one side of such Single Family Home (and such fences or masonry walls extending from such side or sides) are situated on the side boundary lines of the Lot. Because of this design, it is necessary to provide a means by which the Owner of a Lot ("Dominant Lot") containing such a Single Family Home may have access to the "zero lot line" side of the Single Family Home (and other portions of such Owner's Lot and Single Family Home) in order to maintain portions of the Lot, the side(s) of the Single Family Home, the roof and other applicable portions of the Single Family Home and Lot, and so that rain water may run off the roof of a particular Single Family Home onto the easement area described below. Because such access must be, of necessity, over those portions of the neighboring Lot or Lots ("Servient Lot[s]") adjacent to the "zero lot line" side[s] of such a Single Family Home, Declarant hereby makes provision for the "Maintenance Easements" declared and regulated pursuant to this Section 6 (as well as similar easements for the aforesaid purposes which may, but need not, appear on the Plat).

(2) **Creation and Extent of Maintenance Easement:** Declarant hereby reserves a permanent and perpetual non-exclusive maintenance easement in favor of each Dominant Lot over the unimproved portion of the Servient Lot(s) adjacent to the building lines of the "zero lot line" Single Family Home located on the Dominant Lot, which building lines are co-extensive with the Lot lines dividing the aforesaid Lots ("Maintenance Easement"). Said Maintenance Easement shall be appurtenant to and pass with the deed or title of the Dominant



Lot and the Servient Lot(s). The Maintenance Easement shall be only as extensive as reasonably necessary to permit the Owner of a Dominant Lot to make the uses described in the Preamble above, subparagraph (3) below and for rainwater run-off, but in no event less than the greater of seven (7) feet in width or as may be otherwise shown as a maintenance, access or similar easement on the Plat.

(3) Use and Conditions of Maintenance Easement: The Owner of a Dominant Lot, such Owner's guests, invitees, contractors, subcontractors, suppliers, laborers and other service personnel, shall be entitled to enter onto the appurtenant Maintenance Easement for purposes of maintaining, repairing and replacing portions of such Owner's Lot and Single Family Home including, without limitation, the Single Family Home's walls, roof, fence, landscaping and other installations which cannot be conveniently or properly maintained, repaired or replaced solely from the Dominant Lot. The right of each Owner of the Dominant Lot to use the Maintenance Easement shall be limited to the aforesaid uses, and such Owner shall not do anything within the Servient Lot(s) which shall cause damage to the Servient Lot(s) or any Improvement or landscaping thereon which is not promptly and fully remedied by said Owner by returning such damaged Improvement or landscaping to the condition immediately preceding said damage, shall create an undue hazard to persons or pets located on or coming into the Servient Lot(s) or is in furtherance of any activity as to the Dominant Lot or the Single Family Home thereon which is, or would result in, a violation of the restrictions set forth in the Tuscany Documents. The Owner of the Dominant Lot shall, by virtue of making use of any Maintenance Easement, be deemed to indemnify the Owner of a Servient Lot for any and all losses, costs, expenses or damage to any person or property incurred by reason of the former's violations of the restrictions contained herein.

(4) Servient Lot Owner Duties: Owners of Servient Lots shall not make any Improvement to the Servient Lot, including, without limitation, the placement of fences or landscaping, which would unreasonably interfere with the permissible uses of any maintenance or access easement appurtenant to the adjoining Dominant Lot reserved hereby or with the flowage easement described in this Section 6. Notwithstanding the foregoing, except as prohibited under Article X, Section 16 hereof, the Owner of a Servient Lot may install a fence or landscaping thereon provided such installation is approved by the Committee pursuant to Article VIII hereof.

(5) Reciprocity: Each Owner, by acceptance of a deed or title for a Lot containing a "zero lot line" Home, hereby acknowledges and agrees that such Owner's Lot may not only be a Dominant Lot having rights across adjacent Servient Lots as hereinbefore described, but also a Servient Lot encumbered by the easement rights hereinbefore described in favor of the Dominant Lots adjacent to such Owner's Lot.

D. Easement to Enter Upon Lots. An easement or easements for ingress and egress in favor of the Association, including the Board or the designee of the Board, to enter upon the Lots for the purposes of fulfilling its duties and responsibilities of ownership, maintenance and/or repair in accordance with the Tuscany Documents, including, by way of example, the making of such repairs, maintenance or reconstruction as are necessary for the Association Property and to maintain any Lot in the event the Owner thereof fails to do so.

E. Easement Over Association Property. An easement of enjoyment in favor of all Owners, their family members, guests, invitees and tenants in and to the Association Property which shall be appurtenant to and shall pass with a deed or title to every Lot in the Property, subject to the following:

(1) the right of the Association to suspend the right to use the Association Property of any Owner and such Owner's family members, guests, invitees and tenants in accordance with the Tuscany Documents and applicable law;

(2) the right of the Association to grant permits, licenses and easements over the Association Property for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property; and

(3) all provisions set forth in the Tuscany Documents.

F. Easement for Roof Overhangs and Encroachments. An easement or easements, as shown on the Plat and Additional Plat, if any, to provide for the roof overhang of a zero lot line Single Family Home in favor of the Owner thereof, including rights of access for persons or equipment necessary to maintain, repair and replace such roof overhang. In addition to roof overhangs, the foregoing easement shall be deemed to include an easement to allow for the encroachment of all architectural and other decorative features which are appurtenant to and have been included as part of the initial construction of the Owner's Home, which now or hereafter encroach upon any of the Lots, as well as an easement of access for persons or equipment necessary to maintain, repair and replace such improvements.

G. Drainage Easement. An easement over, under and upon all areas of the Property and/or Drainage System for access to install, operate, maintain, alter, inspect, remove, relocated, repair and/or replace the Drainage System. By this easement, the Association shall have the right to enter upon any portion of any Lot and/or Parcel which contains any part of the Drainage System, at a reasonable time and in a reasonable manner, to operate, maintain or repair the Drainage System as required by the Water Management District Permit. No Owner shall install any plantings, landscaping and/or other Improvements whatsoever in, on, over or across any Drainage Easement without the prior approval of the Committee.

H. Irrigation Easement. An easement for irrigation over, under and upon the Property, including, without limitation, each of the Lots, in favor of the Association, including, without limitation, reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate, repair and/or replace the Irrigation System (or any portions thereof) installed on the Property including, without limitation, the irrigation pipes and related equipment. Notwithstanding the foregoing, in the event of any damage caused by an Owner to the Irrigation System or any portions thereof (including, without limitation, any portions of the Irrigation System located upon such Owner's Lot), the cost of the repairs and/or replacements resulting from such damage shall be paid by such Owner.

I. Drainage System and Irrigation System Encroachment Easement. An easement for encroachment over, under and upon the drainage easements and irrigation easements located within the Lots, if any, in favor of: (i) the Owner of the Lot upon which the drainage easement or irrigation easement is located for the existence of any driveway and/or

sidewalk or part thereof, encroaching over, under and upon such drainage easement and/or irrigation easement, as applicable, and (ii) the Association for reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate and repair any driveway and/or sidewalk or part thereof installed or located over, under and upon such drainage easement and/or irrigation easement, as applicable, and (iii) the Water Management District for access for persons and equipment for proper purposes. In the event the Association requires access to any Drainage System and/or Irrigation System improvements within a drainage easement or irrigation easement located within a Lot upon which any such driveway and/or sidewalk encroaches, the Association has the obligation, at its own cost and expense, to remove and replace any such encroachment, and to return it to its condition immediately preceding such removal and replacement once access to the drainage easement or irrigation easement, as applicable, is no longer required. The flowage easements providing for drainage run between each of the Lots parallel to and over the side lot line thereof, draining either from the rear to the front or from the front to the rear, of the Lots. In addition, Declarant may, but is not obligated to, convey easements to the owner(s) of adjacent properties (or portions thereof) to provide legal positive outfall for runoff from such adjacent properties.

J. **Buffer Easements.** An easement or easements as shown on the Plat and/or Additional Plat(s), if any, in favor of the Association for landscape, buffers, drainage and utility purposes.

K. **Lake Maintenance Easements and Lake Maintenance Access Easements.** Easements as shown on the Plat and/or Additional Plat(s), if any, granted in favor of the Association, the County and the Water Management District for the purpose of accessing the Lakes to perform lake maintenance and storm water management and drainage facilities maintenance. Except as otherwise provided herein, the Lake Maintenance Easement and Lake Maintenance Access Easement are the perpetual maintenance obligation of the Association.

L. **Lake Access Easements.** Easements as shown on the Plat and/or Additional Plat(s), if any, in favor of the Association and applicable governmental authorities for the purpose of accessing the Lakes to perform lake maintenance and to perform storm water management and drainage facilities maintenance. Owners, their guests, invitees, tenants and other persons are specifically prohibited from utilizing the lake access easements for the purpose of launching boats or accessing the Lakes for recreation, enjoyment or other uses. The lake access easements are the perpetual maintenance obligations of the Association.

M. **Lift Station Easements.** Easements in favor of the County for ingress, egress and access to and from the Lift Station Tracts as shown on the Plat and/or Additional Plat(s), if any, as Lift Station Tracts, for the installation, repair, maintenance and service of equipment, lines and other structures necessary to supply sanitary sewer services to and from Tuscany.

N. **Bus Stop Easement.** Easement granted or to be granted in favor of the County to permit the County to construct and operate a bus stop, boarding and alighting area within a portion of the Buffer area located adjacent to Atlantic Avenue.

O. **Ingress and Egress Easement in favor of the Commercial Parcel.** Perpetual and non-exclusive easement for vehicular and pedestrian ingress and egress (the

"Commercial Parcel Access Easement") in favor of the Commercial Parcel (and its owners from time to time and such owners' guests, invitees and tenants) over and across the Project Entry Road (as shown on the Project Conceptual Plan). Notwithstanding the foregoing or anything in the Tuscany Documents to the contrary, the Commercial Parcel Access Easement shall not be revoked or modified in any manner without the prior written consent of the owner(s) of the Commercial Parcel, which consent may be withheld in their sole and absolute discretion.

P. Ingress and Egress Easement in favor of Pod B-1. Perpetual and non-exclusive easement for vehicular and pedestrian ingress and egress (the "Pod B-1 Access Easement") in favor of Pod B-1 (and its owners from time to time and such owners' guests, invitees and tenants) over and across the Project Entry Road (as shown on the Project Conceptual Plan). Notwithstanding the foregoing or anything in the Tuscany Documents to the contrary, the Pod B-1 Access Easement shall not be revoked or modified in any manner without the prior written consent of the owner(s) of Pod B-1, which consent may be withheld in their sole and absolute discretion.

Section 7. REAR YARD DRAINAGE SWALE EASEMENT. Declarant hereby reserves and grants a perpetual, nonexclusive drainage easement ("Rear Yard Drainage Swale Easement") over and across the rear of all "Non-Lake Lots", which for the limited purpose of this Section 7 is defined to mean a Lot in which no portion of such Lot is abutting any portion of a Lake or a Lake Maintenance Easement. The Rear Yard Drainage Swale Easement shall be across the rear eight feet (8') of such Non-Lake Lot except for back-to-back Lots (i.e., where two homes share a common rear boundary line) in which event the Rear Yard Drainage Swale Easement shall abut a three feet (3') wide landscape buffer easement along the rear property line of the Non-Lake Lot, which is hereby reserved for landscape and buffer purposes. The Rear Yard Drainage Swale Easement shall be for drainage and flowage of surface and storm water runoff and pipes and other ancillary equipment installed to provide for such drainage and flowage. Except as expressly provided in the following sentence, no planting, landscaping and/or Improvements whatsoever shall be permitted within the Rear Yard Drainage Swale Easement. Notwithstanding the foregoing, subject to approval from the Association, an Owner of a Non-Lake Lot that is subject to the Rear Yard Drainage Swale Easement may install a pool/spa deck, patio and/or screen enclosure within the Rear Yard Drainage Swale Easement on such Owner's Non-Lake Lot provided that such improvement is constructed in a manner that will not discharge surface or storm water runoff from such improvement onto any adjacent property (including, without limitation, any adjacent Owner's Lot or Association Property). In that regard, all such improvements approved to be constructed within the Rear Yard Drainage Swale Easement shall be designed and constructed in a manner that will provide positive conveyance of surface and storm water runoff from the rear of the Lot to the gutters located in the road right-of-way adjacent to the Lot. Such positive conveyance of surface and storm water can be achieved by a system that consist of natural elements such as a properly graded swale area that is maintainable with commercial mowing equipment, elements that included underground pipes and catch basins (yard drains) and/or installation of a commercial grade deck drain, among others (but in all events subject to the prior approval of the Committee). In addition, each Owner of a Non-Lake Lot shall have the right to seek approval from the Association for the installation of a fence across the Rear Yard Drainage Swale Easement to the rear property line of the Non-Lake Lot, subject to the terms and conditions of the Tuscany Documents and the prior approval of the Committee, and otherwise in accordance with the Tuscany Documents.

Section 8. EASEMENT FOR COMMUNITY SYSTEMS. Notwithstanding anything to the contrary in this Declaration, Declarant and Declarant's affiliates and their respective designees

shall have a perpetual exclusive easement over, across, upon and under the Association Property and the Lots for the installation, operation, maintenance, repair, replacement, alteration and expansion of Community Systems.

Section 9. ASSIGNMENTS; ADDITIONAL EASEMENTS. The easements reserved hereunder may be assigned by Declarant or the Association in whole or in part to any city, county or state government or agency thereof, or any duly licensed or franchised public utility, or any other designee of Declarant. Declarant, and after the Turnover Date the Association, shall have and hereby reserves the right to grant and/or reserve additional easements over, under and upon the Property or portions thereof (including the portion of Lots where no physical structure of the Home is located) which may be necessary or desirable by Declarant, and after the Turnover Date the Association. The Owners hereby authorize Declarant and/or the Association to execute, on their behalf and without any further authorization, such grants of easement or other instruments as may from time to time be necessary to grant easements over and upon the Property or portions thereof in accordance with the provisions of this Declaration.

Notwithstanding anything in this Declaration to the contrary, the easement rights granted to or reserved by Declarant hereunder are not to be construed as creating an affirmative obligation to act on the part of Declarant.

#### **ARTICLE V**

#### **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION; BOARD; DURATION OF THE ASSOCIATION**

Section 1. MEMBERSHIP AND VOTING RIGHTS. Membership in the Association shall be established and terminated as set forth in the Articles. Each Member shall be entitled to the benefit of, and be subject to, the provisions of the Tuscany Documents. The voting rights of the Members shall be as set forth in the Articles. The Apartment Site owner(s) shall be a Member of the Association and shall have voting rights as described in the Articles.

Section 2. BOARD. The Association shall be governed by the Board which shall be appointed, designated or elected, as the case may be, as set forth in the Articles.

Section 3. DURATION OF ASSOCIATION. The duration of the Association shall be perpetual, as set forth in the Articles. In the event of termination, dissolution or final liquidation of the Association, the responsibilities for the operation and maintenance of the Drainage System must be transferred to and accepted by an entity which would comply with Section 40C-42.027, Florida Administrative Code, and must be approved by the Water Management District prior to such termination, dissolution or liquidation.

#### **ARTICLE VI**

#### **COVENANT TO PAY ASSESSMENTS; ESTABLISHMENT OF LIENS; COLLECTION OF ASSESSMENTS; COLLECTION BY DECLARANT; CERTAIN RIGHTS OF DECLARANT AND INSTITUTIONAL MORTGAGEES**

Section 1. AFFIRMATIVE COVENANT TO PAY ASSESSMENTS. In order to: (a) fulfill the terms, provisions, covenants, conditions, restrictions, reservations, regulations, burdens, liens and easements contained in the Tuscany Documents; and (b) maintain, operate and preserve the

Association Property for the use, safety, welfare and benefit of the Members and their family members, guests, invitees and tenants, there is hereby imposed upon each Completed Lot, and Incomplete Lot, and each Completed Lot Owner and Incomplete Lot Owner, the affirmative covenant and obligation to pay to the Association commencing from and after the first conveyance of a Completed Lot from Declarant as evidenced by the recordation of a deed in the Public Records of the County (in the manner herein set forth) all Assessments, including, but not limited to, the Individual Lot Assessments and Special Assessments, as applicable. Each Owner, by acceptance of a deed or other instrument of conveyance conveying a Lot within the Property, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the Association all Assessments in accordance with the provisions of the Tuscany Documents.

**Section 2. OPERATING EXPENSES.** The following expenses of the Association are hereby declared to be Operating Expenses which the Association is obligated to assess and collect, and which the Owners are obligated to pay as provided herein or as may be otherwise provided in the Tuscany Documents: (1) any and all taxes and tax liens which may be assessed or levied at any and all times against the Association Property, the Community Systems or against any and all personal property or Improvements thereon; (2) all charges levied for Community Systems or other utilities providing services for the Association Property or to Owners on a bulk basis, such as water, gas, electricity, telephone, cable television, sanitation, sewer and any type of utility or any other type of service charge which is not separately billed to an Owner; (3) the premiums on policies of insurance including, but not limited to, liability and casualty insurance for the Association Property and directors and officers liability insurance for the officers and directors of the Association; (4) any sums necessary for the maintenance and repair of the Association Property and all Improvements located thereon; (5) administrative and operational expenses; (6) fees and other costs of operating, maintaining, repairing and replacing the Irrigation System including, without limitation, all water usage related thereto and all fees, costs and charges incurred for reclaimed water as provided in Section 8 of Article VI and Section 20 of Article XIV below; (7) all sums necessary for the maintenance and repair of the Drainage System, including, but not limited to, work within retention areas, drainage structures and drainage easements; (8) the costs and expenses of maintaining, repairing and replacing the Atlantic Avenue Improvements; and (9) any and all expenses deemed to be Operating Expenses by the Association and/or under this Declaration. Reserves for replacements, capital expenditures and deferred maintenance are specifically excluded from Operating Expenses. The Board may, if it so determines, include reserves in the Association's annual budget; however, reserves are not part of Operating Expenses and are therefore payable only by Completed Lot Owners. In addition, any expense which is required by the Declaration to be the matter of Special Assessment shall not be deemed to be an Operating Expense. Expenses which are required to be the matter of Special Assessment include, by way of example but not by way of limitation, the following: the cost of reconstructing, replacing or improving the Association Property or any portion thereof or Improvements thereon; any casualty loss affecting the Association or the Association Property to the extent such loss exceeds the insurance proceeds, if any, receivable by the Association as a result of such loss; any judgment against the Association (or against a Director or Directors if and to the extent such Director is, or such Directors are, entitled to be indemnified by the Association therefor pursuant to the Articles) to the extent such judgment exceeds the insurance proceeds, if any, received by the Association as a result of such judgment, or an agreement by the Association (or such Director or Directors to whom indemnification is owed) to pay an amount in settlement of a lawsuit against it (or such Director

or Directors) to the extent such settlement exceeds the insurance proceeds, if any, received by the Association as a result of such settlement agreement; and Legal Fees incurred by the Association in connection with litigation (whether incurred for the preparation, filing, prosecution or settlement thereof or otherwise), except Legal Fees incurred by the Association in connection with the collection of Assessments or other charges which Owners are obligated to pay pursuant to the Tuscany Documents or the enforcement of the use and occupancy restrictions contained in the Tuscany Documents, and except Legal Fees incurred for lawsuits not approved pursuant to Section 12 of Article XIV below.

The Operating Expenses with respect to the Association Property are payable by each Owner to the Association notwithstanding the fact that Declarant may not have as yet conveyed title to the Association Property to the Association.

Section 3. ESTABLISHMENT OF LIENS. Each Assessment against a Lot, together with Interest thereon, late charges imposed and costs of collection, including, but not limited to, Legal Fees, shall be the personal obligation of the Owner of such Lot. Any and all Assessments made by the Association in accordance with the provisions of the Tuscany Documents with Interest thereon, late charges imposed and costs of collection, including, but not limited to, Legal Fees, are hereby declared to be a charge and continuing lien upon each Lot against which each such Assessment is made. Said lien shall be effective only from and after the time of the recordation amongst the Public Records of the County of a written, acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in recordable form. Notwithstanding anything to the contrary herein contained, in the event an Institutional Mortgagee of record obtains a deed or title to a Lot as a result of foreclosure of its first mortgage or deed in lieu of foreclosure, such acquirer of a deed or title, its successors or assigns, shall be liable for Assessments pertaining to such Lot and/or chargeable to the former Owner except and to the extent limited by applicable Florida Statutes.

Section 4. COLLECTION OF ASSESSMENTS. In the event any Owner shall fail to pay any Assessment, or installment thereof, charged to such Owner within fifteen (15) days after the same becomes due, then the Association, through its Board, shall have any and all of the following remedies to the extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Association:

A. To accelerate the entire amount of any Assessment for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.

B. To advance on behalf of the Owner(s) in default funds to accomplish the needs of the Association up to and including the full amount for which such Owner(s) is(are) liable to the Association and the amount or amounts of monies so advanced, together with Interest and all costs of collection thereof, including, but not limited to, Legal Fees, may thereupon be collected by the Association from the Owner(s), and such advance by the Association shall not waive the default.

C. To file an action in equity to foreclose its lien at any time after the effective date thereof as provided in Section 2 hereinabove. The lien may be foreclosed by an

action in the name of the Association in like manner as a foreclosure of a mortgage on real property.

D. To file an action at law to collect said Assessment plus Interest and all costs of collection thereof, including, but not limited to, Legal Fees, without waiving any lien rights or rights of foreclosure of the Association.

E. To charge Interest on such Assessment from the date it becomes due, as well as a late charge in the highest amount permitted by law, and if no such late charge is designated by law, then Twenty-Five and No/100 (\$25.00) Dollars, to defray additional collection costs.

F. To suspend the use rights of the Owner(s) in default to the Association Property if such Owner is delinquent in payment of Assessments for more than ninety (90) days, subject to the Notice and Hearing provisions in Article X, Section 1 herein.

G. To suspend the right of the Owner(s) in default to vote on any matter on which Owners have the right to vote if such Owner is delinquent in payment of Assessments for more than ninety (90) days.

H. To collect any monetary obligation, including delinquent Assessments due for the Home from the rents paid by any tenant occupying the Home if the Owner has leased the Home. In such case, the tenant shall remit such delinquent Assessments and other amounts due the Association directly to the Association upon written notice from the Association that the Owner is delinquent in the payment of its monetary obligations and the tenant may deduct such amounts paid to the Association from the rent due to the Owner. The Association has the right to require Owners to use a lease addendum the form of which may be prepared by the Association, which provides, among other things, that the tenant will pay the rent due under the lease directly to the Association upon receipt of notice from the Association that the Owner is delinquent in amounts due to the Association.

Section 5. COLLECTION BY DECLARANT. In the event for any reason the Association shall fail to collect the Assessments, Declarant shall at all times have the right (but not the obligation): (i) to advance such sums as the Association could have advanced as set forth above; and (ii) to collect such Assessments and, if applicable, any such sums advanced by Declarant, together with Interest and costs of collection, including, but not limited to, Legal Fees.

Section 6. RIGHTS OF DECLARANT AND INSTITUTIONAL MORTGAGEES TO PAY ASSESSMENTS AND RECEIVE REIMBURSEMENT. Declarant and any Institutional Mortgagee(s) shall have the right, but not the obligation, jointly or individually, and at their sole option, to pay any of the Assessments which are in default and which may or have become a charge against any Lot(s). Further, Declarant and any Institutional Mortgagee shall have the right, but not the obligation, jointly or individually, and, at their sole option, to pay insurance premiums or fidelity bond premiums or other required items of Operating Expenses on behalf of the Association in the event the same are overdue and when lapses in policies or services may occur. Declarant and any Institutional Mortgagee paying overdue Operating Expenses on behalf of the Association will be entitled to immediate reimbursement from the Association plus Interest and any costs of collection including, but not limited to, Legal Fees, and the Association



shall execute an instrument in recordable form acknowledging such reimbursement obligation(s) and deliver the original of such instrument to each Institutional Mortgagee who is so entitled to reimbursement and to Declarant if Declarant is entitled to reimbursement.

Section 7. COMMUNITY SYSTEMS SERVICES. The Association shall have the right to enter into one or more agreement(s) ("Bundled Service Agreements") for receipt of television (via cable, satellite or otherwise), entertainment, telecommunication, internet, monitored alarm and/or other services (collectively, "Bundled Services") for Homes in Tuscany. Any and all costs and expenses incurred by the Association under or pursuant to any Bundled Service Agreements entered into by the Association for Bundled Services will be assessed against all Completed Lot Owners. It is contemplated that there may be features and services that are or will be available in addition to and not part of the Bundled Services (each, an "Optional Service"). Notwithstanding anything to the contrary contained in this Declaration, the costs and expenses charged to the Association under the Bundled Services Agreements shall be apportioned equally, but only amongst those Homes with respect to which the Association is being charged under or pursuant to the Bundled Services Agreement except to the extent, if any, that any Owner elects to receive an Optional Service (being a service not automatically received by all Owners entitled to receive Bundled Services pursuant to the Bundled Services Agreements). Each Owner who receives an Optional Service, if any, shall be responsible for paying for the costs of such Optional Services and for any hook-up costs, any converter boxes, remote control units, and the charge therefor shall be billed directly to Owner. The foregoing shall in no way obligate Declarant or the Association to enter into any Bundled Services Agreement.

Section 8. CENTRAL IRRIGATION SYSTEM(S). The Irrigation System for the Community shall serve the Association Property, each of the individual Lots, and may be a single, central Irrigation System controlled by the Association. The responsibility for operating, maintaining, repairing and replacing such Irrigation System shall be governed by the provisions of Section 1.B of Article IX below. Water for the Irrigation System will be provided from the Lakes in Tuscany which will include reclaimed water from the Palm Beach County Water Utilities Department as provided in Section 20 of Article XIV below. All of costs of usage and consumption fees charged by the County for use of reclaimed water shall be part of the Operating Expenses of the Association. Notwithstanding the foregoing or anything to the contrary, the Irrigation System shall not serve or provide irrigation to the Apartment Site. The owner of the Apartment Site shall be solely responsible to install, own, operate, maintain, repair and replace an irrigation system on the Apartment Site to serve the Apartment Site.

## **ARTICLE VII**

### **METHOD OF DETERMINING ASSESSMENTS**

### **AND ALLOCATION OF ASSESSMENTS**

Section 1. DETERMINING AMOUNT OF ASSESSMENTS. The total anticipated Operating Expenses for each calendar year shall be set forth in the budget ("Budget") prepared by the Board as required under the Tuscany Documents. Each Completed Lot and Incomplete Lot shall be assessed its *pro rata* portion of the total anticipated Operating Expenses which shall be the "Individual Lot Assessment" as to each Lot. The Individual Lot Assessment shall be based upon the level of service to each Lot and upon the state of the Lot's development, with the Owners of Completed Lots paying the Operating Expenses on a twenty to one ratio (20:1)

compared to the Owners of Incomplete Lots as set forth below. Therefore, the Completed Lot Owners and Incomplete Lot Owners shall share the payment of the Operating Expenses on a ratio of twenty to one (20:1). Therefore, the total anticipated Operating Expenses (other than those expenses which are properly the subject of Special Assessment), shall be divided by the total number of Completed Lots multiplied by twenty (20) plus the number of Incomplete Lots, with the quotient thus arrived at being the "Individual Lot Assessment" for an Incomplete Lot. Said quotient multiplied by twenty (20) shall be the Individual Lot Assessment for a Completed Lot. The number of Completed Lots and Incomplete Lots shall be adjusted quarterly, as needed, as hereinafter set forth. At such time as Declarant has conveyed all of the Homes on all of the Lots, each Lot shall be a Completed Lot and the Individual Lot Assessment shall be equal for each Lot. Notwithstanding anything in the Tuscany Documents to the contrary, any Assessment for Legal Fees incurred by the Association for lawsuits shall be deemed an Operating Expense which is properly the subject of Special Assessment and not the subject of an Individual Lot Assessment so long as approved pursuant to Section 12 of Article XIV, except the Legal Fees incurred by the Association in connection with the collection of assessments or other charges which Owners are obligated to pay pursuant to the Tuscany Documents or the enforcement of the use and occupancy restrictions contained in the Tuscany Documents. Notwithstanding the foregoing, the allocation of costs for improvements, amenities and facilities in Pod C-2 and Pod A (as shown in the Project Conceptual Plan) shall be specially allocated as set forth in Section 9 of this Article VII.

Section 2. ASSESSMENT PAYMENTS. Individual Lot Assessments shall be payable quarterly, in advance, on the first day of January, April, July and October of each year, provided, however, at the Association's option, Individual Lot Assessments may be payable monthly. Individual Lot Assessments, and the quarterly or monthly installments thereof, may be adjusted from time to time by the Board to reflect changes in the number and status of Completed Lots and Incomplete Lots (thus apportioning all such Assessments and installments thereof among all Lots at the time such installment is due) or changes in the Budget or in the event the Board determines that an Assessment or any installment thereof is either less than or more than the amount actually required. When an Incomplete Lot becomes a Completed Lot during a period with respect to which an Assessment or installment thereof has already been assessed, such Completed Lot shall be deemed assessed the amount of such Assessment or installment thereof which was assessed against Completed Lots in existence at the time of such Assessment, prorated from the date the Lot became a Completed Lot through the end of the period in question. If the payment of such Assessment or installment thereof was due at the time the Lot became a Completed Lot or prior thereto, said prorated amount thereof shall be immediately due and payable. Likewise, the amount paid with respect to such Completed Lot based upon the Lot's status as an Incomplete Lot, prorated from the date the Incomplete Lot became a Completed Lot to the end of the period in question, shall be credited against the amount owed as a Completed Lot.

Section 3. SPECIAL ASSESSMENTS. "Special Assessments" include, in addition to other Assessments designated as Special Assessments in the Tuscany Documents and whether or not for a cost or expense which is included within the definition of "Operating Expenses," those Assessments which are levied for capital improvements which include the costs (whether in whole or in part) of constructing or acquiring Improvements for, or on, the Association Property or the cost (whether in whole or in part) of reconstructing or replacing such Improvements. In addition, Special Assessments may be levied against particular Lots and/or Owners to the

exclusion of others. Notwithstanding anything to the contrary herein contained, it is recognized and declared that Special Assessments shall be in addition to, and are not part of, any Individual Lot Assessment. Any Special Assessments assessed against Lots and the Owners thereof shall be paid by such Owners in addition to any other Assessments and shall be assessed in the same manner and using the same 20:1 ratio as the Individual Lot Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board shall, from time to time, determine. Notwithstanding the foregoing, the levying of any Special Assessment after the Turnover Date shall require the affirmative assent of at least two-thirds (2/3) of all Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws for all Special Assessments except only any Special Assessment for: (a) repair, reconstruction, or replacement of damaged or destroyed Improvements previously existing on Association Property (including, without limitation, landscaping), (b) capital improvements necessary or desirable for the sole purpose of preservation of, or prevention of damage to, Association Property, or (c) up-righting or removing any fallen or dislodged trees as set forth in Section 2.B. of Article IX below; which shall not require such affirmative assent of at least two-thirds (2/3) of all Members. Prior to the Turnover Date, but subject to any affirming vote of the Members as may be required by the HOA Act, a Declarant-controlled Board may make a Special Assessment. Special Assessments are not included in the guarantee set forth in Article VII, Section 6 below.

**Section 4. LIABILITY OF OWNERS FOR INDIVIDUAL LOT ASSESSMENTS.** By the acceptance of a deed or other instrument of conveyance of a Lot in the Property, each Owner thereof acknowledges and agrees that each Lot and the Owners thereof are jointly and severally liable for their own Individual Lot Assessments and their applicable portion of any Special Assessments, as well as for any and all other Assessments for which they are liable, as provided for herein. Such Owners further recognize and covenant that they are jointly and severally liable with the Owners of all Lots for the Operating Expenses (subject to any specific limitations provided for herein such as, but not limited to, the limitation with respect to matters of Special Assessment and the limitations on the liability of Institutional Mortgagees and their successors and assigns). Accordingly, subject to such specific limitations, it is recognized and agreed by each Owner, for such Owner and such Owner's heirs, executors, successors and assigns, that in the event any Owner fails or refuses to pay such Owner's Individual Lot Assessment or any portion thereof, or such Owner's respective portion of any Special Assessment or any other Assessment, then the other Owners may be responsible for increased Individual Lot Assessments or Special Assessments or other Assessments due to the nonpayment by such other Owner, and such increased Individual Lot Assessment or Special Assessment or other Assessment can and may be enforced by the Association and Declarant in the same manner as all other Assessments hereunder as provided in the Tuscany Documents.

**Section 5. ASSESSMENTS PAYABLE BY DECLARANT; DECLARANT SUBSIDIES.** Each Owner acknowledges and agrees that because Individual Lot Assessments and Special Assessments are allocated based on the formula set forth in Article VII, Section 1 above, it is possible that the Association may collect more or less than the amount budgeted for Operating Expenses in the Budget of the Association. Except as may be limited by applicable law, Declarant has the right (at its sole election) to: (i) pay Individual Lot Assessments for the Lots owned by Declarant in the same manner as other Owners and at the 20:1 ratio described above, (ii) pay the Deficit (as hereinafter defined), (iii) subsidize the Budget of the Association as provided below by making voluntary contributions in amounts determined by Declarant in Declarant's sole discretion, and/or (iv) to be excused from payment of its share of Assessments

related to its Lots if Declarant elects to guarantee the amount of Individual Lot Assessments and pay the Deficit during the Guarantee Period (as hereinafter defined) as provided in Section 6 of this Article VII below.

During the period of time that Declarant is offering Homes for sale in Tuscany and/or based on the number of Homes owned by Owners other than Declarant, Declarant may seek to keep Assessments lower than they otherwise may be by subsidizing the Budget of the Association by making voluntary contributions in amounts determined by Declarant. The amount of any such voluntary contributions may vary from time to time or may be discontinued and recommenced by Declarant from time to time. The determination to subsidize the Budget of the Association, the amount of any such voluntary contribution, the discontinuance and/or recommencement of any such voluntary contributions shall all be made by Declarant in Declarant's sole discretion and in no event shall Declarant have any obligation whatsoever to make any such voluntary contributions. Each Owner shall be solely responsible to review the Budget of the Association then in effect to determine if and to what extent Declarant is making any voluntary contributions to subsidize the Budget and thus lower the Assessments payable by the Owners that would otherwise be higher based on the Operating Expenses of the Association.

Section 6. GUARANTEED ASSESSMENT DURING GUARANTEE PERIOD. Without limiting the options that Declarant is entitled to pursuant to Section 5 of this Article VII above, and as provided in said Section 5, Declarant shall have the right to elect to be excused from payment of its share of the Operating Expenses and Assessments related to its Lots (including Special Assessments) during the Guarantee Period, which election shall be made at the time of recordation of this Declaration by delivery of written notice thereof to Association. If so elected by Declarant, Declarant shall record a Supplemental Declaration pursuant to which Declarant shall covenant and agree with the Association and the Owners that during the "Guarantee Period" (as defined in any such Supplemental Declaration), the Individual Lot Assessment imposed on each Owner other than Declarant during the time periods specified in any such Supplemental Declaration shall not increase over the amount set forth in any such Supplemental Declaration for such applicable time period (the "Guaranteed Assessment").

Section 7. DECLARANT'S GUARANTEED ASSESSMENT NOT THE OBLIGATION OF INSTITUTIONAL MORTGAGEES. Notwithstanding anything to the contrary herein contained, it is specifically understood and declared that each Owner, by the acceptance of a deed or other instrument of conveyance of a Lot within the Property, shall be deemed to have acknowledged and agreed that no Institutional Mortgagee (other than Declarant) or any successor or assign of such Institutional Mortgagee, or any person acquiring a deed or title to any part of the Property by reason of the foreclosure or otherwise of an Institutional Mortgagee shall be deemed to have made, assumed or otherwise undertaken any covenants or obligations of Declarant: (i) to guarantee the level and/or duration of any Guaranteed Assessments provided for under any of the Tuscany Documents, including any Supplemental Declaration; or (ii) to pay the difference between the actual Operating Expenses and the Guaranteed Assessments, if any, assessed against Lots and the Owners thereof during the guarantee period (as same may have been previously extended) as may be provided for in any of the Tuscany Documents, including any Supplemental Declaration; provided, however, that an Institutional Mortgagee may, at its option, determine to continue the obligation of Declarant to guarantee the amount of the Assessments. Additionally, a successor declarant shall not be deemed to guarantee the level and/or duration of any Guaranteed Assessments provided for under any of the Tuscany

Documents, including any Supplemental Declaration, or be obligated or pay the difference between the actual Operating Expenses and the Guaranteed Assessments, if any, assessed against Lots and the Owners thereof during the guarantee period (as same may have been previously extended) unless such obligation is assumed in writing by such successor declarant.

Section 8. WAIVER OF USE. No Owner, other than Declarant, may exempt himself from personal liability for Assessments duly levied by the Association. No Owner may release the Lot owned by such Owner from the liens and charges hereof either by waiver of the use and enjoyment of the Association Property and the facilities thereon or by abandonment of such Owner's Home.

Section 9. ALLOCATION OF ASSESSMENTS FOR POD A AND C-2. Notwithstanding anything herein to the contrary, the Owners of Lots in Pod C-2 as shown on the Project Conceptual Plan, on the one hand, and the Owners of Lots in Pod A as shown on the Project Conceptual Plan on the other hand, shall be separately responsible for the expenses of, and shall be separately assessed for, the maintenance, repair and replacement of Recreation Tracts, Streets, Drives, Roads, Roadways, Landscaped Areas, Grassed Areas, entranceways, gates, gatehouses, Lakes and other Association Property located entirely within and/or exclusively serving, such Pod. The Budget and related Assessments shall reflect the separate allocation of the costs of maintaining, repairing and replacing the Association Property within each respective Pod in conformance herewith.

## ARTICLE VIII ARCHITECTURAL CONTROL COMMITTEE

Section 1. MEMBERS OF THE COMMITTEE. The Architectural Control Committee, sometimes referred to in this Declaration as the "Committee," shall be comprised of three (3) members. The initial members of the Committee shall consist of persons designated by Declarant. Each of said persons shall hold office until all Lots and Homes have been conveyed by Declarant or such earlier time as Declarant may, at its sole option, elect. Thereafter, each new member of the Committee shall be appointed by the Board and shall hold office until such time as such new member has resigned, has been removed, or such new member's successor has been appointed, as provided herein. Members of the Committee, other than those designated by Declarant, may be removed at any time without cause. The Board shall have the sole right to appoint and remove all members of the Committee other than those designated by Declarant.

Section 2. REVIEW OF PROPOSED CONSTRUCTION.

A. No Improvements, including, by way of example and not of limitation, accessory structures, exterior lighting fixtures, brick pavers, stamped concrete, concrete flatwork, basketball goals, gym sets and play structures, buildings, fences, walls, pools, roofs, gutters or rain spouts, antennae, aerials, microwaves, reception devices, mailboxes, external enclosures or attachments (including entry screen and patio screen enclosures), or landscaping (including hedges, massed plantings and trees) shall be commenced, erected, installed, altered, modified, painted, planted, or maintained on the Property, including the Lots, but specifically excluding the Apartment Site, nor shall any canopies, shutters, or window coverings be attached to or placed upon outside walls or roofs of any Home or building by any Owner other than Declarant, unless

such Improvements have been reviewed by and received the written approval of the Committee in accordance with Paragraph B herein below. Any Owner desiring to make Improvements shall submit two (2) complete sets of plans and specifications prepared by an architect, landscape architect, engineer or other person determined by the Committee to be qualified, showing the nature, dimensions, materials and location of the same, together with the security deposit if required by the Committee, to be held and disbursed by the Association in accordance with Section 3 herein below.

B. The Committee shall approve proposed plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated will not be detrimental to the appearance of the surrounding area of the Property as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures and is otherwise desirable. The Committee shall adhere to all rules and regulations promulgated by the Board with respect to any and all additions and alterations within the Property and all such rules and regulations are incorporated herein by reference. The Committee may also issue and amend from time to time rules or guidelines setting forth procedures for the submission of plans and specifications. If the proposed construction, alterations or additions are to a portion of the Improvements which the Association is obligated to maintain, said approval shall also be subject to approval by the Board. The Committee may condition its approval of proposed plans and specifications in such a manner as it deems appropriate and may require the submission of additional information prior to approving or disapproving such plans. Pursuant to the approvals for the Property granted by the County, and notwithstanding anything to the contrary in the Tuscan Documents, diversity of architectural elevation and exterior color scheme for Homes in Tuscan shall be required by compliance with the following: (i) no identical homes shall be placed next to one another (i.e., same elevation with same exterior color scheme); (ii) no more than three (3) Homes with the same elevation shall be placed next to each other; and (iii) no more than three (3) Homes with the same exterior color scheme may be placed next to each other. Additionally, all zero-lot-line Homes which side yards abut the rear yard of two (2) or more Lots shall be restricted to one (1) story in height. The Committee shall have no obligation to and shall not approve (nor grant any variances for) any plans and specifications submitted if approval of same would result in failure to comply with the foregoing requirements.

C. The Committee shall have forty-five (45) days after delivery of all required materials to give written approval or rejection of any such plans and, if written approval is not given within such forty-five (45) day period, such plans shall be deemed rejected, provided however, that, in any event, no such addition, construction or alteration shall be made by any Owner which is detrimental to or inconsistent with the harmony, appearance or general scheme of the Property as a whole.

D. No landscaping or other Improvements on the Lake Lots or Canal Lots which materially interfere with the view of the Lakes or Canals by immediate neighbors who are also Lake Lot Owners or Canal Lot Owners, as applicable, shall be permitted. In its review of proposed plans and specifications of landscape design and materials for Lake Lots and Canal Lots, including, but not limited to, any massed plantings, the Committee will take into consideration the effect on Lake and Canal views of such landscaping, both at the proposed time of installation and at the time when maximum growth shall have occurred.

E. There shall be a minimum two foot (2') setback requirement from the side yard lot line on the "zero lot line" side of a Home for that portion of any open patio, screen enclosed patio and/or pool deck that extends beyond the ten (10') foot masonry wall extending from such "zero lot line" side of the Home (the "Privacy Wall"). In addition, if an Owner installs or constructs such open patio, screen enclosed patio and/or pool deck between two feet (2') and five feet (5') from the side yard lot line on the "zero lot line" side of a Home, then a Hedge must also be installed by said Owner within the two foot (2') setback area along that portion of the open patio, screen enclosed patio and/or pool deck that extends beyond the Privacy Wall in order to provide a vegetative privacy barrier.

No plantings, landscaping and/or Improvements whatsoever including, without limitation, pool decks, patios, screen enclosures, hedges, trees, etc. shall be installed in any Rear Yard Drainage Swale Easement except only as expressly provided in Article IV, Section 7 above.

G. Notwithstanding any provision in this Article to the contrary, the approval of the Committee shall not be required for any additions, changes or alterations within any Home if such additions, changes or alterations are not visible from the outside of such Home. All changes and alterations shall be subject, independently, to all applicable governmental laws, statutes, ordinances, codes, rules and regulations.

H. Notwithstanding anything to the contrary herein contained, no construction, reconstruction, addition or alteration by Declarant shall require the prior approval or any certificate of consent of the Committee or any security deposit.

I. An Owner shall not plant any shrubs, trees and/or landscaping on his or her Lot and /or in any manner alter the landscaping in Tuscany as initially installed by Declarant without the prior written consent of the Committee. If an Owner receives such approval and plants any shrubs, trees and/or landscaping on his or her Lot, such Owner shall be responsible for the payment of any increase for the Home Landscaping Services (as hereinafter defined) to maintain such shrubs, trees and/or landscaping.

**Section 3. SECURITY DEPOSIT FOR IMPROVEMENTS; INDEMNIFICATION.** Any Owner desiring to make Improvements may be required by the Committee, depending upon the Improvements being requested and the manner of installation of such Improvements, to provide to the Committee, at the time of the Owner's submission of plans and specifications for review and approval by the Committee, a Five Thousand Dollar (\$5,000.00) security deposit to cover inspection fees and any costs of incidental damage caused to Association Property, an adjacent Home or Lot, or any other property (whether real or personal) by virtue of such Owner's construction of Improvements. The Committee shall have the sole discretion to determine whether a security deposit or lesser security deposit is required for the Improvements being requested. The Association shall not be obligated to place the security deposit in an interest bearing account.

If the proposed Improvements are for (or include) planting, landscaping and/or other Improvements proposed to be located in the Rear Yard Drainage Swale Easement, then in addition to the security deposit, Owner shall submit a non-refundable engineering review fee ("Drainage Review Fee") in an amount determined by the Committee to cover the cost of: (i) review of the plans and specifications by an independent engineer retained by the Association

(the "Drainage Inspection Engineer") to determine the impact, if any, on the drainage for the Lot (which fee is separate and distinct from the inspection fees described above), and (ii) a field inspection by the Drainage Inspection Engineer to verify that the Improvements were constructed in accordance with the approved plans and specifications, and that same function as intended without any adverse impact on the drainage of the Lot (the "Drainage Verification"). In the event the Drainage Inspection Engineer cannot issue the Drainage Verification as a result of the Improvements installed, Purchaser shall, at Purchaser's sole cost and expense, make such modifications to the Improvements as required by said Drainage Inspection Engineer so that the modifications can be reinspected and the Drainage Verification issued by the Drainage Inspection Engineer, and pay the fees and costs of the Drainage Inspection Engineer to reinspect the Improvements and said required modifications thereto.

The Owner shall be entitled to the return of the security deposit upon and only after: (i) such Owner's written notice to the Committee that the Improvements covered by the security deposit have been completed in accordance with the plans and specifications approved by the Committee, (ii) the Committee's (or its duly authorized representative's) inspection of such Improvements confirming completion; provided, however, the Association shall have the right to deduct from the security deposit all third-party inspection fees incurred by the Association for inspection of the Improvements; and (iii) with respect to Improvements in the Rear Yard Drainage Swale Easement, receipt of the Drainage Verification by the Drainage Inspection Engineer. In addition, should any incidental damage be caused to Association Property or other property by virtue of such Owner's construction of Improvements, or Owner fails to make any required modifications required by the Drainage Inspection Engineer, the security deposit shall not be returned to Owner unless and until such damages have been repaired or modifications are made, as applicable. In the event that Owner has not repaired such damages to the satisfaction of the Committee or made such modifications to the Improvements as required by the Drainage Inspection Engineer, Association shall have the right (but not the obligation), after five (5) days' notice to the offending Owner, to repair such incidental damage or make such modifications and to use so much of the security deposit held by the Association (after payment of the inspection fees described above) to reimburse itself for the costs of such work. Further, the offending Owner hereby agrees to indemnify and reimburse the Association for all reasonable costs expended by the Association that exceed the security deposit, including Legal Fees, if any, incurred in connection therewith. All amounts incurred or paid by the Association to repair such damages caused by and not repaired by an Owner and/or modifications not made as required by the Drainage Inspection Engineer, shall, in addition to the other rights of the Association, be subject to a Special Assessment levied by the Association against such Owner, which Special Assessment may be collectible in the same manner as other Assessments as set forth in the Declaration. Should any incidental damage be caused to an adjacent Lot or Home by virtue of such Owner's construction of Improvements, the Owner of the adjacent Lot (the "Adjacent Lot Owner") may, at such Adjacent Lot Owner's sole option: (a) remedy such damage and submit to the Association a receipt, invoice or statement therefor for reimbursement from the offending Owner's security deposit (less all inspection fees paid from the security deposit); or (b) allow the offending Owner to repair such incidental damage to the Adjacent Lot Owner's Lot or Home, at the offending Owner's sole cost and expense, and upon receipt by the Association of written notice from the Adjacent Lot Owner that such incidental damage has been repaired, the offending Owner shall be entitled to a return of the balance of the security deposit being held by the Association, if any.

Notwithstanding anything contained in this Section to the contrary, the Association's return of the security deposit being held by it for any such Improvements shall be based solely on considerations set forth above. The Association's return of the security deposit



and/or receipt of a Drainage Verification from the Drainage Inspection Engineer does not and shall not be construed to constitute a determination by members and representatives of the Committee, Declarant, and/or the Association of the structural safety, approval or integrity of any Improvement, conformance with building or other codes or standards, or the proper issuance of governmental permits and approvals for any Improvement. By submitting a request for review and approval of proposed plans and specifications, along with the security deposit required hereunder (and, if applicable, the Drainage Review Fee), an Owner shall be deemed to have automatically agreed to hold harmless and indemnify the members and representatives of the Committee, Declarant, and the Association generally, from any loss, claim, damage or liability connected with or arising out of the Improvements or alterations, and/or the security deposit (including, without limitation, the disbursement thereof).

Association shall not be liable or responsible to anyone for any damages, losses or expenses resulting from Association's holding of the security deposit or disbursement thereof unless same shall be caused by the gross negligence or willful malfeasance of the Association. In the event of any disagreement relating to the security deposit held by the Association or the disbursement thereof, Association shall be entitled (but not obligated) to refuse to disburse the security deposit (or any portion thereof) as long as such disagreement may continue, and Association shall not become liable in any way for such refusal. Association shall have the right at any time, after a dispute has arisen, to pay the security deposit (or any portion thereof) held by it into any court of competent jurisdiction for payment to the appropriate party, whereupon Association's obligations hereunder shall terminate and Association shall be automatically released of any and all obligations.

Section 4. MEETINGS OF THE COMMITTEE. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Article VIII, Section 9 herein below. In the absence of such designation, the vote of any two (2) members of the Committee shall constitute an act of the Committee.

Section 5. NO WAIVER OF FUTURE APPROVALS. The approval of the Committee of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to withhold approval or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that applicant or another applicant. Similarly, the denial of approval by the Committee of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to approve or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that applicant or another applicant.

Section 6. COMPENSATION OF MEMBERS. The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

Section 7. INSPECTION OF WORK. Inspection of work and correction of defects therein shall proceed as follows:

A. Upon the completion of any work for which approved plans are required under this Article, the submitting party shall give written notice of completion to the Committee.

B. Within thirty (30) days after written notice of completion, the Committee or its duly authorized representatives may inspect such Improvement. If the Committee finds such work was not done in substantial compliance with the approved plans, it shall notify the submitting party in writing of such noncompliance within such thirty (30) day period, specifying the particulars of noncompliance, and shall require the submitting party to remedy such noncompliance.

If upon the expiration of fifteen (15) days from the date of such notification the submitting party shall have failed to remedy such noncompliance, notification shall be given to the Board in writing of such failure. Upon such notice, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the submitting party shall remedy or remove the same within a period of not more than thirty (30) days from the date of announcement of the Board's ruling. If the submitting party does not comply with the Board's ruling within such period, the Board, at its option, may remove the Improvement, remedy the noncompliance, or proceed in court to compel compliance and the submitting party shall reimburse the Association, upon demand, for all expenses incurred in connection therewith, including Interest and Legal Fees. If such expenses are not promptly repaid by the submitting party to the Association, the Board shall levy an Assessment against such submitting party for reimbursement, and said Assessment shall constitute a lien upon the applicable Lot and Home with the same force and effect as liens for Operating Expenses.

D. If, for any reason, notification is not given to the submitting party of acceptance within thirty (30) days after receipt of said written notice of completion from the submitting party, the Improvement and/or alteration shall be deemed to be in compliance with said approved plans.

**Section 8. NON-LIABILITY OF COMMITTEE MEMBERS.** Neither the Committee nor any member thereof, nor its duly authorized Committee representative, nor Declarant, shall be liable to the Association or to any Owner or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, unless due to the willful misconduct or bad faith of a member and only that member shall have any liability. The Committee's review and approval or disapproval of plans submitted to it for any proposed Improvement shall be based solely on considerations of the overall benefit or detriment to the community as a whole. The Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes or standards, and no member or representative of the Committee or the Association, nor Declarant, shall be liable for the safety, soundness, workmanship, materials or usefulness for any purpose of any such Improvement or alteration proposed by the plans. By submitting a request for review and approval by the Committee, an Owner shall be deemed to have and does automatically agree to indemnify, defend and hold harmless the Committee, the Association and Declarant (and each of their respective officers, directors, partners, affiliates, representatives and members) from and against any and all claims, causes of action, losses, damages, liabilities, costs and expenses (including, without limitation, Legal Fees) arising from, relating to or in any way connected with

the Improvement or alterations for which such request was submitted, and/or the security deposit (including, without limitation, the disbursement thereof). Furthermore, approval by the Committee of any request does not excuse any Owner from also obtaining approvals from all applicable governmental authorities.

Section 9. VARIANCE. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require; provided, however, the Committee shall not give or authorize (and the Committee is hereby prohibited from giving or authorizing) any variance with respect to: (i) the diversity of architectural elevation and exterior color scheme requirements of Section 2.B. of this Article VIII above, and/or (ii) the displaying of any signs for the sale or renting of the Home as prohibited in Section 10 of Article X below. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the Improvements for which the variance was granted.

Section 10. DECLARANT EXEMPTION. Declarant is hereby exempt from having to comply with the requirements of this Article VIII in their entirety.

Section 11. APARTMENT SITE EXEMPTION. The owner(s) of the Apartment Site are hereby exempt from having to comply with the requirements of this Article VIII in their entirety.

Section 12. COMMUNITY STANDARD. To ensure the preservation of the existing harmonious design and to prevent the introduction of design that is not in keeping with Tuscan, Declarant hereby declares that the style and form of Tuscan, as originally constructed or approved by Declarant, with respect to architectural style, colors and materials shall be used as the standard. This standard shall continue in effect until the adoption and publication of new guidelines and standards.

## **ARTICLE IX**

### **MAINTENANCE AND REPAIR OBLIGATIONS**

Section 1. MAINTENANCE BY THE ASSOCIATION.

A. The Association, at its expense, shall be responsible for the operation, maintenance, repair and replacement of all of the Improvements and facilities located over, through and upon the Association Property, including, without limitation, the Recreation Tracts (except public utilities and Community Systems, to the extent same have not been made Association Property). Should any incidental damage be caused to any Home by virtue of the Association's failure to maintain the Association Property as herein required or by virtue of any work which may be performed or caused to be performed by the Association in the maintenance, repair or replacement of any Association Property, the Association shall, at its expense, repair such incidental damage. The Association shall not, however, be responsible for any loss of use, any hardship, an Owner's time or any other consequential or punitive damages.

B. The Association shall operate, maintain, repair and replace the Irrigation System constructed over, through and upon the Association Property, the Lots (or any portions thereof), and the Atlantic Avenue Improvements, if installed therein. Except as specifically

provided herein, the Association shall be responsible for the costs of operation, maintenance, repair and replacement of such Irrigation System, including any monthly fees and other costs of water and/or electric usage, if any. Subject to any approvals required by the LWDD, the Association shall also be responsible for the operation, maintenance, repair and replacement of any portions of the Irrigation System installed in any Canal banks. There is hereby reserved in favor of the Association the right to enter upon the Association Property and any and all Lots for the purpose of operating, maintaining, repairing and replacing the Irrigation System. Each Owner shall be responsible for any damage caused to the Irrigation System by such Owner and/or such Owner's family members, tenants, invitees and guests, and Owner shall indemnify, defend and hold Association harmless from and against any and all losses, claims, damages and/or liabilities resulting from any such damage.

The Association shall operate, maintain and repair the Drainage System constructed over, through and upon the Property. There is hereby reserved in favor of the Association the right to enter upon the Association Property and the Lots for the purpose of operating, maintaining, repairing, and replacing the Drainage System over, through and upon the Property. The Association shall be responsible for all costs associated with its obligations relating to the cleaning, maintenance, repairs and replacement of any portion of the Drainage System as may be necessary to maintain the system in its original condition and use. In the event the Association fails to maintain the Drainage System in accordance with this Declaration and/or the Water Management District Permit, then the Water Management District shall have the right to commence an enforcement action against the Association, including, without limitation, monetary penalties and injunctive relief, to compel the Association to maintain the Drainage System in accordance with this Declaration and/or the Water Management District Permit. A copy of the Water Management District Permit, together with any action(s) taken by the Water Management District with respect to the Water Management District Permit shall be maintained by the registered agent for the Association for the Association's benefit. Each Owner shall be responsible for any damage caused to the Drainage System by Owner and/or Owner's family members, tenants, invitees and guests, and Owner shall indemnify, defend and hold Association harmless from and against any and all losses, claims, damages and/or liabilities resulting from any such damage.

D. The Association shall be responsible for the maintenance, repair and replacement of all private Streets, Drives, Roads and Roadways located upon the Association Property and there is hereby reserved in favor of the Association the right to enter upon any and all parts of the Association Property and Lots for such purpose. The Association shall also be responsible for the sod, landscaping and irrigation system located within any Street, Drive, Road and/or Roadway cul-de-sac, as applicable.

E. To the extent permitted by the appropriate governmental authority, the Association may, but shall not be obligated to, also provide maintenance of all city, County, district or municipal properties which are located within or in a reasonable proximity of the Property to the extent that their deterioration or unkempt appearance would adversely affect the appearance of the Property, including the right to enhance the landscaping in any public right of way. In addition, the Association shall be responsible to maintain and care for the Atlantic Avenue Improvements.

F. The Association shall be responsible for the maintenance, repair and replacement of any Street Lights and any Decorative Street Lights located in Tuscany.

G. Neither the Association nor any Owner shall alter the slopes, contours, or cross sections of the Lakes, Lake banks, Canals, Canal banks and littoral zones or chemically, mechanically, or manually remove, damage or destroy any plants in any littoral zones, Lake Maintenance Easements or Lake Maintenance Access Easements except upon the written approval from the applicable governmental authority. Littoral plantings will be installed in accordance with the permitting requirements of the Palm Beach County Environmental Resources Management Department and may not be altered, relocated or removed by any Owner. The Association shall be responsible for maintaining the required survivorship and coverage of the planted littoral areas, to ensure the ongoing removal of prohibited and invasive non-native plant species from these areas, and to comply with all governmental regulations applicable to the Lakes, Lake banks, and littoral zones.

H. The Association, by action of its Board, may make minor and insubstantial alterations and Improvements to the Association Property having a cost not in excess of Five Thousand Dollars (\$5,000). All other alterations and Improvements must first be approved by at least two-thirds (2/3) of all Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws. No alteration or Improvement may be made to the Association Property which materially and adversely affects the rights of the Owner of any Lot to the enjoyment of such Owner's Lot or the Association Property unless the Owner and all mortgagees holding recorded mortgages on such Lot consent thereto in writing.

I. The Association shall initially be responsible for the following landscaping services on each Lot (collectively, the "Home Landscaping Services"): mowing sod, landscape trimming, weeding, fertilization and exterior pest control spraying. Each year, the Board shall review the Home Landscaping Services in connection with the preparation of each annual Budget of the Association and the Board shall have the right to add to, remove and/or discontinue the Home Landscaping Services or any portions thereof, all in the Board's sole and absolute discretion. Notwithstanding the obligation of the Association to perform the Home Landscaping Services, any replacement of dead, dying or decaying sod, trees, shrubs, landscaping and other plant materials within the Lots, for any reason whatsoever, shall be the obligation of the Owners of the Lots upon which such replacement is required.

Notwithstanding the foregoing, such Home Landscaping Services do not and shall not include the up righting and/or removing of any fallen or dislodged trees from any Lot following a tropical storm, hurricane or other Act of God. However, the Association shall have the right, but not the obligation, in preparation of or following a tropical storm, hurricane or other Act of God, to upright and/or remove any fallen or dislodged trees, at the respective Owner's cost and expense, on (i) any Lot, and/or (ii) any grassed areas located between the front and/or side of such Owner's Lot and the street; on behalf of the Owner of such Lot. The Owner of said Lot shall be required to reimburse the Association for the costs and expenses incurred by the Association in connection with the up righting and/or removal of any fallen or dislodged trees. In that regard, the Association may levy a Special Assessment against such Lot in connection with such costs and expenses, to the exclusion of all other Owners, without the need for obtaining the affirmative assent of at least two-thirds (2/3) of all Members as set forth in Article VII, Section 3.

J. The property comprising Pod B-1 as shown on the Project Conceptual Plan is expressly not subject to this Declaration and may (but is not required to) be dedicated to a governmental entity. In connection with such dedication, Declarant may agree (but is in no way obligated under the Tuscany Documents) to construct a bridge connecting Pod B-1 to the Project Entry Road for Tuscany (the "Pod B-1 Bridge"). In the event that the Pod B-1 Bridge is constructed, and if and to the extent requested or required by applicable governmental authorities, the Pod B-1 Bridge shall be deemed Association Property to be repaired, replaced and maintained at the Association's sole cost and expense without contribution from the owner(s) of Pod B-1. Declarant reserves (i) perpetual nonexclusive easements of ingress and egress in favor of Declarant and all future owners of Pod B-1, their invitees, licensees, tenants, and the Association, over and across the Pod B-1 Bridge, if and when it is constructed and (ii) to the extent requested or required by applicable governmental authorities, an exclusive easement in favor of Association for access to the Pod B-1 Bridge for repair, replacement and maintenance thereof (these reservations of easement in no way constituting a commitment or obligation of Declarant to construct the Pod B-1 Bridge). In addition to and notwithstanding anything to the contrary in the Tuscany Documents, except to the extent that Pod B-1 is the servient estate as to the easements reserved in this Section 1(J), Article IX, the owner(s) of Pod B-1 shall have no obligations to the Association or any other party under this Declaration.

K. The Association has a reasonable right of entry upon any Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of Tuscany.

L. Notwithstanding anything to the contrary in the Tuscany Documents or otherwise, the Association shall not have any obligations whatsoever to install, own, operate, maintain, repair or replace any portion of the Apartment Site or any of the Improvements located therein or thereon, all of which shall be the sole responsibility of the owner(s) of the Apartment Site. In that regard, the owner(s) of the Apartment Site hereby release and agree to hold the Association harmless from and against any and all maintenance, repair and/or replacement obligations relating to and/or arising out of the Apartment Site and any and all Improvements located therein and thereon. Although the Association has no such maintenance, repair and/or replacement obligations, the Association shall have the reasonable right of entry upon the Apartment Site to make any necessary repairs or replacements of any drainage or other facilities on the Apartment Site that also serves other portions of Tuscany that may be necessary as a result of a failure by the owner(s) of the Apartment Site to do so. Except in the event of an emergency, the Association shall deliver at least ten (10) days' written notice thereof to the owners(s) of the Apartment Site before entering the Apartment Site to make any such repairs or replacements.

M. Subject to the special allocation of certain expenses as set forth in, among other provisions, Section 1 of Article VII (as to Pods A and C-2) and Article XIII (as to the Apartment Site Owner), all expenses incurred by the Association in connection with the services, operation, maintenance, repair and replacement described in Paragraphs A through J, inclusive, are Operating Expenses, payable by each Owner under the provisions of this Declaration concerning Assessments. Should the maintenance, repair or replacement provided for in Paragraphs A through J of this Section 1 be caused by the negligence of or misuse by an Owner, such Owner's family, guests, servants, invitees, or tenants, such Owner shall be responsible

therefor, and the Association shall have the right to levy an Assessment against such Owner's Lot and said Assessment shall constitute a lien upon the appropriate Lot and Home with the same force and effect as liens for Operating Expenses.

Section 2. MAINTENANCE BY THE OWNERS.

A. Except only for the Home Landscaping Services to be performed by the Association as provided in Section 1(I) of this Article IX, the Owner of each Lot and Parcel must keep and maintain the Lot or Parcel and the Improvements thereon, including equipment and appurtenances, in good order, condition and repair, and must perform promptly all maintenance and repair work within, upon and outside of such Owner's Home or other Improvements which, if omitted, could adversely affect Tuscany, the other Owners or the Association and its Members. The Owner of each Lot and Parcel shall be responsible for any damages caused by a failure to so maintain such Lot, Parcel, Improvements and Home. The Owners' responsibility for maintenance, repair and replacement shall include, but not be limited to, all of the physical structures constructed in, upon, above or below the Lot or Parcel, and physical items attached or connected to such structures that run beyond the boundary line of the Lot or Parcel which exclusively service or benefit the Lot, Parcel and Home. Without limiting the generality of the foregoing, the Owner of each Lot and Parcel shall keep all drainage structures (such as catch basins), if any, located on the Owner's Lot or Parcel clear of grass, leaves and other debris. Additionally, the painting, caulking and maintenance of the exterior surface of all walls (including, without limitation, any masonry walls extended from the rear of the Single Family Home), doors, windows and roof of the physical structure of the Single Family Home shall be performed by the Owner, and the exterior surface of such walls, doors, windows and roof shall at all times be maintained in a good and serviceable condition with no damage or other defect therein by the Owner. The Owner of a Lot or Parcel further agrees to pay for all utilities (including, without limitation, those provided by the Community Systems), such as telephone, cable or satellite television, water (excluding reclaimed water associated with the Irrigation System which shall be an Operating Expense of the Association), sewer, sanitation, electric, etc., that may be separately billed or charged to each Home. The Owner of each Lot or Parcel shall be responsible for insect and pest control within the Home or Improvement and the Lot or Parcel. Whenever the maintenance, repair and replacement of any items which an Owner is obligated to maintain, repair or replace at such Owner's own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Owner shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance or otherwise, reduce the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

In addition to the foregoing, the Owner of each Home shall be required to maintain appropriate climate control, keep his or her Home clean, promptly repair any leaks and take necessary measures to retard and prevent mold, fungi, mildew and mycotoxins from accumulating in the Home. Each Owner shall be required to clean and dust such Owner's Home on a regular basis and to remove visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces as soon as reasonably possible and must not block or cover any heating, ventilation or air-conditioning ducts, and to properly maintain and have serviced on

a regular basis, the Home's HVAC system. Each Owner of a Home shall be responsible for damage to such Owner's Home and personal property as well as any injury to the Owner of a Home and/or occupants of the Home resulting from the Owner's failure to comply with these terms. Each Owner of a Home shall be responsible for the repair and remediation of all damages to the Home caused by mold, fungi, mildew and mycotoxins. While the foregoing are intended to minimize the potential developments of molds, fungi, mildew and other mycotoxins, each Owner understands and agrees that there is no method for completely eliminating the development of same. Declarant does not make any representations or warranties regarding the existence or development of molds, fungi, mildew or mycotoxins, and each Owner on behalf of themselves and their family members, guests, invitees, tenants, successors and assigns shall be deemed to and by acceptance of a deed or title to the Home or by use of the Home, waives and expressly releases any such warranty and claims for loss or damages (including, without limitation, property damage and/or personal injury) resulting from the existence and/or development of same.

B. Except as otherwise provided below and in Article II, Section 2(D) above, an Owner whose Lot is adjacent to an "OS" tract shall be responsible for maintaining the sod located in the adjacent "OS" tract up to the center line of such "OS" tract. Moreover, if a side property line of an Owner's Lot abuts an open space tract which separates such Owner's Lot from the rear line of one or more other lots in the Community, such Owner shall be responsible for the maintenance and care of the sod located in such "OS" Tract that abuts the side property line of such Owner's Lot. However, an Owner whose Lot is adjacent to an "OS" tract shall not be responsible for the care of the sod located on such adjacent "OS" tract where such "OS" is part of a Buffer Tract, used as a passive park or focal point, or adjacent to the intersection of two of the Streets, Drives, Roads and/or Roadways thereby creating an entrance into a parcel located within the Community.

C. The Owner of each Lot shall maintain, repair and replace as needed any fencing on their Lot, clean, maintain and repair the driveway on their Lot, and keep the sidewalk located on and/or adjacent to their Lot clean and free from any stains, trash, debris and/or impediments to pedestrian traffic.

D. If a Home is damaged by fire or other casualty, its Owner shall properly and promptly restore it to at least as good a condition as it was before the casualty occurred. Any such work shall be in accordance with the original plans and specifications of the Home unless otherwise authorized by the Board and shall be otherwise subject to all provisions of Article VIII hereof.

E. Each Owner of a Single Family Home shall keep such Owner's Home insured in an amount not less than its full insurable value against loss or damage by fire or other hazards. Evidence of such coverage shall be furnished to the Association promptly upon the Board's request.

F. If an Owner fails to comply with the foregoing provisions of this Section 2, the Association may proceed in court to compel compliance. Further, if the failure to comply relates to the Owner's obligations to maintain insurance, the Association shall be entitled, although not obligated, to obtain the required coverage itself and to levy on the offending Owner an Assessment equal to the cost of premiums, and any such Assessment shall constitute a lien



upon the applicable Lot and Home with the same force and effect as a lien for Operating Expenses.

G. If a failure to comply with the provisions of this Section 2 relates to the Owner's obligation to maintain and care for the Home, landscaping or any other area required to be maintained and cared for by the Owner, then, in addition to the exercise of all other remedies, the Association or Declarant shall have the right but not the obligation, upon fifteen (15) days written notice, to enter upon the Lot of the Owner for the purpose of performing the maintenance and care referred to, set forth and described in the notice, and to levy on the offending Owner an Assessment equal to the cost of performing such maintenance and care. Any such Assessment shall constitute a lien upon the applicable Lot and Home with the same force and effect as a lien for Operating Expenses. The determination of whether an Owner is failing to properly maintain and care for the property for which he has the maintenance responsibility under this Declaration or any of the other Tuscany Documents shall be determined in the sole discretion of the Association or Declarant.

## **ARTICLE X**

### **USE RESTRICTIONS**

All of the Property, but specifically excluding the Apartment Site, shall be held, used, and enjoyed subject to the following limitations and restrictions, and any and all additional rules and regulations which may, from time to time, be adopted by the Association, except as provided in Article X, Section 20 below:

**Section 1. ENFORCEMENT.** Failure of an Owner to comply with any limitations or restrictions in this Declaration or any of the Tuscany Documents or with any rules and regulations promulgated by the Association shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. Without limiting the generality of the foregoing, an Owner shall also be responsible for the payment of any and all Legal Fees incurred by the Association in connection with the enforcement of this Declaration or any of the Tuscany Documents or with any rules or regulations promulgated by the Association, whether or not an action is actually begun. Any such Legal Fees shall be paid not later than thirty (30) days after written notice thereof and if not paid within such thirty (30) day period, shall constitute a lien upon the applicable Lot and Home with the same force and effect as a lien for Operating Expenses.

Notwithstanding the rights of the Association hereunder to enforce to the terms and provisions of the Tuscany Documents, the Water Management District shall also have the right to take enforcement action, including a civil action for an injunction and penalties, against the Association to compel the Association to correct any failure by the Association to operate, maintain and repair the Drainage System in accordance with the Water Management District Permit.

In addition to all other remedies, the Association may suspend, for a reasonable period of time, any or all of the rights of an Owner or an Owner's tenants, guests or invitees to use Association Property and facilities (including, without limitation, cable television and other services provided by Community Systems) for violations of the Tuscany Documents; and

suspend the voting rights of an Owner if such Owner is delinquent in payment of Assessments for more than ninety (90) days; and may levy reasonable fines against any Owner or any Owner's tenant, guest or invitee for failure of such Owner, and/or such Owner's family, guests, invitees, tenants or employees to comply with any of the Tuscany Documents, provided the following procedures are adhered to:

A. Notice. The Association shall notify the Owner in writing of the noncompliance and set forth the corrective action to be taken. A fine or suspension of use rights may not be imposed without notice of at least fourteen (14) days to the Owner sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) 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 of the Association. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. If the Association desires to impose a fine or suspend the use rights of an Owner, the Association shall comply with the requirements of F.S. §720.305(2)(a). At the Association's option, any fine may be levied on a daily basis in the event of a continuing violation without the necessity of a new hearing and without any limitation on the amount of such fine. Fines, as provided in this paragraph and elsewhere in the Tuscany Documents, may exceed One Thousand and No/100 (\$1,000.00).

B. Hearing. Should the Owner still be in noncompliance, the noncompliance shall be presented to the Board after which the Board shall hear reasons why a fine should or should not be imposed. A written decision of the Board shall be submitted to the Owner, as applicable, not later than twenty-one (21) days after said meeting.

C. Payment. A fine shall be paid not later than thirty (30) days after notice of the imposition of the fine.

D. Fines. A fine shall be treated as an Assessment subject to the provisions of the collection of Assessments as otherwise set forth herein. All monies received from fines shall be allocated as directed by the Board, subject always to the provisions of this Declaration.

E. Failure to Pay Assessments. Notwithstanding anything to the contrary contained in the Tuscany Documents, unless contrary to applicable law, Notice and Hearing as provided in Subparagraphs A and B above or elsewhere in the Tuscany Documents shall not be required with respect to the imposition of suspension of use or voting rights or fines upon any Owner because of such Owner's failure to pay Assessments or other charges, or any other monetary obligation due to the Association when due, if such non-payment exceeds more than ninety (90) days.

F. Access. Suspension of use rights to Association Property shall not impair the right of an Owner or tenant of a Lot and/or Home to have vehicular and pedestrian ingress to and egress from such Lot and/or Home, including, but not limited to, the right to park.

Section 2. NUISANCES. No obnoxious or offensive activity shall be carried on or about the Lots or in or about any Improvements, Homes, or on any portion of Tuscany nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any Owner. No use or practice shall be allowed in or around the Homes which is a source of

annoyance to Owners or occupants of Homes or which interferes with the peaceful possession or proper use of the Homes or the surrounding areas. No loud noises or noxious odors shall be permitted in any Improvements, Homes or Lots. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, unlicensed off-road motor vehicles or any items which may unreasonably interfere with television or radio reception of any Owner shall be located, used or placed on any Lot, or exposed to the view of other Owners without the prior written approval of the Board.

Section 3. PARKING AND VEHICULAR RESTRICTIONS. Parking upon the Property shall be restricted to the driveway and garage located upon each Lot and designated parking areas within the Association Property. No Owner shall store any items, materials or other personal property in the garage of such Owner's Home to the extent such storage would limit or prohibit the use of the garage for the parking of vehicles. Such designated parking areas other than driveways and garages located on a Lot shall be on a first-come, first-serve basis. No parking on the streets or swales is permitted. No Owner shall keep any vehicle on any Lot which is deemed to be a nuisance by the Board. No Owner shall conduct repairs taking more than twenty-four (24) hours (except in an emergency or except within the garage of the Home with the garage door closed) or restorations of any motor vehicle, boat, trailer, or other vehicle upon any Lot. No commercial vehicle, trailer, recreational vehicle, boat or boat trailer may be parked or stored on the Property except in the garage of a Home located upon a Lot. No motor home, bus or tractor-trailer or any other truck larger than a full-size pickup truck may be parked on the Property, except temporarily as in the case of a moving van or other such vehicle necessary to provide service to an Owner and with the exception of any vehicles necessary for any construction activity being performed by or on behalf of Declarant.

Section 4. NO IMPROPER USE. No improper, offensive, hazardous or unlawful use shall be made of any Home nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person using any portion of the Property. All valid laws, zoning ordinances, orders, rules, regulations, codes and other requirements of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, ordinances, orders, rules, regulations, codes or other requirements of any governmental agency having jurisdiction thereover relating to any Home or Lot shall be corrected by, and at the sole expense of, the Owner of said Home and/or Lot.

Section 5. LEASES. No portion of a Home (other than an entire Home) may be rented. All leases shall provide, and if they do not so provide then the leases shall be deemed to provide, that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles, the Bylaws, applicable rules and regulations, or of any other agreement, document or instrument governing the Lots or Homes. The Owner of a leased Home shall be jointly and severally liable with such Owner's tenant for compliance with the Tuscany Documents and to the Association to pay any claim for injury or damage to property caused by the negligence of the tenant. Every lease shall be subordinate to any lien filed by the Association whether before or after such lease was entered into. Each Owner shall be required to use a lease addendum which provides, among other things, that the tenant will pay the rent due under the lease directly to the Association upon receipt of notice from the Association that the Owner is delinquent in amounts due to the Association. The Association has the right to require Owners to use a lease addendum the form of which may be

prepared by the Association providing for, among other things, the foregoing. Even if such lease addendum is not included, each lease entered into by Owner for a Home shall be deemed to include the foregoing by this reference.

Within five (5) days following execution of a lease for a Home, but in no event later than occupancy of the Home by a tenant, Owner shall: (a) notify the Association in writing with the name of the tenant and all of tenant's family members or others that will be occupying the Home; and (b) provide the Association with a true, correct and complete copy of the lease agreement. In the event Owner fails to timely comply with the foregoing, such lease shall be null and void and of no further force or effect, and Owner shall be in violation of this Declaration. The provisions of this Section 5 shall also apply to renewals of leases. In no event shall subleases or assignment of leases be permitted.

In the event that an Owner is delinquent in the payment of his or her Assessments or other sums due and owing to the Association, the Lot shall not be leased until such amounts are paid in full or unless the Association consents, in writing, to any such lease. If the Lot is leased in violation of this provision, the Association may terminate the lease and evict the tenants in addition to imposing all other available remedies. In the event an Owner is in default in the payment of Assessments or other sums due and owing to the Association and the Owner's Lot is leased, the Association shall have the right and authority to collect the rent to be paid by the tenant to the Owner directly from the tenant. In the event such tenant fails to remit said rent directly to the Association within ten (10) days (but no later than the day the next rental payment is due) from the day the Association notified such tenant in writing that the rents must be remitted directly to the Association, the Association shall have the right to terminate the lease and evict the tenant. All sums received from the tenant shall be applied to the Owner's account for the leased Lot according to the priority established in Section 720.3085, Florida Statutes, until the Owner's account is current. All leases entered into by an Owner shall be deemed to automatically incorporate this provision and all the Owners hereby appoint the Association its agent for such purpose. The Association may, without further approval of the Owner of the leased Lot, terminate the lease for violations of the Declaration by the tenants, or the tenant's family or guests and thereafter evict the tenants from the Lot.

In addition to any notice to a tenant of a Lot permitted to be given by law, an Owner by acceptance of a deed to a Lot, does hereby irrevocably grant to the Association (and its officers, directors, designees, agents, and employees) and to any professional management or accounting firm providing management or accounting services to the Association, the right to notify, in writing, the tenant of the Lot of any delinquency by the Owner of the Lot in payment of any monetary obligations due to the Association, including but not limited to the amount thereof. Further each Owner hereby agrees and acknowledges that the disclosure of any of Owner's delinquent monetary obligations due to the Association, as provided in the preceding sentence, shall not be construed or be deemed to be a violation of the Fair Debt Collection Practices Act ("FDCPA") 15 U.S.C. Section 1692 et. seq.

Notwithstanding that the Association may exercise any of the rights granted to it by this Section 5 or by Section 720.3085, Florida Statutes, the Association shall not be deemed the landlord of the applicable Lot and Home and shall have no liabilities of a landlord, with the Owner of such Lot and Home being the sole landlord.

Section 6. ANIMALS AND PETS. Only common domesticated household pets may be kept on any Lot or in a Home, but in no event for the purpose of breeding or for any commercial purposes whatsoever. No other animals, livestock, horses, reptiles or poultry of any kind shall be kept, raised, bred or maintained on any portion of the Property. Permitted pets shall only be kept subject to and in accordance with such rules and regulations as shall be promulgated from time to time by the Board. Any pet must be carried or kept on a leash when outside of a Home or fenced-in area. No pet shall be kept tied up outside of a Home or in any screened porch or patio, unless someone is present in the Home. An Owner shall immediately pick up and remove any solid animal waste deposited by such Owner's pet on the Property. An Owner is responsible for the cost of repair or replacement of any Association Property damaged by such Owner's pet.

Notwithstanding the foregoing, under no circumstances shall a Pit Bull (as hereinafter defined), Rottweiler, Doberman Pinscher, Presa Canario (canary dog) or "Dangerous Dog" (as hereinafter defined) be permitted on the Property. As used in this Declaration: (i) a "Pit Bull" is defined as any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying a majority of the physical traits of any one (1) or more of the above breeds, or any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the American Kennel Club or United Kennel Club for any of the above breeds; and (ii) a "Dangerous Dog" is defined as a dog which meets any one (1) of the following criteria: (a) has aggressively bitten, attacked, endangered or has inflicted severe injury on a human being at any time whether on or off the Property, (b) has severely injured or killed a domestic animal at any time whether on or off the Property, or (c) has, when unprovoked, chased or approached any person upon the Streets, Drives, Roads, Avenues, Roadways and/or Sidewalks, or any other portion of the Property in a menacing fashion or apparent attitude of attack; provided, however, a dog shall not be a "Dangerous Dog" if the threat, injury, death or damage was sustained by a person who, at the time, was unlawfully on the Property (or any portion thereof), or, while lawfully on the Property (or any portion thereof), was tormenting, abusing or assaulting the dog or its owner or a family member; provided further, that no dog may be a "Dangerous Dog" if the dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack or assault.

Each Owner who determines to keep a pet hereby agrees to indemnify the Association and Declarant and hold each of the Association and Declarant harmless against any loss or liability of any kind or character whatsoever arising from or growing out of such Owner having any animal on the Property.

Section 7. ADDITIONS AND ALTERATIONS. No Home shall be enlarged by any addition thereto or to any part thereof, and no Owner shall make any Improvement, addition, or alteration to the exterior of such Owner's Home, including, without limitation, the painting, staining, or varnishing of the exterior of the Home, including doors, garage doors, driveways and walkways, without the prior written approval of: (i) the Committee as set forth in Article VIII of this Declaration, which approval may be withheld for purely aesthetic reasons, and (ii) all applicable governmental entities. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein, no planting, landscaping and/or Improvements whatsoever shall be installed or constructed in: (a) the Lake Maintenance Easements adjacent to Lake Lots, (b) any Rear Yard Drainage Swale Easements on Non-Lake Lots except as expressly set forth in and subject to the terms and conditions of Section 7 of Article IV above, and/or (c) in any Drainage Easements.

Section 8. INCREASE IN INSURANCE RATES. No Owner may engage in any action which may reasonably be expected to result in an increase in the rate of any insurance policy or policies covering or with respect to any portion of the Property not owned by such Owner.

Section 9. SLOPES AND TREES. No Owner may engage in any activity which will change the slope or drainage of a Lot, including, without limitation, lake bank slopes. In that regard and without limiting the generality of the foregoing, no Owner may alter the slopes, contours or cross-sections of the Lakes, Lake banks, littoral zones, canals, or canal banks; or chemically, mechanically or manually remove, damage or destroy any plants in any littoral zones. All trees and other landscaping within the Community have been installed in accordance with a landscape plan that meets the requirements of the County Land Development Code. As a result, no additional trees are permitted to be planted on the Property by any Owner and no trees are permitted to be removed from the Property (other than dead or dying trees which are being replaced with trees of the same species) without the prior written consent of Declarant for as long as Declarant owns a Lot, and thereafter, without the prior written consent of the Board. Any Owner who removes or installs any tree upon his or her Lot which is not in conformance with the approved landscape plan shall be responsible for any costs, fines and fees imposed by the County as a result of such action. Declarant and the Association shall each (acting alone) have the right, but not the obligation, after ten (10) days prior notice and demand to do so, to remove (at such Owner's cost and expense) any trees or other landscaping installed by or on behalf of an Owner which is not in accordance with this Declaration.

Section 10. SIGNS. No sign, display, poster, advertisement, notice, lettering or other advertising device of any kind whatsoever (including, without limitation, "For Sale", "For Rent" or "By Owner" or any other signs for the sale or renting of homes) may be exhibited, displayed, inscribed, painted or affixed in public view of any portion of any building or other Improvement in the Property (including, without limitation, a Home) without the prior written consent of the Board, which consent may be given, withheld or conditioned in the sole discretion of the Board. Neither the Board nor the Committee shall consent to any type of "For Sale", "For Rent", "By Owner" or similar sign for the renting or sale of a Home so long as Declarant owns a Lot in Tuscany or so long as Declarant or any of Declarant's affiliates (or any of their respective successors or assigns) are conducting sales and marketing of Homes in Tuscany or other communities developed or marketed by Declarant or its affiliates, whichever is later. Signs, regardless of size, used by Declarant or any of Declarant's affiliates, or any of their successors or assigns, for advertising or marketing during the construction and sale period of Tuscany or other communities developed and/or marketed by Declarant or its affiliates and other signs authorized by Declarant shall be exempt from this Section 10. Such sign or signs as Declarant may be required to erect under the terms of an Institutional Mortgage shall also be exempt from this Section 10. This provision may not be amended without the prior written consent of Declarant.

Section 11. TRASH AND OTHER MATERIALS. No rubbish, trash, garbage, refuse, or other waste material shall be kept or permitted on the Lots and/or Association Property, or other portions of the Property, except in sanitary, self-locking containers located in appropriate areas (i.e., areas not visible from the street or any other Lot other than at times of scheduled trash pickup), and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, offensive, detrimental or a nuisance to Owners or to any other property in the vicinity thereof or to its occupants. No clothing or other household items shall be

hung, dried, or aired in such a way as to be visible from the Association Property or another Lot. No stripped vehicles, lumber or other building materials, grass, tree clippings, metals, scrap, automobile pieces or parts, refuse, or trash shall be stored or allowed to accumulate on any portion of the Property (except when accumulated during construction by Declarant, during construction approved by the Committee, or when accumulated by the Association for imminent pick-up and discard).

Section 12. TEMPORARY STRUCTURES. No tent, shack, shed or other temporary building or Improvement, other than separate construction, service and sales trailers to be used by Declarant, Declarant's affiliates, and/or their respective agents and contractors, for the construction, service and sale of Tuscany or other communities, shall be placed upon any portion of the Property, either temporarily or permanently. No trailer, motor home or recreational vehicle shall be (a) used as a residence, either temporarily or permanently, or (b) parked upon the Property.

Section 13. OIL AND MINING OPERATIONS. No oil drilling, oil development operations, oil refining, boring or mining operations of any kind shall be permitted upon or on any Lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 14. SEWAGE DISPOSAL. No individual sewage disposal system shall be permitted on any of the Property, provided that a central sewage disposal system is being operated in accordance with the requirements of the governmental regulatory body having jurisdiction over said central system.

Section 15. WATER SUPPLY. No individual water supply system shall be permitted on any of the Property, provided that one or more central water supply systems are being operated in accordance with requirements of the governmental body having jurisdiction over said central system.

Section 16. FENCES. Any fence placed upon any Lot must be approved by the Committee, as provided in Article VIII hereof, prior to installation. Fences must be bronze, in a shade approved by the Committee. In no event may the Committee approve any request for a fence to be placed in any of the following areas: (a) the area between the front of a Home and the Street, Drive, Road and/or Roadway at the front of the Lot on which the Home is situated, or (b) any Lake Maintenance Easement or Lake Access Easement on the Property as set forth on the Plat, any Additional Plat or any separate instrument recorded in the public records of the County. The Owner assumes complete responsibility to maintain the fence, including, but not limited to, trimming any grass, ivy or other plants from the fence. In the event the Committee approves the installation of a fence, it shall also have the right to require installation of landscaping, also subject to the Committee's approval, at the time the fence is installed. No Owner shall be permitted to attach their fence to any perimeter fence or wall located within any of the Buffers, Landscaped Areas or Grassed Areas, or to otherwise fence-in or enclose any portion of a Buffer or other Association Property.

Notwithstanding that an Owner has obtained the approval of the Committee to install a fence or landscape materials, as provided hereinabove, such installation shall be at the Owner's

sole risk so long as Declarant has not yet begun or is engaged in the construction of a Home on an adjacent Lot. Declarant shall have the right (but not the obligation), in its sole discretion, to temporarily remove the fence if necessary in order to complete construction of the Home on the adjacent Lot. In the event such construction activity on an adjacent Lot or Declarant's temporary removal of the fence causes damage to or destruction of such Owner's fence or landscape materials or any part thereof, the Owner on whose Lot the fence and/or landscaping has been damaged shall be required, at the Owner's expense, to repair or replace such fence and/or landscape materials in conformance with the requirements of the Committee's approval of the initial installation of the fence and/or landscape materials and Declarant shall have no liability for any such damage or destruction. Such repair or replacement shall commence as soon as construction on the adjacent Lot has been completed and shall be pursued to completion with due diligence. For purposes of this paragraph, the term "landscape materials" shall include landscape materials located on or adjacent to any property line of a Lot, including, by way of example and not of limitation, hedges, shrubs and trees, whether associated with a fence or not.

In addition, the installation of any fence placed upon any Lot is subject to easements which run with the land. In the event that any fence is approved by the Committee and is permitted to cross any such easements, such Committee's approval is still subject to Owner first receiving written approval from the grantee of such easements and all other applicable governmental authorities. In the event the grantee of any such easement which runs with the land (i.e., FPL, utility provider or the County), its successors and/or assigns, requires the removal of any fence upon the Lot, then the Owner of said Lot shall, at the Owner's sole cost and expense, immediately remove the fence. Notwithstanding the foregoing or any permit or governmental approval to the contrary, no fence may be installed within any Lake Maintenance Easement or Lake Access Easement on the Property as set forth on the Plat, any Additional Plat or in any separate instrument recorded in the public records of the County. The Owner of a Lot, when installing any fence upon the Lot, shall comply with all valid laws, zoning ordinances, codes, rules and regulations of all applicable governmental bodies, as applicable, in addition to the Committee approval required by Article VIII hereof.

In addition, no Owner shall be permitted to install a fence within any Drainage Easement without the prior written consent of the Committee, which consent shall be conditioned and subject to Owner's compliance with all of the following:

- (i) Owner shall, at Owner's sole cost and expense, obtain all permits and written approvals from the applicable governmental authorities (including, without limitation, the SFWMD) having jurisdiction over the Drainage Easement, as applicable.
- (ii) Owner shall be required to install one or more access gates within said affected easement area(s), in location(s) determined by the Committee in its sole discretion, and sufficient to provide adequate access to the Association to exercise its rights and to perform its maintenance obligations required under this Declaration.
- (iii) In connection with the installation of such fence, the Owner shall not change or alter the slope or drainage of any portion of the affected Drainage Easement. Moreover, no alteration of a drainage swale, drainage lines, and other equipment shall be authorized and any damage to any drainage swale, drainage lines, and



other equipment, shall be repaired by Owner, at Owner's sole cost and expense. The Drainage Easement, as applicable, shall be immediately returned to the condition in which it existed at the time of the initial conveyance of the Lot by Declarant.

(iv) In the event the Association and/or governmental authorities wish to obtain ingress and/or egress to the Drainage Easement for any purpose including, without limitation, installation, maintenance or repairs of the improvements located therein, Owner shall, at its sole cost and expense, remove those portions of the fence which may be required in order for the Association and/or governmental authorities to obtain access in and to the improvements. Except for emergency situations, in the event the Owner fails to comply within fifteen (15) days of receipt of written notice from the Association and/or the governmental authorities requesting the removal of the fence, the Association may remove any and all portion of the fence and Owner shall be responsible for all removal costs. The Association shall be entitled to levy an assessment equal to the costs of the fence removal against the Owner and its respective Lot, and such Assessment shall constitute a lien upon the applicable Lot with the same force and effect as a lien for Operating Expenses.

Notwithstanding anything contained to the contrary in this Declaration, an Owner of a Lot who elects to install a fence on such Owner's Lot without an operable gate in a location and of sufficient width approved by the Committee shall be responsible for the maintenance and care of the lawn and landscaping on the Lot, if any, in the portion of the Lot which becomes enclosed by the fence construction. In such event, the Association shall no longer provide any of the Home Landscaping Services to such enclosed portion(s) of the Lot and Owner shall not be entitled to a reduction in Assessments in turn for being responsible for such maintenance and care. The Association shall remain responsible, however, to maintain the Privacy Fence, if any, located within any such Lot. In the event the Owner fails to properly maintain his Lot and/or Home pursuant to this subparagraph, then the Association or Declarant shall have the right but not the obligation, upon fifteen (15) days written notice, to enter the property of the Owner for the purpose of performing the maintenance referred to, set forth and described in the notice. The determination of whether an Owner is failing to properly maintain and care for the property for which he has the maintenance responsibility shall be determined in the sole discretion of the Association or Declarant. Further, if failure to comply relates to the Owner's obligations to maintain and care for such Owner's Lot, Home or other Improvement, the Association shall be entitled, but not obligated, to perform such maintenance and care itself and to levy on the offending Owner an Assessment equal to the cost of performing such maintenance and any such Assessment shall constitute a lien upon the applicable Lot and Home with the same force and effect as a lien for Operating Expenses.

**Section 17. ANTENNAE.** No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any portion of the Property or upon any improvements thereon, unless expressly approved in writing by the Association, except that this prohibition shall not apply to those satellite dishes that are one (1) meter (39.37 inches) in diameter or less, and specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated

under the Telecommunications Act of 1996, as amended from time to time. The Association is empowered to adopt, and amend from time to time, rules governing the types of antennae which may be permitted and restrictions relating to safety, location and maintenance of antennae. The Association may also adopt (and amend from time to time) and enforce reasonable rules limiting installation of permissible satellite dishes or antennae to certain specified locations, not visible from the street or neighboring properties, and integrated with the Property and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules and provided the cost of complying with such rules would not unreasonably increase the cost of installation of permissible satellite dishes or antennae. Any permissible satellite dishes or antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations. Further, any Owner desiring to install permissible satellite dishes or antennae may, but is not obligated to, submit plans and specifications for same to the Committee to ensure compliance with the Association's rules governing the types of permissible satellite dishes and antennae and restrictions relating to safety, location and maintenance of satellite dishes and antennae. This Section 17 shall not apply to Declarant.

Section 18. RECREATION TRACTS AND AMENITIES. Notwithstanding anything in the Tuscan Documents to the contrary, the tenants and the family members, occupants, guests, invitees, and owners of Apartment Units shall not have any right and shall not use any of the Recreation Tracts and/or facilities or amenities now or hereafter constructed thereon other than those on the Apartment Site. Owners and the family members, occupants, guests, invitees, and owners of Homes shall not have any right and shall not use any of the recreation facilities or amenities now or hereafter constructed or located on the Apartment Site.

Section 19. HOMES OWNED BY ENTITIES OR UNRELATED PERSONS. It is the intention that Homes be occupied for single-family use. In the event an entity owns a Home, the entity shall notify the Association in writing with the names of the family members who shall occupy the Home. In the event the Owners of the Home are unrelated either through blood or marriage, they shall be permitted to occupy the Home provided they live as a family unit similar to a husband and wife. No Home may be used as a rooming house, hostel, or hotel. Timesharing or other arrangements involving more than three ownership interests in a Lot (including ownership by more than three persons as joint tenants or tenants-in-common), or assigning separate use periods of less than ninety (90) consecutive days' duration, are prohibited.

Section 20. IMPROPER USE OF ASSOCIATION RECORDS. No Member, Owner, or Tenant shall use the Association's Official Records, membership directories or other Association communications such as, by way of example and not limitation, emails containing one of more Member's e-mail addresses, for any purpose whatsoever other than as strictly related to Association business. Failure to comply with the requirements of this Section 20 shall, without limitation, constitute a nuisance for which the Association may seek an injunction against the offending Member(s), Owner(s) and/or Tenant(s).

Section 21. DECLARANT EXEMPTION. Declarant plans to undertake the work of constructing Homes and Improvements upon the Property and may undertake the work of constructing other buildings upon adjacent land or other property being developed or marketed by Declarant or its affiliates. The completion of the aforementioned work and the sale, rental and other transfer of Homes by Declarant and Declarant's affiliates are essential to the

establishment and welfare of the Property as a residential community. In order that such work may be completed and a fully occupied community established as rapidly as possible, neither the Owners, the Association, nor the Architectural Control Committee shall do anything whatsoever to interfere with any of Declarant's or Declarant's affiliates' activities relating to the selling or constructing of Homes and Improvements upon the Property, the selling or constructing of other buildings upon adjacent land or any other property being developed or marketed by Declarant or any of Declarant's affiliates, or the sale, rental and/or other transfer of Homes by Declarant or any of Declarant's affiliates. In this respect, Declarant hereby reserves the right for itself and its employees, agents, licensees, and invitees to come upon any and all portions of the Property (including, without limitation, the Association Property as well as a Lot even after the same has been conveyed to an Owner) as may be necessary or convenient to enable Declarant to carry on its work and other activities including, without limitation, Declarant's development and construction of Tuscany and the Homes therein.

In general, the restrictions and limitations set forth in this Article X shall not apply to Declarant or to Lots owned by Declarant. Declarant shall specifically be exempt from any restrictions which interfere in any manner whatsoever with Declarant's plans for development, construction, sale, lease, or use of the Property and to the Improvements thereon. Declarant shall be entitled to injunctive relief for any actual or threatened interference with its rights under this Article X in addition to whatever remedies at law to which it might be entitled.

Section 22. POD A PROHIBITED USES. Pod A as shown on the Project Conceptual Plan shall not be developed or used for any multi-family residential rental uses that would directly compete with the Apartment Site (the "Prohibited Uses"). The Prohibited Uses specifically exclude, however, and Pod A may be designed, developed, constructed and/or operated as residential units under and pursuant to the Workforce Housing Requirements.

Section 23. RESTRICTED USE OF AMENITIES IN POD A AND POD C-2. Each Owner of a Lot in Pod C-2 or Pod A, each as shown in the Project Conceptual Plan, shall utilize only Association Property and Improvements thereon that are located within the Pod in which that respective Owner's Lot is located (including, without limitation, the Recreation Tract in such Pod). Owners of Lots in Pod C-2 and their family members, occupants, guests and invitees shall not have the right (except as a guest or invitee of an Owner of a Lot in Pod A) to use, and shall not use, any of the Association Property or Improvements thereon now or hereafter constructed on or located within Pod A (including, without limitation the Recreation Tract in Pod A), and Owners of Lots in Pod A and their family members, occupants, guests and invitees shall not have the right (except as a guest or invitee of an Owner of a Lot in Pod C-2) to use, and shall not use, any of the Association Property or Improvements thereon now or hereafter constructed on or located within Pod C-2 (including, without limitation the Recreation Tract in Pod C-2).

## **ARTICLE XI**

### **DAMAGE OR DESTRUCTION TO ASSOCIATION PROPERTY**

Damage to or destruction of all or any portion of the Association Property shall, notwithstanding any provision in this Declaration to the contrary, be handled as follows:

A. If insurance proceeds are sufficient to effect total restoration of damaged or destroyed Association Property, then the Association shall cause such Association Property to be repaired and reconstructed substantially as it previously existed.

B. If insurance proceeds are insufficient to effect total restoration, and the cost of restoration exceeds such proceeds by Twenty-Five Thousand Dollars (\$25,000.00) or less, then the Association shall cause the Association Property to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment proportionately against each of the Lots in accordance with the provisions of Articles VI and VII herein.

If the insurance proceeds are insufficient to effect total restoration and the cost of restoration of the Association Property exceeds said proceeds by over Twenty-Five Thousand Dollars (\$25,000.00), then by the written consent or vote of a majority of the voting interests, they shall determine whether: (i) to rebuild and restore either: (a) in substantially the same manner as the Improvements existed prior to the damage or destruction; or (b) in a manner less expensive, and in the event of (a) or (b) to raise the necessary rebuilding and restoration funds by levying pro rata restoration and construction Special Assessments against all Lots; or (ii) to not rebuild and to retain available insurance proceeds. In the event it is decided that the damaged or destroyed Association Property shall not be rebuilt, the remains of any structure or structures shall be torn down and hauled away, so as not to be a safety hazard or visual nuisance, and the land shall be fully sodded and landscaped or otherwise treated in an attractive manner. Notwithstanding anything contained herein to the contrary, any decision not to rebuild or to rebuild in a manner which would result in a change in the Improvements shall not be effective without the prior written approval of Declarant (which approval shall be given, conditioned or withheld in Declarant's sole discretion) as long as Declarant owns any portion of the Property.

D. Each Owner shall be liable to the Association for any damage to the Association Property not fully covered or collected by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of such Owner's family, tenants, invitees and guests, both minors and adults.

E. In the event that the repairs and replacements were paid for by any Special Assessments as well as insurance proceeds and regular Assessments, then, if after the completion of and payment for the repair, replacement, construction or reconstruction there shall remain any excess in the hands of the Association, it shall be presumed that the monies disbursed in payment of any repair, replacement, construction and reconstruction were first disbursed from insurance proceeds and regular Assessments and any remaining funds shall be deemed to be the remaining Special Assessments which shall be returned to the Owners by means of a *pro rata* distribution in accordance with the collection of such Special Assessments.

## **ARTICLE XII**

### **INSURANCE AND CONDEMNATION**

The Association shall purchase and maintain the following insurance coverages subject to the following provisions, and the cost of the premiums therefor shall be a part of the Operating Expenses:

Section 1. CASUALTY INSURANCE. Property and casualty insurance in an amount equal to the then full replacement cost, exclusive of land, foundation, excavation and other items normally excluded from such coverage, of all Improvements and personal property which are owned by the Association and now or hereafter located upon the Association Property, which insurance shall afford protection against such risks, if any, as shall customarily be covered with respect to areas similar to the Association Property in developments similar to Tuscany in construction, location and use.

Section 2. PUBLIC LIABILITY INSURANCE. A comprehensive policy of public liability insurance naming the Association and, until Declarant no longer owns any Lot with the Property, Declarant as named insureds thereof insuring against any and all claims or demands made by any person or persons whomsoever for personal injuries or property damage received in connection with, or arising from, the operation, maintenance and use of the Association Property and any Improvements located thereon, and for any other risks insured against by such policies with limits of not less than One Million Dollars (\$1,000,000.00) for damages incurred or claimed by any one person for any one occurrence; not less than Three Million Dollars (\$3,000,000.00) for damages incurred or claimed by more than one person for any one occurrence; and for not less than Fifty Thousand Dollars (\$50,000.00) property damage per occurrence with no separate limits stated for the number of claims. The Association may also obtain worker's compensation insurance and other liability insurance including, but not limited to, insurance for lawsuits related to employment contracts in which the Association is a party, as it may deem desirable.

Section 3. FIDELITY COVERAGE. Adequate fidelity coverage to protect against dishonest acts of the officers and employees of the Association and the Board and all others who handle and are responsible for handling funds of the Association shall be maintained in the form of fidelity bonds, which requirements shall be reasonably determined by the Board.

Section 4. DIRECTORS' COVERAGE. Adequate directors' and officers' liability coverage, which coverage shall be effective from and after the date the Association is created.

Section 5. OTHER INSURANCE. The Board may obtain such other forms of insurance as the Board may determine and in such coverage amounts as the Board shall determine to be required or beneficial for the protection or preservation of the Association Property and any Improvements now or hereafter located thereon or in the best interests of the Association and/or its officers and directors.

Section 6. CANCELLATION OR MODIFICATION. All insurance policies purchased by the Association shall provide that they may not be canceled (including for nonpayment of premiums) or substantially modified without at least ten (10) days prior written notice to the Association and to each first mortgage holder, if any, named in the mortgage clause.

Section 7. FLOOD INSURANCE. If determined appropriate by the Board or if required by an Institutional Mortgagee, a master or blanket policy of flood insurance covering the Association Property, if available under the National Flood Insurance Program, shall be purchased, which flood insurance shall be in the form of a standard policy issued by a member of the National Flood Insurers Association, and the amount of the coverage of such insurance shall be the lesser of the maximum amount of flood insurance available under such program, or one

hundred percent (100%) of the current replacement cost of all buildings and other insurable property located in the flood hazard area.

Section 8. CONDEMNATION. In the event the Association receives any award or payment arising from the taking of any Association Property or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of such taken areas and improvements thereon to the extent deemed advisable by the Board and approved by at least two-thirds (2/3) of the total voting interests, and the remaining balance thereof, if any, shall then be distributed pro rata to Owners and mortgagees of Lots as their respective interests may appear.

Section 9. WAIVER OF SUBROGATION. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, Declarant and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement of said persons, but only to the extent that such insurance proceeds are received in compensation for such loss.

### **ARTICLE XIII PARCELS**

Section 1. MULTI-FAMILY PARCEL. "Pod B-2" and "Pod C-1" as shown on the Project Conceptual Plan are hereby designated to be Parcels under this Declaration and are herein together referred to as the "Apartment Site".

Section 2. ALLOCATION OF CERTAIN EXPENSES. Notwithstanding anything to the contrary contained elsewhere in this Declaration, the Apartment Site shall be responsible for only the "Apartment Site Proportionate Share" (as hereinafter defined) of the costs to maintain, repair and replace the "Project Entry Road", the "Bridge", the "Apartment Site Collector Road" and the "Pod C-1 Collector Road" (as those areas are shown on the Project Conceptual Plan and described in Section 5 below), together with all landscaping and irrigation installed by Declarant and/or the Association within and/or along both sides of such roadways. The Apartment Site shall also be responsible for the Apartment Site Proportionate Share of the costs to maintain, repair and replace the Turnpike Wall Improvements (as hereinafter defined) installed by the Owner of the Apartment Site on the Apartment Site. The Apartment Site shall not be obligated to pay any other Operating Expenses.

Section 3. NO ARCHITECTURAL CONTROL. Notwithstanding the provisions of Article VIII above, it is hereby specifically provided that the Apartment Site shall not be subject to any architectural guidelines or approvals of the Committee or the Association with respect to any Improvements on the Apartment Site.

Section 4. WORKFORCE HOUSING. The Apartment Site shall at all times be subject to the County's Workforce Housing Program and therefore the Owner of the Apartment Site shall comply with the Workforce Housing Requirements of the County applicable to the Apartment Site. In that regard, the building(s) constructed on the Apartment Site shall contain the number of residential apartment units required by the County to comply with the Workforce Housing Requirements, which required number of apartment units shall have monthly rental limits based

on the County's various required income categories established by the County, which may be adjusted by the County from time to time.

Section 5. DEFINITIONS.

A. "Apartment Site Proportionate Share" means, for the purpose of this Declaration, the percentage derived by dividing the number of residential trips generated by the multifamily residential dwelling units approved for the Apartment Site by the total number of residential trips generated by the residential dwelling units approved for Tuscany as specified in the approved Traffic Impact Study and ULDC by unit type in Tuscany. By way of example and for illustration purposes only, if the Apartment Site is approved for 395 multifamily residential dwelling units and the total number of residential dwelling units approved for Tuscany is 853 residential dwelling units (i.e., 458 single family residential dwelling units plus the 395 multifamily residential dwelling units), then the Apartment Site Proportionate Share would be calculated as follows:

Apartment Site Trips (i.e.,  $395 \times .7$  trips per day) = 276.5 trips

Tuscany Trips ( $458 \times 1$  trip per day, plus 276.5 trips) = 734.5 total trips

Apartment Site Proportionate Share = 37.64% (i.e., 276.5 divided by 734.5).

B. "Project Entry Road" means the entry road to Tuscany from Atlantic Avenue to and including the Bridge as shown on the Project Conceptual Plan.

C. "Bridge" means the bridge crossing the LWDD E-2-E Canal and connecting the Project Entry Road to the Apartment Site Collector Road, as shown on the Project Conceptual Plan.

D. "Apartment Site Collector Road" means that certain roadway which runs from the Bridge to the northern limits of Pod C-1, and including the Apartment Site Round-About as shown on the Project Conceptual Plan.

E. "Turnpike Wall Improvements" means the following improvements to be constructed by the Owner of the Apartment Site in the Turnpike Wall Buffer: (i) construction of a berm approximately seven feet (7') in height, (ii) installation of a sound wall on the top of such berm which sound wall meets the minimum requirements of the Florida Turnpike Authority, any applicable conditions of the "Development Order Amendment" (as hereinafter defined) and the required noise mitigation study, and (iii) installation of landscaping on such berm that meets or exceeds all applicable requirement of the ULDC and any applicable conditions of the Development Order Amendment.

F. "Development Order Amendment" means the approval by the Board of County Commissioners of the County BCC as contained in R-2009-1823, as amended from time to time.

G. "Pod C-1 Collector Road" means the roadway shown and labeled as such on the Project Conceptual Plan attached hereto as Exhibit G.

Section 6. PROJECT ENTRY ROAD, BRIDGE, APARTMENT SITE COLLECTOR ROAD, THE POD C-1 COLLECTOR ROAD, AND TURNPIKE WALL IMPROVEMENTS.

The Project Entry Road, the Bridge, the Apartment Site Collector Road, the Pod C-1 Collector Road and the Turnpike Wall Improvements are collectively referred to herein as the "Shared Facilities." The Shared Facilities (excluding the Turnpike Wall Improvements) shall not be used for any purpose other than for ingress and egress to or through the Property from adjacent public rights-of-way or any other permitted purpose.

Section 7. MAINTENANCE. The Association shall maintain the Shared Facilities. As used herein "maintain" shall mean operate, upkeep, maintain, repair, replace, trim trees, fertilize, irrigate, provide pest control, paint, stripe, landscape, improve, replace, reconstruct, insure, as well as manage and perform accounting services and to provide all electricity related to any and all of the foregoing. As used herein "cost to maintain" shall mean all costs and expenses incurred by the Association in the course of its actions to maintain, provided that charges for management and accounting fees shall be limited to amounts actually paid by the Association to unaffiliated third parties for such services. The cost to maintain the Shared Facilities shall be referred to herein as the "Shared Facilities Expenses."

The Association shall be responsible to determine the need for and to maintain the Shared Facilities provided that the Shared Facilities shall be kept in good condition and repair and operational at all times. Such maintenance of the Shared Facilities shall be to a standard reasonably determined by the Association, in compliance with the requirements of all governmental authorities and this Declaration.

Section 8. SHARED FACILITIES EXPENSES. The Shared Facilities Expenses shall be determined by the Board in good faith in accordance with this Declaration and the Apartment Site Proportionate Share thereof shall constitute the Apartment Site's sole obligation for Assessments under this Declaration.

Section 9. SHARED FACILITIES EXPENSES BUDGET. The Association shall annually prepare a schedule of anticipated Shared Facilities Expenses and shall bill the Owner of the Apartment Site quarterly in advance for the Apartment Site Proportionate Share of the Shared Facilities Expenses. Payments by the Owner of the Apartment Site shall be made on the fifteenth (15<sup>th</sup>) day of each calendar quarter and shall begin accruing as of the last to occur of (a) the date of recordation of this Declaration and (b) substantial completion of each component of the Shared Facilities. In the event any such payment by the Owner of the Apartment Site is more than ten (10) days late, such Owner shall be obligated to pay interest thereon from the date originally due until actually paid at eighteen percent (18%) per annum.

The Owner of the Apartment Site shall also be liable to the Association for the Apartment Site Proportionate Share of any special assessment attributable to the Shared Facilities payable as directed in the Association's notice of such special assessment, and also subject to interest as provided above for late payment. The Association's notice shall be delivered not less than thirty (30) days before payment for such special assessment is due.

The Owner of the Apartment Site shall have reasonable access to the Association's books and records with respect to Shared Facilities Expenses and shall be



furnished a copy of the Association's schedule of Shared Facilities Expenses for the next fiscal year at least fifteen (15) days prior to the end of the Association's current fiscal year.

The obligation to pay Shared Facilities Expenses shall continue in perpetuity irrespective of any period of vacancy or un-tenantability due to casualty, condemnation, demolition or reconstruction, or otherwise.

Section 10. APARTMENT SITE. The maintenance, repair and replacement of any roadways and/or irrigation lines contained solely within the Apartment Site and solely serving the Apartment Site shall be the responsibility of the Owner of the Apartment Site. Neither the Owner of the Apartment Site nor any tenant, resident or any occupant of any portion of the Apartment Site shall have any voting rights in the Association. The Owner of the Apartment Site shall have no right to participate in the determination of the amount of the Shared Facilities Expenses.

Section 11. NO AMENDMENT. This Article XIII may not be amended without the joinder and consent to any such amendment by the Owner of the Apartment Site.

Section 12. DEFAULT. In the event of a breach of any of the covenants set forth in this Article XIII, the Association and Declarant or the Owner of the Apartment Site, as applicable, shall be entitled to any and all remedies available at law or in equity, including, but not limited to, the equitable remedies of specific performance or mandatory or prohibitory injunction issued by a court of appropriate jurisdiction. In the event it becomes necessary for Declarant, the Association or the Owner of the Apartment Site to defend or institute legal proceedings as a result of the failure of the other to comply with the terms and covenants of this Article XIII, the prevailing party in such litigation shall be entitled to be reimbursed by the non-prevailing party for all costs incurred or expended in connection therewith, including, but not limited to, reasonable attorneys' fees and court costs through all trial and appellate levels.

Section 13. LIEN RIGHTS. The Apartment Site Proportionate Share together with interest thereon and costs of collection thereof, including legal fees as herein provided, are subject to a lien right on behalf of the Association to secure payment thereof. The Apartment Site Proportionate Share is hereby declared to be a charge on the Apartment Site and shall be a continuing lien thereon, but shall be subordinate to the rights of the holder of a first mortgage encumbering the Apartment Site. The Apartment Site Proportionate Share together with interest thereon and costs of collection thereof, including legal fees, shall be the personal obligation of the person, persons, entity and/or entities owning the Apartment Site from time to time. The Association's lien for the Apartment Site Proportionate Share shall relate back to the date of recording this Declaration amongst the Public Records of the County.

Section 14. SHARED FACILITIES EASEMENT. The Apartment Site Owner and all guests, tenants, agents, employees or invitees of the Apartment Site Owner shall have a permanent and perpetual, nonexclusive easement for ingress and egress over, enjoyment in, and use of the Shared Facilities (excluding the Turnpike Wall Improvements) within the Property in common with all other Owners, their family members, guests, tenants, agents and invitees, which easement shall be appurtenant to, and shall pass with a deed and/or title to, the Apartment Site Parcel.

**ARTICLE XIV**  
**GENERAL PROVISIONS**

**Section 1. CONFLICT WITH OTHER TUSCANY DOCUMENTS.** In the event of any conflict between the provisions of this Declaration and the provisions of the Articles and/or Bylaws and/or rules and regulations promulgated by the Association, the provisions of this Declaration, the Articles, the Bylaws, and the rules and regulations shall control in that order.

**Section 2. NOTICES.** Any notice or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid, to: (i) each Owner, at the address of the person whose name appears as the Owner on the records of the Association at the time of such mailing and, in the absence of any specific address, at the address of the Home owned by such Owner; (ii) the Association, certified mail, return receipt requested, at 1600 Sawgrass Corporate Parkway, Suite 400, Sunrise, Florida 33323, or such other address as the Association shall hereinafter notify Declarant and the Owners of in writing; and (iii) Declarant, certified mail, return receipt requested, at 1600 Sawgrass Corporate Parkway, Suite 400, Sunrise, Florida 33323, or such other address or addresses as Declarant shall hereafter notify the Association of in writing, any such notice to the Association of a change in Declarant's address being deemed notice to the Owners.

**Section 3. ENFORCEMENT.** The covenants and restrictions herein contained may be enforced by Declarant (so long as Declarant holds an equitable or legal interest in any Lot and/or Home), the Association, any Owner and any Institutional Mortgagee holding a mortgage on any portion of the Property in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any person, firm or entity violating or attempting to violate any covenant, restriction or provision hereunder. The failure by any party to enforce any such covenant, restriction or provision herein contained shall in no event be deemed a waiver of such covenant, restriction or provision or of the right of such party to thereafter enforce such covenant, restriction or provision. The prevailing party in any such litigation shall be entitled to reimbursement of all costs thereof including, but not limited to, Legal Fees, from the non-prevailing party.

The Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which related to the maintenance, operation and repair of the Drainage System. In addition, the Association shall be entitled to recover pre-litigation attorneys' fees and costs incurred in enforcing the Tuscany Documents which shall be collectible in the same manner as Assessments as set forth in the Declaration

**Section 4. INTERPRETATION.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of recreational facilities and Association Property. Article, Section and Paragraph captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of this Declaration.

Whenever the context so requires or permits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

Section 5. SEVERABILITY. In the event any of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect, and any provisions of this Declaration deemed invalid by a court of competent jurisdiction by virtue of the term or scope thereof shall be deemed limited to the maximum term and scope permitted by law. In the event that any court should hereafter determine that any provision of this Declaration is in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of a time period, such provision shall not thereby become invalid, but instead the duration of such time period shall be reduced to the maximum period allowed under such rule of law, and in the event the determination of the duration of such time period requires measuring lives, such measuring life shall be that of the incorporator of the Association.

Section 6. CERTAIN RIGHTS OF DECLARANT. Notwithstanding anything to the contrary herein contained, no Improvements constructed or installed by Declarant shall be subject to the approval of the Association or the Owners or the provisions and requirements of this Declaration, although it is the intent of Declarant to create a community with a common scheme of development. Notwithstanding the other provisions of this Declaration, Declarant reserves for itself and its affiliates, and Declarant, its affiliates and their respective nominees shall have, the right to enter into and transact on the Property any business necessary to consummate the sale, lease or encumbrance of Homes or real property within or outside Tuscany, including, but not limited to, the right to maintain models and a sales and/or leasing office, a construction office and/or a service office, place signs, employ sales, leasing, construction and service personnel, use the Association Property and show Homes, and Declarant further reserves the right to make repairs to the Association Property and to carry on construction activity for the benefit of the Property, all of which activities may continue even after the Turnover Date. Declarant, its affiliates and their respective nominees, may exercise the foregoing rights without notifying the Association and/or the Owners. Any such models, sales and/or leasing office, construction office, service office, signs and any other items pertaining to such sales, leasing, construction or service efforts shall not be considered a part of the Association Property and shall remain the property of Declarant.

In addition, Declarant hereby has, shall have and hereby reserves the right to enter upon the Association Property (including, without limitation, all drainage, lake maintenance, canal maintenance, and utility easements whether located on a Lot or Association Property) in order for Declarant to final-out and/or close-out any and all approvals, permits, orders, conditions and/or requirements that have been issued or imposed by any governmental entity in connection with the development and construction of Tuscany and all Improvements therein (collectively, the "Community Approvals"), and for Declarant to comply and adhere to the same, and such rights shall survive the Turnover Date and continue for such period of time as is necessary for Declarant to fully comply with all such Community Approvals. Without limiting the generality of the foregoing, in exercising any such rights, Declarant shall have the right to remove and/or relocate any and all items (including, without limitation, landscape materials, fences and/or other Improvements) that may be required to be removed and/or relocated to final-out and/or close-out

any and all Community Approvals without compensation to the Association or the Owners. In the event Declarant is unable to: (i) final-out and/or close-out any and all such Community Approvals as a result of Association's failure to timely and/or properly perform any of its operation, maintenance and/or repair obligations pursuant to the Tuscany Documents, the Community Approvals, and/or any other applicable governmental laws, regulations, codes, approvals and/or rules; or (ii) obtain a return of any bond or surety posted by Declarant in connection with the development and construction of Tuscany, then Declarant shall have the immediate right, but not the obligation, in its sole discretion, to (a) commence an enforcement action against the Association, including, without limitation, monetary penalties and injunctive relief, to compel the Association to perform such operation, maintenance and/or repair obligations; and/or (b) take any and all actions necessary, at the Association's sole cost and expense, to comply with and adhere to any such Community Approvals. The Association hereby agrees to indemnify and reimburse Declarant (within ten (10) days of receipt of a written invoice from Declarant) for all costs and expenses incurred by Declarant in the event Declarant takes actions in accordance with this Section 6. The rights granted to Declarant hereunder shall survive the Turnover Date and continue for such period of time as is necessary for Declarant to fully comply with all Community Approvals.

Declarant shall also have the right, but not the obligation, to conduct inspections and tests from time to time of all or any portion of the Association Property in order to ascertain the physical condition of the Improvements and to determine if maintenance, repair or replacement of any such Improvement is necessary. If Declarant conducts any such tests or inspections, it shall pay all costs thereof and restore the affected portion of the Property to its condition immediately prior to the inspections and tests. Declarant shall have such rights of entry on, over, under, across and through the Property as may be reasonably necessary to exercise the rights described in this Section 6. Declarant's right of inspection shall exist whether or not the Turnover Date has occurred. In the event Declarant exercises its inspection right(s), it is acknowledged by the Association and all Owners that Declarant is performing any such inspection(s) for its own benefit and not for the benefit of the Association and/or the Owners and further, Declarant shall have no obligation to inform the Association and/or the Owners of the result of any such inspection.

ALL OWNERS, OCCUPANTS AND USERS OF TUSCANY ARE HEREBY PLACED ON NOTICE THAT DECLARANT AND/OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES MAY BE, FROM TIME TO TIME, CONDUCTING EXCAVATION, CONSTRUCTION AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO TUSCANY. BY THE ACCEPTANCE OF THEIR DEED, TITLE OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF TUSCANY, EACH SUCH OWNER, OCCUPANT AND USER FOR THEMSELVES AND EACH OF THEIR RESPECTIVE HEIRS, LEGAL REPRESENTATIVES, AND ASSIGNS AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES AS FOLLOWS (i) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY, (ii) NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO TUSCANY WHERE THE AFORESAID ACTIVITIES ARE BEING CONDUCTED (EVEN IF

NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS), (iii) THAT THE OWNER, OCCUPANT OR USER IS AT RISK OF SUFFERING INJURY TO BOTH THEIR PERSON AND/OR PROPERTY AS A RESULT OF ENTRY UPON ANY PROPERTY WITHIN OR IN PROXIMITY TO TUSCANY WHERE THE AFORESAID ACTIVITIES ARE BEING CONDUCTED. EACH OWNER, OCCUPANT AND USER EXPRESSLY ASSUMES FULL RESPONSIBILITY FOR THE RISK OF BODILY INJURY, DEATH OR PROPERTY DAMAGE SUFFERED AS A RESULT OF THE AFORESAID CONSTRUCTION AND OTHER ACTIVITIES; (iv) THAT EACH OWNER, OCCUPANT AND USER HEREBY RELEASES, WAIVES, DISCHARGES AND HOLDS HARMLESS DECLARANT, ITS PARTNERS AND AFFILIATES, AND EACH OF THEIR RESPECTIVE PARTNERS, AFFILIATES, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS, AND ANY SUBSEQUENT DECLARANT ("RELEASED PARTIES") FROM ALL LOSSES, CLAIMS, COSTS, LIABILITIES, DAMAGES, INCLUDING COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE, AND INCLUDING, BUT NOT LIMITED TO, PROPERTY DAMAGE OR BODILY INJURY OR DEATH, WHETHER CAUSED BY NEGLIGENCE ON THE PART OF ANY OR ALL OF THE RELEASED PARTIES OR ANYONE ELSE, AS A RESULT OF, ARISING OUT OF, OR IN CONNECTION WITH THE AFORESAID CONSTRUCTION AND OTHER ACTIVITIES; (v) ANY PURCHASE OR USE OF ANY PORTION OF TUSCANY HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING; AND (vi) THAT THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO DECLARANT TO SELL, CONVEY, LEASE AND/OR ALLOW THE USE OF THE APPLICABLE PORTION OF TUSCANY.

This Section 6 may not be suspended, superseded or modified in any manner by any amendment to this Declaration unless such amendment is consented to in writing by Declarant. This right of use and transaction of business as set forth herein and the other rights reserved by Declarant in the Tuscany Documents may be assigned in writing by Declarant in whole or in part. For the purposes of this Section 6, the term "Declarant" shall include any "Lender" which has loaned money to Declarant to acquire or construct Improvements upon the Property, or its successors and assigns if such Lender, its successors or assigns, acquires title to any portion of the Property as a result of the foreclosure of any mortgage encumbering any portion of the Property securing any such loan to Declarant, or acquires title thereto by deed in lieu of foreclosure. The rights and privileges of Declarant as set forth in this Section 6 are in addition to, and are no way a limit on, any other rights or privileges of Declarant under any of the Tuscany Documents.

Section 7. DISPUTES AS TO USE. In the event there is any dispute as to whether the use of the Property or any portion or portions thereof complies with the covenants, restrictions, easements or other provisions contained in this Declaration, such dispute shall be referred to the Board, and a determination rendered by the Board with respect to such dispute shall be final and binding on all parties concerned therewith. Notwithstanding anything to the contrary herein contained, any use by Declarant of the Property shall be deemed a use which complies with this Declaration and shall not be subject to a contrary determination by the Board.

Section 8. AMENDMENT AND MODIFICATION. The process of amending or modifying this Declaration shall be as follows:

A. Until the Turnover Date, all amendments or modifications shall only be made by Declarant without the requirement of the Association's consent or the consent of the Owners so long as such amendments or modifications do not materially impair the common plan of development of Tuscany; provided, however, that the Association shall, forthwith upon request of Declarant, join in any such amendments or modifications and execute such instruments to evidence such joinder and consent as Declarant shall, from time to time, request.

B. After the Turnover Date, this Declaration may be amended by: (i) the consent of the Owners owning two-thirds (2/3) of all Lots; together with (ii) the approval or ratification of a majority of the Board. The owner(s) of the Apartment Site shall not have the right to vote upon any amendment to this Declaration; provided, however, no amendment to this Declaration shall be valid if such amendment has a material and adverse effect upon the Apartment Site unless the owner of the Apartment Site joins in and consents to such amendment. The aforementioned consent of the Owners owning two-thirds (2/3) of the Lots may be evidenced by a writing signed by the required number of Owners or by the affirmative vote of the required number of Owners at any regular or special meeting of the Association called and held in accordance with the Bylaws and evidenced by a certificate of the Secretary or an Assistant Secretary of the Association.

C. Amendments for correction of scrivener's errors or other nonmaterial changes may be made by Declarant alone until the Turnover Date and by the Board thereafter and without the need of consent of the Owners.

D. Notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of Declarant, the Association or of any Institutional Mortgagee under the Tuscany Documents without the specific written approval of such party affected thereby. In addition, and notwithstanding anything to the contrary contained herein, no amendment to this Declaration shall be effective which shall eliminate or modify the provisions of Section 6 of this Article XIV and any such amendment shall be deemed to impair and prejudice the rights of Declarant.

E. A true copy of any amendment to this Declaration shall be sent certified mail by the Association to Declarant and to all Institutional Mortgagees holding a mortgage on any portion of the Property requesting notice. The amendment shall become effective upon the recording amongst the Public Records of the County of said amendment or any Supplemental Declaration to this Declaration which sets forth any amendment or modification to this Declaration.

F. Notwithstanding anything contained herein to the contrary, Declarant may, without the consent of any Owners, file any amendments to this Declaration which may be required by an Institutional Mortgagee for the purpose of satisfying such Institutional Mortgagee's development criteria or such other criteria as may be established by such mortgagee's secondary mortgage market purchasers, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; provided, however, any such Declarant's filed amendments must be in accordance with any applicable

rules, regulations and other requirements promulgated by the United States Department of Housing and Urban Development.

G. Any proposed amendment to the Declaration which would affect the surface water management system (including environmental conservation areas and the water management portions of the Association Property), shall be submitted to the Water Management District for a determination of whether the proposed amendment necessitates a modification of the Water Management District Permit for the Property.

Section 9. DELEGATION. The Association, pursuant to a resolution duly adopted by the Board, shall have the continuing authority to delegate all or any portion of its responsibilities for maintenance, operation and administration, as provided herein, to any managing agency or entity selected by the Board from time to time and whether or not related to Declarant.

Section 10. TERM. This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens and liens contained herein shall run with and bind the Property, and inure to the benefit of Declarant, the Association and the Owners and their respective legal representatives, heirs, successors and assigns for a term of fifty (50) years from the date of recording this Declaration amongst the Public Records of the County, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each unless at least one (1) year prior to the termination of such fifty (50)-year term or any such ten (10)-year extension there is recorded amongst the Public Records of the County an instrument agreeing to terminate this Declaration signed by Owners owning two-thirds (2/3) of the Lots and Institutional Mortgagees holding first mortgages encumbering two-thirds (2/3) of all Lots encumbered by first mortgages held by Institutional Mortgagees, upon which event this Declaration shall be terminated upon the expiration of the fifty (50)-year term or the ten (10)-year extension during which such instrument was recorded.

In the event this Declaration is terminated or the Association ceases to exist for any reason, the Owners shall be jointly and severally responsible for the costs to maintain and shall maintain the Association Property in the manner described herein. This provision may not be amended or deleted without the prior written consent of the County and this provision shall survive the termination of this Declaration and shall run with the Property in perpetuity. Any Owner may, however, petition the Circuit Court for the appointment of a Receiver to manage the affairs of the Association in the event of dissolution of the Association.

Section 11. RIGHTS OF MORTGAGEES.

A. Right to Notice. The Association shall make available for inspection upon request, during normal business hours or under reasonable circumstances, the Tuscany Documents and the books, records and financial statements of the Association to Owners and the holders, insurers or guarantors of any first mortgages encumbering any portion of the Property. In addition, evidence of insurance shall be issued to each Owner and mortgagee holding a mortgage encumbering a Home upon written request to the Association.

B. Rights of Listed Mortgagee. Upon written request to the Association, identifying the name and address of the holder, insurer, or guarantor (such holder, insurer or guarantor is herein referred to as a "Listed Mortgagee") of a mortgage encumbering a Lot and