

# Tuscany Bay

## HOA Summary

**This summary is provided for general informational purposes** and is not part of the recorded HOA documents nor a full list of restrictions and covenants. Refer to the full HOA governing docs for a complete understanding of the Homeowners' Association covenants, bylaws, and restrictions. Written approval from the Architectural Review Board may be required prior to making allowed changes to the property.

### Fences

**Materials:** No limitations noted

**Height:** No limitations noted

### Landscaping and Yard Use

**Trees, plants, and landscaping:** No limitations noted

**Garden beds:** No limitations noted

**Swing sets and sports equipment:** Not allowed

**Sheds:** No limitations noted

**Swimming pools:** Allowed - In ground. Not allowed - above ground.

### Parking and Motor Vehicles

**Commercial / Work Vehicles:** Allowed in garage

**Boats, RV's, ATV's, jet skis, etc.:** Allowed in garage

**Trailers:** Allowed in garage

### Animals

**Number:** 3 household pets

**Restrictions:** Cannot exceed 50 lbs Any dog whose breed is noted for its viciousness or ill temper, in particular, the "Pit Bull" or any crossbreeds of such breeds.

**Livestock:** Not allowed

### Rentals

**Long term:** No limitations noted

**Short term:** Lease must be 12 consecutive months

**See recorded HOA documents in pages that follow**



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For informational purposes only; subject to change without notice. Refer to the full covenants and association governing docs for a complete understanding of the Homeowners' Association.

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**TUSCANY BAY**

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- TABLE OF EXHIBITS -  
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<u>Exhibit</u>	<u>Subject Matter</u>	<u>Page First Mentioned</u>
"A"	Land Submitted	1
"B"	Articles of Incorporation of Tuscany Bay Property Owners Association, Inc.	3
"C"	By-Laws of Tuscany Bay Property Owners Association, Inc.	4

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
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**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TUSCANY BAY (the "Declaration")** is made this 17 day of November, 2005, by **KINGS LAKE, LLC**, a Florida limited liability company ("Declarant").

**Article I      Creation of the Community**

**1.1      Purpose and Intent.**

Declarant, as the owner of the real property described in **Exhibit "A"**, intends, by recording of this Declaration, to establish a general plan of development for **Tuscany Bay**, a planned community (the "**Community**"). This Declaration, together with the other Governing Documents described in Section 1.3 of this Declaration, provides for the overall development, administration, maintenance, and preservation of **Tuscany Bay**, and provides a flexible and reasonable procedure for its future expansion. An integral part of the development plan is the creation of **Tuscany Bay Property Owners Association, Inc.** (the "**Association**") to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents.

This document does not and is not intended to create a condominium under Florida law.

**1.2      Binding Effect.**

This Declaration governs the property described in **Exhibit "A"** and any other property submitted to this Declaration in the future pursuant to Article IX of this Declaration. This Declaration shall run with the title to such property and shall bind everyone having any right, title, or interest in any portion of such property, their heirs, successors, successors-in-title, and assigns. Declarant, the Builder, the Association, any Owner (as that term is defined in Article II of this Declaration), and their respective legal representatives, heirs, successors, and assigns, may enforce this Declaration. Each Owner shall automatically be a Member (as that term is defined in Article II of this Declaration) of the Association.

This Declaration is intended to have perpetual duration, but shall be effective for a minimum of thirty (30) years from the date it is recorded, subject to the right of Declarant and the Members to amend it as provided in Article XX of this Declaration. After the initial thirty (30) year period, it shall automatically be extended for successive ten (10) year periods in perpetuity unless, within the twelve (12) month period preceding any extension, an instrument signed by the then Owners of at least seventy-five percent (75%) of the Lots (as that term is defined in Article II of this Declaration) agreeing to terminate this Declaration is recorded. If any provision of this Declaration would be invalid under the Florida Uniform Statutory Rule Against Perpetuities, that provision shall expire ninety (90) years after this Declaration is recorded. This section does not authorize termination of any easement created in this Declaration without the consent of the holder of such easement.



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## 1.3 Governing Documents.

The following chart identifies the documents which govern the Community (as they may be amended from time to time, the "Governing Documents") and describes, in part, the purpose of each. Every Owner and occupant of a Lot (as that term is defined in Article II of this Declaration), and their respective guests, tenants, visitors and invitees, shall comply with the Governing Documents.

<b>Declaration</b> ..... (Recorded)	creates obligations which are binding upon the Association and all present and future owners and occupants of, and others with any interest in, property in the Community
<b>Supplemental Declaration</b> ..... (Recorded)	adds property to the Community; and/or may impose additional obligations or restrictions on such property
<b>Articles of Incorporation</b> ..... (filed with the Secretary of State; initial Articles attached as Exhibit "B")	establish the Association as a not for profit corporation under Florida law
<b>By-Laws</b> ..... (Board adopts; initial By-Laws attached as Exhibit "C")	govern the Association's internal affairs, such as voting rights, elections, meetings and officers
<b>Architectural Guidelines</b> ..... (Declarant, Builder and/or Association may adopt)	establish architectural standards and guidelines for improvements and modifications to Lots, including structures, landscaping, and other items on Lots
<b>Use Restrictions</b> ..... (defined in Section 3.1 of this Declaration)	govern use of property and activities within the Community
<b>Rules and Regulations</b> ..... (Board may adopt)	may be adopted, amended and/or modified by the Board and govern use of property, amenities and activities within the Community
<b>Board Resolutions and Rules</b> ..... (Board may adopt)	establish rules, policies, and procedures for internal governance and Association activities; regulate operation and use of Common Area (as defined in Article II)

Additional covenants, conditions, and restrictions may be imposed on all or any portion of the Community, in which case the more restrictive provisions will be controlling. However, no Person (as that term is defined in Article II of this Declaration) shall record any additional covenants, conditions, or restrictions affecting any portion of the Community without Declarant's

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and Builder's written consents, during the Development and Sale Period (as that term is defined in Article II of this Declaration), or without the Board's (as that term is defined in Article II of this Declaration) written consent thereafter. Any instrument recorded without the necessary consent is void and of no force or effect.

If there are conflicts between Florida law, the Declaration, the Articles and the By-Laws, Florida law, the Declaration, the Articles, and the By-Laws (in that order) shall prevail. If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of any other provisions or any other applications of the provision.

This Declaration shall become effective upon its recordation in the Public Records of Hillsborough County, Florida.

## **Article II      Concepts and Definitions**

### **2.1      Defined Terms.**

The terms used in the Governing Documents are given their natural, commonly accepted definitions, unless otherwise specified in the Governing Documents. When used in this Declaration, the following words shall have the following meanings:

(a)      "**Affiliate**": Any Person which (either directly or indirectly, through one or more intermediaries) controls, is in common control with, or is controlled by, another Person, and any Person that is a director, trustee, officer, employee, independent contractor, shareholder, agent, co-venturer, subsidiary, personal representative, or attorney of any of the foregoing. For the purposes of this definition, the term "control" means the direct or indirect power or authority to direct or cause the direction of an entity's management or policies, whether through the ownership of voting securities, by contract, or otherwise.

(b)      "**Architectural Guidelines**": The architectural, design, and construction guidelines and review procedures as may be adopted pursuant to Article IV of this Declaration, any as they may be amended from time to time.

(c)      "**Architectural Review Board**" or "**ARB**": The committee established, upon delegation or termination of Declarant's authority under Article IV of this Declaration, to review plans and specifications for the construction or modification of improvements and to administer and enforce the architectural controls described in Article IV.

(d)      "**Articles**": The Articles of Incorporation of **Tuscany Bay Property Owners Association, Inc.**, filed with the Secretary of State for the State of Florida, as they may be amended and/or amended and restated from time to time. A copy of the initial Articles is attached to this Declaration as **Exhibit "B"** and its terms are incorporated herein by reference.

(e)      "**Association**": **Tuscany Bay Property Owners Association, Inc.**, a Florida not for profit corporation, its successors or assigns.

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(f) **"Benefited Assessment"**: Assessments charged against a particular Lot or Lots for Association expenses as more particularly described in Article VIII, Section 8.4 of this Declaration.

(g) **"Board of Directors"** or **"Board"**: The body responsible for the general governance and administration of the Association, selected as provided in the By-Laws.

(h) **"Builder"**: Mercedes Homes, Inc., a Florida corporation, or any successor or assign as builder of all or any portion of the Community that is designated as Builder in a recorded instrument which the immediately preceding Builder executes. On all matters, Builder may act through any of its Affiliates.

(i) **"By-Laws"**: The By-Laws of **Tuscany Bay Property Owners Association, Inc.**, as they may be amended and/or amended and restated from time to time. A copy of the initial By-Laws is attached to this Declaration as **Exhibit "C"** and its terms are incorporated herein by reference.

(j) **"Class "B" Control Period"**: The time period during which the Class "B" Member may appoint a majority of the Board members. The Class "B" Control Period shall end when any one of the following occurs:

(i) three (3) months after ninety percent (90%) of the Lots have been conveyed to Owners, other than Builder;

(ii) ten (10) years from the date this Declaration is recorded; or

(iii) earlier, if the Class "B" Member, in its discretion, so determines.

(k) **"Common Area"**: All real and personal property, including easements, which the Association owns, holds, leases, or otherwise has a right to possess or use for the common use and enjoyment of the Owners. Common Area includes, but is not limited to, the Surface Water or Stormwater Management System, the Limited Common Area, private streets, street lighting, sidewalks, and any facilities, improvements, structures, buildings, lighting and/or landscaping that may be located, from time to time, on any portion of the Community that has been designated or identified as Common Area.

(l) **"Common Expenses"**: The actual and estimated expenses: which the Association incurs, or expects to incur, for the general benefit of all Owners; for the operation, maintenance and management of the Association; and for the operation, maintenance, management, repair and replacement of the Common Area. Common Expenses also include, but are not limited to, any reserves the Board finds necessary or appropriate.

(m) **"Common Maintenance Area(s)"**: The Common Area, together with any other area for which the Association has or assumes maintenance or other responsibilities, and as further defined in Article VII, Section 7.2 of this Declaration.

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(n) **"Community" or "Tuscany Bay"**: The real property described in Exhibit "A", together with such additional property as is subjected to this Declaration in accordance with Article IX.

(o) **"Community Name"**: "Tuscany Bay" and/or such other name or names as Declarant shall designate for all or any portion of the Community.

(p) **"Community-Wide Standard"**: The standard of conduct, maintenance, or other activity generally prevailing from time to time throughout the Community, or the minimum standards established pursuant to this Declaration, the Architectural Guidelines, Use Restrictions, Rules and Regulations and/or Board resolutions, whichever of these is the highest standard. The Community-Wide Standard may contain objective elements and/or subjective elements.

(q) **"County"**: Hillsborough County, Florida, a political subdivision of the State of Florida.

(r) **"Declarant"**: Kings Lake, LLC, a Florida limited liability company, or any successor or assign that is designated as Declarant in a recorded instrument which the immediately preceding Declarant executes. On all matters, Declarant may act through any of its Affiliates. Any Person who at any time holds the rights of Declarant hereunder and subsequently transfers or assigns the rights of Declarant to another Person shall be known as a **"Predecessor Declarant"** and, unless otherwise agreed in writing, shall be entitled to the rights of a Predecessor Declarant established in this Declaration. Whether or not specifically stated, a Predecessor Declarant shall be afforded the same protection with respect to matters arising from actions taken during its tenure as Declarant as the Predecessor Declarant would have if it were still Declarant.

(s) **"Development Plan"**: The land use or site plan for the Community approved by Declarant and Builder as it may be amended from time to time, which includes all of the property described in Exhibit "A". Declarant is not obligated to submit property shown on the Development Plan to this Declaration. In addition, Declarant may submit property to this Declaration that is not shown on the Development Plan. Reference should be made to Article X of this Declaration to the respective rights and obligations of Owners and Declarant with respect to the use and Development of the Community.

(t) **"Development and Sale Period"**: The period of time beginning when this Declaration is recorded and ending when the Class "B" Control Period ends.

(u) **"Director"**: A member of the Association's Board of Directors.

(v) **"District"**: Southwest Florida Water Management District, an agency created pursuant to Chapter 373 of the Florida Statutes.

(w) **"Fiscal Year"**: The time period beginning on January 1 through and including December 31 of each calendar year, or such other period or time as may subsequently be determined by the Board.



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(x) **"Governmental Authority"**: Any federal, state, county, municipal or other governmental or quasi-governmental department, entity, authority, agency or instrumentality having or asserting jurisdiction over the Community or a portion thereof.

(y) **"HUD"**: United States Department of Housing and Urban Development.

(z) **"Legal Costs"**: The costs which a Person entitled to reimbursement for "Legal Costs" under any provision of the Governing Documents incurs in pursuing legal action (regardless of whether suit is filed or whether arbitration, mediation, administrative action or court action is taken) to enforce the Governing Documents, including, but not limited to, reasonable attorneys' and paralegals' fees, expert witness fees, and court costs at all tribunal levels, including all trial, mediation, arbitration, judgment enforcement, appellate, collections and bankruptcy proceedings.

(aa) **"Limited Common Area"**: A portion of the Common Area primarily benefiting one or more, but less than all, Lots or Service Areas, as described in Article XIII.

(bb) **"Limited Common Expenses"**: The actual and estimated expenses which the Association incurs, or expects to incur, for the benefit of Owners of Lots benefiting from a Limited Common Area or within a particular Service Area, which may include a reserve for capital repairs and replacements and an administrative charge, as may be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Service Area or Lots.

(cc) **"Lot"**: A portion of the Community, whether improved or unimproved, which may be independently owned and conveyed, and which is improved, or intended by Declarant and/or Builder to be improved, with a single family residential dwelling. The term shall refer to the land, if any, which is part of the Lot as well as any improvements on the Lot. The boundaries of each Lot shall be shown on a Plat; however, in the case of a single building containing multiple dwellings or Residences for independent sale (for example, but not limited to, attached townhome or townhouse units), each dwelling or Residence that may be sold independently shall be considered a separate Lot.

A parcel of land shall be deemed to be a single Lot until such time as a Plat subdivides all or a portion of the parcel. Thereafter, the subdivided portion shall contain the number of Lots shown on the Plat. Any portion not subdivided shall continue to be a single Lot.

Any Owner owning two (2) adjoining Lots may, with the prior written approval of Declarant and Builder during the Development and Sale Period, and the Association thereafter, combine such Lots into a single building site for the purpose of constructing one dwelling and such other improvements as are approved hereunder; however, each of the Lots so combined shall continue to be treated as a separate Lot for purposes of voting and assessment, unless the Plat creating such Lots is revised and recorded, with the prior consent of the Declarant, the Builder or the Association, to combine them into a single Lot. Declarant, the Builder or the Association, as applicable, may grant or withhold their approval to any such combination or plat revision in their sole discretion.

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(dd) **"Member"**: A Person subject to membership in the Association, as described with particularity in Article VI, Section 6.2 of this Declaration. There initially are two (2) membership classes in the Association: Class "A" and Class "B."

(ee) **"Mortgage"**: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot and held by an institutional lender. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage. The term "Institutional Lender" shall include any bank, savings bank, mortgage company, life insurance company, federal or state savings and loan association, a credit union, real estate or realty investment trust, any agency of the Federal government, the Federal Investment Mortgage Association, the Federal Home Loan Mortgage Corporation, or similar governmental or quasi-governmental agencies.

(ff) **"Owner"**: The record title holder to any Lot, but excluding, in all cases, anyone holding an interest merely as security for the performance of an obligation (for example, a Mortgagee). If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. For purposes of this Declaration, "Owner" shall also exclude builders, contractors or any others who purchase a Lot for the purpose of constructing improvements on that Lot for resale.

(gg) **"Permit"**: The Surface Water or Stormwater Management permit issued by the District.

(hh) **"Person"**: An individual, a corporation, a general partnership, a limited partnership, a trustee, a limited liability company, or any other legal entity.

(ii) **"Plat"**: Any plat or map for all or any portion of the Community that has been recorded in the Public Records of Hillsborough County, Florida. As to a particular portion of the Community, the applicable Plat shall be deemed to be the Plat (and/or Plat amendment, revision or similar instrument, as applicable) to which such portion of the Community is subject or which otherwise affects such portion of the Community at the time the applicable determination is to be made.

(jj) **"Regular Assessment"**: Assessments levied on an annual basis to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Article VIII, Section 8.1(a).

(kk) **"Residence"**: Each home, dwelling and/or house, including but not limited to, each detached or attached home and/or house located within the Community and intended for occupancy; and any other buildings, structures, appurtenances or improvements of any kind on a Lot.

(ll) **"Roadways"**: The private streets within the Community as may be depicted on the Plat.

(mm) **"Rules and Regulations"**: The Rules and Regulations as the same may be adopted and/or amended from time to time by the Board or as may be amended from time to time by the Members in accordance with Article XX of this Declaration.

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(nn) **"Service Area"**: A group of Lots designated as a separate Service Area pursuant to this Declaration or a Supplemental Declaration for purposes of sharing Limited Common Areas and/or receiving other benefits or services from the Association which are not provided to all Lots. A Service Area may be comprised of more than one housing type and may include noncontiguous parcels of property. A Lot may be assigned to more than one Service Area. Where the context permits or requires, the term "Service Area" shall also refer to a Service Area Committee established in accordance with the By-Laws to represent the interests of Owners of Lots within a Service Area. Service Area boundaries may be established and modified as provided in Article VII, Section 7.12.

(oo) **"Service Area Assessments"**: Assessments levied against one, some or all of the Lots in a particular Service Area to fund Limited Common Expenses, as described in Article VIII, Section 8.1(b).

(pp) **"Special Assessment"**: Assessments levied against Lots in accordance with Article VIII, Section 8.3 to cover unbudgeted expenses and/or expenses in excess of those budgeted.

(qq) **"Supplemental Declaration"**: A recorded instrument which subjects additional property to this Declaration and/or imposes additional and/or modified restrictions and obligations on the land described in such instrument.

(rr) **"Surface Water or Stormwater Management System"**: A drainage system consisting of swales, inlets, culverts, retention ponds, detention ponds, lakes, outfalls, storm drains and other similar and/or related improvements, and all connecting pipes and easements, which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect quantity and quality of discharges from the system, as permitted pursuant to the Permit issued by the District. The Surface Water or Stormwater Management System facilities include, but are not limited to: all inlets, ditches, swales, culverts, water control structures, retention and detention ponds, lakes, floodplain compensation areas, Wetlands and any associated buffer areas and wetland mitigation areas, to the extent that any such facilities, areas, or conditions apply to the Community.

(ss) **"Use Restrictions"**: The initial use restrictions, governing the use and activities on the Lots and the Common Areas as defined in Article III, Section 3.1 of this Declaration, as they may be changed in accordance with Article III or Article XX or otherwise, as amended from time to time.

(tt) **"VA"**: United States Department of Veterans Affairs.

(uu) **"Wetland(s)"**: Any area within the Community identified or designated as habitat for wetland species of plants and/or animals by the District, or by the County, or by the United States Army Corps of Engineers, or by any other agency of the State of Florida or the United States government, whether or not such area is included within the Surface Water or Stormwater Management System, or is an isolated area that is not connected to the Surface



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Water or Stormwater Management System. For the purposes of this Declaration, the term "Wetland(s)" shall include any area within the Community identified or designated as a Wetland mitigation area, mitigation area, upland conservation area, Wetland Conservation Area, Wetland buffer area and/or buffer areas.

## **2.2 Interpretation of Certain References.**

(a) **Recording.** All references in the Governing Documents to a "recorded" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed, or the filing of a legal instrument, in the public records of the County, or such other place designated as the official location for filing documents affecting title to real estate in the County in order to make them a matter of public record.

(b) **Consent or Approval.** All references in the Governing Documents to "consent" or "approval" shall refer to permission or approval which, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

(c) **Discretion and Determinations.** All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall refer to the sole and absolute power, right and/or discretion to decide or act and, unless otherwise expressly limited in the Governing Documents, a Person entitled to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction.

## **Article III                      Use Restrictions**

### **3.1 General.**

The following Use Restrictions are covenants running with the land, and shall apply to all of the Community until such time as they are amended, modified, changed, repealed, and/or limited pursuant to the procedures set forth in Article III, Section 3.2 of this Declaration. The following Use Restrictions shall bind all Owners and their respective Lots, tenants, family members, occupants, agents, servants, employees, invitees and guests.

(a) **Residential and Related Uses.** Lots shall be used primarily for residential and related purposes (including, without limitation, use as a home office). No business shall be conducted in, on, or from any Lot, except that an occupant using the Residence on a Lot primarily for residential purposes may also conduct business activities on such Lot ancillary to their primary residential use with the prior written consent of the Board, and if the business activity, as determined in the Board's absolute and sole discretion:

(i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure and/or Residence;

(ii) complies with applicable zoning and all other legal requirements and the requirements of this Declaration;

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(iii) does not involve regular visitation of the Lot by clients, customers, suppliers, vendors or any other business invitees; and

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(iv) is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the use and enjoyment of other Lots by the Owner thereof or the security or safety of others within the Community.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (A) such activity is engaged in full or part time; (B) such activity is intended to or does generate a profit; or (C) a license is required.

No Lot shall be rezoned to any classification allowing commercial, institutional, or other non-residential use without the express written consent of the Association, the Builder and Declarant, any of which may withhold such consent in its sole discretion and determination. Notwithstanding anything in this Article III to the contrary, Declarant, the Builder or the Association may enforce this covenant by obtaining an injunction against any unapproved rezoning at the expense of the party pursuing the unapproved rezoning, in addition to and not in limitation of Declarant's, Builder's or the Association's other rights and remedies under this Declaration and/or Florida law.

This Section 3.1 shall not apply to restrict Declarant's, Declarant's Affiliates', Builder's and/or Builder's Affiliates' activities nor shall it restrict the activities of Persons that Declarant or Builder approves with respect to the development, construction, and sale of property in the Community. Such purposes may include, without limitation, an information center and/or a sales office for Builder and/or any real estate broker retained by Declarant or Builder to assist in the sale of property described in Exhibit "A", offices for any property manager retained by the Association, business offices for Declarant or Builder, business offices for the Association, and public facilities. This Section 3.1 also shall not apply to Association activities related to the provision of services or to operating and maintaining the Community, including, without limitation, the Community's recreational and other amenities (if any).

Leasing of a single Lot by the Owner thereof for residential occupancy shall not be considered a "**business**" within the meaning of this subsection; however, no Owner or group of Owners who are Affiliates shall, on their own behalf or through any agent, engage in leasing activity with respect to multiple Lots at the same time.

(b) Leasing. For purposes of this Declaration, "**leasing**" is the regular, exclusive occupancy of a Residence by any Person other than the Owner, for which the Owner receives any consideration or benefit, including, without limitation, a fee, service, gratuity or consideration of any type. The improvements on the Lot may be leased only in its entirety (for example, separate rooms within the same Residence may not be leased separately) and in accordance with the restrictions set forth in this subsection 3.1(b).

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All leases of Lots are subject to the Board's prior written consent. All leases shall be in writing and shall have a term of at least twelve (12) consecutive months. No Owner may rent all and/or any portion of a Lot more than once in any twelve (12) consecutive month time period, even if a tenant defaults on a lease or abandons the Lot before expiration of the lease term. The restrictions on lease terms set forth in this paragraph shall not apply to Lots owned or leased by Declarant, Builder, Declarant's Affiliates, Builder's Affiliates or Persons that Builder approves, in connection with their respective development, construction, and/or sale of property in the Community.

All leases shall include an acknowledgment by the tenant that the tenant and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents and that the tenant has received a copy of the Governing Documents. The Owner of that Lot shall be responsible for providing a copy of the Governing Documents to the tenant prior to execution of the lease and shall monitor enforcement and compliance with the Governing Documents by the tenant.

**In addition to the acknowledgement described above, each lease shall set forth the name, address, and telephone number of the Lot's Owner and of the tenant; the date the tenant's occupancy commences and ends; a description of each motor vehicle owned or operated by the tenant or members of the tenant's household; and a description of all pets to be kept at the Lot.**

If an Owner elects to permit a tenant to sublease during the term of the lease, such sublease shall be subject to the limitations and requirements established in this Declaration to the same extent and effect as the original lease.

Within ten (10) days of a lease being signed for a Lot, the Owner shall notify the Board or the Association's managing agent of the lease and provide a copy of such lease and such additional information the Board and/or the Association's managing agent may reasonably require concerning, but not limited to, the lease, the proposed tenant, members of that tenant's household, and any other occupant of the Lot. An Owner proposing to lease a Lot may obscure the rental and deposit amounts in the copy of the proposed lease submitted to the Board so long as the lease contains the required information pursuant to the Governing Documents. In addition to this subsection 3.1(b), the Board may, from time to time, adopt reasonable rules regulating leasing and subleasing.

No Owner may assign and/or otherwise transfer that Owner's obligations under this Declaration to any tenant. The Association shall have the right to enforce the covenants, conditions, and restrictions set forth in this Declaration against the Owner, the tenant, any member of the tenant's household, or any other occupant of the Lot individually or collectively. The Association shall not be bound by any provision in the lease and/or any other agreement between Owner and that Owner's tenant, including, without limitation, those requiring prior notice or imposing other conditions on the rights of the Association.

The Association shall be deemed a third party beneficiary of all leases of Lots, and shall have the right, but not the obligation, to enforce the terms and conditions of such leases against the tenant and/or the Owner. Notwithstanding the foregoing, the Association's failure to object



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to any term or condition of a lease or any other occupancy arrangement shall not be deemed to be consent or approval of any term or condition of the lease, nor shall the Association have any obligation whatsoever for the performance of any obligation of Owner or tenant contained in the lease or otherwise.

Notwithstanding any condition of any lease to the contrary, each Owner, by acceptance of the deed to a Lot, hereby covenants and agrees with the Association and all other Owners of Lots in the Community, including, but not limited to, Declarant and Builder, that the Owner shall be responsible for any violation of the Governing Documents resulting from the acts or omissions of that Owner's tenant, other occupants of the leased Lot, and any respective guests and/or visitors to the same extent that Owner would be liable for that violation if it had resulted from the acts or omissions of the Owner or a member of the Owner's household, visitors or guests. The Owner's obligations hereunder shall be deemed a guaranty of performance by that Owner's tenant, and the Association shall have the right to take any action or seek any remedy for that tenant's failure and/or refusal to comply with the Governing Documents directly from or against the Owner without first taking such action or obtaining such remedy from or against the tenant.

(c) Occupants Bound. Every Owner shall cause anyone occupying or visiting that Owner's Lot to comply with the Governing Documents and shall be responsible for all violations of the Governing Documents and any damage to the Common Maintenance Areas caused by that Owner and/or anyone occupying or visiting that Owner's Lot, notwithstanding the fact that such Persons also are personally responsible for complying and may be sanctioned for any violation.

(d) Subdivision of a Lot. Lots may not be subdivided or their boundary lines changed except with Declarant's, Builder's or the Board's prior written approval. Declarant or Builder may subdivide, change the boundary lines of, and/or replat any Lot it owns without Board approval. In addition, during the Development and Sale Period, Declarant, Builder, or any Declarant Affiliate may convert Lots they respectively own into Common Area.

(e) Setback Lines. No building, structure, Residence and/or any other improvement shall be erected on any Lot nearer to the front Lot line or nearer to the side street line than the setback line(s) shown on the Plat. Any such building, structure, Residence and/or any other improvement shall face toward the front line of the Lot, except that buildings, structures, Residences and/or any other improvement to be constructed, erected, installed, placed and/or built on corner Lots shall face in the direction designated by the ARB. No building, structure, Residence and/or any other improvement shall be located nearer to any interior side Lot line than the distance determined by applicable building and zoning codes.

(f) Walls, Fences and Hedges. No wall, fence or hedge shall be erected upon any Lot without prior written approval from the ARB. Notwithstanding the foregoing, the Declarant and/or Builder may, in their sole respective discretion and prior to the termination of the Class "B" Control Period, construct a fence and/or wall along the rear boundary line of Lots which abut the perimeter of the Community or which abut any of the retention ponds, Wetlands, or conservation easement areas which are a part of the Surface Water or Stormwater Management System or any other portion of the Common Maintenance Areas.

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(g) Driveways. The total area of all driveways shall be paved by plant-mix concrete. All driveways shall be able to accommodate one (1) full-size automobile. No other parking pad or driveway may be built, installed, constructed, poured and/or created on a Lot without the prior written approval of the ARB.

(h) Temporary Fencing. Declarant and Builder have the right to install temporary barricade fencing.

(i) Garages. No Residence shall be constructed without having at least a garage designed for one (1) automobiles. There shall be no conversion of any garage to a finished space for use as an apartment, living space and/or other living area on any Lot without prior written approval pursuant to Article IV of this Declaration. Use of any garage for storage or any other purposes which preclude its primary use for parking of that number of vehicles for which the garage was originally designed is prohibited within the Community.

(j) Hillsborough County Permits. No buildings, fences, structures, Residences or improvements of any kind shall be erected, built, constructed, placed and/or installed on any Lot or any portion of the Common Area without permit(s) as required by the County or any appropriate governmental or quasi-governmental agency. Such permits are in addition to, and not a replacement for, the ARB approval required pursuant to Article IV of this Declaration.

(k) Lodging; Timeshares. No Lot or any portion of a Lot may be used as a rooming house, hostel, transient housing, motel or hotel. Timesharing, any other arrangements involving more than three (3) ownership interests in a Lot (including, without limitation, ownership by more than three (3) Persons as joint tenants or tenants-in-common), and/or assigning separate use periods of less than twelve (12) consecutive months duration, are strictly prohibited.

(l) Mining or Drilling. There shall be no mining, quarrying and/or drilling for minerals, oil, gas, natural gas or for any other reason undertaken within any portion of the Community. Excepted from the foregoing shall be activities of the Declarant, the Builder or the Association, or any assignee of the Declarant, the Builder or the Association, in dredging the water areas, creating land areas from water areas, or creating, excavating or maintaining drainage or other facilities or easements, and/or the installation of wells or pumps in compliance with applicable governmental requirements, or for sprinkler systems for any portions of the Community.

(m) Signs. No signs, flags (other than those described in the Rules and Regulations), banners, advertisements, billboards, logos, contact information, solicitation or advertising structures or materials of any kind, except (i) one sign of not more than one (1) square foot used to indicate the name of the Owner, (ii) a sign of reasonable size provided by a contractor for security services within ten feet (10') of any entrance to a Residence, and (iii) "For Sale" or "For Rent" signs of customary size for the local real estate market and in compliance with this Section 3.1(m), shall be erected, installed, placed and/or displayed on any Lot. Notwithstanding the foregoing, absolutely no "For Sale" or "For Rent" signs shall be posted at any time on any Lot, on any vehicle parked and/or stored on any Lot, or from the interior of a Residence so as to be visible from the streets or any other Lot within the Community, except for the Lots owned by Builder, during any time when Builder is selling any Lot in the Community in the ordinary

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course of business. To effectuate the intent of the foregoing restriction, any Owner wishing to post a "For Sale" or "For Rent" sign shall first request the consent of the Association, which shall not be unreasonably withheld if the Builder is no longer selling any Lot in the Community in the ordinary course of business. Notwithstanding anything to the contrary in this Declaration, the Declarant specifically reserves the right for Builder, Builder's successors, nominees and assigns, and the Association, to place and maintain any and all signs, flags, banners, advertisements, billboards, logos, contact information, solicitation or advertising structure or materials of any kind that Builder or the Association may deem necessary, in connection with the construction, marketing, sales and/or rental of Lots and identifying or informational signs anywhere in the Community.

(n) Parking. Parking of any vehicles on streets, sidewalks or thoroughfares, except temporarily during loading and unloading is strictly prohibited within the Community with the intention to have a more aesthetic streetscape and safer vehicle access. Any vehicle parked in violation of this or any other regulation may be towed by the Association at the sole expense of the owner of that vehicle, if it remains in violation of such rules for a period of twenty-four (24) consecutive hours or for forty-eight (48) consecutive hours in any seven (7) day time period. The Association shall not be liable to the owner of such vehicle for trespass, conversion, theft, burglary or otherwise, nor guilty of any criminal or civil act by reason of such towing and neither that vehicle's removal nor failure of the owner of such vehicle to receive any notice of said violation shall be grounds for relief of any kind.

A parking area may be provided for visitors, invitees and/or guests coming into and/or onto the Community. Such a parking area shall be part of the Common Area, and the Board may, from time to time, adopt reasonable rules regarding the use and/or access to this parking area. If such a parking area is located within the Community, all visitors, invitees, guests and/or agents of any Owner shall park their vehicles only in that parking area or in the driveway located on that Owner's Lot.

No vehicles of any kind or type shall ever be parked, stored, driven and/or operated on any lawn, landscaped portion of any Lot, landscaped portion of the Common Area, or any other portion of the Community which is not specifically designed for the operation and/or parking of vehicles.

All of the following must be parked and/or stored in an enclosed garage, so that they will not be visible from any street and also not visible from any other Lot within the Community: recreational vehicles (RV's); campers, mobile homes, motor homes, all-terrain vehicles (ATV's); buses; dune buggies; scooters; go-carts; golf carts; mini-motos; mini-motorcycles; boats; personal watercraft of any kind; jet skis; trailers of any kind; mopeds; and motorized skateboards

In addition to all other enforcement tools available to the Association, in accordance with Section 715.07 of the Florida Statutes, as it may be amended and/or renumbered from time to time, the Association, Builder and Declarant shall have the right to tow, or have towed, from the Community any vehicle in violation of this Section 3.1(n) at the vehicle owner's expense. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any civil or criminal act by reason of such towing, and neither its removal nor



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failure of the owner of such vehicle to receive any notice of the violation shall be grounds for relief of any kind.

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(o) Commercial Vehicles. Parking of any commercial vehicle and/or equipment, mobile homes, buses, campers and similar recreational vehicles, golf carts, boats and other watercraft, jet skis, dune buggies, all-terrain vehicles (ATV's), scooters, go-carts, mini-motorcycles, trailers of any kind, stored vehicles, and/or inoperable vehicles in places other than enclosed garages, except temporarily during loading and unloading is prohibited within the Community; however, construction, service, and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service and/or to make a delivery to a Lot or the Common Area. For purposes of this Section 3.1(o), "commercial vehicles" shall be defined as any vehicle with any writing, logo, advertisement, contact information, and/or signage of any kind on its exterior and/or displayed from the interior of the vehicle so as to be seen from the street and/or any adjacent Lot and/or vehicles primarily used, designed, or registered for a commercial purpose, but shall not include official vehicles owned by governmental or quasi-governmental bodies including, without limitation, Hillsborough County Sheriff and Florida Highway Patrol vehicles.

Any vehicle, commercial vehicle, mobile homes, buses, campers, trailers of any kind, boat and/or recreational equipment parked in violation of these or other regulations contained herein may be towed by the Association at the sole expense of the owner of such vehicle, mobile home, bus, camper, trailer of any kind, boat, commercial vehicle and/or recreational equipment, if it remains in violation of such rules for a period of twenty-four (24) consecutive hours or for forty-eight (48) nonconsecutive hours in any seven (7) day time period. The Association shall not be liable to the owner of such vehicle, mobile home, bus, camper, trailer of any kind, boat, commercial vehicle and/or recreational equipment for trespass, conversion or otherwise, nor guilty of any civil or criminal act by reason of such towing, and neither its removal nor failure of the owner of such vehicle, mobile home, bus, camper, trailer of any kind, boat, commercial vehicle and/or recreational equipment to receive any notice of said violation shall be grounds for relief of any kind.

(p) Vehicle Repairs. No maintenance and/or repairs shall be performed on any vehicles of any kind upon any portion of the Community except in an emergency situation which shall be determined in the sole discretion of the Board. Notwithstanding the foregoing, all repairs to disabled or inoperable vehicles within the Community must be completed within twelve (12) hours from the vehicle's immobilization otherwise the vehicle must be immediately removed from the Community. If the vehicle is not removed from the Community, the Association, Builder and Declarant shall have the right to tow, or have the vehicle towed, from the Community at the vehicle owner's expense, in addition to all other enforcement tools available to the Association. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any civil or criminal act by reason of such towing, and neither its removal nor failure of the owner of such vehicle to receive any notice of the violation shall be grounds for relief of any kind.

(q) Pets. No animals, livestock, reptiles, pets or poultry of any kind may be kept in and/or on any Lot or brought into the Community by any Owner and/or that Owner's family members, tenants, guests, occupants, invitees, agents, and/or employees other than domesticated



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dogs, domesticated cats, fish and/or caged birds, all of which are usually and commonly kept as household pets (collectively "pets"). These pets may only be kept, maintained and/or allowed to reside in and/or on a Lot provided that such pets are: (a) in full compliance with the applicable law, ordinances and the Governing Documents; (b) under the control of the applicable Owner and/or that Owner's family members, tenants, guests, occupants, invitees, agents or employees at all times when the pet is on any Common Area and/or the pet is outside of that Owner's dwelling or Residence; (c) not left unattended on any balconies, terraces, lanais, garages and/or covered patios; (d) quiet, inoffensive and generally not a nuisance to any other Owners and/or occupants of another Lot; (e) not kept or raised for commercial purposes; and (f) not being boarded in exchange for compensation of any type. The Lot Owner and/or that Owner's family members, tenants, guests, occupants, invitees, agents and/or employees shall promptly pick up all solid waste material from their pet and dispose of that solid waste material appropriately. No solid waste material from their pet shall remain on any Common Area or any Common Maintenance Area. Each Lot Owner and/or any family members, tenants, guests, occupants, invitees, agents and/or employees agree to fully pay for, and/or reimburse the Association for, all extermination costs necessitated by any pet. The Declarant, the Builder, the Association, the Board and the Association's property management company shall not be liable for any personal injury, death and/or property damage resulting from a violation of the restrictions on pets and animals. Any Owner, and/or that Owner's family member, tenant, guest, occupant, invitee, agent and/or employee committing any violation of the restrictions on pets and animals shall fully indemnify and hold harmless the Declarant, the Builder, the Association, the Board, each other Lot Owner and the Association's property management company in such regard. A violation of any rule or restriction on pets and animals shall entitle the Association to all of the Association's rights and remedies, including, but not limited to, the right to fine the applicable Owner and/or to require any pet or animal to be permanently removed from the Community. No Owner, and/or that Owner's family members, tenants, guests, occupants, invitees, agents and/or employees may keep more than three (3) of the permitted pets in and/or on any Lot. No single pet shall exceed fifty (50) pounds in weight. Notwithstanding the foregoing, no dogs of the American Pit Bull Terrier breed shall be kept anywhere in the Community, including any Lot and any garage. No reptiles, insects, livestock, poultry, swine or wildlife of any type shall be kept anywhere in the Community, including any Lot and any garage.

(r) Odors. Any activity which emits foul, disturbing, noxious and/or obnoxious odors beyond any Lot is strictly prohibited within the Community (this Section 3.1(r) shall not preclude normal and customary use of power tools, lawn mowers and other yard maintenance equipment during reasonable hours).

(s) Noise. Any activity that creates an unreasonable level of noise and/or other conditions which tend, in the Board's sole judgment, to unreasonably disturb the peace or threaten the safety of the Owners or occupants of other Lots is strictly prohibited within the Community (this Section 3.1(s) shall not preclude normal and customary use of power tools, lawn mowers and other yard maintenance equipment during reasonable hours). There shall be no use or discharge of any radio, stereo, home entertainment system, television, loudspeaker, horn, whistle, bell, and/or other sound device of any type so as to be an unreasonable source of disturbance or annoyance, as the Board may determine, to Owners or occupants of other Lots, except alarm devices used exclusively for security purposes.

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Any activity which generates a level of noise audible to occupants of other Lots while inside their dwellings (including, without limitation, lawn maintenance, recreational activities, games, parties, music, and other activities conducted outdoors or on porches or decks) between the hours of 11:00 p.m. and 8:00 a.m. is prohibited within the Community, except that during the construction of Residences on the Lots, Declarant, Builder and other related personnel may commence construction activities within the Community at 7:00 a.m.

(t) Compliance with laws. Any activity which violates local, state, or federal laws, ordinances, rules or regulations is prohibited within the Community; however, the Board shall have no obligation to take enforcement action in the event of any violation. The Association, the Board, Builder and Declarant are not empowered, nor have they been created, to act as an entity which enforces or ensures compliance with the laws of the United States, State of Florida, the County or any other jurisdiction. The Association, the Board, Builder and Declarant are not empowered, nor have they been created, to act as an entity which prevents tortious activities.

(u) Prohibited Activities. Pursuit of hobbies and/or other activities which tend to cause an unclean, unhealthy, unsafe, untidy and/or noisy condition to exist outside of enclosed structures on any Lot are prohibited within the Community. Any noxious or offensive activity which in the sole determination of the Board tends to cause embarrassment, discomfort, annoyance, disturbance and/or nuisance to any Person using the Common Area and/or to the Owners or occupants of other Lots are prohibited in the Community.

(v) Disposal of Trash and Yard Waste. There shall be no outside burning of trash, leaves, rubbish, lawn material, debris, and/or other materials within the Community, except during the normal course of construction by Declarant, Builder, or by a Person authorized to do so by Declarant or Builder while constructing a Residence on a Lot. There shall be no dumping of grass clippings, leaves, any other landscaping debris, motor oil, gasoline, any petroleum products, fertilizers, and/or any other potentially hazardous or toxic substances in any drainage ditch, stream, pond, lake, drainage facility, drainage structure and/or elsewhere within the Community, except that fertilizers may be applied to landscaping on Lots provided appropriate care is taken to minimize runoff.

Rubbish, trash, and/or garbage shall not accumulate on any Lot. All rubbish, trash and/or garbage is to be placed only in containers approved by the Association; all garbage and trash containers must be placed in walled-in areas, screened areas or landscaped areas so that they are not visible from any adjoining Lot or any street within the Community, except on the day(s) specifically designated for waste collection. No oil tanks and/or bottled gas tanks shall be allowed without the express written consent of the Board of Directors of the Association. Adequate landscaping or other screening shall be installed and maintained by each Owner to conceal any approved oil and/or bottled gas tanks. All landscaping or other screening must first be approved by the Association.

(w) Drainage. There shall be no obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant, Builder and the Association shall have such right; however, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without that Owner's consent.

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No Owner may construct, install, place, build, erect and/or maintain any building, Residence, dwelling, structure, and/or improvement of any kind in and/or on any portion of the Community that has been identified as Wetlands and/or any drainage easement contained in the approved Permit and the recorded Plat of the Community, unless prior written approval is obtained from the Association and the District's Tampa Regulation Department (and during the Class "B" Control Period, also from the Declarant and Builder).

No Owner may undertake and/or perform any activity in and/or on any portion of the Community that has been identified as Wetlands and/or any drainage easement contained in the approved Permit and recorded Plat of the Community, unless prior written approval is received from the Association and the District's Tampa Regulation Department (and during the Class "B" Control Period, also from the Declarant and Builder).

At the time of construction, placement, installation, erection, building and/or maintenance of a Residence, structure, dwelling and/or improvement of any kind, each Owner shall comply with the construction plans for the Surface Water or Stormwater Management System approved and on file with the District, in addition to all other requirements of the Governing Documents.

If a Lot abuts or adjoins any portion of the Community which has been identified, either in the approved Permit or the recorded Plat, as a wet detention pond, each Owner of such a Lot shall not remove any native vegetation (including, but not limited to, cattails) that becomes and/or is established within any wet detention pond abutting or adjoining that Owner's Lot. "Removal of native vegetation" includes, but is not limited, to the application of herbicide, cutting, mowing, trimming, excavation, weeding, edging and the introduction of grass carp. If an Owner of such a Lot has questions regarding authorized activities within, abutting, adjoining, about and/or adjacent to any wet detention ponds, that Owner can contact the District's Tampa Service Office, Surface Water Regulation Manager.

(x) Firearms. Discharge of firearms of any type is prohibited within the Community; provided, no Association Director, officer, employee or managing agent shall have any duty to become physically involved to stop or prevent any such discharge. For purposes of this Section 3.1(x), "Firearms" shall include, but are not limited to the following: handguns, rifles, shotguns, BB guns, paintball guns and any other type of weapon that expels a projectile of any type.

(y) Fuel Storage. No gasoline, heating, propane or other fuels of any type shall be stored or kept in and/or on any Lot, except for a reasonable amount of fuel for emergency purposes and for the operation of lawn mowers, pool, spa and hot tub heaters, and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. The amount of fuel that is reasonable shall be in the sole discretion of the Board. This Section 3.1(y) shall not apply to any underground fuel tank authorized pursuant to Article IV of the Declaration.

(z) Yard Sales. There shall be no yard sale, garage sale, moving sale, rummage sale, or similar activity, except on such dates as the Board may designate for such activities to be conducted on a Community-wide basis.



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(aa) Wildlife. There shall be no capturing, trapping, and/or killing of wildlife within the Community (other than by or on behalf of the Association, Declarant, Builder or by a representative or designee of a Governmental Authority) except in circumstances posing an imminent threat to the safety of any Person in the Community.

Any activities by any Person other than Declarant, Builder and/or their respective designees which materially disturb and/or destroy the vegetation, wildlife, wetlands, and/or air quality within the Community shall be prohibited within the Community (except as may be approved pursuant to Article IV of the Declaration). Any activity which uses excessive amounts of water and/or which results in unreasonable levels of sound or light pollution is prohibited within the Community.

(bb) Certain Vehicles on Common Area. Operation, use, driving and/or riding of any of the following is strictly prohibited on any sidewalks, streets, pathways, landscaping, lawn, grass, Common Areas, Common Maintenance Areas, and/or any trails maintained by the Association: dune buggies, mopeds, scooters, mini-motos, go-carts, golf carts, mini-motorcycles, all-terrain vehicles and motorized skateboards (collectively, the "prohibited vehicles"). If any Person is found in violation of this Section 3.1(bb), the prohibited vehicle operated, used, driven and/or ridden may, in the sole discretion of the Board, be banned and/or removed from the Community.

(cc) Modification of Lots. There shall be no construction, erection, placement, installation, and/or modification of any structure or thing, permanently or temporarily, on the any portion of a Lot, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IV of the Declaration. This shall include, without limitation, all signs, fences, basketball hoops, swing sets and similar sports and play equipment; children's play houses; jungle gyms; clothes hanging devices; garbage cans; woodpiles; swimming pools, spas, and hot tubs; air conditioners; tanks; solar energy devices; docks, piers and similar structures; landscaping, hedges, walls, mailboxes, dog runs, animal pens, and/or fences of any kind; and satellite television receivers, satellite television dishes and antennas of any type, except that:

(i) an antenna

(A) designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one (1) meter or less in diameter; or

(B) designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one (1) meter or less in diameter or diagonal measurement; or

(C) designed to receive television broadcast signals;

(collectively a "**Permitted Antenna**") shall be permitted in rear yards of Lots or, if necessary to receive an acceptable quality signal, in side yards or front yards, in that order of preference; provided, unless prohibited by applicable law, any installation in the front yard of a Lot shall be subject to review and approval pursuant to Article IV of this Declaration, which review shall be completed within seven (7) days of receipt of the application for review. The Architectural

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Guidelines or the ARB may impose requirements as to location and the manner of installation and screening in order to minimize obtrusiveness, as viewed from streets and adjacent Lots, so long as such requirements are not inconsistent with applicable law. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, satellite or other communication system for the benefit of all or a portion of the Community, should any master system or systems be utilized by the Association and require such exterior apparatus;

(ii) a reasonable number of holiday and religious lights and decorations may be displayed on a Lot for up to thirty (30) days prior to a publicly observed holiday or religious observance and up to fifteen (15) days thereafter without prior approval, subject to the right of the Association, Builder or Declarant to require removal of any such decorations which it deems, in its sole discretion, to: (i) be excessive in number, size, or brightness, relative to other Lots in the area; or (ii) draw excessive attention and/or traffic to that Lot; or (iii) unreasonably interfere with the use and enjoyment of adjacent Common Area and/or adjacent Lots; or (iv) cause a dangerous condition to exist. The Association shall have the right, upon ten (10) days' prior written notice, to enter upon any Lot and summarily remove exterior lights and/or decorations displayed in violation of this provision. The Association, the Board, and the individuals removing the lights and decorations, shall not be liable to the Owner for trespass, conversion, burglary, theft or any civil or criminal action and/or damages of any kind, except willful and intentional misdeeds and gross negligence.

(iii) one portable, removable United States flag not exceeding fifty-four inches by seventy-two inches (54" x 72") in size or one portable, removable official flag of the State of Florida not exceeding fifty-four inches by seventy-two inches (54" x 72") in size may be respectfully displayed on a Lot at a location approved pursuant to Article IV of this Declaration.

(iv) portable, removable official flags representing the United States Army, United States Navy, United States Air Force, United States Marine Corps or the United States Coast Guard, not larger than fifty-four inches by seventy-two inches (54" x 72") may be displayed in a respectful manner only on the following designated days: Armed Forces Day, Memorial Day, Flag Day, Independence Day and Veterans Day.

(v) picketing, protest marches, sit-in demonstrations, protest speeches, and/or other forms of public protest or conduct, including, without limitation, displaying signs or placards on the Lot or any vehicle, apparatus or otherwise within public view in the Community, which tends to vilify, ridicule, denigrate, or impugn the character of Declarant, the Builder, the Association, their respective officers, directors or employees, or any Owner or resident of the Community. Each Owner, by acceptance of the deed to any Lot, shall be deemed to have knowingly and voluntarily accepted the foregoing prohibitions as reasonable limitations on that Owner's right of free speech under either the United States or State of Florida Constitutions.

(dd) Solicitation. There shall be no door-to-door solicitation of any kind within the Community.

(ee) Square Footage. No Residence shall be constructed containing less than one thousand one hundred (1,100) square feet exclusive of porches and garages. Exceptions to this

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limitation may be granted by the Architectural Review Board ("ARB") if, in the opinion of the ARB, the proposed Residence would be in keeping with the overall concept of the Community.

(ff) Mailboxes. No changes shall be made to the original style, design and/or color of any mailbox and/or post. A Lot may have a mailbox which will be supplied by the Declarant or Builder at the expense of each Owner. If a mailbox is located on a Lot, that Lot Owner shall maintain the mailbox in a good state of repair at all times.

(gg) Tree Removal. Removal of any trees (other than by Declarant and/or Builder) within the Community in excess of six inches (6") in diameter at a height of three feet (3') above ground level shall require the prior approval of the Architectural Review Board. No trees may be removed from any Lot until final building plans have been approved by the Architectural Review Board (other than by Declarant and/or Builder).

(hh) Laundry. The outside drying or hanging of laundry is expressly prohibited on any and all portions of the Community, unless prior written approval of the Association or the ARB has been obtained and unless such activity is fully screened from view. No drying or hanging area shall be permitted to be visible from the streets or from any other Lot within the Community.

(ii) Ornamentation and Statuaries. Ornaments, statuaries and lawn decorations or any size or type, including but not limited to, bird feeders, statues, fountains, gazing balls, gnomes, planters and signs, may not be installed or placed without the prior written approval of the ARB. Because ornaments, statuaries and/or lawn decorations become an integral part of the overall landscape aesthetics of the Community, no such items may be installed, placed, planted and/or located on any Lot without first obtaining the written approval of the ARB. To implement this requirement, the ARB may adopt and amend, from time to time, standards for any ornaments, statuary and/or lawn decorations.

Notwithstanding the foregoing, in no event shall any ornament, statuary and/or lawn decoration exceed three feet (3') in height, which shall include any pedestal, base and/or stand. In addition, there shall be no more than a total of three (3) ornaments, statuaries and/or lawn decorations permitted on any Lot.

(jj) Sheds and Trailers. No trailers of any kind, tents, shacks, sheds, storage facility, barns, tree houses, out buildings or temporary structures of any kind shall be parked, built, constructed, placed, installed and/or erected on any Lot or any portion of the Common Area at any time without the prior written approval of the Association or the Board of Directors.

(kk) Pools. No aboveground swimming pool and/or spa shall be constructed, installed, erected and/or placed on any Lot or any portion of the Common Area, except small, removable and inflatable pools specifically designed for children under seven (7) years of age are acceptable on any Lot. No swimming pool and/or spa shall be located in the front or side yard of any Lot, and the proposed location of any swimming pool and/or spa must first be submitted to and approved by the ARB.

(ll) Prohibited Conditions. The following shall be prohibited within the Community:



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(i) Plants, animals, devices and/or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unsafe, unpleasant, and/or of a nature as may diminish or destroy the enjoyment of the Community by any other Owner.

(ii) Structures, equipment, or other items on the exterior portions of a Lot which have become rusty, dilapidated and/or otherwise fallen into disrepair, in the sole opinion of the Board.

(iii) Sprinkler and/or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, Wetlands, drainage structures, drainage facilities, ditches, canals, or other ground or surface waters within the Community, except that Declarant, Builder, their respective designees, and/or the Association shall have the right to draw water from such sources.

(mm) Hurricane Shutters. No security bar system may be installed on the interior and/or exterior of any window or door of any residence or dwelling on a Lot within the Community, unless first submitted to, and approved in writing by, the ARB. No hurricane shutters or similar protective covering for the windows of a residence or dwelling on a Lot within the Community may be installed unless first submitted to, and approved in writing by, the ARB. All hurricane shutters or similar protective window coverings shall be aesthetically pleasing and harmonious with the Governing Documents, the Architectural Guidelines, the architectural scheme of Tuscany Bay and/or the architectural pattern of Tuscany Bay.

(nn) Rules and Regulations. In addition to the Use Restrictions contained in this Section 3.1, the Board may, from time to time, adopt Rules and Regulations for the Community, including but not limited to, use of Common Areas, maintenance of Common Areas, operation of Common Areas, use of Common Maintenance Areas, maintenance of Common Maintenance Areas, operation of Common Maintenance Areas, access and use of any recreational facilities, access and use of any amenities, Owners, guests, visitors, tenants, contractors, use of Lots, appearance of Lots and maintenance of Lots. When adopted, the Rules and Regulations are covenants running with the land and shall apply to all of the Community until such time as they are amended, modified, changed, repealed, and/or limited pursuant to the procedures set forth in Article III, Section 3.2(d) of this Declaration. The Rules and Regulations shall bind all Owners and their respective Lots, tenants, family members, occupants, agents, servants, employees, invitees and guests.

### 3.2 Amendment of Use Restrictions.

(a) The Declarant may change, amend, modify, cancel, limit, create exceptions to, or add to the Use Restrictions set forth in Article III, Section 3.1 of this Declaration at anytime during the Class "B" Control Period with the prior written approval of Builder. A vote of the Association's membership shall not be required during the Class "B" Control Period. Upon the expiration of the Class "B" Control Period, the Use Restrictions may be changed in accordance with the provisions of Article XX of this Declaration, or as otherwise provided in this Declaration. The Board shall send the Association's Members notice of any proposed change at least fourteen (14) days before the meeting at which such change will be considered.



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(b) Any change in the Use Restrictions shall be recorded in the Public Records of the County. The Board shall send a copy of the new or changed Use Restriction(s) to each Owner. The change shall become effective upon recording in the Public Records of the County. An Owner or Mortgagee may request a copy of the Use Restrictions then in effect at the time of the request pursuant to and in compliance with the inspection and photocopying requirements of the Association's official records contained in the Articles and/or By-Laws of the Association.

(c) In the event of a conflict between the Architectural Guidelines, the Rules and Regulations, and the Use Restrictions, the Use Restrictions shall control. In the event of a conflict between the Architectural Guidelines and the Rules and Regulations, the Architectural Guidelines shall control.

(d) The adoption and recording procedures described in this Section 3.2 are specifically not intended to apply to the Rules and Regulations or any other reasonable rules and regulations, which the Board alone may adopt by resolution, or other administrative rules, unless the Board chooses, in its sole discretion, to submit to such procedures; provided all such Rules and Regulations shall be subject to Declarant's and Builder's prior written consents during the Development and Sale Period. The Board shall send the Association's Members notice of any proposed change to the Rules and Regulations at least fourteen (14) days before the meeting at which such change will be considered.

(e) Except as may be set forth in this Declaration (either initially or by amendment), the Association's actions with respect to Use Restrictions, the Rules and Regulations and any other rules adopted by the Board must comply with the following:

(i) Activities Within Residences. The Association shall not interfere with activities carried on within a Residence, except that it may prohibit activities not normally associated with attached, single-family residential property, and it may restrict or prohibit activities that create monetary costs for the Association or other Owners, that increase the Association's insurance rates or premiums, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, that create undesirable odors noticeable to persons outside the dwelling, that are an unreasonable source of annoyance, or that violates a provision of the Governing Documents.

(ii) Alienation. Except for initial lot sales by Builder and the leasing restrictions set forth in Section 3.1(b) hereof, the Association shall not prohibit leasing or transfer of any Lot. The Association may impose additional restrictions on leasing, and may require that Owners use Association-approved lease forms (or include specific lease terms). The Association may, in the sole discretion of the Board, adopt and impose a reasonable review or administrative fee on the lease or transfer of any Lot.

(iii) Abridging Existing Rights. The Association may not require an Owner to remove or dispose of personal property that was in or on a Lot in compliance with previous rules. This exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to subsequent Owners who take title to that Lot after adoption of the rule.

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(iv) Right to Develop. The Association may not impede Declarant's and/or Builder's right to develop, market, or sell the property described on Exhibit "A".

3.3 Owners' Acknowledgment and Notice to Purchasers.

Each Owner, by accepting a deed to a Lot, acknowledges and agrees that the use, enjoyment, and marketability of that Owner's Lot is limited and affected by the terms of the Governing Documents, including the Use Restrictions, the Rules and Regulations and any other Board rules, which may change or be amended from time to time as provided in this Declaration. Copies of the current Use Restrictions, the Rules and Regulations and Board rules may be obtained from the Association in accord with the provisions regarding the Association's official records contained in the Articles and/or By-Laws.

**Article IV    Architecture and Landscaping**

4.1 General.

Except for work done by or on behalf of Declarant, any Declarant Affiliate, Builder, any Builder Affiliate, or the Association, no building, improvement, Residence, landscaping, structure or thing of any type shall be constructed, built, placed, planted, erected, and/or installed upon any Lot, and no improvements of any kind or any other work (which includes, without limitation, staking, clearing, excavation, grading, site work, exterior alterations, exterior additions, any modifications, repair, replacement, utility installation, paving, planting of landscaping and removal of landscaping) shall take place within the Community, except in compliance with this Article IV and the Architectural Guidelines (if any).

Any Owner may remodel, paint, or redecorate the interior of any structure on that Owner's Lot without first obtaining the approval as required by this Article IV. However, modifications to the interior of screened porches, patios, lanais and any other portions of a Lot, Residence, structure or improvement of any kind that are visible from the street or any other Lot are subject to obtaining the prior approval pursuant to this Article IV.

Improvements, structures, Residences, landscaping and buildings shall be constructed, erected, placed, planted, installed and/or built only by qualified Persons acceptable to the Builder or the ARB. Owners or the agents of Owners shall be solely responsible for obtaining all permits and approvals from the County, the City and any other governmental agencies.

Notwithstanding anything to the contrary, this Article IV shall not apply to Declarant's, Builder's, and/or their respective Affiliates' activities during the Class "B" Control Period. Further, this Article IV shall not apply to any activities of the Association.

4.2 Architectural Review.

(a) Architectural Review Board. All portions of the Community, including all Lots, are subject to architectural review by the Association's Architectural Review Board ("ARB"), except Lots owned by Builder during the Class "B" Control Period. During the Class "B" Control Period, Builder shall be entitled to appoint all members of the ARB, none of whom shall be required to be Members of the Association. Builder's rights under this Article IV may be

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assigned and shall continue until the earlier of the following events: (i) five (5) years after termination of the Development and Sale Period; (ii) termination of the Class "B" Control Period; or (iii) Builder terminates its rights in a recorded instrument. Upon the termination or relinquishment of Builder's rights under this Article IV, the members of the ARB shall be determined and selected by the Board.

When appointed, the ARB shall consist of at least three (3), but not more than five (5), persons as may be determined from time to time by the Board. Decisions of the ARB shall be made by majority vote or action. No member of the ARB shall be entitled to compensation for services performed, but the members of the ARB may be reimbursed by the Association for any out-of-pocket expenses incurred as a result of the performance of that member's service on the ARB, and such reimbursement shall be Common Expenses. Members of the ARB need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals, who may be compensated in such manner and amount, if any, as the Board may establish. The ARB members shall serve at the pleasure of the Board and may be removed and/or replaced for any reason, with or without cause, in the Board's sole discretion.

(b) Fees; Assistance. The ARB may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may include, without limitation, the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals employed or with whom it contracts. The Board may include the compensation of such Persons in the Association's annual operating budget as Common Expenses.

#### 4.3 Guidelines and Procedures.

(a) Architectural Guidelines. Builder may, but is not obligated to, prepare and make available the initial Architectural Guidelines, which may contain general provisions applicable to all of the Community as well as specific provisions that may vary according to location within the Community or product type. The Architectural Guidelines are intended to provide guidance to Owners regarding matters of particular concern. The Architectural Guidelines are not the exclusive basis for any decision, and compliance with the Architectural Guidelines does not guarantee an application's approval or even improve the chances that an application is approved.

If Architectural Guidelines have been established, Builder shall have sole and absolute and full authority to amend the Architectural Guidelines, from time to time, during the Development and Sale Period. Builder's right to amend shall continue unless Builder delegates the power to amend the Architectural Guidelines to the ARB. Upon termination or delegation to the ARB of Builder's right to amend, the Board may amend the Architectural Guidelines, subject to Builder's veto right until the termination of the Class "B" Control Period.

If Amendments to the Architectural Guidelines are duly adopted, such Amendments shall be prospective only. Such Amendments shall not require modifications to, or removal of, structures, improvements, landscaping, buildings, Residences and any other item previously approved once the approved construction or modification has begun. However, any application for, and the actual, work, improvements, structures, landscaping, Residences, buildings or any



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other item requiring approval from the ARB submitted after the adoption of any Amendment to the Architectural Guidelines must comply with the Architectural Guidelines and any Amendments to the Architectural Guidelines.

In Builder's absolute discretion, the Architectural Guidelines may be recorded in the Public Records of the County, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

(b) Procedures. No construction activities of any kind and/or any of the activities described in Article IV, Section 4.1 of this Declaration may begin until an application is submitted to and approved in writing by the ARB. The application must be in writing and be accompanied by plans and specifications and any other information the ARB, in its discretion, may require. Plans and specifications shall show, as applicable, site layout, structural design, building plans, boundary surveys, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and any other features of proposed construction or other activity as the ARB deems relevant or helpful in its sole discretion.

In reviewing each submission, the ARB may consider any factors it deems relevant, including, without limitation, harmony of the proposed design with surrounding structures and environment, the architectural plan of the Community, the architectural scheme of the Community and/or the original design of the Community. Decisions of the ARB may be based on purely aesthetic considerations. Each Owner acknowledges and agrees that aesthetic determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular work and/or improvements. The ARB shall have the discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations are not subject to review so long as they are made in good faith and in accordance with the required procedures.

The ARB shall make a determination on each application within forty-five (45) days after receipt of a completed application and all other information the ARB requires. The ARB may permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until forty-five (45) days after the final, required submission stage. The ARB may: (i) approve the application, with or without conditions; (ii) approve a portion of the application, with or without conditions, and disapprove other portions; or (iii) disapprove the application. The ARB shall notify the applicant in writing of a final determination on any application. In the case of disapproval, the ARB may, but shall not be obligated to, specify the reasons for the disapproval and/or offer suggestions for curing any problems, objections or reasons for the disapproval.

After the initial forty-five (45) day period has elapsed, if the Owner has not received notice of the ARB's decision on that Owner's application, the Owner may make a second written request for approval of the plans previously submitted which shall clearly be marked "**Second Request**". If the ARB then fails to respond within seven (7) business days from receipt of the Second Request, approval of that application shall be deemed to have been automatically given. However, no approval (or improvement governed by such approval), whether expressly granted or deemed granted, shall be inconsistent with the Architectural Guidelines or other Governing

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Documents unless a written variance has been granted pursuant to Article IV, Section 4.5 of this Declaration.

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Notwithstanding anything to the contrary in this Declaration, the Articles or the By-Laws, An Owner must send any such "Second Request" via the United States Postal Service, certified mail, return receipt requested, or by commercial overnight carrier that obtains a signed receipt upon delivery. A "Second Request" shall be deemed made, and the seven (7) business day time period shall commence running, on the date of the ARB's actual receipt of that "Second Request", as evidenced by the signature on the return receipt provided by the United States Postal Service or in the records of the overnight carrier, as applicable.

As part of any approval, the ARB may require that construction, landscaping, structures, improvements and/or other items on an application in accordance with the approved plans commence and be completed within a specified time period. If such actions do not commence within the required period, the approval from the ARB shall automatically terminate and that Owner must reapply for ARB approval before commencing any construction, activities or work within the scope of this Article IV. Once commenced, such construction, activities or work must be diligently pursued to completion by the Owner. All elements of the approved work, construction, activities and/or plans shall, at a minimum, be completed within twelve (12) months from the date of commencement unless a shorter or longer period is otherwise specified in the notice of approval from the ARB or the Architectural Guidelines, or unless the ARB, in its sole and absolute discretion, grants an extension in writing. If approved work or activities are not completed within the required time, it shall be in violation of this Article IV, and shall be subject to enforcement action by the Association, Builder or Declarant.

Any approvals granted under this Article IV are conditioned upon completion of all elements of the approved work or activities, unless written approval to modify any application has been obtained from the ARB before any modifications are performed.

Declarant, Builder or the ARB, by resolution, may exempt certain work, construction or activities from the application and approval requirements of this Article, provided such work or activities are undertaken in strict compliance with the requirements of such a resolution.

#### 4.4 No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this Article IV will change from time to time, and that opinions on aesthetic matters, as well as interpretation and application of this Declaration or the Architectural Guidelines, are subjective and may vary accordingly. In addition, each Owner acknowledges that it may not always be feasible to identify objectionable features until work is completed, at which time, it may or may not be unreasonable to require that such objectionable features be changed, modified, altered, corrected and/or removed. However, this shall not prevent the ARB from refusing to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the ARB's right to withhold approval of any similar applications, plans, construction, work, activities, and/or any other matters subsequently and/or additionally submitted for approval.

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4.5 Variances.

The ARB may authorize variances from compliance with the Architectural Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, aesthetic considerations and/or environmental considerations require or permit. No variance shall (a) be effective unless in writing; (b) be contrary or conflict with the provisions of this Declaration; or (c) prevent the ARB from denying a variance in other circumstances. All requested variances approved by the ARB must also receive prior written approval from the Board. If a requested variance approved by the ARB occurs during the Development and Sale Period, the prior written approval of the Board, Builder and Declarant is required.

4.6 Release of Liability.

This Article IV establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Community. Review and approval of any application pursuant to this Article IV may be based on purely aesthetic considerations. The ARB, the Association, the Board, Builder, Builder's Affiliates, Declarant and Declarant's Affiliates are not responsible for: the structural integrity or soundness of approved construction or modifications; for compliance with building codes and other governmental requirements; or for ensuring that every Residence is of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners.

Each Owner knowingly and voluntarily releases Builder, Builder's Affiliates, Declarant, Declarant's Affiliates, any Predecessor Declarant, the Association, its officers, the Board, the ARB, the Association's managing agent, any committee, or any member, shareholder, officer, or director of any of the foregoing for the approval of, disapproval of, or failure to approve or disapprove any plans; soil conditions, drainage, or other general site work related to approved work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any Owner and/or their contractor and/or their subcontractors, employees, or agents; and/or any injury, damages, death, or loss arising out of the manner or quality or other circumstances of approved construction or activities on or modifications to any Lot. In all such matters or claims related therefrom, the Association shall defend, indemnify and hold harmless the Builder, Builder's Affiliates, the Declarant, Declarant's Affiliates, any Predecessor Declarant, the Board, the ARB, the members, directors, officers and shareholders of each, and the Association officers as provided in the Articles.

4.7 Enforcement.

Any construction, alteration, modification, landscaping, building, installation improvement, and/or other work done in violation of this Article IV or the Architectural Guidelines is subject to an enforcement action pursuant to Article VII, Section 7.4 of this Declaration. Any act of any contractor, subcontractor, agent, employee, servant, family member, guest, tenant and/or invitee of an Owner shall be deemed to be an act done by or on behalf of that Owner.



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Article V Maintenance and Repair

5.1 Maintenance of Lots

(a) Each Owner must maintain that Owner's Lot, including, without limitation, all structures, buildings, dwellings, landscaping, fencing, the Residence, all landscaping and all other improvements comprising, in and/or on that Lot, in a manner consistent with the Governing Documents, the Community-Wide Standard, any other applicable covenants, the architectural scheme of Tuscany Bay and the architectural design of Tuscany Bay. This maintenance responsibility and obligation of each Owner is to the extent that such maintenance responsibility and obligation has not been assigned to or expressly assumed by the Association pursuant to this Declaration (including Article V, Section 5.1(e)), any Supplemental Declaration and/or any additional covenants applicable to that Owner's Lot. In addition, each Owner shall maintain the sidewalk and all landscaping located between the boundary of such Owner's Lot and the back-of-curb of any roadway lying adjacent to the boundary of that Owner's Lot, unless the Association assumes all or part of such maintenance responsibility, however, that Owner shall be responsible for all such maintenance not specifically assumed by the Association.

For any interior wall common to and between two (2) dwellings or Residences, each Owner shall be responsible and obligated to maintain the portion of that interior wall that is within the dwelling or Residence of that Owner. If any such interior wall common to and between two (2) dwellings or Residences is damaged or otherwise needs to be repaired, the responsibility to maintain, repair and replace that interior wall is as follows: (1) if the damage occurs on only one (1) side of that interior wall, the Owner of the dwelling or Residence where the damage is located shall be responsible and obligated to maintain, repair and/or replace that interior wall at that Owner's sole expense, subject to the provisions of this Section 5.1(a); (2) if the damage occurs on both sides of that interior wall, each Owner shall jointly and severally be responsible and obligated to maintain, repair and/or replace the damaged portions of that interior wall, and each Owner shall be jointly and severally liable for the costs of any such maintenance, repair and/or replacement, subject to the provisions of this Section 5.1(a); and (3) if the damage is to any pipes, lines, wires, conduits, cable, and/or any other apparatus which serve more than one (1) Lot and is located within any such interior wall, the Association shall be responsible for any maintenance, repair and/or replacement, subject to the conditions and provisions of this Section 5.1(a) and Article V, Section 5.1(e) of this Declaration.

Each Owner's maintenance responsibility as set forth in this Section 5.1(a) is mandatory and shall be complied with in its entirety even if an Owner does not reside on and/or occupy that Owner's Lot. *Each Owner shall immediately repair and/or replace, at that Owner's sole expense, any property whether upon that Owner's Lot, any other Lot, any portion of the Common Maintenance Areas and/or any portion of the Common Area, which repair and/or replacement is required or made necessary because of any negligence, neglect, omission, commission, willful omission and/or the willful act of that Owner and/or any member of such Owner's family or household, any tenant, any guest, any agent, any employee, any contractor, any occupant of that Owner's Lot and/or any invitee of that Owner.*

(b) Failure of Owner to Repair: The Association shall have the right but not the obligation to provide for the repair, replacement, cleaning and/or maintenance on any Lot, and any improvement, structure, landscaping or building thereon, in the event of default, failure



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and/or refusal by any Owner in the duties hereby imposed. Prior to the Association performing repair, replacement, cleaning and/or maintenance on any Lot that is the responsibility of the Owner, the Board shall determine that repair, replacement, cleaning and/or maintenance is needed and that such repair, replacement, cleaning and/or maintenance is the responsibility of the Owner. Except in emergency situations, prior to commencement by the Association of any repair, replacement, cleaning and/or maintenance on any Lot that is the responsibility of the Owner, the Board must furnish written notice to the Owner to the effect that, unless specified repairs, replacement, cleaning and/or maintenance are commenced within ten (10) days from the date of the notice, and thereafter diligently pursued to completion, the Association may perform, or have performed, the repairs, replacement, cleaning and/or maintenance. Upon the Owner's failure and/or refusal to properly and timely commence and pursue diligently to completion the required repairs, replacement, cleaning and/or maintenance, the Association and its agents, employees, servants and/or contractors shall have the right to enter in and/or upon the Lot to perform the repairs, replacement, cleaning and/or maintenance specified in the notice to that Owner. For example and not as a limitation, the Association shall have the right to clean, remove debris, remove trash, paint, resurface, repair, replace and provide maintenance to any and all exterior surfaces, roofs, chimneys, gutters, downspouts, pools, pool enclosures, fences, walls, driveways, walks, sidewalks, parking areas, landscaping (including but not limited to mowing, edging, trimming, watering, fertilizing and caring for trees, shrubs, grass, repairing sprinkler systems and providing shoreline maintenance), swales, berms and other drainage improvements. Neither the Declarant, Builder nor the Association, nor any of their respective Directors, officers, employees, contractors, servants, invitees and/or agents, shall have any liability to the Owner or to any tenant, occupant, invitee and/or guest of any Lot for any trespass, damages and/or injury to property or person(s) for any action taken hereunder unless caused by gross negligence or intentional wrongdoing. Any such entry upon that Owner's Lot shall not be considered a trespass and/or the basis for any civil action or claim, and any corrections, repairs, replacements, cleaning, alterations, modifications and/or removals from that Lot shall not be considered criminal activity of any kind, including but not limited to, theft, trespass, criminal mischief, and burglary.

(c) Assessment of Cost: The cost of any work performed by or at the request of the Association pursuant to Article V, Section 5.1(b) of this Declaration shall be assessed as an Benefited Assessment against the Owner of the Lot upon which such work is done. This Benefited Assessment shall be imposed against that Owner and that Owner's Lot even if that Owner is not then occupying or residing upon that Lot. The Owner of the Lot upon which such work is done pursuant to Article V, Section 5.1(b) of this Declaration voluntarily agrees to indemnify and hold the Association, its Directors, officers, shareholders, Members, employees and agents harmless for any claim, suit, damages, or action of any kind for personal injury, property damage, and/or death that occurs to the Association's contractors, employees, vendors, agents and/or servants that occurs while performing such work on that Owner's Lot.

(d) Access: In order to perform the repairs, replacement, cleaning and/or maintenance authorized by Article V, Section 5.1(b) of this Declaration, the Association and/or the Association's agents, servants, employees, vendors and/or contractors may enter upon any Lot during reasonable hours on any day except Sundays and nationally recognized legal holidays, except that in an emergency situation, as determined by the Board in its sole and absolute discretion, entry may be made at any time. An Owner of any Lot may grant permission

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for entry onto that Owner's Lot on any day, including Sundays and nationally recognized legal holidays.

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(e) The Association shall be responsible for the following on each Lot:

(1) Maintenance of all lawns and landscaping installed on each Lot as part of the initial construction on that Lot, including but not limited to, mowing, weeding, fertilizing, watering, pruning, replacing, controlling insects and controlling disease. Specifically excluded from the Association's responsibility shall be any lawns and/or landscaping located in and/or on the rear of any Lot within any enclosed courtyard, enclosed patio, enclosed lanai, fenced area and/or any other area of the Lot not readily accessible from outside the dwelling or Residence. However, the Association retains the right, but shall not be obligated, to provide such maintenance to lawns and/or landscaping located in the rear of the Lot within an enclosed structure, fenced area and/or any other portion of that Lot not readily accessible;

(2) Painting of all exterior painted portions of any dwelling or Residence, including but not limited to, any garage, garage door, exterior doors, exterior shutters, fascia on the dwelling or Residence and any fence erected, installed, built or placed along the boundaries of a Lot ("Boundary Fences");

(3) Cleaning, repair, maintenance, and replacement of the roofs of dwellings, Residences and garages, including shingles and roof decking. However, the Association shall not be responsible for the cleaning, repair, maintenance and/or replacement of any roof trusses located on any Lot;

(4) Pressure cleaning of front sidewalks, exterior front steps, roofs, exterior walls of all dwellings, exterior walls of all Residences and the exterior walls of garages;

(5) Repair, maintenance and replacement of any Boundary Fence and/or any other perimeters on a Lot originally installed by the Builder;

(6) Operation, maintenance, repair, cleaning and replacement of any irrigation equipment, including but not limited to, sprinklers, sprinkler heads, pumps, wells, water lines and timing clocks, serving each Lot. However, the Association shall have no responsibility, liability and/or obligation for the operation, maintenance, repair, cleaning and/or replacement of any sprinklers or any other irrigation equipment of any type on a Lot installed by or at the request of an Owner or any other occupant of that Lot.

(7) Treatment(s) for termite and other wood destroying organisms of all exterior walls and foundations of dwellings, Residences and garages. However, the Association, the Board, Declarant and Builder shall not have any responsibility and/or liability if any such treatment proves to be ineffective;

(8) Repair, maintenance and replacement of any damaged garage door and exterior door hardware. However, the Association shall not be responsible for any repair, maintenance and/or replacement of any automatic garage door opener. The Association may, but is not obligated to, repair, maintain and/or replace any automatic garage door opener, however

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the cost of that repair, maintenance and/or replacement shall be assessed against the Owner of that Lot as a Benefited Assessment;

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(9) Repair, maintenance and replacement of any lamp post(s) and mail kiosk that were originally installed by the Builder, whether on any Lot or in any portion of the Common Area; and

(10) Maintenance, repair and replacement of the following which serve more than one (1) Lot: all pipes; lines; wires; conduits; cable; and/or any other apparatus.

The Association's costs and expense for its responsibilities and obligations pursuant to Sections 5.1(e)(1) through and including Section 5.1(e)(10) shall be part of the Common Expenses. The maintenance, cleaning, repair and replacement of all other items, structures, buildings, improvements and portions of a Lot shall be the complete responsibility and obligation of the respective Owner of that Lot, including, without limitation, maintenance, repair, cleaning and/or replacement, as necessary, of all pipes, lines, wires, conduits, cables and/or any other apparatus which serve only that Lot. Each Owner shall also be responsible and obligated for the maintenance, cleaning, repair and replacement of all lawns and landscaping located on that Lot within an enclosed courtyard, an enclosed patio, an enclosed lanai, a fenced area and/or any other area of that Lot that is not readily accessible from outside the dwelling or Residence located on that Lot.

The Association shall also not be responsible for any maintenance, repairs, cleaning and/or replacement to any of the following on any portion of a Lot: glass surfaces; windows; sliding doors; anything contained within any dwelling, Residence and/or garage; anything contained within any courtyard, patio, lanai and/or fenced area; and any improvements, structures, buildings, landscaping, modifications and/or improvements of any kind that were added or made to any Lot after the first conveyance or transfer of that Lot by the Builder.

The Association shall also not be responsible for any maintenance, repairs, cleaning, upkeep and/or replacement for any property, structures, Residences, dwellings, landscaping, buildings and/or improvements of any type if such maintenance, repairs, cleaning, upkeep and/or replacement arises from, is related to, is a result of and/or becomes necessary due to the negligence, neglect, omissions, commissions, willful acts and/or willful omissions of an Owner and/or any family member, guest, tenant, vendor, contractor, subcontractor, invitee, occupant, employee or agent of that Owner. All such maintenance, repairs, cleaning, upkeep and/or replacement will be at that Owner's sole expense and shall be that Owner's responsibility and obligation. If that Owner does not complete to the satisfaction of the Association all such maintenance, repairs, cleaning, upkeep and/or replacement, the Association shall be entitled to use any enforcement tools available to it, including but not limited to, those contained in Article V and Article VII of this Declaration.

(f) Declarant and/or Builder may have constructed or installed drainage swales, drainage lines, drainage facilities and/or other equipment on a Lot for the purpose of managing and/or containing the flow of excess surface water, if any, found upon such Lot from time to time. Except to the extent that such responsibility is assigned to or assumed by the Association pursuant to this Declaration or any Supplemental Declaration, each Lot Owner,



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including builders, shall be responsible for the maintenance, operation, and repair of such drainage swale(s), drainage lines, and other equipment on that Owner's Lot. Maintenance, operation, and repair shall mean and include, without limitation, the exercise of practices, such as mowing and erosion repair, which allow the drainage swales, drainage lines, and other equipment to provide drainage, water storage, conveyance, or other stormwater management capabilities as permitted by the District. Filling, excavation, construction of fences, or otherwise obstructing the surface water flow in or into the drainage swales, drainage lines, and/or other equipment is prohibited. No alteration of a drainage swale, drainage lines, and/or any other equipment shall be authorized and any damage to any drainage swale, drainage lines, and/or other equipment, whether caused by natural or human-induced phenomena, shall be repaired and the drainage swale, drainage lines and/or other equipment returned to its former condition as soon as possible by the Owner(s) of the Lot upon which the drainage swale, drainage lines, and/or other equipment is located.

(g) Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance includes responsibility for repair and replacement. The maintenance, repair, replacement, and other obligations of the Association and Owner specified in this Declaration shall be performed as and when necessary, in the determination of the Board, in the sole discretion of the Board, to maintain the Community at a level consistent with the Community-Wide Standard.

#### 5.2 Insurance on Lots; Casualty Losses.

Each Owner shall maintain property insurance providing fire, hurricane and extended coverage at full replacement cost, less a reasonable deductible, on all insurable improvements located on that Owner's Lot. In addition, every Owner shall be obligated to obtain and maintain at all times insurance covering consequential damages to any other Lot and/or the Common Area due to occurrences originating within that Owner's Lot caused by the negligence of that Owner, the failure of the Owner to maintain the Lot, the refusal of the Owner to maintain the Lot and any other casualty within that Lot which causes damage to any Lot and/or the Common Area, to the extent such coverage is not provided by policies maintained by the Association or to the extent insurable losses may result in the Owner's liability for payment of deductibles under the Association's policies. Such insurance policy or policies shall name the Association as an additional insured, if the Association so requires. If the Board so requests, each Owner shall file with the Association a copy of the individual insurance policy or policies covering that Owner's Lot.

Each Owner shall provide a certificate evidencing such insurance to the Association within ten (10) days of a written request from the Board. In addition, if the Board so requests, each Owner shall file with the Association a copy of the individual policy or policies covering that Owner's Lot. Each Owner shall promptly notify the Board in writing in the event such policy on that Owner's Lot is canceled, lapses, expires or is no longer in effect for any reason. In the event that an Owner fails to obtain any insurance which the Owner is required to obtain hereunder, or permits such insurance to lapse or expire, the Association may, but shall not be obligated to, obtain such insurance on behalf of that Owner and assess the costs of such insurance to that Owner and that Owner's Lot as a Benefited Assessment.

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Upon Board resolution and at least sixty (60) days' prior written notice to each Owner of an affected Lot, the Association may elect, but shall have no obligation, to obtain a blanket insurance policy providing property insurance for all structures, dwellings or Residences on all Lots within the Community, or on all Lots within any Service Area. The costs and expenses of any such blanket insurance policy obtained by the Association shall be part of the Common Expenses (if provided to all Lots in the Community) or Service Area Assessments (if provided to a Service Area). Inclusion of the expense(s) of such blanket insurance in the Association's budget provided to each Owner shall be adequate notice. In such event, the Owners of the affected Lots shall be relieved of their insurance responsibility only to the extent such responsibility is assumed by the Association. Any such insurance policy obtained by the Association may exclude fixtures, appliances, finishes, wall coverings, window treatments, floor coverings, contents, personal property and/or improvements to the interior of the structures on the Lot and/or any exterior improvements made by an Owner or occupant of that Lot. Following such an assumption of insurance responsibility, the Association may, at any time, upon not less than thirty (30) days' written notice to each Owner, discontinue such blanket insurance coverage and in such event each Owner shall immediately obtain, in that Owner's name and at that Owner's expense, the insurance coverage for such Owner's Lot and structures, improvements, dwelling, and Residence thereon. In such event, Owner shall name the Association as an additional insured on that Owner's insurance coverage, and each Owner is bound by the provisions of this Section 5.2.

Regardless of whether the insurance required hereunder is obtained by the Association or an Owner, in the event of a casualty loss, the Association shall be entitled to file a claim against such insurance for the cost of any repair and/or reconstruction to the Lot and improvements, structures, Residence and dwelling thereon, and the Owner shall pay the amount of any deductible and shall be responsible for any deficiency in the insurance proceeds. The Association shall be entitled to adjust with each Owner's insurance provider the amount of any proceeds payable to the Association and the Owner thereunder, based upon the amount necessary to enable the Owner and the Association each to repair and replace those portions of the Lot and improvements thereon which are their respective responsibilities.

If an Owner is required to obtain insurance hereunder and such insurance is insufficient, the Association shall be relieved of any obligation to maintain, repair, and replace damaged and/or destroyed portions of that Owner's Lot, to the extent of such insufficiency. Alternatively, the Association may perform any repairs and/or replacement, whether the responsibility of the Association or the Owner, and assess all costs of such repairs and/or replacement to the Owner and the Owner's Lot as a Benefited Assessment pursuant to Article VIII, Section 8.4 of this Declaration.

In the event an improvement, structure, dwelling or Residence on a Lot is damaged and/or destroyed by casualty, hazard or other loss, then, within a reasonable period of time after such incident, not to exceed sixty (60) days, the Owner of that Lot shall either commence to rebuild, replace and/or repair the damaged improvement, structure, dwelling and/or Residence, and diligently continue such rebuilding, replacement and/or repairing activities to completion; provided, however, that in the event of a hurricane or other significant weather event which requires additional time to adjust an insurance claim, the Owner may have until six (6) months after such casualty to commence to rebuild, replace and/or repair the damaged improvement,

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structure, dwelling and/or Residence, so long as the Owner is diligently pursuing the settlement of any such claim with the Owner's insurer. A destroyed improvement, structure, dwelling or Residence shall only be replaced with an improvement, structure, dwelling or Residence of an identical size, type, model and elevation as that destroyed, subject to the then-applicable building codes, and must first be submitted and approved by the ARB pursuant to the provisions of Article IV of this Declaration. If the Association has assumed responsibility for insurance coverage hereunder, the Association shall, subject to the limitations above, be responsible for repair and/or reconstruction of those portions of the improvement, structure, dwelling or Residence on the Lot for which the Association has expressly, in writing, assumed insurance responsibility.

## **Article VI    The Association and its Members**

### **6.1    Function of Association.**

The Association is the entity responsible for management, maintenance, operation, and control of the Common Area and Common Maintenance Areas. The Association also has primary responsibility for administering and enforcing the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Florida law. The Board shall be responsible for management and operation of the Association and may contract with a property management company for such purposes. The Board is appointed or elected as provided in the By-Laws.

### **6.2    Membership.**

Each Owner (including Declarant and Builder) shall be a Member of the Association. Membership in the Association shall be appurtenant to and inseparable from the Lot giving rise to such membership, and any transfer of record title to a Lot shall operate automatically to transfer to the new Owner the membership in the Association appurtenant to that Lot. The interest, if any, of a Member in the funds and assets of the Association may not be assigned, hypothecated or transferred in any manner except as an appurtenance to the Member's Lot. Membership in the Association is mandatory for all Owners and membership shall continue, as to each Owner, until such time as such Owner sells, transfers or conveys that Owner's fee simple interest in the Lot upon which the membership of that Owner is based or until such fee simple interest is transferred or conveyed by operation of law, at which time the membership in the Association will automatically pass to the grantee or transferee. Notwithstanding the foregoing, the Association shall not be obligated to recognize such a transfer or conveyance of membership until such time as the Association receives a true copy of the recorded deed or other written instrument establishing the transfer or conveyance of ownership of the Lot, and it shall be the responsibility of the new Owner of that Lot to provide such true copy of said deed or other written instrument to the Association.

The Association initially shall have two (2) classes of membership, Class "A" and Class "B." Class "A" Members are all Owners except Declarant and Builder. The Class "B" Members shall be Declarant and the Builder. The Class "B" membership shall terminate upon the earlier of: (i) three (3) months after ninety percent (90%) of the Lots have been conveyed to Owners



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other than the Builder; (ii) ten (10) years from the date of recording this Declaration; or (iii) earlier, if the Class "B" Member, in its sole and absolute discretion, so determines.

Notwithstanding any provision to the contrary, there shall be only one (1) Class "A" membership per Lot. If a Lot is owned by more than one (1) Person, each co-Owner shares the privileges of the membership, subject to reasonable Board regulation and the voting restrictions described in Article VI, Section 6.3(a) of this Declaration and in the By-Laws. Co-Owners are jointly and severally obligated to perform the responsibilities of an Owner. The membership rights of an Owner that is not a natural person (for example, a corporation, a partnership, a limited liability company, a limited liability partnership and a trust) may be exercised by any officer, director, partner, trustee, or individual that the Owner designates from time to time in a written instrument provided to the Secretary of the Association's Board.

### 6.3 Voting.

(a) Class "A". Class "A" Members have one (1) equal vote for each Lot they own, except that there shall be no more than one (1) vote per Lot. No vote shall be exercised for any property which is exempt from assessment under Article VIII, Section 8.8 of this Declaration.

In any situation where there is more than one (1) Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association's Board in writing prior to the vote being taken. Absent such a determination, the vote for that Lot shall be suspended and shall not be counted for any purpose if more than one (1) Person seeks to exercise that vote.

(b) Class "B". The Class "B" Members, during the Class "B" Control Period, shall have five (5) votes for each Lot owned by that Class "B" Member. Until the Class "B" Control Period terminates, the Declarant or Declarant's express assigns or successors in interest may appoint all of the Board members, as specified in the Articles and/or By-Laws, and Declarant and/or Builder may exercise the additional rights specified throughout the Governing Documents.

Upon termination of the Class "B" membership, Declarant and Builder shall automatically be converted to Class "A" membership, and Declarant shall be entitled to one (1) Class "A" vote for each Lot that Declarant continues to own in the Community, and Builder shall be entitled to one (1) Class "A" vote for each Lot that Builder continues to own in the Community.

## **Article VII Association Powers and Responsibilities; Private Streets**

### 7.1 Acceptance and Control of Common Areas.

(a) The Association may acquire, hold, mortgage or otherwise encumber, lease (as landlord or tenant), operate, and dispose of tangible and intangible personal property and real property, subject to the provisions of Article XVI, Section 16.9 of this Declaration. The Association may enter into leases, licenses, or operating agreements, for payment or no payment, as the Board deems appropriate, permitting use of portions of the Common Area by others.

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(b) Declarant, Builder or their respective designees may, from time to time, transfer to the Association, and the Association shall accept, personal property and/or fee title or other property interests in any improved or unimproved real property included within the Community described in Exhibit "A". Subject to the provisions of Article XVI, Section 16.9 of this Declaration, upon Declarant's or Builder's request, the Association shall transfer back to Declarant, Builder or their respective designees, without any payment by Declarant, Builder or such designee, any Lot which has not been improved by a structure intended for residential occupancy, whether or not such property has been improved by landscaping, decorative walls, signs, irrigation, utilities, or other improvements, if originally conveyed to the Association for no or nominal payment.

(c) The Association shall be responsible for the maintenance, management, operation, repair, replacement and control of the Common Area, Common Maintenance Areas, and the private streets, gates, walls, landscaping, lighting, irrigation, signs, drainage and other improvements from time to time located on the Common Area and/or Common Maintenance Areas, subject at all times to obtaining all required governmental approvals or permits and subject to any covenants, easements, or restrictions set forth in the deed or another instrument transferring the Common Area to the Association. The Board may, from time to time, adopt such reasonable rules regulating use of, maintenance, appearance and/or access to the Common Area and/or Common Maintenance Areas as it deems appropriate provided such rules shall be subject to Declarant's and Builder's prior written approvals during the Class "B" Control Period. The Board may, from time to time, adopt reasonable rule regulating use of and access to any recreational facility and/or amenities that may be located within the Community. The Association may enter into a property management agreement with any Person.

(d) Declarant and/or Builder may elect to construct or install certain improvements, structures, landscaping and/or facilities upon portions of the Common Area and/or Common Maintenance Areas, but is not obligated to do so, and may elect to leave portions of the Common Area in their natural unimproved state. Declarant and/or Builder shall have the absolute right and power to determine what improvements, structures, landscaping and/or facilities, if any, will be located on any portion of the Common Area and/or Common Maintenance Areas during the Development and Sale Period.

(e) Declarant hereby reserves unto itself and Builder, the right, at all times after conveyance of the Common Area to the Association, to enter the Common Area, without prior notice, and to inspect the condition thereof and the improvements, structures, landscaping and/or facilities thereon, if any. If Declarant or Builder determines, in their respective sole judgment, that the Association has failed to maintain any portion of the Common Area in a manner consistent with the Community-Wide Standard, it may so notify the Association, in writing, and the Association shall promptly perform the required maintenance, replacement and/or repairs. Failure of the Association to maintain the Common Area in a manner consistent with the Community-Wide Standard shall relieve Declarant, Builder and any Predecessor Declarant of any liability to the Association or to any Owner and/or Member for any condition of the Common Area. Declarant and Builder shall have the unrestricted right to make a record of their respective inspections by any means available, including, but not limited to, photographing and/or videotaping the Common Area, and shall have the right to perform any tests or examinations to determine the condition of the Common Area. Notwithstanding the foregoing,

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Declarant and Builder shall have no obligation to perform inspections of the Common Area owned by the Association, and the Association shall not be relieved of its obligation to maintain the Common Area because of the election of Declarant, Builder or any Predecessor Declarant to inspect or not to inspect or report to the Association the condition of the Common Area.

## 7.2 Maintenance of Common Maintenance Areas.

The Association shall maintain the Common Area and Common Maintenance Areas in accordance with the Community-Wide Standard. The Common Maintenance Areas shall include, but are not limited to: (a) the Common Area, including, but not limited to, landscaping, signage, perimeter walls, sidewalks, recreational facilities (if any), amenities (if any), the Surface Water or Stormwater Management System, drainage systems, drainage structures, private streets, street lighting, gates, entry features, signage, fencing, structures, and any other improvements located on the Common Area; (b) any facilities, improvements, buildings, structures, lighting, landscaping and/or irrigation that may be located, from time to time, on any portion of the Community that has been designated or identified as Common Area; (c) landscaping within public rights-of-way within or abutting the Community and Wetlands (if any), if not the obligation of the Owners or an Owner; (d) such portions of Lots as have been specifically identified as the Association's responsibility under this Declaration or any Supplemental Declaration; (e) such portions of any additional property as may be dictated by Declarant, the Builder, this Declaration, any Supplemental Declaration, any Plat, or any contract, covenant, or agreement for maintenance entered into by, or for the benefit of, the Association; and (f) all ponds, streams, lakes, ditches, culverts, and/or Wetland(s) located within the Community and/or which serve as part of the Surface Water or Stormwater Management System, other than those portions located on a Lot and to be maintained by the Owner of such Lot in accordance with Article V, Section 5.1 of this Declaration, including, without limitation, associated improvements and equipment, any other Wetland (whether located in Common Area or a Lot), but not including any such areas, improvements, or equipment maintained by the County, a community development district, or any other governmental or quasi-governmental body.

The Association shall maintain the littoral shelf, if any, of all culverts, ditches, or waterways serving as part of the Surface Water or Storm Water Management system, which maintenance may include, without limitation, appropriate landscaping and plantings.

The Association may maintain other property that it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and the owner of such other property consents. The Association shall not be liable for any property damage, death and/or personal injury occurring on and/or arising out of the condition of property which it does not own, except to the extent that the Association has been grossly negligent in performing the voluntary maintenance on the property which it does not own.

The Association shall maintain and keep the facilities, structures and equipment within the Common Maintenance Areas in continuous operation, except for any periods necessary, as the Board may determine in its discretion, to perform required maintenance, repairs, or replacement, unless Members representing at least seventy-five percent (75%) of the Class "A" votes agree in writing to discontinue such operation (which may include closing, selling,



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removing and/or demolishing such facilities, structures or equipment). Notwithstanding the above, the Common Maintenance Areas may not be reduced, nor shall operation of its facilities, structures and equipment be discontinued, without Declarant's and Builder's prior written approval during the Development and Sale Period. The Association may not discontinue any operation, maintenance, repairs, and/or replacements required by the Permit from the District.

Unless otherwise provided in this Declaration or any applicable Supplemental Declaration, the costs associated with the operation, maintenance, repair, and replacement of the Common Maintenance Areas and Common Area shall be Common Expenses, except that such costs associated with Limited Common Areas shall be a Limited Common Expense. However, the Association may seek reimbursement from the applicable owner(s) of, or other Persons responsible for, certain portions of the Common Maintenance Areas pursuant to this Declaration, a Supplemental Declaration, or other recorded covenants or agreements.

Unless Declarant and/or Builder expressly agree in writing with the Association to pay the costs of maintaining, operating, repairing and/or replacing any portion of the Common Maintenance Areas, Declarant and/or Builder shall have no such obligation, regardless of any inferences or suggestions which may be drawn from statements, promotional items or materials, marketing materials, sales materials or any other written item.

### 7.3 Insurance – Common Areas.

The Association shall keep all improvements, structures, facilities, and fixtures located within the Common Areas insured against loss or damage by fire, hurricane or other casualty for the full insurable replacement value thereof (with reasonable deductibles and normal exclusions for land, foundations, excavation costs and similar matters) and may obtain insurance against such other hazards and casualties as the Association may deem desirable.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect any or all of the following types of insurance, as deemed necessary or advisable in the Board's business judgment and as may be reasonably available: (i) blanket property insurance covering all insurable improvements within the Common Areas to the extent that the Association has responsibility for repair or reconstruction in the event of a casualty, or assumes such responsibility pursuant to this Declaration, regardless of ownership, with full replacement value coverage; (ii) commercial general liability insurance on the Common Maintenance Areas insuring against liability for bodily injury, death, and property damage arising from the activities of the Association or with regards to Common Maintenance Areas, including, without limitation, if obtainable, a cross liability endorsement insuring each Member against liability to each other Member and the Association and vice versa; (iii) directors and officers liability coverage; (iv) commercial crime insurance, including fidelity insurance, covering all Persons responsible for handling Association funds in an amount at least equal to three (3) months of Regular Assessments, plus all reserve funds; (v) to the extent any insurable improvements to Common Maintenance Areas are within an flood zone classified as an "A", flood insurance in an amount equal to the lesser of one hundred percent (100%) of the replacement costs of all insurable improvements (if any) within the Common Maintenance Areas or the maximum amount of coverage available under the National Flood Insurance Program; and (vi) such additional insurance as the Board, in its

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business judgment, determines necessary or advisable. Notwithstanding the foregoing, Declarant and/or Builder may obtain insurance for multiple communities which it is developing and/or other projects under a blanket policy instead of obtaining a separate policy for the Association, and charge a reasonable portion of the cost thereof to the Association.

In addition, the Association shall, if so specified in a Supplemental Declaration applicable to any Service Area, obtain and maintain property insurance on the insurable improvements, structures and facilities within such Service Area. Any such policies, if any, shall provide for a certificate of insurance to be furnished upon request to the Owner of each Lot insured within that Service Area.

Unless designated as a Limited Common Area, a Service Area or as otherwise provided in a Supplemental Declaration, all premiums for any Common Maintenance Area insurance policies shall be Common Expenses.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured under those policies.

To the extent obtainable at reasonable rates, the insurance policy or policies maintained by the Association may contain provisions, or be accompanied by endorsements, for agreed amount and inflation guard, demolition costs, contingent liability from operation of building laws and increased costs of construction. All insurance policies shall contain standard mortgagee clauses, if applicable.

The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Article VII, Section 7.3(a) of this Declaration. In the event of an insured loss, the deductible shall be treated as Common Expenses, Limited Common Expenses or Service Area Expenses in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines that the loss is the result of the negligence and/or willful misconduct of one or more Owners, their guests, invitees, employees, occupants, agents, contractors, family members and/or tenants, then the Board may assess the full amount of such deductible against such Owner(s) and that Owner's Lot(s) as a Benefited Assessment.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or any other property for which the Association maintains insurance coverage, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes and/or technology.

(d) 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 Members, Declarant, Builder, any Predecessor Declarant and the directors, trustees, officers, shareholders, attorneys, agents, managers,

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members 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 by, said Persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Damaged and/or destructed improvements, structures, facilities, equipment and/or buildings on the Common Area shall be repaired and/or reconstructed unless Members representing at least eighty percent (80%) of the total Class "A" votes in the Association affirmatively decide, within ninety (90) days after the loss, not to repair and/or reconstruct. If such a vote takes place during the Class "B" Control Period, the written consent of the Declarant and Builder must also be obtained. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such ninety (90) day period, then the period may be extended until ninety (90) days after such funds or information are available. No Mortgagees shall have the right to participate in the determination of whether the damage and/or destruction to the Common Area shall be repaired and/or reconstructed (unless required by FNMA, HUD, FHA or VA).

If a decision is made not to restore the damaged and/or destroyed improvements, structures, facilities, equipment and/or buildings, and no alternative improvements, structures, facilities, equipment and/or buildings are authorized, the affected Common Area shall be cleared of all debris, trash and ruins, shall be returned to its natural state prior to the development of the Community, and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall deposit any insurance proceeds remaining after paying the costs of repair or reconstruction, or after an agreed-upon settlement, in a capital improvements account or another designated reserve account for the benefit of the Members. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

#### 7.4 Enforcement.

(a) The Association, through the Board or appropriate committee, may impose the following sanctions for any violation of the Governing Documents, subject to the notice and hearing procedures set forth in the By-Laws, as applicable. Such sanctions may include, without limitation:

(i) imposing monetary fines, up to the maximum, if any, permitted by applicable law, which may accrue from the date of notice and which shall, if permitted by law, constitute a lien upon the violator's Lot (in the event that any occupant, family member, guest, tenant, or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board); and/or

(ii) suspending the vote attributable to the violating Owner's Lot if permitted and then in accordance with applicable law; and/or

(iii) suspending the violating Owner's and any guest, family member, tenant, agent, employee and/or invitee of the violating Owner's right to use any recreational facilities and/or amenities within the Common Maintenance Area (if any); and/or



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(iv) suspending any services which the Association provides to an Owner or that Owner's Lot if the Owner is delinquent in paying any assessment or other charge owed to the Association for longer than thirty (30) days (or such longer period as is required by HUD or VA, if either such agency is insuring or guaranteeing the Mortgage on that Lot or has granted project approvals for the Mortgage); and/or

(v) without liability to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article IV of this Declaration and/or the Architectural Guidelines from continuing and/or performing any further work or activities in the Community; and/or

(vi) levying Benefited Assessments pursuant to Article VIII, Section 8.4 of this Declaration to cover costs which the Association incurs to bring a Lot into compliance with the Governing Documents, including Legal Costs, attorneys' fees, and costs incurred as a consequence of the conduct of an Owner or occupant of a Lot, their guests, tenants, family members, agents, employees and/or invitees.

(b) In addition, but without limitation of any of the Association's other rights and remedies, the Association, through the Board or its designee, may take the following actions to enforce the Governing Documents without the necessity of compliance with the notice and hearing procedures set forth in the By-Laws:

(i) requiring an Owner, at that Owner's expense: to perform maintenance and/or repairs on that Owner's Lot; to complete any construction, alteration, installment, placement, installation and/or modification approved pursuant to Article IV of this Declaration; and/or to remove any structure, item, building, Residence, landscaping, dwelling and/or improvement on such Owner's Lot that is in violation of the Governing Documents and to restore that Owner's Lot to its previous condition; and/or

(ii) entering an Owner's Lot pursuant to the easement granted in Article XI, Section 11.5 of this Declaration, and exercising self-help to remove or cure a violating condition, and/or to complete any construction, alteration, installment, placement and/or modification approved pursuant to Article IV of this Declaration which was begun and not completed within the required time period. The Association may exercise such entry and self-help upon the failure and/or refusal of that Owner to take the action required pursuant to Section 7.4(b)(i) above within ten (10) days after the Board's mailing of written notice to do so. Each Owner covenants, understands and agrees that any such entry and self-help by the Association shall not be deemed a trespass, conversion, any other civil offense, any tort or any criminal offense (including, but not limited to, theft, trespass, burglary and criminal mischief); and/or

(iii) exercising self-help in any situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); and/or

(iv) bringing an action at law, bringing an action in equity, bringing an administrative action, bringing a declaratory action, and/or bringing an action to seek injunctive

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relief to enjoin any violation or to recover monetary damages, or both, subject to the procedures set forth in Article XV of this Declaration, if applicable.

(c) All rights, actions and remedies set forth in the Governing Documents shall be cumulative of any rights, actions or remedies available to the Association at law or in equity. The Association's selection of one or more rights, actions and/or remedies shall not preclude the Association from seeking or pursuing any other right, remedy and/or action available to it in order to enforce the Governing Documents. In any action to enforce the Governing Documents whether brought by the Association, Declarant, Builder or an Owner, the prevailing party shall be entitled to recover all Legal Costs (as that term is defined in this Declaration) incurred in any such action.

(d) The Association's decision to pursue an enforcement action in any particular case shall be left to the Board's absolute discretion, except that the Board shall not act in an arbitrary or capricious manner in taking any enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case or potential enforcement action:

(i) the Association's position is not strong enough to justify taking any action or any further action;

(ii) the covenant, restriction, term, provision or rule being enforced is, or is likely to be construed as, inconsistent with then-applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's limited financial resources; and/or

(iv) it is not in the Association's best interests, considering, among other things, hardship, expense, or other reasonable criteria, to pursue an enforcement action.

Such a decision by the Board shall not be construed a waiver of the right of the Association to enforce the same provision at a later time under the same or other circumstances or a waiver of the right of the Association to seek or pursue any type of enforcement action at a later time under the same or any other circumstances. The Association also shall not be precluded from enforcing any other covenant, restriction, term, provision and/or rule in the Governing Documents.

(e) The Association, by contract or other agreement, may enforce applicable governmental regulations and permit a Governmental Authority to enforce ordinances, rules, statutes, or laws within the Community for the benefit of the Association and its Members.

(f) The District and the Association shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration that relate to the maintenance, operation, management and repair of the Surface Water or Storm Water Management System.

(g) Builder shall be entitled to exercise all of the rights and powers granted to the Association under Article VII, Sections 7.4(a), 7.4(b) and 7.4(c) of this Declaration during the

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Class "B" Control Period, and shall be entitled to recover all costs, expenses and Legal Costs that are incurred in so doing from the responsible Owner.

(h) Enforcement of the Governing Documents may be instituted as provided in the Governing Documents by Declarant, its successors and assigns, the Builder, its successors or assigns, the Association, its successors or assigns, and/or any Owner, against any Person violating or attempting to violate or circumvent any covenant, condition, term, provision or restriction of the Governing Documents; and failure by the Association, any Owner, Builder or Declarant to enforce any covenant, condition, term, provision or restriction of the Governing Documents for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce that covenant, condition, term, provision or restriction at any time thereafter. Further, the Association shall have the right of self-help that may be exercised to the fullest extent possible to cure any violations within the Community that remain uncured after any required notice is given.

#### 7.5 Implied Rights: Board Authority.

The Association may exercise any right or privilege given to it expressly or by reasonable implication from the Governing Documents, and may take any action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically limited in the Governing Documents or by law, all of the Association's rights and powers may be exercised solely by the Board without a vote of the membership being necessary or required.

The Board may institute, defend, settle, and/or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Maintenance Areas, Common Area, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation on behalf of or in the name of the Association or the Members.

#### 7.6 Provision of Services to Lots.

The Association may provide, or provide for, services and facilities for all or any of the Owners and their Lots, and may enter into contracts or agreements with other entities, including, without limitation, Declarant, Builder, Builder's Affiliates or Declarant's Affiliates, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities, or may include the costs in the Association's budget as Common Expenses and assess it as part of the Regular Assessment, if provided to, or determined by the Board to be a benefit to, all Lots. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, telephone, internet access, security monitoring, caretaker, transportation, fire protection, utilities, trash collection and recycling, and any other services and/or facilities.

Nothing in this Section shall be construed as a representation by, or an obligation on, Declarant, Builder or the Association as to what, if any, services and/or facilities shall be provided. In addition, subject to the applicable contract terms, the Board may modify, change, add to and/or cancel existing contracts for services in its discretion, unless the services are otherwise required by the Governing Documents. Non-use of services and/or facilities provided



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to Owners or Lots as Common Expenses or Limited Common Expenses, shall not exempt any Owner from the responsibility and obligation to pay the assessments, fees or charges related to such services and/or facilities.

7.7 Municipal Service Benefits Units.

In order to perform the services contemplated by this Declaration, the Association, Builder or Declarant, in conjunction with the County, may seek the formation of special purpose municipal service benefits units ("MSBU's"). The MSBU's will have responsibilities defined in their enabling resolution which may include providing assistance to acquire public health and safety improvements or services with the Community, such as, but not limited to, road paving, drainage, street lighting, water service, sidewalks, aquatic weed control, construction of privacy walls and other services through special assessments on the benefiting Community. In the event such MSBU's are formed, the Community will be subject to a non-ad valorem assessment for the cost of the services performed within the MSBU's, and personnel working for or under contract with the County shall have a perpetual, non-exclusive easement to enter upon lands within the Community to affect the services contemplated. Each Owner, by acquiring any Lot within the Community, agrees to pay each and every MSBU assessment imposed upon the Owner or that Owner's Lot in a timely manner, failing which such assessments and special charges shall be a lien upon that Owner's Lot. The Association retains the right to contract with the County to provide the services funded by the MSBU's. Services performed by an MSBU that would otherwise be performed by the Association and for which the MSBU imposes assessments on the Owners shall be removed from the Association's budget and the Board shall adjust the Regular Assessment accordingly.

7.8 Municipal Service Taxing Units.

In order to perform the services contemplated by this Declaration, the Association, Builder or Declarant, in conjunction with the County, may seek the formation of special purpose municipal service taxing units ("MSTU's"). The MSTU's will have responsibilities defined in their enabling resolutions which may include, but are not limited to, maintaining roadways, roadway informational signs, traffic control signs, benches, trash receptacles, and other street furniture, keeping all public roadways and roadside pedestrian easements clean of windblown trash and debris, mowing, payment of electrical charges, maintenance of drainage canals, ponds and structures, maintenance of designated landscape areas, payment of energy charges for street and pedestrian lighting, and other services benefiting the Community. In the event such MSTU's are formed, the Community will be subject to assessment for the cost of services performed within the MSTU, and personnel working for or under contract with the County shall have a perpetual, non-exclusive easement to enter upon lands within the Community to affect the services contemplated. Each Owner, by acquiring any Lot within the Community, agrees to pay each and every MSTU assessment imposed upon the Owner or that Owner's Lot in a timely manner, failing which such assessments and special charges shall be a lien upon that Lot. The Association retains the right to contract with the County to provide the services funded by the MSTU's. Services performed by an MSTU that would otherwise be performed by the Association and for which the MSTU imposes assessments on the Owners shall be removed from the Association's budget and the Board shall adjust the Regular Assessment accordingly.

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7.9 Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with any neighboring properties, other associations, and/or any other Person to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of maintenance of the Common Maintenance Areas.

7.10 Relationship with Governmental and Tax-Exempt Organizations.

The Association may enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area for the benefit of the Community, the Association and/or the Owners to the following: state or local governments and their respective agencies; public or private utility providers; and non-profit, tax-exempt organizations. The Association may contribute money, real property (including, without limitation, Common Area), personal property, and/or services to any such entity. Any such contribution may be Common Expenses and included as a line item in the Association's annual budget.

For the purposes of this Section 7.10, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4) of the Code, as it may be amended from time to time.

7.11 Right To Designate Sites for Governmental and Public Interests.

During the Development and Sale Period, Declarant and/or Builder may, but is not obligated to, designate sites within the Community for government, education, and/or religious activities and interests, including, without limitation, fire, police, law enforcement, emergency rescue, utility facilities, schools, other educational facilities, houses of worship, parks, and/or other public facilities of any type. Subject to the approval requirements set forth in Article XVI, Section 16.9 of this Declaration, such sites may include Common Area, in which case the Association shall take whatever action is required to permit such use, including dedication or conveyance of the site, if so directed by Declarant and/or Builder.

7.12 Private Streets.

The streets located within and upon the Community are hereby designated by Declarant as private streets, and are not dedicated to the public or the County. Declarant reserves the right, but shall not have the obligation, to designate additional private streets within the Community by Plat or any other instrument recorded in the Public Records of the County. Subject to limitations imposed by the County and/or any other governmental authority, the Association shall maintain, operate, repair and replace to the degree required by all applicable governmental regulations, all private streets located within the Community, except the driveway on any Lot.

As to each private street herein or hereafter designated by Declarant within the Community, Declarant hereby creates, reserves and declares to exist a perpetual, non-exclusive easement for access over, under, across and through the paved and streets and any sidewalks within the Community for the use and benefit of the following: (a) the Owners of the Lots served by the private streets and sidewalks, and their respective tenants, servants, employees,

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guests and invitees; (b) Builder and its tenants, servants, employees, contractors, subcontractors, agents, guests and invitees; (c) The following in their respective official capacities: fire protection services, emergency medical services, law enforcement, the Hillsborough County Sheriff's Office and the United States Postal Service; (d) utility service providers authorized and/or requested to serve the Community by Declarant, Builder, the Association or the Owners of Lots served by the private streets and sidewalks; (e) Mortgagees of Lots served by the private streets and sidewalks; (f) Declarant and its tenants, servants, employees, agents, contractors, subcontractors, guests and invitees; (g) the Association and its tenants, servants, employees, agents, contractors, subcontractors, vendors, guests and invitees; and (h) such other Persons as Declarant, the Builder or the Association may at any time and from time to time designate.

Any Owner (including Declarant and Builder) may grant the benefit of any easement, right or privilege conferred under this Declaration to their respective family members, agents, employees, contractors, members, tenants, licensees, invitees and/or guests, but nothing in this Declaration shall be construed to create any rights, easement and/or privileges in the general public.

Notwithstanding any other provision of this Section 7.12, Declarant, Builder and the Association reserve the unrestricted and absolute right to deny the right of ingress and egress to the Community to any Person who, in the opinion of Declarant, Builder or the Association, may create or participate in a disturbance or a nuisance on any portion of the Community, except that such right of Declarant, Builder or the Association to deny the right of ingress to the Community may not be used to deny any Owner of the right to use any private street and/or sidewalk for ingress and egress to and from that Owner's Lot.

To the extent necessary, each Owner shall have a nonexclusive easement for vehicular and pedestrian access to and from that Owner's Lot over and through the private streets to a public right-of-way. This easement shall be subject to the reasonable regulation of traffic by the Association, Declarant and/or the Builder, including but not limited to, speed limits; one-way streets; stop signs; yield signs; speed bumps; roundabouts; speed control devices; and any other traffic control signs and/or devices.

#### 7.13 Gates.

Declarant may install gates and/or other barriers designed to control vehicular and/or pedestrian access to and from all or any portion of the Community containing private streets and sidewalks. The location of any gate and/or other barrier, when constructed, installed, placed or built, shall be determined by Declarant and Builder in their sole discretions, and Declarant reserves the right for itself and Builder to relocate, change, alter and/or modify any gate and/or any other barrier. Immediately upon installation, construction or placement of any gate and/or other barrier controlling access to any private street and/or sidewalk, the Association shall assume all responsibility for the operation, maintenance, repair and replacement of the gate and/or other barrier. Unless Declarant and Builder require that the gate and/or any other barrier be closed, each gate and/or barrier shall remain open for the purpose of constructing improvements, Residences, facilities and/or structures within the Community. Declarant and Builder shall have no liability or responsibility for the operation, maintenance, repair and/or replacement of the any gate, any other barrier of any type, or for any failure and/or deficiency in



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any of the foregoing, and neither Declarant nor Builder shall be required to supply or ensure compatibility of any remote controls, bar code detection devices or phone connections related to any gate and/or any other barrier.

**7.14 Street Lighting.**

The Association may arrange for and assess the Owners for the fixture rental, electrical usage and/or any other costs related to or associated with any street lighting located within the Community. Any such expenses and costs shall be part of the Common Expenses.

**7.15 Provisions Regarding Private Streets, Sidewalks and Drainage.**

The Common Area to be operated, repaired and maintained by the Association shall include any private streets, sidewalks, street lighting and the Surface Water or Stormwater Management System. The transfer to the County or another governmental entity of any fee simple property rights in and to any private streets, sidewalks, street lighting and/or any portion of the Surface Water or Stormwater Management System is prohibited without the written agreement of one hundred percent (100%) of the Owners. The Association shall establish and collect reserve funds for routine maintenance and periodic major maintenance to the private streets, sidewalks, street lighting and Surface Water or Stormwater Management System, and such reserve funds are to be maintained in perpetuity and replenished from time to time, as necessary. The reserve funds required by this Section 7.14 shall be part of the Common Expenses to be levied and collect in accordance with this Declaration.

**OWNERS RECEIVE NO DISCOUNT OR REDUCTION IN PROPERTY OR ANY OTHER TAXES BECAUSE OF PRIVATE STREETS, SIDEWALKS, STREET LIGHTING AND/OR THE SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM.**

The Tuscan Bay Community contains rights-of-way, easements and other Common Area which are neither owned nor maintained by the County. Owner of Lots will be responsible for the maintenance of any such rights-of-way, easements and Common Area.

Declarant and the Association, jointly and severally, shall indemnify, defend and hold the County harmless from any loss, cost, damage or expense, including Legal Costs, arising directly or indirectly, out of: (a) maintenance, repair and/or reconstruction of the private streets, sidewalks, street lighting and/or the Surface Water or Stormwater Management System; and (b) tort liability related to or stemming from the private streets, sidewalks, street lighting, and/or the Surface Water or Stormwater Management System. The duty to so indemnify, defend and hold the County harmless shall be that of Declarant and the Association, but (a) the duty of Declarant shall exist only for the duration of the Class "B" Control Period, and (b) once the Class "B" Control period terminates pursuant to this Declaration, the recourse of the County with respect to the liability of Declarant shall extend only to the right, title, interest and/or estate of Declarant in or to any of the platted Lots. In addition, the Association shall indemnify, defend and hold Declarant and Builder harmless from any loss, cost, damage and/or expense, including Legal Costs, arising directly or indirectly, out of Declarant's or Builder's liability to the County under this Section 7.14.

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Upon any default in any of the requirements of this Section 7.14, the County, at its option and after due notice of its declaration of a default and a stated time to cure any such default, may remove the gate(s) and/or other barriers and upon dedication of the rights-of-way the County shall assume responsibility for the operation, maintenance, repair and replacement of the streets and sidewalks. The County may choose to fund the operation, maintenance, repair and/or replacement of the streets and sidewalks through the establishment of a municipal service taxing unit, the establishment of a community development district or any other financing method available to the County.

Declarant or the Association shall have the power to enter into an agreement or contract for traffic control and/or traffic law enforcement with the Hillsborough County Sheriff's Office, the Hillsborough County Board of County Commissioners or any other applicable governmental agency. All costs of any such agreement or contract shall be part of the Common Expenses.

**7.16 Provision of Services to Service Areas.**

(a) Declarant, on Exhibit "A" to this Declaration and/or by Supplemental Declaration submitting additional property to this Declaration, may assign the submitted property to one or more Service Areas (by name or other identifying designation) as Declarant deems appropriate, in Declarant's discretion, which Service Areas may be then existing or newly created, and may require that the Association provide benefits and/or services to the Lots within such Service Area in addition to those which the Association provides to all Lots within the Community. Until termination of the Class "B" Control Period, Declarant may amend this Declaration or any Supplemental Declaration to designate and/or redesignate Service Area boundaries with the prior written consent of the Builder. All costs associated with the provision of services or benefits to a Service Area shall be assessed against the Lots within that Service Area as a Service Area Assessment. Any Service Area Assessment will be in addition to, and not in place of, the Regular Assessments adopted and imposed by the Association.

(b) In addition to any Service Areas which Declarant may designate, the Owner(s) of any two (2) or more Lots may petition the Board to designate such Lots as a Service Area for the purpose of receiving from the Association: (i) special benefits and/or services which are not provided to all Lots; or (ii) a higher level of service than the Association otherwise provides. Upon receipt of a written petition signed by the Owner(s) of a majority of the Lots within the proposed Service Area, the Board shall investigate the terms upon which the requested benefits and/or services might be provided, and notify all Owners of Lots within the proposed Service Area of such terms and the charge or Service Area Assessment to be made by the Board for the requested benefits and/or services, which may include a reasonable administrative charge in such amount as the Board deems appropriate in its discretion (provided, any such administrative charge shall apply at a uniform rate per Lot among all Service Areas receiving the same benefits and/or services), or whether it is not possible or not advisable for the Association to provide the requested benefits and/or services. After the Owners of Lots within the proposed Service Area have been notified of the terms and the proposed Service Area Assessment for the requested benefits and/or services, and if it is possible and advisable for the Association to provide such benefits and/or services, at least sixty-seven percent (67%) of the Lot Owners within the proposed Service Area must affirmatively give final approval in writing for the creation of the proposed Service Area. The sixty-seven percent (67%) will be based on the total number of Lots

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in the proposed Service Area, and not the total number of Owners of those Lots. If the final approval for the creation of a Service Area occurs during the Development and Sale Period, the Declarant and Builder must also approve the creation of that Service Area. If the proposed Service Area receives the required final approval as set forth in this Section 7.16(b), the Association shall provide the requested benefits and/or services on the terms set forth in the notification that was sent to the Owners of Lots within that Service Area. The costs, expenses and administrative charges associated with such benefits and/or services shall be assessed against the Lots within such Service Area as a Service Area Assessment, subject to the right of the Owners of Lots within the Service Area to veto the budget for their Service Area as provided in Article VIII, Section 8.1. A Service Area Assessment shall be in addition to, and not in place of, the Regular Assessments adopted and imposed by the Association.

(c) The Board may, by resolution, designate a group of Lots as a Service Area and levy Service Area Assessments against such Lots to fund the costs of operating, maintaining, repairing, replacing and/or insuring certain portions of the Common Maintenance Area within or adjacent to such Service Area. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way, and greenspace between the Service Area and adjacent public roads, private streets within the Service Area, drainage structures, drainage facilities, sidewalks within the Service Area, street lights and lakes or ponds within the Service Area, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; however, all similarly situated Lots shall be treated the same. Any such designation by the Board shall require the consent of Declarant and Builder during the Development and Sale Period.

#### 7.17 Responsibilities Under Governmental Permits.

Declarant and Builder shall have the absolute and unconditional right in their sole respective discretion to assign, delegate, or otherwise transfer to the Association any of its continuing obligations and/or responsibilities under governmental permits and approvals with respect to the Community, including, without limitation, its continuing obligations with respect to the Surface Water or Storm Water Management System under the Permit. The Association shall accept and assume such obligations and responsibilities without condition or consideration. Such assignment, delegation, or transfer and assumption shall be effective without the consent of, or any further action by the Association, but upon Declarant's and/or Builder's request, the Association shall promptly execute any documents which Declarant and/or Builder requests to evidence the assignment, delegation, or transfer and assumption of such obligations and/or responsibilities. The Association shall comply in all respects with the terms of, and shall not undertake any activity inconsistent with, such permits and approvals. The Association shall indemnify, defend and hold Declarant and Builder harmless from any actions, claims or losses arising out of the violation, refusal and/or failure to comply with any permit(s), or arising out of the operation, maintenance and/or use of any improvement, structure, equipment and/or facility authorized by the permit(s), provided such action, claim or loss first occurs after the effective date of the assignment, delegation or transfer (or tender of the assignment, delegation, or transfer, if wrongfully refused by an Association).



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7.18 Waterways, Water Level and Use.

With respect to any waterways, lakes, ponds, streams and canals now existing or which may hereafter be contained within or adjoining the Community, only Declarant and Builder (and after termination of the Class "B" Control Period, the Association) shall have the right to pump or otherwise remove any water from such waterways for the purposes of irrigation or other use or to place any matter or object in such waterways. No docks, moorings, pilings, sea walls, upland retaining walls, placement of rip-rap, placement of any other shoreline reinforcements, boat shelters, any structure, or any improvement of any kind shall be constructed, built, placed, installed altered, modified and/or erected on, in, through, under or over any of the waterways, lakes, ponds, streams, creeks, Wetlands, drainage facilities, Surface Water or Stormwater Management System and/or canals, except as may first be submitted to and approved in writing by Declarant, Builder, the County and the District's Tampa Service Office (and following the termination of the Class "B" Control Period, the ARB, the County and the District's Tampa Service Office). Subject to the provisions of this Declaration and applicable law, the Association shall have the right and, to the extent required by the terms of this Section 7.18 or any applicable governmental permit, ordinance or as permitted by law, the obligation to control the growth and/or eradication of plants, fowl, reptiles, animals, fish, fungi, molds and other growth or habitation in, on and around such waterways.

7.19 Surface Water or Stormwater Management System.

(a) Maintenance and Operation. The Association shall be responsible for the maintenance, operation, repair, and replacement of the Surface Water or Stormwater Management System. Maintenance of the Surface Water or Stormwater Management System(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance, or other surface water or storm water management capabilities as permitted by the District. Any repair or reconstruction of the Surface Water or Stormwater Management System shall be as permitted or, if modified, as approved by the District. Notwithstanding anything contained herein to the contrary, the Association may maintain embankments so that grass, planting, or other lateral support shall prevent erosion of the embankment. The height, grade, and contour of such embankments shall not be changed without the prior written consent of the District, Declarant (if during the Class "B" Control Period), Builder (if during the Class "B" Control Period) and the ARB.

(b) Shared Facilities. Certain portions of the Surface Water or Stormwater Management System may serve the drainage needs of adjacent lands not owned by Declarant or Builder and not within the Community. Declarant reserves the right to grant such drainage and/or use such easements and rights as Declarant may deem necessary or appropriate for accomplishing the drainage needs of the Community and/or lands owned by others provided that such agreements shall not unreasonably interfere with the use of the system by the Owners or unreasonably increase the cost of maintenance of the system by the Association.

(c) Effect of Dissolution. In the event of the termination, dissolution, or final liquidation of the Association, the responsibility for the operation and maintenance of the Surface Water or Stormwater Management System and Wetlands must be transferred to and accepted by an entity which would comply with the applicable provisions of the Florida

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ADMINISTRATIVE CODE, as it may be amended and/or renumbered from time to time, and be approved by the District prior to such termination, dissolution, or liquidation. In the event that no other entity exists to receive such transfer, the obligations of the Association shall be deemed assumed by the Owners, and all such Owners shall be jointly and severally responsible for the operation and maintenance of the Surface Water or Stormwater Management System and Wetlands in accordance with the requirements of the Permit.

**7.20 Swimming Pool and Recreational Facilities.**

Declarant and/or Builder may elect, but are not obligated, to construct a swimming pool, related amenities, a cabana, a tot lot, a playground, a clubhouse and/or other recreational facilities (collectively, the "recreational facilities") as part of the Common Area, subject to Declarant and/or Builder obtaining all applicable governmental permits and approvals for such recreational facilities. The Board may promulgate and amend, from time to time, rules and regulations regarding the use, operation, maintenance and/or management of any recreational facilities, including but not limited to, limitations on hours of operation, frequency and manner of use, and use by guest, invitees, family members, children, occupants and/or tenants of an Owner. The Board may, but shall not be obligated to, assess fees and charges for the use of any recreational facilities in addition to the assessments described in Article VIII of this Declaration. To the extent not paid from any use fees and charges that may be imposed and/or adopted by the Board, the costs of operating, maintaining, managing, repairing, replacing, insuring and protecting any recreational facilities shall be part of the Common Expenses of the Association and included in the assessments levied and collected pursuant to Article VIII of this Declaration.

**7.21 Adopt Rules and Regulations.**

The Association, through the Board, shall have the power to make, adopt, establish, amend and enforce rules and regulations regarding the use, appearance, access to and/or the condition of any portion of the Community bound by the terms, covenants, conditions and restrictions of this Declaration, including, but not limited to, Common Area, Common Maintenance Area, Lots, Members, recreational facilities (if any), amenities (if any), structures, Residences, dwellings, landscaping, and maintenance.

The Association shall also have all of the common law and statutory powers of a not for profit corporation organized under the laws of the State of Florida, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

**Article VIII Association Finances**

**8.1 Budgeting and Allocating Common Expenses.**

(a) **Calculation of Regular Assessments.** Before the beginning of each Fiscal Year, the Board shall prepare a budget of the estimated Common Expenses which it expects to incur for that coming Fiscal Year, including any contributions to be made to reserves pursuant to Article VIII, Section 8.2 of this Declaration for periodic major maintenance, repair and/or replacement of items that the Association maintains as Common Expenses. Each budget shall include, as a separate line item in the operating expense portion of the budget, the estimated cost

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of routine maintenance, repair and operation of the Surface Water or Stormwater Management System (including, but not limited to, work within retention areas, drainage structures and drainage easements) and, as a separate line item in the reserve portion of the budget, a contribution to a reserve fund for periodic major maintenance, repair and replacements to the Common Maintenance Areas as provided in Article VIII, Section 8.2 of this Declaration, including, without limitation, contributions to reserves for the Surface Water or Stormwater Management System. The budget shall separately reflect the anticipated sources and estimated amounts of funds necessary to pay the Common Expenses, including, but not limited to, any surplus or deficit to be applied from prior Fiscal Years, assessment income, any fees charged for use of any recreational amenities, and any other non-assessment income.

The Association is authorized to levy Regular Assessments to fund the Common Expenses against all Owners and Lots subject to such assessment under Article VIII, Section 8.5 of this Declaration, in the proportions described in that Article VIII, Section 8.5. In determining the Regular Assessment rate, the Board may, but is not obligated to, consider any assessment income expected to be generated from any property in the Community anticipated to become subject to assessment during that Fiscal Year.

During the Development and Sale Period, Builder may, but shall not be obligated to, reduce the Regular Assessment for any Fiscal Year by payment of a subsidy (in addition to any amounts paid by Builder under Article VIII, Section 8.6(b) of this Declaration) which may be either a contribution, an advance against future assessments due from Builder during the Development and Sale Period, or a loan, in Builder's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any Fiscal Year shall not obligate Builder to continue paying a subsidy in any subsequent Fiscal Years, unless otherwise provided in a written agreement between the Association and Builder.

The Board shall send a summary of the proposed budget and notice of the Regular Assessment to be levied against each Owner and each Owner's Lot pursuant to such budget to each Owner at least thirty (30) days prior to the effective date of the budget. The budget and Regular Assessment shall automatically take effect on such date unless disapproved by at least seventy-five percent (75%) of Members representing the total number of Class "A" votes at a duly called meeting of the Association's Members at which a quorum is present. That budget and Regular Assessment would also need to be disapproved by Builder and Declarant, if the vote of the Class "A" Members takes place during the Class "B" Control Period. There shall be no obligation to call a meeting of the Association's Members for the purpose of considering the budget except upon petition of the Members as provided for in the By-Laws. Any such petition must be in writing and must be presented to the Board no later than fourteen (14) days after mailing of the proposed budget and proposed Regular Assessment for that Fiscal Year.

If any proposed budget is disapproved, or if the Board fails for any reason to determine the budget for any Fiscal Year and fix the Regular Assessments, then the budget most recently in effect shall continue in effect until a new budget is determined. If any proposed budget is disapproved, or if the Board fails for any reason to determine the budget for any Fiscal Year, the Regular Assessments shall continue to be due and payable by all Owners. The amount of such Regular Assessments will be the same as imposed and assessed under the budget most recently in effect, unless amended pursuant to this Section 8.1(a).



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As long as a budget has been determined and is in effect for a particular Fiscal Year, the Board, without a vote of the Association's membership, may revise and amend that budget and adjust the Regular Assessment amounts from time to time during that Fiscal Year, subject only to the notice requirements set forth in this Section 8.1(a), the By-Laws and applicable law.

(b) Calculation of Service Area Assessments. Before the beginning of each Fiscal Year, the Board shall also prepare a separate budget for each Service Area (if any) of the estimated Limited Common Expenses which the Association expects to incur on behalf of such Service Area for the coming Fiscal Year, including any contributions to be made to a reserve fund pursuant to Article VIII, Section 8.2 of this Declaration for periodic major maintenance, repair and/or replacement of items that the Association maintains on behalf of the Service Area as Limited Common Expenses. Each budget shall include, as a separate line item in the operating expense portion of the budget, the estimated cost of routine maintenance and repair of property, facilities, equipment, structures and improvements which the Association maintains on behalf of such designated Service Area as a Limited Common Expense, and as a separate line item in the reserve portion of the budget, a contribution to a reserve fund for periodic major maintenance of such property, facilities, equipment, structures and improvements. The budget shall separately reflect the anticipated sources and estimated amounts of funds to pay the Limited Common Expenses for that Fiscal Year, including any surplus or deficit to be applied from prior Fiscal Years, Service Area Assessment income, any fees charged for use of recreational amenities maintained on behalf of the Service Area, and any other non-Service Area Assessment income.

The Association is authorized to levy Service Area Assessments, to fund the Limited Common Expenses for each Service Area (if any), against all Lots in the Service Area that are subject to such assessment under Article VIII, Section 8.5 of this Declaration, in the proportions described in that Article VIII, Section 8.5, except that, unless otherwise specified in an applicable Supplemental Declaration, any portion of the Service Area Assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures, may be levied on each of the benefited Lots in proportion to the benefit received, as the Board may reasonably determine. Any such Service Area Assessments shall be in addition to the Regular Assessments adopted and imposed for that same Fiscal Year. In determining the Service Area Assessment rate for any Service Area, the Board may, but is not obligated to, consider any assessment income expected to be generated from any property in the Service Area anticipated to become subject to assessment during that Fiscal Year.

Builder may, but shall not be obligated to, reduce the Service Area Assessment applicable to any Service Area for any Fiscal Year by payment of a subsidy (in addition to any amounts paid by Builder under Article VIII, Section 8.6(b) of this Declaration) which may be either a contribution, an advance against future assessments due from Builder during the Class "B" Control Period, or a loan, in Builder's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the Service Area budget. The payment of such subsidy in any Fiscal Year shall not obligate Builder to continue paying a subsidy in any subsequent Fiscal Years, unless otherwise provided in a written agreement between the Association and Builder.

The Board shall send a summary of the proposed Service Area budget and notice of the Service Area Assessment to be levied pursuant to such budget to each Owner at least thirty (30)

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days prior to the effective date of that Service Area budget. The Service Area budget and Service Area Assessment shall automatically take effect on the effective date unless disapproved by at least seventy-five percent (75%) of Members representing the total Class "A" votes of the Lots within that Service Area at a duly called meeting of the Association's membership at which a quorum is present. That Service Area budget and Service Area Assessment must also be disapproved by Builder and Declarant, if the vote of the Class "A" Members takes place during the Class "B" Control Period. There shall be no obligation to call a meeting of the Members for the purpose of considering the Service Area budget except upon petition of the Members as provided for in the By-Laws. Any such petition must be in writing and must be presented to the Board no later than fourteen (14) days after mailing of the of the proposed Service Area budget and the proposed Service Area Assessment.

If a proposed Service Area budget is disapproved, or if the Board fails for any reason to determine the Service Area budget for any Fiscal Year, then the Service Area budget most recently in effect shall continue in effect until a new Service Area budget is determined. If a proposed Service Area budget is disapproved, or if the Board fails for any reason to determine the Service Area budget for any Fiscal Year, the Service Area Assessments shall continue to be due and payable by all Owners. The amount of such Service Area Assessments will be the same as imposed and assessed under the Service Area budget most recently in effect, unless amended pursuant to this Section 8.1(b).

As long as a Service Area budget has been determined and is in effect for a particular Fiscal Year, the Board, without a vote of the Association's membership, may revise and amend that Service Area budget and adjust the Service Area Assessment amounts from time to time during that Fiscal Year, subject only to the notice requirements set forth in this Section 8.1(b), the By-Laws and applicable law.

All amounts that the Association collects as Service Area Assessments shall be expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Association's general funds and Regular Assessments.

## 8.2 Budgeting for Reserves.

The Board shall prepare and periodically review separate reserve budgets for the Common Maintenance Area, and for each Service Area for which the Association maintains capital items as Limited Common Expenses, which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair and/or replacement cost of capital items under each budget. The Board shall include in the Common Expenses budget adopted pursuant to Article VIII, Section 8.1(a) of this Declaration, or any Service Area budget(s) adopted pursuant to Article VIII, Section 8.1(b) of this Declaration, as appropriate, a capital contribution to fund reserves in an amount which the Board, in the exercise of its business judgment, deems sufficient to meet the projected needs under each budget with respect to both amount and timing by annual contributions over the budget period.

The reserve funds held in each account may be expended only for maintenance, repair, and/or replacement of those assets covered by the applicable reserve budget pursuant to which they were collected. Subject to such limitation, the Board may adopt resolutions regarding the

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expenditure of any reserve funds including, without limitation, policies designating the nature of assets for which reserve funds may be expended. Neither the Association membership nor the Board shall adopt, modify, limit, or expand such policies without Builder's prior written consent during the Development and Sale Period.

Notwithstanding anything contrary in this Declaration, the Board may establish additional reserve accounts that the Board, in its absolute discretion, determines are necessary or advisable for the Association. The Board may also determine the appropriate funding levels for any such reserve accounts and include those amounts as part of the Common Expenses.

#### 8.3 Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses and/or expenses in excess of those budgeted. Any such Special Assessment may be levied: against all Owners and their Lots, if such Special Assessment is for Common Expenses; or against only those Owners and Lots within any Service Area, if such Special Assessment is for Limited Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of a majority of the entire Board. Any Special Assessment shall also require the affirmative votes or written consents of Builder and Declarant during the Class "B" Control Period. Special Assessments shall be due and payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the Fiscal Year in which the Special Assessment is approved.

#### 8.4 Benefited Assessments.

The Association may levy Benefited Assessments against one (1) or more particular Lots as follows:

(a) to cover the costs, including, without limitation, overhead and administrative costs, of providing services to a Lot upon request of the Owner of that Lot pursuant to: any menu of special services and/or benefits which the Association may offer (which might include the items identified in Article VII, Section 7.6 of this Declaration or Article VIII, Section 8.10 of this Declaration); or pursuant to a Supplemental Declaration. Benefited Assessments for special services and/or benefits may be levied in advance of actually providing the requested service to that Lot; and/or

(b) to cover, refund and/or reimburse any costs and expenses incurred in bringing, or attempting to bring, a Lot into compliance with the Governing Documents, including, without limitation, Legal Costs, subject only to the applicable limitations of Article VII, Section 7.4 of this Declaration. To cover, refund and/or reimburse any costs and expenses incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, family members, tenants, and/or guests, including, without limitation, Legal Costs, subject only to the applicable limitations of Article VII, Section 7.4 of this Declaration.



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8.5 Assessment Rate; Commencement of Assessments; Time of Payment.

The obligation to pay assessments commences as to each Lot, except for Lots owned by Builder and/or Declarant, on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article VIII, whichever is later. All Lots owned by Declarant or Builder shall not be subject to assessments until such time as the Declarant or the Builder have obtained a certificate of occupancy from the County for the single-family dwelling constructed on their respective Lots, and the Declarant or the Builder has conveyed that Lot to a third-party purchaser. Regular Assessments and Special Assessments for Common Expenses shall be allocated equally among all Lots subject to such assessment. Except as otherwise provided in Article VIII, Section 8.1(b) of this Declaration, or in any applicable Supplemental Declaration, Service Area Assessments shall be allocated equally among all Lots subject to such assessment in the applicable benefited Service Area. The first Regular Assessment and Service Area Assessment, if any, levied on each Lot shall be prorated and adjusted according to the number of months remaining in the Fiscal Year at the time the obligation to pay such assessments commences on that Lot.

Owners shall pay assessments in the manner and on the dates as established by the Board. The Board may require advance payment of some or all assessments at the closing of the transfer of title to a Lot and may impose special requirements for any Owner who has failed and/or refused to pay, on a timely basis, two (2) or more payments, in any twelve (12) consecutive month period, of any nature, due any payable under the Governing Documents. If the Board so elects, assessments may be paid in quarterly or monthly installments. Unless the Board otherwise provides, the Regular Assessment and Service Area Assessment shall be due and payable in advance on the first day of each Fiscal Year. If any Owner is delinquent in paying any assessments, installments of assessments or any other charges levied on that Owner's Lot, the Board may require that the outstanding balance on all assessments be paid in full immediately.

8.6 Obligation for Assessments.

(a) Personal Obligation. Each Owner, except for Declarant and Builder, by accepting a deed or entering into a recorded contract of sale for any Lot, covenants and agrees to pay all assessments levied in accordance with the Governing Documents for each Lot owned. All assessments, together with interest (computed from the assessment's due date at a rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is greater), late charges as determined by Board resolution, and Legal Costs, shall be the personal obligation of each Owner, other than Declarant and Builder during the Class "B" Control Period, and a continuing lien upon each Lot until paid in full. If a Lot is owned by more than one (1) Person, each such Owner shall be personally obligated and shall be jointly and severally liable for all assessments, together with interest, late charges and Legal Costs. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Any failure by the Board to fix any assessment amounts or rates or any failure by the Board or an agent of the Association to deliver or mail each Owner an assessment notice shall

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not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner, other than Declarant and Builder during the Class "B" Control Period, shall continue to pay Regular Assessments and Service Area Assessments, if any, on the same basis as during the last Fiscal Year for which an assessment was made until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner is exempted from liability for assessments by non-use of Common Maintenance Areas, non-use of Common Area, abandonment of that Owner's Lot, or for any other reason. The obligation to pay assessments is a separate and independent covenant by each Owner, other than Declarant and Builder during the Class "B" Control Period. No reduction or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some required function, or for inconvenience or discomfort arising from making repairs or improvements, or for any other reason.

Following a written request, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing or administrative fee for the issuance of such a certificate.

(b) Builder's Option to Fund Budget Deficits. Notwithstanding anything to the contrary contained in this Declaration, to the extent permitted by Florida law, during the Class "B" Control Period, Builder may satisfy the obligation for assessments on Lots which it owns either by paying assessments in the same manner as any other Owner or by funding the Association's budget deficit (commonly referred to as "deficit-funding the Association"). The Declarant shall have no obligation to fund any budget deficits of the Association that may occur. The Association's budget deficit is the difference between (i) the amount of Regular Assessments levied on Class "A" Member-owned Lots, plus any other anticipated income of the Association during that Fiscal Year, and (ii) the amount of the Common Expenses and the Association's anticipated expenditures during that Fiscal Year, excluding contributions to reserves and excluding Special Assessments arising as a result of any loss or liability. Unless Builder otherwise notifies the Board in writing at least thirty (30) days before the beginning of a Fiscal Year, Builder shall continue paying on the same basis as during the previous Fiscal Year.

Regardless of Builder's election, Builder's assessment obligations during the Class "B" Control Period may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these, the value of which shall be reasonably determined by Builder. After termination of the Class "B" Control Period, Builder shall pay assessments on Lots which it or its Affiliates own in the same manner as any other Owner.

(c) Declarant's and/or Builder's Right to Loan or Advance Funds. Declarant and/or Builder may (but is not obligated to) loan, advance or otherwise make payments to the Association to assist the Association in meeting the Association's financial obligations, in addition to Declarant's and Builder's obligations to pay assessments or fund the deficit under Article VIII, Sections 8.5 or 8.6(b) of this Declaration. Notwithstanding anything to the contrary

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contained in this Article VIII, if Declarant and/or Builder loans, advances or otherwise pays assessments in excess of its obligations under Article VIII, Sections 8.5 or 8.6(b) of this Declaration, then any such sums shall be repaid by the Association to the Declarant and/or Builder prior to the termination of the Class "B" Control Period.

#### 8.7 Lien for Assessments.

All assessments (Regular Assessments, Service Area Assessments, Special Assessments, Capital Improvement Assessments and Benefited Assessments), together with such interest and late charges as shall be imposed by the Board and all Legal Costs, shall be a charge and continuing lien upon the Lot against which such assessment is made from and after the date on which such assessment is due in order to secure payment of assessments that remain unpaid for a period of thirty (30) days or longer after becoming due. The Association may record a notice of lien for any delinquent assessments in the Public Records of the County and foreclose the lien in the same manner as a mortgage. Upon recording, the lien shall secure the amount of delinquency stated therein and all unpaid assessments, interest, late charges and Legal Costs thereafter until satisfied of record. Such lien shall be superior to all other liens, except: (a) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value; and (b) other liens or encumbrances which by law would be superior. The Association's lien may be enforced by suit, judgment, and/or judicial or nonjudicial foreclosure, unless prohibited by applicable law.

Notwithstanding the above, and subject to applicable law, the Board may designate assessments or charges levied solely for the purpose of funding Common Expenses related to acquisition, development, or construction of infrastructure or capital improvements serving the Community (or to pay the cost to underwrite, service, and repay any debt incurred to finance any such acquisition, development, or construction) as a "Capital Improvement Assessment", and the lien for a Capital Improvement Assessment shall be superior to: (a) the Association's lien for other Common Expenses and Limited Common Expenses; and (b) all other liens except those deemed superior under federal or Florida law and which may not be made subordinate by this provision.

At a foreclosure sale, the Association may bid for the Lot and acquire, hold, lease, mortgage, and convey that Lot. The Association may sue for unpaid assessments and other charges without foreclosing or waiving its assessment lien.

Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure by the first Mortgagee (or pursuant to a deed in lieu of foreclosure to a first Mortgage) extinguishes the lien relating to any amounts due prior to the Mortgagee's foreclosure or the deed in lieu of foreclosure. The purchaser of such foreclosed Lot shall not be personally liable for assessments on such Lot due prior to the foreclosure sale. Such unpaid assessments shall become Common Expenses collectible from Owners of all Lots subject to assessment and collection under Article VIII, Section 8.5, including, without limitation, such purchaser, its successors and assigns.



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Notwithstanding the above, while the Association owns a Lot: (a) no right to vote or voting interest shall be exercised on behalf of that Lot; (b) no assessment shall be levied on that Lot; and (c) each other Lot shall be charged, in addition to its usual assessment(s), its prorated share of the assessment(s) that would have been charged to such Lot had it not been acquired or owned by the Association.

**8.8 Exempt Property.**

The following property shall be exempt from payment of Regular Assessments, Service Area Assessments, Special Assessments, Capital Improvement Assessments and Benefited Assessments:

- (a) All Common Area and any other portions of the Community which are not Lots; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

**8.9 Initial One-Time Assessment.**

The Association hereby establishes an initial one-time assessment (the "Initial Assessment") applicable to each Lot, in such amount as determined in the Board's discretion, not to exceed one hundred percent (100%) of the full Regular Assessment per Lot levied for the Fiscal Year in which that Initial Assessment is due and payable. The Initial Assessment shall become due and payable upon first occupancy of such Lot as a place of residence by a Class "A" Member or upon the first conveyance of the Lot with a completed dwelling, whichever occurs first. The Declarant and Builder shall not be required to pay the Initial Assessment but the third party purchaser of any Lot from Declarant or Builder shall be liable for the Initial Assessment. Such Initial Assessment may be used to fund the Association's initial start up costs, other operating expenses, to pay Common Expenses or to help fund reserves, in the Board's discretion. The Initial Assessment may be referred to by another term or phrase, such as Working Capital Contribution, Working Fund Contribution or some other term or phrase, in any marketing, sales, promotional and/or disclosure materials.

No further Initial Assessment shall be due for any subsequent transfer of ownership of any Lot from one Class "A" Member to a successor Class "A" Member.

**8.10 Use and Consumption Fees; Licenses and Royalties.**

The Board may charge use and consumption fees to any Person using Association services or facilities and may, in its discretion, determine the amount and method of determining such fees. Different fees may be charged to different classes of users (for example, Owners and non-Owners). Any such fees charged to Owners shall be considered a Benefited Assessment against the Lots of such Owners under Article VIII, Section 8.4(a) of this Declaration.

As set forth in Article X, Section 10.7 of this Declaration, the Association may enter into license agreements with Declarant, Builder or other parties to permit the Association's use of trade names or service marks, such as the use of the name "Tuscany Bay". To the extent

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permitted by such license agreements, the Board may enter into sub-license agreements, under negotiated terms, which permit others within the Community to use such trade names and/or service marks. The Association may charge fees and collect royalties in connection with such sub-license agreements; provided, Declarant, Builder, any Builder Affiliate and any Declarant Affiliate shall retain the absolute right to use such trade names and service marks without payment of any license fees. Any such fees and royalties shall be considered a Benefited Assessment under Article VIII, Section 8.4(a) of this Declaration.

## **Article IX    Expansion of the Community**

### **9.1    Annexation by Declarant.**

Declarant may, from time to time, subject additional property to this Declaration and the jurisdiction of the Association by recording a Supplemental Declaration describing the property being subjected. A Supplemental Declaration recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if that owner is not the Declarant.

Declarant's right to annex property pursuant to this Section 9.1 expires ten (10) years after this Declaration is recorded. Until then, Declarant may transfer or assign this right, in whole or in part, to any Person who is the developer of at least a portion of the real property described in **Exhibit "A"**. Any such transfer of this right shall be memorialized in a recorded instrument executed by Declarant.

Nothing in this Declaration shall require Declarant or any successor Declarant to subject additional property to this Declaration or to develop any other property in any manner whatsoever.

Declarant intends to develop the Community in accordance with the Development Plan, but hereby reserves the right to modify the Development Plan and any Plat from time to time in its sole and absolute discretion and at its option. Declarant shall not be required to follow any predetermined order of improvement and development within the Plat or Community; and Declarant may annex additional lands and develop them before completing the development of the Community.

### **9.2    Annexation by the Association.**

The Association may annex property and subject that property to the provisions of this Declaration and the jurisdiction of the Association by recording a Supplemental Declaration describing that additional property. Annexation by the Association shall require the affirmative vote or written consent of at least fifty-one percent (51%) of Members representing the total number of Class "A" votes and the consent of the owner of that additional property. In addition, during the Development and Sale Period, written consent from Declarant and Builder is required for any annexation. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property to be annexed, and by Declarant and Builder, if such consent from Declarant and Builder is required.

In the event that either the U.S. Department of Housing and Urban Development ("HUD") or the U.S. Department of Veterans Affairs ("VA") insures or guarantees any

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Mortgage encumbering a Lot, and the regulations or procedures of either agency require under such circumstances approval of annexations by the applicable agency or determination by the applicable agency that such annexation is consistent with the general plan of development for the Community, then such approval or determination as described in Article XVI, Section 16.9 of this Declaration shall be a prerequisite to such annexation.

**9.3 Additional Covenants and Easements.**

By recording a Supplemental Declaration, Declarant, (or the Association) may impose additional covenants, conditions, restrictions and easements on any property annexed into the Community, including, without limitation, covenants obligating the Association to maintain and insure specific property, and authorizing the Association to recover its costs through Benefited Assessments or through Service Area Assessments. If a Person other than Declarant owns the additional (or annexed) property, then such Person's consent and execution of the Supplemental Declaration is required. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the additional (or annexed) property in order to reflect the different character and/or intended use of that property.

**9.4 Effect of Filing Supplemental Declaration.**

A Supplemental Declaration shall be effective upon recording in the Public Records of the County. Unless otherwise specified in the Supplemental Declaration, the Lots made subject to this Declaration and the jurisdiction of the Association by such Supplemental Declaration shall have equal voting rights in the Association and equal pro rata liability for Regular Assessments with all other Lots in the Community.

**Article X Additional Rights Reserved to Declarant**

**10.1 Withdrawal of Property.**

Declarant reserves the right to amend this Declaration until termination of the Class "B" Control Period in order to withdraw and remove from the application of this Declaration any property which has not been improved by a structure or Residence intended for occupancy, whether or not such property has been improved by landscaping, decorative walls, signs, irrigation, utilities, and/or any other improvements. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if that property is not owned by Declarant. Except as provided in Article VII, Section 7.1(b) of this Declaration, if the property is Common Area, the Association's prior written consent is required for such withdrawal.

**10.2 Marketing and Sales Activities.**

Notwithstanding anything in the Governing Documents to the contrary, Declarant, Builder, their respective Affiliates and assigns may construct, install, place, maintain, and operate upon portions of the Common Area and property they respectively own, such facilities, structures, equipment, activities, and/or things as, Declarant and/or Builder, in their discretion, may deem to be required, convenient, or incidental to the construction, marketing or sale of Lots in the Community or in any other planned community being developed by Declarant and/or



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Builder. Such permitted facilities, structures, equipment, activities, and things shall include, without limitation, business offices, signs, flags (whether on flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, exterior lighting features, and exterior lighting displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant, Declarant's Affiliates, Builder, Builder's Affiliates and their respective assigns, and any other authorized builders may park vehicles in areas other than garages or driveways, including, without limitation, on streets.

#### 10.3 Right to Develop.

Declarant and its Affiliates, Builder and its Affiliates, and their respective employees, agents, vendors, licensees, invitees and designees, shall have a right of access and use, and an easement over, upon, through and under, all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area and/or the Exhibit "A" property, as Declarant and/or Builder deems appropriate in their respective discretion.

Each Owner acknowledges that the development of the Community may extend over a number of years, and voluntarily agrees and consents to all changes in: (a) uses or density of Lots or dwellings within the Community; (b) the Development Plan; (c) the architectural scheme of the Community; (d) the type of residence or dwelling being built, constructed and/or sold; and/or (e) the architectural pattern of the Community.

Notwithstanding anything contained in any written letter, document or materials, or any oral statement received by any Owner, each Owner acknowledges, understands and voluntarily agrees that the present plans and themes for the Community's development may change, and that such Owner has not relied on any representation, warranty, or assurance by any Person: (a) that any Lots, or other property, amenities or facilities, will be added, modified, or eliminated within the Community; or (b) as to the financial or other impact of such action on any Owner. Each Owner acknowledges and agrees that it is not entitled to rely upon and has not received or relied upon any representations, warranties, or guarantees whatsoever as to the current or future: (a) design, construction, completion, development, use, benefits, or value of property within the Community; (b) number, types, sizes, prices, or designs of any residential or non-residential structures, facilities, amenities or improvements built or to be built in any part of the Community; or (c) use or development of any property adjacent to or within the vicinity of the Community.

#### 10.4 Right to Approve Changes in the Community Standards.

No amendment to or modification of any Use Restrictions, Rules and Regulations, any other Board rules, or the Architectural Guidelines during the Class "B" Control Period shall be effective without prior notice to, and the written approval of, the Declarant and the Builder.

#### 10.5 Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's rights and obligations set forth in this Declaration, the Articles or the By-Laws may, except to the extent restricted by Florida law, be transferred, in whole or in part, from time to time, to other Persons. No such transfer or assignment shall be effective unless it is in a recorded instrument signed by Declarant. Declarant may allow other Persons to

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exercise, on a one-time or limited basis, any Declarant right without transferring the entire right. In such case, a recorded instrument is not required, but such transfer must be in writing.  
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**10.6 Right to Transfer or Assign Builder Rights.**

Any or all of Builder's rights and obligations set forth in this Declaration, the Articles or the By-Laws may, except to the extent restricted by Florida law, be transferred, in whole or in part, from time to time, to other Persons. No such transfer or assignment shall be effective unless it is in a recorded instrument signed by Builder. Builder may allow other Persons to exercise, on a one-time or limited basis, any Builder right without transferring the entire right. In such case, a recorded instrument is not required, but such transfer must be in writing.

**10.7 Community Systems and Services.**

Declarant reserves for itself, Builder, Declarant's successors and assignees, and grants to the Association (after Declarant no longer owns any property described on Exhibit "A" or at such earlier time as Declarant elects in writing) the exclusive and perpetual right to provide and operate, or to permit others to provide and operate, within the Community, such telecommunication systems (including, without limitation, cable television, satellite television, community intranet, internet, and any other systems for receiving, distributing, and transmitting electronic data, signals, and audio or visual communications), security systems and services, utilities, trash collection, and other systems and services, including, without limitation, conduits, wires, amplifiers, towers, receivers, satellite dishes, antennae, and other apparatus and equipment for the operation or provision thereof (collectively, the "Community Systems and Services") as Declarant or Builder, in their respective discretion, deem appropriate. Such right shall include, without limitation, the right to select and contract with companies licensed, if applicable, to provide such services within the Community, and to charge individual users a fee not to exceed the maximum allowable charge for such service, as is from time to time defined by the laws, rules, and regulations of the relevant government authority, if applicable. Declarant and/or Builder may receive, and shall be entitled to retain, any rebate, credit, fee, or any other incentive relating to the installation, operation, and/or provision of any Community Systems and Services.

During the Class "B" Control Period, Declarant and/or Builder may require that the Association enter into agreements for the provision of Community Systems and Services to all Lots as Common Expenses, or to Lots within a particular Service Area as Limited Common Expenses. If particular services or benefits are provided to particular Owners or Lots at their request, the benefited Owner(s) shall pay the service provider directly for such services or benefits, or the Association may assess the costs as a Benefited Assessment.

**10.8 Rights To Use Names; License Agreements.**

The Community Name, and all similar or derivative names, along with all logos associated therewith, are the proprietary trade names and service marks of Declarant, Builder, or their respective Affiliates. No Person shall use such trade names or service marks for advertising or any other purpose in any promotional, advertising or sales materials, whether printed, audio, video, internet, website, on-line or otherwise, in any signage, or in any logo or depiction or in

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any other fashion or manner without the prior written consent of the Person who owns such mark in each instance. In addition, due to the integrated nature of the Community as a planned community, and the public identification of the Lots with the Community, any name or logo to be used in connection with or displayed on any Lot, and any sales, promotional or other materials or documentation related to the use of the Lot, shall be subject to Declarant's and Builder's prior written consents in each instance. Such approval may be given or withheld in Declarant's and Builder's absolute and sole discretions and may be subject to such terms and conditions as Declarant and Builder deem appropriate in Declarant's and Builder's discretions.

Notwithstanding the above, an Owner may use the name "Tuscany Bay" where such term is used solely to specify that the Owner's particular Lot is located within the Community (subject, however, to such terms and conditions as Declarant and/or Builder may impose in order to protect any registered trade names and/or service marks).

The mark or trademark owner may condition such use of the mark by the Association or any Owner upon the signing of one or more license agreement(s) which are intended to protect the trade names and service marks from unauthorized use by others. Such license agreement(s) shall be non-exclusive, non-transferable, in form and substance acceptable to the owner of the mark.

#### 10.9 Easement to Inspect and Right to Correct.

Declarant reserves for itself, Builder and others Declarant may designate from time to time, the right to inspect, monitor, test, redesign, modify and correct any structure, Residence, equipment, facility, improvement, and/or condition which may exist on any portion of the Community, including any Lot, and a nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner of that Lot and no entry into a Residence or other structure on a Lot shall be permitted without that Owner's consent, which consent shall not unreasonably be withheld, conditioned, and/or delayed. The failure and/or refusal to permit reasonable access to the Lot for the purposes contemplated under this Section 10.9 shall excuse Declarant, Builder or their respective designees, from responsibility for any replacement, maintenance, repairs or damages. The Person exercising this easement shall promptly repair, and pay for, any resulting damage. The provisions of this Section 10.9 do not impose any obligation on Declarant, Builder or any other Person (other than the Owner of the applicable Lot) to perform any such inspection, monitoring, testing, redesigning, modification, alteration and/or correction.

#### 10.10 Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures, facilities, equipment, buildings, amenities or improvements, including, without limitation, Residences, within the Community in connection with or in anticipation of any potential or pending claim, demand, action, suit or litigation involving such design or construction unless Declarant and Builder have been first notified in writing and given an opportunity to meet with the Owner and conduct Declarant's and Builder's own independent inspections.



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**10.11 Termination of Rights.**

Rights granted to Declarant under this Article X (other than the rights granted in Article X, Sections 10.7 and 10.8 of this Declaration) shall terminate upon the earlier of: (a) the period specified in the particular Section of this Article X, if any; or (b) twenty-five (25) years from the date this Declaration is recorded. Thereafter, Declarant and/or Builder may continue to use the Common Areas for the purposes stated in this Article X only pursuant to a rental or lease agreement between Declarant and/or Builder and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas. Notwithstanding the above, Declarant reserves for itself and Builder a perpetual, non-exclusive easement of access to and use of the Common Areas in connection with the marketing, promotion and/or sale of other properties in order to show the Community as an example of Declarant's and/or Builder's projects. This Article shall not be amended without Declarant's and Builder's prior written consents.

**10.12 Exclusion of Declarant's and/or Builder's Other Properties.**

By accepting a deed to a Lot, each Owner specifically acknowledges that nothing contained in this Declaration shall, in any way, either expressly or by implication, restrict, limit, or otherwise affect the use or disposition by Declarant, Builder, any Affiliate of Builder or any Affiliate of Declarant of any property respectively owned by any of them, whether contained within or contiguous to the Community. Declarant, its Affiliates, Builder and Builder's Affiliates, shall have full, free, and unrestricted use of its and their other lands, notwithstanding any incompatibility of such use with restrictions this Declaration imposes upon the Lots. By accepting a deed to a Lot, each Owner, specifically and expressly disclaims any reciprocal negative easement in any property Declarant and/or Builder owns.

**Article XI Easements**

**11.1 Easements in Common Area.**

Subject to the provisions set forth below, every Owner shall have a right to use a perpetual, non-exclusive easement of enjoyment in and to the Common Area and/or certain Limited Common Area together with a perpetual, non-exclusive easement of access to and from the Common Area and/or certain Limited Common Area, which shall be appurtenant to and shall pass with the title to the Lot owned by such Owner. Declarant grants to each Owner a right and easement of use, access, and enjoyment in and to the Common Area, as stated in this Section 11.1, subject to the following limitations:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying the property to the Association;
- (c) The Board's right to:

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- (i) adopt rules regulating Common Area use, including, without limitation, rules limiting the number of guests who may use the Common Area, and charge use fees for such use;
  - (ii) suspend the right of an Owner and that Owner's family members, guests, tenants, employees, agents and invitees to use any Common Maintenance Area facility, structure, equipment and/or amenity: (A) for any period during which any assessment or other charge against that Owner's Lot remains delinquent; (B) for a period not to exceed thirty (30) days for a single violation; and/or (C) for a longer period of time in the case of any continuing violation of the Governing Documents;
  - (iii) dedicate or transfer all or any part of the Common Area, subject to any approval requirements set forth in this Declaration;
  - (iv) rent any portion of the Common Area on an exclusive or non-exclusive short-term basis to any Person;
  - (v) permit use by the general public, which use may, but need not, be subject to admission charges, membership fees, and/or any other user fees established in the Board's sole discretion (except to the extent inconsistent with any easement agreement relating thereto); and
  - (vi) mortgage, pledge, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred, subject to the approval requirements set forth in Article XVI, Section 16.9 of this Declaration.

(d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated as "**Limited Common Areas**," if any, as described in Article XIII of this Declaration.

Any Owner may extend that Owner's right to use the Common Area to the members of that Owner's, tenants, guests and social invitees, as applicable, subject at all times to reasonable Board regulation. An Owner who leases that Owner's Lot in accordance with this Declaration shall be deemed to have assigned all such rights to the tenants of such Lot for the lease term and shall not have any right to utilize the Common Area during such term, except as necessary to access that Owner's Lot.

Each Owner has a perpetual, non-exclusive ingress and egress easement to that Owner's Lot(s).

#### 11.2 Easements of Encroachment.

Declarant grants easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots. Such easement shall permit encroachment only by a structure, improvement or fixture which has been constructed by Declarant and/or Builder, or approved in advance in accordance with Article IV of this Declaration, and which is constructed, installed, built, erected and/or placed on another's property without the actual intention of encroaching on such property.

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An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.  
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11.3 Easements for Utilities, Etc.

(a) Installation and Maintenance. Declarant reserves for itself and its duly authorized agents, successors, assigns and Builder, so long as Declarant, Builder or any Affiliate of Declarant, owns any property described in Exhibit "A", and grants to the Association, subject to Declarant's rights under Article X, Section 10.7 of this Declaration, perpetual, non-exclusive easements on, over, under and throughout the Community (but not through a Residence) to: (i) install utilities and any infrastructure to serve any portion of the Community, including, without limitation, water, sewer, telephone, electric, gas, irrigation, cable television and other systems for sending and receiving data and/or other electronic signals, drainage structures, facilities and systems, and security and similar systems and any other Community Systems and Services; (ii) install walkways, sidewalks, pathways, landscaping, trails, curb cuts, driveways, paved areas, street lights, and signage on property which Declarant, Builder or the Association owns and/or within public rights-of-way or easements reserved for such purpose (or for the installation of landscaping or utilities) on a Plat; (iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described in this Section 11.3(a); (iv) access and read utility meters; and (v) for any other purpose in Declarant's and/or Builder's sole discretion. The right, license, or easement granted to a utility supplier shall include the non-exclusive right to ingress and egress over any streets for access and maintenance of equipment and facilities.

Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) Specific Easements. Declarant also reserves for itself and Builder the non-exclusive right and power to record such specific easements anywhere in the Community (except through a Residence) as may be necessary or appropriate, in Declarant's and/or Builder's sole discretion, to assist in the development, management, marketing, sales and/or operation of the Community.

(c) Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section 11.3 shall be performed in such a manner as to minimize, to the extent reasonably practical, interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably practicable, to the condition existing prior to the work. The exercise of these easements shall not extend to permitting entry into the structures or Residences on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant of that Lot.

11.4 Easements to Serve Additional Property.

Declarant reserves for itself and its duly authorized agents, successors, assigns, Builder and Mortgagees, an easement in, through, under and over the Common Area and Lots for



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enjoyment, use, access, and development of any additional property, whether or not such additional property is actually made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over, under, in and through the Common Area and Lots for construction of roads and for connecting and installing utilities.

If the above easement is exercised for permanent access to any property which is not submitted to this Declaration, Declarant, Builder or their respective successors or assigns, shall enter into an agreement with the Association to share the cost of maintenance that the Association provides for the benefit of the easement holder, except to the extent such easement was created prior to the recordation of this Declaration.

#### 11.5 Easements for Maintenance, Emergency and Enforcement.

Declarant grants to the Association easements over, in, under, across and through the Community as necessary for the Association to fulfill its maintenance and operation responsibilities under this Declaration and any Supplemental Declaration. The Association shall also have an easement and the right, but not the obligation, to enter upon any Lot for emergency, security, and/or safety reasons, to perform maintenance and/or to inspect for the purpose of ensuring compliance with and enforcing the Governing Documents. Such easement and right may be exercised by the Association through its officers, Directors, committee members, employees, contractors, or agents in their official capacities as such and by all emergency personnel (for example, fire, police, law enforcement, paramedics and emergency medical technicians) in the performance of their official duties. Except in an emergency situation, entry by the Association shall only be during reasonable hours and after notice to the Owner of that Lot.

Declarant grants to the Association, subject to any required notice, an easement and right to enter any Lot to abate a violation of the Governing Documents and/or to remove any structure, improvement, thing, or condition that violates the Governing Documents. Any costs incurred by the Association, including Legal Costs, shall be assessed against that Lot Owner as a Benefited Assessment.

#### 11.6 Easements for Maintenance of Bodies of Water and Flooding.

Declarant reserves for itself, the Builder, the Association, the District, and their respective successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and/or any Wetlands located within the Common Maintenance Areas and the Community to: (a) install, operate, maintain, repair, and replace pumps and any other equipment to supply irrigation water to the Common Maintenance Areas; (b) construct, maintain, repair, and replace structures and equipment used for retaining, detaining, and otherwise controlling water; and/or (c) maintain such areas in a manner consistent with the Community-Wide Standard and applicable legal requirements. Declarant, the Builder, the Association, the District, and their successors, assigns, and designees shall have an access easement over, under and across any portion of the Community which abuts or contains bodies of water and/or any Wetlands to the extent reasonably necessary to exercise their rights under this Section 11.6.

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Declarant further reserves for itself, the Builder, the Association, and their respective successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Maintenance Areas and Lots (but not inside a Residence or other structure) adjacent to or within fifty (50) feet of bodies of water and/or Wetlands within the Community, in order to: (a) temporarily flood and back water upon and maintain water over such portions of the Community; (b) alter in any manner and generally maintain the bodies of water and any Wetlands within the Common Maintenance Areas; and (c) maintain and landscape the slopes and banks pertaining to such areas. Anyone exercising these easements shall use reasonable care in, and repair any damage resulting from, their intentional exercise of the easements. Nothing herein shall be construed to make Declarant, Builder or any other Person liable for damage resulting from flooding due to natural occurrences and/or for any other occurrences or events not reasonably foreseeable or under the direct control of Declarant, Builder or such other Person. This Section 11.6 shall not be amended without the prior written approval of the District.

**11.7 Easements for Cross-Drainage.**

All portions of the Community shall be burdened with easements for drainage of stormwater runoff from other portions of the Community; however, no Person other than Declarant and/or Builder shall alter the drainage on any Lot to increase materially the drainage of stormwater onto adjacent portions of the Community without the consent of the Owner(s) of the affected property, the Board, the District, if applicable, and if such request is made during the Development and Sale Period, the Declarant and Builder.

**11.8 Rights to Storm Water Runoff, Effluent and Water Reclamation.**

Declarant reserves for itself, its designees and Builder, all rights to ground water, surface water, stormwater runoff, and effluent located and/or produced within the Community, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such rights shall include, without limitation, the reservation of an easement over, under and through the Community for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and effluent. This Section 11.8 may not be amended without Declarant's and Builder's prior written consents, and the rights created in this Section shall survive termination of this Declaration.

**11.9 Easement for Maintenance of Surface Water or Stormwater Management System.**

The Declarant, the Builder and the Association shall have a perpetual, non-exclusive easement over all portions of the Surface Water or Stormwater Management System for access to operate, maintain, repair, and/or replace the system. By this easement, the Declarant, the Builder and the Association shall have the right to enter upon any portion of any Lot which is a part of or adjacent to the Surface Water or Stormwater Management System, at a reasonable time and in a reasonable manner, to operate, maintain, repair, and/or replace the Surface Water or Stormwater Management System as required by the District Permit, the County, the City and/or any governmental agency or quasi-governmental body. Additionally, the Declarant, the Builder and the Association shall have a perpetual, non-exclusive easement for drainage over the entire Surface Water or Stormwater Management System, and the owner of the pumps, pipes, and other

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apparatus comprising the system shall have an easement of access and maintenance as necessary for the operation, maintenance, repair, and/or replacement of such equipment. No Person shall alter the drainage flow of or over the Surface Water or Stormwater Management System, including, without limitation, buffer areas or swales, without the prior written approval of the Association and the District, and, if it is during the Development and Sale Period, the prior written approval of Declarant and the Builder. This Section 11.9 shall not be amended without the prior written approval of the District.

#### 11.10 Sign Easement.

Declarant reserves for itself, the Builder and the Association an easement (herein referred to as the "Entry, Sign and Landscape Easement") over, upon, through and across all areas designated as "Landscape Tract", "Signage Tract" "Landscape Area", "Entryway Feature Easement Area or Tract" or identified by any similar designation, on any Plat of the Community, for the erection, installation, operation, maintenance, repair, and/or replacement of signs, walls, monuments, fencing, decorative improvements, entry features, gates, landscaping, lighting, utility, and/or irrigation facilities within and/or adjacent to the Community. No Owner shall obstruct access to this Entry, Sign and Landscape Easement, or install or remove any plant or other improvement or installation placed in the Entry, Sign and Landscape Easement by the beneficiaries thereof, or obstruct the view of the Entry, Sign and Landscape Easement from the adjacent street right-of-way. All signs, walls, monuments, entry features, gates, landscaping, utility, irrigation and other permanent improvements installed in the Entry, Sign and Landscape Easement by Declarant and/or Builder shall become the Common Area of the Association upon conveyance from Declarant, and the Association shall maintain such Entry, Sign and Landscape Easement and the improvements therein as part of the Common Area. In addition, Declarant, any designee of Declarant and Builder shall have the right, without the prior approval of the Association or any Owner, within the Entry, Sign and Landscape Easement, to erect, change, move, alter, remove, repaint, maintain, and/or otherwise exercise complete and unfettered control over advertising, sales, promotional and/or marketing signs at all times prior to the sale of the last Lot in the Community owned by Builder or any designee of Builder, and all such advertising, sales, promotional and/or marketing signs shall be and remain the exclusive property of Builder (or such designee of Builder) and shall not be deemed or considered part of the Common Area owned by the Association.

#### 11.11 Easement for Irrigation Equipment

If there is a master irrigation system for the Community, the Declarant, the Builder and the Association shall have a perpetual, non-exclusive easement over, under and through all exterior portions of each Lot, except any area upon which buildings have been erected by Declarant and/or Builder or otherwise in accordance with Article IV of this Declaration, for the purpose of installing, maintaining, repairing, replacing and/or operating all irrigation equipment, systems and lines serving all or any portion of the Lots and/or Common Area. The foregoing easement shall not impose any obligation on the Association, the Builder and/or Declarant to install any such irrigation equipment, systems or lines.



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**11.12 General Development Easements.**

The Declarant reserves for itself, its successors, assigns and Builder, a blanket easement throughout the entire Community, to allow it to take whatever action it determines is necessary or beneficial to the development, management and/or operation of the Community. This blanket easement is to allow the Declarant and/or Builder to construct all of its improvements, landscaping, structures, facilities, amenities, equipment and/or any other item in the Community, whether on Common Area or on any Lot, in the manner that Declarant and/or Builder may deem necessary. This means that the Declarant and Builder have access and use of any Lot and/or the Common Area as is necessary to construct, install, operate, build, and/or place any improvement, structure, landscaping, Residence, facility, amenity, entry feature, signage, or any other item within the Community. It also is reserved for the purpose of allowing the Declarant and/or Builder, if they deem necessary, to repair, relocate, construct, operate, replace and/or maintain any of the improvements, structures, landscaping, facilities, amenities, equipment and/or any other item installed in the Community.

**Article XII Conservation Easements, Natural Conditions and Preserves**

**12.1 Conservation Easements.**

(a) **Establishment of Conservation Easements.** The provisions of Section 704.06 of the Florida Statutes (2005), and as it may be amended and/or renumbered from time to time, establish the right of the District and/or the County (the "Easement Grantee") to accept easements for the preservation of the natural habitat, if any (such easements shall be referred to herein as the "Conservation Easements"). There are no Conservation Easements established by this Declaration; however, Declarant reserves unto itself, the Builder and to the Association the right to grant such easements over and upon portions of the Common Area or Lots unto the Easement Grantee pursuant to the provisions of Section 704.06 of the Florida Statutes. Any Conservation Easements so granted shall be subject to the requirements of Section 704.06 of the Florida Statutes, and the following provisions. For the purposes of this Declaration, any portion of the Common Area encumbered by a Conservation Easement shall be referred to as the "**Conservation Easement Property**".

(b) **Purpose.** The purpose of a Conservation Easement is to assure that the Conservation Easement Property will be retained forever in its existing natural condition and to prevent any use of the Conservation Easement Property that will impair or interfere with the environmental value of the Conservation Easement Property.

(c) **Prohibited Acts and Uses.** Any activity on or use of the Conservation Easement Property inconsistent with the purpose of a Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(i) constructing or placing buildings, roads, signs, billboards, or other advertising, utilities or other structures on or above the ground;

(ii) dumping or placing soil or other substances or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials;

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(iii) removing, mowing, trimming or destroying trees, shrubs, or other  
vegetation;  
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(iv) excavating, dredging, or removing loam, peat, gravel, soil, rock, or  
other material substances in such a manner as to affect the surface;

(v) using the surface area of the Conservation Easement Property,  
except for purposes that permit the land or water area to remain predominantly in its natural  
condition;

(vi) activities detrimental to drainage, flood control, water  
conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;

(vii) acting upon or using the Conservation Easement Property in a  
manner detrimental to such retention of land or water areas;

(viii) acting upon or using the Conservation Easement Property in a  
manner detrimental to the preservation of the structural integrity or physical appearance of sites  
or properties of historical, architectural, archaeological, or cultural significance;

(ix) constructing or installing utilities on, below, or above the ground  
without appropriate local, state, and federal permits or other authorization; and/or

(x) applying of herbicides, pesticides, or fertilizers.

(d) Reserved Rights. The owner of record title to the Conservation Easement  
Property, if any, reserves unto itself, and its successors and assigns, all rights accruing from its  
ownership of the Conservation Easement Property, including, without limitation, the right to  
engage in or permit or invite others to engage in all uses of the Conservation Easement Property  
that are not expressly prohibited herein and are not inconsistent with the purpose of the  
Conservation Easement.

(e) Rights of Easement Grantee. To accomplish the purposes stated herein, the owner  
of record title to the Conservation Easement Property shall grant the following rights to the  
Easement Grantee, Builder and Declarant:

(i) to enter upon and inspect the Conservation Easement Property in a  
reasonable manner and at reasonable times to determine if the Association, the Owners, the  
Builder and Declarant or its successors and assigns are complying with the covenants and  
prohibitions contained in the Conservation Easement; and

(ii) to proceed at law or in equity to enforce the provisions of the  
Conservation Easement and the covenants set forth therein, to prevent the occurrence of any of  
the prohibited activities set forth herein, and require the restoration of areas or features of the  
Conservation Easement Property that may be damaged by any activity inconsistent with the  
Conservation Easement.

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(f) Easement Grantee's Discretion. The Easement Grantee may enforce the terms of the Conservation Easement at its discretion, but if the Association, Declarant, Builder or any Owner, breaches any term of the Conservation Easement and the Easement Grantee does not exercise its rights under the Conservation Easement, the Easement Grantee's forbearance shall not be construed to be a waiver by the Easement Grantee of such term, or of any subsequent breach of the same, or any other term of the Conservation Easement, or of any of the Easement Grantee's rights under the Conservation Easement. No delay or omission by the Easement Grantee in the exercise of any right or remedy upon any breach by the Association, Declarant, Builder or any Owner shall impair such right or remedy or be construed as a waiver. The Easement Grantee shall not be obligated to Declarant, the Builder or to any other Person or entity, to enforce the provisions of the Conservation Easement.

(g) Easement Grantee's Liability. The owner of the fee interest in the Conservation Easement Property shall retain all liability for any injury or damage to the person or property of third parties that may occur on the Conservation Easement Property. Neither Declarant, Builder, nor any Owner, nor any Person or entity claiming by or through Declarant, Builder or any Owner, shall hold the Easement Grantee liable for any damage or injury to person or personal property that may occur on the Conservation Easement Property.

(h) Acts Beyond Declarant's Control. Nothing contained in the Conservation Easement shall be construed to entitle the Easement Grantee to bring any action against Declarant, Builder and/or the Association for any injury to or change in the Conservation Easement Property resulting from natural causes beyond Declarant's, Builder's and/or the Association's control, including, without limitation, fire, flood, storm, tornado, hurricane, natural erosion and/or earth movement, or from any necessary action taken by Declarant, Builder and/or the Association under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Easement Property or to Persons resulting from such causes.

(i) Recordation. Declarant shall record any Conservation Easement in a timely fashion, and Declarant, Builder and the Owners of any Lots encumbered by the Conservation Easement shall re-record it by separate instrument at any time the Easement Grantee may require to preserve its rights. The Owners of any Lots encumbered by the Conservation Easement shall pay all recording costs and taxes necessary to record the Conservation Easement as a Benefited Assessment. Declarant will hold the Easement Grantee harmless from any recording costs or taxes necessary to record the Conservation Easement.

(j) Successors. The covenants, terms, conditions, and restrictions of the Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Conservation Easement Property.

(k) Restrictive Covenants Affecting Conservation Easements. No Owner or other Person shall cut, remove, destroy, or otherwise disturb any plant, shrub, tree, or other vegetation within any Conservation Easement Property, nor shall any Person, including, but not limited to any Owner, Declarant, Builder and the Association, deposit dirt, fill, grass clippings, trash, rubbish, tree trimmings, building materials, or other waste within such easements without the



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prior written consent (as evidenced by any required permit or other official certification) of the Association, Declarant, the Builder, the County and the District.

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(1) Amendment. This Section 12.1 shall not be amended without the prior approval of the Easement Grantee and the District, if the District is not the Easement Grantee at the time of the proposed amendment to this Section 12.1.

#### 12.2 Natural Conditions.

(a) The Community may contain a number of manmade, natural, and environmentally sensitive areas that may serve as habitats for a variety of native plants and wildlife, including, without limitation, insects, venomous and non-venomous snakes, alligators, other reptiles, raccoons, foxes, wild dogs, wild cats, and other animals, some of which may pose hazards to persons and/or pets coming in contact with them. Each Owner and occupant of any Lot, and every Person entering the Community: (i) acknowledges and agrees that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movements within and/or through the Community; and (ii) knowingly and voluntarily assumes all risk of property damage, personal injury and/or death arising from the presence of such plants and wildlife within the Community. Neither the Association, Builder, Declarant, any Predecessor Declarant, the Board, any builder, nor the members, partners, affiliates, officers, directors, shareholders, attorneys, agents, and/or employees of any of the foregoing, shall have any duty to take action to control, remove, or eradicate any plant or wildlife in the Community, nor shall they have any liability for any property damage, personal injury and/or death resulting from the presence, movement, and/or propagation of any plant or wildlife within or through the Community.

(b) The natural areas described in Article XII, Section 12.2(a) of this Declaration may also contain creeks, ponds, streams, lakes, retention ponds, detention ponds, Wetlands, intermittent pools of water, muddy areas, buffer areas, Wetland buffers, Wetland conservation areas and/or underbrush, among other things, all of which are important to the ecological balance and maintenance of the area as a wildlife habitat. No Owner or occupant of a Lot shall enter upon, or permit their guests, family members, invitees, agents, tenants, employees or any other Person acting on that Owner's behalf to enter upon, and/or disturb such areas in any way without the Association's, Builder's or Declarant's prior written approval.

#### 12.3 Preserves.

As may be depicted on any Plat, certain tracts of land within the Community may be identified as "Open Areas", "Buffer Areas", "Wetland Buffer", "Wetland Conservation Area" or "Wetlands" (collectively for purposes of this Section 12.3, the "Preserves"). Unless otherwise approved in writing by Declarant, Builder, the District, the County and any other governmental authorities having jurisdiction, the Preserves shall be maintained in their natural state in perpetuity. No Owner, member of an Owner's household, tenant, invitee, agent, guest, employee or any other Person acting, or purporting to act, on behalf of any Owner, or for whom any Owner shall be responsible pursuant to this Declaration, shall disturb the natural environment of any Preserves in any way without first obtaining the written consent of the Board properly approved by the adoption of a resolution describing in detail the exact activities to be conducted within the Preserves, the times and dates when such activities are authorized to occur,

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and the identities of the Persons who are authorized to so act, together with the written consent of Declarant, the Builder and any governmental authority having jurisdiction over the proposed activity.

This Section 12.3 is intended in the broadest sense, and includes, but is not limited to: the Use Restrictions set forth in Article III, Section 3.1 of this Declaration, as they may be amended from time to time; trimming, cutting, or mowing grass, shrubs, trees or other plants; removal of native vegetation; placing grass clippings, landscape debris, household trash or other materials; storing materials, equipment, vehicles, boats, motor homes, trailers, or other items; erecting children's playhouses, tree houses, swings, jungle gyms or any other permanent or temporary improvements; planting trees, shrubs, grass, or ground cover; releasing birds, snakes, reptiles, insects, or other animals; grading or excavating; cultivating or gardening; or dumping dirt, sand, rocks, gravel, or other inorganic or organic material on any part of the Preserves; no hunting or animal trapping; no carrying and/or discharging of firearms; no overnight camping and/or campfires; and no operation of motorcycles, mopeds, scooters, motorized skateboards, mini-motorcycles, so-called "all-terrain vehicles (ATV's)", "dirt bikes", or any other motorized vehicles, implements, equipment, or conveyances shall be permitted within any portion of the Preserves at any time.

Any Owner who violates this Section 12.3 shall be responsible for the cost of restoring the affected Preserves to the satisfaction of the Association, Declarant, Builder and any governmental authority having jurisdiction thereof, and the Association shall have the right to prohibit the violating Owner from further use and/or enjoyment of the Preserves.

**BECAUSE THE PRESERVES, IF ANY, ARE TO BE RETAINED IN THEIR NATURAL STATE, SUCH AREAS SHOULD BE CONSIDERED HAZARDOUS AND UNFIT FOR RECREATIONAL ACTIVITIES.**

**NEITHER THE ASSOCIATION, THE BOARD, BUILDER NOR DECLARANT, NOR ANY OF THEIR AFFILIATES, HAS ANY OBLIGATION TO PROVIDE SECURITY, SAFETY OR SUPERVISION FOR ANY PERSON USING ANY PORTION OF THE PRESERVES, AND ALL PERSONS USING ANY PORTION OF THE PRESERVES DO SO AT THEIR OWN RISK.**

**INSECTS, SNAKES, ALLIGATORS AND ANIMALS THAT MAY BE DANGEROUS TO HUMANS AND/OR CARRY DISEASE MAY INHABIT ANY PORTION OF THE PRESERVES.**

**OWNERS SHOULD NOT ALLOW CHILDREN OR PETS TO ENTER ANY PORTION OF THE PRESERVES WITHOUT ADULT SUPERVISION.**

**NEITHER THE ASSOCIATION, THE BOARD NOR DECLARANT, NOR ANY OF THEIR AFFILIATES SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY CONDITION OF ANY PORTION OF THE PRESERVES OR ANY PROPERTY DAMAGE, PERSONAL INJURY AND/OR DEATH OCCURRING THEREON.**

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**THE ASSOCIATION SHALL HAVE THE RIGHT TO IMPOSE ADDITIONAL RULES AND REGULATIONS GOVERNING THE USE OF THE PRESERVES, IF ANY ARE LOCATED WITHIN THE COMMUNITY.**

**IF ANY PORTION OF THE PRESERVES, OR THE TREES OR VEGETATION THEREON, ARE DAMAGED AND/OR DESTROYED BY FIRE, WINDSTORM, TORNADO, HURRICANE, TROPICAL STORM, FLOOD, DISEASE, OR OTHER NATURAL OR MANMADE EVENT, NEITHER THE ASSOCIATION, NOR THE BOARD, BUILDER, DECLARANT NOR ANY OF DECLARANT'S AFFILIATES, SHALL HAVE ANY OBLIGATION TO REPAIR OR RESTORE THE DAMAGE AND/OR DESTRUCTION, OR TO REMOVE ANY DEAD OR DAMAGED TREES OR ANY OTHER VEGETATION.**

### **Article XIII Limited Common Areas**

#### **13.1 Purpose.**

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of one (1) or more, but less than all, Lots within the Community. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, private roads, sidewalks, ponds, signage, lakes and other portions of the Common Area primarily serving a limited area, Service Area or less than all the Lots within the Community. All costs associated with ownership, maintenance, repair, replacement, management, operation and insurance of a Limited Common Area shall be a Limited Common Expense allocated in accordance with Article VIII, Section 8.1(b) of this Declaration among the Owners in the Service Area to which the Limited Common Area is assigned.

#### **13.2 Designation.**

Initially, any Limited Common Area shall be designated as such in the deed conveying such area to the Association or on the Plat relating to such Limited Common Area; however, any such assignment shall not preclude Declarant and/or Builder from later assigning use of the same Limited Common Area to additional Lots during the Development and Sale Period.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area upon approval of: (a) the Board; (b) Members representing a majority of the total Class "A" votes in the Association; and (c) Members entitled to cast a majority of the Class "A" votes attributable to Lots to which the Limited Common Area is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassignment shall also require Declarant's and Builder's prior written consents.

#### **13.3 Use by Others.**

Upon the approval described in Article XIII, Section 13.2, the Association may permit Owners of other Lots (outside of the designated Service Area) to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Limited Common Expenses attributable to such Limited Common Area.



## **Article XIV Party Walls and Other Shared Structures**

### **14.1 General Rules of Law to Apply**

Each wall, fence, driveway, and similar structure built as a part of the original construction on the Lots that serves any two (2) adjoining Lots shall constitute a party structure. For the purposes of this Article XIV, any fence that serves to enclose only one (1) Lot, or which is otherwise installed at the option of the Owner of a Lot, shall not be deemed a party structure. To the extent not inconsistent with the provisions of this Section 14.1, the general rules of law regarding party walls and liability for property damage due to negligence, willful acts and/or omissions shall apply to all party structures. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XV of this Declaration. For the purposes of this Article XIV, any interior wall common to and between two (2) dwellings or Residences shall not be considered a party structure.

### **14.2 Maintenance; Damage and Destruction**

Unless otherwise specifically provided in additional covenants relating to such Lots, the Owners sharing the party structure shall share equally in the cost of necessary or appropriate party structure repairs, replacement and/or maintenance; however, painting and other aesthetic modifications visible only to one side of the structure shall be the sole responsibility of the Lot Owner with such visibility.

If a party structure is destroyed and/or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of such insurance, any Owner sharing the structure may restore it and be entitled to contribution for the restoration cost in equal proportions from all other sharing Owners. However, such contribution will not prejudice the right to call for a larger contribution from the other Owners under any rule of law regarding liability for negligence, willful acts and/or omissions. The Owner of each Lot is granted an easement over the adjacent Lot as necessary to make repairs and/or restore the Lot.

The right of any Owner to contribution from any other Owner under this Section 14.2 shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

## **Article XV Dispute Resolution**

### **15.1 Agreement to Encourage Resolution of Disputes Without Litigation**

(a) Declarant, the Builder, the Association and its officers, Directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article XV (collectively, "Bound Parties"), agree to attempt to resolve disputes involving the Community and/or the Governing Documents without the emotional and financial costs of litigation. Accordingly, the Bound Parties knowingly and voluntarily agree, to the fullest extent permitted by applicable law, not to, directly or indirectly, file a lawsuit for a Claim described in Article XV, Section 15.1(b) of this Declaration without first submitting the Claim to the alternative dispute resolution procedures described in Article XV, Section 15.2 of this Declaration.

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(b) As used in this Article XV, the term "Claim" shall refer to any claim, grievance, action or dispute arising out of or relating to:

(i) the interpretation, application, and/or enforcement of the Governing Documents;

(ii) the rights, obligations, and/or duties of any of the Bound Parties under the Governing Documents;

(iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Article IV of this Declaration, which shall not be subject to review; and/or

(iv) trespass, nuisance, property damage, or enforcement of laws, codes, or ordinances within the Community.

(c) The following shall not be considered a "Claim" unless all of the applicable Bound Parties to the matter otherwise agree to submit the matter to the procedures set forth in Article XV, Section 15.2 of this Declaration:

(i) any Association action to collect assessments, fines (in accordance with the By-Laws), charges, fees and/or any other amounts due from any Owner;

(ii) any Association action to obtain a temporary or permanent restraining order or injunction (or emergency equitable relief), and such ancillary relief as a court of competent jurisdiction may deem necessary in order to enforce any of the provisions of the Governing Documents and/or maintain the status quo and preserve the Association's ability to enforce all the provisions of the Governing Documents;

(iii) any action between Owners, which does not include Declarant, Builder, and/or the Association as a party, if such suit asserts a claim, action or dispute which would constitute a cause of action independent of the Governing Documents;

(iv) any action in which any indispensable party is not one of the Bound Parties;

(v) any action as to which the applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Article XV, Section 15.2(a) of this Declaration, unless the party or parties against whom the claim, action, or dispute is made agree to toll, or extend, the applicable statute of limitations to comply with this Article XV; and/or

(vi) fines in accordance with the By-Laws.

(vii) suspensions of Common Area use rights in accordance with the By-Laws.

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15.2 Dispute Resolution Procedures.

(a) Notice. For any of the Bound Parties to assert a Claim against any of the other Bound Parties, the one asserting a Claim ("Claimant") shall give written notice ("Notice") to the other(s) ("Respondent") by certified mail, return receipt requested; overnight delivery by a nationally recognized courier that provides tracking and receipt services; or personal delivery to each Respondent, and to the Board, stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (for example, but not as a limitation, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim and the dates Claimant is available for such meeting(s).

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing by both the Claimant and Respondent, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the Bound Parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other agreed upon period), the Claimant shall then have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services within the jurisdiction of the County. The Bound Parties shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Bound Parties do not settle the Claim within thirty (30) days after submitting the matter to mediation, or within such time as determined reasonable by the mediator but which will not cause the statute of limitations to expire, the mediator shall issue a notice of termination of the mediation proceedings indicating that the Bound Parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative or other proceedings on the Claim, as appropriate.

Each of the Bound Parties shall bear its own costs and expenses of the mediation, including, without limitation, Legal Costs and attorneys' fees, and each Party shall share equally all fees charged by the mediator.



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(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the applicable Bound Parties. If any of the Bound Parties that were part of the settlement thereafter fails to abide by the terms of such agreement, then any other of the Bound Parties that were part of the settlement may file suit, initiate administrative proceedings or initiate any other proceeding, as appropriate, to enforce such agreement without the need to again comply with the procedures set forth in this Section 15.2. In such event, the Bound Parties taking action to enforce the agreement shall, upon prevailing, be entitled to recover from the non-complying Bound Parties (or each one in equal proportions) all costs incurred in enforcing such agreement, including, without limitation, Legal Costs.

### 15.3 Initiation of Litigation by Association.

After the Class "B" Control Period and the sale by Builder of all of the Lots to third party purchasers, the Association shall not initiate any judicial and/or administrative proceeding which is reasonably expected to cost Twenty-Five Thousand and No/100 Dollars (\$25,000.00) or more in legal fees to prosecute to completion unless first approved by the Board or by Members representing a majority of the Class "A" votes in the Association. Prior to any Board vote to initiate any such judicial and/or administrative proceeding, the Board shall first perform a feasibility analysis, including: an explanation of the issues; a budget for legal and related expenses; the amount in controversy; and the expectation of success which shall then be provided or made available to the Members with the Board's agenda in advance of such meeting.

## Article XVI Mortgagee Provisions

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots.

### 16.1 Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within sixty (60) days;

(c) Any lapse, cancellation, or material modification of any Association insurance policy;

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders; or

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(e) If the U.S. Department of Housing and Urban Development ("HUD") is insuring or the U.S. Department of Veterans Affairs ("VA") is guaranteeing the Mortgage on any Lot, any material amendment to the Governing Documents or extraordinary action of the Association, as defined under VA Pamphlet 26-7, as it may be amended or superceded from time to time.

Otherwise, no consent from Eligible Holders shall be necessary to enable the Association to accomplish any of its operational duties and responsibilities or to exercise any of its rights and powers.

#### 16.2 Special FHLMC Provision.

To the extent required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to, and not in lieu of, those provided in Article XVI, Section 16.1 of this Declaration. Unless at least sixty-seven percent (67%) of the Eligible Holders or Class "A" Members representing at least sixty-seven percent (67%) of the total Association vote consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot (any decision or action in accordance with the provisions of this Declaration or any Supplemental Declaration subsequently recorded on any portion of the Community resulting in the levy of Service Area Assessments shall not be subject to this provision);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Lots and the Common Area (the issuance and/or amendment of Architectural Guidelines, procedures, the Rules and Regulations, or Use Restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property. However, any surplus from hazard insurance proceeds after the repair, replacement or reconstruction of such property may be used by the Association for any other purpose and shall not be subject to this provision.

Notwithstanding the above, any action required of the Association by a court of competent jurisdiction that typically would fall under the prohibitions detailed in this Section 16.2 shall not be subject to this Section 16.2 and shall not require any approval from Owners and/or Eligible Holders. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or already have become a charge against the Common Area, and may pay overdue premiums on casualty insurance policies or secure new casualty insurance

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coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

**16.3 Other Provisions for First Lien Holders.**

To the extent not inconsistent with Florida law and in addition to the provisions of this Declaration:

(a) Any restoration and/or repair of the Community after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications for the Community unless the approval is obtained of the Eligible Holders of first Mortgages on Lots to which more than fifty percent (50%) of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Lots to which more than fifty percent (50%) of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

**16.4 Amendments to Documents for Article XVI Mortgage Provisions.**

The following provisions shall not apply to: (1) amendments to the Governing Documents; (2) termination of the Association, if solely on account of destruction, damage, or condemnation pursuant to Article XVI, Sections 16.3(a) and (b) of this Declaration; or (3) the annexation of land in accordance with Article IX of this Declaration, otherwise:

(a) The affirmative consent of at least sixty-seven percent (67%) of the Class "A" votes, the consent of Declarant and Builder during the Class "B" Control Period, and the approval of the Eligible Holders of first Mortgages on Lots to which at least sixty-seven percent (67%) of the votes of Lots subject to a Mortgage shall be required to terminate the Association.

(b) If and to the extent FHA, HUD or the VA is insuring or guaranteeing any Mortgage on any Lot, the affirmative consent of at least sixty-seven percent (67%) of the Class "A" votes, and the consent of Declarant and Builder during the Class "B" Control Period, shall be required to amend any material provisions of this Declaration, the By-Laws, or the Articles of Incorporation, or to add any material provisions thereto which establish, provide for, amend, govern, or regulate any of the following:

- (i) changes in the voting rights of Members;
- (ii) changes in how assessments are allocated between the Lots, assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair and replacement of the Common Maintenance Area;
- (iv) insurance or fidelity bonds;



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- (v) rights to use the Common Maintenance Area;
  - (vi) responsibility for maintenance and repair of the Community;
  - (vii) expansion or contraction of Community or the addition, annexation, or withdrawal of property to or from the jurisdiction of the Association;
  - (viii) boundaries of a Lot;
  - (ix) leasing of Lots;
  - (x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey that Owner's Lot;
  - (xi) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or
  - (xii) any provisions included in the Governing Documents which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Lots.

**16.5 Construction of Article XVI.**

Nothing contained in this Article XVI shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the Articles, the By-Laws, or Florida law for any of the acts set out in this Article XVI.

**16.6 No Priority.**

No provision of this Declaration, the Articles or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

**16.7 Notice to Association.**

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering that Owner's Lot.

**16.8 Failure of Mortgagee to Respond.**

Any Mortgagee (and for purposes of this paragraph "Mortgagee" shall include FHA, VA, HUD, FNMA, FHLMC, or other similar governmental or quasi-governmental agency) who receives a written request from the Board to respond to, or consent to any action, shall be conclusively deemed to have irrevocably approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified mail, return receipt requested; or overnight delivery by a nationally recognized courier that provides tracking and receipt services; or personal delivery.

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**16.9 HUD/VA Approval.**

As long as there is a Class "B" membership, the following actions shall require the prior approval of HUD or the VA, if either such agency has granted project approval for such Mortgages and the approval of Declarant, Builder and at least sixty-seven percent (67%) of the Class "A" Members:

- (a) merger, consolidation, or dissolution of the Association;
- (b) annexation of additional property;
- (c) dedication, conveyance (other than to correct errors on property descriptions or other inconsequential or immaterial conveyances), or mortgaging of Common Area. The granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a conveyance within the meaning of this Section 16.9(c); or
- (d) a material amendment of this Declaration as set forth in Section 16.4(b) of this Declaration.

**Article XVII Disclosures and Waivers.**

**17.1 No Liability For Acts of Others.**

Owners, their family members, tenants, guests, agents, invitees, employees and any occupants of Lots, are responsible for their own personal safety and for their property in the Community. The Association may, but is not obligated to, maintain or support certain activities within the Community which are intended to promote or enhance safety or security within the Community. However, the Association, the Board, Builder and Declarant shall not in any way be considered insurers and/or guarantors of safety or security within the Community, nor shall they be held liable for any loss, damage, personal injury and/or death by reason of failure to provide adequate security or ineffectiveness of any security measures that may be undertaken.

The Association, the Board, Builder and Declarant are not empowered, nor have they been created, to act as an entity which enforces or ensures compliance with the laws of the United States, State of Florida, the County or any other jurisdiction. The Association, the Board, Builder and Declarant are not empowered, nor have they been created, to act as entity which prevents tortious activities.

No representation or warranty is made that any systems or measures, including, without limitation, fire protection, burglar alarm, or other security monitoring systems, (or if there is any gate, barrier or any other mechanism or system for limiting access to the Community), cannot be compromised or circumvented, nor that any such systems or measures undertaken will prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, agrees and shall be responsible for informing that Owner's family members, tenants, guests, invitees, agents, employees and all occupants of that Owner's Lot that the Association, the Board and its committees, Builder, Declarant and any Predecessor Declarant are not insurers

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and/or guarantors of security or safety and that each Person within the Community has knowingly and voluntarily assumed all risks of personal injury, death and loss of or damage to property, including Lots and the contents of Lots, resulting from acts of others. Any gate, barrier and/or other mechanism or system for limiting access to the Community, if any, are solely intended to regulate vehicle access, and are not intended and/or designed to be a security feature, a safety feature, provide protection to persons and/or property, a warranty of personal safety, a guarantee of personal safety, a warranty of the safety of personal property and/or a guarantee of the safety of personal property. Any gate, barrier and/or any other mechanism or system for limiting access to the Community, if any, may at Declarant's and/or Builder's discretion be left open and/or unattended, from time to time or at any time, to facilitate access by contractors, subcontractors, inspectors, brokers, salespersons, employees, agents and any others to any sales office and/or Lots that are under construction and/or for sale.

**17.2 View Impairment.**

Neither Declarant, Builder nor the Association guarantee or represent that any view over, through and/or across the Lots, any open space, any Common Area, any Common Maintenance Area or any other portion of the Community will be preserved without impairment. Neither Declarant, the Builder nor the Association shall be obligated to relocate, prune, or thin trees or other landscaping. The Association (with respect to the Common Area), Builder and Declarant have the right to relocate, prune, thin, or add trees and other landscaping from time to time subject to applicable law. Any express or implied easements for view purposes and/or for the passage of light and air are hereby expressly disclaimed.

**17.3 Notices and Disclaimers as to Community Systems and Services.**

In recognition of the fact that interruptions in cable television, satellite television and any other Community Systems and Services will occur from time to time, neither Declarant, Builder nor any of their respective successors or assigns (and their respective Affiliates) shall in any manner be liable for, and no Community System and Service user shall be entitled to refund, rebate, discount, or offset in applicable fees, for any interruption in any Community Systems and Services, regardless of whether or not such interruption is caused by reasons within the service provider's control. Declarant and/or Builder shall be entitled to retain any rebate, discount, or other compensation received from the provider of any Community Systems and Services in connection with the installation and/or operation of such system.

**17.4 Construction Activities.**

All Owners, occupants, and users of Lots are hereby placed on notice that Declarant, any Affiliate of Declarant, Builder, any Affiliate of Builder and/or their agents, contractors, subcontractors, vendors, licensees, and other designees, successors, or assigns, shall continue, from time to time, to conduct construction activities within the Community. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest in a Lot, and/or by using any portion of a Lot or the Community generally, Owners, occupants and users of Lots acknowledge, stipulate, and agree: (a) such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon,



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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 the Lot or any other portion of the Community where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night, a holiday or otherwise during non-working hours); (c) that Builder, any Affiliate of Builder, Declarant, any Affiliate of Declarant, or Predecessor Declarant, and all of their agents, contractors, subcontractors, licensees, vendors and other designees, successors, and assigns, shall not be liable for any losses, damages (compensatory, consequential, punitive, or otherwise), injuries, property damage, and/or deaths arising from and/or relating to any breach of this covenant; (d) that any purchase or use of any portion of a Lot has been and will be made with full knowledge of the foregoing; and (e) this acknowledgment and agreement is a material inducement to Declarant, Builder and their Affiliates to sell, convey, lease, and/or allow the use of Lots within the Community.

#### 17.5 Water Management.

Each Owner acknowledges and agrees that some or all of the water features or Wetlands which may be located in or adjacent to the Community are designed as water management areas and are not designed solely as aesthetic features. Due to fluctuations in water elevations and precipitation within the immediate area, water levels will rise and fall. Each Owner further acknowledges and agrees that neither Declarant nor Builder have, and are not obligated to exert, control over such elevations. Therefore, each Owner agrees to, and does by purchase of a Lot, release and discharge Builder, the Affiliates of Builder, Declarant, Affiliates of Declarant, and any Predecessor Declarant from and against any and all losses, claims, suits, causes of action, demands, damages, and/or expenses of whatever nature or kind, including, without limitation, Legal Costs, related to and/or arising out of any claim relating to such fluctuations in water elevations. Owners shall not alter, modify, expand, or fill any water features or Wetlands that may be located within or in the vicinity of the Community without the prior written approval of Declarant, Builder, the District and any local, state, or federal regulatory or permitting authorities as may have relevant jurisdiction over such matters.

DECLARANT, BUILDER THE ASSOCIATION AND THE BOARD SHALL NOT BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL, INCLUDING, BUT NOT LIMITED TO, LIFEGUARDS, FOR THE BODIES OF WATER THAT MAY BE LOCATED WITHIN OR IN THE VICINITY OF THE COMMUNITY, INCLUDING BUT NOT LIMITED TO, DETENTION PONDS, RETENTION PONDS, LAKES, PONDS, CANALS, STREAMS, DITCHES, RIVERS, WETLANDS, CREEKS, DRAINAGE FACILITIES AND WATERWAYS OF ANY SIZE OR TYPE. ANY INDIVIDUAL USING SUCH BODIES OF WATER SHALL DO SO AT HIS OR HER OWN RISK AND HEREBY HOLDS DECLARANT, BUILDER AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM, LOSS, PERSONAL INJURY, DAMAGE AND/OR DEATH ARISING FROM SUCH USE.

EACH OWNER, BY THE ACCEPTANCE OF TITLE TO A LOT, ACKNOWLEDGES THAT SUCH BODIES OF WATER MAY BE DEEP AND ARE LIKELY DANGEROUS. NEITHER DECLARANT, BUILDER, THE ASSOCIATION NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR

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SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE AND/OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY, WATER QUALITY OR WATER LEVEL OF AND/OR IN ANY BODY OF WATER WITHIN THE COMMUNITY OR IN THE VICINITY OF THE COMMUNITY, 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 AND/OR DEATH OCCURRING IN, OR OTHERWISE RELATED TO, ANY BODY OF WATER. ALL PERSONS USING ANY BODY OF WATER WITHIN THE COMMUNITY OR IN THE VICINITY OF THE COMMUNITY VOLUNTARILY AND KNOWINGLY DO SO AT THEIR OWN RISK. ALL OWNERS, VISITORS, GUESTS AND/OR USERS OF ANY PORTION OF THE COMMUNITY SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO, OR USE OF, SUCH PROPERTY TO HAVE AGREED TO RELEASE THE LISTED PARTIES FROM ALL CLAIMS, ACTIONS AND/OR SUITS FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES. ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME WILDLIFE MAY HABITATE, OCCUPY AND/OR ENTER INTO BODIES OF WATER WITHIN OR NEARBY THE COMMUNITY, INCLUDING, BUT NOT LIMITED TO, ALLIGATORS AND VENOMOUS SNAKES, AND MAY POSE A THREAT TO PERSONS, PETS AND/OR 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, PERSONAL INJURY AND/OR PROPERTY DAMAGE CAUSED BY SUCH WILDLIFE.

17.6 Liability for Association Operations.

The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Builder, Declarant and any Predecessor Declarant (including, without limitation, their respective Affiliates, successors, and assigns) from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, Legal Costs), which relate to and/or arise out of Association management and operations, including, without limitation, improvement, maintenance, and/or operation of amenities, facilities and other portions of the Common Maintenance Areas and the collection of assessments.

17.7 Disclaimer.

EXCEPT AS EXPRESSLY PROVIDED IN THIS DECLARATION, NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, HAS BEEN GIVEN OR MADE BY DECLARANT, BUILDER, THE ASSOCIATION OR THEIR RESPECTIVE EMPLOYEES OR AGENTS IN CONNECTION WITH THE COMMUNITY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, REPAIRS, COST OF MAINTENANCE, TAXES OR

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REGULATION OF ANY OF THESE. IF ANY SUCH WARRANT CANNOT BE  
DISCLAIMED, AND AS TO ANY CLAIMS WHICH CAN BE MADE AS TO THE  
MATTERS CONTAINED IN THIS SECTION 17.7, ALL INCIDENTAL AND/OR  
CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.

#### **Article XVIII            Changes in Ownership of Lots**

Any Owner, other than Builder, Declarant or any Affiliate of Declarant, desiring to sell or otherwise transfer title to that Owner's Lot shall give the Board at least fourteen (14) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. Notwithstanding the transfer of title, the transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Lot Owner, including, without limitations, assessment obligations, until the date upon which the ownership of the Lot is actually transferred, after which the original Owner shall be released from the obligation to pay assessments levied after the date ownership of that Lot is actually transferred.

#### **Article XIX            Changes in Common Area**

##### **19.1    Condemnation.**

Whenever any part of the Common Area is taken or conveyed under threat of condemnation by any authority having the power of eminent domain, the Board shall determine, in the exercise of its business judgment, whether each Owner is entitled to notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore, repair and/or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless, within sixty (60) days after such taking, at least seventy-five percent (75%) of the total number of Class "A" Members agree not to restore and/or replace such improvements. If the taking occurs during the Class "B" Control Period, the Declarant and the Builder must also agree not to restore and/or replace such improvements. Any such construction, restoration and/or replacement shall be in accordance with plans approved solely by the Board. The provisions of Article VII, Section 7.3 of this Declaration regarding funds for the repair of damage and/or destruction shall apply.

If the taking does not involve any Common Area improvements, or if a decision is made not to repair, replace and/or restore, or if net funds remain after any such restoration, repair and/or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine in its sole discretion.

##### **19.2    Partition.**

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section 19.2 shall not prohibit the Board



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from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

**19.3 Transfer or Dedication of Common Area**

The Association may convey, dedicate, or otherwise transfer portions of the Common Area and/or portions of any Limited Common Area to the County, the District or to any other local, state, or federal governmental or quasi-governmental entity, with the consent of at least two-thirds (2/3) of the Owners and such approval as may be required by Article XVI, Section 16.9 of this Declaration.

**Article XX Amendment of Declaration and General Matters**

**20.1 By Declarant.**

In addition to specific amendment rights granted elsewhere in this Declaration, until the termination of the Class "B" Control Period, Declarant may amend this Declaration for any purpose with the prior written approval of the Builder, subject to the approval requirements set forth in Article XVI of this Declaration, if applicable.

Until termination of the Class "B" Control Period, Declarant may amend this Declaration, with the prior written approval of the Builder, if such amendment is necessary: (a) to bring any provision into compliance with any applicable governmental statute, rule, ordinance, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD, or the VA, to make, purchase, insure, or guarantee mortgage loans on the Lots; or (d) to satisfy the requirements of any local, state, or federal governmental agency.

**20.2 By the Members.**

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least sixty-seven percent (67%) of the Association's total Class "A" votes. In addition, during the Development and Sale Period, Declarant's and Builder's prior written consents are required for any amendment. The approval requirements set forth in Article XVI of this Declaration also shall be met, if applicable.

Notwithstanding the above, the percentage or fraction of votes necessary to amend a specific provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that specific provision.

**20.3 By the Board.**

The Rules and Regulations may be modified, amended, repealed and/or changed from time to time by a majority vote of the Board. Any modification, amendment, repeal and/or change shall comply with any limitations set forth in this Declaration or under Florida law, and

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shall occur at a duly noticed Board meeting called for such purpose. The Board, in its sole discretion, may submit any proposed modification, amendment, repeal and/or change to the Rules and Regulations for approval by the Members pursuant to Article XX, Section 20.2 of this Declaration.

#### 20.4 Approval by the District.

Notwithstanding Article XX, Sections 20.1, 20.2, and 20.3 of this Declaration, any amendment to this Declaration that alters any provision relating to the Surface Water or Stormwater Management System, beyond maintenance in its original condition, including the water management portions of the Common Areas, or any amendment to this Section 20.4, must have the prior approval of the District.

Notwithstanding anything to the contrary contained in this Declaration, the District shall have the right to enforce, by any proceeding at law, in equity, or both, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water or Stormwater Management System.

#### 20.5 Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant and/or Builder without the written consents of Declarant and/or Builder (or the assignee of such right or privilege). If an Owner consents to any amendment to this Declaration, the Articles or the By-Laws, it will be conclusively presumed that the Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment, if required by applicable laws, permits and/or approvals.

Any amendment shall become effective upon the earliest of: (a) recording; or (b) a later effective date specified in the amendment. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. All amendments to this Declaration shall be recorded in the Public Records of the County.

#### 20.6 Exhibits.

Exhibits "A", "B", and "C", attached to this Declaration are made a part hereof and incorporated into this Declaration by this reference.

#### 20.7 Other Restrictions Established by the Association.

The Association shall have the authority, as hereinabove expressed, from time to time, to include within its promulgated residential planning criteria other restrictions, as it shall deem appropriate. Said restrictions shall be governed in accordance with the criteria contained in this Declaration for residential planning promulgated by the Association. However, once the Association promulgates certain restrictions set forth herein, such restrictions shall be valid until the Association modifies, amends, changes and/or promulgates new restrictions.

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20.8 Right of Declarant.

Notwithstanding anything in this Declaration to the contrary, Declarant and Builder shall have the right to use the Community for ingress and egress thereover including the use of construction machinery and trucks thereon, and no Person shall in any way impede or interfere with the completion of the contemplated improvements and/or sale of Lots and improvements thereon. Furthermore, the Declarant and Builder may make such use of the Community free from the interference of Owners or contract purchasers as may be reasonably necessary to facilitate the completion and sale of Lots and improvements thereon, including but not limited to, the maintenance of a sales office and model area, the showing of Lots and the Community, the display of signs, and the right to construct or place sales and construction offices of a temporary nature on the Common Areas and/or on any Lot owned by Declarant and/or Builder.

20.9 Interpretation.

All Article, Section and subsection headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions and/or for interpretation or construction of this Declaration or any of the Governing Documents. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine and neuter genders shall each include the others. The Board shall have the right, except as limited by any other provisions of the Governing Documents, to determine all questions arising in connection with this Declaration and to construe and interpret its provisions, and the Board's determination, construction and/or interpretation shall be final and binding.

20.10 Severability.

Invalidation of any one of these covenants, conditions or restrictions or any part, clause or word of this Declaration, or the application thereof in specific circumstances, by judgment or court order, shall not affect any other provisions and/or applications in other circumstances, all of which shall remain in full force and effect.

**[SIGNATURES BEGIN ON FOLLOWING PAGE]**



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IN WITNESS WHEREOF, Declarant has caused this instrument to be executed on the day and year written below.

WITNESSES:

DECLARANT:

**KINGS LAKE, LLC**, a Florida limited liability company

By: **THE RYAN GROUP, LLC**, a Florida limited liability company, as its Managing Member

By:

Print Name: **JOHN M. RYAN**  
Title: Managing Member

Date: November 17, 2005

Kathleen Nicholson  
Print Name: KATHLEEN NICHOLSON

Anne Dugg  
Print Name: Anne Dugg

STATE OF FLORIDA     )  
                                      )  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me on this the 17 day of NOVEMBER, 2005, by John M. Ryan, as Managing Member of **THE RYAN GROUP, LLC**, a Florida limited liability company, the Managing Member of **KINGS LAKE, LLC**, a Florida limited liability company. He ☒ is personally known to me OR ☐ has produced \_\_\_\_\_ (type of identification) as identification and he acknowledged executing this document in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in him by said company.

NOTARY SEAL:



Kathleen Nicholson  
Signature of Notary Public, State of Florida  
Print Name: KATHLEEN NICHOLSON  
Commission No.: DD430982  
My Commission Expires: MAY 19, 2009

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**JOINDER AND CONSENT OF BUILDER**

**MERCEDES HOMES, INC.**, a Florida corporation (the "Builder"), does hereby consent, join in, agree to and acknowledge the Declaration of Covenants, Conditions and Restrictions for Tuscany Bay ("Declaration") to which this Joinder is attached, and the terms, conditions, covenants, restrictions and easements set forth in the Declaration are and shall be binding upon the Builder and its successors in title.

**IN WITNESS WHEREOF**, Builder has caused this instrument to be executed on the day and year written below.

**WITNESSES:**

**BUILDER:**

**MERCEDES HOMES, INC.**, a Florida corporation

Patricia Malone  
Print Name: PATRICIA MALONE

By: Cliff Morgan  
Print Name: Cliff Morgan  
Title: PRESIDENT

Stephanie D. Pruschander  
Print Name: Stephanie D. Pruschander Date: NOVEMBER 17, 2005


**STATE OF FLORIDA** )  
 )  
**COUNTY OF Hillsborough** )

The foregoing instrument was acknowledged before me on this the 17<sup>th</sup> day of November, 2005, by Cliff Morgan, who has personally known to me to be the \_\_\_\_\_ of **MERCEDES HOMES, INC.**, a Florida corporation limited liability company, or ☐ has produced

\_\_\_\_\_ (type of identification) as identification.

He/She acknowledged executing this document in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in him/her by said corporation.

**NOTARY SEAL:**

Stephanie D. Pruschander  
Signature of Notary Public, State of Florida  
Print Name: Stephanie D. Pruschander  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
 Stephanie D. Pruschander  
My Commission 00288990  
Expires October 18, 2007

THIS IS NOT A  
JOINDER AND CONSENT BY MORTGAGEE  
CERTIFIED COPY  
KNOW ALL MEN BY THESE PRESENTS:

THAT COLONIAL BANK, N.A., (the "Mortgagee"), whose address is 400 North Tampa Street, Suite 2500, Tampa, Florida 33602, the owner and holder of that certain Mortgage and Security Agreement dated February 17, 2005, and recorded in Official Records Book 14727, Page 666 and that certain Assignment of Rents and Leases dated February 17, 2005, and recorded in Official Records Book 14727, Page 693, and that certain UCC-1 Financing Statement recorded in Official Records Book 14727, Page 701, all of the foregoing being of the Public Records of Hillsborough County, Florida, (collectively, the "Security Documents") encumbering the Property described in the foregoing Declaration of Covenants, Conditions and Restrictions for (the "Declaration"), by the execution hereof, hereby joins into and consents to the placing of the Declaration on the Property described in Exhibit "A" to the Declaration.

IN WITNESS WHEREOF, the Mortgagee has executed this Joinder and Consent by Mortgagee this 16<sup>th</sup> day of November, 2005.

Signed, sealed and delivered  
in the presence of:

COLONIAL BANK, N.A.

Barbara Cule  
Printed Name: Barbara Cule  
Melody Fischer  
Printed Name: Melody Fischer

By: K. Harrell  
Name: Kent Harrell  
Title: SVP

(CORPORATE SEAL)

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of November, 2005, by Kent Harrell as Senior Vice President of Colonial Bank, N.A., a national banking association, on behalf of the bank. He/She is personally known to me.



Melody S. Fischer  
Notary Public, State of Florida  
Printed name:  
My Commission Expires:

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EXHIBIT "A"  
LEGAL DESCRIPTION

TUSCANY BAY according to Plat thereof recorded in Plat Book 105, Pages 108 through 115, Public Records of Hillsborough County, Florida, more particularly described as:

DESCRIPTION: A parcel of land lying in Section 11, Township 31 South, Range 19 East, Hillsborough County, Florida, and being more particularly described as follows:

Commence at the Southeast corner of the Southeast 1/4 of said Section 11, run thence along the East boundary of said Southeast 1/4 of Section 11, N.00°31'51"E., 231.81 feet to the POINT OF BEGINNING; thence N.88°37'29"W., 200.00 feet; thence S.00°31'51"W., 200.00 feet to a point on the Northerly maintained right-of-way line of BIG BEND ROAD (STATE ROAD No. 672); thence along said Northerly maintained right-of-way line, N.88°37'29"W., 439.20 feet to a point on a curve, said point also being the Southeasterly corner of KINGS LAKE PHASE 1A, according to the plat thereof as recorded in Plat Book 88, Page 80, of the Public Records of Hillsborough County, Florida; thence along the Easterly boundary of said KINGS LAKE PHASE 1A, the following six (6) courses: 1) Northwesterly, 230.15 feet along the arc of a curve to the right having a radius of 375.00 feet and a central angle of 35°09'49" (chord bearing N.50°00'12"W., 226.55 feet) to a point of reverse curvature; 2) Northwesterly, 416.90 feet along the arc of a curve to the left having a radius of 425.00 feet and a central angle of 56°12'11" (chord bearing N.60°31'23"W., 400.38 feet) to a point of tangency; 3) N.88°37'29"W., 15.00 feet to a point of curvature; 4) Northwesterly, 39.27 feet along the arc of a curve to the right having a radius of 25.00 feet and a central angle of 90°00'00" (chord bearing N.43°37'29"W., 35.36 feet) to a point of tangency; 5) N.01°22'31"E., 175.27 feet to a point of curvature; 6) Northerly, 177.28 feet along the arc of a curve to the right having a radius of 440.00 feet and a central angle of 23°05'05" (chord bearing N.12°55'04"E., 176.08 feet); thence S.89°28'10"E., 1163.66 feet to a point on the aforesaid East boundary of the Southeast 1/4 of Section 11; thence along said East boundary of the Southeast 1/4 of Section 11, S.00°31'51"W., 520.03 feet to the POINT OF BEGINNING.

Containing 15.939 acres, more or less.

EXHIBIT "B"  
Audit No. (((H05000267565 3)))

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ARTICLES OF INCORPORATION  
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**TUSCANY BAY PROPERTY OWNERS ASSOCIATION, INC.**

In compliance with the requirements of Florida law, the undersigned Incorporator has executed, adopted and caused to be delivered for filing these Articles of Incorporation for the purpose of forming a corporation not for profit and does hereby certify:

**ARTICLE I  
NAME OF CORPORATION**

The name of the corporation is TUSCANY BAY PROPERTY OWNERS ASSOCIATION, INC. (hereinafter called the "Association").

**ARTICLE II  
DEFINITIONS**

Unless otherwise provided in these Articles of Incorporation, all terms used in these Articles of Incorporation shall have the same definitions and meanings as those set forth in the Declaration of Covenants, Conditions and Restrictions for Tuscany Bay recorded or to be recorded in the Public Records of Hillsborough County, Florida, as it may be amended and/or supplemented from time to time (hereinafter called the "Declaration").

**ARTICLE III  
PRINCIPAL OFFICE OF THE ASSOCIATION**

The principal place of business and the mailing address of the Association is located at 5909-G Hampton Oaks Parkway, Tampa, Florida 33610.

**ARTICLE IV  
REGISTERED OFFICE AND REGISTERED AGENT**

The initial registered office of the Association shall be located at 6767 North Wickham Road, Suite 500, Melbourne, Florida 32940, and the initial registered agent of the Association shall be Karen Harkness. The Association may change its registered agent or the location of its registered office, or both, from time to time, without having to amend these Articles of Incorporation.

Karen Harkness, Esq.  
Mercedes Homes, Inc.  
6767 N. Wickham Rd, Suite 500  
Melbourne, FL 32940  
(321)259-6972  
(321)252-9291 - FAX

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**ARTICLE V**

**PURPOSE AND POWERS OF THE ASSOCIATION**

Section 1. Purpose. The purposes for which the Association is organized are as follows:

(a) To operate as a corporation not for profit pursuant to Chapter 617 and any other applicable provisions of the Florida Statutes, as they may be amended and/or renumbered from time to time. The Association does not contemplate pecuniary gain or profit. The Association shall not pay dividends and no part of any income of the Association shall be distributed to its Members, Directors or officers.

(b) To operate as a homeowners' association pursuant to Chapter 720 and any other applicable provisions of the Florida Statutes, as they may be amended and/or renumbered from time to time, and to administer, enforce and carry out the terms, conditions, restrictions and provisions of the Declaration as it may be amended and/or supplemented from time to time.

(c) To administer, enforce and carry out the terms and provisions of any other Declaration of Covenants, Conditions and Restrictions or similar document, submitting property to the jurisdiction of or assigning responsibilities, rights or duties to the Association.

Section 2. Powers. The Association shall have the following powers:

(a) All of the common law and statutory powers of a not-for-profit corporation organized under the laws of the State of Florida, subject only to such limitations upon the exercise of such powers as are expressly set forth in these Articles of Incorporation, the By-Laws or the Declaration.

(b) To enter into, make, establish, amend and enforce, rules, regulations, By-Laws, covenants, restrictions and agreements to carry out the purposes of the Association. The Association may use any enforcement method authorized by the Declaration and/or Florida law, including but not limited to, fines, suspensions of use rights to Common Areas, actions for damages, equitable actions, injunctive relief, administrative actions, self-help or any combination of those.

(c) To fix, levy and collect assessments (Regular Assessments, Service Area Assessments, Capital Improvement Assessments and/or Benefited Assessments) for Common Expenses from Members to defray the costs, expenses, reserves and losses incurred or to be incurred by the Association and to use the proceeds thereof in the exercise of the Association's powers and duties, including, but not limited to, the costs of maintenance and operation of the Surface Water or Stormwater Management System.

(d) To fix, levy and collect Special Assessments for Common Expenses from Members to defray the costs, expenses, reserves, losses, damages and budget shortfalls incurred or to be incurred by the Association and to use the proceeds thereof in the exercise of the Association's powers and duties.



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(e) To make, adopt, establish, amend and enforce rules and regulations regarding the use, appearance and/or condition of any portion of the Community bound by the terms, covenants, conditions and restrictions of the Declaration, including but not limited to, Common Area, Common Maintenance Areas, Lots, Members, structures, improvements, dwellings, Residences, landscaping and maintenance.

(f) To own, purchase, sell, mortgage, lease, administer, manage, operate, maintain, improve, repair and/or replace real property and personal property.

(g) To borrow and to hold funds, select depositories, administer bank accounts of the Association, and to pay all expenses, including licenses, public assessments, taxes or government charges, incident to the purposes and powers of the Association, as set forth in these Articles of Incorporation and as may be provided in the Declaration and the By-Laws.

(h) To purchase insurance for the protection of the Association, its officers, Directors, Members and such other parties as the Association may determine to be in the best interests of the Association. To require Members to purchase insurance for the protection of their Lots and any structures, landscaping, dwellings, Residences and/or improvements thereon.

(i) To operate, maintain, manage, repair, control, regulate, replace and/or improve the Common Area, Common Maintenance Areas, private streets, street lighting, sidewalks, and any facilities, improvements, structures, buildings, lighting and/or landscaping that may be located, from time to time, on any portion of the Community that has been designated or identified as Common Area and/or Common Maintenance Areas, and such other portions of the Community as may be determined by the Association from time to time.

(j) To enter into contracts and agreements between third parties and the Association.

(k) To exercise architectural control, either directly or through appointed committees, over all buildings, structures, dwellings, Residences, landscaping and/or improvements of any type to be placed, built, erected, installed and/or constructed upon any portion of the Community. Such architectural control shall be exercised pursuant to the Declaration.

(l) To provide for any functions and services within the Community as the Board of Directors in its sole discretion determines necessary or appropriate.

(m) To provide, purchase, sell, lease, acquire, replace, improve, maintain and/or repair such buildings, structures, pathways, landscaping, paving, equipment and property, both real and personal, as the Association, through its Board of Directors, in its discretion determines necessary or appropriate.

(n) To employ any personnel necessary to perform the obligations, services and/or duties required of or to be performed by the Association and/or to contract with others for

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the performance of such obligations, services and/or duties and to pay the costs thereof in accordance with whatever contractual arrangement the Board of Directors of the Association shall enter in its sole discretion.

(o) To operate, maintain and manage the Surface Water or Stormwater Management System in a manner consistent with the Southwest Florida Water Management District ("District") Permit requirements and applicable District rules, and shall assist in the enforcement of the terms, conditions, restrictions and provisions of the Declaration which relate to the Surface Water or Stormwater Management System.

(p) To establish, maintain, operate and use reserve funds for capital improvements, repairs and replacements. To establish, maintain, operate and use reserve funds for items, services, property and/or any other purpose as the Board of Directors of the Association may determine in its sole discretion to be in the best interest of the Association.

(q) To enter into a management contract with a third party for the maintenance and repair of any Common Area, Common Maintenance Areas and for the operation of the Association. The Board of Directors will carry out this power on behalf of the Association. The management contract may provide a management fee to the management agent and the delegation of certain duties, as may be determined by the Board of Directors of the Association.

(r) To enter into agreements and/or contracts with professionals, including but not limited to attorneys and accountants, to assist the Association in its performance of the obligations, services and duties required of or to be performed by the Association. The Board of Directors will carry out this power on behalf of the Association.

(s) To create, appoint and/or dissolve any committees that the Board of Directors of the Association may deem appropriate.

(t) To collect delinquent assessments by fine, claim of lien, suit or otherwise and to file and defend any suit or other proceeding in pursuit of all legal, equitable and/or administrative remedies or defense of all claims relating to the Declaration, the By-Laws, these Articles of Incorporation and/or Florida law.

(u) To adopt, change, repeal and/or amend the By-Laws.

(v) To adopt, change, repeal and/or amend By-Laws that would be effective only in an emergency, as defined in Article XIII of these Articles of Incorporation.

## **ARTICLE VI MEMBERSHIP**

**Section 1.** Each Owner (including Declarant and Builder) shall be a Member of the Association. Membership in the Association shall be appurtenant to and inseparable from the Lot giving rise to such membership, and any transfer of record title to a Lot shall operate

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automatically to transfer to the new Owner the membership in the Association appurtenant to that Lot. The interest, if any, of a Member in the funds and assets of the Association may not be assigned, hypothecated or transferred in any manner, except as an appurtenance to that Member's Lot. Membership in the Association is mandatory for all Owners and membership shall continue, as to each Owner, until such time as that Owner transfers or conveys that Owner's fee simple interest in the Lot upon which that Owner's membership is based or until such fee simple interest is transferred or conveyed by operation of law, at which time the membership in the Association will automatically pass to the grantee or transferee. Notwithstanding the foregoing, the Association shall not be obligated to recognize such a transfer or conveyance of membership until such time as the Association receives a true copy of the recorded deed or other written instrument establishing the transfer or conveyance of ownership of the Lot, and it shall be the responsibility and obligation of the new Owner of the Lot to provide such true copy of said recorded instrument to the Association.

Section 2. The Association shall have two (2) classes of membership with the voting rights as follows:

(a) Class "A". Class "A" Members shall be all the Owners of Lots, with the exception of Declarant and Builder for so long as Class "B" membership exists. Each Class "A" Member shall have one (1) vote for each Lot owned by that Member. When more than one Person is an Owner of any Lot, all such Persons shall be Members, but there shall not be more than one (1) Class "A" vote for each Lot.

(b) Class "B". The Class "B" Members shall be the Declarant, Declarant's express assigns or successors in interest and Builder. Until conversion of the Class "B" membership to Class "A" membership as set forth in Article VI, Section 2(c) of these Articles of Incorporation, Declarant shall have five (5) votes for each Lot owned by Declarant, and Builder shall have five (5) votes for each Lot owned by Builder.

(c) Conversion of Class "B" Membership. The Class "B" membership shall continue in effect during the period from the date of the Declaration until the earlier of the following events:

(1) Three (3) months after ninety percent (90%) of all Lots in Tuscan Bay have been conveyed or transferred to Owners other than Builder, excluding conveyances and/or transfers to builders, contractors, and/or others who purchase a Lot for the purpose of constructing improvements thereon for resale; or

(2) Ten (10) years after the date on which the Declaration is recorded in the Public Records of Hillsborough County, Florida; or

(3) At such earlier time as the Class "B" Members, in their discretion, may so elect by recording a notice of such election in the Public Records of Hillsborough County, Florida.



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When the earlier of the preceding events occurs, the Class "B" Members shall call a Special Meeting of the Association's membership to advise of the termination of Class "B" membership. When the Class "B" membership terminates, Declarant and Builder will automatically be converted to Class "A" membership. Declarant shall then retain one (1) vote for each Lot still owned by Declarant, and Builder shall then retain one (1) vote for each Lot still owned by Builder. When the Class "B" membership converts to Class "A" membership in the Association, Declarant and Builder may exercise their respective rights to vote any Lot(s) still owned by them in the same manner as any other Class "A" Member, except Declarant and Builder cannot exercise either of their respective vote(s) for the purposes of reacquiring control of the Association or selecting a majority of the members of the Board of Directors.

(d) No Split Votes. The vote for each Lot must be cast as a single vote, and fractional votes shall not be allowed. If a Lot is owned by more than one (1) Owner, and the Owners of that Lot are unable to agree among themselves as to how the vote is to be cast, or if more than one (1) Class "A" vote is cast for any Lot, the vote for that Lot shall not be counted for any purpose except for establishing a quorum. If any Owner casts a vote on behalf of a Lot, it shall be conclusively presumed that Owner was acting with the authority and consent of all other Owners of that Lot.

(e) Voting by Proxy. All Members entitled to vote may do so by proxy. Any proxy shall be delivered to the Secretary of the Association's Board of Directors or another authorized person so designated by the Board of Directors. No proxy shall be valid after ninety (90) days from the date the proxy is signed by the Member. Every proxy shall be revocable at any time in the discretion of the Member executing that proxy. Other requirements for a proxy and voting by proxy are set forth in the By-Laws.

(f) No Cumulative Voting. There shall be no cumulative voting on any issue, matter or candidate that is the subject of a vote by the Association's membership.

(g) Percentage of Members. When reference is made in these Articles of Incorporation or the By-Laws to a majority, specific percentage or fraction of Members, such reference shall be deemed to be a reference to a majority, specific percentage or fraction of the votes eligible to be cast and not of the Members themselves. As an illustration, but not as a limitation, if there are one hundred fifty (150) Lots in the Community and all the Lots are owned by Class "A" Members, then there are one hundred fifty (150) votes eligible to be cast.

## ARTICLE VII BOARD OF DIRECTORS

The affairs of the Association shall be managed and administered by a Board of Directors consisting of either three (3), five (5) or seven (7) members, as may be determined from time to time by the Association's membership. All of the duties, power and authority of the Association existing under Florida law, the Declaration, these Articles and/or the By-Laws shall be exercised exclusively by the Board of Directors, subject to approval by the Members only when specifically required. The names and addresses of persons who are to act in the capacity of Director until appointment or election of their successors are:

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NAME ADDRESS

1. Cliff Morgan 5909-G Hampton Oaks Parkway  
Tampa, Florida 33610
2. Tom Larkins 5909-G Hampton Oaks Parkway  
Tampa, Florida 33610
3. Jim Sigmund 5909-G Hampton Oaks Parkway  
Tampa, Florida 33610

Any other provision of these Articles notwithstanding, the Declarant or Declarant's express assigns or successors in interest shall be entitled to appoint and remove any Director while Class "B" membership exists. When Class "B" membership terminates, the Class "A" Members shall elect Directors by written ballot at a Special Meeting of the Association's Members. A Member must be current in the payment of all Association Assessments to be eligible to run for and hold the position of Director. Directors must be natural persons who are eighteen (18) years of age or older. All Directors, except those designated or appointed by the Declarant (or Declarant's express assigns or successors in interest), shall be Members of the Association.

Any vacancies on the Board shall be filled as set forth in the By-Laws of the Association.

#### ARTICLE VIII OFFICERS

The officers of the Association may include a President, a Vice President, a Secretary, a Treasurer and such other officers as the Board of Directors may from time to time by resolution create. The officers shall be elected by the Board of Directors and the officers shall serve at the pleasure of the Board of Directors. The names and addresses of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

<u>OFFICE</u>	<u>NAME</u>	<u>ADDRESS</u>
President	Cliff Morgan	5909-G Hampton Oaks Parkway Tampa, Florida 33610
Vice President	Tom Larkins	5909-G Hampton Oaks Parkway Tampa, Florida 32940
Secretary & Treasurer	Jim Sigmund	5909-G Hampton Oaks Parkway Tampa, Florida 32940

#### ARTICLE IX

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## INDEMNIFICATION OF OFFICERS AND DIRECTORS

Section 1. The Association shall defend, indemnify and hold harmless any person of the Association who is made a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit or proceedings, whether civil, criminal, administrative, or investigative, by reason of the fact that person is or was a Director, officer, Committee member, employee or agent of the Association:

(a) From and against expenses (including reasonable attorneys' fees for pretrial, trial, or appellate proceedings), judgments, fines, and amounts paid in settlement actually and reasonably incurred by that person in connection with an action, suit, or proceeding (other than one by or in the right of the Association), if that person acted in good faith, and, with respect to any criminal action or proceedings, he or she had no reasonable cause to believe his or her conduct was unlawful; and

(b) From and against expenses (including reasonable attorneys' fees for pretrial, trial, or appellate proceedings) actually and reasonably incurred by him or her in connection with the defense or settlement of an action or suit by or in the right of the Association, if he or she acted in good faith.

Section 2. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith, or, with respect to any criminal action or proceeding, that such person had reasonable cause to believe that his or her conduct was unlawful.

Section 3. Notwithstanding any other provision hereof to the contrary, no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or misconduct in the performance of his duty to the Association.

Section 4. Any indemnification under Article IX, Section 1 of these Articles of Incorporation (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Director or officer, Committee member, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Article IX, Section 1 of these Articles of Incorporation. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit, or proceeding, or (b) if such quorum is not obtainable, or even if obtainable and a quorum of disinterested Directors so directs, by a majority vote of Members of the Association.

Section 5. Expenses incurred in defending a civil, criminal, administrative or investigative action, suit, or proceeding shall be paid by the Association from time to time as incurred rather than only after the final disposition of such action, suit, or proceeding. Payment of such expenses shall be authorized by the Board of Directors in each specific case only after receipt by the Association of an undertaking by or on behalf of the Director or officer to repay



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such amounts if it shall later develop that he or she is not entitled to be indemnified by the Association.

Section 6. The indemnification provided by this Article IX shall not be deemed exclusive of any other rights to which the Association's Directors, officers, Committee members, employees or agents may be entitled under the Association's By-Laws, agreement, vote of Members or disinterested Directors, or otherwise, both as to actions in their official capabilities and as to action in another capacity while holding such offices or positions, and shall continue as to a person who has ceased to be a Director, officer, Committee member, agent or employee and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7. Notwithstanding the foregoing provisions, indemnification provided under this Article IX shall not include indemnification for any action of a Director, officer, Committee member, agent or employee of the Association for which indemnification is deemed to be against public policy. In the event that indemnification provided under this Article IX is deemed to be against public policy, such an event shall not invalidate or affect any other right or indemnification herein provided.

Section 8. The Association shall have the power, but shall not be obligated, to purchase and maintain indemnification insurance to provide coverage for any liability asserted against any Director, officer, committee member, agent or employee of the Association in any of his or her capacities as described in Article IX, Section 1 of these Articles of Incorporation, whether or not the Association would have the power to indemnify him or her under this Article IX.

Section 9. Any person requesting indemnification shall first look to any insurance maintained by the Association for indemnification against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement (as described above). The Association shall be obligated to indemnify such person (if entitled to indemnification by the Association) only to the extent such insurance does not indemnify such person. In the event that any expenses, judgments, fines, or amounts paid in settlement are paid pursuant to insurance maintained by such Association, the Association shall have no obligation to reimburse the insurance company.

## **ARTICLE X EXISTENCE AND DURATION**

Section 1. The existence of the Association shall commence with the filing of these Articles of Incorporation with the appropriate agency of the State of Florida. The Association shall exist in perpetuity.

Section 2. In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Surface Water or Stormwater Management System must be transferred to and accepted by an entity which would comply with the District rules and requirements, as they may be amended and/or renumbered from time to time, and be approved by the District prior to such termination, dissolution or liquidation. In the event no other entity exists to receive such transfer, the obligations of the Association shall be deemed assumed by the Lot Owners, and all such Lot Owners shall be jointly and severally

responsible for the operation and maintenance of the Surface Water or Stormwater Management System and Wetlands in accordance with the requirements of the Permit.

**ARTICLE XI  
AMENDMENTS**

Amendments to these Articles of Incorporation shall be proposed and adopted as follows:

A. The Board of Directors, by majority vote, must adopt a resolution setting forth the proposed amendment(s); and

Written notice of the content of the proposed amendment(s) must be given to all Members of the Association at least fourteen (14) days prior to the date of the meeting when the vote on the proposed amendment(s) will take place. In addition to the content of the proposed amendment(s), the Association shall provide the date, time and location for the meeting where the vote will take place. For purposes of this Article XI(A), the notice will be considered to have been properly sent to the Association's membership when personally delivered or mailed, postage prepaid, by the Association, its employees, agents, officers or Directors, to the address of the person who appears as a Member on the records of the Association at the time of such delivery or mailing.

B. Any proposed amendment to these Articles of Incorporation must be submitted to a vote by the Members for approval. At least sixty-seven percent (67%) of those Members, who appear either in person or by proxy at any duly called meeting of the Association's membership where a quorum is attained, must vote in favor of adopting any amendment to these Articles of Incorporation. A vote by the Members regarding a proposed amendment to these Articles of Incorporation may take place at any duly called meeting of the Association's membership where a quorum is attained, which may either be the Annual Meeting or a Special Meeting.

C. If an amendment is adopted by the Members pursuant to Article XI(B) of these Articles, a copy of the amendment(s) must be filed with the State of Florida Secretary of State or other appropriate agency of the State of Florida, and a copy that has been certified by the Secretary of State or other appropriate agency of the State of Florida shall be recorded in the Public Records of Hillsborough County, Florida. Any amendment to these Articles of Incorporation shall be effective on the date it has been accepted and filed by the Secretary of State or other appropriate agency of the State of Florida.

**ARTICLE XII  
BY-LAWS**

The By-Laws of the Association shall be initially adopted by a majority vote of the Association's Board of Directors and may subsequently be altered, amended, repealed and/or rescinded in the manner provided in the By-Laws.

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**ARTICLE XIII  
EMERGENCY BY-LAWS**

The Association's Board of Directors, by majority vote, may adopt By-Laws that would be effective only in an emergency. For purposes of these Articles of Incorporation, "emergency" shall be defined as a catastrophic event that would prevent a quorum of the Association's Board of Directors from readily assembling, which would include, but is not limited to, the following: a hurricane; a declared state of emergency by the appropriate governmental agencies; and an evacuation of the area where the Community is located ordered by the appropriate governmental agencies.

Any emergency By-Laws adopted by the Association's Board of Directors shall cease to be effective once the reason for the emergency ends. All provisions of the regular By-Laws that do not conflict with the emergency By-Laws remain effective during the emergency.

**ARTICLE XIV  
CONFLICT BETWEEN DOCUMENTS**

In the event of any conflict or inconsistency between these Articles of Incorporation and the Declaration, the terms, conditions and provisions of the Declaration shall control and prevail. In the event of any conflict or inconsistency between these Articles of Incorporation and the By-Laws, the terms, conditions and provisions of these Articles of Incorporation shall control and prevail.

**ARTICLE XV  
REQUIRED APPROVALS**

Notwithstanding anything in these Articles of Incorporation to the contrary, as long as there exists a Class B membership in the Association, if any one of more of the Department of Housing and Urban Development ("HUD"), Federal Housing Administration ("FHA") or the Veteran's Administration ("VA") requires approval or consent by it or them for any of the following: mergers or consolidations involving the Association; placing any mortgage lien on the Association's Common Area; dedication to the public of any Common Area; any amendment of the Declaration; any amendment of these Articles of Incorporation; and dissolution of the Association, then the required consent or approval shall be obtained.

**ARTICLE XVI  
MERGER**

Section 1. The Association may be merged with any other Florida not for profit or for profit corporation, as long as the surviving corporation is a Florida not for profit corporation and has as one of its purposes to administer, enforce and carry out the terms, conditions, restrictions and provisions of the Declaration as it may be amended and/or supplemented from time to time, any subsequent Declaration, any restrictive covenants that run with the land and/or any equitable servitudes that may apply to the Community.



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Section 2. In order for a merger to occur, the Association must adopt a plan of merger that contains at a minimum the following: the names of the corporations proposing to merge and the name of the surviving corporation which will be left following the merger; the terms and conditions of the proposed merger; a statement of any changes in the articles of incorporation of the surviving corporation to be effected by the merger; and a prohibition on any abandonment of the proposed merger after the merger has been approved by the Association's members pursuant to Article XV, Section 3(c) of these Articles of Incorporation, unless such abandonment is first approved by the Association's members.

Section 3. In order to approve a plan of merger:

(a) the Board of Directors, by a majority vote, must first adopt a resolution approving the proposed plan of merger and then submit that plan of merger to a vote of the Association's membership by written notice.

(b) the written notice of the content of the proposed amendment must be given to all Members of the Association at least fourteen (14) days prior to the date of the meeting when the vote on the proposed amendment will take place. In addition to the content of the proposed amendment, the Association shall provide the date, time and location for the meeting where the vote will take place. For purposes of Article XVI, Section 3(b) of these Articles of Incorporation, the notice will be considered to have been properly sent to the Association's membership when personally delivered or mailed, postage prepaid, by the Association, its employees, agents, officers or Directors, to the address of the person who appears as a Member or Owner on the official records of the Association at the time of such delivery or mailing.

(c) the proposed plan of merger must then be approved by at least a majority of the Association's Members, voting either in person or by proxy, at a duly called meeting of the Association's Members at which a quorum is attained. This meeting of the Association's Members may be either the Annual Meeting or a Special Meeting.

#### ARTICLE XVII INCORPORATOR

The name and street address of the Incorporator to these Articles of Incorporation are as follows: Karen Harkness, 6767 North Wickham Road, Suite 500, Melbourne, Florida 32940.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Florida, the undersigned, constituting the Incorporator of this Association, has executed these Articles of Incorporation this 17th day of November, 2005.

  
KAREN HARKNESS

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STATE OF FLORIDA  
COUNTY OF BREVARD

CERTIFIED COPY  
The foregoing Articles of Incorporation were acknowledged before me this 17th day of November, 2005, by KAREN HARKNESS who ☒ is personally known to me OR ☐ has produced \_\_\_\_\_ as identification.

NOTARY STAMP:

*Theresa A. Steelman*  
NOTARY PUBLIC, State of Florida



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**CERTIFICATE DESIGNATING REGISTERED AGENT**  
**FOR SERVICE OF PROCESS**

Pursuant to Chapters 48 and 617 of the Florida Statutes, the following is submitted in compliance with said Acts:

TUSCANY BAY PROPERTY OWNERS ASSOCIATION, INC., desiring to organize as a corporation under the laws of the State of Florida, with its registered office at 6767 North Wickham Road, Suite 500, Melbourne, Florida 32940, has named KAREN HARKNESS, located at the above-registered office, as its Registered Agent to accept service of process within the State of Florida.

**ACKNOWLEDGMENT**

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

Registered Agent:

By: Karen Harkness  
KAREN HARKNESS

Dated: November 17, 2005



EXHIBIT "C"  
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BY-LAWS  
OF  
TUSCANY BAY PROPERTY OWNERS ASSOCIATION, INC.  
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**ARTICLE I**

**IDENTITY AND LOCATION**

These are the By-Laws of TUSCANY BAY PROPERTY OWNERS ASSOCIATION, INC. (hereinafter called the "Association"), a corporation not for profit organized and existing under the applicable provisions of the Florida Statutes, for the purpose of administering the Community, the Common Area and the Common Maintenance Area, in accordance with the Declaration of Covenants, Conditions and Restrictions for Tuscan Bay (the "Declaration") recorded or to be recorded in the Public Records of Hillsborough County, Florida. The principal office of the Association shall be located at 5909-G Hampton Oaks Parkway, Tampa, Florida 33610, but meetings of the Association's Board of Directors may be held at such places within the State of Florida as may be designated from time to time by the Board of Directors.

**ARTICLE II**

**GENERAL**

Section 1. Incorporation of Declaration. As supplemented herein, the regulation of the business, operation, powers, duties and affairs of the Association shall be governed by the Declaration, as it may be amended and/or supplemented from time to time, the terms and provisions of which are incorporated herein by reference as though it had been set forth in its entirety.

Section 2. Fiscal Year. The Fiscal Year of the Association shall be the calendar year (January 1 through and including December 31), or such other period as may subsequently be determined by the Board of Directors.

Section 3. Corporate Seal. The corporate seal of the Association shall include the following: "Tuscan Bay Property Owners Association, Inc.", "Florida" and "corporation not for profit".

Section 4. Definitions. Unless otherwise specifically provided in these By-Laws, all terms used in these By-Laws shall have the same definitions and meanings as those set forth in the Declaration, as it may be amended and/or supplemented from time to time.

**ARTICLE III**

**PURPOSE AND POWERS OF THE ASSOCIATION**

Section 1. Purpose. The purposes for which the Association is organized are as follows:

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(a) To operate as a corporation not for profit pursuant to Chapter 617 and any other applicable provisions of the Florida Statutes, as they may be amended and/or renumbered from time to time. The Association does not contemplate pecuniary gain or profit. The Association shall not pay dividends and no part of any income of the Association shall be distributed to its Members, Directors or officers.

(b) To operate as a homeowners' association pursuant to Chapter 720 and any other applicable provisions of the Florida Statutes, as they may be amended and/or renumbered from time to time, and to administer, enforce and carry out the terms, conditions, restrictions and provisions of the Declaration as it may be amended and/or supplemented from time to time.

(c) To administer, enforce and carry out the terms and provisions of any other Declaration of Covenants, Conditions and Restrictions or similar document, submitting property to the jurisdiction of or assigning responsibilities, rights or duties to the Association.

Section 2. Powers. The Association shall have the following powers:

(a) All of the common law and statutory powers of a not for profit corporation organized under the laws of the State of Florida, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles of Incorporation, these By-Laws or the Declaration.

(b) To enter into, make, establish, amend and enforce, rules, regulations, By-Laws, covenants, restrictions and agreements to carry out the purposes of the Association. The Association may use any enforcement method authorized by the Declaration and/or Florida law, including but not limited to, fines, suspensions of use rights to the Common Area, actions for damages, equitable actions, injunctive relief, administrative actions, self-help, or any combination of those. The prevailing party in any action at law, action for damages, equitable action, action for injunctive relief and/or administrative action shall be entitled to recover all of its attorneys' fees, paralegal fees, costs, expenses, appellate attorneys' fees and appellate costs.

(c) To fix, levy and collect assessments (Regular Assessments, Service Area Assessments, Capital Improvement Assessments and/or Benefited Assessments) for Common Expenses from Members to defray the costs, expenses, reserves and losses incurred or to be incurred by the Association and to use the proceeds thereof in the exercise of the Association's powers and duties, including, but not limited to, the costs of maintenance and operation of the Surface Water or Stormwater Management System.

(d) To fix, levy and collect Special Assessments for Common Expenses from Members to defray the costs, expenses, reserves, losses, damages and budget shortfalls incurred or to be incurred by the Association and to use the proceeds thereof in the exercise of the Association's powers and duties.

(e) To make, adopt, establish, amend and enforce rules and regulations regarding the use, appearance, maintenance and/or condition of any portion of the Community.

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bound by the terms, covenants, conditions and restrictions of the Declaration, including but not limited to, Common Area, Common Maintenance Areas, Lots, Members, structures, improvements, dwellings, Residences, landscaping, any recreational facilities, playgrounds, swimming pool and any amenities of any kind.

(f) To own, purchase, sell, mortgage, lease, administer, manage, operate, maintain, improve, repair and/or replace real property and personal property.

(g) To borrow and to hold funds, select depositories, administer bank accounts of the Association, and to pay all expenses, including licenses, public assessments, taxes or government charges, incident to the purposes and powers of the Association, as set forth in the Articles of Incorporation and as may be provided in the Declaration and these By-Laws.

(h) To purchase insurance for the protection of the Association, its officers, Directors, Members and such other parties as the Association may determine to be in the best interests of the Association. To require Members to purchase insurance for the protection of their Lots and any structures, Residences, landscaping and/or any improvements thereon.

(i) To operate, maintain, manage, repair, control, regulate, replace and/or improve the Common Area, Common Maintenance Areas, private streets, street lighting, sidewalks, and any facilities, improvements, structures, buildings, lighting and/or landscaping that may be located, from time to time, on any portion of the Community that has been designated or identified as Common Area or Common Maintenance Areas, and such other portions of the Community as may be determined by the Association from time to time.

(j) To enter into contracts and agreements between third parties and the Association.

(k) To exercise architectural control, either directly or through appointed committees, over all buildings, structures, dwellings, Residences, landscaping and/or improvements of any type to be placed, built, erected, installed and/or constructed upon any portion of the Community. Such architectural control shall be exercised pursuant to the Declaration.

(l) To provide for any functions and services within the Community as the Board of Directors in its sole discretion determines necessary or appropriate.

(m) To provide, purchase, sell, lease, acquire, replace, improve, maintain and/or repair such buildings, structures, pathways, landscaping, paving, equipment and property, both real and personal, as the Association, through its Board of Directors, in its discretion determines necessary or appropriate.

(n) To employ any personnel necessary to perform the obligations, services and/or duties required of or to be performed by the Association and/or to contract with others for the performance of such obligations, services and/or duties and to pay the costs thereof in



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accordance with whatever contractual arrangement the Board of Directors of the Association shall enter in its sole discretion.

(o) To operate, maintain and manage the Surface Water or Stormwater Management System in a manner consistent with the Southwest Florida Water Management District ("District") Permit requirements and applicable District rules, and shall assist in the enforcement of the terms, conditions, restrictions and provisions of the Declaration which relate to the Surface Water or Stormwater Management System.

(p) To establish, maintain, operate and use reserve funds for capital improvements, repairs and replacements. To establish, maintain, operate and use reserve funds for items, services, property and/or any other purpose as the Board of Directors of the Association may determine in its sole discretion to be in the best interest of the Association.

(q) To enter into a management contract with a third party for the maintenance and repair of any Common Area, Common Maintenance Area and for the operation of the Association. The Board of Directors will carry out this power on behalf of the Association. The management contract may provide a management fee to the management agent and the delegation of certain duties, as may be determined by the Board of Directors of the Association.

(r) To enter into agreements and/or contracts with professionals, including but not limited to attorneys and accountants, to assist the Association in its performance of the obligations, services and duties required of or to be performed by the Association. The Board of Directors will carry out this power on behalf of the Association.

(s) To create, appoint, remove and/or dissolve any committees that the Board of Directors of the Association may deem appropriate.

(t) To collect delinquent assessments by fine, claim of lien, suit or otherwise and to file and defend any suit or other proceeding in pursuit of all legal, equitable and/or administrative remedies or defense of all claims relating to the Declaration, these By-Laws, the Articles of Incorporation and/or Florida law.

(u) To adopt, change, repeal and/or amend the By-Laws.

(v) To adopt, change, repeal and/or amend By-Laws that would be effective only in an emergency.

Section 3. Power to be Exercised by Board of Directors. Except where approval by the Association's membership is specifically required by Florida law, the Declaration, the Articles of Incorporation and/or these By-Laws, all powers, duties, affairs, authority, and/or purposes of the Association shall be exercised and/or carried out exclusively by the Association's Board of Directors.

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## ARTICLE IV

### OFFICIAL RECORDS OF THE ASSOCIATION

The Association shall maintain each of the following items, if applicable, which shall constitute the official records of the Association:

- (1) Copies of any plans, specifications, permits and warranties related to improvements constructed on the Common Area or any other property that the Association is obligated to maintain, repair and/or replace.
- (2) A copy of the By-Laws of the Association and a copy of each amendment to the Bylaws.
- (3) A copy of the Articles of Incorporation of the Association and a copy of each amendment to the Articles of Incorporation.
- (4) A copy of the Declaration and a copy of each amendment to the Declaration.
- (5) A copy of the current Rules and Regulations of the Association.
- (6) The minutes of all meetings of the Board of Directors, and the minutes must be retained for a minimum of seven (7) years.
- (7) The minutes of all Annual Meetings of the Association's membership, and the minutes must be retained for a minimum of seven (7) years.
- (8) The minutes of all Special Meetings of the Association's membership, and the minutes must be retained for a minimum of seven (7) years.
- (9) A current roster of all Owners and their mailing addresses and parcel identifications. The Association shall not be obligated to recognize a transfer or conveyance of ownership of any Lot until such time as the Association receives a true copy of the recorded deed or other written instrument establishing the transfer or conveyance of ownership of the Lot, and it shall be the responsibility and obligation of the new Owner(s) of the Lot to provide such true copy of said recorded instrument to the Association.
- (10) For those Owners consenting to receive notice by electronic transmission, the Association shall maintain the electronic mailing addresses and the numbers designated by those Owners. The electronic mailing address and number provided by an Owner to receive notice by electronic transmission shall be removed from the Association's records when consent to receive notice by electronic transmission has been revoked by that Owner. The Association shall not be liable for an erroneous disclosure of an Owner's electronic mail address or the number for receiving electronic transmission of notices.

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(11) All of the Association's insurance policies or a copy of those insurance policies. These must be retained for a minimum of seven years (7) from the effective date of each policy.

(12) A current copy of all contracts to which the Association is a party, including any management agreement, lease or other contract under which the Association has any obligation or responsibility.

(13) Any bids received by the Association for work to be performed, and these must be retained for a minimum of one (1) year.

(14) The financial and accounting records of the Association, kept according to good accounting practices, including the following:

(a) Accurate, itemized and detailed records of all receipts and expenditures.

(b) A current account and a periodic statement of the account of each Owner, designated the name and current address of each Owner who is obligated to pay assessments, the due date and amount of each assessment or other charge against the Owner, the date and amount of each payment on the account, and any balance due.

(c) All tax returns, financial statements and financial reports of the Association.

(d) Any other records that identify, measure, record or communicate financial information of the Association.

All financial and accounting records of the Association must be retained for a minimum of seven (7) years.

(15) A copy of the disclosure summary currently described in Section 720.401(1) of the Florida Statutes, as it may be amended and/or renumbered from time to time.

(16) All other written records of the Association which are related to the operation of the Association.

## ARTICLE V

### ACCESS TO OFFICIAL RECORDS OF THE ASSOCIATION

Section 1. Access to Records Generally. The official records of the Association shall be maintained at a location within the State of Florida. The official records of the Association shall be open to inspection and available for photocopying by Members or an authorized agent of a Member, except for the official records contained in Article V, Section 2 of these By-Laws. In order to inspect and/or photocopy the official records of the Association, a Member or a Member's authorized agent must first provide a written request to the Association or any person



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or entity designated by the Association to receive such written requests. The Association shall then make available the requested records for inspection and/or photocopying no later than ten (10) business days following receipt of the written request. Notwithstanding the foregoing, a Member and/or any authorized agent of that Member shall not be permitted to inspect the official records of the Association for more than eight (8) hours per month. The Association, through the Board of Directors, has the right to adopt additional reasonable rules in writing governing the frequency, time, location, notice, records to be inspected and manner of the inspections. However, the Association and/or the Association's agent shall not at any time impose a requirement that a Member or an authorized agent of a Member specify a purpose for the inspection of the Association's official records or provide a reason for the inspection of the Association's official records.

Section 2. Records Not Open for Inspection. The following official records of the Association shall not be accessible, open for inspection and/or photocopied by any Member or any authorized agent of any Member:

- (a) Any record of the Association protected by the attorney-client privilege.
- (b) Any record of the Association protected by the work-product privilege.
- (c) Any record of the Association prepared by an attorney for the Association or prepared at that attorney's express direction which reflects a mental impression, conclusion, litigation strategy and/or legal theory of that attorney or the Association, and the record was prepared exclusively for civil litigation, criminal litigation and/or adversarial administrative proceedings, or the record was prepared in anticipation of imminent civil litigation, criminal litigation and/or adversarial administrative proceedings. Once the civil litigation, criminal litigation and/or adversarial administrative proceedings completely conclude, including any and all appeals, enforcement and/or contempt proceedings, the records shall be open to, accessible to, and available for photocopying by any Member or any authorized agent of any Member.
- (d) Any information and record obtained by the Association in connection with the approval of a lease, sale and/or any other transfer of a Lot.
- (e) Any and all disciplinary records of the Association's employees.
- (f) Any and all health records of the Association's employees.
- (g) Any and all insurance records of the Association's employees.
- (h) Any and all personnel records of the Association's employees.
- (i) Any and all medical records of Members and/or residents of the Tuscany Bay Community.

Section 3. Cost of Photocopies. If the Association or the Association's agent have a photocopy machine available at the location where the Association's official records are

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maintained, the Association must provide Members or a Member's authorized agent with photocopies of requested documents during the inspection by those Members or authorized agents, if the entire photocopy request is limited to no more than twenty-five (25) pages. The Association may impose fees to cover the costs of providing any copies of the official records, including, without limitation, the costs of photocopying. The Association may charge a maximum of Fifty Cents (\$0.50) per page for any copies of the official records made on the Association's or the agent of the Association's photocopy machine.

If the Association or the Association's agent do not have a photocopy machine available at the location where the official records of the Association are kept, or if the records requested to be copied exceed a total of twenty-five (25) pages, the Association may have the requested copies made by an outside vendor and the Association may charge the Member requesting the copies the actual cost of the copying by the outside vendor.

## ARTICLE VI

### MEETINGS OF MEMBERS

Section 1. Members of the Association. Each Owner (including Declarant and Builder) shall be a Member of the Association. Membership in the Association shall be appurtenant to and inseparable from the Lot giving rise to such membership, and any transfer of record title to a Lot shall operate automatically to transfer to the new Owner the membership in the Association appurtenant to that Lot. The interest, if any, of a Member in the funds and assets of the Association may not be assigned, hypothecated or transferred in any manner, except as an appurtenance to that Member's Lot. Membership in the Association is mandatory for all Owners and membership shall continue, as to each Owner, until such time as that Owner transfers or conveys that Owner's fee simple interest in the Lot upon which the membership of that Owner is based or until such fee simple interest is transferred or conveyed by operation of law, at which time the membership in the Association will automatically pass to the grantee or transferee. Notwithstanding the foregoing, the Association shall not be obligated to recognize such a transfer or conveyance of membership until such time as the Association receives a true copy of the recorded deed or other written instrument establishing the transfer or conveyance of ownership of the Lot, and it shall be the responsibility and obligation of the new Owner(s) of the Lot to provide such true copy of said recorded instrument to the Association.

Section 2. Annual Meetings. An Annual Meeting of the Members of the Association shall be held during the calendar year at a date, time and location as determined by the Board of Directors. The election of Directors, if such an election is required to take place, shall take place at the Annual Meeting of the Members, except for the first election of Directors by Class "A" Members which shall take place at a Special Meeting of the Members called when the Class "B" membership terminates and is automatically converted to Class "A" membership.

Section 3. Special Meetings. A Special Meeting of the Members of the Association may be called at any time by the Board of Directors. A Special Meeting of the Members may also be called upon written request of at least sixty percent (60%) of the Association's Members. A Special Meeting of the Members may be called upon written request of the Builder for so long

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as the Builder owns any Lot. Business conducted at any Special Meeting of the Members is limited to the specific purposes and issues described in the notice of the Special Meeting.

A Special Meeting of the Members shall be called and properly noticed when the Class "B" membership terminates pursuant to the Declaration for the purpose of the Class "A" Members electing Directors and any additional business that the Association will consider at that Special Meeting.

Section 4. Notice of Meetings. Notice of Meetings shall be as follows:

(a) Annual Meetings. The notice of the Annual Meeting shall include the time, date and location of the Annual Meeting. The notice of the Annual Meeting of the Members does not need to include a description of the purpose, business and/or items to be discussed or for which the Annual Meeting is called. The notice of the Annual Meeting of the Members shall be mailed, hand delivered or electronically transmitted to all Members at least fourteen (14) days prior to the date of the Annual Meeting and no more than sixty (60) days prior to the date of the Annual Meeting. Proof of compliance with this notice requirement shall be made by an affidavit executed by the person providing the notice, and this affidavit shall immediately be filed in the official records of the Association after it is executed.

The notice of the Annual Meeting of the Members shall also be posted in a conspicuous place within the Community at least fourteen (14) days prior to the date of the Annual Meeting.

(b) Special Meetings. The notice for any Special Meeting of the Members shall include the time, date and location of that Special Meeting. In addition, the notice must contain a description of the purpose, business and/or items to be discussed or for which the Special Meeting is called. The notice for any Special Meeting of the Members shall be mailed, hand delivered or electronically transmitted to all Members at least fourteen (14) days prior to the date of that Special Meeting and no more than sixty (60) days prior to the date of that Special Meeting. Proof of compliance with this notice requirement shall be made by an affidavit executed by the person providing the notice, and this affidavit shall immediately be filed in the official records of the Association after it is executed.

The notice for any Special Meeting of the Members shall also be posted in a conspicuous place within the Community at least fourteen (14) days prior to the date of that Special Meeting.

(c) Notice by Electronic Transmission. The Association shall not send any notice of the Annual Meeting or a Special Meeting of the Members by electronic transmission to a Member, unless that Member has first consented to receive notice by electronic transmission. A Member may revoke his or her consent to receive notice by electronic transmission at any time, but must provide that revocation in writing to the Association or any person designated by the Association to receive such revocations.

(d) Notice Timing. Any notice required to be sent to any Member under these By-Laws shall be deemed to have been properly sent when personally delivered or mailed, postage prepaid, to the last known address of the person who appears as a Member on the official



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records of the Association at the time of such delivery or mailing. If any Member has consented to receive notice by electronic transmission, any notice required to be sent to that Member shall be deemed to have been properly given when sent and/or forwarded to the electronic mailing address(es) designated by that Member.

Section 5. Attendance at Meetings. All Members of the Association shall have a right to attend each Annual Meeting and any Special Meeting of the Members. In addition, all Members of the Association shall have the right to speak for at three (3) minutes on any item opened for discussion or included on the agenda of the Annual Meeting or any Special Meeting. However, if a Member wishes to exercise this right to speak, that Member must submit a written request to speak at least one (1) hour prior to the start of the Annual Meeting or Special Meeting at which that Member wishes to speak. This written request to speak must be submitted to the Association or any person designated by the Association to receive such written requests. The Board of Directors may adopt additional reasonable rules regarding the frequency, duration and manner Members are permitted to speak at the Annual Meeting and any Special Meeting.

Section 6. Adjournment of Meetings.

(a) Annual Meetings. The Annual Meeting of the Members may be adjourned to a different date, time and/or place. Notice of the new date, time and/or place shall be mailed, hand delivered or electronically transmitted to all Members at least fourteen (14) days prior to the new date of the adjourned Annual Meeting. Proof of compliance with this notice requirement shall be made by an affidavit executed by the person providing the notice, and this affidavit shall immediately be filed in the official records of the Association after it is executed.

The notice of the new date, time and/or place shall also be posted in a conspicuous place within the Community at least fourteen (14) days prior to the new date of the adjourned Annual Meeting.

(b) Special Meetings. A Special Meeting of the Members may be adjourned to a different date, time and/or place. Notice of the new date, time and/or place shall be mailed, hand delivered or electronically transmitted to all Members at least fourteen (14) days prior to the new date of the adjourned Special Meeting. Proof of compliance with this notice requirement shall be made by an affidavit executed by the person providing the notice, and this affidavit shall immediately be filed in the official records of the Association after it is executed.

The notice for the new date, time and/or place shall also be posted in a conspicuous place within the Community at least fourteen (14) days prior to the new date of the adjourned Special Meeting.

Section 7. Minutes of Meetings. Minutes of all Annual Meetings and all Special Meetings of the Members must be maintained in written form or in another form that can be converted into written form within a reasonable time. These minutes must be retained by the Association for a period of not less than seven (7) years.

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Section 8. Quorum for Meetings. The presence, either in person or by proxy, at any Meeting of the Members of the Association, whether it is an Annual Meeting or a Special Meeting, of at least thirty percent (30%) of the Association's Members shall constitute a quorum for that Meeting. If a quorum is not attained at any Meeting of the Members of the Association, that Meeting may be adjourned from time to time pursuant to Article VI, Section 6 of these Bylaws until such time as a quorum is attained.

Section 9. Voting. If a quorum has been attained at any Meeting of the Members of the Association and unless otherwise provided by Florida law, the Declaration, the Articles of Incorporation or these By-Laws, any decisions or matters that require a vote of the Members must be approved by at least a majority of the Members present at that Meeting, either in person or by proxy.

The Association shall have two (2) classes of membership with the voting rights as follows:

(a) Class "A". Class "A" Members shall be all the Owners of Lots, with the exception of Declarant and Builder for so long as Declarant and Builder retain Class "B" membership. Each Class "A" Member shall have one (1) vote for each Lot owned by that Member. When more than one Person is an Owner of any Lot, all such Persons shall be Members, but the vote for that Lot shall be exercised only by one (1) Member. In no event shall there be more than one (1) Class "A" vote cast for each Lot.

(b) Class "B". The Class "B" Members shall be the Declarant, Declarant's express assigns or successors in interest and Builder. Until conversion of the Class "B" membership to Class "A" membership as set forth in Article VI, Section 9(c) of these By-Laws, Declarant shall have five (5) votes for each Lot owned by Declarant, and Builder shall have five (5) votes for each Lot owned by Builder.

(c) Conversion of Class "B" Membership. The Class "B" membership shall continue in effect during the period from the date of the Declaration until the earlier of the following events:

(1) Three (3) months after ninety percent (90%) of all Lots in Tuscany Bay have been conveyed or transferred to Owners other than Builder, excluding conveyances and/or transfers to builders, contractors, and/or others who purchase a Lot for the purpose of constructing improvements thereon for resale; or

(2) Ten (10) years after the date on which the Declaration is recorded in the Public Records of Hillsborough County, Florida; or

(3) At such earlier time as the Class "B" Members, in their sole discretions, may so elect by recording a notice of such election in the Public Records of Hillsborough County, Florida.

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When the earlier of the preceding events occurs, the Class "B" Members shall call a Special Meeting of the Association's membership to advise of the termination of Class "B" membership. When the Class "B" membership terminates, the Class "B" Members will automatically be converted to Class "A" membership. Declarant shall then retain one (1) vote for each Lot still owned by Declarant, and Builder shall then retain one (1) vote for each Lot still owned by Builder. When the Class "B" membership converts to Class "A" membership in the Association, Declarant and Builder may exercise their respective rights to vote any Lot(s) still owned by them in the same manner as any other Class "A" Member, except Declarant and Builder cannot exercise their respective vote(s) for the purposes of reacquiring control of the Association or selecting a majority of the members of the Board of Directors.

(d) No Split Votes. The vote for each Lot must be cast as a single vote, and fractional votes shall not be allowed. If a Lot is owned by more than one (1) Owner, and the Owners of that Lot are unable to agree among themselves as to how the vote is to be cast, or if more than one (1) Class "A" vote is cast for any Lot, the vote for that Lot shall not be counted for any purpose except for establishing a quorum. If any Owner casts a vote on behalf of a Lot, it shall be conclusively presumed that Owner was acting with the authority and consent of all other Owners of that Lot.

(e) No Cumulative Voting. There shall be no cumulative voting on any issue, matter or candidate that is the subject of a vote by the Association's membership.

(f) Percentage of Members. When any reference is made in these By-Laws to a majority, specific percentage or fraction of Members, such reference shall be deemed to be a reference to a majority, specific percentage or fraction of the votes eligible to be cast and not of the Members themselves. As an illustration, but not as a limitation, if there are one hundred fifty (150) Lots in the Community and all the Lots are owned by Class "A" Members, then there are one hundred fifty (150) votes eligible to be cast.

(g) Voting Qualifications. To be qualified to vote, a Class "A" Member must be current in payment of all Assessments and any liens which may have been levied against that Member and/or any Lot owned by that Member as of the date of the Meeting where the vote is to take place. Any person designated in writing by a Class "B" Member shall be qualified to cast the votes for each respective Lot owned by that Class "B" Member.

Section 10. Proxies. All Members entitled to vote may do so either in person or by proxy at any Meeting of the Members of the Association, whether it is an Annual Meeting or a Special Meeting. The proxy must be mailed or hand delivered to the Secretary of the Association's Board of Directors or another authorized person so designated to receive the proxy by the Board of Directors, so that the proxy is received prior to the date of the Meeting for which the proxy is being given. All proxies must contain the date, time and place of the Meeting of the Members for which the proxy is being given. The proxy must be signed and dated by the authorized Member who executed the proxy. Any proxy will be effective only for the specific Meeting for which that proxy was originally given, and any reconvening of that Meeting that may have been adjourned. Notwithstanding the foregoing, a proxy shall automatically expire ninety (90) days after the date of the Meeting for which it was originally given, even if that



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Meeting is adjourned and reconvened at a later date, time and/or place. A proxy is revocable at any time at the pleasure of the Member who executes that proxy. If a proxy submitted by a Member does not provide a name of a proxy holder, the Secretary of the Board of Directors of the Association or another person designated by the Board of Directors, shall automatically become the proxy holder of that proxy.

Section 11. Recording of Meetings. Any Member may tape record and/or videotape any Meetings of the Members of the Association, whether it is an Annual Meeting or a Special Meeting, subject to the following and such further reasonable rules and restrictions that the Board of Directors may adopt from time to time:

- (a) The only audio equipment, video equipment and other devices which Members are authorized to utilize at any such Meeting is equipment which does not produce distracting sound, light and/or heat emissions;
- (b) All audio equipment and/or video equipment shall be assembled and placed in position in advance of the scheduled time for the start of the meeting;
- (c) Any Member videotaping, audiotaping and/or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the videotaping, audiotaping and/or recording; and
- (d) At least twenty-four (24) hours prior written notice shall be given to the Secretary of the Association's Board of Directors by any Member desiring to audiotape, record and/or videotape the Meeting.

Section 12. Conduct of Meetings. The President of the Board of Directors shall preside at all Meetings of the Members of the Association. If the President is unable to preside at a Meeting, or if the office of President is vacant when that Meeting occurs, the Board of Directors may designate another person to preside at that Meeting of the Members.

## ARTICLE VII

### BOARD OF DIRECTORS

Section 1. Board of Directors; Selection; Terms of Office. The affairs of the Association shall be managed and administered by a Board of Directors consisting of either three (3), five (5) or seven (7) members, as may be determined from time to time by the Association's membership. Each member of the Board of Directors shall have one (1) equal vote.

All Directors, except those designated or appointed by the Declarant, shall be Members of the Association. A Member must be current in the payment of all Association assessments to be eligible to run for and hold the position of Director. Directors must be natural persons who are eighteen (18) years of age or older.

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In the event a Member is not a natural person (including but not limited to corporations, partnerships, limited liability companies and trusts), any person appointed by or who is an officer, director, partner, manager or trust officer of that Member shall be eligible to serve as a Director of the Association unless specific written notice to the contrary is signed and provided to the Association by that Member.

The Declarant shall have the sole right to appoint and remove any member(s) of the Board of Directors of the Association while Class "B" membership exists. When Class "B" membership terminates, the Class "A" Members shall elect Directors by written ballot at a Special Meeting of the Association's membership. Each Member shall be entitled to cast that Member's vote(s) for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting for any Director(s). All Directors elected by the Class "A" Members at this Special Meeting shall serve until the first Annual Meeting of the Association to be held after that Special Meeting, unless the Director resigns, dies, is recalled or is otherwise removed prior to the next Annual Meeting of the Association, in which case the vacancy will be filled pursuant to these By-Laws.

All subsequent elections of Directors shall occur at the Annual Meeting of the Association's Members. Each Member shall be entitled to cast that Member's vote(s) for each of as many nominees as there are vacancies to be filled on the Board of Directors at that Annual Meeting. There shall be no cumulative voting for any Director(s). All Directors elected by the Class "A" Members at an Annual Meeting of the Association shall serve until the date of the next Annual Meeting of the Association, unless the Director resigns, dies, is recalled or is otherwise removed prior to the next Annual Meeting of the Association, in which case the vacancy will be filled pursuant to these By-Laws.

Section 2. Vacancies on the Board of Directors. Vacancies on the Board of Directors caused by any reason other than the removal of a Director by a vote of the Members ("recall") shall be filled by a majority vote of the remaining Directors, even though they may constitute less than a quorum of the Board. Each person elected to fill a vacancy on the Board of Directors shall serve until a successor is elected at the next Annual Meeting of the Association. A vacancy or vacancies shall be deemed to exist in the case of death, resignation, removal of any Director, judicial adjudication of mental incompetence of any Director, increases in the size of the Board, or in the event the Members fail to elect the full number of authorized Directors at any meeting at which such election takes place.

Section 3. Recall of Directors. Any one (1) or more of the Directors (other than those appointed by Declarant) may be recalled with or without cause by a majority vote of the Members, provided the following procedures are followed:

(a) Directors may be recalled by an agreement in writing or by written ballot without a meeting of the Association's membership. The agreement in writing, the written ballots, a copy of the agreement in writing or a copy of the written ballots must be served on the Association by certified mail or by personal service by a process server. When at least a majority of the Board of Directors is sought to be recalled, the agreement in writing or written ballots shall list at least as many possible replacement Directors as there are Directors subject to the recall. The Members may vote for as many replacement candidates as there are Directors

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subject to the recall. When the recall of more than one (1) Director is sought, the agreement in writing or written ballots shall provide the Members a separate vote for each Director sought to be recalled. The agreement in writing and all written ballots must comply with the requirements of Florida law.

(b) The Board of Directors shall duly notice and hold a meeting of the Board no later than five (5) full business days after receipt of the agreement in writing or written ballots. At this Board meeting, the Board shall either:

- (1) Certify the written ballots or written agreement to recall a Director or Directors of the Board. If so certified, the Director or Directors shall be recalled effective immediately and the recalled Director(s) shall turn over to the Board within five (5) full business days any and all records and property of the Association in the possession of the Director(s); or
- (2) Not certify the written ballots or written agreement to recall a Director or Directors of the Board. The Board shall then, within five (5) full business days after the Board meeting, file a petition for arbitration with the appropriate agency of the State of Florida. The Members who executed the agreement in writing or written ballots shall constitute one party under the petition for arbitration. If, as a result of the arbitration, the arbitrator certifies the recall as to any Director or Directors of the Board, the recall of the Director or Directors will be effective upon mailing of the final order of arbitration to the Association. The Director or Directors so recalled shall deliver to the Board any and all records and property of the Association in the possession of the recalled Director(s) within five (5) full business days after the effective date of the recall.

(c) At the Board meeting held pursuant to Article VII, Section 3(b) of these By-Laws, minutes must be taken and those minutes must: record the date and time of the meeting; record the decision of the Board whether or not to certify the recall; and the vote count taken on each Director subject to the recall. If the Board of Directors decides not to certify the recall, in addition to the other requirements, the minutes must also identify each vote that was rejected, the parcel number of each rejected vote and the specific reason that each vote was rejected. The minutes of this Board meeting are an official record of the Association.

(d) If the Board of Directors fails to duly notice and hold a Board meeting within five (5) full business days after service of an agreement in writing or written ballots on the Association, the recall shall be deemed effective and the Director(s) so recalled shall immediately turn over to the Board all records and property of the Association in the possession of the Director(s).

(e) If it is determined by the applicable agency of the State of Florida, during the arbitration process described in Article VII, Section 3(b)(2) of these By-Laws, that a first



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recall effort was defective for any reason, the written agreements or written ballots used in that first recall effort which were not found to be defective may be reused in one (1) subsequent recall effort. In no event shall a written agreement or written ballot be valid for more than one hundred twenty (120) days after it has been signed by the Member.

(f) A Member can revoke or rescind that Member's written ballot or written agreement. The revocation or rescission must be in writing and delivered to the Association before the Association is served with the written agreement or written ballots.

(g) If any vacancy occurs on the Board as a result of a recall, and less than a majority of the Directors are removed, the vacancy may be filled by a majority vote of the remaining Directors. If any vacancy occurs on the Board as a result of a recall and a majority or more of the Directors are removed, those vacancies shall be filled by the Members who voted in favor of the recall. The Members may vote for replacement Directors in the written agreement or written ballots. The written agreement and all written ballots must comply with the requirements of Florida law. Any person elected to fill a vacancy on the Board that results from a recall shall serve until a successor is elected at the next Annual Meeting of the Association.

Section 4. Meetings. Meetings of the Board of Directors may be held at such times and places as shall be determined, from time to time, by a majority of the Directors. Special meetings of the Directors may be called by the President of the Board, and must be called by the President or Secretary of the Board at the written request of one-third (1/3) of the Directors. Notice of all Board meetings shall be given to each Director, personally or by mail, telephone, facsimile or by electronic transmission, and shall be provided at least three (3) days prior to the meeting. Notice of Board meetings, which notice shall specifically include an identification of agenda items, shall be posted in a conspicuous place in the Community at least forty-eight (48) hours preceding the date and time of the Board meeting, except in the event of an emergency as defined in Article VII, Section 16 of these By-Laws. A meeting of the Board of Directors occurs whenever a quorum of the Board gathers to conduct Association business. Board meetings shall be open to all Members, except for: meetings between the Board and the Association's attorney with respect to proposed or pending litigation where the content of the discussion would be protected by the attorney-client privilege; and meetings between the Board and the Association's attorney held for the purpose of discussing personnel matters. The right of Members to attend Board meetings includes the right to speak for three (3) minutes at such meetings with respect to all designated agenda items. The Association may adopt additional reasonable rules governing the frequency, duration and manner of Member statements. The Board shall adopt by rule, and give notice to the Members of, a specific location in the Community upon which all notices of Board and/or Committee meetings shall be posted. Directors may not vote at Board meetings by proxy or by secret ballot, except a secret ballot may be used by Directors only for the election of officers. All meetings of the Board of Directors shall be conducted, to the extent practicable, in accordance with the latest published edition of Robert's Rules of Order (Revised), however, Robert's Rules of Order shall not be used in such a manner to frustrate the proceedings or unnecessarily delay the proceedings.

Section 5. Recording of Board Meetings. Any Member may tape record and/or videotape any meeting of the Board of Directors of the Association, subject to the following and

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such further reasonable rules and restrictions that the Board of Directors may adopt from time to time:

- (a) The only audio equipment, video equipment and other devices which Members are authorized to utilize at any such meeting is equipment which does not produce distracting sound, light and/or heat emissions;
- (b) All audio equipment and/or video equipment shall be assembled and placed in position in advance of the scheduled time for the start of the meeting;
- (c) Anyone videotaping, audiotaping and/or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the videotaping, audiotaping and/or recording; and
- (d) At least twenty-four (24) hours prior written notice shall be given to the Secretary of the Association's Board of Directors by any Member desiring to audiotape, record and/or videotape the Board Meeting.

Section 6. Notice of Certain Board Meetings.

(a) Notwithstanding the notice requirement contained in Article VII, Section 4 of these By-Laws, if any meeting of the Board of Directors includes:

- (1) Consideration of assessments (Regular Assessments, Service Area Assessments, Capital Improvement Assessments, Special Assessments, or Benefited Assessments); or
- (2) Levy or adoption of assessments (Regular Assessments, Service Area Assessments, Capital Improvement Assessments, Special Assessments, or Benefited Assessments)

then notice of that Board meeting must be mailed or personally delivered to all Members not less than thirty (30) days before that Board meeting and no more than sixty (60) days before that Board meeting. In addition, the notice of that Board meeting must be posted in a conspicuous place in the Community not less than fourteen (14) days before that Board meeting. The notice of that Board meeting must include a statement that assessments will be considered at the Board meeting and the notice must describe the nature of the assessments.

(b) Notwithstanding the notice requirement contained in Article VII, Section 4 of these By-Laws, if any meeting of the Board of Directors includes:

- (1) Adoption of, Amendments to and/or Revocations of the Governing Documents regarding use of Lots;

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(2) Adoption of, Amendments to and/or Revocation of the Association  
rules and regulations regarding use of Lots; or  
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(3) Adoption of, Amendments to and/or Revocation of the Use  
Restrictions

then notice of that Board meeting must be mailed or personally delivered to all Members not less than fourteen (14) days before that Board meeting. In addition, the notice of that Board meeting must be posted in a conspicuous place in the Community not less than fourteen (14) days before that Board meeting. The notice of that Board meeting must include a statement that changes to the Governing Documents (and/or Association rules and regulations) will be considered at the Board meeting.

(c) Notwithstanding the notice requirement contained in Article VII, Section 4 of these By-Laws, if any meeting of the Board of Directors includes an item of business which is placed on the Board's agenda upon petition by Members pursuant to Article VII, Section 6 of these By-Laws, then notice of that Board meeting must be mailed or personally delivered to all Members no less than fourteen (14) days before that Board meeting. In addition, the notice of that Board meeting must be posted in a conspicuous place in the Community not less than fourteen (14) days before that Board meeting.

Section 7. Agenda Items Through Member Petition. If at least twenty percent (20%) of the Members petition the Board of Directors in writing to take up or address an item of business, the Board shall place that item of business on an agenda of the Board for the next regular meeting of the Board, but no later than sixty (60) days after the Association receives the petition with the required percentage of Members. Other than addressing the item(s) of business placed on the Board's agenda through the written petition, the Board is not obligated or required to take any other action on the item(s) at that Board meeting. Each Member of the Association shall have the right to speak for three (3) minutes on each item of business placed on the Board's agenda through written petition, and will be subject to any other reasonable rules that have been adopted by the Board governing the frequency, duration and manner of Member statements. In order to speak on any item, a Member must either sign a sign-up sheet if one is provided at the Board meeting or submit to the Association a written request to speak before that Board meeting begins.

Section 8. Waiver of Notice. Any Director may waive notice of a Board meeting before or after the Board meeting and that waiver shall be deemed equivalent to the due receipt by that Director of notice. Attendance by any Director at a Board meeting shall constitute a waiver of notice of such Board meeting, and a waiver of any and all objections to the place of the meeting, to the time of the meeting or the manner in which it has been called or convened, except when a Director states at the beginning of the meeting, or promptly upon arrival at the meeting, any objection to the transaction of affairs because the meeting has not been lawfully called or convened. The transactions at any meeting of the Board, however called and noticed or wherever held, shall be as valid as though they were made at a Board meeting duly held after regular call and notice, if a quorum is present, and if, either before or after the Board meeting, each of the Directors not present signs such written waiver of notice, a consent to holding such



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Board meeting, or an approval of the minutes of that Board meeting. All such waivers, consents and approvals shall be filed with the official records of the Association or made a part of the minutes of the Board meeting.

Section 9. Quorum. A quorum for any meeting of the Board of Directors shall consist of a majority of the entire Board. The acts approved by a majority of those Directors present at a Board meeting at which a quorum is present shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is specifically required by the Governing Documents.

Section 10. Adjourned Meetings. If, at any proposed meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present, provided notice of such newly scheduled meeting is given as required by Article VII, Section 4 or Article VII, Section 6 of these By-Laws. At any newly scheduled meeting, any business that might have been transacted at the meeting as originally called may be transacted as long as notice of such business to be conducted at the rescheduled meeting is given.

Section 11. Joinder in Meeting by Approval of Minutes. The joinder of a Director in the action of a Board meeting by signing and concurring in the minutes of that Board meeting shall constitute the approval of that Director of the business conducted at the Board meeting, but such joinder shall not allow the applicable Director to be counted as being present for purposes of quorum.

Section 12. Presiding Officer. The presiding officer at any meeting of the Board of Directors shall be the President (who may, however, designate any other officer to preside). If the President is absent or if the office of President is vacant, the Vice President shall preside at that Board meeting.

Section 13. Action Without Meeting. The Directors shall have the right to take any action in the absence of a Board meeting which they could take at a Board meeting by obtaining the written consent of all Directors. Any action so approved shall have the same effect as though taken at a duly constituted meeting of the Directors.

Section 14. Committees. The Board may by resolution create Committees, appoint persons to such Committees, and vest in such Committees such powers and responsibilities as the Board shall deem advisable. The resolution establishing a Committee may also appoint its members, as well as a chair, state the purposes of the Committee, and provide for reports and other administrative matters as deemed appropriate by the Board. The Board may at any time dissolve, terminate or expand any Committee that has been created. All persons appointed to serve on any Committee (including, without limitation, the Architectural Review Board) serve at the pleasure of the Board of Directors and may be removed at any time by the Board with or without cause. Meetings of any Committee established by the Board of Directors at which a quorum of the members of that Committee is present shall be open to all Members, except for meetings between any Committee and the Association's attorney with respect to proposed or pending litigation and/or adversarial administrative proceedings where the content of the

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discussion would be protected by the attorney-client privilege; and meetings between any Committee and the Association's attorney held for the purpose of discussing personnel matters.

If any Committee created by the Board of Directors meets to make a final decision regarding any expenditure of Association funds, notice of that Committee meeting must be posted in a conspicuous place in the Community at least forty-eight (48) hours preceding the date and time of the Committee meeting.

Notice of any meeting of the Association's Architectural Review Board must be posted in a conspicuous place in the Community at least forty-eight (48) hours preceding the date and time of the Architectural Review Board meeting.

Section 15. Minutes of Meetings. The minutes of all meetings of the Board of Directors shall be kept in written form or in another form that can be converted into written form within a reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.

Section 16. Emergency By-Laws and Powers. In the event of an "emergency" as defined in Article VII, Section 16(a) of these By-Laws, the Board of Directors of the Association may exercise the emergency powers described in this Section, and any other emergency powers granted to a not for profit corporation under then-existing Florida law.

(a) An "emergency" exists for purposes of this Section 16 during the time a quorum of the Association's Directors cannot readily be assembled because of a catastrophic event, which includes without limitation, a hurricane, earthquake, act of war, civil unrest, domestic terrorism, or other similar occurrence. An "emergency" also exists during any period of time that local civil authorities have declared that a state of emergency exists in, or have ordered the mandatory evacuation of, the area in which the Tuscan Bay Community is located. A determination by any two (2) Directors that an emergency exists shall have presumptive validity.

(b) The Board of Directors may name as assistant officers persons who are not Directors, and these assistant officers shall have the same authority as the executive officers of whom they are the designated assistant during the period of the emergency, in the event of the incapacity of any officer of the Association.

(c) The Board of Directors may relocate the principal office during the period of the emergency, or designate alternative principal offices, or authorize the officers to do so.

(d) During any emergency the Board of Directors may hold Board meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice of that Board meeting may be given in any reasonable manner, including, but not limited to, publication, radio and television. The Director or Directors in attendance at such a Board meeting shall constitute a quorum of the Board.

(e) Corporate action taken in good faith during the period of an emergency under this Section 16 to further the ordinary affairs of the Association shall bind the Association,

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and that corporate action shall have the rebuttable presumption of being reasonable and necessary.

(f) Any officer, Director, agent of the Association and/or employee of the Association acting with a reasonable belief that his or her actions are lawful in accordance with these emergency By-Laws shall incur no liability for doing so, except in the case of willful misconduct and/or gross negligence.

(g) The provisions of these emergency By-Laws shall supersede any inconsistent or contrary provisions of the By-Laws during the period of an emergency. However, all provisions of the By-Laws that do not conflict with the emergency By-Laws remain effective during the period of an emergency.

(h) The provisions of these emergency By-Laws shall cease to be effective once the reason for the emergency ends.

Section 17. Execution of Documents. The Board of Directors, except as otherwise provided in these By-Laws, hereby authorizes the President or, if the President is unavailable for a period greater than two (2) full business days, the Vice President to enter into any contract or agreement and/or to execute any instrument in the name and on behalf of the Association.

## ARTICLE VIII

### POWERS AND AUTHORITY OF THE BOARD OF DIRECTORS

All of the duties, power and authority of the Association existing under Florida law or the Governing Documents shall be exercised exclusively by the Board of Directors, subject to approval by the Members only when specifically required. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association. Such powers and duties of the Board of Directors shall include, without limitation (except as limited elsewhere herein), the following:

- (a) Operating and maintaining all Common Area and Common Maintenance Area.
- (b) Determining the Common Expenses, Assessments, and any other financial obligations of the Association.
- (c) Maintaining bank accounts on behalf of the Association and designating the signatories required therefore.
- (d) Creation and maintenance of reserve accounts on behalf of the Association.
- (e) Purchasing, leasing or otherwise acquiring title to, or an interest in, property in the name of the Association, or its designee, for the use and benefit of its members. The power to acquire personal property shall be exercised by the Board and the power to acquire real property shall also be exercised by the Board.



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(f) Purchasing, leasing or otherwise acquiring property, including, without limitation, Lots, Residences or other property within the Property at foreclosure or other judicial sales, all in the name of the Association, or its designee.

(g) Making repairs, replacements, additions and improvements to, or alterations of, Common Area, Common Maintenance Areas, private streets, street lighting, sidewalks, and any facilities, improvements, structures, buildings, lighting and/or landscaping that may be located, from time to time, on any portion of the Community that has been designated or identified as Common Area and/or Common Maintenance Areas in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings or otherwise.

(h) Allocating income and expenses and taking such other actions as shall be deemed necessary and proper for the sound management of the Association.

(i) Levying fines against Members, any tenants, any lessees, any guests, any licensee and/or any invitees for any violation(s) of the Governing Documents and/or the rules and regulations established by the Association to govern the conduct of Members, tenants, lessees, guests, licensees and/or invitees. No fine shall be levied except after giving reasonable notice and opportunity for a hearing to the affected Member and, if applicable, his or her tenant(s), guest(s), lessee(s), licensee(s) and/or invitee(s).

(j) Suspending, for a reasonable period of time, the rights of any Member, any tenant, any lessee, any guest, any licensee and/or any invitee to use the Common Area, any recreational facilities and any amenities located on the Common Area for any violation(s) of the Governing Documents and/or the rules and regulations established by the Association to govern the conduct of Members, tenants, lessees, guests, licensees and/or invitees. No suspension shall be imposed except after giving reasonable notice of at least fourteen (14) days and an opportunity for a hearing to the affected Member and, if applicable, that Member's tenant(s), guest(s), lessee(s), licensee(s) and/or invitee(s).

(k) Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep and maintenance of Common Area, Common Maintenance Areas, private streets, street lighting, sidewalks, and any facilities, improvements, structures, buildings, lighting and/or landscaping that may be located, from time to time, on any portion of the Community that has been designated or identified as Common Area and/or Common Maintenance Areas, or the acquisition of real property, and granting mortgages on and/or security interests in Association-owned property or the Association's assessment authority.

(l) Contracting and paying for the management, maintenance, repair and replacement of the Common Area, Common Maintenance Areas (to the extent required), private streets, street lighting, sidewalks, and any facilities, improvements, structures, buildings, lighting and/or landscaping that may be located, from time to time, on any portion of the Community that has been designated or identified as Common Area and/or Common Maintenance Areas, and authorizing a management agent (who may be an affiliate of the Declarant or Builder) to assist

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the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, preparation of financial records, maintenance of financial records, maintenance of the Association's official records, enforcement of the Governing Documents and maintenance, repair, and replacement of the Common Area and Common Maintenance Area with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Governing Documents, including, but not limited to, the making of any Assessments, promulgation of rules, amendment of the Governing Documents and execution of contracts on behalf of the Association.

(m) At its discretion, authorizing Members or other Persons to use portions of the Common Area for private parties and gatherings and imposing reasonable charges for such private use.

(n) Exercising: (1) all powers specifically set forth in the Governing Documents; (2) all powers incidental thereto; and (3) all other powers not prohibited to a Florida not for profit corporation or a Florida "homeowners' association" as defined under Florida law.

(o) Contracting with and creating or joining in the creation of special taxing districts, joint councils and the like.

(p) Selecting, appointing and removing all officers, Committee members, agents, contractors, vendors and/or employees of the Association, prescribing such powers and duties for them as may be consistent with law and the Governing Documents, and fixing their compensation, if any.

(q) Changing the principal office for the transaction of the business of the Association; designating any place for the holding of any Annual or Special Meeting of the Association's Members consistent with the provisions of the Governing Documents; and designating any place for the holding of any Board meeting consistent with the provisions of the Governing Documents.

(r) Fixing and levying from time to time assessments upon the Owners, as provided in the Governing Documents; setting the due date for the payment of such Assessments and the date upon which the same shall become delinquent. Assessments shall be fixed and levied to provide for the payment of the expenses of the Association, for the operation, management, maintenance, repair and replacement of the Common Area (including, without limitation, any facilities and/or amenities constructed on the Common Area), Common Maintenance Areas, private streets, street lighting, sidewalks, and any facilities, improvements, structures, buildings, lighting and/or landscaping that may be located, from time to time, on any portion of the Community that has been designated or identified as Common Area and/or Common Maintenance Areas and Association Property, to pay any service provider, for the costs of cable television that may be uniformly provided to all Lots, and for taxes and/or governmental assessments upon real or personal property owned, leased, controlled and/or occupied by the Association, or for the payment of expenses for labor rendered or materials or supplies used and consumed, or equipment and appliances furnished for the maintenance, improvement or

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development of such property or for the payment of any and all obligations in relation thereto, or in performing or causing to be performed any of the purposes of the Association for the general benefit and welfare of its Members, all in accordance with the provisions of the Governing Documents. Should any Owner fail to pay such assessments before delinquency, the Board of Directors in its discretion is authorized to enforce the payment of such delinquent Assessments as provided in the Governing Documents.

(s) Enforcing the provisions of the Governing Documents and other agreements of the Association. To enforce any provision of the Governing Documents, the Board may take and/or seek any remedy at law, equitable remedy, administrative remedy, self-help or any combination of those available to the Board.

(t) Contracting and paying for fire, casualty, errors and omissions, blanket liability, malicious mischief, vandalism, and any other insurance, insuring the Members, the Association, the Board of Directors and other interested parties, in accordance with the provisions of the Governing Documents, covering and protecting against such damages or injuries as the Board deems advisable, which may include, without limitation, medical expenses of persons injured on the Common Area, Common Maintenance Areas and/or Association Property and to bond the agents and employees of any management body, if deemed advisable by the Board. The Board of Directors shall review at least once each calendar year all insurance policies and bonds obtained by the Board on behalf of the Association.

(u) Employing personnel and/or professional services necessary for the operation of the Common Area, Common Maintenance Areas, Association Property, and the Association, including legal and accounting services, and contracting and paying for improvements to the Common Area and/or Common Maintenance Areas.

(v) Contracting and paying for maintenance, gardening, landscaping, materials, supplies and services relating to the Common Area and Common Maintenance Areas.

(w) Delegating its powers according to law and the Governing Documents.

(x) Granting easements where necessary for utilities, telecommunications, cable television, water facilities, sewer facilities and any other services or utilities over the Common Area or any other portion of the Community.

(y) Fixing, determining and naming from time to time, if necessary or advisable, the public agency, fund, foundation or not for profit corporation or association, which is then organized, to which the assets of the Association shall be distributed upon liquidation or dissolution, according to the Association's Governing Documents. The assets so distributed shall be those remaining after satisfaction of all just debts and obligations of the Association, and after distribution of all property held or acquired by the Association under the terms of a specific trust or trusts.

(z) Adopting such rules and regulations as the Board may deem necessary for the operation and/or management of the Community, Residences, dwellings, Lots, Common Area, Common Maintenance Area, recreational facilities (if any), amenities (if any) and/or Association



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Property, which rules and regulations shall become effective and binding after: (1) they are adopted by a majority of the Board at a duly noticed Board meeting held pursuant to these By-Laws, and (2) the rules and regulations are mailed or personally delivered to all Members of the Association within ten (10) business days following the adoption of the rules and regulations. Such rules and regulations shall not materially adversely affect the rights, privileges or preferences of Declarant and/or Builder as established by the Governing Documents without the prior written approval of Declarant and Builder. Such rules and regulations may concern, without limitation, use of the Common Area, use of Common Maintenance Area, use of Association Property, signs, parking restrictions, use of Lots, maintenance of Lots, appearance of Lots, use of Residences, maintenance of Residences, appearance of Residences, and any other matter within the jurisdiction of the Association as provided in the Governing Documents. However, any rules and regulations shall be enforceable only to the extent that they are consistent with the Governing Documents.

## ARTICLE IX

### OFFICERS

Section 1. Designation. The principal officers of the Association may be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an Assistant Treasurer and an Assistant Secretary, and such other officers as in the Board's judgment may be necessary. Officers must be Directors. Any two offices may be held by the same person, however the offices of President and Secretary may not be held by the same person.

Section 2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the Annual Meeting, following the election of Directors. Notwithstanding the foregoing, officers shall be elected at the Special Meeting of the Association held when Directors are to be elected by the Class "A" Members for the first time following termination of the Class "B" membership. Each officer shall hold his or her office at the pleasure of the Board of Directors, until he or she has resigned, is removed, is recalled or is otherwise disqualified to serve.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the entire Board of Directors, any officer may be removed, with or without cause, and his or her successor elected at any duly noticed meeting of the Board of Directors.

Section 4. President. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board of Directors. The President shall have all of the general powers and duties which are usually vested in the office of the President of a corporation. The President shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business of the Association. The President shall be ex officio a member of all standing committees established by the Board, and he or she shall have such other powers and duties as may be prescribed by the Board of Directors or these By-Laws.

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Section 5. Vice President. The Vice President shall take the place of the President and perform his or her duties whenever the President shall be absent, disabled, refuses to act or is unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as may be prescribed by the Board of Directors or these By-Laws.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Members of the Association at the principal office of the Association or at such other place as the Board of Directors may order. The Secretary shall keep the seal of the Association in safe custody and shall have charge of such books and papers as the Board of Directors may direct; and the Secretary shall, in general, perform all of the duties incident to the office of Secretary. The Secretary shall give, or cause to be given, notices of meetings of the Members of the Association and of the Board of Directors required by the Governing Documents, these By-Laws or by law to be given. The Secretary shall maintain a list of Members, listing the names and addresses of the Members as furnished to the Association, and such list shall be changed only at such time as satisfactory evidence of a change in ownership is presented to the Secretary. The Secretary shall perform such other duties as may be prescribed by the Board of Directors or these By-Laws.

Section 7. Treasurer. The Treasurer shall have responsibility for the Association funds and securities and shall be responsible for keeping, or causing to be kept, full and accurate accounts, financial statements, financial records, tax records and other records of business transactions of the Association, including accounts of all assets, liabilities, receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall disburse the funds of the Association as may be ordered by the Board of Directors in accordance with the Governing Documents, shall render to the President and Directors, upon request, an account of all of his or her transactions as Treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these By-Laws.

## ARTICLE X

### COMPENSATION AND RESIGNATION

Section 1. Compensation. No Director or officer shall receive compensation for their services as such, but this provision shall not preclude the Board of Directors from employing a Director or officer as an employee of the Association, or from contracting with a Director or officer for any other service to be supplied by such Director or officer. Directors and officers shall be compensated for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

Section 2. Resignation. Any Director or officer may resign his or her post at any time by written resignation delivered to the Board, to the President of the Association, or to the Secretary of the Association. Any such resignation shall take effect upon its receipt unless a

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later date is specified in the resignation, in which event the resignation shall be effective from such date unless the resignation is withdrawn prior to that later date. The acceptance of a resignation shall not be required to make it effective. The conveyance, sale or transfer of all Lots owned by any Director (other than appointees of the Declarant) shall constitute an immediate written resignation of that Director, and that Director's position on the Board may then be filled pursuant to these By-Laws.

## ARTICLE XI

### BUDGET AND ASSESSMENTS

#### Section 1. Budgeting and Allocating Common Expenses.

(a) Calculation of Regular Assessments. Before the beginning of each Fiscal Year, the Board shall prepare a budget of the estimated Common Expenses which it expects to incur for the coming Fiscal Year, including any contributions to be made to reserves pursuant to Article XI, Section 2 of these By-Laws for periodic major maintenance, repair and/or replacement of items that the Association maintains as Common Expenses. Each budget shall include, as a separate line item in the operating expense portion of the budget, the estimated cost of routine maintenance, repair and operation of the Surface Water or Stormwater Management System (including, but not limited to, work within retention areas, drainage structures and drainage easements) and, as a separate line item in the reserve portion of the budget, a contribution to a reserve fund for periodic major maintenance, repair and replacements to the Common Maintenance Areas as provided in Article XI, Section 2 of these By-Laws, including, without limitation, contributions to any reserve accounts established by the Board. The budget shall separately reflect the anticipated sources and estimated amounts of funds necessary to pay the Common Expenses, including, but not limited to, any surplus or deficit to be applied from prior Fiscal Years, assessment income, any fees charged for use of any recreational amenities, and any other non-assessment income.

The Association is authorized to levy Regular Assessments to fund the Common Expenses against all Members and Lots subject to assessment under Article XI, Section 5 of these By-Laws, in the proportions described in that Article XI, Section 5. In determining the Regular Assessment rate, the Board may consider any assessment income expected to be generated from any property in the Community anticipated to become subject to assessment during that Fiscal Year.

The Board shall send a summary of the proposed budget and notice of the Regular Assessment to be levied against each Member and each Member's Lot pursuant to such budget to each Member at least thirty (30) days prior to the effective date of the budget. The budget and Regular Assessment shall automatically take effect on such date unless disapproved by at least seventy-five percent (75%) of Members representing the total number of Class "A" votes at a duly called meeting of the Association's Members at which a quorum is present, and if such a vote occurs during the Class "B" Control Period, that budget must also be disapproved by Declarant and Builder. There shall be no obligation to call a meeting of the Association's Members for the purpose of considering the budget except upon petition of the Members as provided in these By-Laws. Any such petition must be presented to the Board within fourteen



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(14) days after mailing of the proposed budget and proposed Regular Assessment for that Fiscal Year.

If any proposed budget is disapproved, or if the Board fails for any reason to determine the budget for any Fiscal Year, then the budget most recently in effect shall continue in effect until a new budget is determined. If any proposed budget is disapproved, or if the Board fails for any reason to determine the budget for any Fiscal Year, the Regular Assessments shall continue to be due and payable by all Owners. The amount of such Regular Assessments will be the same as imposed and assessed under the budget most recently in effect, unless amended pursuant to this Section 1(a).

As long as a budget has been determined and is in effect for a particular Fiscal Year, the Board, without a vote of the Association's membership, may revise and amend that budget and adjust the Regular Assessment amounts from time to time during that Fiscal Year, subject only to the notice requirements set forth in this Section 1(a) and applicable law.

(b) Calculation of Service Area Assessments. Before the beginning of each Fiscal Year, the Board shall also prepare a separate budget for each Service Area (if any) of the estimated Limited Common Expenses which the Association expects to incur on behalf of such Service Area for the coming Fiscal Year, including any contributions to be made to a reserve fund pursuant to Article XI, Section 2 of these By-Laws for periodic major maintenance, repair and/or replacement of items that the Association maintains on behalf of the Service Area as Limited Common Expenses. Each budget shall include, as a separate line item in the operating expense portion of the budget, the estimated cost of routine maintenance and repair of any private roads, sidewalks, drainage and street lighting which the Association maintains on behalf of such designated Service Area as a Limited Common Expense, and as a separate line item in the reserve portion of the budget, a contribution to a reserve fund for periodic major maintenance, repair and repaving of such roads, sidewalks, drainage and street lighting. The budget shall separately reflect the anticipated sources and estimated amounts of funds to pay the Limited Common Expenses for that Fiscal Year, including any surplus or deficit to be applied from prior Fiscal Years, Service Area Assessment income, any fees charged for use of any recreational amenities maintained on behalf of the Service Area, and any other non-assessment income.

The Association is authorized to levy Service Area Assessments, to fund the Limited Common Expenses for each Service Area (if any), against all Lots in the Service Area that are subject to such assessment under Article XI, Section 5 of these By-Laws, in the proportions described in that Section 5, except that, unless otherwise specified in an applicable Supplemental Declaration, any portion of the Service Area Assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures, may be levied on each of the benefited Lots in proportion to the benefit received, as the Board may reasonably determine. In determining the Service Area Assessment rate for any Service Area, the Board may consider any assessment income expected to be generated from any property in the Service Area anticipated to become subject to assessment during that Fiscal Year.

The Board shall send a summary of the proposed Service Area budget and notice of the Service Area Assessment to be levied pursuant to such budget to each Owner at least thirty (30)

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days prior to the effective date of that budget. The budget and Service Area Assessment shall automatically take effect on the effective date unless disapproved by Members representing seventy-five percent (75%) of the total Class "A" votes at a duly called meeting of the Association's membership at which a quorum is present. If such vote takes place during the Class "B" Control Period, Declarant and Builder must also disapprove of that Service Area budget. There shall be no obligation to call a meeting of the Members for the purpose of considering the Service Area budget except upon petition of the Members as provided for in these By-Laws. Any such petition must be presented to the Board within fourteen (14) days after mailing of the of the proposed Service Area budget and the proposed Service Area Assessment.

If a proposed Service Area budget is disapproved, or if the Board fails for any reason to determine the Service Area budget for any Fiscal Year, then the Service Area budget most recently in effect shall continue in effect until a new budget is determined. If a proposed Service Area budget is disapproved, or if the Board fails for any reason to determine the Service Area budget for any Fiscal Year, the Service Area Assessments shall continue to be due and payable by all Members. The amount of such Service Area Assessments will be the same as imposed and assessed under the Service Area budget most recently in effect, unless amended pursuant to this Section 1(b).

As long as a Service Area budget has been determined and is in effect for a particular Fiscal Year, the Board, without a vote of the Association's membership, may revise and amend that budget and adjust the Service Area Assessment amounts from time to time during that Fiscal Year, subject only to the notice requirements set forth in this Section 1(b) and applicable law.

All amounts that the Association collects as Service Area Assessments shall be expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Association's general funds and Regular Assessments.

## Section 2.     Budgeting for Reserves.

The Board shall prepare and periodically review separate reserve budgets for the Common Maintenance Area, and for each Service Area for which the Association maintains capital items as Limited Common Expenses, which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair and/or replacement cost of capital items under each budget. The Board shall include in the Common Expenses budget adopted pursuant to Article XI, Section 1(a) of these By-Laws, or any Service Area budget(s) adopted pursuant to Article XI, Section 1(b) of these By-Laws, as appropriate, a capital contribution to fund reserves in an amount which the Board, in the exercise of its business judgment, deems sufficient to meet the projected needs under each budget with respect to both amount and timing by annual contributions over the budget period.

The reserve funds held in each account may be expended only for maintenance, repair, and/or replacement of those assets covered by the applicable reserve budget pursuant to which they were collected. Subject to such limitation, the Board may adopt resolutions regarding the expenditure of any reserve funds including, without limitation, policies designating the nature of assets for which reserve funds may be expended. Neither the Association membership nor the

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Board shall adopt, modify, limit, or expand such policies without Declarant's and Builder's prior written consents during the Development and Sale Period.

Notwithstanding anything contrary in these By-Laws, the Board may establish additional reserve accounts that the Board, in its absolute discretion, determines are necessary or advisable for the Association. The Board may also determine the appropriate funding levels for any such reserve accounts and include those amounts as part of the Common Expenses.

Section 3. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses and/or expenses in excess of those budgeted. Any such Special Assessment may be levied: against all Owners and their Lots, if such Special Assessment is for Common Expenses; or against only those Owners and Lots within any Service Area, if such Special Assessment is for Limited Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of a majority of the entire Board. Any Special Assessment shall also require the affirmative votes or written consents of Declarant and Builder during the Class "B" Control Period. Special Assessments shall be due and payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the Fiscal Year in which the Special Assessment is approved.

Section 4. Benefited Assessments.

The Association may levy Benefited Assessments against one (1) or more particular Lots as follows:

(a) to cover the costs, including, without limitation, overhead and administrative costs, of providing services to a Lot upon request of the Owner of that Lot pursuant to: any menu of special services and/or benefits which the Association may, but is not obligated to, offer; or pursuant to a Supplemental Declaration. Benefited Assessments for special services and/or benefits may be levied in advance of actually providing the requested service to that Lot; and

(b) to cover, refund and/or reimburse any costs and expenses incurred in bringing, or attempting to bring, a Lot into compliance with the Governing Documents, including, without limitation, Legal Costs, subject only to the applicable limitations of the Declaration. To cover, refund and/or reimburse any costs and expenses incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, tenants, and/or guests, including, without limitation, Legal Costs, subject only to the applicable limitations of the Declaration.

Section 5. Assessment Rate; Commencement of Assessments; Time of Payment.

The obligation to pay assessments commences as to each Lot, except for Lots owned by Declarant or Builder, on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article XI, whichever is later. All Lots owned by Declarant and/or Builder shall not be subject to assessments until such time as the Declarant or



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Builder has obtained a certificate of occupancy from the County for the single-family dwelling constructed on their respective Lots, and the Declarant or Builder has conveyed that Lot to a third-party purchaser. Regular Assessments and Special Assessments for Common Expenses shall be allocated equally among all Lots subject to such assessment. Except as otherwise provided in Article XI, Section 1(b) of these By-Laws, the Declaration or in any applicable Supplemental Declaration, Service Area Assessments shall be allocated equally among all Lots subject to such assessment in the applicable benefited Service Area. The first Regular Assessment and Service Area Assessment, if any, levied on each Lot shall be prorated and adjusted according to the number of months remaining in the Fiscal Year at the time the obligation to pay such assessments commences on that Lot.

Members shall pay assessments in the manner and on the dates as established by the Board. The Board may require advance payment of some or all assessments at the closing of the transfer of title to a Lot and may impose special requirements for Members who have failed to pay, on a timely basis, two (2) or more payments, in any twelve (12) consecutive month period, of any nature, due and payable under the Governing Documents. If the Board so elects, assessments may be paid in quarterly or monthly installments. Unless the Board otherwise provides, the Regular Assessment and Service Area Assessment shall be due and payable in advance on the first day of each Fiscal Year. If any Member is delinquent in paying any assessments or other charges levied on that Member's Lot, the Board may require that the outstanding balance on all assessments be paid in full immediately.

#### Section 6.      Obligation for Assessments.

Each Member, except for Declarant and Builder, by accepting a deed or entering into a recorded contract of sale for any Lot, covenants and agrees to pay all assessments levied in accordance with the Governing Documents for each Lot owned. All assessments, together with interest (computed from the assessment's due date at a rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is greater), late charges as determined by Board resolution, and Legal Costs, shall be the personal obligation of each Member, other than Declarant and Builder, and a lien upon each Lot until paid in full. If a Lot is owned by more than one (1) Person, each Person shall be jointly and severally liable for all assessments that become due and payable on that Lot, together with applicable interest, late charges and Legal Costs. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Any failure by the Board to fix assessment amounts or rates or any failure by the Board or an agent of the Association to deliver or mail each Member an assessment notice shall not be deemed a waiver, modification, or a release of any Member from the obligation to pay assessments. In such event, each Member, other than Declarant and Builder during the Class "B" Control Period, shall continue to pay Regular Assessments and Service Area Assessments, if any, on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Member is exempted from liability for assessments by non-use of Common Maintenance Area, non-use of Common Area, abandonment of that Member's Lot, or any other

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reason. The obligation to pay assessments is a separate and independent covenant by each Member, other than Declarant and Builder. No reduction or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some required function, or for inconvenience or discomfort arising from making repairs or improvements, or for any other reason.

Following a written request, the Association shall furnish to any Member liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such a certificate.

Section 7. Lien for Assessments.

All assessments (Regular Assessments, Service Area Assessments, Special Assessments, Capital Improvement Assessments and Benefited Assessments), together with such interest and late charges as shall be imposed by the Board and all Legal Costs, shall be a charge and continuing lien upon the Lot against which such assessment is made from and after the date on which such assessment is due in order to secure payment of assessments that remain unpaid for a period of thirty (30) days or longer after becoming due. The Association may record a notice of lien for any delinquent assessments in the Public Records of the County and foreclose the lien in the same manner as a mortgage. Upon recording, the lien shall secure the amount of delinquency stated therein and all unpaid assessments, interest, late charges and Legal Costs thereafter until satisfied of record. Such lien shall be superior to all other liens, except: (a) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value; and (b) other liens or encumbrances which by law would be superior. The Association's lien may be enforced by suit, judgment, and/or judicial or nonjudicial foreclosure, unless prohibited by applicable law.

Notwithstanding the above, and subject to applicable law, the Board may designate assessments or charges levied solely for the purpose of funding Common Expenses related to acquisition, development, or construction of infrastructure or capital improvements serving the Community (or to pay the cost to underwrite, service, and repay any debt incurred to finance any such acquisition, development, or construction) as a "**Capital Improvement Assessment**", and the lien for a Capital Improvement Assessment shall be superior to: (a) the Association's lien for other Common Expenses and Limited Common Expenses; and (b) all other liens except those deemed superior under federal or Florida law and which may not be made subordinate by this provision.

At a foreclosure sale, the Association may bid for the Lot and acquire, hold, lease, mortgage, and convey that Lot. The Association may sue for unpaid assessments and other charges without foreclosing or waiving its assessment lien.

Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure by the first Mortgagee (or pursuant to a deed in lieu of foreclosure to a first mortgage) extinguishes the lien relating to any amounts due prior to the Mortgagee's foreclosure

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or the deed in lieu of foreclosure. The purchaser of such foreclosed Lot shall not be personally liable for assessments on such Lot due prior to the foreclosure sale. Such unpaid assessments shall become Common Expenses collectible from Owners of all Lots subject to assessment under Article XI, Section 5, including, without limitation, such purchaser, its successors and assigns.

Notwithstanding the above, while the Association owns a Lot: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on that Lot; and (c) each other Lot in the Community shall be charged, in addition to its usual assessment, its prorated share of the assessment that would have been charged to such Lot had it not been acquired and owned by the Association.

Section 8. Exempt Property.

The following property shall be exempt from payment of Regular Assessments, Service Area Assessments, Special Assessments, Capital Improvement Assessments and Benefited Assessments:

- (a) All Common Area and any other portions of the Community which are not Lots; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

Section 9. Initial One-Time Assessment.

The Association hereby establishes an initial one-time assessment (the "Initial Assessment") applicable to each Lot, in such amount as determined in the Board's discretion, not to exceed one hundred percent (100%) of the full Regular Assessment per Lot levied for the Fiscal Year in which the Initial Assessment is due and payable. The Initial Assessment shall become due and payable upon first occupancy of such Lot as a place of residence by a Class "A" Member or upon the first conveyance of the Lot with a completed dwelling, whichever occurs first. The Declarant and Builder shall not be required to pay the Initial Assessment but the third party purchaser of any Lot from Declarant or Builder shall be liable for the Initial Assessment. Such Initial Assessment may be used to fund the Association's initial start up costs and other operating expenses or to help fund reserves, in the Board's discretion. The Initial Assessment may be referred to by another name, such as Working Capital Contribution, Working Fund Contribution or some other name, in marketing, sales, promotional and/or disclosure materials.

No further Initial Assessment shall be due for any subsequent transfer of ownership of any Lot from one Class "A" Member to a successor Class "A" Member.

Section 10. Use and Consumption Fees; Licenses and Royalties.

The Board may charge use and consumption fees to any Person using Association services or facilities and may, in its discretion, determine the amount and method of determining such fees. Different fees may be charged to different classes of users (for example, Owners and non-Owners). Any such fees charged to Owners shall be considered a Benefited Assessment against the Lots of such Owners under Article XI, Section 4(a) of these By-Laws.



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As set forth in the Governing Documents, the Association may enter into license agreements with Declarant and/or Builder or other parties to permit the Association's use of trade names or service marks, such as the use of the name "Tuscany Bay". To the extent permitted by such license agreements, the Board may enter into sub-license agreements, under negotiated terms, which permit others within the Community to use such trade names and/or service marks. The Association may charge fees and collect royalties in connection with such sub-license agreements; provided, Declarant, Builder, any Builder Affiliate and any Declarant Affiliate shall retain the absolute right to use such trade names and service marks without payment of any license fees. Any such fees and royalties shall be considered a Benefited Assessment under Article XI, Section 4(a) of these By-Laws.

Section 11. Depository. The depository of the Association shall be such bank or banks in the State of Florida as shall be designated from time to time by the Board of Directors and in which the monies of the Association shall be deposited. Any and all banks utilized by the Board of Directors and the Association shall be federally insured. Withdrawal of monies from those accounts may be made by either: (a) checks signed by such person or persons as are authorized by the Board of Directors; or (b) electronic fund transfers by such person or persons as are authorized or under the direction of the Board of Directors. All reserve and operating funds collected by the Association from assessments or otherwise shall not be commingled in a single account and shall be divided into more than one (1) account as determined by a majority of the Board of Directors. In addition, a separate reserve account may be established for the Association in such a depository for monies specifically designated as reserves for capital expenditures, deferred maintenance and/or any other item or expense in the sole discretion of the Board of Directors.

Section 12. Fidelity Bonds. Fidelity bonds may be required, in the discretion of the Board of Directors, for all persons handling or responsible for Association funds in such amounts as shall be determined by a majority of the Board, but in no event less than the greater of One Hundred Thousand Dollars (\$100,000) or the maximum amount that will be in the custody or control of the Association or any Persons handling or responsible for Association funds at any one time. The premiums on such bonds shall be paid by the Association as a Common Expense.

Section 13. Accounting Records and Reports. The Association shall maintain accounting records in the State of Florida, according to accounting practices normally used by similar associations. All financial and accounting records must be kept by the Association for a period of at least seven (7) years. The records shall include, but not be limited to: (a) accurate, itemized and detailed records of all receipts and expenditures; (b) a current account and periodic statement of the account of each Member, designating the name and current mailing address of each Member, the amount of each assessment, the dates and amounts in which the assessments come due, the amount paid upon the account and the dates so paid, and the balance due; (c) all tax returns, financial statements and financial reports of the Association; and (d) any other Association records that identify, measure, record or communicate financial information.

Within sixty (60) days following the end of each Fiscal Year, the Association shall prepare, or have prepared, a complete annual financial report. The annual financial report will consist of a complete set of financial statements that were prepared in accordance with generally

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accepted accounting principles, and with such other requirements established by Florida law for a homeowners' association with total annual revenue of the Association. When the Board of Directors completes or receives this annual financial report, the Association shall within ten (10) business days either: mail or deliver a copy of the annual financial report to each Member; or mail or deliver a written notice to each Member that a copy of the annual financial report is available upon request at no charge to the Member.

## ARTICLE XII

### AMENDMENTS TO THE BY-LAWS

These By-Laws may be amended, altered, modified, repealed and/or rescinded in the following manner:

Section 1. Notice. Notice of the subject matter of a proposed amendment, alteration, rescission, and/or modification to these By-Laws shall be included in the notice of the meeting of the Association's Board of Directors at which a proposed amendment, alteration, rescission and/or modification to these By-Laws is to be considered.

Section 2. Adoption. An amendment, alteration, modification and/or rescission of these By-Laws may be made upon the approval of a majority of the entire Board of Directors at a duly noticed meeting of the Board.

Section 3. Effective Date. The effective date for any amendment, alteration, modification and/or rescission of these By-Laws shall be when a Certificate of Amendment is signed by an officer of the Association and filed in the Public Records of Hillsborough County, Florida along with a copy of the text of the amendment, alteration, modification and/or rescission.

## ARTICLE XIII

### CONFLICTING PROVISIONS

Section 1. Conflicting Provisions. In case any of these By-Laws conflict with any provisions of the laws of the State of Florida, such conflicting By-Laws shall be null and void, but all other provisions of these By-Laws shall remain in full force and effect. In case of any conflict between the Articles and these By-Laws, the Articles shall control. In the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

Section 2. Waiver. No provision of these By-Laws or any regulation promulgated by the Board of Directors pursuant hereto shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches which may have occurred.

Section 3. Severability. The provisions of these By-Laws are severable, and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the enforceability or effect of the remainder.

THIS IS NOT A

**Section 4. Captions.** Captions and headings are inserted herein only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these By-Laws or the intent of any provision.

**Section 5. Gender and Number.** All nouns and pronouns used herein shall be deemed to include the masculine, the feminine, and the neuter, and the singular shall include the plural and the plural shall include the singular whenever the context requires or permits.

**IN WITNESS WHEREOF**, the members of the Board of Directors have adopted by these By-Laws of Tuscany Bay Property Owners Association, Inc. effective as of this 17<sup>th</sup> day of NOVEMBER, 2005.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: President

Attested by: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: Director



Prepared by and, after  
recording, return by mail to:  
Michael S. Lawson  
Metro Development Group, LLC  
2502 North Rocky Point  
Drive, Suite 1050  
Tampa, FL 33607

INSTRUMENT#: 2012201065, O BK 21172  
PG 1902-1905 06/08/2012 at 03:06:29 PM,  
DEPUTY CLERK: JROSARIO Pat Frank, Clerk  
of the Circuit Court Hillsborough County

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**FOURTH AMENDMENT TO THE DECLARATION OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS FOR TUSCANY BAY PROPERTY**  
**OWNERS ASSOCIATION, INC.**

**THIS FOURTH AMENDMENT** to the Declaration of Covenants, Conditions and Restrictions for Tuscany Bay Property Owners Association, Inc. (the "Fourth Amendment") is made this 31<sup>st</sup> day of May, 2012, by Dune FL Land I Sub LLC, a Delaware limited liability company (the "Developer"), and joined in by Tuscany Bay Property Owners Association, Inc., a Florida corporation not for profit (the "Association").

**RECITALS**

**WHEREAS**, that certain Declaration of Covenants, Conditions, and Restrictions for Tuscany Bay Property Owners Association, Inc. was executed on the 17th of November, 2005, and recorded in O.R. Book 15815, Page 464 *et. seq.* of the public records of Hillsborough County, Florida, and modified by that certain First Amendment dated March 1, 2006, recorded in O.R. Book 16192, Page 853 *et. seq.* in the Public Records of Hillsborough County, Florida, and that certain Second Amendment dated November 10, 2006, recorded in O.R. Book 17163, Page 16 *et. seq.* in the Public Records of Hillsborough County, Florida, and that certain Third Amendment dated January 11, 2007, recorded in O.R. Book 17337, Page 1543 *et. seq.* in the Public Records of Hillsborough County, Florida (collectively, the "Declaration");

**WHEREAS**, Article XX of the Declaration provides that until the termination of the Class "B" Control Period the Declaration may be amended by the Declarant; and

**WHEREAS**, Developer has Class "B" control of the Association; and

**NOW THEREFORE**, the Developer declares that every portion of Tuscan Bay is to be held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions and restrictions hereinafter set forth and as may be further amended.

Words in the text that are lined or stricken through (-----) indicate deletions from the existing text; words in the text that are double-underlined indicate additions to the existing text.

**I. General Provisions.** The foregoing Recitals are true and correct and are incorporated into and form a part of this Fourth Amendment. In the event that there is a conflict between this Fourth Amendment and the Declaration, this Fourth Amendment shall control. Whenever possible, this Fourth Amendment to the Declaration shall be construed as a single document. All initially capitalized terms not defined herein shall have the definitions for such terms as provided in the Declaration.

**II. Article VI.** Article VI Section 6.2 (ii) of the Declaration is hereby amended to read as follows:


6.2 Membership (ii) ~~ten~~fifteen ~~(10)~~(15) years from the date of recording the declaration; or

**IV. No Other Amendments.** Except as modified herein, all other terms, conditions and provisions of the Declaration shall remain the same and shall be fully enforceable according to their terms.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGES]**

IN WITNESS WHEREOF, the Developer has executed this Fourth Amendment to the Declaration the day and date first above written.

Signed, sealed and delivered  
in the presence of:

  
(Signature of Witness)  
LORI PRICE

(Print Name of Witness)




(Signature of Witness)

Anthony Brannan  
(Print Name of Witness)

**DUNE FL LAND I SUB LLC,**  
a Delaware limited liability company  
its Managing Member

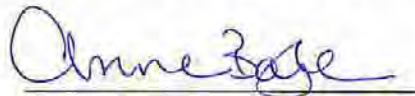
By: WTRG Member, LLC,  
a Delaware limited liability company  
its Administrative Member

By: Hawk Portfolios Holdings, LLC,  
a Florida limited liability company  
its: Administrative Member

By:   
John M. Ryan  
Its: Manager

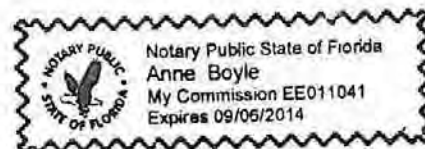
STATE OF FLORIDA )  
COUNTY OF Hillsborough )

Sworn to and subscribed before me this 1 day of June, 2012,  
by John M. Ryan, as Manager of Hawk Portfolios Holdings, LLC, a Florida limited liability  
company, as Administrative Member of Dune FL Land I Sub LLC, a Delaware limited liability  
company, who (☒) is personally known to me or ( ) has produced a Driver's License as  
identification.



Print Name: Anne Boyle

Notary Public State of Florida  
My Commission Expires:







**JOINDER AND CONSENT BY**  
**TUSCANY BAY PROPERTY OWNERS ASSOCIATION, INC.**


KNOW ALL MEN BY THESE PRESENTS:

That Tuscany Bay Property Owners Association, Inc., a Florida corporation not for profit, acknowledges, agrees, subordinates, joins in and consents to the terms and conditions of the Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany Bay Property Owners Association, Inc. to which this Joinder and Consent by Tuscany Bay Property Owners Association, Inc. is attached.

WITNESSES:

  
Print Name: LORI PRICE  
  
Print Name: Anthony Brannan

**TUSCANY BAY PROPERTY  
OWNERS ASSOCIATION, INC.**  
a Florida corporation not for profit

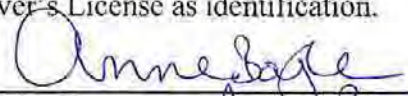
By:   
Print Name: John Ryan  
Its: President

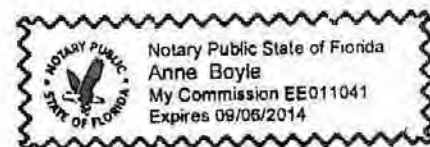
(CORPORATE SEAL)

STATE OF FLORIDA )  
COUNTY OF Hillsborough )

Sworn to and subscribed before me this 1 day of June, 2012, by John Ryan as President of Tuscany Bay Property Owners Association, Inc., a Florida corporation not for profit, on behalf of the corporation, who ☒ is personally known to me or ( ) has produced a \_\_\_\_\_ Driver's License as identification.

(SEAL)

  
Print Name: Anne Boyle  
Notary Public State of Florida  
My Commission Expires:



Prepared By & Return To:

Gary N. Strothauer, Esq.  
BAXTER, STROTHAUER, MANNION  
& SILBERMANN, P.A.  
1150 Cleveland Street, Suite 300  
Clearwater, Florida 33755

INSTRUMENT#: 2007023143, O BK 17337  
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DEPUTY CLERK: DLEDUC Pat Frank, Clerk of  
the Circuit Court Hillsborough County

**THIRD AMENDMENT TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR TUSCANY BAY**

KNOW ALL MEN BY THESE PRESENTS:

That this Third Amendment to the Declaration of Covenants, Conditions and Restrictions for TUSCANY BAY (the "Third Amendment") is made and entered into this 11 day of JANUARY, 2006, effective the 11 day of JANUARY, 2006, by KINGS LAKE, LLC, a Florida limited liability company, hereinafter referred to as Declarant.

WITNESSETH:

WHEREAS, the Tuscany Bay Declaration of Covenants, Conditions and Restrictions (the "Declaration"), was executed on the 17th day of November, 2005, and recorded in O.R. Book 15815, Pages 464 through 611, of the Public Records of Hillsborough County, Florida; and

WHEREAS, the Declaration was modified and amended by the First Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany Bay, (the "First Amendment"), recorded on March 7, 2006, in O.R. Book 16192, Pages 853 through 856, of the Public Records of Hillsborough County, Florida; and

WHEREAS, the Declaration was modified and amended by the Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany Bay, (the "Second Amendment"), recorded on November 14, 2006, in O.R. Book 17163, Pages 16 through 18, of the Public Records of Hillsborough County, Florida; and

WHEREAS, Declarant desires to amend the definition of the Defined Term "Builder" as referenced in the Declaration;

NOW THEREFORE, the Declarant does hereby declare:

1. Subparagraph (h) "Builder" of Paragraph 2.1, Defined Terms, of Article II, Concepts and Definitions of the Declaration is hereby amended to read:

(h) **"Builder"**: Mercedes Homes, Inc., a Florida corporation, and/or Park Square Enterprises, Inc., a Florida corporation, or any successor or assign as Builder of all or any portion of the Community that is designated as Builder in a recorded instrument which the immediately preceding Builder executes. On all matters, Builder may act through any of its affiliates.

2. Article 8.1(a) "Calculation of Regular Assessments" of **Article VIII, Association Finances**, of the Declaration is hereby amended to provide that the option by any Builder to reduce the Regular Assessment by payment of a subsidy shall only affect such electing Builder's Lots and shall not affect any other Builder owned Lots.

3. Article 8.6(b) "Builder's Option to Fund Budget Deficits" of **Article VIII, Association Finances**, of the Declaration is hereby amended to provide that the option by any Builder to satisfy assessments on Lots by funding the Association's deficit shall only affect such electing Builder's Lots and shall not affect any other Builder owned Lots.

4. The Declaration is amended to provide that any common construction obligations or payment obligations of Builder under the Declaration shall be apportioned equally between all Builder's on a pro rata basis in accordance with the number of Lots owned by each Builder.

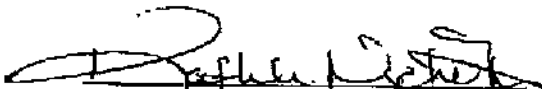
5. Except as herein modified and amended, the Tuscany Bay Declaration of Covenants, Conditions and Restrictions, as amended, shall remain in full force and effect as first written.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed by its duly authorized officer and its corporate seal to be hereunto affixed as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

KINGS LAKE, LLC,  
a Florida limited liability company,

By: The Ryan Group, LLC, its  
Managing Member

  
Signature of Witness #1

By:   
John M. Ryan, Managing Member

Kathleen Nicholson  
Typed/Printed Name of Witness #1

Address: 2502 N. Rocky Point Drive  
Suite 1050  
Tampa, FL 33607

  
Signature of Witness #2

DOUG DRAPE  
001800CS 10827741 2



Typed/Printed Name of Witness #2

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of January, 2007, by John M. Ryan as Managing Member of The Ryan Group, LLC, as Managing Member of Kings Lake, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me.



[Signature]  
Notary Commission  
My Commission Expires: May 19, 2009

JOINDER AND CONSENT OF BUILDER

The undersigned Builder joins in and consents to this Third Amendment to the Declaration and agrees to perform the obligations of Builder contained in the Declaration.

Signed, sealed and delivered in the  
presence of:

BUILDER:

MERCEDES HOMES, INC.,  
a Florida corporation,

[Signature]  
Signature of Witness #1

By: [Signature]  
Name: Kirk R. Malone  
Title: Division President

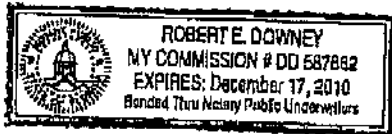
Cammie Longenecker  
Typed/Printed Name of Witness #1


[Signature]  
Signature of Witness #2

Lara M. Noel  
Typed/Printed Name of Witness #2

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH  
ORLDOCS 10837741 2

The foregoing instrument was acknowledged before me this 11<sup>TH</sup> day of JANUARY, 2007, by KIRK R. MALONE, as DIVISION PRESIDENT of MERCEDES HOMES, INC., on behalf of the corporation. He/She ☒ is personally known to me or ☐ has produced \_\_\_\_\_ as identification.



  
Notary Public Robert E. Downey  
My Commission Expires: \_\_\_\_\_

JOINDER AND CONSENT OF BUILDER

The undersigned Builder joins in and consents to this Third Amendment to the Declaration and agrees to perform the obligations of Builder contained in the Declaration.

Signed, sealed and delivered in the presence of:

BUILDER:

PARK SQUARE ENTERPRISES, INC.,  
a Florida corporation

Signature of Witness #1

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Typed/Printed Name of Witness #1

Signature of Witness #2

Typed/Printed Name of Witness #2

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by \_\_\_\_\_ as \_\_\_\_\_

ORLODCS 10827741 2

JOINDER AND CONSENT OF BUILDER

The undersigned Builder joins in and consents to this Third Amendment to the Declaration and agrees to perform the obligations of Builder contained in the Declaration.

Signed, sealed and delivered in the presence of:

BUILDER:

PARK SQUARE ENTERPRISES, INC.,  
a Florida corporation

Mary Florence King  
Signature of Witness #1

MARY FLORENCE KING

Typed/Printed Name of Witness #1

By:

Suresh K. Gupta

Title: President

Michele A. Ryder  
Signature of Witness #2

Michele A. Ryder

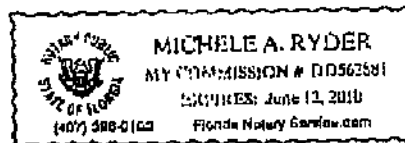
Typed/Printed Name of Witness #2

STATE OF FLORIDA

COUNTY OF Orange

The foregoing instrument was acknowledged before me this 11th day of January, 2007, by Suresh Gupta as President of PARK SQUARE ENTERPRISES, INC., on behalf of the corporation. He/She ☒ is personally known to me or ☐ has produced \_\_\_\_\_ as identification.

Michele A. Ryder  
Notary Public  
My Commission Expires:





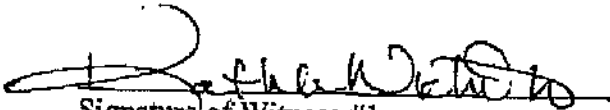
JOINDER AND CONSENT OF HOMEOWNERS ASSOCIATION

The undersigned Homeowners Association joins in and consents to this Third Amendment to the Declaration and agrees to perform the obligations of the Homeowners Association contained in the Declaration.


Signed, sealed and delivered in the presence of:

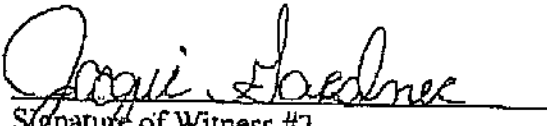
HOMEOWNERS ASSOCIATION:

TUSCANY BAY PROPERTY OWNERS ASSOCIATION, INC., a Florida not-for-profit corporation

  
Signature of Witness #1

Kathleen Nicholson  
Typed/Printed Name of Witness #1

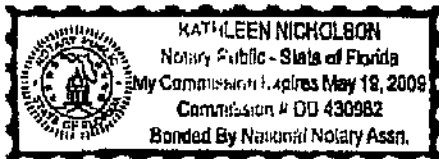
By:   
John M. Ryan  
President

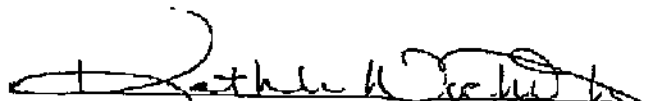
  
Signature of Witness #2

JACQUI GARDNER  
Typed/Printed Name of Witness #2

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 11 day of January, 2007, by John M. Ryan as President of TUSCANY BAY PROPERTY OWNERS ASSOCIATION, INC., a Florida not-for-profit corporation. He is personally known to me.



  
Notary Public  
My Commission Expires: May 19, 2009

Prepared By & Return To:

Gary N. Strohauer, Esq.  
BAXTER, STROHAUER, MANNION  
& SILBERMANN, P.A.  
1150 Cleveland Street, Suite 300  
Clearwater, Florida 33755

**SECOND AMENDMENT TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR TUSCANY BAY**

KNOW ALL MEN BY THESE PRESENTS:

That this Second Amendment to the Declaration of Covenants, Conditions and Restrictions for TUSCANY BAY (the "Second Amendment") is made and entered into this 10<sup>th</sup> day of November, 2006, effective the 10<sup>th</sup> day of November, 2006, by KINGS LAKE, LLC, a Florida limited liability company, hereinafter referred to as Declarant.

WITNESSETH:

WHEREAS, the Tuscany Bay Declaration of Covenants, Conditions and Restrictions (the "Declaration"), was executed on the 17th day of November, 2005, and recorded in O.R. Book 15815, Pages 464 through 611, of the Public Records of Hillsborough County, Florida; and

WHEREAS, the Declaration was modified and amended by the First Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany Bay, (the "First Amendment"), recorded on March 7, 2006, in O.R. Book 16192, Pages 853 through 856, of the Public Records of Hillsborough County, Florida; and

WHEREAS, Declarant desires to amend Subparagraph (q) of **ARTICLE III, USE RESTRICTIONS**, in the Declaration;

NOW THEREFORE, the Declarant does hereby declare:

1. Subparagraph (q) Pets of **Article III, USE RESTRICTIONS**, is hereby amended to read:

(q) Pets. No animals, livestock, reptiles, pets or poultry of any kind may be kept in and/or on any Lot or brought into the Community by any Owner and/or that Owner's family members, tenants, guests, occupants, invitees, agents, and/or employees other than domesticated dogs, domesticated cats, fish and/or caged birds, all of which are usually and commonly kept as household pets (collectively "pets"). These pets may only be kept, maintained and/or allowed to reside in and/or on a Lot provided that such pets are: (a) in full compliance with the applicable law, ordinances and the Governing Documents; (b) under the control of the applicable Owner and/or that Owner's family members, tenants, guests, occupants, invitees, agents or employees at all times when the pet is on any Common Area and/or the pet is outside of that Owner's dwelling or Residence; (c) not left unattended on any balconies, terraces, lanais, garages and/or covered patios; (d) quiet, inoffensive and generally not a nuisance to any other Owners and/or occupants of another Lot; (e) not kept or raised for commercial purposes; and (f) not being boarded in exchange for compensation of any type. The Lot Owner and/or that Owner's family members, tenants, guests, occupants, invitees, agents and/or employees shall promptly pick up all solid waste material from their pet and dispose of that solid waste material appropriately. No solid waste material from their pet shall remain on any Common Area or any Common Maintenance Area. Each Lot Owner and/or any family members, tenants, guests, occupants, invitees, agents and/or employees agree to fully pay for, and/or reimburse the Association for all extermination costs necessitated by any pet. The Declarant, the Builder, the Association, the Board and the Association's property management company shall not be liable for any personal injury, death and/or property damage resulting from a violation of the restrictions on pets and animals. Any Owner, and/or that Owner's family member, tenant, guest, occupant, invitee, agent and/or employee committing any violation of the restrictions on pets and animals shall fully indemnify and hold harmless the Declarant, the Builder, the Association, the Board, each other Lot Owner and the Association's property management company in such regard. A violation of any rule or restriction on pets and animals shall entitle the Association to all of the Association's rights and remedies, including, but not limited to, the right to fine the applicable Owner and/or to require any pet or animal to be permanently removed from the Community. No Owner, and/or that Owner's family members, tenants, guests, occupants, invitees, agents and/or employees may keep more than three (3) of the permitted pets in and/or on any Lot. Notwithstanding the foregoing, no dogs of the American Pit Bull Terrier breed shall be kept anywhere in the Community, including any Lot and any garage. No reptiles, insects, livestock, poultry, swine or wildlife of any type shall be kept anywhere in the Community, including any Lot and any garage.

2. Except as herein modified and amended, the Tuscany Bay Declaration of Covenants, Conditions and Restrictions, as amended by First Amendment, shall remain in full force and effect as first written.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed by its duly authorized officer and its corporate seal to be hereunto affixed as of the day and year first above written.

[SIGNATURE PAGE TO FOLLOW]



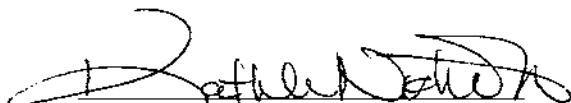
[SIGNATURE PAGE OF SECOND AMENDMENT]

Signed, sealed and delivered  
in the presence of:

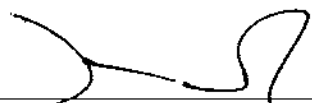
DECLARANT:

KINGS LAKE, LLC,  
a Florida limited liability company


By: The Ryan Group, LLC, its  
Managing Member

  
Signature of Witness #1

Kathleen Nicholson  
Typed/Printed Name of Witness #1

By:   
John M. Ryan, Managing Member


Address: 2502 N. Rocky Point Drive  
Suite 1050  
Tampa, FL 33607

  
Signature of Witness #2

JACQUI GARDNER  
Typed/Printed Name of Witness #2

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of November, 2006, by John M. Ryan as Managing Member of The Ryan Group, LLC, as Managing Member of Kings Lake, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me.

  
Notary Commission  
My Commission Expires:



Prepared By & Return To:

Gary N. Strohauser, Esq.

BAXTER, STROHAUSER, MANNION

& SILBERMANN, P.A.

1150 Cleveland Street, Suite 300

Clearwater, Florida 33755

**INSTR # 2006112551**

**O BK 16192 PG 0853**

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RECORDED 03/07/2006 02:24:41 PM

PAT FRANK CLERK OF COURT

HILLSBOROUGH COUNTY

DEPUTY CLERK B Loggans

**FIRST AMENDMENT TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR TUSCANY BAY**

KNOW ALL MEN BY THESE PRESENTS:

That this First Amendment to the Declaration of Covenants, Conditions and Restrictions for TUSCANY BAY (the "First Amendment") is made and entered into this 1st day of MARCH, 2006, by KINGS LAKE, LLC, a Florida limited liability company, ("Declarant") and MERCEDES HOMES, INC., a Florida corporation, ("Builder").

**RECITALS**

A. Declarant caused that certain DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TUSCANY BAY to be recorded in Official Records Book 15815, at Page 464, of the Public Records of Hillsborough County, Florida, (the "Declaration").

B. Article 3.2(a) and Article 20.1 of the Declaration provides that Declarant, with the approval of Builder, shall have the right to amend the Declaration as it deems appropriate, without the joinder or consent of any person or entity whatsoever.

NOW, THEREFORE, Declarant hereby declares that every portion of the Property (as defined in the Declaration) is to be held, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions and restrictions hereinafter set forth.

1. The foregoing Recitals are true and correct and are incorporated into and form a part of this First Amendment.

2. In the event that there is a conflict between this First Amendment and the Declaration, this First Amendment shall control. Whenever possible, this First Amendment and the Declaration shall be construed as a single document. Except as modified hereby, the Declaration shall remain in full force and effect.

3. All initially capitalized terms not defined herein shall have the meanings set forth in the Declaration.

4. The following Section 3.1(oo) shall be added to Article 3 in the Declaration:

(oo) Master-Metered Water Usage. Each Dwelling will be metered by a master meter and a public utility will determine water usage for all of TUSCANY BAY. No Individual Dwelling will be sub-metered. Each Owner understands and agrees that by taking title to the Dwelling, the Owner agrees to pay a pro-rata share of the water usage for all of TUSCANY BAY, regardless of the amount of water usage by the Owner of a particular Dwelling. The cost associated with such master-metered water usage shall be deemed part of the Common Expenses of the Association and each Owner shall pay an equal share of such costs. Owners will not receive an itemized bill covering water usage fees and there will be no method for prorating the cost of water usage to the Dwellings. Any proposed amendment to this Declaration, the Articles, and/or Bylaws which will alter the method of payment, collection, and water usage for TUSCANY BAY must be provided to the Hillsborough County Health Department prior to being effectuated. No approval of the Hillsborough County Health Department shall be required to record amendments to this Declaration.

5. This First Amendment shall be a covenant running with the land.

C. Except as herein modified and amended, the original Declaration of Covenants, Conditions and Restrictions for Tuscan Bay, shall remain in full force and effect as first written.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed by its duly authorized officer and its corporate seal to be hereunto affixed as of the day and year first above written.

[SIGNATURE PAGES TO FOLLOW]




Signed, Sealed and delivered  
in the presence of:

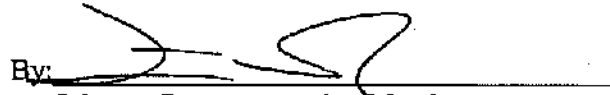
DECLARANT:  
KINGS LAKE, LLC  
a Florida limited liability company  
By: The Ryan Group, LLC, its Managing Member

  
Signature of Witness #1

Joseph S. Rodi, Jr.  
Typed/Printed Name of Witness #1

  
Signature of Witness #2


THOMAS C. JACKSON  
Typed/Printed Name of Witness #2


By:   
John M. Ryan, Managing Member  
2502 N. Rocky Point Drive, Suite 1050  
Tampa, FL 33607

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

I HEREBY CERTIFY that on this 1st day of MARCH, 2006, before me personally appeared, John M. Ryan, as Managing Member of The Ryan Group, LLC as Managing Member of Kings Lake, LLC, a Florida limited liability company, on behalf of the company, to me known to be the person described in and who executed the foregoing First Amendment and he acknowledged the execution thereof to be his free act and deed as such officer, for the uses and purposes therein mentioned; and that he affixed thereto the official seal of said company, and declared said instrument to be the act and deed of said company. He is personally known to me.

WITNESS my hand and official seal at Tampa, County of Hillsborough, State of Florida, the day and year last aforesaid.

NOTARY PUBLIC-STATE OF FLORIDA  
 Celeste C. Murphy  
Commission # DD421079  
Expires: APR. 21, 2009  
Bonded By: Florida Bonding Co., Inc.

  
Notary Commission  
My Commission Expires:

Signed, sealed and delivered  
in the presence of:

BUILDER:  
MERCEDES HOMES, INC.  
a Florida corporation

Rachel Smith  
Signature of Witness #1

Rachel Smith  
Typed/Printed Name of Witness #1

By: Cliff Morgan  
Print Name: Cliff Morgan  
Title: DIVISION PRESIDENT


Stephanie D. Puschunder  
Signature of Witness #2

Stephanie D. Puschunder  
Typed/Printed Name of Witness #2


STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

I HEREBY CERTIFY that on this 28<sup>th</sup> day of February, 2006, before me personally appeared, Cliff Morgan, as Division President of MERCEDES HOMES, INC., a Florida corporation, on behalf of the corporation, to me known to be the person described in and who executed the foregoing First Amendment and he acknowledged the execution thereof to be his free act and deed as such officer, for the uses and purposes therein mentioned; and that he affixed thereto the official seal of said corporation, and declared said instrument to be the act and deed of said corporation. He is personally known to me.

WITNESS my hand and official seal at Tampa, County of Hillsborough, State of Florida, the day and year last aforesaid.

Stephanie D. Puschunder  
Notary Commission  
My Commission Expires:  Stephanie D. Puschunder  
My Commission D0258960  
Expires October 18, 2007

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STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH  
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE  
AND CORRECT COPY OF THE DOCUMENT ON FILE IN  
MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL  
THIS 28 DAY OF FEBRUARY, 2006.  
 PAT FRANK  
CLERK OF CIRCUIT COURT  
BY [Signature] D.C.