

Return to: (enclose self-addressed stamped envelope)

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CFN 20160313910

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Pgs 1260 - 1269; (10pgs)



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OR BK 28501 PG 0683
RECORDED 08/12/2016 08:59:32
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0683 - 692; (10pgs)

(Space Reserved for Clerk of Court)

This is a Certified Copy

This instrument prepared by and after recording this instrument should be returned to:

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

NOTE TO RECORDER: THIS INSTRUMENT IS RERECORDED TO REFLECT THAT THIS FIRST SUPPLEMENTAL AND SECOND AMENDMENT IS MADE AS OF THE 4TH DAY OF AUGUST, 2016.

FIRST SUPPLEMENTAL DECLARATION
AND SECOND AMENDMENT TO AMENDED AND RESTATED
DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR TUSCANY

This FIRST SUPPLEMENTAL DECLARATION AND SECOND AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR TUSCANY (the "First Supplemental and Second Amendment") is made as of the 4th day of August, 2016 by ATLANTIC COMMONS ASSOCIATES, LLLP, a Florida limited liability limited partnership (the "Declarant"), whose principal office is located at 1600 Sawgrass Corporate Parkway, Suite 400, Sunrise, Florida 33323, and joined in by TUSCANY PROPERTY OWNERS ASSOCIATION, INC., a Florida not for profit corporation (the "Association"), whose principal office is located at 1600 Sawgrass Corporate Parkway, Suite 400, Sunrise, Florida 33323, and FC ATLANTIC COMMONS PHASE I, LLC, a Florida limited liability company, and FC ATLANTIC COMMONS PHASE II, LLC, a Florida limited liability company (collectively, the "Apartment Site Owners").

WHEREAS, Declarant executed and recorded that certain Amended and Restated Declaration of Covenants, Restrictions and Easements for Tuscany on July 18, 2014, in Official Records Book 26923, at Page 148 of the Public Records of Palm Beach County, Florida (hereinafter referred to as the "Declaration"); and

WHEREAS, pursuant to Article VII, Section 6 of the Declaration, Declarant elected 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, and therefore is recording this First Supplemental and Second Amendment pursuant to Section 6; and

WHEREAS, Article XIV, Section 8 of the Declaration provides that prior to the "Turnover Date", Declarant may amend the Declaration without the requirement of the consent of the Association or the "Owners" so long as such amendment does not materially impair the common plan of development of "Tuscany" (as such terms are defined in the Declaration); and

WHEREAS, Article XIV, Section 8 of the Declaration further provides that the Association shall, upon the request of the Declarant, join in any such amendment; and

WHEREAS, Declarant has requested the Association to join in and execute this First Supplemental and Second Amendment, and the Association has agreed to join and execute this First Supplemental and Second Amendment on behalf of itself and all Owners as their agent and attorney-in-fact; and

WHEREAS, Article XIII, Section 11 of the Declaration provides that Article XIII may not be amended without the joinder and consent to any such amendment by the owner(s) of the Apartment Site, and the Apartment Site Owners are the owners of the Apartment Site on the date hereof; and

WHEREAS, Declarant has requested Apartment Site Owners, as the owner(s) of the Apartment Site to join in and execute this First Supplemental and Second Amendment, and Apartment Site Owners have agreed to join and execute this First Supplemental and Second Amendment; and

WHEREAS, the Turnover Date has not occurred as of the date first above written, the changes to the Declaration set forth in this Amendment do not materially impair the common plan of development of Tuscany and do not materially or adversely affect the Apartment Site; and

WHEREAS, Declarant, along with the joinder and consent of the Association and the Apartment Site Owners, desires to supplement and amend the Declaration in certain respects, all as more fully set forth herein.

NOW, THEREFORE, Declarant hereby declares that the Declaration is hereby supplemented and amended as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference. Unless otherwise defined herein, each capitalized term used herein, but not otherwise defined, shall have the same meaning as defined in the Declaration.

2. Article VII, Section 9 of the Declaration is hereby amended to include the following at the end of said Section 9:

“For the avoidance of any doubt, the expenses of maintaining, repairing and replacing any perimeter fences and walls on or in Association Property abutting a Pod shall be the responsibility of, and assessed to, the Owners of such Pod. In addition, the expenses referenced in this Section 9 shall also include the expenses relating to insurance procured by the Association for the Association Property described in this Section 9. All other Operating Expenses of the Association shall be assessed and payable pursuant to Article VII by all Owners regardless of whether they own a Lot in Pod A or Pod C-2.”

3. As provided in Article VII, Section 6 of the Declaration, Declarant hereby supplements and amends Article VII, Section 6 of the Declaration to add the following at the end thereof:

“Without limiting the options that Declarant is entitled to pursuant to Sections 5 and 6 of this Article VII, Declarant covenants and agrees with the Association and the Owners that during the Guarantee Period, the Individual Lot Assessment imposed on each Owner other than Declarant shall not increase by more than ten percent (10%) each calendar year (the “Guaranteed Assessment”). “Guarantee Period” as used herein shall mean and be defined as the period commencing with the date of recordation of this Declaration and ending upon the sooner to occur of: (i) the Turnover Date; or (ii) delivery of written notice from Declarant to Association of Declarant’s termination of its election, which termination shall only be effective to terminate the Guaranteed Assessment as of the end of the calendar year in which such written notice is provided to the Association, but in no event later than the Turnover Date.

During the Guarantee Period, Declarant shall be obligated to pay the difference (“Deficit”), if any, between: (a) the Operating Expenses (other than those Operating Expenses which are properly the subject of a Special Assessment) incurred by the Association during the Guarantee Period, and (b) the sum of (i) the amounts assessed as Guaranteed Assessments against Owners during the Guarantee Period, and (ii) any other income of the Association. The Deficit, if any, to be paid by Declarant pursuant to this Section 6 shall be determined by examining the entire Guarantee Period, without regard to quarterly, annual or any other accounting or fiscal periods and without regard to intraperiod allocations. In that regard, in the event it is determined at the end of the Guarantee Period that Declarant has previously advanced funds to the Association in excess of the Deficit incurred during the Guarantee Period, Declarant shall be entitled to the immediate repayment from the Association of the amount of funds advanced by Declarant in excess of the Deficit. This guarantee expressly does not include Special Assessments and/or any unpaid Assessments by Owners. Special Assessments may include, but are not limited to, assessments for items such as capital expenditures or amounts needed to supplement repair expenses not covered by insurance.

After the Guarantee Period terminates, each Owner shall be obligated to pay Assessments as set forth in Article VII, Section 1 of the Declaration, and, commencing at such time, Declarant shall be required to pay Assessments on any Lots it owns as provided in Article VII, Section 1.”

4. Article XIII, Section 2 of the Declaration is hereby amended in its entirety to read as follows:

“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”, the “Pod C-1 Collector Road” and the “Atlantic Avenue Entrance Lighting” (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 not be obligated to pay any other Operating Expenses.”

5. The following subsection H. is hereby added to Article XIII, Section 5 of the Declaration:

“H. “Atlantic Avenue Entrance Lighting” means those certain seven (7) cobra light poles located on the portion of Atlantic Avenue that borders the entrance to Tuscany, as shown on the Project Conceptual Plan attached hereto as Exhibit G.”

6. Article XIII, Section 6 of the Declaration is hereby amended to: (a) remove and exclude the Turnpike Wall Improvements from the Shared Facilities, and (b) add the Atlantic Avenue Entrance Lighting as Shared Facilities. Accordingly, Article XIII, Section 6 of the Declaration is hereby amended to read in its entirety as follows:

“Section 6. PROJECT ENTRY ROAD, BRIDGE, APARTMENT SITE COLLECTOR ROAD, THE POD C-1 COLLECTOR ROAD AND THE ATLANTIC AVENUE ENTRANCE LIGHTING. The Project Entry Road, the Bridge, the Apartment Site Collector Road, and the Pod C-1 Collector Road and the Atlantic Avenue Entrance Lighting are collectively referred to herein as the “Shared Facilities.” The Shared Facilities 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.

7. The following is hereby added to the end of Article XIII, Section 10 of the Declaration:

“The Owner of the Apartment Site shall also be solely responsible for the costs to maintain, repair, replace and insure the Turnpike Wall Improvements. In the event that the Owner of the Apartment Site fails to maintain, repair and/or replace the Turnpike Wall Improvements within sixty (60) days following the date that the Owner of the Apartment Site has received written notice from the Association that such maintenance, repair and/or replacement of the Turnpike Wall Improvements is required, then (i) the Association shall have the right, but not the obligation, to perform such maintenance, repair and/or replacement, and (ii) the costs and expenses of such maintenance, repair and/or replacement shall be assessed solely to the Apartment Site by the Association and subject to all collection, lien or foreclosure rights set forth in Article XIII, Section 13 of the Declaration in a manner similar to any other unpaid assessment.”

8. Exhibit G to the Declaration and the Project Conceptual Plan depicted therein are hereby deleted and replaced with Exhibit G attached hereto and the Project Conceptual Plan thereon.

9. Except as modified by this First Supplemental and Second Amendment, the Declaration shall remain in full force and effect in accordance with the terms thereof.

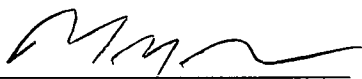
[Signatures and Joinders Appear on Following Pages]

IN WITNESS WHEREOF, this First Supplemental and Second Amendment has been signed by Declarant and joined in by the Association and Apartment Site Owners.

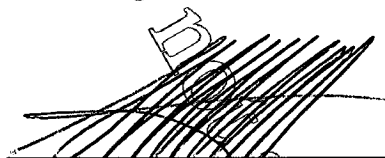
DECLARANT:


ATLANTIC COMMONS ASSOCIATES, LLLP, a Florida limited liability limited partnership

By: Atlantic Commons Corporation, a Florida corporation, its general partner

By: 
Name: Richard M. Norwalk
Title: Vice President

WITNESSES AS TO DECLARANT:


Signature
Print Name Steven Helfman

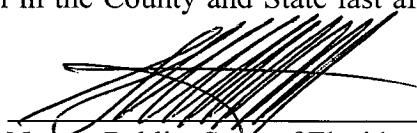

Signature
Print Name Sharolyn Webb

STATE OF FLORIDA

COUNTY OF BROWARD)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Richard M. Norwalk as Vice President of Atlantic Commons Corporation, a Florida corporation, the general partner of Atlantic Commons Associates, LLLP, a Florida limited liability limited partnership, freely and voluntarily under authority duly vested in him by said corporation and partnership, and that the seal affixed thereto is the true corporate seal of said corporation. He is personally known to me.

WITNESS my hand and official seal in the County and State last aforesaid this 4th day of August, 2016.


Notary Public, State of Florida at Large

My Commission Expires:

Typed, Printed or Stamped Name of Notary Public



JOINDER AND CONSENT OF OWNERS OF APARTMENT SITE

The undersigned, FC ATLANTIC COMMONS PHASE I, LLC, a Florida limited liability company, and FC ATLANTIC COMMONS PHASE II, LLC, a Florida limited liability company, being the collective owners of the property comprising the Apartment Site (as defined in the Amended and Restated Declaration of Covenants, Restrictions and Easements for Tuscany), do hereby join in and consent to the amendments to the Amended and Restated Declaration of Covenants, Restrictions and Easements for Tuscany as set forth in the attached First Supplemental and Second Amendment to Amended and Restated Declaration of Covenants, Restrictions and Easements for Tuscany. In that regard, the undersigned further consent to the execution and recording of the First Supplemental and Second Amendment to Amended and Restated Declaration of Covenants, Restrictions and Easements for Tuscany.

Signed, sealed and delivered in the presence of:

FC ATLANTIC COMMONS PHASE I, LLC, a Florida limited liability company

By: FCI Residential Corporation, a Florida corporation, its manager

Michelle Curschellas
Print Name: Michelle Curschellas

By: [Signature]
Name: Juan C. Porro
Title: Vice President

[Signature]
Print Name: Alfonso Treviño

[CORPORATE SEAL]

STATE OF FLORIDA

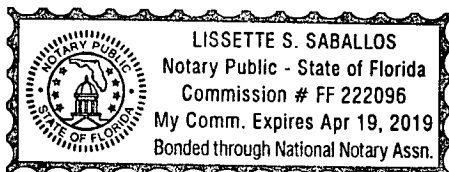
COUNTY OF Miami-Dade

I HEREBY CERTIFY that on this 3rd day of August, 2016, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by [Signature], as Vice President of FCI Residential Corporation, a Florida corporation, the manager of FC ATLANTIC COMMONS PHASE I, LLC, a Florida limited liability company, on behalf of such companies. She/He is personally known to me or produced [Signature] as identification.

[Signature]
Notary Public, State of Florida

Lisette Saballo
Typed, Printed or Stamped Name of Notary Public

My Commission Expires:



JOINDER AND CONSENT OF OWNERS OF APARTMENT SITE
(continued)

Signed, sealed and delivered in
the presence of:

FC ATLANTIC COMMONS PHASE II,
LLC, a Florida limited liability company

By: FCI Residential Corporation, a Florida
corporation, its manager

Michelle Curschella
Print Name: Michelle Curschella

By: *[Signature]*
Name: John C. Palao
Title: Vice President

Alexandro Arellano
Print Name: Alexandro Arellano

[CORPORATE SEAL]

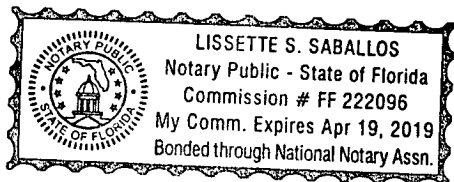
STATE OF FLORIDA)
COUNTY OF Miami-Dade) SS

I HEREBY CERTIFY that on this 3rd day of August, 2016, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by John C. Palao, as Vice President of FCI Residential Corporation, a Florida corporation, the manager of FC ATLANTIC COMMONS PHASE II, LLC, a Florida limited liability company, on behalf of such companies. She/He is personally known to me or produced _____ as identification.

[Signature]
Notary Public, State of Florida

Lissette Saballos
Typed, Printed or Stamped Name of Notary Public

My Commission Expires:



MORTGAGEE'S CONSENT

The undersigned, BANK OF AMERICA, N.A. ("Bank"), as Agent, by virtue of that certain Assignment of Mortgage and other Loan Documents dated August 20, 2014 and recorded August 21, 2014, in Official Records Book 26993, Page 240 and re-recorded in Official Record Book 27016, Page 822, all of the Public Records of Palm Beach County, Florida ("Bank") is the owner and holder of the following loan documents given in connection with the loan evidenced by such loan documents, all as amended and/or modified from time to time (collectively, the "Loan Documents"): (i) that certain Real Estate Mortgage, Assignment and Security Agreement given by Atlantic Commons Associates, LLLP, a Florida limited liability limited partnership ("Borrower") dated August 20, 2014 and recorded August 21, 2014 in Official Record Book 26993, Page 215, of the Public Records of Palm Beach County, Florida, as amended and/or modified from time to time; and (ii) any other collateral loan documents securing the indebtedness referred to in the Loan Documents; which Loan Documents encumber the "Property" as defined in the foregoing Amended and Restated Declaration of Covenants, Restrictions and Easements for Tuscany (the "Declaration"). Bank does hereby join in and consent to the execution and recording of the foregoing First Supplemental and Second Amendment to the Declaration.

Signed, sealed and delivered in the Presence of:

BANK:

BANK OF AMERICA, N.A., a national banking association, as Agent

Nellie D...
Print Name: Nellie D...
Carlos Hernandez
Print Name: Carlos Hernandez

By: *William Campano*
Name: William Campano
Title: Senior Vice President

[CORPORATE SEAL]

STATE OF FLORIDA)
) SS
COUNTY OF MIAMI-DADE)

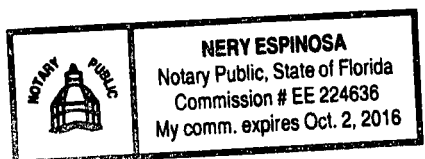
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by William Campano, as SVP of BANK OF AMERICA, N.A., a national banking association, on behalf of the Bank, as Agent, freely and voluntarily under authority duly vested in him/her by said Bank. He/She is personally known to me or produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 8th day of August, 2016.

Nery Espinosa
Notary Public, State of Florida at Large

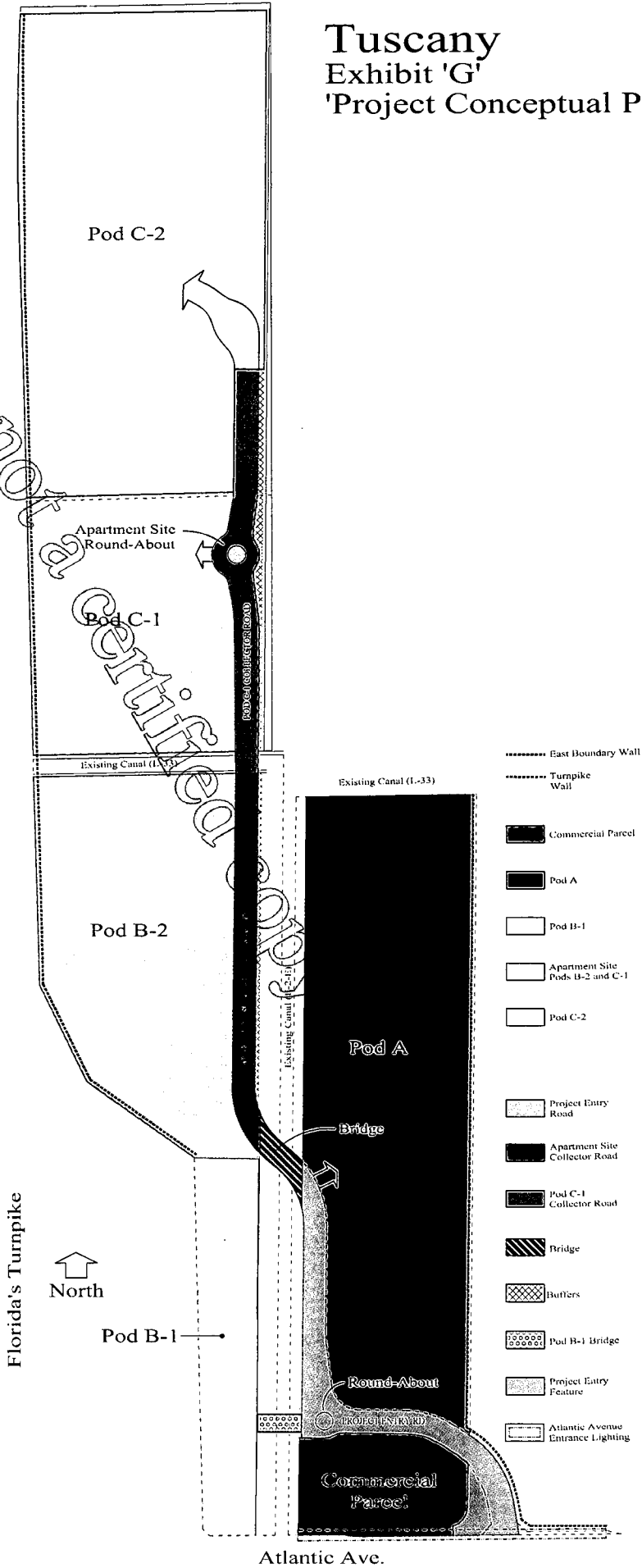
Nery Espinosa
Typed, Printed or Stamped Name of Notary Public

My Commission Expires: 10/2/2016



Tuscany Exhibit 'G' 'Project Conceptual Plan'

This is not a certified plan



- East Boundary Wall
- Turnpike Wall
- Commercial Parcel
- Pod A
- Pod B-1
- Apartment Site Pods B-2 and C-1
- Pod C-2
- ▨ Project Entry Road
- Apartment Site Collector Road
- ▨ Pod C-1 Collector Road
- ▨ Bridge
- ▨ Butlers
- ▨ Pod B-1 Bridge
- ▨ Project Entry Feature
- ▨ Atlantic Avenue Entrance Lighting

Florida's Turnpike



North

Pod B-1 →

Atlantic Ave.