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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
TUSCANY VILLAGE OF ST. AUGUSTINE**

THIS DECLARATION is made this 26<sup>th</sup> day of June, 2006, by KB HOME JACKSONVILLE, LLC, a Florida limited liability company, its successor or assigns ("Declarant"), and joined in by Tuscany Village of St. Augustine Homeowners Association, Inc., a Florida corporation not-for-profit ("Association").

WITNESSETH:

WHEREAS, Tuscany Village of St. Augustine is located in St. Johns County, Florida, and is legally described on **Exhibit "A"** attached hereto;

WHEREAS, Declarant is developing Tuscany Village of St. Augustine as a townhome subdivision;

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities established as aforesaid to create a not-for-profit corporation pursuant to Chapter 617 and 720, Florida Statutes, known as the Tuscany Village of St. Augustine Homeowners Association, Inc., which Association has joined in this Declaration and to which there has been and will be delegated and assigned certain powers and duties of operation, administration, maintenance and repair of portions of Tuscany Village of St. Augustine, including the collection and disbursement of the "Operating Expenses" (as that term is hereinafter defined), all as more particularly set forth herein; and

WHEREAS, Declarant intends to develop Tuscany Village of St. Augustine in two phases and desires to impose these protective covenants, conditions and restrictions only upon the land legally described on **Exhibit "A"** attached hereto and shall be herein referred to as "Committed Property";

NOW, THEREFORE, Declarant declares that Committed Property described in **Exhibit "A"** is and shall be owned, used, sold, conveyed, encumbered, demised, and occupied subject to the covenants, conditions, restrictions, easements, reservations, regulations, burdens, liens, and all other provisions of this Declaration, all as hereinafter set forth, which shall run with such land and be binding on all parties

having any right, title or interest in such lands, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each "Owner" (as that term is hereinafter defined) thereof.

## ARTICLE I

### Definitions

The following words and phrases when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Access Area" shall mean and refer to that portion of each Improved Lot which surrounds the exterior of the Dwelling Unit.

(b) "Adjacent Lot" shall mean and refer to that Lot or those Lots immediately to either side of a Townhome Lot.

(c) "Architectural Review Committee" or "Committee" shall mean and refer to a committee appointed by Declarant pursuant to Article XI, Section 3, herein.

(d) "Articles" shall mean and refer to the Articles of Incorporation of Tuscan Village of St. Augustine Homeowners Association, Inc., a Florida corporation not-for-profit, attached hereto as **Exhibit "C,"** as may be amended from time to time.

(e) "Assessment" shall mean and refer to the share of Association Expenses assessed from time to time against a Lot and the Owner(s) thereof. Assessment will also have the meaning set forth in Section 720.301, Florida Statutes.

(f) "Assessment Period" shall be the same period as a calendar year, from January 1 to December 31 of any given year.

(g) "Association" shall mean and refer to the Tuscan Village of St. Augustine Homeowners Association, Inc., a Florida corporation not-for-profit, its successors or assigns, which has its principal place of business in St. Johns County, Florida. The Association is NOT a condominium association. Association will also have the meaning set forth in Section 720.301(9), Florida Statutes.

(h) "Association Expenses" shall mean and refer to the expenses and charges described in this Declaration, incurred or to be incurred by the Association and assessed or to be assessed against the Lots and the Owners thereof through annual or special Assessments.

(i) "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

(j) "Building" shall mean and refer to a building in Tuscan Village of St. Augustine containing attached Dwelling Units sharing party walls and a common roof.

(k) "Bylaws" shall mean and refer to the Bylaws of the Association, attached hereto as **Exhibit "D,"** as may be amended from time to time.

(l) "Committed Property" shall mean and refer to the property described in **Exhibit "A"** attached hereto and made a part hereof and any additional property hereafter made subject to this Declaration by the Declarant by filing a Supplemental Declaration in accordance with the provisions of this Declaration.

(m) "Common Area" shall mean and refer to those portions of Property owned or used by the Association, and devoted to the common use and enjoyment of all Owners, together with any improvements thereon, including, without limitation, a swimming pool with covered patio and restrooms, a tot lot, entry signage and landscape buffers, any wetlands areas, open space, off-street parking areas, utilities and sidewalks, within or about the Property, all as further described in Article IV hereof. Tract E as shown on the Plat (as defined below) are retention ponds forming part of the Common Areas.

(n) "Conservation Easement" shall mean and refer to those areas depicted on the Plat as "Conservation Area" or "Conservation Easement". All Conservation Areas and Conservation Easements shall be maintained by the Association consistent with the terms and conditions of the Conservation Easement, with such maintenance constituting a portion of the common expenses of the Association.

(o) "County" shall mean and refer to St. Johns County, Florida.

(p) "Declarant" shall mean and refer to KB Home Jacksonville, LLC, a Florida Limited Liability Company, duly authorized to do business in the State of Florida, its designee, successors and assigns, and subsidiaries. Declarant may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with appropriate portions of the Property (as hereinafter defined). In the event of a partial assignment, the assignee shall not be deemed Declarant, but may exercise such rights of Declarant specifically assigned to it. Any such assignment may be made on a nonexclusive basis. The rights of Declarant under this Declaration are independent of Declarant's rights to control the Board of Directors of the Association, and, accordingly, shall not be deemed waived, transferred or assigned to the Owners, the Board or the Association upon the transfer of control of the Association.

(q) "Declaration" shall mean and refer to these Covenants for Tuscany Village of St. Augustine, as may be amended from time to time.

(r) "Development" shall mean and refer to the proposed development area commonly known as Tuscany Village of St. Augustine.

(s) "Dwelling Unit" shall mean and refer to a residential Townhome unit to be used as an abode for one family.

(t) "Improved Lot" shall mean and refer to any Townhome Lot upon which a Dwelling Unit has been constructed.

(u) "Institutional Mortgagee" shall mean and refer to a lending institution having a first mortgage lien upon a Lot including any of the following institutions: (a) Federal or State Savings and Loan or Building and Loan Association, a national or state bank or real estate investment trust, or mortgage banking company doing business in the State of Florida, or life insurance company; (b) any "Secondary Mortgage Market Institution" including the Federal National Mortgage Association,

Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration and Veterans Administration and such other Secondary Mortgage Market Institution as the Board shall hereafter approve in writing which has acquired a first mortgage upon a Lot; (c) any and all investors or lenders, or the successors and assigns of such investors or lenders which have loaned money to Declarant to acquire or construct improvements upon the Property and who have a mortgage lien on all or a portion of the Property securing such loan; or (d) such other lenders as the Board shall hereafter approve in writing which have acquired a first mortgage upon a Lot. Institutional Mortgagees shall have the rights provided in this Declaration including the rights set forth in Article XIII, Section 16.

(v) "Lot" or "Townhome Lot" means any platted lot, whether improved or unimproved, intended for the construction of a Townhome Dwelling Unit and located within any lands that are subject to this Declaration.

(w) "Maintenance Areas" shall mean the maintenance of the exterior surface of the Townhome including exterior surfaces of front doors (but not door, glass or window replacement), the roof and roof sheathing, gutters, if any, and the landscaping and lawn in the front and rear yards of the Townhome Lots, as more fully provided in Article VI, Section 2 of this Declaration. The Owners shall have the right to expand Maintenance Areas by amending this definition and Section VI, Section 2.

(x) "Members" shall mean and refer to all Owners of Lots, who by virtue of such ownership become Members of the Association as provided in Article III, Section 2(a).

(y) "Operating Expenses" shall mean and refer to the expenses for which Owners are liable to the Association as described in this Declaration and in any other document governing Tuscan Village of St. Augustine, and include, but are not limited to, the costs and expenses incurred by the Association in fulfilling its obligations hereunder and in administering, operating, owning, constructing, reconstructing, financing, maintaining, repairing and replacing the Common Areas, other real property, or portions of either and improvements thereon, as well as expenses incurred by the Association in fulfilling its obligations under this Declaration and any other document governing portions of Tuscan Village of St. Augustine subject to this Declaration, which mean and include the costs and expenses described in these documents as such and include regular and special assessments made by the Association in accordance with the terms hereof.

(z) "Owner" or "Lot Owner" shall mean and refer to the record owner (other than Declarant), whether one (1) or more persons, firms or entities, who has acquired fee simple title to any Improved Lot. The term "Owner" shall not mean or refer to any mortgagee, grantee or beneficiary under a mortgage, deed of trust or security deed unless and until such mortgagee, grantee or beneficiary has acquired title pursuant to foreclosure or any proceeding or conveyance in lieu of foreclosure.

(aa) "Party Wall" shall mean and refer to the entire wall, from front to rear, all or a portion of which is used for support of each adjoining structure, situated, or intended to be situated, on the boundary line between adjoining Lots.

(bb) "Plat" shall mean and refer to the Subdivision Plat of North Tuscan Village as recorded in Map Book 58, Pages 9 through 12 of the Public Records of St. Johns County, Florida.

(cc) "Property Line" shall mean and refer to the perimeter boundary lines of a Townhome Lot (herein defined) within the Property.

(dd) "Proposed Tuscany Village Development" shall mean the lands described in **Exhibit B** which are not subject to this Declaration at this time.

(ee) "Rules and Regulations" shall mean and refer to the rules and regulations promulgated by the Board in accordance with the terms of this Declaration.

(ff) "Tuscany Village" or "Tuscany Village of St. Augustine" shall mean and refer to the proposed townhome development (including Lots and Common Areas) to be located on the Property described in **Exhibit "A"**.

(gg) "Surface Water" or "Stormwater Management System" shall mean a system 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 the quantity and quality of discharges from the system, as permitted pursuant to applicable rules of the water management district. Except as otherwise specifically excepted herein, all Systems located on lands subject to this Declaration shall be maintained by the Association as part of the Operating Expenses.

## ARTICLE II

### Description, Plans for Development and Declarant's Rights and Powers

Section 1. General Plan of Development. Declarant is the owner of the Committed Property and presently plans to develop it as part of a multi-phase development to be known as Tuscany Village of St. Augustine.

Section 2. Committed Property. **NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN CONTAINED OR CONTAINED IN ANY OTHER DOCUMENT, ONLY THAT PORTION OF TUSCANY VILLAGE OF ST. AUGUSTINE DESCRIBED IN EXHIBIT "A" ATTACHED HERETO ("COMMITTED PROPERTY") IS SUBJECT TO THE TERMS AND CONDITIONS OF THIS DECLARATION AT THIS TIME. SHOULD DECLARANT ELECT TO CHANGE ITS PLANS, OTHER PORTIONS OF THE PROPOSED TUSCANY VILLAGE DEVELOPMENT, AS DESCRIBED IN EXHIBIT "B", MAY NOT BE SUBJECTED TO THIS DECLARATION.**

Section 3. Additions to Committed Property; Certain Amendments. Declarant shall have the right, and hereby reserves the right, to dedicate lands within the Proposed Tuscany Village Development to this Declaration. Any additional properties brought within the scheme of this Declaration may contain Lots, Common Areas, or both Lots and Common Areas and shall become part of the scheme of this Declaration and the Association. The right of Declarant as provided for this Section 3 shall be for a period of twenty (20) years commencing with the recording of this Declaration in the Public Records of St. Johns County, Florida.

Declarant, its successors and assigns, shall not be obligated to add to the Committed Property. The additions and amendments authorized under this subsection shall only be made by Declarant, shall

not require the consent or approval of the Association, Members or any other person or entity, and shall be made by the recording in the Public Records of St. Johns County of a Supplemental Declaration with respect to the additional property, which shall extend the scheme of this Declaration to such property or modify the Declaration with respect to such additional properties as hereinafter set forth. Such Supplemental Declaration(s) shall identify Lots and Common Properties within the properties described therein. Declarant's rights under this Section 3 are paramount to other provisions of this Declaration.

Supplemental Declarations may contain such additions and modifications of this Declaration as may be necessary to reflect the different character, if any, of the additional properties which are the subject of such Supplemental Declaration.

The provisions of this Article cannot be amended without the written consent of Declarant, and any amendment of this Article without the written consent of Declarant shall be deemed null and void.

### ARTICLE III

#### Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Townhome Lot which is or is at any time made, subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and inseparable from ownership of a Lot. Transfer of Lot ownership either voluntarily or by operation of law shall terminate membership in the Association, and said membership shall thereupon be vested in the transferee.

When any one (1) Lot is owned by more than one (1) person, firm, individual, corporation or other legal entity, the composite title holder shall be and constitute one (1) Member of the Association. Any person, firm, individual, corporation or legal entity owning more than one (1) Lot shall be as many Members as the number of Lots owned.

Section 2. Classes of Memberships and Voting Rights. The Association shall have two (2) classes of voting membership:

(a) Class A Members shall be all Owners, with the exception of the "Declarant" (as long as the Class B Membership shall exist, and thereafter, Declarant shall be a Class A Member to the extent it would otherwise qualify). When entitled to vote, each Class A Member shall have one vote for each Unit or Lot owned by such member.

(b) Class B Member. The Class B Member shall be Declarant, or a representative thereof, who shall have the sole vote until Transition including the right to elect all of the members of the Board of Directors of the Association. "Transition" shall occur at the time provided in the Articles of Incorporation. Transition shall occur no later than three (3) months after 90 percent of the parcels in the community that will ultimately be operated by the Association have been conveyed to members other than Declarant. The Class B Membership shall terminate at Transition. For purposes of this provision, the term "members other than Declarant" shall not include builders or contractors who purchase a parcel for the purpose of constructing improvements thereon for resale.

After Transition, Declarant shall be entitled to elect at least one member of the Board of Directors of the Association as long as Declarant holds for sale in the ordinary course of business at least

five (5) percent of the parcels in the community. After Declarant relinquishes control of the Association, Declarant may exercise the right to vote any Declarant-owned voting interests in the same manner as any other member, except for purposes of reacquiring control of the Association or selecting the majority of the members of the Board of Directors

Section 3. Membership and Voting Procedure. The Articles and Bylaws of the Association shall more specifically define and describe the procedural requirements for the Association and voting procedures, but shall not substantially alter or amend any of the rights or obligations of the Development as set forth herein.

## ARTICLE IV

### Common Areas

Section 1. Common Areas. Common Areas are those portions of the Property designated as such in this Declaration, Plat, or other written instrument recorded in the Public Records of the County. Common Areas may be for recreational or other purposes. So long as Declarant appoints a majority of the Board of Directors, the Common Areas shall be only that property designated as such by Declarant. Declarant shall have the right, and the power, but neither the duty nor the obligation, in its sole discretion, to, or to cause others to, convey, lease or grant a license or other use right to real property within the Property to the Association for such purposes as may be expressed in the instrument of conveyance, lease or grant of license or use. No such real property shall be considered to be a Common Area until actually so conveyed or leased or until a grant of license or other use right is created by a written instrument. The Association shall accept from Declarant, or others approved by Declarant, any such conveyance, lease, grant of license or grant of use right.

Section 2. Maintenance Areas. The Association shall maintain all of the Common Areas and Maintenance Areas in an attractive condition and in a manner that is harmonious with the Property and in accordance with any applicable governmental or agency permitting requirements. If the Association fails to maintain the Common and Maintenance Area in accordance with the foregoing, so long as Declarant owns a Lot, Declarant shall have the right, but no obligation, to enter upon any such Common or Maintenance Area to perform such maintenance or work which may be reasonably required, all at the expense of the Association, which expense shall be payable by the Association to Declarant on demand.

Section 3. Easements. Declarant reserves the right for itself and its designees to grant additional easements for use, ingress and egress, governmental services and utilities over, across and under the Common Areas, for the use and benefit of persons who are not Members of the Association so long as Declarant owns any Lot in the Development.

Section 4. Maintenance. The Association may enter into agreements with other persons or entities to provide for the maintenance, upkeep and repair of any of the Common Areas or any other property which the Association has the obligation to maintain, upkeep and repair under this Declaration.

Section 5. Title in Association. Within six months after issuance of a final certificate of occupancy as to all improvements to be made to the real property known as Tuscany Village, Declarant, or its successors and assigns, shall convey and transfer to the Association the record fee simple title of those portions of Tuscany Village that constitute the Common Areas (as that term is herein defined) and the Association shall accept such conveyance. To preserve and enhance the property values and

amenities of Tuscan Village, the Common Areas, and any facilities now or hereafter built or installed thereon, these shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. The maintenance and repair of the Common Areas may include, but not be limited to, the repair and maintenance of landscaped areas, walkways, recreational facilities (if any), or signs. The Association, by its execution of this Declaration, covenants and agrees to accept all conveyances of Common Areas. This section shall not be amended to reduce or eliminate the obligation for maintenance or repair of the Common Areas without the prior written consent of Declarant so long as Declarant owns a Lot in the Development.

The Association shall be responsible for the maintenance thereof in a continuous and satisfactory manner and for the payment of taxes assessed against Common Areas and any improvements and any personal property thereon accruing from and after the conveyance to the Association, and such taxes shall be prorated as of the date of conveyance. Prior to completion of the Common Areas and conveyance of the title thereto to the Association, the taxes assessed against such non-public property shall be paid by Declarant or its successors or assigns.

Section 6. Title to Additional Common Areas. From time to time, Declarant reserves the right, but not the obligation, to convey to the Association legal title to additional Common Areas, subject only to the condition that such properties shall be a part of the Development as set forth in the Plat.

Section 7. Surface Water/Stormwater Management System. Tuscan Village contains a Surface Water Management System (the "System") including, but not necessarily limited to, the drainage and water management areas shown on the Plat as Tracts C, D and E.

Section 8. Surface Water or Stormwater Management System.

(a) Definition. Surface Water or Stormwater Management System means a system which is designed and constructed or implemented within the Property 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 the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, Florida Administrative Code, or regulations of similar import. For purposes of this Declaration, the System shall be deemed to be a part of the Common Elements and shall include any drainage swales located within the Property.

(b) Duties of Association; Maintenance of Surface Water or Stormwater Management System. The Association shall be responsible for the maintenance, operation and repair of the Surface Water and Stormwater Management System. Maintenance of the Surface Water and Stormwater Management System shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance of other surface water, or stormwater management capabilities as permitted by the St. Johns River Water Management District (the "SJRWMD"). The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the System shall be as permitted, or if modified, as approved by the SJRWMD. All maintenance obligations of the Association shall be performed as ordered by the Board of Directors of the Association, and all or any portion of the cost of such maintenance incurred by the Association pursuant to this Section shall be a Common Expense of the Association to be collected and paid in the manner prescribed by this Declaration. The



maintenance responsibilities of the Association payable through assessment of the Owners shall specifically include, but not be limited to, the perpetual maintenance of all retention ponds, drainage swales, and all other drainage and stormwater management improvements lying within the Property, and all other such improvements, constituting a part of the System permitted by the SJRWMD.

(c) Easements. The Association shall have a perpetual non-exclusive easement for drainage over the entire Surface Water and Stormwater Management System. By this easement, the Association shall have the right to enter upon the Common Elements which are a part of the System at a reasonable time and in a reasonable manner, to operate, maintain, or repair the System as required by the SJRWMD. No person shall alter the drainage flow of the System, including buffer areas or swales, without the prior written approval of the SJRWMD.

(d) Amendment. Any amendment to this Declaration which alters any provision relating to the System, beyond maintenance in its original condition, including the water management portion of the Common Elements, must have the prior written approval of the SJRWMD.

(e) Assessments. Assessments shall be used for the maintenance and repair of the System including, but not limited to, work within retention areas, drainage structures, and drainage easements.

(f) Enforcement. The SJRWMD shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the System and/or jurisdictional wetlands or conservation areas subject to the control of the SJRWMD, and it shall be the Association's responsibility to assist the SJRWMD in any such enforcement proceedings.

(g) Association Powers and Duties. The Association shall operate, maintain, and manage the System in a manner consistent with SJRWMD Permit No. 40-109-99745-1 ("Permit") requirements and applicable SJRWMD rules, and shall assist in the enforcement of the restrictions and covenants herein contained. The Association shall levy and collect adequate Assessments against Members of the Association for the costs of maintenance and operation of the System.

(h) Jurisdictional Areas and Permits. THE PROPERTY HAS BEEN OR WILL BE DEVELOPED IN ACCORDANCE WITH REQUIREMENTS OF THE PERMITS ISSUED BY THE ACOE, SJRWMD OR OTHER ENVIRONMENTAL AGENCIES. THE PERMITS ARE, OR WILL BE, OWNED BY THE ASSOCIATION AND THE ASSOCIATION HAS THE OBLIGATION TO ASSURE THAT ALL TERMS AND CONDITIONS THEREOF ARE ENFORCED. THE ASSOCIATION SHALL HAVE THE RIGHT TO BRING AN ACTION, AT LAW OR IN EQUITY, AGAINST ANY OWNER VIOLATING ANY PROVISION OF THE PERMITS.

(i) Permit Responsibilities and Indemnification. The Association shall be solely responsible for maintenance and operation of the System pursuant to the Permit. The Association shall indemnify, defend and hold the Declarant harmless from all suits, actions, damages, liability and expenses in connection with loss of life, bodily or personal injury or property damage, or any other damage arising from or out of an occurrence in, upon, at or resulting from the operation or maintenance of the System, occasioned wholly or in part by any act or omission of the Association or its agents,

contractors, employees, servants or licensees. The Declarant has the right and obligation to assign all of its rights and obligations under the Permit to the Association.

(j) Dissolution. This Declaration may not be terminated unless adequate provision for transferring perpetual maintenance responsibility for the System obligation to the then Owners of the Units is made, and said transfer obligation is permitted under the then existing requirements of the SJRWMD or its successors and the County or any other governmental body that may have authority over such transfer. In the event that the Association is dissolved, prior to such dissolution, all responsibility relating to the System and the Permits must be assigned to and accepted by an entity approved by the SJRWMD.

(k) Use of System. No structure of any kind shall be constructed from any Lot abutting the System into the System and no person other than Declarant or the Association shall draw any water from the System for any purpose.

(l) Maintenance. The Association shall maintain all of the landscaping, sprinkler systems and grass areas originally installed on each Lot as part of the initial construction of a Dwelling Unit, including the portions of any Lot which abut the System. A nonexclusive easement is hereby reserved in favor of Declarant, the Association and their designees for ingress, egress, and access to any portion of the Property in order to maintain the System. All costs of maintenance of the System shall be an Operating Expense, unless otherwise provided in this Declaration. Declarant or the Association shall have the right to enter into agreements with third parties to maintain the System.

#### Section 9. Jurisdictional Areas.

(a) The Plat of the Property may depict certain wetland jurisdictional lines and/or environmental buffer zones and/or conservation easements as established by the SJRWMD. No Owner shall make any vegetative or topographic alterations to the land lying waterward of such jurisdictional lines and/or within environmental buffer zones and/or lying within any conservation easement without obtaining a permit from the applicable agency. Any Owner violating this provision shall indemnify and hold Declarant, builder and the Association harmless from all fines, penalties, costs or damages arising out of such violation.

(b) Pursuant to the provisions of Section 704.06(1)(A-H)(1), Florida Statutes, restrictions are hereby placed on the Property that all construction, including clearing, dredging, or filling, except that which is specifically authorized by the SJRWMD or which may be authorized by a future SJRWMD permit, which is waterward of the jurisdictional wetland line and/or within environmental buffer zones as depicted on the plat(s) of the Property is prohibited. The foregoing restriction may be enforced by the SJRWMD. Notwithstanding any other provision, the restriction set forth in this subsection (b) may not be amended with the approval of the SJRWMD.

(c) In addition, in the event that the governmental agencies having jurisdiction over the Property require the granting of a conservation easement over the Property or any part thereof, the Owners of any land subject to the conservation easement shall abide by all restrictions contained therein.

(d) This Declaration is subject to the rights of the State of Florida and the United States over any portion of the Property which may be considered wetlands, marshes, sovereignty, or jurisdictional lands and Declarant has obtained certain permits to allow the development of the Property.

The SJRWMD has issued permits for the development of Tuscan Village being District Permit #40-109-99745-1 (the "Permit"). The construction period for works authorized by the Permit is finite, the Permit itself, with its limitations and prohibitions do not expire.

The Permit has been or will be assigned to the Association for operation and maintenance of the System and the Association has the obligation to assure that all terms and conditions thereof are enforced. The Association shall have the right to bring an action, at law or in equity, against an Owner violating such Permit. In the event that an Owner violates the terms and conditions of the Permit and for any reason Declarant or the Association is cited therefore, the Owner agrees to indemnify and hold Declarant and the Association harmless from all costs arising in connection therewith, including without limitation, all costs and attorneys' fees, as well as costs of curing such violation.

Notwithstanding any other provisions contained elsewhere in this Declaration, the SJRWMD shall have the rights and powers enumerated in this paragraph. The SJRWMD shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the System and/or jurisdictional lands subject to the regulation of the SJRWMD. Any repair or reconstruction of the System shall be as permitted, or if modified, as approved by the SJRWMD. In the event that the Association is dissolved, prior to such dissolution, all responsibility relating to the System and the Permit must be assigned to and accepted by an entity approved by the SJRWMD.

(e) Use of Stormwater Retention Ponds. With respect to the stormwater retention pond areas ("SRPs") now existing, or which may be hereafter created within the Property, no Owner shall:

- (1) pump or otherwise remove any water from such SRPs for the purpose of irrigation or other use;
- (2) place rocks, stones, trash, garbage, untreated sewage, rubbish, debris, ashes, or other refuse in such SRPs or in any other portion of the land owned by Declarant lying adjacent to or near the Property;
- (3) construct, place or maintain therein or thereon any docks, piers, bulkhead or other similar facilities, without the prior approval of any governmental or quasi-governmental agency having jurisdiction, and Declarant so long as there is a Class B membership, or thereafter subject to the prior approval of the Association;
- (4) fish with the use of nets or with any other trap or spear; or
- (5) operate or maintain thereon any gas or diesel driven vehicles; provided, however, boats used for the maintenance of SRPs shall be permitted.

(f) Maintenance of SRPs. Declarant, for so long as there is a Class B membership, shall have the sole and absolute right, but no obligation, to control the surface water level of the SRPs. The Association shall be responsible for the maintenance of the SRPs including, without limitation, the control of the growth and eradication of plants, fowl, reptiles, animals, fish and fungi in and on such SRPs. This Declaration cannot be terminated to extinguish the Association's obligation to maintain the SRPs unless adequate provisions for transferring this obligation to the then Owners of the Townhome

Lots subject to the easement on a pro rata basis is made and said transfer of obligation is permitted under then existing requirements of the SJRWMD or its successors and any other governmental body that may have authority over such transfer of obligation. In connection with the platting and development of the Property, Declarant assumed certain obligations in connection with the maintenance of the water in the SRPs. The Declarant hereby assigns to the Association and the Association hereby agrees to assume all the obligations and responsibilities for maintenance of the SRPs by Declarant under the Plat. The Association further agrees that subsequent to the termination of the Class B membership, it shall indemnify and hold Declarant harmless from suits, actions, damages, liability and expenses in connection with loss of life, bodily or personal injury or property damage or any other damage arising from or out of occurrence in, upon, at or from the maintenance of the SRPs, occasioned wholly or in part by any action or omission of the Association or its agents, contractors, employees, servants or licensees.

## ARTICLE V

### Grant and Reservation of Easements

Section 1. Easement of Enjoyment. Each Member and each tenant, agent or invitee of Members shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title of the Townhome Lot, subject to this Declaration, including the following:

(a) The right and duty of the Association to levy Assessments against each Townhome Lot for the purpose of maintaining the Common Areas and facilities;

(b) The right of Declarant, and of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and in aid thereof, to mortgage the Common Areas. In the event of a default upon such mortgage, the lender's rights thereunder shall be limited by the rights of the Members as described therein;

(c) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;

(d) The right of the Association to adopt and enforce rules and regulations governing the use of the Common Areas and all facilities at any time situated thereon;

(e) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes. Prior to the termination of the Class B membership, such dedication or transfer may be effected by Declarant without further consent from the Owners or its mortgages. Subsequent to the termination of the Class B membership, no such dedication or transfer shall be effective until agreed to by a vote of two-thirds (2/3) of the votes of the Owners of all Townhome Lots and unless an instrument has been recorded, signed and sworn to by the Secretary of the Association stating that such a vote was duly held and that two-thirds (2/3) of the votes representing all Townhome Lots favored such dedication or transfer. Provided, however, the granting of an easement, license or permit over the Common Areas by the Association shall not be deemed to be a dedication or transfer of the Common Area requiring approval as provided herein but may be granted by the Association without further consent of the Owners or its mortgages;

(f) The right of Declarant and the Association to grant and reserve easements and rights-of-way in, through, under, over and across the Property for the installation, maintenance, and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television and other utilities, and the right of Declarant to grant and reserve easements and rights-of-way in, through, under, over, upon and across the Property for the completion of the Development; and

(g) The rights of tenants and Owners to use the facilities on the Common Areas.

Section 2. Access Easements. Declarant does hereby establish and create for the benefit of the Association and for the benefit of any and all Owners of Townhome Lots, their tenants, invitees and Institutional Mortgagees and does hereby give, grant and convey to each of the aforementioned, the following easements, licenses, rights and privileges:

(a) Right-of-way for ingress and egress by vehicles or on foot, as practicable, in, through, over, under and across the streets, roads, and walks within Common Areas (as they may be built or relocated in the future) for all purposes.

(b) Right-of-way for ingress and egress for pedestrian traffic and for access, as necessary, over, under, and across the Access Areas for each Townhome Lot. This easement shall not be construed to permit the operation of any type of motorized vehicle on any portion of the Access Areas of a Townhome Lot, except as may be required or permitted by other easements providing for maintenance, construction or access by emergency vehicles.

Section 3. Public Easements. Fire, police, health, sanitation, and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Property as needed.

Section 4. Easement for Encroachments on Townhome Lots or Common Areas.

(a) If any portion of any roadway, walkway, fence, gate, parking area, roof drainage system, roof, trellis, water lines, sewer lines, utility lines, sprinkler system or any other structure as originally constructed by Declarant or its designee, successor or assign encroaches on any Townhome Lot or Common Area, it shall be deemed that the Owner of such Townhome Lot or Common Area has granted a perpetual easement to the Owner of the adjoining Townhome Lot or Common Area or the Association as the case may be, for continuing maintenance and use of such encroaching roadway, walkway, fences, gates, parking area, roof drainage system, roof, trellis, water line, sewer line, utility line, sprinkler system or other structure originally constructed by Declarant. The foregoing shall also apply to any replacement of any such roadway, walkway, fence, gate, parking area, roof drainage system, roof, trellis, water lines, sewer lines, utility lines, sprinkler system or other structure, if same are constructed in substantial conformance to the original. Other encroachments may hereafter be maintained as provided in a Supplemental Declaration. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of this Declaration.

(b) There shall be an easement for encroachment in favor of the Association and all Townhome Townhome Lot Owners in the event any Dwelling Unit now or hereafter encroaches upon any other Dwelling Unit as a result of minor inaccuracies in survey, construction or reconstruction or due to settlement or movement. The encroaching improvements shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the

maintenance and use of the encroaching improvement in favor of the Dwelling Unit Owners, their designees, mortgagees and the Association. If any portion of any Townhome Lot encroaches upon the Access Areas and Common Areas as a result of the construction, reconstruction, repair, shifting settlement or moving of any portion of the Property, a valid easement for the encroachment and for the maintenance of same shall exist so long as the encroachment exists.

Section 5. Easement for Maintenance by Association. Declarant hereby grants to the Association, its employees, subcontractors, agents and designees, a non-exclusive, perpetual easement over, through, across and under each Townhome Lot to permit the Association, its employees, subcontractors, agents or designees to maintain and replace, as necessary, those portions of the Townhome Lot required to be maintained, replaced and repaired by the Association, as provided in this Declaration.

Section 6. Easement for Sprinkler System. Declarant hereby reserves to itself and grants to the Association, its employees, subcontractors, agents and designees, a non-exclusive, perpetual easement over, through, across and under each Townhome Lot for the installation, maintenance, operation, repair and replacement of sprinkler system lines and sprinkler heads, which lines and heads are hereby deemed to be the property of the Association; provided, however, no lines shall be located under a Dwelling Unit on a Townhome Lot. Should a sprinkler line(s) or sprinkler head(s) be required to be maintained, repaired or replaced as a result of the negligence by an Owner, his family, servants, guests or invitees, the applicable Owner shall be responsible for the costs thereof, and the Association shall have the right to levy an assessment against the Owner of said Townhome Lot for same, which assessment shall have the same force and effect as all other special assessments.

Section 7. Utility Easement. Declarant hereby grants to the Owner of each Townhome Lot a non-exclusive perpetual easement on, over, under and across the Common Areas and all other Townhome Lots for the installation, maintenance, operation, repair and replacement of utility lines, including water and sanitary sewer lateral pipes servicing the Townhome Lot, together with wires, pipes, conduits, cable television lines, telephone lines and equipment and drainage lines.

Section 8. Conservation Easements. Those portions of the Plat designated as Conservation Easements or Buffers have been established to preserve existing wetlands on the Property. The Conservation Easements are not intended to be used except as a passive, visual amenity and only in strict compliance with all applicable state and local laws and regulations. The Conservation Easements and Buffer Zones shall be maintained by the Association as part of the Common Areas, regardless of whether any portion of a Conservation Easement is located on a Townhome Lot or Common Area.

Section 9. Landscape Buffers. Any portion of the Plat designated as "Landscape Buffers" are dedicated to and will be conveyed to the Association, including signs, lighting, and landscaping located within the Landscape Buffers and the Association shall be solely responsible for the maintenance of such improvements and landscaping. The cost of this maintenance shall be assessed by the Association as part of the Common Expenses.

Section 10. Reservation of Easements by Declarant.

(a) Easements for Development and Sales. So long as Declarant owns any Townhome Lot:

(1) Declarant reserves the easements, licenses, rights and privileges of a right-of-way in, through, over, under and across the Property, including all Townhome Lots, for the purpose of constructing adjacent properties and completing its work in developing and providing for the development of the Property; and, toward this end, reserves the right to grant and reserve easements and rights-of-way, through, under, over and across the Property, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, electric and other utilities and for any other materials or services necessary for the completion of such work.

(2) Declarant also reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers, and drainage lines which may from time to time be in or along the streets and roads of other areas of the Common Areas.

(3) Declarant also reserves the right for itself, its designees, successors and assigns, to continue to use the Property, and any roadways, sales offices, model homes, signs and parking spaces located on the Property, in its efforts to market or develop Dwelling Units or Townhome Lots in the Development.

(b) Utility Easements. A perpetual, nonexclusive alienable and releasable easement is hereby reserved to Declarant, and its successors and assigns, over, under and above a ten foot (10') strip at the rear of each Townhome Lot and also over, under and above those easements shown on the recorded Plat of the Property for the construction, installation and maintenance of drainage ditches and facilities, power, telephone, lighting, heating, gas, water, electric, sanitary and storm sewer facilities and other public or private utility installations of every kind. However, said Townhome Lot line easements shall not extend into the Conservation Easement areas on Townhome Lots which are adjacent and contiguous to a Conservation Easement. Said rear utility easement shall be located adjacent to and landward of the Conservation Easement area. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The Owner of any Townhome Lot or Townhome Lots subject to such easements shall acquire no right, title or interest in or to any pipes, wires, poles, equipment or other appliances placed on, over or under said easement areas. The Owner of any Townhome Lot or Townhome Lots subject to such easements shall remove any structures, planting, trees or shrubbery in said easement areas upon demand of Declarant, and its successors and assigns, where such structures, planting, trees or shrubbery interfere with the use of the said easement for the purposes for which the same have been reserved. The easements and rights hereinabove granted and reserved to Declarant, and its successors and assigns, shall not pass from Declarant, and its successors and assigns, by deed conveying any of said Townhome Lots but shall exist and continue in Declarant, and its successors and assigns, only or in those persons or corporations to whom Declarant, and its successors and assigns, shall have expressly conveyed said easements and rights. The Declarant shall have the right to grant subordinate easements to utility companies, governmental bodies and others within such easement area for the purpose of carrying out or facilitating such construction, installation and maintenance.

(c) Amendment. This Section 10 may not be amended without the prior written consent of Declarant.

Section 11. Surface Water/Stormwater Management System Maintenance Easement. An easement for maintenance of the Surface Water/Stormwater Management System shall exist as provided for in Article IV, Section 7 and 8 of this Declaration.

## ARTICLE VI

### Maintenance

Section 1. Maintenance of Common Areas. The Association shall at all times maintain in good repair, operate, manage, insure and replace as often as necessary, any and all improvements situated on the Common Areas, including, but not limited to, any courtyards, fences, gates, recreational facilities, lawns, landscaping, sprinkler systems, paving, drainage structures, lakes, street lighting fixtures and appurtenances, sidewalks and other structures, and utilities, all of such work to be done as ordered by the Board of Directors of the Association acting on a majority vote of the Board Members.

Section 2. Lot Maintenance.

(a) Association.

(1) The Association, through action of its Board of Directors, shall provide exterior maintenance at its expense upon Maintenance Areas as follows: paint, repair, replace and care for roofs, gutters, downspouts, and exterior building surfaces, including window and door trim (but not replacement or repair of windows and exterior doors) all as originally installed by Declarant. The Association shall be responsible for the painting or staining the exterior of any front door and garage door as required but shall not be responsible for the maintenance of any hardware or mechanical component of any garage door or any garage door opener, such maintenance being the responsibility of the Townhome Lot Owner.

(2) In addition to the exterior maintenance referred to in the preceding sentence, the Association shall be obligated to maintain in good repair and replace as necessary that part of the fences, gates, drainage structures, landscaping, trees, shrubs, grass, and sprinkler systems situated on each Townhome Lot, all as originally installed by Declarant. The Association shall not maintain any additional or replacement landscaping or grass installed by any Lot Owner, nor will it maintain any deck or patio area of a Dwelling Unit or plantings thereon, which will specifically be the responsibility of the Lot Owner to maintain. The Association shall be responsible for irrigating and the irrigation system the grassed area and landscaping on the Townhome Lot excluding grass and landscaping NOT originally installed by Declarant. The time and frequency of watering shall be determined by the Association subject to applicable rules of the SJRWMD. The cost of sprinkling as well as the maintenance and repair of the sprinkling system shall be an Operating Expense. The cost and expense of repair, maintenance and replacement of any part of the sprinkler system damaged by a Lot Owner, his family, lessees, guests, servants or invitees, may be assessed against said Townhome Lot.

(3) The Association shall contract for garbage removal, unless provided by the City. The Townhome Lot Owner shall comply with the regulations promulgated in such regard. The cost and expense of garbage removal shall be an Operating Expense, unless such garbage removal is provided by the City.



(4) The Association shall not maintain any other portion of the Townhome Lot and improvements thereon.

(5) Maintenance of the Surface Water/Stormwater Management System shall be as provided in Article IV, Section 7 and 8 of this Declaration.

(b) Lot Owner. The Lot Owner is responsible to maintain and repair everything on the Townhome Lot, including, but not limited to, the Dwelling Unit, back yard of the Townhome Lot, and any other improvements, except for items which the Association is required to maintain, as specifically provided in the paragraph above. Provided, however, Lot Owners shall be responsible for the maintenance, repair and replacement, if applicable, of water and sanitary sewer lateral pipes servicing their Dwelling Units, which laterals extend from the applicable water and sewer main to the Dwelling Units, notwithstanding that a portion of such lateral may be located within the Common Area. The Lot Owner is responsible to maintain, repair and replace the air-conditioning and heating system and appurtenances thereto, servicing the Dwelling Unit and improvements located on his Townhome Lot and any other portion of the air-conditioning and heating system or appurtenances thereto servicing his Dwelling Unit which may be located on the Common Area. The Lot Owner shall also maintain all screening, glass, and all doors, windows or other openings in the exterior of the Dwelling Unit, except for any periodic painting or staining required. The Lot Owner shall be responsible for damage to the Dwelling Unit and its contents caused by water intrusion into the Dwelling Unit unless such intrusion is caused solely by the negligence of the Association in failing to maintain the roof of the Townhome.

Section 3. Assessments. All maintenance performed by the Association pursuant to Sections 1 and 2 (a) above and all expenses hereunder shall be paid for by the Association as Operating Expenses through Assessments imposed by the Board of Directors in accordance with Article VII. Such Assessments shall be against all Townhome Lots equally. No Owner may waive or otherwise escape liability for the Assessments for such maintenance by non-use of the Common Areas or abandonment of his right to use the Common Areas. Assessments shall include payment for insurance and taxes on the Common Areas. The cost and expense of the Association-provided maintenance shall be funded by an Association Assessment against all Owners and shall be paid by the Association notwithstanding that title to the Common Area may be vested in Declarant.

Section 4. Disrepair of Dwelling Units and Townhome Lots. If the Owner of any Townhome Lot shall fail to maintain his Lot, and the improvements situated thereon, as required by any provision of this Declaration, in a manner reasonably satisfactory to the Board of Directors of the Association or any committee established by such Board, except for such areas as the Association is required to maintain, upon direction of the Board of Directors, the Association shall have the right, through its agents and employees, to enter upon the Townhome Lot to maintain and restore the improvements erected on such Townhome Lot. The cost of any maintenance supplied by the Association pursuant to this Section shall be added to and become part of the Assessment to which such Townhome Lot is subject.

Section 5. Access at Reasonable Hours. For the purpose solely of performing the maintenance required by this Article, the Association, through its duly authorized agents and employees, shall have the right, without notice, to enter upon any Owner's Townhome Lot at reasonable hours on any day except Sunday and legal holidays.

Section 6. Negligence of Owner. Should any portion of a Dwelling Unit which the Association is required to maintain pursuant to this Article be required to be maintained, repaired or replaced as a result of the negligence of the Owner, his family, lessee, guests, servants or invitees, the applicable Owner shall be responsible for the cost thereof and the Association shall have the right to levy an assessment against the Owner of said Townhome Lot for same, which assessment shall have the same force and effect as all other assessments.

Section 7. Management. The Association, through the action of its Board of Directors, shall have the right to employ a manager or management firm which employment may either be on the basis of an employee of the Association or as an independent contractor.

## ARTICLE VII

### Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of the Assessments. Each Owner of any Townhome Lot by acceptance of a deed or instrument of conveyance, whether or not it shall be so expressed in such deed or other instrument of conveyance, including any purchaser at a judicial sale, or by the acquisition of title in any other manner, shall be deemed to covenant and agree to pay to the Association annual assessments or charges for the maintenance of the Townhome Lots and Common Areas as provided in this Declaration, including such reasonable reserves as the Association may deem necessary, special assessments as provided in this Article, and assessments for maintenance as provided herein. Assessments for Operating Expenses shall be fixed, established and collected from time to time as herein provided. The annual, special and other assessments, together with such interest and costs of collection as hereinafter provided, shall, upon the recordation of a claim of lien, be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs of collection, shall also be the personal obligation of the person who is the Owner of such property at the time when the assessment became due. All Assessments by the Association for Operating Expenses shall be assessed against all Townhome Lots equally. No Owner may waive or otherwise escape liability for the Assessments provided herein by non-use or abandonment. Furthermore, the obligation of the Association and the Owners for Assessments and the obligation for maintenance shall commence upon conveyance of the Townhome Lot.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners in Tuscany Village and, in particular, for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the appropriate portion of the Common Areas and of the Townhome Lots situated upon the Property, including, without limiting the foregoing, the payment of taxes (if any), insurance, repair, replacement, maintenance, additions, and the cost of labor, equipment, materials, utilities, services, management and supervision, as well as any other costs set forth in this Declaration for which the Association is responsible.

Section 3. Commencement of Payment.

(a) The Association's Board of Directors shall, from time to time, but at least annually, fix and determine a budget representing the sum or sums necessary and adequate for the

continued operation of the Association. The Board shall determine the total amount of Operating Expenses, including the operational items such as insurance, repairs, replacements, reserves, maintenance and other expenses, as well as charges to cover any deficits from prior years and capital improvements and reserves approved by the Board. The total annual assessments and any supplemental assessments shall be shared by all Townhome Lots based upon the formula and terms and provisions set forth herein and in the Articles and Bylaws.

(b) Each Townhome Lot shall commence paying its share of the Association assessments commencing with the day title of the Townhome Lot is conveyed by deed from Declarant to the first grantee thereof; provided, however, a conveyance by Declarant to a related or affiliated entity or subsidiary shall not be deemed a conveyance to the first grantee. Subject to the provisions of Section 4 immediately below (which provisions are only applicable during any guarantee period or any extension thereof), the assessment for Operating Expenses for each Townhome Lot shall be the dividend arrived at by dividing the total anticipated Operating Expenses reflected by the budget, other than those Operating Expenses which are properly the subject of a special assessment, by the total number of all Townhome Lots which have been conveyed by Declarant as of the date the budget was adopted. The total number of Townhome Lots responsible for payment of Operating Expenses will be adjusted from time to time in accordance with this Declaration. All questions regarding the number of Townhome Lots subject to assessments shall be determined by the Association.

(c) Additionally, each Townhome Lot shall pay a one-time initial assessment fee of \$400.00, due on the day title of the Townhome Lot is conveyed; however, a conveyance by Declarant to a related or affiliated entity or subsidiary shall not be deemed a conveyance for this purpose. These funds may be used for purchases of amenities or for improvements to or replacements of amenities, or such other similar purposes as may be determined by the Association.

Section 4. Declarant Assessment Guarantee. As provided in Section 720.308, Florida Statutes, during the period that Declarant is in control of the Association (that is, prior to Transition as provided in Section 720.307, Florida Statutes) but not to exceed one (1) year, Declarant may either (a) pay the amount of Operating Expenses of the Association incurred during that period and not produced by Assessments receivable from other Lot Owners in the amount as specified in the operating budget of the Association or (b) pay Assessments on the Townhome Lots owned by Declarant. Declarant may extend its guarantee for successive three (3) month periods so long as Declarant is in control of the Association.

Section 5. Due Dates; Duties of the Board of Directors. All Assessments shall be payable annually in advance or on such other basis as is ordered by the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the Assessment against each Townhome Lot and shall prepare a roster of the Lots and Assessments applicable, which shall be kept in the office of the Association and shall be open to inspection by any Member. Upon the written request of a Member or his Institutional Mortgagee, the Board shall promptly furnish such Member or his Institutional Mortgagee with a written statement of the unpaid charges due from such Member.

Section 6. Effect of Non-Payment of Assessment; The Personal Obligation of the Member; The Lien; Remedies of the Association. If an Assessment is not paid within thirty (30) days after the due date, then at the option of the Board, such Assessment, together with the balance of the annual

Assessment established by the Board, shall become delinquent and shall, together with such interest thereon, late charges and the cost of collection thereof, including reasonable attorneys' fees and court costs, thereupon become a continuing lien on the Member's Townhome Lot which shall bind such property in the hands of the Member, his heirs, devisees, personal representatives and assigns. Such lien shall be prior to all other liens except: (a) tax or assessment liens of the taxing division of any governmental authority, including, but not limited to, state, county and school district taxing agencies; and (b) all sums unpaid on any bona fide first mortgage held by an Institutional Mortgagee of record encumbering the Dwelling Unit. The personal obligation of the Member who was the Owner of the Townhome Lot when the Assessment fell due, to pay such Assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them, although the lien shall continue to encumber the Townhome Lot.

A late charge of up to \$25.00 may be assessed by the Board and the Association through its Board. The Board may bring an action at law against the Member or former Member personally obligated to pay the same or it may bring an action to foreclose the lien against the property. There shall be added to the amount of such Assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided and reasonable attorneys' fees to be fixed by the court, together with the cost of the action and the aforesaid late charge.

#### Section 7. Selling, Leasing and Gifts of Townhome Lots, Etc.

(a) No Member shall convey, mortgage, pledge, hypothecate, sell or lease his Townhome Lot and the Dwelling Unit thereon unless and until all unpaid Assessments assessed against such Townhome Lot shall have been paid as directed by the Board of Directors; such unpaid Assessments, however, may be paid out of the proceeds from the sale of the Townhome Lot or by the purchaser of such Townhome Lot. If all unpaid Assessments are not paid out of the proceeds of sale, the successor Member will be deemed to have agreed to pay the same.

(b) Upon the written request of a Member or his Institutional Mortgagee, the Board or its designee shall furnish a written statement of the unpaid charges due from such Member which shall be conclusive evidence of the payment of amounts assessed prior to the date of the statement but unlisted thereon. A reasonable charge may be made by the Board for issuance of such statements.

(c) The provisions of this section shall continue to apply in the event of the acquisition of a Townhome Lot by an Institutional Mortgagee who shall acquire title to such by foreclosure or by deed in lieu of foreclosure. In such event the unpaid Assessments against the Townhome Lot which were assessed for Operating Expenses and became due prior to the acquisition of title by such Institutional Mortgagee shall not be deemed waived by the Association. Additionally, such provisions shall also apply to any Assessments which are assessed and become due after the acquisition of title by the Institutional Mortgagee and to any purchaser from such Institutional Mortgagee.

(d) Whenever the term Townhome Lot is referred to in this section, it shall include the Member's interest in the Association and the Member's interest in any property acquired by the Association. Any Member may convey or transfer his Townhome Lot by gift during his lifetime or devise the same by will or pass the same by intestacy.

(e) The provisions of this section shall not apply to Declarant. This section may not be amended without the prior written consent of Declarant.

Section 8. Subordination of Lien. The lien for Assessments provided for in this Article shall be superior to all other liens, except tax liens, mortgage liens in favor of Institutional Mortgagees, and mortgage liens in favor of mortgagees under mortgages now existing or hereafter granted by Declarant, as mortgagor.

Section 9. Exterior Maintenance Assessment. The Association, through action of its Board of Directors, shall provide exterior maintenance upon each Townhome Lot as provided in Article VI. The cost of the exterior maintenance referred to in Article VI shall be an Operating Expense.

Section 10. Capital Improvements. Funds necessary for capital improvements, emergencies or non-recurring expenses may be levied by such Association as special assessments, upon approval of a majority of the Board of Directors.

Section 11. Certificate of Assessment. The Association shall upon demand at any time furnish to any Owner liable for an Assessment a certificate in writing signed by an officer of the Association, setting forth whether such Assessment has been paid as to any particular Townhome Lot. Such certificate shall be conclusive evidence of payment of any Assessment to the Association therein stated to have been paid.

## ARTICLE VIII

### Common Structural Elements

Section 1. Definition. Each Building contains or shall contain certain elements, features or parts which are structural elements of the Building or of more than one Dwelling Unit (such elements, features, or parts being hereinafter referred to as "Common Structural Elements"). The Common Structural Elements of each Building shall include the following:

(a) Party Walls. All division walls between two (2) Townhomes beginning at the unfinished surface of each side of such wall (hereinafter referred to as "Party Walls") located upon a Property Line between two (2) Townhomes, provided that the mere fact such a division wall between two (2) Townhomes is found not to be on a Property Line shall not preclude such division wall from being a Party Wall.

(b) Roofing. The entire roof of the Building, any and all roof support structures, and any and all appurtenances to such roof and roof support structures, including, without limitation, the roof covering, roof trim and roof drainage fixtures, all of which are collectively referred to herein as the "Roofing." Should the Roofing or part thereof extend beyond the Townhomes, same shall not be deemed to violate the provisions of this Declaration and such easements as may be necessary to accommodate and permit the Roofing as same shall be constructed or hereby imposed.

(c) Foundation. The entire concrete floor slab or wood floor system if used in lieu thereof and all foundational and support structures and appurtenances thereto, all of which are collectively referred to as the "Foundation." Should the Foundation or part thereof extend beyond the Townhomes, same shall not be deemed to violate the provisions of this Declaration and such easements

as may be necessary to accommodate and permit the Foundation as same shall be constructed or thereby imposed.

Section 2. General. Each Owner shall own that portion of the Party Wall which stands on his own Townhome Lot. To the extent not inconsistent with the provisions of this Article, the general rule of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to each Party Wall (or party fence, if applicable) which is built by Declarant as part of the original construction of the Dwelling Units upon the Townhome Lots and any replacement thereof.

If any portion of any structure, as originally constructed by Declarant or its designee, including any Party Wall or fence, shall protrude over two (2) adjoining Townhome Lots, it shall be deemed that said Owners have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the projection, Party Wall or fence. The foregoing shall also apply to any replacements of any structures, Party Walls or fences, if same are constructed in conformance with the original structure, Party Wall or fence. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

Section 3. Sharing Maintenance or Repair. The costs of reasonable repair and maintenance of Common Structural Elements shall be shared equally by the Owners who make use of the wall in proportion to such use, except as otherwise provided herein. Such costs shall not be an Operating Expense.

Section 4. Destruction by Fire or Other Casualty. In the event of damage or destruction of Common Structural Elements from any cause whatsoever, other than the negligence or willful misconduct of either Owner thereto, the Owners shall, at their joint expense, repair or rebuild said Common Structural Elements in accordance with the requirements of Article XI of this Declaration, and each Owner, his successors and assigns, shall have the right to full use as herein contained of said Common Structural Elements so repaired or rebuilt. If damage or destruction is a result of one Owner's negligence or willful misconduct, that party shall be responsible for the total repair and replacement in a timely fashion. If either Owner fails to pay his share of repair or replacement, as aforesaid, then the other Owner shall have such Common Structural Elements repaired or reconstructed and shall be entitled to file in the Public Records of the County a claim of lien on the premises of the Owner failing to pay for the amount of such defaulting Owner's share of the repair or replacement costs. Owner shall have the right to foreclose said claim of lien in accordance with the same procedural requirements as now provided for in Florida Statutes for foreclosure of a mechanic's lien; provided, however, said claim of lien shall be filed within ninety (90) days from date repairs or replacements were made to the Party Wall, and suit thereon shall be commenced one (1) year from date such lien is filed. If either or both Owners shall give or shall have given a mortgage or mortgages upon his property to an Institutional Mortgagee, then such Institutional Mortgagee shall have the full right, at its option, to exercise the rights of its mortgagor as an Owner hereunder and, in addition, the right to add to the outstanding balance of such mortgage any amounts paid by the Institutional Mortgagee for repairs hereunder and not reimbursed to said Institutional Mortgagee by the Owners.

Section 5. Easement for Repairs. If repairs or reconstruction to the Common Structural Elements shall be necessary, all necessary entries on or into the adjacent Dwelling Unit upon the Adjacent Townhome Lot shall not be deemed a trespass so long as the repairs and reconstruction shall

be done in a timely and workmanlike manner. Consent is hereby given to enter on or into adjacent Dwelling Units to effect necessary repairs and reconstruction.

Section 6. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7. Weather Proofing. Notwithstanding other provisions of this Article, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary repair and protection against such elements.

Section 8. Arbitration. In the event of any dispute arising concerning Common Structural Elements, or under the provisions of this Article, each party shall choose one arbiter, and such arbiters shall choose one additional arbiter, and the decision of a majority of all of the arbiters shall be final and conclusive of the questions involved.

Section 9. Alterations. The Owner of a Dwelling Unit sharing a Party Wall with an adjoining Dwelling Unit shall not cut windows or other openings in the Party Wall, nor make any alterations, additions or structural changes in the Party Wall.

Section 10. Structural Cross Easements. Cross easements of support and use over, upon, across, under, through and into the Common Structural Elements shall exist in favor of the Association, the Owners or their designees for the continued use, benefit and enjoyment and continued support, service, maintenance, repair and design of all Dwelling Units and Common Structural Elements within any of the Buildings.

## ARTICLE IX

### Insurance

#### Section 1. Common Areas.

(a) General Liability. The Association, by action of its Board of Directors, shall maintain public liability insurance, to the extent obtainable, covering the Association and each Association Member, lessee and occupant, and the managing agent, if any, against liability for any negligent act of commission or omission attributable to them which occurs on or in the Common Areas.

(b) Additional Insurance. To the extent obtainable, the Board of Directors shall also be required to obtain the following insurance:

- (1) Vandalism and malicious mischief endorsements, insuring the Common Areas; and,
- (2) Worker's compensation insurance, if required by law; and,
- (3) Directors' and Officers' liability insurance, fidelity insurance and other insurance it may deem proper to protect the Association, its Members and property.

(c) Common Area Casualty Insurance. All casualty insurance policies purchased by the Association hereunder shall be for the benefit of the Association and all Owners and their mortgagees as their interests may appear and shall provide that all proceeds covering casualty losses of \$10,000.00 or less shall be paid to the Association. Any sum in excess of \$10,000.00 shall be paid either to the Association or to an insurance trustee as the Association shall determine at the time. An "Insurance Trustee" shall be any bank or trust company or other corporate trustee authorized for and doing business in Florida, as designated by the Board of Directors of the Association. The duty of the Insurance Trustee shall be to receive such proceeds as are paid to it and to hold the same in trust pursuant to the terms of the Insurance trust agreement to be executed by the Association and the Insurance Trustee, which shall not be inconsistent with any of the provisions herein set forth.

(d) Payment of Premiums. The Board of Directors shall collect and pay the premiums for insurance as a part of the Operating Expenses. Expenses of any Insurance Trustee appointed shall be paid by means of special assessment by the Board.

(e) Mandatory Repair. Unless there occurs substantial damage or destruction to all or a substantial part of Common Area facilities, the Association and the Owners shall use insurance proceeds to repair, replace and rebuild the damage caused by casualty loss. Related costs and expenses not covered by insurance shall be borne by the Owners in a fair and equal manner.

(f) Association as Agent. The Association is hereby irrevocably appointed agent for each Owner to adjust all claims arising under insurance policies purchased by the Association, and to execute releases thereof.

## Section 2. Townhome Dwelling Units, Townhome Lots.

(a) Owner's Insurance Coverage. Each Owner shall be required to obtain and maintain adequate insurance on his Dwelling Unit which shall insure the property for its full replacement value, with no deductions for depreciation, against loss by fire, storm or other hazards or casualty. Such insurance shall name the Association an additional insured and shall be sufficient to cover the full replacement value, or to cover necessary repair or reconstruction work. Such insurance shall be written in the manner acceptable to the Board of Directors of the Association and shall contain a clause which provides ten (10) days prior written notice to the Board of Directors of the Association before the policy can be cancelled. Each Owner shall be required on an annual basis to supply the Board of Directors with evidence of insurance coverage on his Dwelling Unit which complies with the provisions of this Section. Each Owner shall also be responsible for the purchasing of liability insurance for accidents occurring on his or her Townhome Lot.

(1) Action by Board. If the insurance provided under this Section has not otherwise been obtained by each Owner, as determined by the Board of Directors, then the Board shall endeavor to obtain such insurance coverage. Insurance obtained by the Board of Directors shall be written in the name of the Association, as Trustee, for the benefit of the applicable Unit Owner.

(2) Payment of Premium. Premiums for insurance obtained by the Board of Directors for the benefit of an individual Owner, as provided hereinabove, shall not be an Operating Expense, but shall be an individual assessment (special assessment) payable in accordance with the provisions of Article VII of this Declaration.



(3) Repair or Replacement of Damaged or Destroyed Property. Each Owner shall be required to reconstruct or repair any Dwelling Unit destroyed by fire or other casualty, covered by insurance written in the name of the Association as Trustee. The insurance proceeds shall be deposited in a bank or other financial institution, subject to withdrawal only by the signature(s) of an agent(s) duly authorized by the Board of Directors. If no repair or rebuilding has been contracted for or otherwise substantially started by the Owner within thirty (30) days of the receipt of the insurance proceeds, the Board of Directors shall itself initiate the repair or rebuilding of the damaged or destroyed portions of the structure and/or exterior of the Dwelling Unit pursuant to Section 2(b) hereinbelow.

(b) Association Action. Notwithstanding the provisions of the above subsection (a) of this Section 2, the following provisions shall also apply to Dwelling Units which have Common Structural Elements:

(1) Association Approval. The insurance referred to in subsection (a) of this Section shall be written in a manner acceptable to the Association. The Association shall carry out the functions set forth hereafter.

(2) Insurance Trustee. Each policy shall contain a loss payment provision which provides that the proceeds of any loss shall be payable to the Association who shall hold such funds in trust to insure that repairs are made as hereinafter set forth. Each policy shall also contain a clause that it is non-cancelable without ten (10) days prior written notice to the Association. Each Owner shall be required to supply the Association with evidence of insurance coverage on his Dwelling Unit which complies with the provisions of this Section.

(3) Action by Board. If the insurance provided under this Section has not otherwise been adequately obtained by each Owner, as determined by the Board of the Directors of the Association, then the Board of Directors of the Association shall endeavor to obtain such insurance coverage. The purpose of such insurance will be to protect, preserve and provide for the continued maintenance and support of separately owned Dwelling Units which shall include Common Structural Elements. Insurance obtained by the Board of Directors of the Association shall be written in the name of the Association, as Trustee, for the benefit of the applicable Owner.

(4) Payment of Premiums. Premiums for insurance obtained by the Board of Directors for the benefit of an individual Owner, as provided hereinabove, shall not be a part of the Operating Expenses, but shall be an individual assessment (special assessment) payable in accordance with the provisions of Article VII of this Declaration.

(5) Repair or Replacement of Damaged or Destroyed Property. Each Owner shall, with the concurrence of the Owner's Institutional Mortgagee, if any, and the Board of Directors of the Association, be required to reconstruct or repair any Dwelling Unit destroyed by fire, storm or other casualty in accordance with the requirements of Article XI of this Declaration. Insurance proceeds issued for such repair shall be in the name of the Association, as Trustee. The insurance proceeds shall be deposited in a bank or other financial institution, subject to withdrawal only by the signature(s) of an agent(s) duly authorized by Board of Directors of the Association. If no repair or rebuilding has been contracted for or otherwise substantially started by the Owner within thirty (30) days after the Association receives the insurance proceeds, the Board of Directors of the Association is hereby irrevocably authorized by such Owner to initiate the repair or rebuilding of the damaged or destroyed

portions of the structure and/or exterior of the Dwelling Unit. Repairs should be done in a good and workmanlike manner in conformance with the original plans and specifications. The Board of Directors of the Association may advertise for sealed bids from any licensed contractors and may then negotiate with said contractors. The contract or contractors selected to perform the work shall provide full performance and payment bonds for such repair or rebuilding, unless such requirement is waived by the Board of Directors of the Association. If the insurance proceeds are insufficient to fully pay the costs of repairing and/or rebuilding the damaged or destroyed portions in a good and workmanlike manner, the Board of Directors of the Association shall levy a special assessment against the Owner in whatever amount is required to make up the deficiency. If the insurance proceeds exceed the cost of repairing and/or rebuilding, such excess shall be paid over to the respective Owner and/or the Owner's mortgagee in such portions as shall be independently determined by those parties.

(c) Administrative Fee. Should the Association obtain the insurance coverage on a Dwelling Unit pursuant to this Article, then the Association may charge, and the applicable Owner shall be responsible for, as a special assessment against the Townhome Lot, an administration fee of \$100.00. Said fee is in addition to the charge for the premium, for which Owner is also responsible.

(d) Notwithstanding anything to the contrary in this Article, the Association, its Director or officers, shall not be liable to any person should it be unable or fail for any reason whatsoever to obtain insurance coverage on a Dwelling Unit.

## ARTICLE X

### The Association

The Association shall have all statutory and common law powers of a Florida corporation not-for-profit, to the extent they do not conflict with all powers provided in its Articles and Bylaws, and all powers granted in this Declaration.

## ARTICLE XI

### Building and Use Covenants

Section 1. Land Use. The use of a Dwelling Unit or of the Common Areas by a Member or other occupant shall be subject to the rules, regulations and provisions of this Declaration, the Articles and Bylaws and the Rules and Regulations of the Board of Directors. A Dwelling Unit shall be used only for residential purposes for immediate members of a single family and their guests and invitees.

Section 2. Building Type. No building shall be erected, altered, placed or permitted to remain on any Townhome Lot other than the Townhome Dwelling Unit of the type and style originally constructed by Declarant.

Section 3. Architectural Control.

(a) No building, wall, fence, decking, paving, awning, pool, storage shed, door screening or other structure or improvement of any nature other than such structures originally constructed by Declarant shall be erected, placed, modified, altered or permitted to remain on any Townhome Lot or Common Area unless the construction plans and specifications and a plan showing

the kind, shape, materials, colors and location of the structure, exterior elevations, and landscaping, as may be required by the Architectural Review Committee, have been approved in writing by the Architectural Review Committee. In the case of structures initially constructed by Declarant on a Common Area or Townhome Lot prior to the conveyance of the Common Area to the Association or the sale of that Townhome Lot to the initial Owner other than Declarant, no review and approval by the Architectural Review Committee shall be required. All other buildings, walls, fences, or other structures or improvements of any nature, together with the landscaping, shall be erected, placed or altered upon the Property only in accordance with the plans and specifications and plot plan so approved. Refusal of approval of plans, specifications and plot plan, or any of them, may be based on any grounds, including purely aesthetic grounds, which, in the sole discretion of said Architectural Review Committee, seems sufficient. Any change in the exterior appearance of any building, wall, fence or other structure or improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval. The Architectural Review Committee shall have the power to promulgate such rules and regulations, including the power to adopt and charge appropriate uniform fees for required reviews, as it deems necessary to carry out the provisions and intent of this paragraph.

(b) The Architectural Review Committee shall review the proposed submission as to the type and quality of materials, harmony of the exterior design and location of the building or structure with existing buildings or structures, location of the building or structure with respect to topography, trees, vegetation and the finished grade elevation and floor slab, exterior color(s) of any building or structure and any other relevant considerations. Upon completion of the proposed improvements, an "as-built" survey showing the finished floor and grade elevation and location of all improvements shall be filed with the Association and with the Architectural Review Committee.

(c) The Architectural Review Committee shall be comprised of not less than three (3) nor more than seven (7) persons. The Members of the Committee shall be appointed by Declarant, its designees, successors or assigns. The membership, rules of procedure and duties of the Committee shall be prescribed by and, from time to time, changed or modified by Declarant. If and when Declarant deems the circumstances appropriate, Declarant, in its sole discretion, may assign to the Association, or any other body, all or part of the rights, duties, and functions of the Architectural Review Committee as set forth in this Declaration. From and after the date of any such assignment, Declarant shall be relieved of any further duties or obligations concerning the Committee, and the Association or other body shall assume the duties and obligations and perform the functions as set forth herein.

(d) If the Architectural Review Committee shall disapprove, in whole or in part, any submission required herein, the Committee shall notify the person, firm or entity making the submission of the reasons for such disapproval. If the Architectural Review Committee fails or refuses to approve or disapprove a submission containing all the requirements as set forth herein within sixty (60) days after submission is received by the Committee, it shall then be presumed that the submission has been disapproved by the Architectural Review Committee.

Section 4. Change in Buildings. Neither the Association nor any Owner shall make or permit any structural modification or alteration of any Building except with the prior written consent of the Architectural Review Committee, or its successor, and all Institutional Mortgagees holding a mortgage on a Dwelling Unit within said Building. Consent may be withheld if, in the sole discretion of the party requested to give the same, it appears that such structural modification or alteration would affect or in any manner endanger other Dwelling Units. No Building shall be demolished or removed

without the prior written consent of all Owners of all other Dwelling Units within such Building and of all Institutional Mortgagees holding a mortgage on a Dwelling Unit within said Building, and also the prior written consent of Declarant or its successors. Declarant shall have the right, but shall not be obligated, to assign all of its rights and privileges under this Article to the Association. No garage shall at any time be used as a residence or enclosed and incorporated into a residence, except that Declarant and/or a builder buying Townhome Lots from Declarant, with Declarant's prior approval, shall be permitted to enclose the garage of model homes, and if the garage is so enclosed, the Townhome cannot be sold or occupied without the enclosed garage being converted to a garage with an approved garage door.

Section 5. Regulations. Regulations promulgated by the Board of Directors, or any committee established by the Board of Directors, or any committee established by the Board concerning the use of Tuscan Village shall be observed by the Members and their family, invitees, guests and tenants; provided, however, that copies of such regulations are furnished to each Member by personal delivery or by regular mail prior to the time the regulations become effective.

Section 6. Building Location. Buildings shall be located in conformance with this Declaration, the applicable ordinances of St. Johns County and any specific approvals thereunder, or as originally constructed on a Townhome Lot by Declarant or its successors or assigns.

Section 7. Damage to Buildings. If a Dwelling Unit is damaged, through Act of God or other casualty, then the Owner shall promptly cause his Dwelling Unit to be repaired and rebuilt substantially in accordance with the architectural plans and specifications used by Declarant for the original construction of such Dwelling Unit. It shall be the duty of the Association to enforce such repair or rebuilding of the Dwelling Unit to comply with this responsibility in accordance with this Article IX. To accomplish the requirements of this Section, each Owner shall insure his Dwelling Unit at the highest insurable value, including, but not limited to, full replacement value of the premises, in accordance with Article XI.

Section 8. Temporary and Accessory Structures. No accessory building or structure of a temporary character, or trailer, tent, mobile home, or recreational vehicle shall be permitted on any Townhome Lot or Common Areas at any time or used as living quarters or for storage at any time, either temporarily or permanently, except as permitted by the Architectural Review Committee. No gas tank, gas container, or gas cylinder serving a Dwelling Unit shall be permitted to be placed on or about the outside of any Dwelling Unit or any ancillary building, and all gas tanks, gas containers and gas cylinders shall be installed underground in every instance where gas is used. In the alternative, gas containers may be placed above ground if enclosed on all sides by a decorative screen approved by the Architectural Review Committee. Gas grills must be concealed from view when not in use.

Section 9. Signs. A single "for sale" sign of no more than one foot by two feet (1' x 2') may be displayed on a Dwelling Unit during any period when the Dwelling Unit is being offered for sale. The Committee shall have the right to adopt and enforce uniform standards as to the appearance and method of display of such "for sale" signs. In addition, any Owner may display a sign of reasonable size provided by a contractor for security services within 10 feet of any entrance to the home. No other sign, advertisement or poster of any kind shall be erected or displayed to the public view on the Property without the prior written approval of the Architectural Review Committee as to size, color, content, material, height and location. The Committee shall have the authority to enter upon any Townhome Lot

and summarily remove any signs which do not meet the provisions of this paragraph. This paragraph shall not apply to Declarant.

Section 10. Intersection Sight Lines. No fence, wall, hedge or shrub planting which obstructs a sight line at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Townhome Lot within the triangular area formed by the street property lines, or, in the case of a rounded property corner, from the intersection of the street property lines extended. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of sight lines. Nothing contained in this Declaration shall prevent Declarant, or any person designated by Declarant, from erecting or maintaining such fence, wall, hedge or shrub planting.

Section 11. Pets, Livestock and Poultry. No animals, livestock, or poultry of any kind or size shall be raised, bred or kept on any Townhome Lot, except that dogs, cats or other household pets may be kept subject to the rules and regulations governing their keeping adopted by the Board of Directors. In no event shall the number of pets exceed two (2) for any Townhome Lot. No permitted pet may be kept, bred or maintained for any commercial purpose. No permitted pet may be kept if the pet becomes a nuisance or annoyance to any neighbor, as determined by the Board of Directors. No dogs or other pets shall be permitted to have excretions on the Property, except in locations designated by the Association.

Section 12. Nuisances. No noxious or offensive activity, including, without limitation, loud music, shall be carried on upon any Townhome Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to the neighborhood.

Section 13. Antenna. No television, radio, electronic or other type antenna or satellite dish may be erected on the Property or attached to any Dwelling Unit thereon without prior approval of the Architectural Review Committee.

Section 14. Exterior Appearances and Landscaping. The paint, coating, stain, and other exterior finishing colors on all buildings may be maintained as originally installed by Declarant without prior approval of the Architectural Review Committee. Prior approval by the Architectural Review Committee shall be necessary before any such exterior finish color is changed. Furthermore, prior approval shall be required if the Association or any Owner wishes to paint, varnish, stain or make any application to exterior trellises or wood treatment, if any. The landscaping, including, without limitation, the trees, shrubs, lawns, flower beds, walkways, and ground elevations, shall be maintained as originally installed by Declarant, unless the prior approval for any substantial change is obtained from the Association and the Architectural Review Committee. Neither aluminum foil, paper, nor anything which the Architectural Review Committee deems objectionable, may be placed on windows or glass doors, including without limitation, window air conditioning units. No Owner may place any furniture, equipment or objects of any kind or construct any structures, slabs or porches beyond the limits of any Building or patio wall or place any objects such as bicycles, toys, barbecues, etc., on the rear patio unless concealed from the view of the road frontage and other Dwelling Units, except, however, customary outdoor furniture. All Townhome Lots shall be kept in a clean and sanitary manner and no rubbish, refuse or garbage shall be allowed to accumulate or any fire hazard allowed to exist.

Section 15. Commercial Vehicles, Trucks, Trailers, Campers and Boats. No trucks or commercial vehicles, campers, mobile homes, motor-homes, automobiles which are not currently registered and capable of legal operation on public roads, recreational vehicles, boats, house trailers, boat trailers, horse trailers, or trailers of every other description shall be permitted to be parked or to be stored overnight at any place on any Townhome Lot or Common Area in the Property; except if such vehicle is being used in the construction of improvements on the Property and then only during the periods of approved construction on said Townhome Lot, or if parked in an area designated by Declarant for such purpose or parked in a fully enclosed garage with the garage door fully closed. This prohibition of parking shall not apply to vehicles which serve both as a Townhome Lot Owner's personal and commercial vehicle, nor does the prohibition apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery and other commercial services. Non-commercial vans used for personal purposes shall not be prohibited. No person shall park a vehicle so as to obstruct any person's use of ingress or egress rights created by this Declaration or park a vehicle on any unpaved portion of any Townhome Lot or Common Area, except as expressly permitted by Declarant.

Section 16. Rentals; Interval Ownership. No Townhome Lot or Dwelling Unit thereon may be rented or sublet without written notice to the Board of Directors of the Association. In addition, notice of the sale of the Townhome will also be given to the Association. This provision is for the purpose of assuring that subsequent owners and renters understand the rights and obligations of Members of the Association, including, the Rules and Regulations and payment of assessments. In addition, the Board of Directors may authorize the use of a registration form to be completed by prospective purchasers or renters. No Dwelling Unit may be rented, leased or sublet for a period of less than thirty (30) days. All enforcement procedures applicable to this Declaration shall be equally applicable to enforcement of this section. Interval ownership and timeshares are prohibited.

Section 17. Walls/Fences. No fence, wall, gate, hedge, or other structure shall be erected or maintained on any Townhome Lot, except as originally installed by Declarant or Declarant's assignee, or except any approved in writing by the Architectural Review Committee as provided herein.

Section 18. Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited on any Townhome Lot except in areas designated by the Association for such purpose. All equipment for storage or disposal of such material shall be kept in clean and sanitary condition and shall be kept hidden from view.

Section 19. Outdoor Drying and Laundry. No clothing, laundry or wash shall be aired or dried on any portion of any Townhome Lot or Common Area in an area viewable to any other Townhome Lot or Dwelling Unit or roadway. No garments, rugs, etc., shall be hung from windows or doorways of Dwelling Units, and no clotheslines or similar type structure shall be permitted on any Townhome Lot in an area viewable from any other Lot, Common Area or roadway.

Section 20. Swimming Pools and Screen Enclosures. All screen enclosures, deck areas, patios, hot tubs, jacuzzis, and sun decks, except for such structures originally installed by Declarant as part of the first construction of a Dwelling Unit or Common Area, must be approved in writing by the Architectural Review Committee.

Section 21. Lawful Conduct. No immoral, improper, offensive or unlawful use shall be made of any Townhome Lot or other improvements. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be strictly observed.

Section 22. Risks. No Owner shall permit or suffer anything to be done or kept in his Dwelling Unit or upon his Townhome Lot which will increase the rate of insurance to other Owners or as to their Townhome Lots or to the Association with respect to the Common Areas.

Section 23. Parking Spaces. Each Owner shall have the exclusive right to use the driveway and paved portions of the Owner's Townhome Lot for parking and shall not park on any unpaved areas. Any parking spaces located on the Common Areas will not be assigned, but shall be for the common use and benefit of Owners, their guests and invitees, subject to the right of the Board to adopt regulations concerning the use of such spaces. Declarant shall have the right to use any such unassigned spaces for parking by prospective purchasers and such other parties as Declarant, in its sole discretion, deems advisable. All common area parking spaces shall be maintained by the Association.

Section 24. Basketball Boards. Basketball boards are prohibited, whether attached to the Dwelling Unit or free-standing.

Section 25. Skateboard Ramps. Skateboard ramps are prohibited on any Townhome Lot or Common Area.

Section 26. Flagpoles. Any Owner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day may display, in a respectful manner, portable, removable official flags, not larger than 4 1/2 feet by 6 feet, which represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard regardless of any other rules or requirements dealing with flags or decorations. Other decorative flags on the front of any Townhome are subject to the review and approval of the Architectural Review Committee.

Section 27. ADA Ramps. An Owner may construct an access ramp if a resident or occupant of the parcel has a medical necessity or disability that requires a ramp for egress and ingress under the following conditions: (1) The ramp must be as unobtrusive as possible, be designed to blend in aesthetically as practicable, and be reasonably sized to fit the intended use and (2) plans for the ramp must be submitted in advance to the Architectural Review Committee. The Architectural Review Committee may make reasonable requests to modify the design to achieve architectural consistency with surrounding structures and surfaces. The Owner must submit to the Architectural Review Committee an affidavit from a physician attesting to the medical necessity or disability of the resident or occupant of the parcel requiring the access ramp. Certification used for Section 320.0848, Florida Statutes, shall be sufficient to meet the affidavit requirement.

Section 28. Decorative Items. The use of decorative items, including, but not limited to, statues, gates, rocks, planters, bird baths and other ornamental accessories are prohibited, unless the Architectural Review Committee has given written permission for their installation prior to use, installation or construction.

Section 29. Mailboxes. All mailboxes shall be of the standardized type originally installed by Declarant or as thereafter may be designated by the Architectural Review Committee as to style,

location, material, color, height and type of post mounting. To ensure uniformity, maintenance, repair and replacement of mailboxes will be the responsibility of the Association.

Section 30. Lighting. All exterior lighting, including, but not limited to, walkway, driveway, accent, or Common Areas, must be approved by the Architectural Review Committee prior to construction or installation.

Section 31. Occupancy. Dwelling Units shall be utilized for single family residential purposes. No business or business activity shall be carried on in any Dwelling Unit at any time; provided, however, that, to the extent allowed by applicable zoning laws, private business activities may be conducted in a Dwelling Unit as long as such use is incidental to the primary residential use of the Dwelling Unit and does not violate any applicable law, involve any exterior signage or advertising of the Unit as a place of business, require frequent visits by clients or business associates to the Property, or unduly contribute to parking, traffic, telecommunications or security problems for the Property. In the event of a dispute as to whether business activities within a Dwelling Unit meet the requirements of this sub-section, the decision of the Board of Directors is conclusive.

The above provisions shall not preclude (i) such business activity of the Association or any Management Agent as is reasonably required for the effective operation of the Property and the Association, (ii) the use, rental or leasing of any Dwelling Units as permitted by the Declaration or for activities determined by the Board of Directors to be beneficial to the Association or the Owners; (iii) showing of any Dwelling Unit for sale or lease during normal business hours and in accordance with any reasonable procedures established by the Board of Directors to preserve a congenial, pleasant, safe and dignified living atmosphere, or (iv) business operations of Declarant, its agents, successors, assigns or designees during the period of marketing or managing the Property, including, without limitation, leasing, sales, administration, storage, or similar activities. Nothing in this restriction shall prohibit Declarant and its assigns from operating sales models and/or a sales and leasing office on any portion of the Property.

Section 32. Wells, Mining, Drilling and Excavation. No wells, mining, drilling or excavation of any type, except for such excavation as may be necessary for construction of Dwelling Units and Common Areas, shall be permitted on any portion of the Property. The foregoing notwithstanding, Declarant may install wells in Common Areas for irrigation purposes. No Owner of any Dwelling Unit shall draw water from any water body on or adjacent to any of the Property.

Section 33. Sewage Disposal. Each Owner of a Townhome Lot shall pay when due the periodic charges or rates for the furnishing of sewage collection and disposal service. No septic tank or sewage disposal unit shall be installed or maintained on any Townhome Lot.

Section 34. Violations. The Association may levy reasonable fines, not to exceed \$100 per violation, against any member or any tenant, guest, or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$1,000 in the aggregate unless otherwise provided in the governing documents. A fine shall not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorney's fees and costs from the non-prevailing party as determined by the court.



The Board of Directors may impose fines against the Townhome Lot or Unit owned by the Owner as follows:

- (i) First non-compliance or violation: a fine not in excess of One Hundred Dollars (\$100.00).
- (ii) Second non-compliance or violation: a fine not in excess of Five Hundred Dollars (\$500.00).
- (iii) Third and subsequent non-compliance, or a violation or violations which are of a continuing nature after notice thereof (even if in the first instance): a fine not in excess of One Thousand Dollars (\$1,000.00).

Provided, however, to the extent that state law is later modified to permit fines of greater amount, this Declaration shall be automatically amended to include such increase (without incorporating the statute).

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

The requirements of this subsection do not apply to the imposition of suspensions or fines upon any Member because of the failure of the Member to pay Assessments or other charges when due if such action is authorized by the governing documents.

Section 35. Declarant Rights. Notwithstanding any other provision in this Declaration, Declarant is irrevocably empowered to sell, lease or rent Townhome Lots on any terms to any purchasers or lessees for as long as it owns any Townhome Lot. This section is intended to provide Declarant with the broadest authority and power to transact and implement its business, and such activities shall be free and clear of any restrictions contained in this Declaration which would impede such activities. Declarant shall have the right to transact any business necessary to consummate sales and leases of said Townhome Lots, temporary uses for model homes, parking lots and/or sales offices, maintain signs, have employees in the office, use the Common Areas and show Townhome Lots. Sales office signs and all items pertaining to sales shall not be considered property of the Association and shall remain property of Declarant.

## ARTICLE XII

### Additional Powers Reserved to Declarant

Section 1. Declarant Related Documents. So long as Declarant shall own any of the Property, no Declarant related amendment shall be made to the Declaration, to any Supplemental Declaration, to the Articles, Bylaws, Rules and Regulations, or any other similar Association document, nor shall any such Declarant related amendments or documents be executed, adopted or promulgated by the Association or the Board of Directors unless such Declarant related amendment or document shall be

specifically approved in writing by Declarant in advance of such execution, adoption, promulgation and recording.

Section 2. Definitions. For the purposes of Section 1 of this Article, an amendment or document which does any of the following shall be considered to be a Declarant related amendment:

- (a) Discriminates or tends to discriminate against Declarant as an Owner or otherwise;
- (b) Directly or indirectly by its provisions or in practical application relates to Declarant in a manner different from the manner in which it relates to other Owners;
- (c) Modifies the definitions provided for by Article I of this Declaration in a manner which alters Declarant's rights or status;
- (d) Modifies or repeals any provision of Article II of this Declaration;
- (e) Alters the character and rights of membership as provided for by Article III of this Declaration or affects or modifies in any manner whatsoever the rights of Declarant as a Member of the Association;
- (f) Alters any previously recorded or written agreement with any public or quasi-public agencies, utility company, political subdivision, public authorities or other similar agencies or bodies, respecting zoning, streets, roads, drives, easements or facilities;
- (g) Denies the right of Declarant to convey the Common Areas to the Association;
- (h) Modifies the basis or manner of Association Assessments as applicable to Declarant or any Townhome Lots owned by Declarant as provided for by Articles VI and VII;
- (i) Modifies the provisions of Article XI (architectural control) as applicable to Declarant or any Townhome Lots owned by Declarant;
- (j) Denies the right to Declarant, its contractors and subcontractors, to maintain temporary construction trailers, sheds or other buildings upon the Property; or
- (k) Alters or repeals any of Declarant's rights or any provision applicable to Declarant's rights as set forth in any provision of this Declaration or other document applicable to Declarant.

The decision to approve or not approve any Declarant related document or Amendment by Declarant in accordance with Section 1 of this Article shall be in the sole and absolute discretion of Declarant and Declarant shall not be liable to the Association, its Members or any party as a result of granting or refusing to grant such approval.

Section 3. Declarant Lands. So long as Declarant continues to construct any facilities in the Development, no action may be taken by the Board or the Association applicable to Declarant or any of the Townhome Lots or other land owned by Declarant unless such action shall be approved in writing by

Declarant, or unless the need therefor shall be waived by Declarant in writing. Nothing herein contained shall be construed to prohibit legal action against Declarant as contemplated by Section 720.3075(1)(b), Florida Statutes.

## ARTICLE XIII

### General Provisions

Section 1. Beneficiaries of Easements, Rights and Privileges. The easements, licenses, rights and privileges established, created and granted by this Declaration shall be for the benefit of and restricted solely to, the Association, Declarant and its subsidiaries and assigns, the Owners of Townhome Lots, and to any other party to whom Declarant or Association is entitled to grant such easements, licenses, rights and privileges under this Declaration; and any Owner may also grant the benefit of such easement, license, right or privilege to his tenants and guests and their immediate families for the duration of their tenancies or visits, subject to the Rules and Regulations of the Board of Directors; but, the same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public.

Section 2. Duration. The covenants and restrictions of this Declaration shall run with and bind the land that has been made a part of the Association and shall inure to the benefit of and be enforceable by Declarant, the Association, or the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by then Owners of two-thirds (2/3) of the Townhome Lots and all Institutional Mortgagees of Townhome Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded one (1) year in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 3. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 4. Enforcement. Enforcement of these covenants and restrictions shall be by Declarant, its assigns, the Association, the Architectural Review Committee, or any Owner of five (5) or more Townhome Lots by any proceeding at law or in equity, including without limitation, injunctive relief, against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; failure by Declarant, the Association, the Architectural Review Committee, any Owner or other party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The SJRWMD shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the System. The prevailing party in any proceeding at law or in equity provided for in this Section shall be entitled to recover in said suit the cost of the action, including reasonable attorneys' fees as fixed by the court, including attorneys' fees in connection with appeal of any action.

Section 5. Disposition of Assets Upon Dissolution of Association. Upon dissolution of the Association, its real and personal assets, including the Common Areas, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the case of the Surface Water/Stormwater Management System which is maintained by the Association, the responsibility for the operation and maintenance of the System must be transferred to and accepted by an entity which would comply with applicable rules of the SJRWMD in the Florida Administrative Code and be approved by the SJRWMD prior to any termination, dissolution or liquidation of the Association. If such dedication is refused acceptance, which refusal in the case of the local government shall be by formal resolution of local government, such assets shall be granted, conveyed and assigned to any corporation not-for-profit, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No such disposition of the Association properties shall be effective to divest or diminish any right or title to any Member vested in him under the licenses, covenants and easements of this Declaration, or under any subsequently recorded covenants and deeds applicable to Tuscany Village, unless made in accordance with the provisions of this Declaration or said covenants and deeds.

Section 6. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect any other provisions which shall remain in full force and effect.

Section 7. Amendment. The covenants, restrictions, easements, charges, and liens of this Declaration may be amended, changed, added to, derogated, or deleted at any time and from time to time, upon the execution and recordation of any instrument executed by:

- (1) Declarant, until transition of the Association control from Declarant to non-Declarant Members as contemplated by Section 720.307, Florida Statutes or
- (2) Owners holding not less than two-thirds vote of the membership in the Association, or by an instrument signed by the President and Secretary of the Association attesting that such instrument was approved by Members entitled to vote two-thirds (2/3) of the total votes of the Association, at a meeting of the Members called for such purpose.

Any amendment must be properly recorded in the Public Records of the County to be effective.

Institutional Mortgage holders shall have the rights to approve amendments as provided in Article XIII, Section 16, below.

Because the availability of institutional financing benefits all Owners, the Declarant shall have the right to amend this Section as necessary to obtain Veterans Administration, Federal Housing Administration, Federal National Mortgage Association financing for the subdivision.. Any amendment pursuant to the requirements of the Veterans Administration, Federal Housing Administration, Federal National Mortgage Association, its successors and assigns, SJRWMD, FDEP, U.S. Army C.O.E., or such similar institutions or associations, may be made without further consent of any of the Owners and all

Owners acknowledge that such amendment shall be binding upon and shall constitute covenants running with the land irrespective of the date of amendment.

Any amendment to this Declaration which alters the Surface Water/Stormwater Management System, beyond the maintenance in its original condition, including the water management portions of the Common Areas, must have the prior approval of the SJRWMD.

Section 8. Administration. The administration of the Association shall be in accordance with the provisions of this Declaration and the Articles of Incorporation and Bylaws which are made a part of this Declaration and attached hereto as **Exhibits "C" and "D"**, respectively.

Section 9. Interpretation. In all cases the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which will best effect the intent of the general plan of development of Tuscan Village. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended and enlarged by implication as to make them fully effective.

Section 10. Conflict. In case of any conflict between the Articles and Bylaws, the Articles shall control. In case of any conflict between the Articles or Bylaws and this Declaration, this Declaration shall control.

Section 11. Effective Date. This Declaration shall become effective upon its recordation in the Official Records of St. Johns County.

Section 12. Captions. The captions of the paragraphs hereof are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular paragraph to which they refer.

Section 13. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable and the use of the masculine pronoun shall include the neuter and feminine, wherever applicable.

Section 14. Approval of Declarant. Where in this Declaration the consent or approval of Declarant is required to be obtained, no action requiring such consent or approval shall be commenced or undertaken until after a request in writing seeking the same has been submitted to, and approved in writing by, Declarant. Such request shall be sent to Declarant by Certified Mail with return receipt requested. In the event that Declarant fails to act on any such written request within sixty (60) days after the same has been submitted to Declarant as required above, the consent or approval of Declarant to the particular action sought in such written request shall be presumed; however, no action shall be taken by or on behalf of the person or persons submitting such written request which violates any of the covenants and restrictions herein contained.

Section 15. Approval of Association Lawsuits by Owners. Disputes shall be subject to mediation and/or arbitration as provided in Section 720.311, Florida Statutes. Certain lawsuits must be approved by a majority of the Owners as set forth in Section 720.303(1), Florida Statutes.

Section 16. Institutional Mortgagee's Rights. Upon written request to the Association by an Institutional Mortgagee, such Institutional Mortgagee, if its request specifies the name, address and factual basis of entitlement of the requesting party, shall be entitled to prompt written notice of:

(a) any condemnation or casualty loss that affects either a material portion of the Condominium Property or any Unit encumbered by its Mortgage;

(b) any 60 day delinquency in the payment of Assessments, Special Assessments or charges owed by the Unit Owner of any Unit on which it holds the Mortgage;

(c) a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) any proposed action which requires the consent of a specified percentage of Institutional Mortgagees.

Any Institutional Mortgagee, upon written request, shall be entitled to receive from the Association a financial report for the immediately preceding fiscal year. Any Institutional Mortgagee who has registered its name with the Association shall be provided with written notice prior to the effective date of any proposed, material amendment to this Declaration, or the Articles or Bylaws.

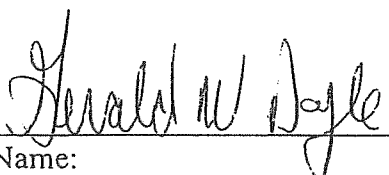
Section 17. Assignment of Declarant's Rights. The Declarant shall have the sole and exclusive right at any time and from time to time to transfer and assign by written assignment any or all rights, obligations, powers, easements, privileges, authorities and reservations given to or reserved by Declarant as developer and declarant in this Declaration. Upon such assignment, all rights and obligations of Declarant, including Declarant's guaranty of assessments, shall be transferred to and be assumed by Declarant's designated assignee and Declarant will be relieved of any rights and obligations under this Declaration. Upon the termination of the Class B Member, the rights of Declarant hereunder shall vest automatically in the Association which shall assume all obligations thereof.

Section 18. Declarant's Right to Re-Subdivide. The Declarant may re-subdivide or replat Tuscan Village in any way it sees fit for any purpose whatsoever consistent with the Development. The restrictions herein contained, in case of any such replating or re-subdividing, shall apply to each Townhome Lot as replatted or re-subdivided.


IN WITNESS WHEREOF, Declarant has hereunto caused this document to be signed by its proper officers this 26<sup>th</sup> day of June, 2006.

Signed in the presence of:

**KB HOME JACKSONVILLE, LLC,  
A FLORIDA LIMITED LIABILITY  
COMPANY**

  
Name: \_\_\_\_\_

GERALD W DOYLE  
Print Name: \_\_\_\_\_

By:   
Name: James A. Hickey  
Title: Director of Care

Kathleen Brown  
Name

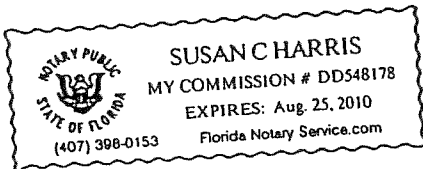
Katherine Brown  
Print Name:

STATE OF FLORIDA  
COUNTY OF DUAL

The foregoing Declaration and General Protective Covenants were acknowledged before me on the 26<sup>th</sup> day of June, 2006, by James Hissain as Director of Land of KB HOME JACKSONVILLE, LLC, a limited liability company, on behalf of the company. He is personally known to me and did not take an oath.

WITNESS my hand and official seal on the day and year last aforesaid.

Susan C Harris  
Susan C Harris  
Notary Public, State of Florida





ACCEPTANCE

FOR GOOD AND VALUABLE CONSIDERATION, the receipt whereof is hereby acknowledged, Tuscany Village of St. Augustine Homeowners Association, Inc., a Florida corporation not-for-profit, hereby agrees to accept all of the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto.

IN WITNESS WHEREOF, the above described corporation, a Florida corporation not-for-profit, has caused these presents to be signed in its name by its President and its corporate seal affixed this 26<sup>th</sup> day of June, 2006.

Signed, Sealed and Delivered  
In the presence of

[Signature]  
V.E. Huey

[Signature]  
Caroline Pearlman Her

TUSCANY VILLAGE OF ST. AUGUSTINE  
HOMEOWNERS ASSOCIATION, INC., a  
Florida corporation not-for-profit

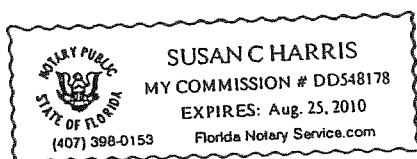
By: [Signature]  
Name: GERALD W. DOYLE  
Title: President

(Corporate Seal)

STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing Acceptance was acknowledged before me the 26<sup>th</sup> day of June, 2006, by Gerald W. Doyle as President of Tuscany Village of St. Augustine Homeowners Association, Inc., a Florida corporation not-for-profit, on behalf of the corporation.

WITNESS my hand and official seal on the day and year last aforesaid.



[Signature]  
Susan C Harris  
Notary Public, State of Florida

## EXHIBIT "A"

### Legal Description of Committed Property

#### ST. AUGUSTINE CENTRE - RESIDENTIAL PARCEL "A"

A tract of land being a portion of Section 5, Township 7 South, Range 29 East, St. Johns County, Florida and being more particularly described as follows:

Commence at the Northwest corner of said Section 5, for a point of reference; thence N89°15'19"E, along the North line of said Section 5, for 2702.33 feet to the point of intersection with the easterly right-of-way line of Inman Road (a 60.00 foot private right-of-way, as it is now established); thence S02°34'25"E, along said easterly right-of-way line, for 1149.57 feet; thence N90°00'00"W, for 60.06 feet to the point of intersection with the westerly right-of-way line of aforesaid Inman Road, said point also being the POINT OF BEGINNING; thence S02°34'25"E, along said westerly right-of-way line, for 891.99 feet to the point of intersection with the northerly right-of-way line of Outlet Centre Drive (an 80.00 foot private right-of-way, as it is now established); thence along said northerly right-of-way line the following four (4) courses; (1) thence S90°00'00"W, for 215.05 feet to the point of curvature of a curve concave to the North; (2) thence northwesterly along the arc of said curve, having a radius of 1110.00 feet, a central angle of 03°49'28", an arc length of 74.09 feet and a chord bearing N88°05'16"W, for 74.08 feet to the point of tangency; (3) thence N86°10'32"W, for 75.47 feet to the point of curvature of a curve concave to the North; (4) thence northwesterly along the arc of said curve, having a radius of 13955.80 feet, a central angle of 01°23'01", an arc length of 337.00 feet and a chord bearing N85°29'02"W, for 336.99 feet; thence N01°39'02"E, leaving said northerly right-of-way line, for 891.77 feet to the point intersection with the southerly boundary line of that Conservation Easement No. 3, as recorded in Official Records Book 1333, on Page 398 of the Public Records of St. Johns County, Florida; thence along said southerly boundary line, the following two (2) courses; (1) thence S79°14'02"E, for 68.93 feet; (2) thence S83°00'57"E, for 176.62 feet; thence S90°00'00"E, leaving said southerly boundary line, for 391.56 feet to the POINT OF BEGINNING.

Also being known as "North Tuscany Village" as recorded in Map Book 58, Pages 9 through 12 of the Public Records of St. Johns County, Florida.

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## EXHIBIT "B"

Legal Description of Additional Phase which is not Committed Property and which may be added to the Committed Property by Amendment or Supplemental Declaration

### ST. AUGUSTINE CENTRE - RESIDENTIAL PARCEL "B"

A tract of land being a portion of Section 5, Township 7 South, Range 29 East, St. Johns County, Florida and being more particularly described as follows:

Commence at the Northwest corner of said Section 5, for a point of reference; thence N89°15'19"E, along the North line of said Section 5, for 2702.33 feet to the point of intersection with the easterly right-of-way line of Inman Road (a 60.00 foot private right-of-way, as it is now established); thence S02°34'25"E, along said easterly right-of-way line, for 2121.64 feet to the point of intersection with the easterly extension of the southerly right-of-way line of Outlet Centre Drive (an 80.00 foot private right-of-way, as it is now established); thence N90°00'00"W, along said southerly right-of-way line, for 60.06 feet to the point of intersection with the westerly right-of-way line of aforesaid Inman Road, said point also being the POINT OF BEGINNING; thence S02°34'25"E, along said westerly right-of-way line, for 293.44 feet; thence N86°20'55"W, leaving said easterly right-of-way line, for 663.92 feet; thence S02°34'25"E, for 710.30 to the point of intersection with the South line of a 50.00 foot drainage easement, as recorded in Official Records Book 783, on Page 429 of the Public Records of St. Johns County, Florida; thence N86°20'55"W, along said south line, for 496.22 feet; thence N02°34'25"W, leaving said South line, for 1012.21 feet to the point of intersection with aforesaid southerly right-of-way line of said Outlet Centre Drive, said point also being the point of intersection with a curve concave to the North; thence along said southerly right-of-way line the following four (4) courses; (1) thence southeasterly along the arc of said curve, having a radius of 14035.80 feet, a central angle of 03°13'07", an arc length of 788.49 feet and a chord bearing S84°33'58"E, for 788.39 feet to the point of tangency; (2) thence S86°10'32"E, for 75.47 feet to the point of curvature of a curve concave to the North; (3) thence southeasterly along the arc of said curve, having a radius of 1190.00 feet, a central angle of 03°49'28", an arc length of 79.43 feet and a chord bearing S88°05'16"E, for 79.42 feet to the point of tangency; (4) thence S90°00'00"E, for 218.64 feet to the POINT OF BEGINNING.

King Engineering, Inc.  
March 17, 2005  
7860-050-002

## EXHIBIT "C"



June 30, 2006

## FLORIDA DEPARTMENT OF STATE

Division of Corporations

TUSCANY VILLAGE OF ST. AUGUSTINE HOMEOWNERS ASSOCIATION  
10475 FORTUNE PARKWAY SUITE 100  
JACKSONVILLE, FL 32256

The Articles of Incorporation for TUSCANY VILLAGE OF ST. AUGUSTINE HOMEOWNERS ASSOCIATION, INC. were filed on June 29, 2006, and assigned document number N06000007007. Please refer to this number whenever corresponding with this office.

This document was electronically received and filed under FAX audit number H06000167556.

A corporation annual report/uniform business report will be due this office between January 1 and May 1 of the year following the calendar year of the file/effective date. A Federal Employer Identification (FEI) number will be required before this report can be filed. Please apply NOW with the Internal Revenue Service by calling 1-800-829-3676 and requesting form SS-4 or by going to their website at [www.irs.ustreas.gov](http://www.irs.ustreas.gov).

Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

Should you have any questions regarding corporations, please contact this office at the address given below.

Sincerely,  
Suzanne Hawkes  
Document Specialist  
New Filings Section  
Division of Corporations

Letter Number: 506A00043063

**ARTICLES OF INCORPORATION  
FOR  
TUSCANY VILLAGE OF ST. AUGUSTINE HOMEOWNERS ASSOCIATION, INC.  
a Florida not-for-profit corporation**

The undersigned incorporator, for the purpose of forming a corporation not-for-profit pursuant to the laws of the State of Florida, hereby adopts the following Articles of Incorporation:

**1  
NAME**

The name of the corporation is TUSCANY VILLAGE OF ST. AUGUSTINE HOMEOWNERS ASSOCIATION, INC. For convenience, the corporation shall be referred to in this instrument as the "Association", these Articles of Incorporation as the "Articles", and the Bylaws of the Association as the "Bylaws". The terms used in these Articles shall have the meanings set forth in the Declaration of Covenants for Tuscan Village of St. Augustine.

**2  
POWERS**

The powers of the Association shall include and be governed by the following:

- 2.1 General. The Association shall have all of the common law and statutory powers of a corporation not-for-profit under the Laws of Florida (which are in effect at the time of filing of these Articles), except as expressly limited or restricted by applicable law, the terms of these Articles, the Declaration or the Bylaws.
- 2.2 Enumeration. In addition to the powers set forth in Section 2.1 above, the Association shall have all of the powers and duties reasonably necessary to operate the Property pursuant to the Declaration and as more particularly described in the Bylaws, as they may be amended from time to time, including, but not limited to, the following:
  - (a) To make and collect Assessments and other charges against Members as Owners (whether or not such sums are due and payable to the Association), and to use the proceeds thereof in the exercise of its powers and duties including, without limitation, the maintenance and operation of the Water Management System, including, but not limited to, work within the retention areas, drainage structures or drainage easements.
  - (b) To buy, accept, own, operate, lease, sell, trade and mortgage both real and personal property in accordance with the provisions of the Declaration; provided however, the Common Property may not be mortgaged without the consent of the Owners with voting power representing two thirds of the votes.
  - (c) To maintain, repair, replace, reconstruct, add to and operate the Common Property, and other property acquired or leased by the Association.

- (d) To purchase insurance upon the Common Property and insurance for the protection of the Association, its officers, directors and Owners.
  - (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Property and for the health, comfort, safety and welfare of the Owners.
  - (f) To enforce by legal means the provisions of the Declaration, these Articles, the Bylaws, the rules and regulations for the use of the Common Property and applicable law.
  - (g) To contract for the management and maintenance of the Common Property and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Property 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 to make Assessments, promulgate rules and execute contracts on behalf of the Association.
  - (h) To employ personnel to perform the services required for the proper operation and maintenance of the Common Property.
  - (i) To execute all documents or consents, on behalf of all Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and, in that regard, each Owner, by acceptance of the deed to such Owner's Unit or Lot and each Mortgagee of an Owner by acceptance of a lien on said Unit or Lot, appoints and designates the President of the Association as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.
  - (j) To operate, maintain and manage the Surface Water Management System (the "System") in a manner consistent with the St Johns River Water Management District (the "SJRWMD") Permit No. 40-109-99745-1, SJRWMD requirements, and applicable SJRWMD rules, and shall assist in the enforcement of the restrictions and covenants contained in the Declaration. The Association shall levy and collect adequate Assessments against members of the Association for the costs of maintenance and operation of the System.
- 2.3 Association Property. All funds and the title to all properties acquired by the Association and their proceeds shall be held for the benefit and use of the Members in accordance with the provisions of the Declaration, these Articles and the Bylaws.
- 2.4 Distribution of Income; Dissolution. The Association shall not pay a dividend to its Members and shall make no distribution of income to its Members, directors or officers, and upon dissolution, all assets of the Association shall be transferred only to another not-

for-profit corporation or a public agency or as otherwise authorized by the Florida Not-For-Profit Corporation Act (Chapters 617 and 720, Florida Statutes) and as may be approved by the SJRWMD, with respect to the transfer of the System.

- 2.5 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration, the Bylaws and applicable law, provided that, in the event of conflict, the provisions of applicable law shall control over those of the Declaration and Bylaws. The provisions of the Declaration shall control over those of the Articles and Bylaws; the provisions of the Articles shall control over the provisions of the Bylaws.

### 3 MEMBERS

- 3.1 Membership. The Members of the Association shall consist of the record title owners of Lots or Units within the Property from time to time, which membership shall be appurtenant to and inseparable from ownership of the Lot or Unit.
- 3.2 Assignment. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Lot or Unit for which that share is held.
- 3.3 Voting. The Association shall have two (2) classes of voting membership:

Class A Members shall be all Owners, with the exception of the "Declarant" (as long as the Class B Membership shall exist, and thereafter, the Declarant shall be a Class A Member to the extent it would otherwise qualify). Each Class A Member shall have one vote for each Unit or Lot owned by such member.

Class B Member. The Class B Member shall be the Declarant who shall be entitled to three (3) votes for each Lot owned by the Declarant. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership;
- (b) Three (3) months after ninety percent (90%) of the Lots have been conveyed to members of the Association other than the Declarant;
- (c) December 31, 2012; or
- (d) Such earlier date as the Declarant may choose to terminate the Class B Membership upon notice to the Association.

All votes shall be exercised or cast in the manner provided by the Declaration and Bylaws. After Turnover, the Class A Members may vote to elect the majority of the members of the Board. For the purposes of this Article, builders, contractors or others who purchase a Lot

for the purpose of the constructing improvements thereon for resale shall not be deemed to be Class A Members. After Turnover, for so long as the Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots within the Property, the Declarant may elect at least one (1) Director. After Turnover, the Declarant will be a Class A Member with respect to the Lots which it owns and shall have all rights and obligations of a Class A Member, except that it may not cast its votes for the purpose of reacquiring control of the Association.

- 3.4 Meetings. The Bylaws shall provide for an annual meeting of Members, and may make provision for regular and special meetings of Members other than the annual meeting.
- 3.5 Proviso. At Turnover, the Declarant shall transfer control of the Association to Owners other than the Declarant by causing enough of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Owners other than the Declarant to elect Directors and assume control of the Association. Provided at least thirty (30) days notice of Declarant's decision to cause its appointees to resign is given to Owners, neither the Declarant, nor such appointees, shall be liable in any manner in connection with such resignations even if the Owners other than the Declarant refuse or fail to assume control.

#### 4

### INCORPORATOR

The name and address of the Incorporator of this Corporation is:

NAME

ADDRESS

Lynda R. Aycock

1301 Riverplace Boulevard  
Suite 1500  
Jacksonville, FL 32207

#### 5

### TERM OF EXISTENCE

Existence of the Association shall commence with the filing of theses Articles of Incorporation with the Secretary of State, Tallahassee, Florida and shall exist in perpetuity. Provided, however, in the event that the Association is dissolved, the assets shall be dedicated to the public body or conveyed to a not-for-profit corporation with similar purpose. In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the System must be transferred to and accepted by an entity which would comply with Section 40C-42.027, Florida Administrative Code, and be approved by the SJRWMD prior to such termination, dissolution or liquidation.

#### 6

### OFFICERS

The affairs of the Association shall be administered by the officers holding the offices designated in the Bylaws. The officers shall be elected by the Board of Directors of the Association at its first meeting following the annual meeting of the Members of the Association and shall serve at the pleasure of the Board of Directors. The Bylaws may provide for the



removal from office of officers, for filling vacancies and for the duties and qualifications of the officers. The names and addresses of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

President:

Gerald W. Doyle

10475 Fortune Parkway, Suite 100,  
Jacksonville, Florida 32256

Vice President:

William Buckley

10475 Fortune Parkway, Suite 100,  
Jacksonville, Florida 32256

Secretary/Treasurer:

Carrie Pearlmutter

10475 Fortune Parkway, Suite 100,  
Jacksonville, Florida 32256

7

**DIRECTORS**

- 7.1 Number and Qualification. The property, business and affairs of the Association shall be managed by a board consisting of the number of directors determined in the manner provided by the Bylaws, but which shall consist of not less than three (3) directors. Prior to Turnover, Directors need not be members of the Association.
- 7.2 Duties and Powers. All of the duties and powers of the Association existing under the law, the Declaration, these Articles and the Bylaws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Owners when such approval is specifically required.
- 7.3 Election and Removal. Directors of the Association shall be elected at the annual meeting of the Members in the manner determined by and subject to the qualifications set forth in the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.
- 7.4 Term of Declarant's Directors. The Declarant shall appoint the members of the first Board of Directors and their replacements who shall hold office for the periods described in the Bylaws.
- 7.5 First Directors. The names and addresses of the members of the first Board of Directors who shall hold office until their successors are elected and have taken office, as provided in the Bylaws, are as follows:

NAME

ADDRESS

Gerald W. Doyle  
William Buckley  
Carrie Pearlmutter

10475 Fortune Parkway, Suite 100,  
Jacksonville, Florida 32256

- 7.6 Standards. A director shall discharge his duties as a director, including any duties as a member of a Committee, in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner reasonably believed to be in the best interests of the Association. Unless a director has knowledge concerning a matter in question that makes reliance unwarranted, a director, in discharging his duties, may rely on information, opinions, reports or statements, including financial statements and other data, if prepared or presented by one or more officers or employees of the Association whom the director reasonably believes to be reasonable and competent in the manners presented; legal counsel, public accountants or other persons as to matters the director reasonably believes are within the persons' professional or expert competence; or a Committee of which the director is not a member if the director reasonably believes the Committee merits confidence. A director is not liable for any action taken as a director, or any failure to take action, if he performed the duties of his office in compliance with the foregoing standards.

## 8

**INDEMNIFICATION PROVISIONS**

- 8.1 Indemnitees. The Association shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the Association) by reason of the fact that he is or was a director, officer, employee or agent (each, an "Indemnitee") of the Association, against liability incurred in connection with such proceeding, including any appeal thereof, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or 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 and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.
- 8.2 Indemnification. The Association shall indemnify any person who was or is a party to any proceeding by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, or agent of the Association against expenses and amounts paid in settlement not exceeding, in the judgment of the Board of Directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

- 8.3 Indemnification for Expenses. To the extent that a director, officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any proceeding referred to in subsection 8.1 or 8.2, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses actually and reasonably incurred by him in connection therewith.
- 8.4 Determination of Applicability. Any indemnification under subsection 8.1 or subsection 8.2, unless pursuant to a determination by a court, shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in subsection 8.1 or subsection 8.2. 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 proceeding;
  - (b) If such a quorum is not obtainable or, even if obtainable, by majority vote of a Committee duly designated by the Board of Directors (in which directors who are parties may participate) consisting solely of two or more Directors not at the time parties to the proceeding;
  - (c) By independent legal counsel:
    - 1. selected by the Board of Directors prescribed in paragraph (a) or the committee prescribed in paragraph (b); or
    - 2. if a quorum of the directors cannot be obtained for paragraph (a) and the Committee cannot be designated under paragraph (b), selected by majority vote of the full Board of Directors (in which Directors who are parties may participate); or
  - (d) By a majority of the voting interests of the members of the Association who were not parties to such proceeding.
- 8.5 Determination Regarding Expenses. Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible.
- 8.6 Advancing Expenses. Expenses incurred by an officer or director in defending a civil or criminal proceeding may be paid by the Association in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if he is ultimately found not to be entitled to indemnification by the Association pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the Board of Directors deems appropriate.
- 8.7 Exclusivity; Exclusions. The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and the Association may make any other or further indemnification or advancement of expenses of any of its directors, officers,

employees, or agents, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any director, officer, employee, or agent if a judgment or other final adjudication establishes that his actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

- (a) A violation of the criminal law, unless the director, officer, employee, or agent had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful;
- (b) A transaction from which the director, officer, employee, or agent derived an improper personal benefit; or
- (c) Willful misconduct or a conscious disregard for the best interests of the Association in a proceeding by or in the right of the Association to procure a judgment in its favor or in a proceeding by or in the right of the members of the Association.

8.8 Continuing Effect. Indemnification and advancement of expenses as provided in this section shall continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless otherwise provided when authorized or ratified.

8.9 Application to Court. Notwithstanding the failure of the Association to provide indemnification, and despite any contrary determination of the Board or of the Members in the specific case, a director, officer, employee, or agent of the Association who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that: (a) the director, officer, employee, or agent is entitled to mandatory indemnification under subsection 8.3 in which case the court shall also order the Association to pay the director reasonable expenses incurred in obtaining court-ordered indemnification or advancement of expenses; (b) the director, officer, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the Association of its power pursuant to subsection 7.7; or (c) the director, officer, employee, or agent is fairly and reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether such person met the standard of conduct set forth in subsection 8.1, subsection 8.2, or subsection 8.7, unless (d) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed Indemnatee, that he did not act in good faith or acted in a manner he reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful and (e) such

court further specifically determines that indemnification should be denied. The termination of any 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 did act in a manner which he reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

- 8.10 Definitions. For purposes of this Article 8, the term "expenses" shall be deemed to include attorneys' fees, including those for any appeals; the term "liability" shall be deemed to include obligations to pay a judgment, settlement, penalty, fine, and expenses actually and reasonably incurred with respect to a proceeding; the term "proceeding" shall be deemed to include any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal; and the term "agent" shall be deemed to include a volunteer; the term "serving at the request of the Association" shall be deemed to include any service as a director, officer, employee or agent of the Association that imposes duties on such persons.
- 8.11 Amendment. Anything to the contrary herein notwithstanding, no amendment to the provisions of this Article 8 shall be applicable as to any party eligible for indemnification hereunder who has not given his prior written consent to such amendment.

## 9

### BYLAWS

The first Bylaws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded in the manner provided in the Bylaws and the Declaration.

## 10

### AMENDMENTS

Amendments to these Articles shall be proposed and adopted in the following manner:

- 10.1 Notice. Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in Chapters 617 and 720, Florida Statutes. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.
- 10.2 Adoption. Amendments shall be proposed and adopted in the manner provided in Chapters 617 and 720, Florida Statutes and in the Act (the latter to control over the former to the extent provided for in the Act), provided that in all events such amendments shall be approved by the Owners representing two thirds of the votes of the Members of the Association who have voting power at the time of such amendment.

- 10.3 Declarant Amendments. Notwithstanding anything herein contained to the contrary, to the extent lawful, the Declarant may amend these Articles consistent with the provisions of the Declaration allowing certain amendments to be effected by the Declarant alone.
- 10.4 Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the public records of St. Johns County, Florida with an identification on the first page thereof of the book and page of said public records where the Declaration is recorded which contains, as an exhibit, the initial recording of these Articles.

11

**INITIAL REGISTERED OFFICE;  
ADDRESS AND NAME OF REGISTERED AGENT**

The initial registered office of this corporation shall be at 10475 Fortune Parkway, Suite 100, Jacksonville, Florida 32256, with the privilege of having its office and branch offices at other places within or without the State of Florida. The initial registered agent at that address shall be Gerald W. Doyle.

12

**APPROVAL OF FHA/VA**


In the event that a mortgage on a Unit or a Lot is guaranteed by the Federal Housing Agency ("FHA") or the Veteran's Administration ("VA"), then, for so long as there is a Class B Membership, there shall be approval of the FHA or VA to the following actions: annexation of additional properties (excluding Future Development Property), mergers and consolidations of the Association, mortgaging of Common Property, dissolution or amendment of these Articles.

13

**PRINCIPAL AND MAILING ADDRESS**

The principal office and mailing address of the corporation is 10475 Fortune Parkway, Suite 100, Jacksonville, Florida 32256.

IN WITNESS WHEREOF, the Incorporator has affixed his signature the day and year set forth below.

  
\_\_\_\_\_  
Lynda R. Aycock  
Incorporator

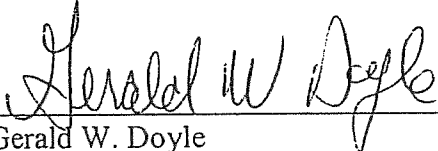
Dated this 26<sup>th</sup> day of June, 2006.

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

In compliance with the laws of Florida, the following is submitted:

First --That desiring to organize under the laws of the State of Florida with its principal office, as indicated in the foregoing Articles of Incorporation, in the County of St. Johns, State of Florida, the Association named in the said articles has named Gerald W. Doyle, whose address is 10475 Fortune Parkway Suite 100, Jacksonville, Florida 32256, as its statutory registered agent.

Having been named the statutory agent of said Association at the place designated in this certificate, I am familiar with the obligations of that position and hereby accept the same and agree to act in this capacity and agree to comply with the provisions of Florida law relative to keeping the registered office open.

  
\_\_\_\_\_  
Gerald W. Doyle  
Registered Agent

DATED this 26<sup>th</sup> day of JUNE, 2006.

EXHIBIT "D"

**BYLAWS  
OF  
TUSCANY VILLAGE OF ST. AUGUSTINE HOMEOWNERS ASSOCIATION, INC.**

**A Corporation Not for Profit  
Under the Laws of the State of Florida**

**13  
DEFINITIONS**

All terms in these Bylaws shall have the meanings as set forth in the Covenants and Restrictions for TUSCANY VILLAGE OF ST. AUGUSTINE HOMEOWNERS ASSOCIATION, INC.

**14  
BOOKS AND PAPERS**

- 14.1 The books, records and papers of the Association shall, at all times, during reasonable business hours, be subject to the inspection of any Member of the Association.

**15  
MEMBERSHIP**

- 15.1 Membership of the Association is as set forth in Article 3 of the Articles of Incorporation of the Association.
- 15.2 The rights of membership are subject to the payment of annual and special Assessments levied by the Association, the obligation of which Assessments is imposed against each Owner of, and becomes a lien upon, that portion of the Property against which such Assessments are made as provided in the Declaration.

**16  
REGISTERED AGENT**

The initial Registered Agent is Gerald W. Doyle, whose address is 10475 Fortune Parkway, Suite 100, Jacksonville, Florida 32256 or at such other place as the Board of Directors may from time to time designate.

**17  
BOARD OF DIRECTORS**

- 17.1 After Transition as defined in Section 720.307, Florida Statutes, the Directors of the Association shall be elected at the annual meeting of the Members except as otherwise specified in the Articles of Incorporation. The election shall be decided by a majority of votes cast either by Members present in person or by written ballots cast prior to or at the annual meeting. The election shall be valid notwithstanding whether there was a quorum at the meeting.