

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

TUSCAWILLA

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR TUSCAWILLA**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TUSCAWILLA is made as of this 2nd day of August, 2006 by EF MINUS S, LLC, a Florida limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Martin County, Florida, as more particularly described in **Exhibit "A"** ("Initial Property"), and Declarant desires to subject the Initial Property to the provisions of this Declaration and to provide a flexible and reasonable method for the administration and maintenance of the Initial Property; and

WHEREAS, as hereinafter provided in this Declaration, Declarant has retained and reserved the right to submit additional real property ("Additional Property") to the provisions of this Declaration, at a later time and from time to time, as part of Tuscawilla, as hereinafter defined, on such terms and conditions as Declarant may specify; and

NOW, THEREFORE, Declarant hereby declares that the Initial Property and any Additional Property (collectively, the "Property" or "Tuscawilla") shall be held, transferred, sold, conveyed, leased, occupied and used subject to the following easements, restrictions, covenants, charges, liens and conditions which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the Property, and which shall be binding on all parties having any right, title or interest in the Property or any portion thereof, and their respective heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each owner thereof and where specifically provided herein, shall benefit such other parties or properties as Declarant shall now or hereafter determine.

**ARTICLE I.
DEFINITIONS**

1.1. Definitions. When used in this Declaration, the following capitalized terms shall have the following meanings and all definitions shall be applicable to the singular and plural forms of such capitalized terms:

1.1.1. "Additional Property" shall mean and refer to all or any portion of the real property contained in Tuscawilla (not currently submitted to this Declaration) and all improvements thereon, together with such other additional property and all improvements thereon, and such other real property as Declarant shall acquire from time to time, which Declarant specifically subjects to the terms of this Declaration by amendment hereto recorded in the Public Records of Martin County, Florida, as more fully described in **Section 14.7**.

1.1.2. "Annual Assessments" shall have the meaning set forth in **Section 11.3** hereof.

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1.1.3. "Architectural Review Committee" or "ARC" shall mean and refer to the committee which shall be established as provided in **ARTICLE XII** hereof.

1.1.4. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time, as filed with the Florida Secretary of State, and attached hereto as **Exhibit "B"**. The initial Articles are attached hereto for informational purposes only and no amendment of this Declaration shall be required in the event the Articles are amended from time to time pursuant to its terms.

1.1.5. "Assessment" shall mean and refer to those charges made by the Association from time to time against the Lots or Units in accordance with **ARTICLE XI** of this Declaration, for the purposes and subject to the terms set forth therein.

1.1.6. "Association" shall mean and refer to Tuscawilla Community Association, Inc., a Florida not-for-profit corporation, its successors and assigns.

1.1.7. "Association Documents" shall mean this Declaration, the Articles, the By-Laws, the Community Standards and the Rules and Regulations, as amended from time to time.

1.1.8. "Audubon International" shall mean a not for profit 501(c)(3) environmental organization dedicated to improving the quality of the environment through research, education, and conservation assistance.

1.1.9. "Audubon International Sustainable Development Program" shall mean the Audubon International Sustainable Development Program related to the Common Areas and the Lots, which is on file in the office of Declarant.

1.1.10. "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

1.1.11. "Bessey Creek" shall mean that certain creek contained within the Property, shown as "Bessey Creek" on the Plat.

1.1.12. "Builder" shall mean any person or entity that purchases a Lot from Declarant for the purpose of constructing one or more Units.

1.1.13. "Bylaws of the Association" or "Bylaws" shall mean and refer to those Bylaws of the Association, which govern the administration and operation of the Association, as the same may be amended, modified or supplemented from time to time, as attached hereto as **Exhibit "C"**. The initial Bylaws are attached hereto for informational purposes only and no amendment of this Declaration shall be required in the event the Bylaws are amended from time to time pursuant to its terms.

1.1.14. "Capital Contribution" shall have the meaning set forth in **Section 11.11** of this Declaration.

1.1.15. "Club" shall mean the Tusawilla Club, the use of which is provided for the Owners pursuant to the provisions of the Club Plan.

1.1.16. "Club Dues" shall mean the charges related to the Club to be paid by the Owners and Builders pursuant to the provisions of the Club Plan including, without limitation, the Club Expenses and the Club Membership Fee.

1.1.17. "Club Expenses" shall have the meaning set forth in the Club Plan.

1.1.18. "Club Facilities" shall mean certain club facilities within the Club Property (as herein after defined) owned by the Club Owner as described in the Club Plan.

1.1.19. "Club House Lake" shall mean that certain lake within the Property, shown on the Plat as "Club House Lake".

1.1.20. "Club Manager" shall mean the entity operating and managing the Club Facilities at any given time. As provided in the Club Plan, the Association may, at the direction of Club Owner, be required to act as Club Manager from time to time.

1.1.21. "Club Membership Fee" shall mean the fee to be paid to the Club Owner by each Owner pursuant to the provisions of this Declaration and the Club Plan.

1.1.22. "Club Owner" shall mean the owner of the Club Facilities and Club Property, its successors and assigns. Presently Club Owner is Declarant.

1.1.23. "Club Plan" shall mean the Tusawilla Club Plan and all amendments thereof. This Declaration is subordinate in all respects to the Club Plan.

1.1.24. "Club Property" shall mean the real property owned by the Club Owner as described in the Club Plan.

1.1.25. "Common Areas" shall mean and refer to all real property interests and personalty including any improvements, amenities, easements, fixtures and facilities thereon owned, leased, controlled or operated by the Association, or the use of which has been granted to the Association as set forth in this Declaration or an amendment thereto, or a deed of conveyance, or that hereafter may be conveyed or leased to the Association or to which use rights have been granted to the Association. Common Areas may include, without limitation, community signage, open space areas, internal buffers, landscape areas, easement areas or other property owned by others, Community Control Program, maintenance areas, Roads, streets, rights-of-way dedicated to a public body but which the Association is required to or may elect to maintain, parking lots, walkways, sidewalks, street lighting, signage, nature trails, any pedestrian or bike path, trail lighting, Equestrian Trails, parks, and the following when the Association has an easement over or maintenance obligations therefor: Recreational Facilities, Surface Water Management System and Wetland & Upland Conservation Areas. The Common Areas do not include any portion of any Unit or the Club Facilities unless the Club Facilities are acquired by the Association pursuant to the terms of the Club Plan. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large

acquires any easement of use or enjoyment therein. Declarant may, but shall not be required to, designate and convey other property to the Association.

1.1.26. "Common Expenses" shall mean all costs and expenses of the Association and the Common Areas. Common Expenses may include, without limitation, all costs of ownership; operation; administration; all amounts payable by the Association; all amounts required to maintain the Surface Water Management System; all community lighting including up-lighting and entrance lighting, all amounts payable in connection with any agreement between the Association and a service provider or governmental agency; amounts payable to a Telecommunications Provider for Telecommunications Services furnished to all Owners or for the Association's benefit; utilities; taxes; insurance; bonds; Community Control Program; salaries; management fees; professional fees; service costs; supplies; maintenance; all costs associated with the Audubon International Sustainable Development Program; repairs; replacements; refurbishments; common area landscape maintenance; and any and all costs relating to the discharge of the obligations hereunder and/or the Club Plan, or as determined to be part of the Common Expenses by the Association. By way of example, and not of limitation, Common Expenses shall include all of the Association's legal expenses and costs relating to or arising from the enforcement and/or interpretation of this Declaration and/or the Club Plan.

1.1.27. "Community Completion Date" shall mean the date upon which all Units in Tuscawilla, as ultimately planned and as fully developed, have been conveyed by Declarant and/or Builder(s) to Owners.

1.1.28. "Community Control Program" shall mean one or more electronic entrance gates and/or gatehouses. THE PROVISION OF A COMMUNITY CONTROL PROGRAM SYSTEM (INCLUDING ANY TYPE OF GATEHOUSE) SHALL IN NO MANNER CONSTITUTE A WARRANTY OR REPRESENTATION AS TO THE PROVISION OF OR LEVEL OF SECURITY WITHIN THE PROPERTY. NEITHER DECLARANT, THE CLUB OWNER NOR THE ASSOCIATION GUARANTEE OR WARRANT, EXPRESSLY OR BY IMPLICATION, THE MERCHANTABILITY OF FITNESS FOR USE OF ANY COMMUNITY CONTROL PROGRAM SYSTEM, OR THAT ANY SUCH SYSTEM (OR ANY OF ITS COMPONENTS OR RELATED SERVICES) WILL PREVENT INTRUSIONS, FIRES, OR OTHER OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE COMMUNITY CONTROL PROGRAM SYSTEM IS DESIGNED TO MONITOR THE SAME. EACH AND EVERY BUILDER, OWNER AND THE OCCUPANT OF EACH UNIT ACKNOWLEDGES THAT DECLARANT, THE CLUB OWNER, AND THE ASSOCIATION, THEIR EMPLOYEES, AGENTS, MANAGERS, DIRECTORS, AND OFFICERS, ARE NOT INSURERS OF OWNERS OR UNITS, OR THE PERSONAL PROPERTY LOCATED WITHIN UNITS. NEITHER DECLARANT, THE CLUB OWNER NOR THE ASSOCIATION WILL BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES, OR DEATHS RESULTING FROM ANY SUCH EVENTS.

1.1.29. "Community Standards" shall have the meaning ascribed thereto in **Section 12.2.1.6** hereof.

1.1.30. "Contractors" shall have the meaning set forth in **Section 12.2.6** hereof.

1.1.31. "County" shall mean Martin County, Florida.

1.1.32. "Data Transmission Services" shall mean enhanced services as defined in Section 64.702 of Title 47 of the Code of Federal Regulations, as amended from time to time, and without regard to whether the transmission facilities are used in interstate commerce.

1.1.33. "Declarant" shall mean and refer to EF Minus S, LLC, a Florida limited liability company, or any such corporation, partnership, limited liability company or other entity which is specifically assigned the rights of the "Declarant" under this Declaration.

1.1.34. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Tusawilla and all amendments thereof filed for record in the Public Records of Martin County, Florida.

1.1.35. "Development Order" shall mean and refer to the Tusawilla Planned Unit Development Zoning Agreement by and between Declarant, BreFrank, Inc. and Martin County recorded on January 30, 2006 in Official Records Book 02106, Page 2366, in the Public Records.

1.1.36. "Equestrian Trail" shall mean those trails located within the Property boundary and shown on the Plat which may be used by the public for horseback riding purposes which shall be maintained in accordance with the terms of the Development Order.

1.1.37. "Foreclosure" shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the conveyance of secured property by a deed in lieu of a judicial foreclosure.

1.1.38. "Individual Assessments" shall have the meaning set forth in **Section 11.5** hereof.

1.1.39. "Initial Property" shall mean and refer to that certain real property more particularly described on **Exhibit "A"**, and all improvements thereon.

1.1.40. "Institutional Mortgage" shall be deemed to mean a Mortgage held by a bank, trust company, insurance company, pension fund or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, and the holder of any Mortgage of public record given or assumed by Declarant, and the successors of any of the foregoing.

1.1.41. "Lot" shall mean any platted lot shown on a Plat. Upon completion of the Unit on a Lot, such Lot and the improvements thereon shall collectively be considered to be a Unit for purposes of this Declaration.

1.1.42. "Member" shall mean and refer to any member of the Association, which shall include each Owner of a Lot or Unit.

1.1.43. "Mortgage" shall mean and refer to a mortgage, installment land sales contract or other similar security instrument granting, creating or conveying a lien upon, or a security interest in, a Lot or Unit.

1.1.44. "Mortgagee" shall mean and refer to the holder of a Mortgage.

1.1.45. "Multichannel Video Programming Service" shall mean any method of delivering video programming to Units including, without limitation, interactive video programming. By way of example, and not of limitation, the term Multichannel Video Programming Service may include cable television, satellite master antenna television, multipoint distribution systems, video dial tone, or any combination thereof.

1.1.46. "Natural Resource Management Plan" is defined in **Section 12.3.2**.

1.1.47. "Natural Resources Manager" shall mean the person responsible for ensuring compliance with the Audubon International goals and enforcing the requirements of the Natural Resource Management Plan for Tusawilla. A Natural Resources Manager may not be required, depending upon the level of participation in the Audubon International Sustainable Development Program. If required, the Natural Resources Manager shall be employed by Declarant until Turnover. Subsequent to Turnover, the Natural Resources Manager shall be a volunteer or an employee of the Association.

1.1.48. "NPDES" shall have the meaning ascribed thereto in **Section 12.2.6**.

1.1.49. "Occupant" shall mean and refer to any person, including, without limitation, any Owner or any guest, invitee, lessee, tenant or family member of an Owner, occupying or otherwise using a Lot or Unit within the Property.

1.1.50. "Owner" shall mean and refer to one or more persons, including Declarant, who or which owns fee simple title to any Lot or Unit. The term "Owner" shall not include a Builder.

1.1.51. "Plat" shall mean any plat of any portion of Tusawilla filed in the Public Records, as the same may be amended by Declarant, from time to time.

1.1.52. "Public Records" shall mean the Public Records of Martin County, Florida.

1.1.53. "Premium Channel" shall mean any channel recognized in the industry as premium including, without limitation, HBO, Showtime, Disney, Cinemax and the Movie Channel.

1.1.54. "Property" shall mean all of the real and personal property subject to this Declaration.

1.1.55. "Public Walking Trail(s)" shall mean those trails located within the Property and shown on the Plat, which may be used by the public for pedestrian purposes and shall be maintained in accordance with the terms of the Development Order.

1.1.56. "Recreational Facilities" shall mean and refer to the recreational facilities that are owned by the Association from time to time (including those recreational facilities which may be acquired by the Association pursuant to the Club Plan), which may, at Declarant's sole and absolute discretion, be constructed within the Property. Recreational Facilities shall be part of the Common Areas. The Recreational Facilities do not include any part of the Club Facilities unless and until the Club Facilities are sold and conveyed to the Association by Club Owner pursuant to the Club Plan. In the event the Club Facilities are conveyed to the Association, upon such acquisition the Club Facilities shall become Recreational Facilities and part of the Common Areas.

1.1.57. "Roads" shall mean and refer to any street or thoroughfare which is constructed by Declarant within the Common Areas, and which is dedicated to the Association, or to any governmental agency, whether same is designated, for example, by way of illustration and not as limitation, as a street, avenue, boulevard, drive, place, court, road, terrace, way, circle, lane, walk, alley or similar designation.

1.1.58. "Rules and Regulations" shall mean the rules, regulations, and policies for the administration and use of the Property, which may be adopted and enforced by the Board from time to time.

1.1.59. "SFWMD" shall mean the South Florida Water Management District.

1.1.60. "SFWMD Permit" shall mean Permit No. 43-01783-P issued by SFWMD as may be amended from time to time, a current copy of which is attached hereto as Exhibit "D".

1.1.61. "Special Assessments" shall mean those Assessments more particularly described as Special Assessments in Section 11.4 hereof.

1.1.62. "Surface Water Management System" shall mean the collection of devices, improvements, or natural systems whereby surface waters are controlled, impounded or obstructed and shall include Club House Lake. This term may include, but is not limited to, storm sewers, exfiltration trenches, wetland preservation areas, Wetland & Upland Conservation Areas, canals, dams, impoundments, reservoirs, drainage maintenance easements and all structures, works and/or improvements defined in permits and/or referenced in Section 373.403 of the Florida Statutes to extent the same exist within the Property. The Tuscawilla Surface Water Management System includes those works authorized by SFWMD pursuant to the Permit.

1.1.63. "Telecommunications Provider" shall mean any party contracting with the Association to provide Owners with one or more Telecommunication Services. Declarant, its affiliates, subsidiaries, joint venturers, associates, and partners may be a Telecommunications Provider. With respect to any particular Telecommunications Services,

there may be one or more Telecommunications Providers. By way of example, with respect to Multichannel Video Programming Service, one Telecommunications Provider may provide the Association such service while another may own, maintain and service the Telecommunications Systems that allow delivery of such Multichannel Video Programming Service.

1.1.64. "Telecommunications Services" shall mean local exchange services provided by a certified local exchange carrier or alternative local exchange company, intraLATA, and interLATA voice telephony and data transmission service and Multichannel Video Programming Service. Without limiting the foregoing, such Telecommunications Services may include the provision of the following services: Toll Calls, Data Transmission Services, Basic Service, Expanded Basic Service and Premium Channels.

1.1.65. "Telecommunications Systems" shall mean all facilities, items and methods required and/or used in order to provide Telecommunications Services to the Property. Without limiting the foregoing, Telecommunications Systems may include wires (fiber optic or other material), conduits, passive and active electronic equipment, pipes, wireless cell sites, computers, modems, satellite antennae site(s), transmission facilities, amplifiers, junction boxes, trunk distribution, drop cables, related apparatus, converters, connections, head-end antennae, earth station(s), appurtenant devices, network facilities necessary and appropriate to support provision of local exchange services and/or any other item appropriate or necessary to support provision of Telecommunications Services. Ownership and/or control of all of a portion of any part of the Telecommunications Services may be bifurcated among network distribution architecture, system head-end equipment, and appurtenant devices (e.g., individual adjustable digital units).

1.1.66. "Toll Calls" shall have meaning given to such term by the Florida Public Service Commission and/or the Federal Communications Commission.

1.1.67. "Turnover" shall have the meaning set forth in **Section 10.2** of this Declaration.

1.1.68. "Tusawilla" shall have the meaning set forth in the Recitals hereof subject to additions and deletions thereto as permitted pursuant to the terms of this Declaration. Declarant may, when amending or modifying the description of real property which is subject to the operation of this Declaration, also amend or modify the definition of Tusawilla.

1.1.69. "Unit" shall mean and refer to any improved property intended for residential use located within the Property. A Unit shall be deemed created and have perpetual existence upon the issuance of a final or temporary certificate of occupancy for such residence; provided, however, the subsequent loss of such certificate of occupancy (e.g., by casualty or remodeling) shall not affect the status of a Unit, or the obligation of Owner to pay Assessments with respect to such Unit. The term "Unit" includes any interest in land, improvements, or other property appurtenant to the Unit.

1.1.70. "Violations Committee" shall have the meaning ascribed to such term in **Section 12.2.11** herein.

1.1.71. "Wetland & Upland Conservation Areas" shall mean any portion of Tuscawilla which is intended to be preserved and maintained in a natural state in perpetuity. The Wetland & Upland Conservation Areas shall include all wetland enhancement and wetland creation areas and any preserved upland areas as more specifically described and located on any site plan or Plat of any portion of Tuscawilla or specified in any applicable permit. All Wetland & Upland Conservation Areas shall be protected in perpetuity and maintained by the Association pursuant to the Development Order and any applicable permit.

1.2. Interpretation and Flexibility. In the event of any ambiguity or question as to whether any person, entity, property or improvement falls within any of the definitions set forth in this **ARTICLE I**, the determination made by Declarant in such shall be binding and conclusive. Moreover, Declarant may alter, amend or supplement the application of any portion(s) of this Declaration to specific portion(s) of the Property.

ARTICLE II. DEVELOPMENT

2.1. Development of Property. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot or Unit primarily for the purpose of sale, to make improvements and changes to all Common Areas and to all Lots or Units owned by Declarant, including without limitation: (i) installation and maintenance of any improvements in and to the Common Areas; (ii) changes in the location of the boundaries of any Lots or Units owned by Declarant or of the Common Areas; and (iii) changes in the maintenance of any water, sewer, drainage, irrigation well, septic tank or other utility system or facilities.

2.2. Development of Additional Property. Prior to Turnover, Declarant may subject Additional Property to this Declaration, including without limitation, Common Areas, Recreational Facilities, Roads, vacant lands, and property of all types, including undeveloped lands, platted subdivisions, and lots by recording in the Public Records, an amendment to this Declaration describing the property to be submitted to this Declaration and setting forth any use restrictions, voting rights, maintenance requirements, user fees, dues, or other provisions pertaining to such additional property, if any. Such amendments may include, without limitation, the creation of easements for Telecommunications Systems, utility, drainage, ingress and egress and roof overhangs over any portion of Tuscawilla; additions or deletions from the properties comprising the Common Areas; changes in the Rules and Regulations, and modifications of restrictions on the Units, and maintenance standards for landscaping. Declarant's right to amend under this provision is to be construed as broadly as possible. Despite the fact that Declarant's submission of Additional Property to this Declaration may result in an overall increase in the Common Expenses, and a resulting increase in the Assessments payable by each Lot or Unit, or may result in an increase in the total number of votes or Members in the Association, Declarant shall not be required to obtain the joinder or consent of the Association, any Lot or Unit Owner, any other party, or any Mortgagee except for the approval, if required, of the County or any other government authority having jurisdiction. Any property submitted to this Declaration by amendment, shall be included in the term "Property", and shall be part of Tuscawilla. In no event shall Declarant be obligated to submit any Additional Property to the provisions of this Declaration.

2.3. No Vested Rights. Each Owner by acceptance of a deed to a Unit irrevocably waives any claim that such Owner has any vested rights pursuant to case law or statute with respect to this Declaration or any of the other Association Documents. It is expressly intended that Declarant and the Association have the unfettered right to amend this Declaration and the other Association Documents except as expressly set forth herein.

2.4. Common Areas.

2.4.1. Common Areas Generally. NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DEFINITION OF "COMMON AREAS" AND AS SET FORTH IN THIS DECLARATION IS FOR DESCRIPTIVE PURPOSES ONLY AND SHALL IN NO WAY BIND OR OBLIGATE DECLARANT TO CONSTRUCT OR SUPPLY ANY SUCH ITEM AS SET FORTH IN SUCH DESCRIPTION. FURTHER, NO PARTY SHALL BE ENTITLED TO RELY UPON SUCH DESCRIPTION AS A REPRESENTATION OR WARRANTY AS TO THE EXTENT OF THE COMMON AREAS TO BE OWNED, LEASED BY OR DEDICATED TO THE ASSOCIATION, EXCEPT AFTER CONSTRUCTION AND DEDICATION OR CONVEYANCE OF ANY SUCH ITEM. In addition, the following provisions shall be applicable to the Common Areas.

2.4.2. Establishment of Common Areas. Declarant may in its sole discretion, establish Common Areas for recreational, maintenance, utilities, access, ingress, egress, or other purposes. The Common Areas shall be only that property dedicated to the Association in a Plat of Tuscawilla or property designated as such by Declarant in this Declaration, an amendment, deed conveying the Common Areas to the Association or other written instrument recorded in the Public Records, including any improvements and fixtures thereon, owned by, leased to, or the use of which has been granted to the Association as set forth in this Declaration or an amendment. Common Areas should also include any public property which the Association agrees to maintain, which may include portions of public rights-of-way. Prior to the conveyance, identification and/or dedication of the Common Areas to the Association, any portion of the Common Areas owned by Declarant shall be operated, maintained, and administered at the sole cost of the Association for all purposes and uses reasonably intended, as Declarant in its sole discretion deems appropriate. During such period, Declarant shall own, operate, and administer the Common Areas without interference from any Owner or Mortgagee of a Unit or any other person or entity whatsoever. Owners shall have no right in or to any Common Areas referred to in this Declaration unless and until same are actually constructed, completed, and conveyed to, leased by, dedicated to, and/or maintained by the Association. THE CURRENT CONCEPTUAL PLANS AND/OR REPRESENTATION, IF ANY REGARDING THE COMPOSITION OF THE COMMON AREAS ARE NOT A GUARANTEE OF THE FINAL COMPOSITION OF THE COMMON AREAS. DECLARANT HAS NO OBLIGATION OR RESPONSIBILITY TO CONSTRUCT OR SUPPLY ANY SUCH COMMON AREAS OF THE ASSOCIATION, AND NO PARTY SHALL BE ENTITLED TO RELY UPON ANY STATEMENT CONTAINED HEREIN AS A REPRESENTATION OR WARRANTY AS TO THE EXTENT OF THE COMMON AREAS TO BE OWNED, LEASED BY, OR DEDICATED TO THE ASSOCIATION. DECLARANT, SO LONG AS IT CONTROLS THE ASSOCIATION, FURTHER SPECIFICALLY RETAINS

THE RIGHT TO ADD TO, DELETE FROM, OR MODIFY ANY OF THE COMMON AREAS REFERRED TO HEREIN.

2.4.3. **Conveyance.** After Turnover, or earlier as determined by Declarant in its sole discretion, all or portions of the Common Areas may be dedicated by Plats, created in the form of easements, or conveyed by written instrument recorded in the Public Records, or by quitclaim deed from Declarant to the Association. The dedication, creation by easement, or conveyance shall be subject to easements, restrictions, reservations, conditions, limitations, and declarations of record, real estate taxes for the year of conveyance, zoning, land use regulations and survey matters. The Association shall be deemed to have assumed and agreed to pay all continuing obligations and service and similar contracts relating to the ownership, operation, maintenance and administration of the conveyed portions of Common Areas and other obligations relating to the Common Areas imposed herein. The Association shall, and does hereby, indemnify and hold Declarant harmless on account thereof. The Association, by its joinder in this Declaration, hereby accepts such dedication(s) or conveyance(s) without setoff, condition, or qualification of any nature. The Common Areas, personal property and equipment thereon and appurtenances thereto shall be dedicated or conveyed in "as is, where is" condition WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION, FITNESS OR MERCHANTABILITY OF THE COMMON AREAS BEING CONVEYED.

2.4.4. **Form of Common Area Deed.** Each deed of the Common Areas shall be subject to the following provisions:

2.4.4.1. a perpetual nonexclusive easement in favor of governmental agencies for the maintenance and repair of existing road, speed and directional signs, if any;

2.4.4.2. matters reflected in the Plat(s) of Tusawilla;

2.4.4.3. perpetual non-exclusive easements in favor of Declarant, its successors, and assigns in, to, upon and over all of the Common Areas for the purposes of vehicular and pedestrian ingress and egress, installation of utilities, landscaping and/or drainage, without charge, including, without limitation, the right to use such roadways for construction vehicles and equipment. The easements reserved in the deed shall run in favor of Declarant, and its employees, representatives, agents, licensees, guests, invitees, successors and/or assigns;

2.4.4.4. all restrictions, easements, covenants and other matters of record;

2.4.4.5. a reservation of right in favor of Declarant (so long as Declarant owns any portion of Tusawilla) to require that the Association reconvey all or a portion of the Common Areas conveyed by quitclaim deed in favor of Declarant in the event that such property is required to be owned by

Declarant for any purpose, including, without limitation, the reconfiguration of any adjacent property by replatting or otherwise; and

2.4.4.6. a reservation of rights in favor of the Club Owner as is provided in **Section 6.2.4** herein.

2.4.5. Operation After Conveyance. After the conveyance or dedication of any portion of the Common Areas to the Association, the portion of the Common Areas so dedicated shall be owned, operated and administered by the Association for the use and benefit of the Owners of all property interests in Tuscawilla including, but not limited to, the Association, Declarant, Club Owner, Owners and any Mortgagees. Subject to the Association's right to grant easements, and other interests as provided herein, the Association may not convey, abandon, alienate, encumber, or transfer all or a portion of the Common Areas to a third party **without** (i) if prior to Turnover, the approval of (a) a majority of the Board; **and** (b) the consent of Declarant and Club Owner, or (ii) after Turnover, approval of (a) sixty six and two-thirds percent (66 2/3%) of the Board, (b) seventy-five percent (75%) of all of the votes in the Association, and (c) the Club Owner.

2.4.6. Paved Common Areas. The Common Areas may contain certain paved areas. Without limiting any other provision of this Declaration, the Association is responsible for the maintenance and/or resurfacing of all paved surfaces, including but not limited to roads, bridges, pathways, walking trails, bicycle paths, and sidewalks forming a part of the Common Areas, if any. Although pavement appears to be a durable material, it requires maintenance. The Association shall have the right, but not the obligation, to arrange for an annual inspection of all paved surfaces forming a part of the Common Areas by a licensed paving contractor and/or engineer. The cost of such inspection shall be a part of the Common Expenses of the Association. The Association shall determine annually the parameters of the inspection to be performed, if any. By way of example, and not of limitation, the inspector may be required to inspect the roads and sidewalks forming part of the Common Areas annually for deterioration and to advise the Association of the overall pavement conditions including any upcoming maintenance needs. Any patching, grading, or other maintenance work should be performed by a company licensed to perform the work. From and after the Community Completion Date, the Association should monitor the roads and sidewalks forming the Common Areas monthly to ensure that vegetation does not grow into the asphalt and that there are no eroded or damaged areas that need immediate maintenance.

2.4.7. Delegation. Once conveyed or dedicated to the Association, the Common Areas and facilities and improvements located thereon shall, subject to the provisions of this Declaration and the document of conveyance or dedication, at all times be under the complete supervision, operation, control, and management of the Association. Notwithstanding the foregoing, the Association may delegate all or a portion of its obligations hereunder to a licensed manager or professional management company. The Association specifically shall have the right to pay for management services on any basis approved by the Board (including bonuses or special fee arrangements for meeting financial or other goals). Declarant, its affiliates and/or subsidiaries shall have the right to manage the Association. Owners and the Association acknowledge that it is fair and reasonable to have Declarant, its affiliates and/or

subsidiaries manage the Association. Further, in the event that Common Areas are created by easement or maintenance agreement, the Association's obligations and rights with respect to such Common Areas may be limited by the terms of the document creating such easement or maintenance obligation.

2.4.8. Property Owned by Others. The Association may enter into easement agreements or other use or possessory agreements whereby the Association may obtain the use or possession of certain real property not owned by Declarant, on an exclusive or non-exclusive basis, and included or not included within Property, for certain specified purposes and whereby the Association agrees to maintain and pay for the use, enjoyment, access, taxes, insurance, administration, upkeep, repair, replacement and maintenance of such property. The aforesaid expenses shall be a Common Expense, whether or not such real property shall be Common Areas. Prior to Turnover, no such agreement shall be entered into without the prior written consent of Declarant, which consent may be withheld in Declarant's sole discretion.

2.5. Roadways. The Property is generally bounded on the south by Martin Highway (S.R. 714), on the west by Boat Ramp Avenue, on the east by State Road 76-A, and on the north by the Stormwater Treatment Area. NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDITION, LOCATION, WIDTH OR FUTURE MODIFICATIONS TO MARTIN HIGHWAY (S.R. 714), BOAT RAMP AVENUE OR STATE ROAD 76-A OR THE AMOUNT OF TRAFFIC OVER SUCH ROADS OR THE AMOUNT OF NOISE CAUSED THEREBY. DECLARANT AND THE ASSOCIATION HEREBY DISCLOSE THAT ROAD WIDENINGS OF ALL SUCH ROADS MAY OCCUR FROM TIME TO TIME.

2.6. Interest Subject to Plan of Development. Every purchaser of a Lot or Unit shall purchase such Lot or Unit, and every Mortgagee and lienholder holding an interest therein, shall take title, or hold such security interest with respect thereto, subject to Declarant's right to add Additional Property to the Property as hereinabove provided and subject to the provisions of this Declaration. Any provision of this Declaration to the contrary notwithstanding, the provisions set forth in this **ARTICLE II** may not be abrogated, modified, rescinded, supplemented or amended in whole or in part without the prior written consent of Declarant.

2.7. Development Order; Master Plan Site Plan(s); Subdivision Plat. Prior to Turnover, Declarant reserves the right to record, modify, amend, revise and add to, at any time and from time to time, the Development Order, master plan or one or more site plans, subdivision Plat(s) or resubdivision Plat(s) setting forth such information as Declarant may deem necessary with regard to the Property, including without limitation the locations and dimensions of the Lots, Units, Common Areas, Additional Property, Wetland & Upland Conservation Areas, Roads, utility systems, drainage systems, utility easements, drainage easements, access easements and set-back line restrictions. Notwithstanding the foregoing, any Plat, amendment to the Development Order, master plan or one or more site plans is subject to approval by the County.

2.8. Withdrawal of Property. Declarant may, at any time and from time to time, withdraw any portion of the Property from the provisions of this Declaration as a result of any change whatsoever in Declarant's plans for Tuscawilla, without the joinder or consent of any party other than the Owners of that portion of the Property to be withdrawn. Any withdrawal of any portion of the Property shall not result in a material adverse change to the overall uniform scheme of development for Tuscawilla. Declarant shall withdraw portions of the Property from the provisions of this Declaration by executing an amendment to this Declaration which shall be filed in the Public Records, together with a legal description of that portion of the Property withdrawn by such amendment.

2.9. Not a Condominium. The Association created pursuant to this Declaration and the Articles of Incorporation of the Association is expressly not intended to be a condominium association and is not created in accordance with the Condominium Act.

2.10. Amendment. This Article shall not be amended without the prior written consent of Declarant.

ARTICLE III. PROPERTY RIGHTS

3.1. General. Each Lot and Unit shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive ownership and possession of his Lot or Unit, subject to the provisions of this Declaration. The ownership of each Lot and Unit shall include, and there shall pass with each Lot and Unit as an appurtenance thereto, membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title to his Lot or Unit. Lots shall not be subdivided, and, except as provided in Sections 2.1 and 3.4 hereof, the boundaries between Lots shall not be relocated, unless the relocation thereof is made with the consent of Declarant, so long as Declarant owns a Lot or Unit primarily for the purpose of sale. Notwithstanding the foregoing, nothing herein shall prohibit the combination of two or more Lots into a larger Lot in order to create a Unit site larger than one Lot.

3.2. Use of Common Areas.

(a) Until Turnover, Declarant shall have the right to use any portion of the Common Areas, without charge, for any purpose deemed appropriate by Declarant.

(b) Every Owner shall have a non-exclusive right, privilege and easement of use and enjoyment in and to the Common Areas, subject to this Declaration as it may be amended from time to time, and subject to any restrictions or limitations contained in this Declaration or in any deed conveying such property to the Association. Any Owner may delegate his or her right of enjoyment to the members of his or her family, tenants, and social invitees subject to reasonable regulation by the Board, and in accordance with procedures which it may adopt. An Owner who leases his or her Unit shall be deemed to have delegated all such rights to the

Unit's lessee. The rights and easements of enjoyment created hereby shall be subject to the following:

3.2.1. The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real and personal property as security for money borrowed or debts incurred.

3.2.2. The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against Foreclosure.

3.2.3. The right of the Association to suspend:

3.2.3.1. The right of an Owner to use the Common Areas and Recreational Facilities within the Common Areas for any period during which an Assessment or any other charge against such Owner's Unit remains delinquent; and

3.2.3.2. The enjoyment rights and easements of any Owner for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation (other than a delinquent Assessment), of this Declaration, any applicable amendment, the Articles, the Bylaws, or the Rules and Regulations of the Association after notice and hearing pursuant to the Bylaws.

3.2.4. The right of the Association to maintain the Common Areas.

3.2.5. The right of the Board to adopt Rules and Regulations affecting the use and enjoyment of the Common Areas, including, without limitation, rules restricting use of Recreational Facilities and Wetland & Upland Conservation Areas within the Common Areas to Occupants of Units and their guests and rules limiting the number of guests who may use the Common Areas. The Board may also promulgate procedures for the enforcement of the Rules and Regulations, including, without limitation, the assessment of fines against Owners who violate the restrictions regarding the Wetland & Upland Conservation Areas and against Owners, whose family members, guests, invitees, licensees, employees, or agents violate such restrictions. The fines will be levied as an Individual Assessment as set forth in Section 11.5 hereof upon the Owner who violates the restrictions, or upon the Owner whose family members, guests, invitees, licensees, employees, or agents violate the restrictions. Before any fine shall be effective, the Owner shall be entitled to notice and an opportunity to be heard before the Board. Notwithstanding anything contained herein to the contrary, the foregoing shall be subject to the provisions in the Bylaws which provide for the assessment of fines.

3.2.6. The right of the Board to post motor vehicle speed limits throughout the Common Areas, and to promulgate traffic regulations for the Roads. The Board may also promulgate procedures for the enforcement of the traffic regulations, including, without limitation, the assessment of fines against Owners who violate the traffic regulations and against Owners whose family members, guests, invitees, licensees, employees, or agents violate the traffic regulations. The fines will be levied as an Individual Assessment as set forth in

Section 11.5 hereof upon the Owner who violates the traffic regulations, or upon the Owner whose family members, guests, invitees, licensees, employees, or agents violate the traffic regulations. Before any fine shall be effective, the Owner shall be entitled to notice and an opportunity to be heard before the Board. Notwithstanding anything contained herein to the contrary, the foregoing shall be subject to the provisions in the Bylaws which provide for the assessment of fines.

3.2.7. The right of the Board to establish parking regulations throughout the Common Areas and Tuscawilla. In the event the Board has established parking regulations, the Board shall also promulgate procedures for the enforcement of the parking regulations, including, without limitation, the assessment of fines against Owners who violate the parking regulations and against Owners whose family members, guests, invitees, licensees, employees, or agents violate the parking regulations. The Board will diligently enforce such parking regulations and the fines will be levied as an Individual Assessment as set forth in **Section 11.5** hereof upon the Owner who violates the parking regulations, or upon the Owner whose family members, guests, invitees, licensees, employees, or agents violate the parking regulations. Before any fine shall be effective, the Owner shall be entitled to notice and an opportunity to be heard before the Board. Notwithstanding anything contained herein to the contrary, the foregoing shall be subject to the provisions in the Bylaws which provide for the assessment of fines.

3.2.8. The right of the Association to dedicate or transfer all, or any part, of the Common Areas to any governmental or quasi-governmental agency, authority, utility, water management or water control district, with the consent of Declarant, prior to the Community Completion Date, land at any time with the consent of the Club Owner.

3.2.9. The restrictions contained on any Plat, or filed separately, with respect to all or any portion of the Property.

3.2.10. All of the provisions of this Declaration, the Articles, and Bylaws of the Association and all exhibits thereto, and all Rules and Regulations adopted by the Association, as same may be amended from time to time.

3.2.11. The rights and easements reserved to Declarant in this Declaration.

3.2.12. The right of the Association to grant and accept easements as provided in **Section 7.4** hereof and to dedicate or transfer fee simple title to all or any portion of the Common Areas to the County, the State of Florida or to any other local, state or federal governmental entity, or to any public agency or authority, public service district, public or private utility, or other person, with the consent of Declarant, prior to the Community Completion Date, land at any time with the consent of the Club Owner.

3.2.13. The rights and easements reserved in this Declaration for the benefit of the Association, its directors, officers, agents and employees.

3.2.14. The rights and easements reserved in this Declaration for the benefit of the Club Owner, its directors, officers, agents and employees and invitees.

3.2.15. The rights and easements reserved in this Declaration for the benefit of the Additional Property.

3.2.16. The rights of the public to use the Equestrian Trail and the Public Walking Trail(s) as set forth on the Plat.

3.2.17. In case of any emergency originating in, or threatening the Property or any Unit, regardless of whether the Owner is present at the time of such emergency, the Board, or any other person authorized by the Board, or the management agent under a management agreement, shall have the right to enter the Property or such Unit, for the purpose of remedying, or abating, the cause of such emergency, and such right of entry shall be immediate.

3.2.18. The right of Declarant and/or the Association to enter into easement agreements or other use or possession agreements whereby Owners, Telecommunications Providers, other service providers and/or the Association and/or others may obtain the use, possession of, or other rights regarding certain property, on an exclusive or non-exclusive basis, for certain specified purposes. The Association may agree to maintain and pay the taxes, insurance, administration, upkeep, repair, and replacement of such property, the expenses of which shall be Common Expenses. Any such agreement by the Association prior to the Community Completion Date shall require the consent of Declarant.

3.2.19. The perpetual right of Declarant to access and enter the Common Areas at any time, even after the Community Completion Date, for the purposes of inspection and testing of the Common Areas. The Association and each Owner shall give Declarant unfettered access, ingress and egress to the Common Areas so that Declarant and/or its agents can perform all tests and inspections deemed necessary by Declarant. Declarant shall have the right to make all repairs and replacements deemed necessary by Declarant. At no time shall the Association and/or an Owner prevent, prohibit and/or interfere with any testing, repair or replacement deemed necessary by Declarant relative to any portion of the Common Areas.

3.2.20. The right of Declarant and/or the Association and/or the Club Owner to modify the Common Areas as set forth in this Declaration.

3.2.21. The right of Declarant and/or the Association to enter into contribution and maintenance agreements, cost sharing agreements, easement agreements, and use agreements with the Club Owner.

3.2.22. An Owner relinquishes use of the Common Areas at any time that a Unit is leased to a tenant.

3.3. Title to Common Areas. Declarant shall not be required to convey title to the Common Areas or any portion thereof to the Association until Turnover. Notwithstanding the manner in which title is held, the Association shall be responsible for the management, maintenance, and operation of the Common Areas, and for the payment of all real estate taxes and other charges which are liens against the Common Areas, from and after the recording of this Declaration. On or before Turnover, Declarant shall convey the Common Areas to the Association by quitclaim deed. Declarant shall not be required to provide any title insurance or

other related title documents to the Association in connection with the conveyance of the Common Areas. The dedication, creation by easement, or conveyance shall be subject to easements, restrictions, reservations, conditions, limitations, and declarations of record, real estate taxes for the year of conveyance, zoning, land use regulations and survey matters. The Association shall be deemed to have assumed and agreed to pay all continuing obligations and service and similar contracts relating to the ownership, operation, maintenance, and administration of the conveyed portions of the Common Areas and other obligations relating to the Common Areas imposed herein. The Association shall, and does hereby, indemnify and hold Declarant harmless on account thereof. The Association, by its joinder in this Declaration, hereby accepts such dedications or conveyances without setoff, condition, or qualification of any nature. The Common Areas, personal property and equipment thereon and appurtenances thereto shall be dedicated or conveyed in "as is, where is" condition WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION, FITNESS OR MERCHANTABILITY OF THE COMMON AREAS BEING CONVEYED. Declarant shall have the right to assign and the Association shall have the obligation to assume all responsibilities under any permits or governmental approvals affecting the Common Areas.

3.4. Changes in Boundaries; Additions to and Easements Over Common Areas.

Declarant reserves the right to change and realign the boundaries of the Common Areas and any Lots or Units owned by Declarant, including the realignment of boundaries between adjacent Lots and/or Units owned by Declarant. Declarant's right to change the boundaries of Lots shall include the right to approve minor changes in Lot boundaries after conveyance of Lots from Declarant, provided that the affected Owners exchange deeds, in which event no other person nor the Association shall have the right to consent to such modifications. Declarant's consent to such modification must be in writing and any such modification must comply with governmental requirements. Furthermore, Declarant reserves the right, but shall not have the obligation, to convey by quit-claim deed to the Association at any time and from time to time, as an addition to the Common Areas, such other portion of the Property as Declarant, in its discretion, shall choose.

3.5. Purchase of Club Facilities. The Association shall have the power to purchase the Club Facilities and Club Property and to acquire debt therefore in accordance with the terms of the Club Plan. The costs of such acquisition shall be levied against every Owner of a Lot or Unit as a Special Assessment as set forth in **Section 11.4**. Upon acquisition of the Club Facilities and Club Property (and not prior thereto), the Club Facilities and Club Property shall become part of the Common Area.

3.6. No Partition. There shall be no judicial partition of the Property or any part thereof, nor shall any person acquiring any interest in the Property or any part thereof seek any such judicial partition unless the Property has been removed from the provisions of this Declaration.

3.7. Obstruction of Common Areas. No portion of the Common Areas may be obstructed, encumbered, or used by Owners for any purpose other than as permitted by the Association and this Declaration.

3.8. Assumption of Risk. Without limiting any other provision herein, each person within any portion of the Common Areas accepts and assumes all risk and responsibility for noise, liability, injury, or damage connected with use or occupation of any portion of such Common Areas, including, without limitation, (a) noise from maintenance equipment, (b) use of pesticides, herbicides and fertilizers, (c) view restrictions caused by maturation of trees and shrubbery, (d) reduction in privacy caused by the removal or pruning of shrubbery or trees within any portion of the Common Areas and (e) design of any portion of the Common Areas. The person also expressly indemnifies and agrees to hold harmless Declarant, the Association, Club Owner, Club Manager, and all employees, directors, representatives, officers, agents, and partners of the foregoing, from any and all damages, whether direct or consequential, arising from or related to the person's use of the Common Areas, including for attorneys' fees, paraprofessional fees and costs at trial and upon appeal. Without limiting the foregoing, all persons using the Common Areas, including without limitation, any pool or area adjacent to the lake, do so at their own risk. BY ACCEPTANCE OF A DEED, EACH OWNER ACKNOWLEDGES THAT THE COMMON AREAS MAY CONTAIN WILDLIFE SUCH AS ARMADILLOS, GOPHER TORTOISE, ALLIGATORS, FISH, RACCOONS, DEER, COYOTES, PANTHERS, FOWL, AND FOXES. DECLARANT AND THE ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR MONITORING SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE. EACH OWNER AND HIS OR HER GUESTS AND INVITEES ARE RESPONSIBLE FOR THEIR OWN SAFETY.

3.9. Owner's Obligation to Indemnify. Each Owner agrees to indemnify and hold harmless Declarant, the Association, Club Owner and Club Manager, their officers, partners, agents, employees, affiliates, directors and attorneys (collectively, "Indemnified Parties") against all actions, injury, claims, loss, liability, damages, costs and expenses of any kind or nature whatsoever ("Losses") incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect, or consequential, as a result of or in any way related to the Common Areas, including, without limitation, use of the lake and other water bodies within the Property by Owners, and their guests, family members, invitees, or agents, or the interpretation of this Declaration and/or exhibits attached hereto and/or from any act or omission of Declarant, the Association, or of any of the Indemnified Parties. Should any Owner bring suit against Declarant, the Association, or any of the Indemnified Parties for any claim or matter and fail to obtain judgment therein against such Indemnified Parties, such Owner shall be liable to such parties for all Losses, costs and expenses incurred by the Indemnified Parties in the defense of such suit, including attorneys' fees and paraprofessional fees at trial and upon appeal.

3.10. Burden Upon the Property. This Declaration and all covenants, conditions and restrictions contained in this Declaration are equitable servitudes, perpetual and run with the land. Each Owner, by acceptance of a deed to a Unit or Lot, and any person claiming by, through or under such Owner (i) agrees to be subject to the provisions of this Declaration and (ii) irrevocably waives any right to deny, and any claim, that this Declaration and all covenants, conditions and restrictions contained in this Declaration are not enforceable under the Marketable Record Title Act, Chapter 712 of the Florida Statutes. It is expressly intended that the Marketable Record Title Act will not operate to extinguish any encumbrance placed on

Tuscawilla by this Declaration. It is further expressly intended that no re-filing or notice of preservation is necessary to continue the applicability of this Declaration and the applicability of all covenants, conditions, and restrictions contained in this Declaration. This provision is not subject to amendment.

3.11. Nonseverability of Rights. The rights, liabilities and obligations set forth herein shall attach to and run with the ownership of any portion of the Property as more specifically set forth herein and may not be severed or alienated from such ownership. The transfer of the fee title to a Unit or Lot, whether voluntary or by operation of law, terminating the Owner's title to that Unit or Lot shall terminate the Owner's rights to the use of and enjoyment of the Common Areas and Club Facilities as it pertains to that Unit or Lot. An Owner's rights and privileges under this Declaration or the Club Plan are not assignable separately from a Unit or Lot. In the event that any Owner desires to sell or otherwise transfer title of his or her Unit or Lot, such Owner shall give the Board at least fourteen (14) days prior written notice of the name and address of the purchaser or transferee, the date on which such transfer of title is to take place, and such other information as the Board may reasonably require. The transferor shall remain jointly and severally liable with the transferee for all obligations of the Owner and the Unit or Lot pursuant to this Declaration including, without limitation, payment of all Assessments accruing prior to the date of transfer. Until written notice is received as provided in this Section, the transferor and transferee shall be jointly and severally liable for Assessment accruing subsequent to the date of transfer. In the event that upon the conveyance of a Unit or Lot an Owner fails in the deed of conveyance to reference the imposition of this Declaration on the Unit or Lot, the transferring Owner shall remain liable for Assessments accruing on the Unit or Lot from and after the date of conveyance.

3.12. Ownership by Entity. In the event that an Owner is other than a natural person, that Owner shall, prior to occupancy of the Unit, designate one or more persons who are to be the Occupants of the Unit and register such persons with the Association. All provisions of this Declaration and other Association Documents shall apply to both such Owner and the designated Occupants.

3.13. Paramount Right of Declarant. Notwithstanding anything to the contrary herein, prior to the Community Completion Date, Declarant shall have the paramount right to dedicate, transfer, and/or convey (by absolute conveyance, easement, or otherwise) portions of Tuscawilla for various public purposes or for the provision of Telecommunications Systems, or to make any portions of Tuscawilla part of the Common Areas, or to create and implement a special taxing district which may include all or any portion of Tuscawilla. In addition, the Common Areas of Tuscawilla may include decorative improvements, berms, waterfalls, and waterbodies. Notwithstanding anything to the contrary herein, the waterbodies may be dry during certain weather conditions or during certain times of the year. Declarant may remove, modify, eliminate or replace these items from time to time in its sole discretion. **SALES BROCHURES, SITE PLANS, AND MARKETING MATERIALS ARE CURRENT CONCEPTUAL REPRESENTATIONS AS TO WHAT FACILITIES, IF ANY, WILL BE INCLUDED WITHIN THE COMMON AREAS. DECLARANT SPECIFICALLY RESERVES THE RIGHT TO CHANGE THE LAYOUT, COMPOSITION, AND**

DESIGN OF ANY AND ALL COMMON AREAS AT ANY TIME WITHOUT NOTICE AT ITS DISCRETION.

**ARTICLE IV.
MEMBERSHIP**

4.1. Membership in the Association. Every Owner of a Lot or Unit, shall be deemed to have membership in the Association. The votes of Members other than Declarant shall be cast at meetings of the Association. The number of votes belonging to the Association shall be equal to the number of Lots and Units located within the Property, with the relative voting weights among all the Lots or Units within the Property being equal. The Owner of a Lot or Unit shall have one vote for each Lot or Unit owned, except that two Lots may be combined to form one Lot with one Unit in accordance with the provisions hereof, in which event the Owner shall have a total of only one vote in the Association. This Section 4.1 shall be subject to the terms of Section 4.3.

4.2. Multiple Ownership; Effect of Additional Property on Voting Weights. Declarant reserves the right to determine the voting weights of any Additional Property. Each Owner, by acceptance of a deed or other conveyance for a Lot or Unit, consents and agrees to the dilution of his voting interest in the Association by virtue of the submission from time to time of the Additional Property to the terms of this Declaration as provided herein. This Section 4.2 shall be subject to the terms of Section 4.3.

4.3. Restrictions on Voting Rights Before Turnover. The terms of Section 4.1 and Section 4.2, and the voting rights of Members and Owners as described therein, shall apply only after Declarant ceases to control the Association as provided in Section 10.2 and Section 14.1; provided, however, that Declarant may at any time and from time to time request the vote of Members and Owners on certain Association matters before Declarant ceases to control the Association as provided in Section 10.2 and Section 14.1.

4.4. Changes in Voting Rights. Notwithstanding anything to the contrary contained herein, so long as Declarant controls the Association pursuant to Sections 10.2 and 14.1, Declarant shall have the right in its sole and absolute discretion to change the voting rights of any portion of the Property at any time and from time to time.

**ARTICLE V.
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

5.1. Common Areas. The Association, subject to the rights of the Owners set forth in this Declaration and the rights of the Club to maintain the Common Areas as provided in Section 6.2.4 herein, shall own, manage, and control the Common Areas and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas), and shall keep it in good clean attractive and sanitary condition, order, and repair, consistent with this Declaration and the Community Standards.

5.2. Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property.

Declarant may convey to the Association improved or unimproved real estate, the Surface Water Management System, the Wetland & Upland Conservation Areas located within the Property, personal property, and leasehold and other property interests. Such property shall be accepted by the Association, and thereafter shall be maintained as Common Areas by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the conveying deed or instrument.

5.3. Rules and Regulations. The Association, through its Board, may make and enforce reasonable rules governing the use of the Property, in addition to further defining or limiting, and, where specifically authorized hereunder, creating exceptions to those covenants and restrictions set forth in this Declaration. Such rules shall be binding upon all Owners, Occupants, invitees, and licensees until and unless repealed or modified in a regular or special meeting by vote of the Members representing a majority.

5.4. Implied Rights: Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Bylaws, the Articles or reasonably implied from or reasonably necessary to effectuate any such right or privilege contained therein. Except as otherwise specifically provided in this Declaration, the Bylaws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the Members.

5.5. Indemnification.

5.5.1. The Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member except for expenses incurred from claims arising from such officer, director or committee member's own individual willful misfeasance, malfeasance, criminal misconduct or bad faith.

5.5.2. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, criminal misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

5.6. Dedication of Common Areas. The Association may dedicate portions of the Common Areas to the County, or to any other local, state, or federal governmental entity, subject to such approval as may be required by this Declaration.

5.7. Telecommunications Services.

5.7.1. Authority of Declarant or Board. Declarant or the Board shall have the right but not the obligation to establish exclusive systems for the provision of Telecommunication Services subject to the regulatory authority of the County and all applicable statutes and ordinances. Declarant or the Board may establish and operate such systems itself or may enter into agreements with related or unrelated persons or entities for this purpose, with any such agreements to be on such terms as Declarant or the Board shall deem, in its sole discretion, to be in the best interests of the Owners. If Declarant is not the Telecommunications Provider for any particular Telecommunications Service, Declarant shall have the right to receive, on a perpetual basis, all or a portion of access fees and/or the revenues derived from such Telecommunications Service within the Property as agreed, from time to time, between the Telecommunications Provider and Declarant. Any such systems for Telecommunications Services shall be mandatory for all Owners, regardless of when they took title to a Unit.

5.7.2. Terms of Services. The terms upon which the Telecommunications Services are established and operated, whether directly by Declarant or by any party contracting with Declarant for this purpose (Declarant or any such party operating the Telecommunications Services or both being referred to herein as the "Telecommunications Provider"), may include, but shall not be limited by or to, the following:

5.7.2.1. Every Unit within the Property receiving Telecommunications Services pursuant to the terms of this Article may be subject to a charge, payable per Unit on the first day of each month or quarter in advance, of specified dollar amounts for Telecommunications Services, which dollar amounts are subject to periodic adjustment.

5.7.2.2. The Association may impose assessments for Telecommunications Services fees due and payable as provided for in **Section 5.7.2.1** and may collect the same and remit the amount collected to the Telecommunications Provider.

5.7.2.3. Where an institutional mortgagee or other Owner of a Unit obtains title to the Unit as a result of the foreclosure of an institutional mortgage, such acquirer of title, its successors and assigns, shall not be liable for the payment of the aforementioned charges pertaining to such Unit which become due prior to acquisition of title in the manner provided above. Such charges shall be Common Expenses payable by the Association.

5.7.2.4. Declarant may exclude nonresidential property within the Property from the provisions of this **Section 5.7.2** and may further exclude residential property which, in the determination of Declarant, has uses for Telecommunications Services inconsistent with the overall design of such services in the Property as a whole.

5.7.3. **Easement for Telecommunications Services.** Declarant hereby (i) reserves for itself and its nominees, successors, assigns, affiliates, and licensees, and (ii) grants to each Telecommunications Provider, providing Telecommunications Services to all or a part of the Property pursuant to an agreement between Declarant or the Board and such Telecommunications Provider, and for any successors or assigns of any of the foregoing, a perpetual easement, privilege and right in and to, over, under, on and across all of the Property for the purpose of erecting, installing, maintaining, operating and removing any and all equipment or other property associated with the Telecommunications Services.

5.7.4. **Structures.** Notwithstanding anything to the contrary in the Declaration, Declarant hereby reserves for itself and for any Telecommunications Providers, and for any successors or assigns of any of the foregoing, the right to erect, install, maintain, operate and remove from the Property, at any time and from time to time, any satellite dish, tower or other such structure or equipment for the purpose of establishing and operating Telecommunications Services.

5.7.5. **Restoration.** Upon the completion of any installation, upgrade, maintenance, repair, or removal of the Telecommunications Systems or any part thereof, each Telecommunications Provider shall restore the relevant portion of the Common Areas and/or any Unit to as good a condition as that which existed prior to such installation, maintenance, repair or removal. Failure by Telecommunications Provider to complete such restoration within ten (10) days after receiving written notice from Declarant or the Board of such failure shall vest in Declarant or the Board the right (but not the obligation) to restore or cause to be restored such portion of the Common Areas and/or Unit disturbed by such work, all at such Telecommunications Provider's sole cost and expense, except for in emergency situations whereby Declarant or the Board may restore or cause to be restored such disturbed portion of the Common Areas and/or Unit. In the event that Declarant or the Board exercises the right of self-help, each Telecommunications Provider agrees in advance that Declarant or the Board shall have the sole right to (i) select the Contractors to perform such work and (ii) determine the extent of required restoration. This remedy of self-help is in addition to all other remedies of Declarant or the Board hereunder. All reasonable expenses incurred by Declarant or the Board in connection with such restoration shall be paid by Telecommunications Provider within ten (10) days of delivery to Telecommunications Provider of Declarant's or the Board's invoice therefor. Any expenses not so paid when due shall bear interest from the due date at the maximum rate of interest allowed by the law of the State of Florida for such obligations, or as provided in any agreement between a Telecommunications Provider and Declarant or the Board.

5.8. Community Control Program.

5.8.1. **Right to Install.** Declarant or the Board shall have the right, but not the obligation, to install and/or contract for the installation of a Community Control Program for the Property. Prior to Turnover, all contracts for a Community Control Program shall be subject to the prior written approval of Declarant. Any contracts or agreements respecting a Community Control Program may provide that Declarant receive compensation for approving such contract. Declarant or its nominees, successors, assigns, affiliates, and licensees may

install such a Community Control Program. Declarant reserves the right, at any time and in its sole discretion, to discontinue or terminate any Community Control Program prior to Turnover. In addition, all Owners specifically acknowledge that the Property may have a perimeter Community Control Program, such as fences, walls, hedges, or the like on certain perimeter areas. Declarant and the Board shall not be held liable for any loss or damage by reason or failure to provide an adequate Community Control Program or ineffectiveness of Community Control Program measures undertaken.

5.8.2. No Liability. NEITHER THE ASSOCIATION, CLUB OWNER NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF THE HEALTH, SAFETY, WELFARE OR SECURITY OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTY INCLUDING, WITHOUT LIMITATION, THE NATURE TRAILS, EQUESTRIAN TRAILS, ANY PEDESTRIAN OR BIKE PATH, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, ALARM SYSTEM, COMMUNITY CONTROL PROGRAM OR OTHER SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS, OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS LESSEES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, THE CLUB OWNER AND DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS, AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.

5.8.3. Components. A Community Control Program, if installed, may include one or more manned gatehouses and one or more electronic gates. Declarant and the Board do not warrant or guaranty in any manner that the system will include these items, but reserve the right to install or provide the foregoing items, or any other items they deem appropriate in their sole and absolute discretion. After Turnover, the Association may expand the Community Control Program by a vote of the majority of the Board, without the joinder or consent of the Owners or any third parties. Without limiting the foregoing, Declarant and the Board reserve the right to, at any time, increase, decrease, eliminate, or add manned or unmanned gate houses, information booths, sensors, gates and other access monitoring measures as they deem appropriate in their sole and absolute discretion; provided, however no changes shall be made prior to Turnover without the prior written consent of Declarant.

5.8.4. Part of Common Expenses. The cost of operating and monitoring any Community Control Program may be included in Common Expenses and may be payable as a portion of the Assessments against Owners. Any such Community Control Program shall be mandatory for all Owners, regardless of whether or not they utilize the Community Control Program or services of such system. Club Owner shall have no obligation to pay any part of the

costs of installing, maintaining or replacing the Community Control Program. In the event such system requires a card to enter Tusawilla, each employee, the Club Manager and each licensee of the Club Facilities (as such terms are defined in the Club Plan) shall be entitled to such a card upon payment to the Association of the actual cost of such card.

5.8.5. Owners' Responsibility. All Owners and Occupants of any Unit, and the tenants, guests and invitees of any Owner, as applicable, acknowledge that the Association, its Board and officers, Declarant, their nominees or assigns, or any successor Declarant, and the ARC and its members, do not represent or warrant that (a) any Community Control Program, designated by or installed according to guidelines established, will not be compromised or circumvented, (b) any Community Control Program will prevent loss by fire, smoke, burglary, theft, hold-up, bodily injury or harm or otherwise, and/or (c) the Community Control Program will in all cases provide the detection for which the system is designed or intended. In the event that Declarant elects to provide a Community Control Program, Declarant shall not be liable to the Owners, Occupants or the Association with respect to such Community Control Program, and the Owners, Occupants and the Association shall not make any claim against Declarant for any loss that an Owner, Occupant or the Association may incur by reason of break-ins, burglaries, acts of vandalism, personal injury or death, which are not detected or prevented by the Community Control Program. Each Owner, Occupant and the Association is responsible for protecting and insuring themselves in connection with such acts or incidents.

5.9. Surface Water Rights. The Association may establish programs and Rules and Regulations for reclamation of surface water and storm water runoff for appropriate uses within the Property, and may require Builders, Owners and Occupants of Units to participate in such programs to the extent reasonably practical. No Builder, Owner or Occupant of a Unit shall have any right to be compensated for water claimed or reclaimed from Units. The Board shall also have the right to establish restrictions on the use of surface water within the Property. Lakes, canals, and other open surface waters with the Property are designed as water retention and water management areas and are not designed solely as aesthetic features. From time to time, low ground water elevations or drought conditions may cause the Common Areas lakes, canals, creeks, wetlands and other water management areas to be shallow or dry, or lakebed areas to be exposed.

5.10. Club Manager. In the event Club Owner designates the Association as Club Manager, the Association, upon action by the Board, shall have the power to enter into an agreement with Club Owner to act as the Club Manager or to assume some or all of the responsibilities of Club Owner.

ARTICLE VI. MAINTENANCE

6.1. Responsibilities of Owners and Builders.

6.1.1. General. Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of Lots and Units, together with all other improvements thereon or therein and driveways and grounds on and within a Lot or Unit, shall be the responsibility of the Builder or Owner, as applicable, of such Lot or Unit. Each

Builder and Owner shall maintain his or its own Unit including, without limitation, structures, boundary walls and fences, driveways, parking areas, the irrigation system and other improvements comprising the Unit in neat, clean and sanitary condition and in good repair in a manner consistent with the Community Standards and this Declaration. The cost and expense of obtaining utilities exclusively serving a particular Lot or Unit shall be the responsibility of the Owner of such Lot or Unit. The Builder's and Owner's responsibility shall include the maintenance and care of all exterior surfaces of all Units, buildings and other structures. As provided in **Section 6.2.3** hereof, each Builder or Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining or cleaning any item which is the responsibility of such Builder or Owner, but which responsibility such Builder or Owner fails or refuses to discharge. If such Builder's or Owner's Lot or Unit is subject to the approval of the ARC, such Builder or Owner shall not (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Unit or the landscaping, grounds or other improvements within a Lot unless such decoration, change or alteration is first approved, in writing, by the ARC as provided in **ARTICLE XII** hereof, or (ii) do any work which, in the reasonable opinion of the ARC, would jeopardize the soundness and safety of the Property, reduce the value thereof, or impair any easement or hereditament thereto, without in every such case obtaining the written approval of the ARC.

Each Builder and Owner shall properly irrigate and fertilize the lawn and landscaping on such Builder's or Owner's Lot and shall make adjustments to the irrigation system cycles as may be recommended by the Association from time to time. Failure to properly irrigate, fertilize or to properly maintain the irrigation system may result in severe damage to the lawn and landscaping and shall constitute a violation of this Declaration and the Rules and Regulations of the Association. In addition, each Builder or Owner shall be solely responsible for all costs of repair or replacement of lawn and/or landscaping caused by the Builder's or Owner's failure to properly irrigate as recommended by the Association. If any Builder or Owner fails to properly irrigate or to properly maintain the irrigation system in accordance with this **Section**, the Association may enter the Lot and conduct the necessary irrigation and/or maintenance and assess all costs incurred by the Association against the Unit and the Builder or Owner thereof in accordance with the further provisions of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Builder or Owner reasonable notice and an opportunity to cure the problem prior to entry.

6.1.2. Requirement to Maintain Insurance. Each Builder and Owner shall be required to obtain and maintain adequate insurance of his or her Unit. Such insurance shall be sufficient for necessary repair or reconstruction work, and/or shall cover the costs to demolish a damaged Unit as applicable, remove the debris, and to resod and landscape the land comprising the Unit. Upon the request of the Association, each Builder and Owner shall be required to supply the Board with evidence of insurance coverage on his Unit which complies with the provisions of this **Section**. Without limiting any other provision of this Declaration or the powers of the Association, the Association shall specifically have the right to bring an action to require a Builder or an Owner to comply with his or her obligations hereunder.

6.1.3. **Requirement to Reconstruct or Demolish.** In the event that any Unit is destroyed by fire or other casualty, the Builder or Owner, as applicable, of such Unit shall do one of the following: the Builder or Owner, as applicable, shall commence reconstruction and/or repair of the Unit ("Required Repair"), or the Builder, or Owner, as applicable, shall tear the Unit down, remove all the debris, and resod and landscape the property comprising the Unit as required by the ARC ("Required Demolition") to the extent permitted under law. If a Builder or an Owner elects to perform the Required Repair, such work must be commenced within thirty (30) days of the casualty and such reconstruction and/or repair must be completed in a continuous, diligent, and timely manner in compliance with the Community Standards. If a Builder or an Owner elects to perform the Required Demolition, the Required Demolition must be commenced within thirty (30) days of the casualty and completed within sixty (60) days from the date of the casualty or such longer period of time established by the Board in its sole and absolute discretion subject to extension if required by law. Then, upon completion of the Required Demolition, such Builder or Owner shall be required to commence construction of a new Unit upon the Lot in accordance with plans and specifications approved by the ARC. Such construction must commence not later than nine (9) months from the date of the casualty and be completed in a continuous, diligent, and timely manner in compliance with the Community Standards. In the event that the Builder or an Owner elects to perform the Required Demolition and same is not commenced within thirty (30) days of the casualty, the Association shall have the right to perform such Required Demolition, the expense of which shall be charged to such Owner or Builder as an Individual Assessment. In the event that, following the Required Demolition, commencement of construction of a new Unit upon the Lot does not commence within nine (9) months from the date of the casualty, the Association shall have the right to levy a fine against such Builder or Owner, which shall be assessed as an Individual Assessment. The Association shall have the right to inspect the progress of all reconstruction and/or repair work. Without limiting any other provision of this Declaration or the powers of the Association, the Association shall have a right to bring an action against a Builder or an Owner who fails to comply with the foregoing requirements. By way of example, the Association may bring an action against an Owner who fails to either perform the Required Repair or Required Demolition on his or her Unit within the time periods and in the manner provided herein. Each Builder and Owner acknowledges that the issuance of a building permit or a demolition permit in no way shall be deemed to satisfy the requirements set forth herein, which are independent of, and in addition to, any requirements for completion of work or progress requirements set forth in applicable statutes, zoning codes, and/or building codes.

6.1.4. **Standard of Work.** The standard for all demolition, reconstruction, and other work performed as required by this Section shall be in accordance with the Community Standards and any other Rules and Regulations established by the Association with respect to any casualty that affects all or a portion of Tuscawilla

6.2. Association's Responsibility.

6.2.1. Except as may be otherwise specifically provided herein, the Association shall maintain and keep in good repair all portions of the Common Areas, the Wetland & Upland Conservation Areas and the Surface Water Management System, which responsibility shall include the maintenance, repair and replacement of (i) all Roads, bridges,

parks, walks, sidewalks, parking areas, streetlights, entrances and guardhouses, landscaped areas, Recreational Facilities, the nature trails, Equestrian Trails, any pedestrian or bike path and other improvements made by Declarant or the Association situated within the Common Areas or within easements encumbering Lots or Units pursuant to **ARTICLE VII** hereof, (ii) such monitoring systems and utility lines, pipes, plumbing, wires, conduits and related systems which are a part of the Surface Water Management System and which are not maintained by a public authority, public service district, public or private utility or other person, (iii) maintenance of all irrigation systems within the Common Areas, (iv) all lawns, trees, shrubs, hedges, grass and other landscaping and all lakes and ponds situated within or upon the Common Areas, and (v) the Surface Water Management System, all Wetland & Upland Conservation Areas, and all retention and drainage areas and facilities constructed by Declarant wherever located, that are part of the Common Areas. The Association shall also ensure compliance with the Audubon International Sustainable Development Program as provided in **Section 12.3**. The Association and Declarant shall not be liable for injury or damage to any person or property (A) caused by the elements or by any Owner or any other person, (B) resulting from any rain, drought or other surface water which may leak, diminish, restrain or flow from any portion of the Common Areas, or (C) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system or utility line or facility, the responsibility for the maintenance of which is that of the Association or Declarant. Nor shall the Association or Declarant be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Common Areas or any other portion of the Property. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments being a separate and independent covenant on the part of each Owner.

6.2.2. Maintenance of Property Owned by Others. The Association may maintain vegetation, landscaping, sprinkler system, community identification/features, Roads, and/or other areas or elements designated by Declarant upon areas which are within or outside of Tuscawilla. Such areas may abut, or be proximate to Tuscawilla and may be owned by, or dedicated to, others including, but not limited to, a utility, governmental or quasi-governmental entity. These areas may include (for example and not limitation) swale areas, landscape buffer areas, or median areas within the right-of-way of public streets, roads, drainage areas, community identification or features, lakes, community signage or other identification and/or areas within canal rights-of-ways or other abutting waterways.

6.2.3. Failure of Builder or Owner to Discharge Obligations. In the event that Declarant or the Board of Directors determines that: (i) any Builder or Owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder, or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of a Builder or an Owner, or his or her

family, tenants, guests or invitees, and is not covered and promptly paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, shall give such Builder or Owner written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Builder or Owner, and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Builder or Owner, shall have fifteen (15) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situation, or the failure of any Builder or Owner to comply with the provisions hereof after notice, Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, repair or replacement at the sole cost and expense of such Builder or Owner, and said cost shall be added to and become a part of the Assessment to which such Builder or Owner and his or her Lot or Unit are subject. In the event that Declarant undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses of any nature. In the event Declarant or the Association provides any of the forgoing maintenance, repair or replacement, the Declarant or the Association, as applicable, shall not be obligated to procure bids for such maintenance repair or replacement and shall, in their sole discretion, designate a contractor to perform such work; however the Association shall be required to obtain competitive bids if required by applicable law.

6.2.4. Rights of the Club Owner Upon Failure to Discharge Obligations.

In the event that any Builder, Owner or the Association fails to comply with the terms of this **ARTICLE VI**, or to otherwise maintain Tuscawilla in accordance with the Community Standards after notice from the Club Owner, the Club Owner shall have the right, but not the obligation, to provide any such maintenance, repair or replacement at the sole cost and expense of such Builder, Owner or the Association and such costs shall be paid to the Club Owner within ten (10) days after delivery of an invoice for same from Club Owner. The Club Owner shall have the same enforcement and lien rights to collect such amounts as are provided for Assessments in **Section 11.2** and **Section 11.6**. In the event Club Owner provides any of the forgoing maintenance, repair or replacement, Club Owner shall not be obligated to procure bids for such maintenance repair or replacement and shall, in its sole discretion, designate a contractor to perform such work.

**ARTICLE VII.
EASEMENTS**

7.1. Access Easements. All Owners, by accepting title to Lots or Units conveyed subject to this Declaration, waive all rights of uncontrolled and unlimited access, ingress and egress to and from such Lot or Unit and acknowledge and agree that such access, ingress and egress shall be limited to Roads, walkways, nature trails, paths, sidewalks and other Common Areas located within the Property from time to time for such purposes provided that pedestrian and vehicular access to and from all Lots and Units shall be provided at all times. There is

reserved unto Declarant, the Association and their respective successors and assigns the right and privilege, but not the obligation, to hire persons and/or to maintain electronically-controlled gates controlling vehicular access to and from the Property. In addition, in the event that an Owner is unable to access portions of their Lot or Unit without crossing or entering a portion of an adjoining Lot, Unit or Common Area, then such Owner shall have an easement of access over and upon such adjoining Lots, Units, and/or Common Areas for the purposes of allowing such Owner to (i) install, construct or establish improvements to such Owner's Lot or Unit; (ii) repair, maintain, replace and/or upgrade portions of such Owner's Lot or Unit; and (iii) access the rear of the Lot or Unit from the front of the Lot or Unit and access the front of the Lot or Unit from the rear of the Lot or Unit.

7.2. Permits, Licenses and Easements. Prior to Turnover, Declarant, and thereafter the Association, shall, in addition to the specific rights reserved to Declarant herein, have the right to grant, modify, amend and terminate permits, licenses and easements over, upon, across, under and through the Property (including Units) for Telecommunications Systems, utilities, roads and other purposes reasonably necessary or useful as it determines, in its sole discretion. To the extent legally required, each Owner shall be deemed to have granted to Declarant and, thereafter, the Association an irrevocable power of attorney, coupled with an interest, for the purposes herein expressed.

7.3. Easements for Declarant.

7.3.1. There is hereby reserved for the benefit of Declarant, for a period of five (5) years following the conveyance of all the Lots in the Property to Members, an alienable and transferable right and easement on, over, through, under and across the Common Areas for the purpose of grading and drainage, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing.

7.3.2. Prior to the Community Completion Date, Declarant shall have an alienable and transferable right and easement on, over, through, under and across the Common Areas for the purpose of constructing Units and other improvements in and to the Lots and the Additional Property and for installing, maintaining, repairing and replacing such other improvements to the Property (including any portions of the Common Areas) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by **ARTICLE II** hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Declarant at that time retains ownership of a Lot or Unit or has the right to submit the Additional Property to this Declaration, Declarant shall have an alienable, transferable and perpetual right and easement to have access, ingress and egress to the Common Areas and improvements thereof for such purposes as Declarant deems appropriate, provided that Declarant shall not exercise such right so as to unreasonably interfere with the rights of Owners to the use of the Common Areas.

7.4. Easement for Utilities and Public Services. There is hereby reserved for the benefit of Declarant, the Association and their respective successors and assigns, the alienable, transferable and perpetual right and easement, as well as the power to grant and accept easements to and from the County, SFWMD, or any other public authority or agency, public service district, public or private utility, upon, over, under and across: (i) all or any portion of the Common Areas; (ii) those portions of all Lots and Units as are reasonably necessary, for the purpose of installing, replacing, repairing, maintaining and using any cable television, Telecommunications Systems, Community Control Program system, and all utilities, including, but not limited to, storm sewers, drainage systems and retention ponds and facilities for the Property or any portion thereof, and electrical, gas, telephone, water and sewer lines, provided that such easements shall not unreasonably affect the developability of any such Lot or Unit. Such easements may be granted or accepted by Declarant, or by the Board of Directors; provided, however, that prior to the Community Completion Date, the Board of Directors must obtain the written consent of Declarant prior to granting and/or accepting any such easements. To the extent possible, all utility lines and facilities serving the Property and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Property so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities; (ii) to cut and remove any trees, bushes or shrubbery; (iii) to grade, excavate or fill; or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use of such utilities and systems; provided, however, that to the extent practicable, Declarant and/or the Board of Directors shall endeavor to obtain an undertaking from such utility company or other supplier or servicer to take reasonable actions to repair any damage caused by such utility company or other supplier during the exercise of any rights conveyed under any easement granted hereunder; provided, however, that Declarant, the Association and the Board shall have no liability therefor.

7.5. Easement for Sheriff and Fire Rescue. Declarant hereby grants to the County Sheriff or County Fire Rescue and any other relevant governmental authority or agency, as shall from time to time have jurisdiction over the Property with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over and across all of the Common Areas for purposes of performing such duties and activities related to law enforcement and fire protection in the Property as shall be required or appropriate from time to time by such governmental authorities under applicable law.

7.6. Easements for Association.

7.6.1. There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot or Unit or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner or Occupant of the Lot or Unit directly affected thereby.

7.6.2. Easements for the use of the Surface Water Management System and for drainage and installation and maintenance of drainage facilities are granted to the Association, Club Owner and Declarant as shown on all recorded Plats for the Property or as may otherwise be installed from time to time. Within these easement areas no structure, planting or other material other than sod, shall be placed or permitted to remain (unless installed by Declarant) which may interfere with such installation and maintenance or which may obstruct or retard the flow of water through drainage channels. The foregoing easements shall cover all lakes and drainage easements located anywhere within the Property. The Association shall have the right to contract for the maintenance of any portion of the Surface Water Management System with an established water management or water control district or with any other party.

7.6.3. Easements for the installation and maintenance of sod and other landscaping of swales and other areas are hereby granted to the Association and Declarant, within all public or private roads and road rights-of-way and as shown on all recorded Plats for the Property. Within these easement areas, the Association or Declarant may install and maintain sod and such other landscaping as the Association or Declarant deems necessary or appropriate. The Association and Declarant shall have access to all Lots and Units for the purpose of the operation and maintenance of such landscape easements.

7.6.4. Easements for the installation and maintenance of street lights are hereby granted to the Association and Declarant, within all public or private roads and road rights-of-way and as shown on all recorded Plats for the Property. Within these easement areas, the Association or Declarant may install and maintain streetlights and related apparatus as the Association or Declarant deems necessary or appropriate. The Association and Declarant shall have access to all Lots and Units for the purpose of the operation and maintenance of such street light easements.

7.7. Sales and Construction Easement. In addition to the rights reserved elsewhere herein, Declarant reserves an easement for itself or its nominees and creates an easement in favor of Club Owner over, upon, across, and under Tuscawilla as may be required in connection with the development of Tuscawilla and other lands designated by Declarant and to promote or otherwise facilitate the development, construction and sale, marketing and/or leasing of Units, the Club Facilities, and other lands designated by Declarant. Without limiting the foregoing, Declarant specifically reserves the right to use all paved roads and rights of way within Tuscawilla for vehicular and pedestrian ingress and egress to and from construction sites and for the construction and maintenance of any Telecommunication System provided by Declarant as service provider. Specifically, each Owner acknowledges that construction vehicles and trucks may use portions of the Common Areas. Declarant shall have no liability or obligations to repave, restore, or repair any portion of the Common Areas as a result of the use of the same by construction traffic, and all maintenance and repair of such Common Areas shall be deemed ordinary maintenance of the Association payable by all Owners as part of the Common Expenses. Without limiting the foregoing, at no time shall Declarant be obligated to pay any amount to the Association on account of Declarant's and Club Owner's use of the Common Areas for construction purposes. Declarant intends to use the Common Areas for sales of new and used Units. Further, Declarant may market other residences and commercial

properties located outside of Tuscawilla from Declarant's sales facilities located within Tuscawilla. Declarant has the right to use all portions of the Common Areas, including without limitation, the clubhouse, if any, in connection with its marketing activities, including, without limitation, allowing members of the general public to inspect model Units, installing signs and displays, holding promotional parties and picnics, and using the Common Areas for every other type of promotional or sales activity that may be employed in the marketing of new and used residential Units. The easements created by this Section, and the rights reserved herein in favor of Declarant, shall be construed as broadly as possible and supplement the other rights of Declarant set forth herein. At no time shall Declarant incur any expense whatsoever in connection with its use and enjoyment of such rights and easements.

7.8. Easement for Additional Property. There is hereby reserved in Declarant for the benefit of and as an appurtenance to the Additional Property and as a burden upon the Property, perpetual, non-exclusive rights and easements for: (i) pedestrian and vehicular ingress, egress and parking, across, within, and on all Roads, sidewalks, the nature trails, Equestrian Trails, any pedestrian or bike path and parking facilities, from time to time located within the Common Areas or within easements serving the Common Areas; (ii) the installation, maintenance, repair, replacement and use within the Common Areas and those portions of Lots and Units encumbered pursuant to Section 7.4 hereof, of Community Control Program systems and utility facilities and distribution lines, including without limitation drainage systems, storm sewers and electrical, gas, telephone, water, sewer and Telecommunication Services system lines; and (iii) drainage and discharge of surface water onto and across the Property, provided that such drainage and discharge shall not materially damage or affect the Property or any improvements from time to time thereon.

7.9. Maintenance Easement. Subject to the terms of Section 6.1 hereof, there is hereby reserved for the benefit of Declarant, the Association and their respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement to enter upon any Lot and upon unimproved portions of any Unit for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety and appearance within the Property, provided that such easements shall not impose any duty or obligation upon Declarant or the Association to perform any such actions.

7.10. Easements for Encroachments. Declarant hereby grants an easement for encroachment in the event any improvements upon the Common Areas now or hereafter encroach upon a Unit, or in the event that any Unit now or hereafter encroaches upon the Common Areas or upon another Unit, as a result of minor inaccuracies in survey, construction, reconstruction, or due to settlement or movement or otherwise to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. The encroaching improvements shall remain undisturbed as long as the encroachment exists. This easement for encroachment shall also include an easement for the maintenance and use of the encroaching improvements. Provided, however, that at no time shall there be any encroachment onto the Surface Water Management System, or the Wetland & Upland Conservation Areas without the written consent of the SFWMD, or any other governmental agency, as applicable. In no event shall an easement for encroachment exist if

such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, Occupant or the Association.

7.11. Creation of Easements. Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to be so created shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees for the purpose of allowing the original party or parties to whom the easements were originally granted the benefit of such easement, and the Owners and Members hereby designate Declarant and the Association (or either of them) as their lawful attorney-in-fact to execute any instrument on such Owners' or Members' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited.

7.12. Club Easements. A non-exclusive easement shall exist in favor of Club Owner and its respective designees, invitees, guests, agents, employees, and licensees over and upon the Common Areas and portions of Tuscawilla necessary for ingress, egress, access to, and for the construction, operation, maintenance and/or repair of, the Club Facilities or Club Property. Club Owner, Club employees, agents, invitees, guests, vendors, contractors, subcontractors, any manager of the Club, and all licensees of the Club Facilities shall be given access to the Club Facilities on the same basis as Owners, but without any charge therefor (by way of Assessments or otherwise). This Section 7.12 may not be amended or revoked without the prior written consent of Club Owner.

7.13. Driveway and Sidewalk Repair Easement. Each Builder and Owner shall be responsible to timely repair, maintain and/or replace the driveway comprising part of a Unit and the sidewalk abutting the front Lot of the Unit, including, but not limited to, any damage caused by Declarant, the Association or by the holder of any easement over which such driveway or sidewalk is constructed. Each Builder and Owner, by acceptance of a deed to a Lot or Unit, shall be deemed to have agreed to indemnify and hold harmless the Association and the holder of any such easement, including without limitation, all applicable utility companies and governmental agencies, their agents, servants, employees and elected officials, from and against any and all actions or claims whatsoever arising out of the use of the Common Areas and any easement or the construction and/or maintenance of any driveway or sidewalk in that portion of the Common Areas, easement area, or in a public right-of-way between the boundary of such Builder's or Owner's Unit and the edge of the adjacent paved roadway. Further, each Builder or Owner agrees to reimburse the Association any expense incurred in repairing any damage to such driveway or sidewalk in the event that such Builder or Owner fails to make the required repairs, together with interest at the highest rate allowed by law.

7.14. Equestrian Trail Easement. A non-exclusive easement shall exist in favor of the general public over the Equestrian Trails as set forth on the Plat, for ingress, egress required for the riding of horses over and upon the Equestrian Trails.

7.15. Public Walking Trail(s) Easement. A non-exclusive easement shall exist in favor of the general public over the Public Walking Trail(s) as shown on the Plat, for ingress, egress and walking thereon.

ARTICLE VIII. SURFACE WATER MANAGEMENT SYSTEM

8.1. Maintenance of Surface Water Management System. The Property is subject to a SFWMD approved surface water management plan ("Surface Water Management System") and the related Permit, as may be modified from time to time. In order to implement aspects of the Surface Water Management System the Association will maintain the Surface Water Management System. Portions of the Surface Water Management System facilities constructed by Declarant shall be maintained by the Association, such as roads/streets, curbing, sidewalks, the exfiltration system within the roads/streets and drainage easement areas within the Property. Accordingly, certain parcels of real property within the Property have or will be dedicated or conveyed, in fee or by easement to the Association for stormwater retention, drainage, streets and/or roads. The Association shall maintain its portion of the Surface Water Management System in compliance with the rules and regulations promulgated by the SFWMD. The Surface Water Management System plans shall cover surface water drainage throughout the Property, including but not limited to regular and storm drainage on dedicated streets and other rights of way, canal drainage, and such other requirements as may be imposed by the SFWMD. In accordance with this Section, the Association: (a) shall apply for and obtain such permits and licenses as may be required by the applicable governmental agencies, (b) at the Association's expense, provide Declarant with any and all plans and specifications, surveys, descriptive maps, and other documentation required for the maintenance of surface water as contemplated by this Section and shall give and grant to Declarant, owners of land adjacent to the Property, the County, any and all easements and rights of way required to effect real property surface water management, and (c) after the original development of Declarant, the Association shall cause all physical earth moving, landscaping, sloping, grading and other work required to be done on the Property, in connection with the maintenance of the Surface Water Management System to be done at the cost and expense of the Association. As further provided in this Declaration, the Association shall be entitled to (i) assess Members for the cost of operation, maintenance and repair of the Surface Water Management System including but not limited to work within retention areas, drainage structures and drainage easements, (ii) establish Rules and Regulations with respect to the operation and maintenance of the Surface Water Management System, and, (iii) contract with third parties for the provision of such operation and maintenance. In addition, in the event that a drainage swale is constructed upon any Lot, for the purpose of managing and containing the flow of excess surface water, the owner of such Lot, including builders, shall be responsible for the maintenance, operation and repair of the drainage swales on the Lot. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow a drainage swale to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the SFWMD. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in a drainage swale is prohibited. No alteration of a drainage swale shall be authorized and any damage to a drainage swale, whether caused by natural or human induced phenomena, shall be repaired and the damaged drainage swale shall be returned to its former

condition as soon as possible by the Owner of the Lot upon which the drainage swale is located.

8.2. Amendments Affecting the Surface Water Management System. Any proposed amendment to Association Documents which will affect the Surface Water Management System, including any environmental conservation area and the water management portions of the Common Areas must have the prior written approval of the SFWMD. The Association's registered agent shall maintain copies of all Surface Water Management System permits and correspondence respecting such permits, and any future SFWMD permit actions shall be maintained by the Association's registered agent for the Association's benefit.

8.3. Notices and Disclaimers as to Water Bodies. NEITHER DECLARANT, NOR THE ASSOCIATION, NOR THE COUNTY, NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE OR BOARD MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES"), SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY WITHIN THE PROPERTY, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED FOR WITH, AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES. CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES SHALL, FROM TIME TO TIME, EXCAVATE, CONSTRUCT AND MAINTAIN LAKES AND WATER BODIES WITHIN OR IN PROXIMITY TO THE PROPERTY. NOTWITHSTANDING THE FOREGOING, EXCAVATION OR CONSTRUCTION OF WATER BODIES SHALL BE PROHIBITED UNLESS AUTHORIZED BY THE APPLICABLE SOUTH FLORIDA WATER MANAGEMENT DISTRICT PERMIT. IN THE EVENT THAT THE EXCAVATION OR CONSTRUCTION OF WATER BODIES IS NOT AUTHORIZED BY SAID PERMIT, SUCH EXCAVATION OR CONSTRUCTION MAY ONLY TAKE PLACE IF A PERMIT MODIFICATION IS OBTAINED FROM THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT. BY THE ACCEPTANCE OF THEIR DEED OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF THE PROPERTY, EACH SUCH OWNER, OCCUPANT OR USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES: (i) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY; (ii) NOT TO ENTER UPON, OR ALLOW CHILDREN, GUESTS OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY LAKE OR WATER BODY WITHIN THE PROPERTY, EXCEPT AS SPECIFICALLY PERMITTED BY THIS DECLARATION OR THE RULES AND REGULATIONS

ADOPTED BY THE ASSOCIATION; (iii) DECLARANT, THE ASSOCIATION, THE COUNTY, AND THE OTHER LISTED PARTIES SHALL NOT BE LIABLE BUT, RATHER, SHALL BE HELD HARMLESS, FROM ANY AND ALL LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES; (iv) ANY PURCHASE OR USE OF ANY PORTION OF THE PROPERTY HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING; AND (v) THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO DECLARANT TO SELL, CONVEY AND/OR ALLOW THE USE OF THE APPLICABLE PORTION OF THE PROPERTY. ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS AND OTHER WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES WITHIN THE PROPERTY AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

8.4. Indemnification. Each Owner shall severally indemnify, defend and hold Declarant and the Association harmless from and against any and all costs, expenses, liabilities, fines, penalties and clean-up costs incurred by Declarant or the Association, as applicable, as a result of any damage or alteration to the Surface Water Management System caused by such Owner, or any unlawful discharge of such Owner into the Surface Water Management System. In the event any damage to the Surface Water Management System by a Owner is not reimbursed by such Owner upon demand, the Association shall, upon written request of Declarant or the Association, levy and assess an Individual Assessment against such Owner to cover the cost incurred by the Association or Declarant in correcting such damage, alteration or unlawful discharge, and shall pay over the amount thereof to Declarant or the Association, as applicable.

8.5. Catchment Swales. Each Owner and Builder shall be required to maintain their rear yard catchment swale. In the event an Owner or Builder does not properly maintain such rear yard catchment swale, the Association shall have the right to undertake such maintenance and/or repair, as applicable, and shall levy and assess an Individual Assessment against such Owner or Builder to cover the cost incurred by the Association in providing such maintenance and/or repair. The Association need not give notice to such Owner or Builder prior to providing such maintenance and/or repair.

ARTICLE IX. WETLAND & UPLAND CONSERVATION AREAS

9.1. Wetland & Upland Conservation Areas Maintenance and Protection. Portions of the Property may be designated and dedicated as Wetland & Upland Conservation Areas. Certain Lots may be adjacent to such Wetland & Upland Conservation Areas. The Wetland & Upland Conservation Areas may be described in any permits, plans, and ordinances issued by SFWMD, United States Army Corps of Engineers, the County, or any applicable governmental agencies ("Permits"). The Permits may set forth various use, protection, and other restrictions respecting the Property. The Association shall permit representatives of all appropriate

governmental agencies to enter and monitor such portions of the Property upon reasonable notice. The costs of all maintenance expenses on such portions of the Property shall be assessed to the Members as a Common Expense in perpetuity.

9.2. Use Restriction for Wetland & Upland Conservation Areas. The Association acknowledges and shall enforce any use restrictions placed on any Wetland & Upland Conservation Areas. The Wetland & Upland Conservation Areas shall be the perpetual responsibility of the Association and may in no way be altered from their natural or permitted state. These use restrictions, if any, may be defined on the Permits, and the Plats associated with the Property. Activities prohibited within the Wetland & Upland Conservation Areas, except as otherwise permitted by the Association and approved by the SFWMD and the County, include but are not limited to, the following:

- (i) Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- (ii) Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;
- (iii) Removal or destruction of trees, shrubs, or other vegetation, except for the removal of exotic vegetation in accordance with a governmentally approved maintenance plan;
- (iv) Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;
- (v) Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;
- (vi) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;
- (vii) Acts or uses detrimental to retention of land or water areas;
- (viii) Acts or uses which are detrimental to the preservation of any features or aspects of the Property having historical or archaeological significance.
- (ix) No Builder or Owner within Tusawilla may construct or maintain any building, residence, or structure, or undertake or perform any activity in the Wetland & Upland Conservation Areas described in the Permits and recorded Plat(s) of Tusawilla, unless prior approval is received from the SFWMD.
- (x) Each Builder and Owner within Tusawilla at the time of construction of a building, residence, or structure shall comply with the construction

plans for the Surface Water Management System approved and on file with the SFWMD.

ARTICLE X. ADMINISTRATION

10.1. Common Areas. The Association, subject to the rights of Declarant and the rights and duties of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in a good, clean, attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof.

10.2. Control by Declarant. Except to the extent otherwise required by the provisions of the laws of Florida relating to nonprofit corporations, this Declaration, the Bylaws or the Articles of Incorporation, the powers herein or otherwise granted to the Association may be exercised by the Board of Directors, acting through the officers of the Association, without any further consent or action on the part of the Owners. As provided in **Section 14.1** hereof and notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing the Property, Declarant shall have the right to appoint or remove any member or members of the Board of Directors and any officer or officers of the Association, without the necessity of a vote at an annual meeting, until such time as the first of the following events shall occur ("Turnover"): (i) the date three months after ninety percent (90%) of the Lots in all phases of the Property that will ultimately be operated by the Association have been conveyed to Members other than Declarant; or (ii) the surrender by Declarant of the authority to appoint and remove directors and officers of the Association by an express amendment to this Declaration executed and recorded by Declarant. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Unit, vests in Declarant such authority to appoint and remove directors and officers of the Association as provided by this **Section 10.2** and by **Section 14.1**.

10.3. Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the laws of Florida relating to nonprofit corporations, this Declaration, the Bylaws and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the laws of Florida, this Declaration, the Bylaws or the Articles of Incorporation, the provisions of the laws of Florida, this Declaration, the Articles and the Bylaws, in that order, shall prevail, and each Owner of a Lot or Unit by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Club Plan or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Notwithstanding the foregoing provisions of this **Section 10.3** or any other provision of this Declaration to the contrary, for so long as Declarant shall own any Lot or Unit, the Association shall not, without the consent of Declarant, borrow money or pledge, mortgage or hypothecate all or any portion of the Common Areas.

10.4. Agreements. Subject to the prior approval of Declarant for so long as Declarant owns a Lot or Unit, all agreements and determinations lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors and assigns, and all others having an interest in the Property or the privilege of possession and enjoyment of any part of the Property; and in performing its responsibilities hereunder, the Association, through its Board of Directors, shall have the authority to delegate to persons of its choice such duties of the Association as may be determined by the Board of Directors. In furtherance of the foregoing, and not in limitation thereof, the Association may obtain and pay for the services of any person or entity, including, without limitation, an entity affiliated with Declarant, to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Property whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of an Association manager shall be Common Expenses. During the term of such management agreement, such manager may, if authorized by the Board of Directors, exercise all of the powers and shall be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers or Members of the Association by this Declaration or the Bylaws. Such manager may be an individual, corporation or other legal entity, as the Board of Directors shall determine, and may be bonded in such a manner as the Board of Directors may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board of Directors may hire and contract for, such legal and accounting and other professional or consulting services as are necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration, the Bylaws or the Rules and Regulations of the Association.

10.5. Insurance.

10.5.1. The Board of Directors or its duly authorized agents shall have the authority to and shall obtain and continue in effect property insurance, in such form as the Board deems appropriate, for the benefit of the Association and insuring all insurable improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.

10.5.2. The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy covering all the Common Areas and all damage or injury caused by the negligence of the Association, its Members, Owners, its directors and officers, or any of its agents. Such public liability policy shall provide such coverages as are determined to be necessary by the Board of Directors.

10.5.3. The Board or its duly authorized agents shall have the authority and may obtain (i) workers' compensation insurance to the extent necessary to comply with any

applicable laws and (ii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.

10.5.4. The Board or its duly authorized agents shall have the authority and may obtain officers' and directors' insurance, if available at reasonable cost, as determined by the Board of Directors in their sole and absolute discretion.

10.5.5. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for each of the Owners and costs of all such coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Property shall be vested in the Board of Directors; provided, however, that no Mortgagee or other security holder of the Common Areas having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

10.5.6. It shall be the individual responsibility of each Owner at his or her own expense to provide public liability, property damage, title and other insurance with respect to his or her own Lot or Unit. The Board of Directors may require all Owners to carry public liability and property damage insurance with respect to their respective Lots and Units and to furnish copies or certificates thereof to the Association evidencing continuing coverage from time to time.

10.6. Personal Property and Real Property. The Association, through action of its Board of Directors, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, shall be held by and for the benefit of the Association. The undivided interests of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated or transferred in any manner.

10.7. Rules and Regulations. As provided in **ARTICLE XIII** hereof, the Association, through its Board of Directors, may make and enforce reasonable Rules and Regulations governing the use of the Lots, Units, Common Areas, which Rules and Regulations shall be consistent with the rights and duties established by this Declaration.

10.8. Indemnification. The Association shall indemnify and hold harmless every officer or director of the Association and member of the ARC and all other committees and subcommittees of the Association, against any and all expenses, including court costs and reasonable attorneys' fees, reasonably incurred by or imposed upon any current or former officer or director of the Association and member of the ARC in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the Board of Directors) to which he or she may be made a party by reason of being or having been an officer or director of the Association or member of the ARC. The officers or directors of the Association and members of the ARC shall not be liable for any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such

officers or directors may also be Owners or Members of the Association), and the Association shall indemnify and forever hold each such officer, director and member of the ARC free and harmless, against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director of the Association or member of the ARC, or former officer, director or member may be entitled. Such indemnification shall continue as to a person who has ceased to be a director, officer, member of the ARC, employee or agent, and shall inure to the benefit of the heirs and personal representatives of such a person. An adjudication of liability shall not affect the right to indemnification for those indemnified. The Association shall as a Common Expense maintain adequate general liability and officers' and directors' liability insurance to fund this obligation.

ARTICLE XI. ASSESSMENTS

11.1. Purpose of Assessments. The Assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, welfare, common benefit and enjoyment of the Owners and Occupants of the Property, and maintaining the Property and improvements therein, all as may be authorized in this Declaration, the Articles, the Bylaws and as may otherwise be determined from time to time by the Board of Directors.

11.2. Creation of Lien and Personal Obligation of Assessments. Each Builder or Owner of a Lot or Unit by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (i) Annual Assessments, such Assessments to be established and collected as provided in **Section 11.3** hereof; (ii) Special Assessments, such Assessments to be established and collected as provided in **Section 11.4** hereof; (iii) Individual Assessments against any particular Lot or Unit which are established pursuant to the terms of this Declaration, including, but not limited to, fines as may be imposed against such Lot or Unit in accordance with **ARTICLE XIII** hereof; and (iv) any other Assessment. Any such Assessment, together with late charges, simple interest at the rate of eighteen percent (18%) per annum, and court costs, paraprofessional fees, and attorneys' fees incurred to enforce or collect such Assessment, at all levels of proceedings including, without limitation, appeals, collections and bankruptcy, shall be an equitable charge and a continuing lien upon the Lot or Unit, the Builder or Owner of which is responsible for payment. The lien is effective from and after recording a Claim of Lien in the Public Records stating the legal description of the Lot or Unit, name of the Builder or Owner, and the amounts due as of that date, but shall relate back to the date that this Declaration is recorded. The Claim of Lien shall also cover any additional amounts which accrue thereafter until satisfied. Each Assessment, together with interest, late fees, costs and reasonable attorneys' fees and paraprofessional fees at all levels including appeals, collections and bankruptcy, and other costs and expenses provided for herein, shall be the personal obligation of the person who was the Builder or Owner of the Lot or Unit at the time when the Assessment became due, as well as the Builder's Owner's heirs, devisees, personal representatives, successors or assigns.

Each Builder shall pay such portion of the Common Expenses which benefits any Lot owned by such Builder, as determined by Declarant in Declarant's sole discretion. By way of example, and not of limitation, Declarant may require that each Builder pay some portion of Assessments on a Lot owned by a Builder which does not contain a Unit. As vacant Lots owned by Builders may not receive certain services (e.g., Telecommunications Services), Builders shall not be required to pay for the same. Each Builder or Owner shall be personally liable for Assessments coming due while he or she is the Builder or Owner of a Lot or Unit, and his or her grantee shall take title to such Lot or Unit subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his or her grantor any amounts paid by such grantee therefor. Any purchaser of a Lot or Unit through a Foreclosure sale shall thereafter be subject to all future Assessments. In the event of co-ownership of any Lot or Unit, all of such co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, provided that unless otherwise provided by the Board, at any time and from time to time, the Annual Assessments shall be paid in one annual installment. Club Owner, as a member of the Association, shall be obligated to pay a nominal Assessment of One Dollar (\$1) per year to the Association and no other Assessments.

11.3. Computation of Annual Assessments. It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses during the coming year. Notwithstanding the foregoing, the budget may cover a period of less than twelve (12) months if the first budget is adopted mid-year or in order to change the fiscal year of the Association. The budget shall be in the form required by Florida Statutes 720.303(6), as amended from time to time. The Board shall cause the budget and the proposed total of the "Annual Assessments" to be levied against Lots and Units for the following year to be delivered in accordance with this Declaration to each Builder and Owner at least fifteen (15) days prior to such meeting. The budget and the Annual Assessments shall become effective unless disapproved at the annual meeting by either (i) Declarant, for so long as Declarant has the authority to appoint and remove directors and officers of the Association, or (ii) a vote of a majority of the votes of the Association (provided that a minimum vote of fifty-one percent (51%) of all the votes of the Association shall be required to disapprove the budget). In the event the Common Expenses as estimated in the budget for a particular fiscal year are, after the actual Common Expenses for that period is known, less than the actual costs, then the difference shall, at the election of the Association: (i) be added to the calculation of Annual Assessments, as applicable, for the next ensuing fiscal year; or (ii) be immediately collected from the Builders and Owners as a Special Assessment. The Association shall have the unequivocal right to specially assess Builders and Owners retroactively on January 1st of any year for any shortfall in Annual Assessments, which Special Assessment shall relate back to the date that the Annual Assessments could have been made. No vote of the Owners shall be required for such Special Assessment (or for any other Assessment) except to the extent specifically provided herein. Except as provided in **Section 11.9**, each Lot and Unit shall be subject to Annual Assessments divided equally among every Lot and Unit. Any allocated or shared cost or expense will be allocated as determined by the Association, which prior to the Community Completion Date must be approved by Declarant, and the determination by the Association will be dispositive. In the event of any dispute between or among Builders and/or Owners as to the propriety or amount of any expense

incurred by the Association or one or more Builders and/or Owners for (or purportedly for) the benefit of such Builders and/or Owner(s) and one or more other Builders and/or Owners, and/or the proper amount of such expense to be allocated to each benefited Builer and/or Owner, and/or the identity of the Builders and/or Owners benefited by such cost or expense, such dispute may be referred to the Association by any party to the dispute, and the decision of the Association with respect to such dispute will be dispositive and binding upon all Builders and/or Owners and other persons or entities affected thereby. Notwithstanding the foregoing, in the event the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year subject to a maximum five percent (5%) increase in each line item of the preceding year's budget. THE INITIAL BUDGET OF THE ASSOCIATION IS PROJECTED (NOT BASED ON HISTORICAL OPERATING FIGURES). THEREFORE, IT IS POSSIBLE THAT ACTUAL ASSESSMENTS MAY BE LESSER OR GREATER THAN PROJECTED.

The budget may include, without limitation, the following listed line items:

(a) All expenses necessary to meet the Association's responsibility to maintain the Common Areas in accordance with the requirements of this Declaration. Including, by way of illustration and not as limitation, such Common Areas expenses as: maintenance of the Surface Water Management System, irrigating, grass cutting, trimming, fertilizing, pest control, and the like, in a manner consistent with the Community Standards.

(b) All charges levied for utility services to the Common Areas, whether supplied by a private or public firm including, without limitation, all charges for water, electricity, telephone, sewer, septic, cable television, and any other type of utility or service charge.

(c) The premiums on any policy or policies of insurance required under this Declaration, together with the costs of such other policies of insurance as the Board shall determine to be in the best interest of the Association.

(d) The costs of administration for the Association, including any secretaries, bookkeepers, and other employees necessary to carry out the obligations and covenants of the Association under this Declaration, including the collection of sums owed by a particular Lot or Unit. In addition, the Association may retain a managing company or contractors to assist in the operation of the Association and to perform or assist in the performance of certain obligations of the Association hereunder. The fees or costs of any management company or contractor so retained shall be deemed to be part of the Association's expense.

(e) The costs of any Community Control Program.

(f) All taxes levied or assessed upon the Common Areas by any and all taxing authorities, including all taxes, charges and assessments, impositions and liens for public improvements, special charges and assessments; and, in general, all taxes on

personal property and improvements which are now and which hereinafter may be placed in the Common Areas, including any interest penalties and other charges which may accrue on such taxes.

(g) All off property maintenance, including, without limitation, median landscaping, as required by the Development Order, the County or other governmental authority.

(h) Any charges, including, without limitation, sales tax, for alarm services provided to Units ("Bulk Alarm Assessments"). Notwithstanding the foregoing, all equipment and related items to Bulk Alarm Assessments shall be maintenance expenses of each Owner.

(i) Any charges, including, without limitation, sales tax and franchise fees, for cable services provided to Units ("Bulk Cable Assessments").

11.4. Special Assessments. In addition to the Annual Assessments authorized above, the Association, acting through its Board of Directors, may levy, in any Assessment year, "Special Assessments" for Common Expenses, applicable to that year only, provided that any such Special Assessment shall be approved by (i) Declarant, for so long as Declarant owns any Lot or Unit and (ii) by a majority of the votes of the Members who are voting at a meeting duly called for this purpose. The Board of Directors may make such special Assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted.

11.5. Individual Assessments. Any expenses of the Association arising out of either or both of the following events shall be specially assessed against the appropriate Builder(s), Owner(s) and their respective Lots or Units: (i) any expenses occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests or invitees of any Owner; and (ii) any expenses arising out of the provision by the Association or Declarant of maintenance service under **Section 6.1**. By way of example, and not of limitation, all of the Owners within a Plat may be subject to "Individual Assessments" for maintenance, repair and/or replacement of facilities serving only the residents of such Plat. Further, in the event a Builder or an Owner fails to maintain the exterior of his or its Unit in a manner satisfactory to the Association, the Association shall have the right, through its agents and employees, to enter upon the Unit and to repair, restore, and maintain the Unit as required by this Declaration. The cost thereof, plus the reasonable administrative expenses of the Association, shall be an Individual Assessment. Individual Assessments may also include, fines assessed as set forth in **ARTICLE XIII** hereof and costs if one or more Owners receive optional Telecommunications Services such as Toll Calls, Basic Service, Expanded Basic Service, Premium Channels, and/or Data Transmission Services, and the Association pays a Telecommunications Provider for such services, then the cost of such services shall be an Individual Assessment as to each Owner receiving such services. The Individual Assessments provided for in this **Section 11.5** shall be levied by the Board of Directors and the amount and due date of such Assessments so levied by the Board shall be as specified by the Board. The lien for an Individual Assessment may be foreclosed in the same manner as any other Assessment, except that any Individual Assessments for fines shall be a personal obligation and not a lien against a Lot or Unit.

11.6. Liens. All sums assessed against any Lot or Unit pursuant to this Declaration, together with court costs, reasonable attorneys' fees, late charges and interest as provided herein, shall be secured by an equitable charge and continuing lien on such Lot or Unit in favor of the Association. Such liens shall be superior to all other liens and encumbrances on such Lot or Unit except only for (i) liens of ad valorem taxes, (ii) liens for all sums unpaid on a first priority Institutional Mortgage or on any Mortgage to Declarant or its affiliates, and all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument, and (iii) Club Dues. Notwithstanding the foregoing to the contrary, the subordination of Assessments to the lien of such Mortgages shall only apply to such Assessments which have become due and payable prior to a Foreclosure. All other persons acquiring liens or encumbrances on any Lot or Unit after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for Assessments as provided herein, whether or not such prior consent shall be specifically set forth in the instruments creating such liens or encumbrances.

11.7. Effect of Nonpayment; Remedies of the Association.

11.7.1. Any Assessment of a Builder or an Owner or any portion thereof which is not paid when due shall be delinquent. Any Assessment delinquent for a period of more than ten (10) days after the date when due shall incur a late charge in an amount as may be determined by the Board from time to time and shall also commence to accrue simple interest at the rate of eighteen percent (18%) per annum. A lien and equitable charge as herein provided for each Assessment shall attach simultaneously as the same shall become due and payable, and if any installment of the Assessment for such year has not been paid within thirty (30) days, the entire unpaid balance of the Assessment may be accelerated at the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such Assessment shall include the late charge established by the Board of Directors, interest on the principal amount due at the rate of eighteen percent (18%) per annum, all costs of collection (including reasonable attorneys' fees, paraprofessional fees, and court costs), and any other amounts provided or permitted hereunder or by law. In the event that the Assessment remains unpaid after sixty (60) days from the original due date, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Article shall be in favor of the Association, and each Builder or Owner, by his acceptance of a deed or other conveyance to a Lot or Unit, vests in the Association and its agents the right and power to bring all actions against him or it personally for the collection of such Assessments as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The Association shall have the power to bid on the Lot or Unit at any Foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

11.7.2. No Builder or Owner may waive or otherwise escape liability for the Assessments provided for herein, including by way of illustration but not limitation, non-use of the Common Areas, the Club Facilities or abandonment of his Lot or Unit, and a Builder or an Owner shall remain personally liable for Assessments, interest and late charges which accrue prior to a sale, transfer or other conveyance of his or its Lot or Unit. The obligation to pay Assessments is a separate and independent covenant on the part of each Builder or Owner. No

diminution or abatement of Assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of the County or other governmental authority.

11.8. Certificate. The treasurer or any assistant treasurer shall, within ten (10) days of a written request and upon payment of such fee as is from time to time reasonably determined by the Board of Directors, furnish to any Builder or Owner which requests the same, a certificate in writing signed by said treasurer or assistant treasurer, setting forth whether the Assessments for which such Builder or Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest and other penalty charges. As to parties without knowledge of error who rely thereon, such certificate shall be presumptive evidence against all but such Builder or Owner of payment of any Assessments stated therein to have been paid.

11.9. Date of Commencement of Annual Assessments; Declarant's Rights and Obligations. The Annual Assessments provided for herein shall commence as to each Lot and Unit on the day on which such Lot or Unit is conveyed to a person other than Declarant and shall be due and payable in such manner and on such schedule as the Board of Directors may provide. Anything contained herein to the contrary notwithstanding, Declarant shall not be responsible for the payment of Annual, Individual or Special Assessments on Lots or Units which it owns. For so long as Declarant has the authority hereunder to appoint and remove directors of the Association, Declarant shall have the option to either pay Annual Assessments on Lots and Units owned by Declarant or fund any deficit which may exist between (i) the total amount of Assessments levied on all Lots or Units not owned by Declarant and (ii) the actual expenditures required to operate the Association during the fiscal year (not including the funding of any reserves); provided, however, that the annual budget, Assessments, and deficits, if any, shall be annually reviewed by Declarant and the Board of Directors, and during such period Declarant's obligation for funding deficits shall only be up to the amount of the Association's budget. Any surplus in funds held by or due to the Association shall be carried over from year to year so as to reduce Declarant's obligation to pay Assessments, and Declarant shall have no obligation to fund reserves if the Board of Directors creates such reserves. Upon Declarant no longer having the authority to appoint directors or officers of the Association, Declarant shall be obligated only to pay Assessments on Lots and Units owned by Declarant and shall have no obligation to fund any deficit as set forth above. Notwithstanding anything to the contrary contained herein, so long as Declarant controls the Association pursuant to **Sections 10.2 and 14.1**, Declarant shall have the right in its sole and absolute discretion to change the Assessments attributable to any portion of the Property at any time and from time to time, and Declarant shall have the additional right to designate portions of the Property to be exempt from assessment under this **ARTICLE XI**. Declarant's obligation hereunder may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a

combination of services and materials with Declarant or other entities for the payment of some portion of the Assessments.

11.10. Common Areas and Certain Other Property. Unless otherwise provided herein, no Common Areas hereunder shall be subject to assessment hereunder. Further, the foregoing exemption shall apply to any land owned by a public agency as long as such land is used for public purposes. In the event of any ambiguity or doubt as to whether any particular open space or other land is subject to assessment, the determination of Declarant shall be final and conclusive.

11.11. Capital Contributions. The initial purchaser of each Lot or Unit from Declarant, at the time of closing of the conveyance from Declarant to the purchaser, shall pay to Declarant an initial capital contribution in an amount equal to three (3) months' Assessments (or such other amount as established by Declarant from time to time) (the "Initial Capital Contribution"). The funds derived from the Initial Capital Contributions shall be used at the discretion of Declarant for any purpose, including but not limited to, future and existing capital improvements, operating expenses, support costs and start-up costs. Declarant may waive this requirement for some Lots and Units, if the first purchaser is a Builder, and the Builder becomes unconditionally obligated to collect and pay the Initial Capital Contribution upon the subsequent sale of each Lot and Unit to an end purchaser. Upon each and every subsequent acquisition of record title to a Lot from the initial Owner (other than Declarant), such new Owner will contribute to the capital of the Association an amount equal to one-fourth (1/4) of the amount of the Assessment determined by the Board of Directors for the Lot for the year in which the new Owner acquired title ("Capital Contributions"). Such Capital Contributions shall be used to establish adequate reserve funds for replacement and/or capital refurbishment of the Common Areas, Surface Water Management System and the portions of Lots or Units which the Association is responsible for maintaining and the payment of other expenses in the amounts determined proper and sufficient by the Board, if any. Each Owner acknowledges and understands that Capital Contributions are the exclusive property of the Association as a whole, and that no Owner shall have any interest, claim or right to any such Capital Contributions or funds composed of the same. The Association shall be responsible for maintaining the Capital Contribution in a separate reserve account and to use such funds only for capital costs and expenses as aforesaid.

11.12. Use of Reserves. Any reserve funds established by the Association from time to time, whether funded from Annual Assessments or from Capital Contributions shall be used only for the purpose originally reserved for in the Association budget and may not be used by the Association for any other purpose, unless such other purpose is approved by a 75% vote of all votes in the Association. Notwithstanding the foregoing, the Board of Directors of the Association shall have the authority to utilize up to 20% of the amount reserved in any particular reserve fund for another capital purpose without the vote or the approval of the Members. For example, the Board of Directors would have authority to use up to 20% of the amounts reserved for road repairs for a drainage repair without requiring a vote of the Members. However, the Board of Directors shall not have the authority to use the reserve funds for Common Expenses, or for any other purpose except upon the required vote of the Members of the Association.

11.13. Club Dues. Notwithstanding anything in this Declaration to the contrary (and unless otherwise directed by Club Owner), during any period that the Association is operating the Club Facilities as Club Manager pursuant to the Club Plan, the Association shall collect from Owners the Club Dues in addition to Assessments. As provided in the Club Plan, Club Owner shall have the right, at its sole option, to require that the Association enforce Club Owner's lien to collect Club Dues. The claim of Club Owner for Membership Fees is paramount to all claims of the Association and the lien created by the Club Plan for Membership Fees and other costs and expenses owed to Club Owner is superior to the lien of the Association for Assessments. Notwithstanding anything in this Declaration to the contrary, the requirement to pay Club Dues shall not apply to any Mortgagee (or its designee) obtaining title to a Lot or Unit by virtue of foreclosure of its Mortgage on a Lot or Unit, by acceptance of a deed in lieu of foreclosure for a Lot or Unit, or in satisfaction of a debt.

11.14. Assessment Estoppel Certificates. No Owner shall sell or convey its interest in a Unit unless all sums due the Association have been paid in full and an estoppel certificate in recordable form shall have been received by such Owner. The Association shall prepare and maintain a ledger noting Assessments and Club Dues due from each Owner. The ledger shall be kept in the office of the Association, or its designees, and shall be open to inspection by Owner and Club Owner. Within ten (10) days of a written request therefor, there shall be furnished to an Owner an estoppel certificate in writing setting forth whether the Assessments have been paid and/or the amount which is due as of any date. As to parties other than Owners who, without knowledge of error, rely on the certificate, the certificate shall be conclusive evidence of the amount of any Assessment therein stated. The Owner requesting the estoppel certificate shall be required to pay the Association a reasonable sum to cover the costs of examining records and preparing such estoppel certificate. Each Owner waives its rights (if any) to an accounting related to the Association expenses or Assessments.

11.15. Payment of Real Estate Taxes. Each Builder and Owner shall pay all taxes and obligations relating to its Lot or Unit which, if not paid, could become a lien against the Lot or Unit which is superior to the lien for Assessments created by this Declaration.

11.16. Collection by Declarant. If for any reason the Association shall fail or be unable to levy or collect Assessments, then in that event, Declarant shall at all times have the right, but not the obligation: (i) to advance such sums as a loan to the Association to bear interest and to be repaid as hereinafter set forth; and/or (ii) to levy and collect such Assessments by using the remedies available as set forth above, which remedies; including, but not limited to, recovery of attorneys' fees and paraprofessional fees at all levels including appeals, collections and bankruptcy, shall be deemed assigned to Declarant for such purposes. If Declarant advances sums, it shall be entitled to immediate reimbursement, on demand, from the Association for such amounts so paid, plus interest thereon at the Wall Street Journal Prime Rate plus two percent (2%), plus any costs of collection including, but not limited to, reasonable attorneys' fees and paraprofessional fees at all levels including appeals, collections and bankruptcy.

11.17. Rights to Pay Assessments and Receive Reimbursement. The Association, Declarant, Club Owner and any Mortgagee of a Unit shall have the right, but not the obligation, jointly and severally, and at their sole option, to pay any Assessments or other charges which

are in default and which may or have become a lien or charge against any Unit. If so paid, the party paying the same shall be subrogated to the enforcement rights of the Association with regard to the amounts due.

11.18. Mortgagee Right. Each Mortgagee may request in writing that the Association notify such Mortgagee of any default of the Owner of the Unit subject to the Mortgagee's Mortgage under the Association Documents which default is not cured within thirty (30) days after the Association learns of such default. A failure by the Association to furnish notice to any Mortgagee shall not result in liability of the Association because such notice is given as a courtesy to a Mortgagee and the furnishing of such notice is not an obligation of the Association to Mortgagee.

11.19. Exemption. Notwithstanding anything to the contrary herein, neither Declarant nor Club Owner nor any Unit or property owned by Declarant or Club Owner shall (unless specified to the contrary by Declarant or Club Owner in a separate written instrument) be responsible for any Assessments of any nature or any portion of the Association expenses. Declarant, at Declarant's sole option, may pay Assessments on Units owned by it.

ARTICLE XII.

ARCHITECTURAL STANDARDS AND USE RESTRICTIONS

12.1. Purpose. In order to preserve the natural setting and beauty of the Property, to establish and preserve a harmonious and aesthetically pleasing design for the Property, and to protect and promote the value of the Property, the Lots, Units and any and all improvements located therein or thereon shall be subject to the restrictions set forth in this **ARTICLE XII**. Every grantee of any interest in a Lot or Unit, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this **ARTICLE XII**.

12.2. Restrictions Applicable to Buildings and Other Improvements.

12.2.1. Architectural Review Committee.

12.2.1.1. The ARC shall be a permanent committee of the Association and shall administer and perform the architectural and landscape review and control functions relating to Tusawilla. The ARC shall consist of a minimum of three (3) members who shall initially be named by Declarant and who shall hold office at the pleasure of Declarant. One of the members of the ARC may be a paid consultant, i.e. an architect, at Declarant's option. Until the Community Completion Date, Declarant shall have the right to change the number of members on the ARC, and to appoint, remove, and replace all members of the ARC. Prior to the Community Completion Date, any members appointed by Declarant do not have to be Owners. Declarant shall determine which members of the ARC shall serve as its chairman and co-chairman. In the event of the failure, refusal, or inability to act of any of the members appointed by Declarant, Declarant shall have the right to replace any member within thirty (30) days of such occurrence. If Declarant fails to replace that member, the remaining members of the ARC shall fill the vacancy by appointment. From and after the

Community Completion Date, the Board shall have the same rights as Declarant with respect to the ARC.

12.2.1.2. A majority of the members of the ARC shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter before it. In lieu of a meeting, the ARC may act in writing.

12.2.1.3. The ARC is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. Each member of the ARC may be paid a stipend or honorarium as from time to time determined by the Board. The ARC may establish fees sufficient to cover the expenses of reviewing applications, plans and related data, and to compensate any consulting architects, landscape architects, urban designers, inspectors or attorneys retained in accordance with the terms hereof.

12.2.1.4. Requirement of Architectural Review; Community Standards; Delegation of Authority.

12.2.1.5. No Unit or other improvements of any nature whatsoever shall be constructed, altered, added to or maintained upon any part of the Property, except for (i) Units and other improvements which are constructed by Declarant, (ii) such improvements as are approved by the ARC in accordance with this **ARTICLE XII**, or (iii) improvements which pursuant to this **ARTICLE XII** do not require the consent of the ARC.

12.2.1.6. The ARC is hereby authorized to promulgate from time to time written architectural standards, policies and guidelines (the "Community Standards") governing the construction, location, color, landscaping and design of improvements, the contents of submissions of plans and specifications, and other information required to evidence compliance with and obtain approval pursuant to **Section 12.2**. Any such Community Standards published by the ARC shall be binding and enforceable on all Owners, Builders, and their Contractors and employees with respect to all improvements in the Property requiring the approval of the ARC. The Community Standards shall be effective from the day of adoption; shall be specifically enforceable by injunction or otherwise; and shall have the effect of covenants as if set forth herein verbatim. Until the Community Completion Date, Declarant shall have the right to approve the Community Standards, which approval may be granted in its sole discretion.

12.2.2. **Construction of Improvements.** No Unit may be temporarily or permanently occupied until the exteriors thereof and the landscaping of the Lot on which the Unit is located have been completed, and a certificate of occupancy for such Unit has been issued. No temporary house, shack, tent, or other outbuilding shall be permitted on any Lot at

any time, except for temporary structures for construction or for social functions as may be permitted by Rules and Regulations promulgated by the Board. During the continuance of construction by an Owner or Builder, such Owner or Builder shall require its Contractors to maintain the Lot and Unit in a reasonably clean and uncluttered condition and, to the extent possible, all construction trash and debris shall be kept within refuse containers, and the construction site shall be kept secure by the use of temporary fences during construction. Upon completion of construction, such Owner or Builder shall cause its Contractors to immediately remove all equipment, tools and construction material and debris from the Lot or Unit which such construction has been completed.

12.2.3. Architectural Approval. To preserve the architectural and aesthetic appearance of the Property, no construction or demolition of any Unit or other improvements of any nature whatsoever shall be commenced or maintained by any Owner or Builder, other than Declarant, with respect to the construction or demolition or affecting the exterior appearance of any Unit or with respect to any other portion of the Property, including, without limitation, the construction, installation or demolition of sidewalks, driveways, parking lots, mailboxes, decks, patios, courtyards, awnings, swimming pools, tennis courts, greenhouses, playhouses, doghouses, walls, fences, exterior lighting, recreational facilities, or other buildings, unless and until two (2) copies of the plans and specifications and related data showing the nature, color, type, shape, height, materials and location of the same shall have been submitted to and approved in writing by the ARC as to the compliance of such plans and specifications with such Community Standards as may be published by the ARC from time to time. Notwithstanding the foregoing, an Owner or Builder may make interior improvements and alterations within its Unit that do not affect the exterior appearance, without the necessity of approval or review by the ARC. The ARC shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association. Following approval of any plans and specifications by the ARC, representatives of the ARC shall have the right during reasonable hours to enter upon and inspect any Lot, Unit, or other improvements with respect to which construction or demolition is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event the ARC shall determine that such plans and specifications have not been approved or are not being complied with, the ARC shall be entitled to enjoin further construction or demolition and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In the event the ARC fails to approve or disapprove in writing any proposed plans and specifications within thirty (30) days after such plans and specifications and all other materials with respect thereto as the ARC may request, shall have been submitted, such plans and specifications will be deemed to have been expressly approved, provided the proposed improvements are generally in harmony with the scheme of the Property as set forth in this Declaration. Refusal of approval of plans and specifications may be based by the ARC upon any ground which is consistent with the objects and purposes of this Declaration, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

12.2.4. Landscaping Approval. To preserve the aesthetic appearance of the Property, no landscaping, clearing, grading, excavation or filling of any nature whatsoever shall be implemented and installed by any Owner or Builder, other than Declarant, unless and until

the plans therefor have been submitted to and approved in writing by the ARC. The provisions of **Section 12.2.3** regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc., shall also be applicable to any proposed landscaping, clearing, grading, excavation or filling. No Owner or Builder, other than Declarant, shall be entitled to cut, remove or mutilate any trees, shrubs, bushes or other vegetation having a trunk diameter of four (4) inches or more at any point above ground level, without obtaining the prior approval of the ARC, except as set forth in the preceding sentence, and provided further that dead or diseased shrubs, bushes or other vegetation, shall be cut and removed promptly from any Lot or Unit by the Owner or Builder of such Lot or Unit and shall be promptly replaced with similar shrubs, bushes or vegetation.

12.2.5. Construction. Each Owner shall deliver to the ARC copies of all construction and building permits as and when received by the Owner. Each construction site in Tusawilla shall be maintained in a neat and orderly condition throughout construction. Construction activities shall be performed on a diligent, workmanlike and continuous basis. Roads, drainage areas, Wetland & Upland Conservation Areas, easements, swales, Common Area and other such areas in Tusawilla shall be kept clear of vehicles, construction materials and debris at all times. No construction office or trailer shall be kept in Tusawilla and no construction materials shall be stored in Tusawilla subject, however, to such conditions and requirements as may be promulgated by the ARC. All refuse and debris shall be removed or deposited in a dumpster on a daily basis. No materials shall be deposited or permitted to be deposited in any waterbody or Common area or other Units in Tusawilla or be placed anywhere outside of the Unit upon which the construction is taking place. No hazardous waste or toxic materials shall be stored, handled and used, including, without limitation, gasoline and petroleum products, except in compliance with all applicable federal, state and local statutes, regulations and ordinances, and shall not be deposited in any manner on, in or within the construction or adjacent property or waterbodies. All construction activities shall comply with the Community Standards. If a Builder, Contractor or Owner shall fail in any regard to comply with the requirements of this Section, the ARC may require that such Builders, Contractors, or Owners post security with the Association in such form and amount deemed appropriate by the ARC in its sole discretion.

12.2.6. NPDES. The U.S. Environmental Protection Agency has authorized the Florida Department of Environmental Protection to implement the National Pollutant Discharge Elimination System ("NPDES") stormwater permitting program in Florida. The program regulates point source discharges of stormwater runoff from certain construction sites. The "operator" (i.e., the entity that owns or operates the project and has authority to ensure compliance) of regulated construction sites must obtain an NPDES stormwater permit and implement appropriate pollution prevention techniques to minimize erosion and sedimentation and properly manage stormwater. All Builders and Owners must ensure compliance with the NPDES requirements with regards to construction within the Property.

12.2.7. Contractors. There shall be provided to the ARC a list (name, address, telephone number, and identity of contact person), of all contractors, subcontractors, materialmen, and suppliers (collectively, "Contractors") and changes to the list as they occur relating to construction. Each Builder and all of its employees and Contractors and their

employees shall utilize those roadways any entrances into Tuscahill as are designated by the ARC for construction activities. The ARC shall have the right to require that each Builder's and Contractor's employees check in at the designate construction entrances and to refuse entrance to persons and parties whose names are not registered with the ARC.

12.2.8. Compliance. Each Owner is responsible for insuring compliance with all terms an conditions of these provisions and of the Community Standards by all of its employees and Contractors. In the event of any violation of any such terms or conditions by any employee, Contractor, or, in the opinion of the ARC, the continued refusal of any employee or Contractor to comply with such terms and conditions, after five (5) days' notice and right to cure, the ARC shall have, in addition to the other rights hereunder, the right to prohibit the violating employee or Contractor from performing any further services in Tuscahill.

12.2.9. Common Area Damage. If during any construction activity on a Lot, or at any other time, any of the Common Area is damaged or destroyed, including without limitation, any street light sidewalks, landscaping or street signs located thereon, the Builder or Owner of such Unit shall be liable for costs incurred in repairing or replacing such Common Area and the total costs thereof shall be assessed against the Builder or Owner as an Individual Assessment. The Association reserves the right to collect from Builders, Owners or Contractors a security deposit that may be applied to reduce damages to the Common Areas which might occur during the construction of a Unit.

12.2.10. Conduct. The ARC may, from time to time, adopt standards governing the performance or conduct of Builders, Owners, Contractors and their respective employees within Tuscahill. Each Builider, Owner and Contractor shall comply with such standards and cause its respective employees to also comply with same. The ARC may also promulgate requirements to be inserted in all contracts relating to construction within Tuscahill and each Builder, Owner and Contractor shall include the same therein.

12.2.11. Violation. If any improvement shall be constructed or altered without prior written approval, or in a manner which fails to conform with the approval granted, or a Lot or improvement is maintained in violation of this Declaration or the Community Standards, the Owner or Builder shall, upon demand of the Association or the ARC, cause such improvement to be removed, or restored until approval is obtained or in order to comply with the plans and specifications originally approved, or such Lot or improvement maintained in compliance with this Declaration or the Community Standards. The Owner or Builder shall be liable for the payment of all costs of removal, restoration, or maintenance, including all costs and attorneys' fees and paraprofessional fees at all levels including appeals, collections and bankruptcy, incurred by the Association or the ARC. The costs shall be deemed an Individual Assessment and enforceable pursuant to the provisions of this Declaration. The ARC and/or the Association is specifically empowered to enforce the architectural and landscaping provisions of this Declaration and the Community Standards, by any legal or equitable remedy. In the event that the Association or ARC shall cite an Owner for a violation, the Owner may request a hearing for review of the fine or citation before a committee of the ARC established for such purpose (the "Violations Committee"). The Violations Committee shall have the power to

investigate alleged violations and hold hearings with regard to same, according to such procedures as shall be promulgated by the Violations Committee. Any decision by the Violations Committee shall be final and binding upon the Owner, the ARC and the Association.

12.2.12. Court Costs. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed improvement or to cause the removal of any unapproved improvement, the Association and/or ARC shall be entitled to recover court costs, expenses and attorneys' fees and paraprofessional fees at all levels, including appeals, collections and bankruptcy, in connection therewith.

12.2.13. Certificate. In the event that any Owner fails to comply with the provisions contained herein, the Community Standards, or other rules and regulations promulgated by the ARC, the Association and/or ARC may, in addition to all other remedies contained herein, record a Certificate of Non-Compliance against the Unit stating that the improvements on the Unit fail to meet the requirements of this Declaration and that the Unit is subject to further enforcement remedies.

12.2.14. Certificate of Compliance. Prior to the occupancy of any improvement constructed or erected on any Lot by other than Declarant, or its designees, the Owner thereof shall obtain a Certificate of Compliance from the ARC, certifying that the Owner has complied with the requirements set forth herein. The ARC may, from time to time, delegate to a member or members of the ARC, the responsibility for issuing the Certificate of Compliance.

12.2.15. Exemption. Notwithstanding anything to the contrary contained herein, or in the Community Standards, any improvements of any nature made or to be made by Declarant, Club Owner or their nominees, including, without limitation, improvements made or to be made to the Common Area or any Unit, shall not be subject to the review of the ARC, the Association, or the provisions of the Community Standards.

12.2.16. Disclaimer as to Architectural Review Committee; Approval Not Guarantee. NO APPROVAL OF PLANS AND SPECIFICATIONS AND NO PUBLICATION OF COMMUNITY STANDARDS SHALL BE CONSTRUED AS REPRESENTING OR IMPLYING THAT SUCH PLANS, SPECIFICATIONS OR COMMUNITY STANDARDS WILL, IF FOLLOWED, RESULT IN PROPERLY DESIGNED OR CONSTRUCTED IMPROVEMENTS. SUCH APPROVALS AND COMMUNITY STANDARDS SHALL IN NO EVENT BE CONSTRUED AS REPRESENTING OR GUARANTEEING THAT ANY RESIDENTIAL UNIT OR OTHER IMPROVEMENT BUILT IN ACCORDANCE THEREWITH WILL BE BUILT IN A GOOD AND WORKMANLIKE MANNER. NEITHER DECLARANT, THE ASSOCIATION NOR THE ARC SHALL BE RESPONSIBLE OR LIABLE FOR ANY DEFECTS IN ANY PLANS OR SPECIFICATIONS SUBMITTED, REVISED OR APPROVED PURSUANT TO THE TERMS OF THIS ARTICLE XII, ANY LOSS OR DAMAGE TO ANY PERSON ARISING OUT OF THE APPROVAL OR DISAPPROVAL OF ANY PLANS OR SPECIFICATIONS, ANY LOSS OR DAMAGE ARISING FROM THE NONCOMPLIANCE OF SUCH PLANS AND SPECIFICATIONS WITH ANY GOVERNMENTAL ORDINANCES AND

REGULATIONS, OR ANY DEFECTS IN CONSTRUCTION UNDERTAKEN PURSUANT TO SUCH PLANS AND SPECIFICATIONS.

12.2.17. Building Restrictions. All buildings and other structures shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions and any applicable regulations and restrictions of applicable governmental agencies.

12.2.18. Service Yards. Each Owner of a Lot or Unit shall provide visually-screened areas to serve as service yards in which garbage receptacles, wood piles, gas and electric meters, pool equipment, air conditioning equipment and other outdoor equipment shall be located. Vehicles, materials, supplies and equipment which are stored outside by Owners must be placed or stored in order to conceal them from view from roads and adjacent properties. Any such visual barrier shall consist of fencing, landscaping or planting and shall be at a height and type which is approved by the ARC in accordance with the terms of this **ARTICLE XII**.

12.2.19. Exterior Appearance. All fences shall be subject to the Community Standards published by the ARC and shall be approved by the ARC prior to installation. Further, no foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or other purpose, nor shall any window-mounted heating or air-conditioning units be permitted without the approval of the ARC. Outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed or maintained unless screened completely from view on all sides from all adjoining properties and Common Areas, nor shall any clothing, rugs or other items be hung on any railing, fence, hedge or wall. No projections of any type shall be placed or permitted to remain above the roof of any improvement except approved chimneys or vent stacks.

12.2.20. Signs. Except as may be required by any applicable law, no signs, flags, banners or advertising posters of any kind shall be maintained or permitted within any windows, on the exterior of any improvements located within the Property, or elsewhere on any portion of the Property, without the express written permission of the ARC. The ARC may establish reasonable restrictions regarding the display of the American flag. Under no circumstances shall "Garage Sale", "Estate Sale", "Yard Sale" or other related signs be permitted within Tuscawilla and no "For Sale" or "Open House" signs shall be permitted within Tuscawilla except as permitted under applicable law. The approval of any signs and posters, including, without limitation, name and address signs, shall be upon such conditions as may be from time to time determined by the ARC and may be arbitrarily withheld. Notwithstanding the foregoing, the restrictions of this **Section 12.2.20** shall not apply to Declarant. In addition, the Board of Directors, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on any portion of the Common Areas and within those easement areas established in **Section 7.7**.

12.2.21. Satellite Dishes and Antennae. No exterior visible antennae, radio masts, towers, poles, aerials, satellite dishes, or other similar equipment shall be placed on any Unit or Lot without the prior written approval thereof being first had and obtained from the ARC as required by this Declaration. The ARC may require, among other things, that all such

improvements be screened so that they are not visible from adjacent Units, or from the Common Areas. Each Owner agrees that the location of such items must be first approved by the ARC in order to address the welfare of the residents of Tuscawilla. No Owner shall operate any equipment or device which will interfere with the radio or television reception of others. Club Owner may install Telecommunications Services equipment, a satellite dish or similar equipment within the Club Property so long as such equipment is not visible from the street giving access to the Club Property. All antennas not covered by the Federal Communications Commission ("FCC") rules are prohibited. Installation, maintenance, and use of all antennas shall comply with restrictions adopted by the Board and shall be governed by the then current rules of the FCC.

12.2.22. Additional Items Requiring the Prior Approval of the ARC.

Without in any matter limiting the generality of any other provision in Section 12.2, the following items must be approved in advance by the ARC:

- (a) Basketball hoops and backboards (all basketball hoops shall be of temporary, rollaway design and shall be removed at night and stored inside the garage of a Unit).
- (b) All flagpoles and other similar items;
- (c) Lawn ornaments, exterior sculpture, fountains and other similar items;
- (d) Mailboxes, paper boxes or other receptacles of any kind for use in the delivery of mail, newspapers, magazines or similar material;
- (e) Swimming pools and tennis courts;
- (f) Bicycle racks or stands;
- (g) Play equipment, unless screened completely from view on all sides from all adjoining properties, including, without limitation, swing sets, tree houses and sandboxes; and
- (h) Outdoor lighting.

12.3. Audubon International.

12.3.1. Audubon International Goals. The Audubon International Sustainable Development Program is based upon principles and practices that create communities compatible with the natural environment through enhancement of (i) natural resources, (ii) habitat value and quantity, (iii) biodiversity, (iv) conservation, and (v) education.

12.3.2. Certification Program. Audubon International is a not-for-profit environmental organization dedicated to improving the quality of the environment through research, education and conservation programs. Declarant may, but shall not be obligated to, develop all or portions of the Property under the Audubon International Sustainable Development Program. The program requires adherence to the management principles and practices outlined by Audubon International in the Natural Resource Management Plan on file

with the Association. The "Natural Resource Management Plan" is a comprehensive management plan developed by Audubon International that establishes criteria and guidelines that address wildlife conservation and habitat enhancement, water quality management, water conservation, waste reduction and management, energy efficiency, and public information and outreach in the Property. If Declarant develops portions of the Property in accordance with the Audubon International Sustainable Development Program, which Declarant shall have no obligation to do, then to retain certification in the program, the Association must, among other things, comply with the Natural Resource Management Plan, file annual reports and monitoring data, maintain documentation regarding environmental conditions, host an annual audit, pay an annual re-certification fee to Audubon International, comply with the Natural Resource Management Plan's maintenance standards, and retain the services of a Natural Resources Manager whose duties will be to facilitate the Audubon International Sustainable Development Program. **The costs of the foregoing shall be assessed against Owners as part of the Assessments described in ARTICLE XI of this Declaration.**

12.3.3. Audubon International Community Education and Information Outreach. An integral part of the Audubon International Sustainable Development Program is a community education and information plan that shall include conducting (i) environmental workshops and training seminars for project staff, contractors, residents, guests, and (ii) community outreach programs such as on-site field trips and informational seminars. The Board, in its sole discretion, shall designate portions of the Common Areas as areas to which Audubon International employees and certain community groups shall have access for the purpose of providing educational programs.

12.3.4. Discontinuance of Audubon International Sustainable Development Program. Declarant, prior to Turnover, and the Association, after Turnover, shall have the right to discontinue the Audubon International Sustainable Development Program for all or any portion of the Property at any time in its sole and absolute discretion.

12.4. General Restrictions.

12.4.1. Septic System. A septic tank must be installed on each Lot. Such septic tanks must be approved by the ARC prior to installation. No bottle gas tanks or soft water tanks may be installed or maintained on any Lot or Unit unless specifically approved by the ARC, which approval may be withheld by the ARC in its sole and absolute discretion.

12.4.2. Lot Irrigation. Declarant and each Builder will install an irrigation system, a surface water and/or effluent irrigation system or a well water irrigation system serving each Lot and the Common Areas. **ALL IRRIGATION WELLS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT FOR PRIVATE IRRIGATION WELLS. ALL WELLS SHALL HAVE A MINIMUM DEPTH OF FIFTY (50) FEET UNLESS OTHERWISE REQUIRED BY THE PERMITS.** Every Lot and the Common Areas must participate in the use of such irrigation systems. Except for sprinkler or irrigation systems installed by Declarant, no sprinkler or irrigation systems of any type which draw water from lakes, rivers, ponds, canals or other surface waters within the Property shall be installed, constructed or operated within the Property unless prior written approval from the Board has

been obtained. Each Owner shall maintain the irrigation system on his Lot in accordance with **Section 6.1** hereof. Before the Board approves the installation of any alterations or improvements to a Lot that in any way affect the irrigation system, the irrigation system that will be within the improvement portion of that Lot must be rerouted, if necessary, by a professional irrigation company. In order for the Board to approve the improvement installation, a letter or other evidence by a professional irrigation company must be given to the Board at least ten (10) days before the improvement installation stating that the effectiveness of the Tuscawilla drainage system will not be affected by the rerouting of the irrigation system. Should an Owner install the improvement without providing the necessary letter or other evidence from a professional irrigation company in advance as required herein, then, upon reasonable notice to the Owner, the Association may enter the Lot and conduct the necessary inspection, repair any necessary drainage facilities and the costs of such work, together with interest thereon, may be charged to the Owner and, as charged, shall become a lien on the Lot.

12.4.3. Nuisances. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property, nor shall any nuisance or odors be permitted to exist or operate upon or arise from the Property, so as to render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using or occupying any other portions of the Property. Noxious or offensive activities shall not be carried on in any Lot or Unit or in any part of the Common Areas, and each Owner, his or her family, tenants, guests, invitees, servants and guests shall refrain from any act or use of a Lot or Unit or of the Common Areas which could cause disorderly, unsightly or unkempt conditions, or which could cause embarrassment, discomfort, annoyance or nuisance to the Occupants of other portions of the Property, or which could result in a cancellation of any insurance for any portion of the Property, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used or placed within the Property without permission by the Board of Directors of the Association, which may establish restrictions on the time, place and manner of such use. Any Owner, or his or her family, tenants, guests, invitees, servants or agents who dumps or places any trash or debris upon any portion of the Property shall be liable to the Association for the actual costs of removal thereof or the sum of \$150.00, whichever is greater, and such sum shall be added to and become a part of that portion of any Assessment next becoming due to which such Owner and his or her Lot or Unit are subject.

12.4.4. Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Declarant and its agents and employees shall have the right to maintain on Declarant's Property and Common Areas and carry on such facilities and activities as may be reasonably required, convenient or incidental to the completion, improvement and sale and resale of Lots and/or Units or the developing of Lots, Units, Common Areas and the Additional Property, including, without limitation, the installation and operation of sales and construction trailers, offices, signs and model Units, all as may be approved by Declarant from time to time, provided that the location of any construction trailers of any assignees of Declarant's rights under this **Section 12.4.4** shall be subject to Declarant's approval. The right to maintain and carry on such facilities and activities

shall include specifically the right to use Units as model residences, and to use any Unit as an office for the sale and resale of Lots and/or Units and for related activities.

12.4.5. Traffic Regulations. All vehicular traffic on the streets and roads in the Property shall be subject to the provisions of the laws of the State of Florida, the County concerning operation of motor vehicles on public streets. THE ASSOCIATION IS HEREBY AUTHORIZED TO PROMULGATE, ADMINISTER AND ENFORCE REASONABLE RULES AND REGULATIONS GOVERNING VEHICULAR AND PEDESTRIAN TRAFFIC, INCLUDING REASONABLE SAFETY MEASURES AND SPEED LIMITS AND MODIFICATIONS OF THOSE IN FORCE ON ANY STREETS WITHIN THE PROPERTY. THE ASSOCIATION SHALL BE ENTITLED TO ENFORCE SAME BY ESTABLISHING SUCH ENFORCEMENT PROCEDURES AS IT DEEMS APPROPRIATE, INCLUDING LEVYING FINES FOR THE VIOLATION THEREOF. In the event of a conflict between such provisions of the laws of the State of Florida, the County and such Rules and Regulations promulgated by the Association, the Association may enforce the strictest provisions. Only drivers licensed to operate motor vehicles by the State of Florida or by any other state in the United States may operate any type of motor vehicle on any street or Common Areas within the Property. All vehicles of any kind and nature which are operated on the streets in the Property shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all residents of the Property.

12.4.6. Restrictions on Use of Additional Property. As Additional Property, including Common Areas, is subjected to this Declaration in accordance with Section 2.2 hereof, Declarant shall have the absolute right to change, amend or alter the use restrictions set forth in this ARTICLE XII, as applicable to the Additional Property, and to add additional use restrictions for such Additional Property as deemed necessary or appropriate by Declarant, in its sole and absolute discretion. Such use restrictions on Additional Property, notwithstanding anything to the contrary contained herein, may be either more or less restrictive than the restrictions contained herein.

12.4.7. Boat Docks and Use of Water Bodies. No docks, bulkheads, moorings, pilings, boathouses or boat shelters of any kind may be erected on any part of the Property, including without limitation any lakes and waterways within the Property, except for those constructed by Declarant, Club Owner or the Association. All Wetland & Upland Conservation Areas within the Property shall be left in their natural state and no alteration thereof or construction thereon shall be permitted. No motorized boats shall be operated in any lakes or canals within the Property. All uses of the lakes, and canals within the Property, including without limitation fishing, boating, swimming, playing or the use of personal flotation devices, shall be permitted only as provided in any Rules and Regulations promulgated by Declarant, Club Owner or the Association. Declarant, Club Owner and the Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of the lakes or canals within the Property.

12.4.8. Bessey Creek. Owners and their guests shall be restricted in the use of Bessey Creek as provided in the Rules and Regulations.

12.4.9. Compliance with the Development Order. Subject to the terms of **Section 6.2** hereof, the Property and each Lot and Unit shall be owned and maintained in a manner so as not to violate the applicable terms of the Development Order. Declarant and the Association shall be severally indemnified, defended and held harmless by each Owner for all losses, damages (compensatory, consequential, punitive or otherwise) or claims arising from or relating to the failure by such Owner to comply with the terms of the Development Order.

12.4.10. Hazardous Materials. No reportable quantities of hazardous materials shall be used or stored at the Property.

12.4.11. Mining and Excavation. No oil, gas, mineral or other type of mining, excavating, drilling, refining, quarrying or other similar activities of any kind shall be conducted on the Property. The terms of this Section shall not apply to Declarant or the Association.

12.4.12. Parking and Off-Street Motor Vehicles. Vehicles shall be parked only in the garages or in the driveways serving the Units or in the appropriate spaces or designated areas in which parking may be assigned, and then subject to the reasonable Rules and Regulations adopted by the Association. No repair, except emergency repair, of vehicles shall be made within Tuscawilla, except in the garage of a Unit. In the event a vehicle is parked in a driveway servicing a Unit, such vehicle must be completely within the boundaries of such driveway space and no part of the vehicle may extend outside the driveway space. No "commercial vehicle" (as such term is defined in the municipal or county code in effect on the date of recordation of this Declaration): (i) shall be permitted to be parked in Tuscawilla for a period of more than four (4) hours per day unless such commercial vehicle is temporarily present and necessary in the actual construction, maintenance, or repair of a Unit or other improvements in Tuscawilla or (ii) shall be permitted to be parked overnight or stored in Tuscawilla unless fully enclosed within a garage. No recreational vehicle of any kind shall be parked overnight in Tuscawilla, and no boats, boat trailers, trailers of any kind, campers, motor homes, mobile homes or buses shall be permitted to be parked in Tuscawilla unless kept fully enclosed within a garage. No vehicle shall be used as a domicile or residence, either temporary or permanent. In the event any vehicle is improperly parked in Tuscawilla in violation of this **Section 12.4.12**, the Association (or at the Association's direction a towing company) may enter the Lot or Common Areas and remove the vehicle and assess all costs incurred by the Association for such removal against the Unit and the Owner responsible for the parking of the vehicle in Tuscawilla, and such assessment shall become a lien on the Lot.

12.4.13. Vehicles. Except as needed for construction and maintenance by Declarant or the Association, no motorized vehicle may be operated off of paved roads or streets.

12.4.14. Sales Activities. No sales activities relating to any portion of the Property shall be conducted on the Property. Except as may be required by any applicable law, no sign of any nature or type whatsoever, including without limitation "for rent" or "for sale" signs, shall be displayed or placed on any part of the Property without the prior approval of the ARC, if required. The terms of this **Section 12.4.14** shall not apply to Declarant.

12.4.15. Use of Lots and Units. Except as permitted by Sections 7.7 and 12.4.4, each Lot and Unit shall be used for residential purposes only, and no trade or business of any kind may be carried on therein. No more than one (1) Unit shall be located on any Lot. Lots may be combined with the prior consent of the ARC, provided only one Unit shall be placed on the combined Lots and only for so long as a unity of title agreement in form approved by the Association is recorded against both Lots. The use of a portion of a Unit as an office by an Owner or his tenant shall not be considered to be a violation of this covenant if such use does not create regular customer, client or employee traffic. Lease or rental of a Unit for residential purposes shall also not be considered to be a violation of this covenant so long as the lease (i) is for not less than the entire Lot and all the improvements thereon, (ii) is not for a period of less than four (4) months, (iii) complies with all governmental laws, rules, ordinances and regulations; and (iv) is otherwise in compliance with the Rules and Regulations as may be promulgated and published from time to time by the Board of Directors. No more than one (1) lease for a Unit may commence in any one calendar year. All leases shall be in writing, and, prior to the commencement of any such lease, the Owner shall provide the Association and the managing agent of the Association, if any, with copies of such lease. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration and the Rules and Regulations adopted hereunder.

12.4.16. Pets. No animals, livestock, birds or poultry of any kind shall be raised, bred or kept by any Owner upon any portion of the Property, provided that up to three (3) generally recognized house pets (not including tropical fish, which may be kept in reasonable numbers) may be kept in Units, subject to Rules and Regulations adopted by the Association through its Board of Directors, and further provided that such pet or pets are kept or maintained solely as domestic pets and not for any commercial purpose. No pet shall be kept within any screened enclosure. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any pet shall be constructed or maintained on any part of the Common Areas. Pets shall be under leash at all times when walked or exercised in any portion of the Common Areas, and no pet shall be permitted to leave its excrement on any portion of the Common Areas, and the Owner of such pet shall immediately remove the same. Upon the written request of the Owner, the Board of Directors may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section 12.4.16, a particular pet is a generally recognized house pet or such pet is a nuisance, and the Board shall have the right to require the Owner of a particular pet to remove such pet from the Property if such pet is found to be a nuisance or to be in violation of these restrictions.

12.4.17. Motor Vehicles, Trailers, Boats, Etc. The Board of Directors of the Association shall have the authority to promulgate Rules and Regulations to govern or prohibit mobile homes, trailers (either with or without wheels), motor homes, tractors, trucks, helicopters, commercial vehicles of any type, campers, recreational vehicles, motorized campers or trailers, boats or other watercraft, boat trailers, motorcycles, motorized bicycles, motorized go-carts or any other related forms of transportation. No Owners or other Occupants of any portion of the Property shall repair or restore any vehicle of any kind upon or within any Lot or Unit or within any portion of the Common Areas, except (i) within enclosed garages or

(ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

12.4.18. Firearms. The discharge of firearms, including without limitation BB guns, pellet guns and other firearms of all types and sizes, is prohibited. Notwithstanding anything to the contrary contained herein, the Association shall not be obligated to take action to enforce this Section.

12.4.19. Lighting. All exterior lighting must be approved in advance by the ARC, except for seasonal Christmas decorative lights which may be displayed only between Thanksgiving Day and January 10, unless prohibited or further restricted by applicable Association restrictions.

12.4.20. Solar Panels and Energy Conservation Equipment. The ARC must approve all solar panels and energy conservation equipment prior to installation of such equipment on a Unit. All solar heating apparatus must conform to the standards set forth in the HUD Intermediate Minimum Property Standards Supplement, Solar Heating, and domestic Water Systems. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless it is an integral and harmonious part of the architectural design of a structure, as reasonably determined by the ARC as set forth in this **ARTICLE XII**. No solar panel, vents, or other roof-mounted, mechanical equipment shall project more than 1.0 feet above the surface of the roof of a Unit; and all such equipment, other than solar panels, shall be painted consistent with the color scheme of the portion of the Unit to which such equipment is installed. This provision is not intended to prohibit the use of solar energy devices.

12.4.21. Hurricane Shutters. Any hurricane shutters or other protective devices visible from outside a Unit shall be of a type as approved in writing by the ARC. Panel, accordion and roll-up style hurricane shutters may not be left closed during hurricane season (nor at any other time). Any such approved hurricane shutters may be installed or closed up to forty-eight (48) hours prior to the expected arrival of a hurricane and must be removed or opened within seventy two (72) hours after the end of a hurricane watch or warning or as the Board may determine otherwise. Except as the Board may otherwise decide, shutters may not be closed at any time other than a storm event. Any approval by the ARC shall not be deemed an endorsement of the effectiveness of hurricane shutters.

12.4.22. Irrigation. The water used in the irrigation system may not be suitable for drinking or water sports. Children and pets should not play in such water. Due to water quality, irrigation systems may cause staining on Units, other structures or paved areas. It is each Owner's responsibility to treat and remove any such staining. Association may require from time to time, that Owners install, at such Owner's sole cost and expense, system(s) to prevent stains (e.g., automatic deionization systems). Each Owner whose Unit receives water from a well system acknowledges and agrees to service or have serviced and to maintain or have maintained in good condition the well system, and to replace or have replaced all filters and/or filtration devices necessary for the proper functioning of the well system. Without limiting the foregoing, should an Owner fail to install, maintain, or service the necessary system(s) to prevent stains or fail to replace any necessary filter and/or filtration device as

provided herein, the Association may, but is not obligated to, install any such stain prevention system(s) and/or replace any such filters or filtration devices, and the cost of the same shall be charged as an Individual Assessment against such Owner.

12.4.23. Pools and Spas. Not all Lot designs in Tuscahill will accommodate a swimming pool or spa. No above ground pools shall be permitted. All pools and appurtenances installed shall require the approval of the ARC as set forth in this Declaration. All pools shall be adequately maintained and chlorinated. Unless installed by Declarant, no slides, or platforms shall be permitted without ARC approval. The drainage of a pool into another Lot, the Common Areas or into the waterways, canals, or Wetland & Upland Conservation Areas is prohibited.

12.4.24. Roofs and Pressure Treatment. Roofs and/or exterior surfaces and/or pavement, including, but not limited to, walks and drives, shall be pressure treated as often as appropriate but in any event within thirty (30) days of notice by the ARC.

12.4.25. Paint. Units shall be repainted as often as needed but in any event within forty-five (45) days of notice by the ARC.

12.4.26. Storage. No temporary or permanent utility or storage shed, storage building, tent, or other structure or improvement shall be permitted and no other structure or improvement shall be constructed, erected, altered, modified or maintained without the prior approval of the ARC, which approval shall conform to the requirements of this Declaration and/or the ARC Rules and Regulations.

12.4.27. Fences and Walls. Walls and fences on Lots must be approved in advance by the ARC in its sole discretion. Under no circumstances shall wood fences be permitted in any part of Tuscahill.

12.4.28. Porches. No grills, gym or other equipment may be stored on the front porches of Units. The ARC in its sole discretion may establish Rules and Regulations regarding the appearance of front porches.

12.4.29. Garage Doors. Garage Doors shall be closed at all times when the garage of a Unit is not in use.

12.4.30. Garbage Storage/Pickup. The Board of Directors of the Association shall have the authority to promulgate Rules and Regulations to govern garbage storage and pickup within Tuscahill.

12.4.31. Minor's Use of Facilities. Parents shall be responsible for all actions of their minor children at all times in and about Tuscahill. Declarant and the Association and Club Owner shall not be responsible for any use of the facilities by anyone, including minors.

ARTICLE XIII RULE MAKING

13.1. Rules and Regulations. Subject to the provisions hereof, the Board of Directors may establish reasonable Rules and Regulations concerning the use of Lots, Units, the Common Areas and facilities located thereon. Copies of such Rules and Regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of such Rules and Regulations and amendments thereto. Such Rules and Regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants and agents, until and unless any such rule or regulation is specifically overruled, canceled or modified by the Board of Directors or in a regular or special meeting of the Association by the vote of the Members holding a majority of the total votes in the Association, provided that in the event of such vote, such action must also be approved by Declarant, for so long as Declarant owns any Lot or Unit.

13.2. Authority and Enforcement. Subject to the provisions of Section 14.10, upon the violation of this Declaration, the Bylaws or any Rules and Regulations duly adopted hereunder, including, without limitation, the failure to timely pay any Assessments, Club Dues (as set forth in the Club Plan) the Board shall have the power (i) to impose reasonable monetary fines which shall constitute an equitable charge upon the Lot or Unit of the Owners or Occupants of which are guilty of such violation; (ii) to suspend an Owner's right to vote in the Association; or (iii) to suspend an Owner's right (and the right of such Owner's family, guests and tenants and of the co-Owners of such Owner and their respective families, guests and tenants) to use any of the Recreational Facilities located in the Common Areas, and the Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his or her family, guests or tenants or by his or her Occupants or co-Owners or the family, guests or tenants of his or her Occupants or co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days per violation.

13.3. Procedure. Except with respect to the failure of an Owner to pay Assessments, the Board shall not impose a fine, suspend voting rights or infringe upon or suspend any other rights of an Owner or other Occupant of the Property for violations of this Declaration, the Bylaws or any Rules and Regulations, unless and until the following procedure is followed: (a) Written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violation specifying: (i) The alleged violation; (ii) The action required to abate the violation; and (iii) A time period of not less than fourteen (14) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Bylaws or of the Rules and Regulations of the Association may result in the imposition of sanctions after notice and hearing. (b) Within twenty (20) days of such demand, if the violation continues beyond the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board of Directors may serve such Owner with written notice of a hearing to be held by the Board of Directors. The notice shall contain: (i) The nature of the alleged violation; (ii) The time and place of the hearing,

which time shall be not less than fourteen (14) days from the giving of the notice; (iii) An invitation to attend the hearing and produce any statement, evidence and witnesses on his behalf; and (iv) The proposed sanction to be imposed. (c) The hearing shall be held in an executive session of the Board of Directors pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer, director or other individual who delivered such notice. In addition, the notice requirement shall be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

13.4. Declarant Not Subject to Rules and Regulations. The Rules and Regulations shall not apply to Declarant or any property owned by Declarant, and shall not be applied in a manner which would prohibit or restrict the development or operation of the Club Facilities or adversely affect the interests of Club Owner or Declarant. Without limiting the foregoing, Declarant, and/or its assigns, shall have the right to: (i) develop and construct Units, Common Areas and the Club Facilities and related improvements within Tuscawilla, and make any additions, alterations, improvements, or changes thereto (ii) maintain sales offices (for the sale and resale of Units and Lots), general office and construction operations within Tuscawilla; (iii) place, erect or construct portable, temporary or accessory buildings or structures within Tuscawilla for sales, construction storage or other purposes; (iv) temporarily deposit, dump or accumulate materials, trash, refuse and rubbish in connection with the development or construction of any portion of Tuscawilla; (v) post, display, inscribe or affix to the exterior of any portion of the Common Areas or portions of Tuscawilla owned by Declarant, signs or others materials used in developing, constructing, selling or promoting the sale of any portion of Tuscawilla including, without limitation, Lots and Units; (vi) excavate fill from any lakes or waterways within and/or contiguous to Tuscawilla by dredge or dragline, store fill within Tuscawilla and remove and/or sell excess fill; and grow or store plants and trees within, or contiguous to Tuscawilla and use and/or sell excess plants and trees; (vii) undertake all activities which, in the sole opinion of Declarant, are necessary for the development and sale of any lands and improvements comprising Tuscawilla; and (viii) undertake all activities which, in the sole opinion of the Club Owner, are necessary for the construction, operation, maintenance and repair of the Club Facilities.

ARTICLE XIV. GENERAL PROVISIONS

14.1. Control by Declarant. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION OR THE BYLAWS OF THE ASSOCIATION, DECLARANT HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF DIRECTORS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE TERM SET FORTH IN SECTION 10.2. Every grantee of any interest in the Property, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with the

foregoing provisions of this **Section 14.1** and the provisions of **Section 10.2**, without the necessity of a vote at an annual meeting. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of **Section 10.2** and this **Section 14.1**, such right shall pass to the Owners, including Declarant if Declarant then owns one or more Lots or Units, and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board of Directors, and Declarant shall deliver all books, accounts and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

14.2. Sales Office. For so long as Declarant owns any property in Tusawilla that is affected by this Declaration, or maintains a sales office within Tusawilla, Declarant shall have the right to take such action reasonably necessary to transact any business necessary to consummate the development of Tusawilla and sales and re-sales of Units and/or other properties owned by Declarant or others outside of Tusawilla. This right shall include, but not be limited to, the right to: (i) maintain models, sales offices and parking associated therewith; (ii) have signs on any portion of Tusawilla, including Common Areas, Club Facilities and the Club Property; (iii) have employees in the models and offices; and (iv) use the Common Areas, the Club Facilities and the Club Property to show Units. Prior to Turnover, the sales office and all signs pertaining to development and sales remain the property of Declarant. Declarant shall have all of the foregoing rights without charge or expense.

14.3. Modification. The development and marketing of Tusawilla will continue as deemed appropriate in Declarant's sole discretion and nothing in this Declaration or ARC Rules and Regulations, or otherwise, shall be construed to limit or restrict such development and marketing. It may be necessary or convenient for the development of Tusawilla to, as an example and not a limitation, modify the boundary lines of the Common Areas, grant easements, dedications, agreements, licenses, restrictions, reservations, covenants, rights-of-way, and to take such other actions which Declarant, or its agents, affiliates, or assignees may deem necessary or appropriate. The Association and Owners shall, at the request of Declarant, execute and deliver any and all documents and instruments which Declarant deems necessary or convenient, in its sole and absolute discretion, to accomplish the same.

14.4. Promotional Events. Prior to Turnover, Declarant, and at all times, Club Owner, shall have the right, at any time, to hold marketing and promotional events or to use the Club Facilities and the Common Areas without restriction by the Association and without any charge for use thereof. Declarant, its agents, affiliates, or assignees shall have the right to market Tusawilla and Units in advertisements and other media by making reference to Tusawilla, including, but not limited to, pictures or drawings of Tusawilla, the Club Facilities, Club Property, Common Areas, Lots and Units constructed in Tusawilla. All logos, trademarks, and designs used in connection with Units are the property of Declarant, and the Association shall have no right to use the same after Turnover except with the express written permission of Declarant.

14.5. Use by Prospective Purchasers. Prior to Turnover, Declarant shall have the right, without charge, to use the Common Area for the purpose of entertaining prospective purchasers of Units, or other properties owned by Declarant outside of Tusawilla.

14.6. Equestrian Trails. The Equestrian Trails may be used for horseback riding purposes only. No Structure or improvement of any kind shall be placed, kept or installed anywhere on the Equestrian Trails by any Owner, other than Declarant. No person, including without limitation, all Owners, as well as their families, tenants, guests, invitees and pets, shall engage in any obnoxious, unpleasant, unsightly, offensive, noisy or other activity whatsoever on the Equestrian Trails which shall interfere with the use of the Equestrian Trails for its designated purposes or which could affect a rider's performance in the vicinity of the Equestrian Trails. Furthermore, all Owners, as well as their families, tenants, guests, invitees and pets, shall be obligated to refrain from any actions which would distract from the safety of riders and horses in the vicinity of the Equestrian Trails. Prohibited activities shall include, but not be limited to, burning materials where smoke will cross the Equestrian Trails, the maintenance of dogs or other pets under conditions which interfere with a rider's activities due to their loud barking or other actions, playing of loud radios, televisions, stereos or musical instruments, running, bicycling, or similar interference. The provisions of this Section may be enforced by the Association and/or Declarant.

14.7. Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Public Records, without the approval of any person or entity whatsoever. Such amendments may include, without limitation, the creation of easements for Telecommunications Systems, utility, drainage, ingress and egress and roof overhangs over any portion of Tusawilla; additions or deletions from the properties comprising the Common Areas; changes in the Rules and Regulations, and modifications of restrictions on the Units, and maintenance standards for landscaping. Declarant's right to amend under this provision is to be construed as broadly as possible.

14.8. Amendment by Association. Amendments to this Declaration, other than those authorized by Section 14.7 hereto, shall be proposed and adopted in the following manner:

14.8.1. Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each Owner and Member of the Association.

14.8.2. At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors or by Members of the Association. Such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association; provided, however, (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Unit, building or the Common Areas as set forth in this Declaration or adversely affects the title to any Unit or building, such amendment shall be valid only upon the written consent thereto by a majority in number of votes of the then existing Owners affected thereby, (ii) that any amendment which materially and adversely affects the security, title and interest of any Mortgagee must be approved by such

Mortgagee, and (iii) during any period in which Declarant owns a Unit or building, such amendment must be approved by Declarant.

14.8.3. The agreement of the required percentage of the Owners and, where required, Declarant and any Mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the president of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

14.9. General Restrictions on Amendments. Notwithstanding any other provision herein to the contrary, no amendment to this Declaration shall affect the rights of Declarant or Club Owner unless such amendment receives the prior written consent of Declarant or Club Owner, as applicable, which consent may be withheld for any reason whatsoever. No amendment shall alter the provisions of this Declaration benefiting Mortgagees without the prior approval of the Mortgagee(s) enjoying the benefit of such provisions. If the prior written approval of any governmental entity or agency having jurisdiction is required by applicable law or governmental regulation for any amendment to this Declaration, then the prior written consent of such entity or agency must also be obtained. All amendments must comply with **Section 8.2** which benefits the SFWMD. No amendment shall be effective until it is recorded in the Public Records.

14.10. Enforcement. Each Owner shall comply strictly with the Bylaws and the published Rules and Regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration, the Club Plan and in the deed or other instrument of conveyance to his Lot or Unit, if any. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or rights of use in and to the Club Facilities, Recreational Facilities located in the Common Areas, or for instituting an action to recover sums due, for damages, and/or for injunctive relief and/or any other remedy available at law or in equity, such actions to be maintainable by Declarant, the Board of Directors on behalf of the Association, or, in a proper case, by an aggrieved Owner. Should Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of this Declaration, the Bylaws, and the Rules and Regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that Declarant, the Association or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction or other equitable action to restrain any such violation or breach or any threatened violation or breach. After Turnover, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of two-thirds (2/3) of the total vote of the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation,

the foreclosure of liens), (b) the imposition and collection of Assessments or fines, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims or crossclaims brought by the Association in proceedings instituted against it. No delay, failure or omission on the part of Declarant, the Association or any aggrieved Owner in exercising any right, power, or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person of the provisions of this Declaration, the Bylaws or any Rules and Regulations of the Association, however long continued. This Section shall not be amended unless such amendment is made by Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

14.11. Enforcement by or Against Other Persons. In addition to the foregoing, this Declaration or ARC Rules and Regulations may be enforced by Declarant and/or, where applicable, Club Owner and/or the Association by any procedure at law or in equity against any person violating or attempting to violate any provision herein, to restrain such violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein. The expense of any litigation to enforce this Declaration or ARC Rules and Regulations shall be borne by the person against whom enforcement is sought, provided such proceeding results in a finding that such person was in violation of this Declaration or the ARC Rules and Regulations.

14.12. Duration. The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of Declarant, the Association and all other Owners and Mortgagees and their respective heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect for a period of fifty (50) years from and after the date of the recording of this Declaration, provided that rights and obligations which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said fifty (50) year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10) year renewal periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration, if, during the last year of the initial fifty (50) year period or the last year of any ten (10) year renewal period, seventy-five percent (75%) of the total votes of the Association are cast in favor of terminating this Declaration at the end of the then current term. In the event that the Association votes to terminate this Declaration, and such termination is approved by the County, an instrument evidencing such termination shall be duly filed, such instrument to contain a certificate wherein the president of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in the Property, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property as provided hereby. Reference in the respective deeds of conveyance or in any mortgage or trust deed or other evidence of obligation or transfer, to the

covenants, conditions, restrictions, easements, rights, benefits and privileges of every character contained herein, shall be deemed and taken to be appurtenant to and covenants running with such property, and shall be binding upon any such grantee, mortgagee or trustee and their successors and assigns as fully and completely as though the provisions of this Declaration were fully recited and set forth in their entirety in such documents.

14.13. 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, in the opinion of Declarant or the Board of Directors, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance, building codes or other regulations which are less restrictive. The effective date of this Declaration shall be the date of its filing for record. The captions of each Article and Section hereof as to the contents of each Article and Section 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 Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Florida.

14.14. Dissolution.

14.14.1. Generally. In the event of the dissolution of the Association without reinstatement within thirty (30) days, other than incident to a merger or consolidation, any Owner may petition the Circuit Court of the appropriate Judicial Circuit of the State of Florida for the appointment of a receiver to manage the affairs of the dissolved Association and to manage the Common Areas in the place and stead of the Association, and to make of such provisions as may be necessary for the continued management of the affairs of the dissolved Association. In the event the Association is dissolved, and any portion of the Surface Water Management System is part of the Common Areas, the Surface Water Management System shall be conveyed to an appropriate agency of local government, and that if not accepted, then the Surface Water Management System shall be dedicated to a similar non-profit corporation.

14.14.2. Applicability of Declaration after Dissolution. In the event of dissolution of the Association, Tusawilla and each Unit therein shall continue to be subject to the provisions of this Declaration, including, without limitation, the provisions respecting Assessments and the Club Dues specified in this Declaration and/or the Club Plan. Each Owner shall continue to be personally obligated to the successors or assigns of Association, and/or Club Owner, as the case may be, for Assessments and Club Dues to the extent that Assessments and Club Dues are required to enable the successors or assigns of Association and/or Club Owner to properly maintain, operate and preserve the Common Areas and/or Club Property. Without limiting the foregoing, the obligation of each Owner to pay the Club Dues shall survive the dissolution of the Association. The provisions of this Section shall only apply with regard to the maintenance, operation, and preservation of those portions of Tusawilla which had been Common Areas and/or comprised part of the Club Property and continue to be so used for the common use and enjoyment of the Owners.

14.15. Assignment. Declarant may assign all or a portion of its rights under this Declaration, or all or a portion of such rights in connection with portions of the Property. In the event of such 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 non-exclusive basis. After an assignment, the assignee shall have the same rights and powers, and be subject to the same obligations and duties as was Declarant prior to the assignment, and Declarant shall be relieved and released of all obligations with respect to such rights, powers, obligations, easements or estates.

14.16. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

14.17. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

14.18. Rights of Third Parties. This Declaration shall be recorded for the benefit of Declarant, the Association, the Owners and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Property, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Declarant and Mortgagees as herein provided, the Owners shall have the right to extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any adjoining owner or third party.

14.19. Notice of Sale, Lease or Mortgage. In the event an Owner sells, leases, mortgages or otherwise disposes of any Lot or Unit, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee or transferee.

14.20. No Trespass. Whenever the Association, Declarant, the ARC and their respective successors, assigns, agents or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve or do any other action within any portion of the Property, the entering thereon and the taking of such action shall not be deemed to be a trespass.

14.21. Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association, or if no address has been so designated, at the addresses of such Owners' respective Lots or Units. All notices to the Association shall be delivered or sent in care of Declarant at the following address:

Tuscawilla Community Association, Inc.

1601 Forum Place, Suite 805
West Palm Beach, FL 33401
Attention: President

Or at such other address as specified by written notice to Owners. All notices to Declarant shall be delivered or sent to Declarant at the above address or to such other address as Declarant may from time to time notify the Association. Notices to Mortgagees shall be delivered to such address as such Mortgagees specify in writing to the Association, and if no such notice is given to the Association, to the address provided in the Mortgage. All notices are deemed delivered when delivered by hand or when deposited in the United States mail.

14.22. Plats. In addition to this Declaration, the Property shall be subject to the additional covenants, restrictions, easements, dedications, reservations and other terms and provisions set forth in the Development Order and Plats of the Property, which Plats are recorded or to be recorded in the Public Records.

14.23. Use of Tusawilla Name. All parties owning or otherwise making any use of any portion of the Property shall be deemed, by virtue of accepting such ownership or making such use, to have covenanted and agreed that: (i) except as provided below, no usage of the name "Tusawilla" or any associated logo will be made in naming or referring to any business or activity within or outside of the Property or in describing or referring to the location of any business or enterprise conducted within or outside of the Property and (ii) generally, no usage of that name will be made whatsoever without the express prior written approval of Declarant.

14.24. Disclaimer as to Site Plan. THE SITE PLAN OF TUSAWILLA AND ALL AMENDMENTS THERETO REPRESENTS ONLY A GENERAL SCHEME OF DEVELOPMENT AND SHALL NOT BE CONSTRUED AS REPRESENTING, IMPLYING OR GUARANTEEING THAT ANY UNIT OR OTHER IMPROVEMENT WILL BE BUILT IN ACCORDANCE THEREWITH.

14.25. Club Plan. The Association and each Unit Owner, where applicable, shall be bound by and comply with the Club Plan. This Declaration is subordinate and inferior to the Club Plan. In the event of any conflict between the Club Plan and this Declaration, the Club Plan shall control. Notwithstanding anything to the contrary herein, neither Club Owner, the Club Facilities, nor the Club Property shall be subject to this Declaration, except as otherwise expressly provided herein.

14.26. Representations. Declarant makes no representations concerning development both within and outside the boundaries of Tusawilla including, but not limited to, the number, design, boundaries, configuration and arrangements, prices of all Lots or Units or Club Facilities and buildings in all other proposed forms of ownership and/or other improvements on Tusawilla or adjacent to or near Tusawilla, including, but not limited to, the size, location, configuration, elevations, design, building materials, height, view, airspace, number of homes, number of buildings, location of easements, parking and landscaped areas, services and amenities offered.

14.27. Non-Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE ASSOCIATION DOCUMENTS, THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY BUILDER, OWNER, OCCUPANT OR USER OF ANY PORTION OF TUSCAWILLA INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, LESSEES, LICENSEES, INVITEES, AGENTS, SERVANTS, CONTRACTORS, AND/OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

14.27.1. IT IS THE EXPRESS INTENT OF ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF TUSCAWILLA HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF TUSCAWILLA AND THE VALUE THEREOF; AND

14.27.2. THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN AGENCY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE STATE OF FLORIDA AND/OR MARTIN COUNTY OR PREVENTS TORTIOUS ACTIVITIES; AND

14.27.3. THE PROVISIONS OF ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY, AND WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY, OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO A UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING A USE OF, ANY PORTION OF TUSCAWILLA (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USE) SHALL BE BOUND BY THIS SECTION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS SECTION OR OTHERWISE. AS USED IN THIS SECTION, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS).

14.28. Resolution of Disputes. BY ACCEPTANCE OF A DEED, EACH BUILDER AND OWNER AGREES THAT THE ASSOCIATION DOCUMENTS ARE VERY COMPLEX; THEREFORE, ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION,

WITH RESPECT TO ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSS CLAIM, WHETHER IN CONTRACT AND/OR IN TORT (REGARDLESS IF THE TORT ACTION IS PRESENTLY RECOGNIZED OR NOT), BASED ON, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO ASSOCIATION DOCUMENTS, INCLUDING ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, VALIDATION, PROTECTION, ENFORCEMENT ACTION OR OMISSION OF ANY PARTY SHOULD BE HEARD IN A COURT PROCEEDING BY A JUDGE AND NOT A JURY IN ORDER TO BEST SERVE JUSTICE. DECLARANT HEREBY SUGGESTS THAT EACH OWNER UNDERSTAND THE LEGAL CONSEQUENCES OF ACCEPTING A DEED TO A LOT OR UNIT.

14.29. Venue. EACH BUILDER AND OWNER ACKNOWLEDGES REGARDLESS OF WHERE SUCH BUILDER OR OWNER (i) EXECUTED A PURCHASE AND SALE AGREEMENT, (ii) RESIDES, (iii) OBTAINS FINANCING OR (iv) CLOSED ON A UNIT, THIS DECLARATION LEGALLY AND FACTUALLY WAS EXECUTED IN MARTIN COUNTY, FLORIDA. DECLARANT HAS AN OFFICE IN MARTIN COUNTY, FLORIDA AND EACH UNIT IS LOCATED IN MARTIN COUNTY, FLORIDA. ACCORDINGLY, AN IRREBUTTABLE PRESUMPTION EXISTS THAT THE ONLY APPROPRIATE VENUE FOR THE RESOLUTION OF ANY DISPUTE LIES IN MARTIN COUNTY, FLORIDA. IN ADDITION TO THE FOREGOING, EACH BUILDER, OWNER AND DECLARANT AGREE THAT THE VENUE FOR RESOLUTION OF ANY DISPUTE LIES IN MARTIN COUNTY, FLORIDA.

14.30. Reliance. BEFORE ACCEPTING A DEED TO A LOT OR UNIT, EACH BUILDER AND OWNER HAS AN OBLIGATION TO RETAIN AN ATTORNEY IN ORDER TO CONFIRM THE VALIDITY OF THIS DECLARATION. BY ACCEPTANCE OF A DEED, EACH BUILDER AND OWNER ACKNOWLEDGES THAT HE OR IT HAS SOUGHT AND RECEIVED SUCH AN OPINION OR HAS MADE AN AFFIRMATIVE DECISION NOT TO SEEK SUCH AN OPINION. DECLARANT IS RELYING ON EACH BUILDER AND OWNER CONFIRMING IN ADVANCE OF ACQUIRING A LOT OR UNIT THAT THIS DECLARATION IS VALID, FAIR AND ENFORCEABLE. SUCH RELIANCE IS DETRIMENTAL TO DECLARANT. ACCORDINGLY, AN ESTOPPEL AND WAIVER EXISTS PROHIBITING EACH BUILDER AND OWNER FROM TAKING THE POSITION THAT ANY PROVISION OF THIS DECLARATION IS INVALID IN ANY RESPECT. AS A FURTHER MATERIAL INDUCEMENT FOR DECLARANT TO SUBJECT TUSCAWILLA TO THIS DECLARATION, EACH BUILDER AND OWNER DOES HEREBY RELEASE, WAIVE, DISCHARGE, COVENANT NOT TO SUE, ACQUIT, SATISFY AND FOREVER DISCHARGE DECLARANT, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS AND ITS AFFILIATES AND ASSIGNS FROM ANY AND ALL LIABILITY, CLAIMS, COUNTERCLAIMS, DEFENSES, ACTIONS, CAUSES OF ACTION, SUITS, CONTROVERSIES, AGREEMENTS, PROMISES AND DEMANDS WHATSOEVER IN LAW OR IN EQUITY WHICH A BUILDER OR AN OWNER MAY HAVE IN THE FUTURE, OR WHICH ANY PERSONAL REPRESENTATIVE, SUCCESSOR, HEIR OR ASSIGN OF OWNER HEREAFTER CAN, SHALL OR MAY HAVE AGAINST DECLARANT, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, AND ITS AFFILIATES AND ASSIGNS, FOR, UPON OR BY REASON OF ANY

MATTER, CAUSE OR THING WHATSOEVER RESPECTING THIS DECLARATION, OR THE EXHIBITS HERETO. THIS RELEASE AND WAIVER IS INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY THE LAWS OF THE STATE OF FLORIDA.

14.31. Florida Statutes. Whenever this Declaration refers to the Florida Statutes, it shall be deemed to refer to the Florida Statutes as they exist on the date this Declaration is recorded except to the extent provided otherwise as to any particular provision of the Florida Statutes.

14.32. Construction Activities. ALL OWNERS, OCCUPANTS AND USERS OF TUSCAWILLA ARE HEREBY PLACED ON NOTICE THAT (1) DECLARANT AND/OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES AND/OR (2) ANY OTHER PARTIES WILL BE, FROM TIME TO TIME, CONDUCTING CONSTRUCTION ACTIVITIES, BLASTING, EXCAVATION, CONSTRUCTION AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO TUSCAWILLA. BY THE ACCEPTANCE OF THEIR DEED OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF TUSCAWILLA, EACH SUCH OWNER, OCCUPANT AND USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES (i) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY, (ii) NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO TUSCAWILLA WHERE SUCH ACTIVITY IS BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS), (iii) DECLARANT AND THE OTHER AFORESAID RELATED PARTIES SHALL NOT BE LIABLE FOR ANY AND ALL LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES, EXCEPT RESULTING DIRECTLY FROM DECLARANT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND (iv) ANY PURCHASE OR USE OF ANY PORTION OF TUSCAWILLA HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING.

14.33. Title Documents. Each Builder and Owner by acceptance of a deed to a Lot or Unit acknowledges that such Lot or Unit is subject to certain land use and title documents and all amendments thereto, which include among other items, the Title Documents identified in this Declaration (collectively, the "**Title Documents**"). Declarant's plan of development for Tuscawilla may necessitate from time to time the further amendment, modification and/or termination of the Title Documents. DECLARANT RESERVES THE UNCONDITIONAL RIGHT TO SEEK AMENDMENTS AND MODIFICATIONS OF THE TITLE DOCUMENTS. It is possible that a governmental subdivision or agency may require the execution of one or more documents in connection with an amendment, modification, and/or termination of the Title Documents. To the extent that such documents require the joinder of

Builders or Owners other than Declarant, Declarant, by any one of its duly authorized officers, may, as the agent and/or the attorney-in-fact for the Builders and Owners, execute, acknowledge and deliver any documents required by applicable governmental subdivision or agency; and the Builders and Owners, by virtue of their acceptance of deeds, irrevocably nominate, constitute and appoint Declarant, through any one of its duly authorized officers, as their proper and legal attorney-in-fact for such purpose. This appointment is coupled with an interest and is therefore irrevocable. Any such documents executed pursuant to this Section may recite that it is made pursuant to this Section. Notwithstanding the foregoing, each Builder and Owner agrees, by its acceptance of a deed to a Lot or Unit:

14.33.1. to execute or otherwise join in any documents required in connection with the amendment, modification, or termination of the Title Documents; and

14.33.2. that such Builder or Owner has waived its right to object to or comment the form or substance of any amendment, modification, or termination of the Title Documents.

Without limiting the foregoing, upon the Community Completion Date, the Association shall assume all of the obligations of Declarant under the Title Documents unless otherwise provided by Declarant by amendment to this Declaration recorded by Declarant in the Public Records, from time to time, and in the sole and absolute discretion of Declarant.

14.34. Exhibits. The following exhibits are attached to and incorporated in this Declaration:

Exhibit "A" – Legal Description of Initial Property
Exhibit "B" – Articles of Incorporation
Exhibit "C" – Bylaws
Exhibit "D" – SFWMD Permit

IN WITNESS WHEREOF, a duly authorized officer of the undersigned Declarant has executed this Declaration under seal, as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

Michael Wilber
Name: Michael Wilber

EF MINUS S, LLC, a Florida limited
liability company

By: Tusawilla Acquisition Subsidiary,
LLC, a Delaware limited liability company,
Sole Member

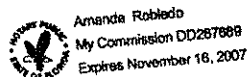
By: Kolter Homes Division, LLC,
a Delaware limited liability company,
Sole Member

JOSEPH PEARCE
Name: JOSEPH PEARCE

Doug Bruk
By: Doug Bruk
Senior Project Manager

STATE OF FLORIDA)
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me as of this 2 day of August, 2006, by Doug Bruk, as Senior Project Manager of Kolter Homes Division, LLC, a Delaware limited liability company, Sole Member of Tusawilla Acquisition Subsidiary, LLC, a Delaware limited liability company, Sole Member of EF Minus S, LLC, a Florida limited liability company, on behalf of the limited liability company. The foregoing individual is personally known to me or has produced _____ as identification.



Amanda Robledo
Print Name: _____
NOTARY PUBLIC - STATE OF _____
Commission Number: _____
My commission expires: _____

(Notarial Seal)

JOINDER OF ASSOCIATION

Tusawilla Community Association, Inc., a Florida not-for-profit corporation, hereby joins in this Declaration of Covenants, Conditions and Restrictions for Tusawilla, for the sole purpose of agreeing to perform its obligations as contained herein.

Signed, sealed and delivered
presence of:

Tusawilla Community Association, Inc.,
a Florida not-for-profit corporation

Michael Wilber
Name: Michael Wilber

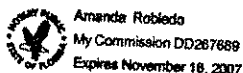
By: Don Brink
Name: Don Brink
Its: PRESIDENT

Steve MacCarbony
Name: Steve MacCarbony

(CORPORATE SEAL)

STATE OF FLORIDA _____)
COUNTY OF Palm Beach) ss.

The foregoing instrument was acknowledged before me this 9 day of August 2006 by Don Brink, the _____ of Tusawilla Community Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. The above-named individual [X] is personally known to me or [] has produced the following identification which is current or has been issued within the past five years and bears a serial or other identifying number and did not take an oath.



Amanda Robledo
Print Name: Amanda Robledo
NOTARY PUBLIC - STATE OF FL
Commission Number: DD267689
My commission expires: 11-18-07

(Notarial Seal)

EXHIBIT "A"

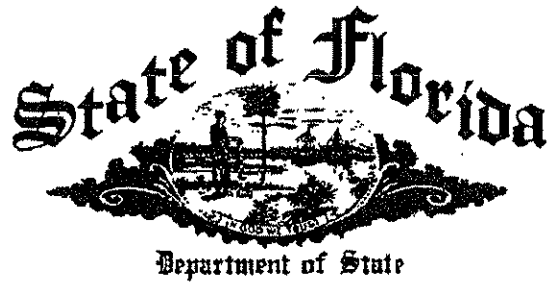
LEGAL DESCRIPTION OF INITIAL PROPERTY

All real property contained in Tuscawilla PUD, according to the Plat thereof, as recorded in Plat Book 116, Page 39 of the Public Records of Martin County, Florida, LESS AND EXCEPT Tracts "MC", "DB-1", "DB-2", "SS", and "REC" as shown on the Plat.

EXHIBIT "B"
ARTICLES OF INCORPORATION

WIPB 883160.10

-82-



I certify the attached is a true and correct copy of the Articles of Incorporation of FUSCAWILLA COMMUNITY ASSOCIATION, INC., a Florida corporation, filed on August 10, 2006, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number E06000201278. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is N06000008585.

Authentication Code: 206A00050365-081506-N06000008585-1/1



Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
Fifteenth day of August, 2006

Sue M. Cobb
Sue M. Cobb
Secretary of State

ARTICLES OF INCORPORATION
of
TUSCAWILLA COMMUNITY ASSOCIATION, INC.

(A Florida Corporation Not for Profit)

ARTICLE I
NAME

The name of this corporation shall be **Tuscawilla Community Association, Inc.** (hereinafter referred to as the "Association").

ARTICLE II
PRINCIPAL ADDRESS

The mailing and principal office address of the Association shall be 1601 Forum Place, Suite 805, West Palm Beach, FL 33401, Attn: Association President. The Association is NOT a condominium association under Chapter 718, Florida Statutes.

ARTICLE III
DEFINITIONS

All terms that are used but not otherwise defined in these Articles of Incorporation shall have the meanings ascribed to such terms in the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TUSCAWILLA, and any amendments or supplements thereto, to be recorded in the Public Records of Martin County, Florida (hereinafter referred to as the "Declaration").

ARTICLE IV
PURPOSES

The purposes for which this Association is organized are to operate and manage the affairs and property of the Association, to perform all acts provided in the Declaration and applicable Florida laws, and administer the interests of the Association and the Owners. The Association is not organized for profit and no part of the net earnings, if any, shall inure to the benefit of any Member or any individual person, firm or corporation.

ARTICLE V
POWERS

A. The Association shall, subject to the limitations and reservations set forth in the Declaration, have all the powers, privileges and duties reasonably necessary to discharge its obligations, including, but not limited to, the following:

1. To perform all the duties and obligations of Association set forth in the Declaration and By-Laws, as herein provided.

WPB 882558.7

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2. To enforce, by legal action or otherwise, the provisions of the Declaration and By-Laws and of all rules, regulations, covenants, restrictions and agreements governing or binding the Association and the Tuscawilla community.

3. To fix, levy, collect and enforce payment, by any lawful means, of all Assessments pursuant to the terms of the Declaration, these Articles and By-Laws.

4. To pay all operating costs, including, but not limited to, all licenses, taxes or governmental charges levied or imposed against the property of the Association.

5. To do all acts and make all payments required by the Club Plan.

6. To acquire (by gift, purchase or otherwise), annex, own, hold, improve, build upon, operate, maintain, convey, grant rights and easements, sell, dedicate, lease, transfer or otherwise dispose of real or personal property (including the Common Areas) in connection with the functions of the Association except as limited by the Declaration. Without limiting the foregoing, if Club Owner is ever willing to sell the Club, the Association may purchase the same without the joinder or consent of the Owners or any other person or entity.

7. To borrow money, and to mortgage, pledge or hypothecate any or all of its real or personal property as security for money or debts incurred.

8. To dedicate, grant, license, lease, concession, create easements upon, sell or transfer all or any part of Tuscawilla to any public agency, entity, authority, utility or other person or entity for such purposes and subject to such conditions as it determines and as provided in the Declaration.

9. To participate in mergers and consolidations with the other non-profit corporations as it determines and as provided in the Declaration.

10. To adopt, publish, promulgate or enforce rules, regulations, covenants, restrictions or agreements governing the Association, Tuscawilla, the Common Areas, Lots, and Units as provided in the Declaration, and to effectuate all of the purposes for which the Association is organized.

11. To have and to exercise any and all powers, rights and privileges which are not-for-profit corporation organized under the Laws of the State of Florida may now, or hereafter, have or exercise.

12. To employ personnel and retain independent contractors to contract for management of the Association, Tuscawilla, the Common Areas and the Club (if the Association shall ever be designated the Club Manager by the Club Owner in writing pursuant to the Club Plan) as provided in the Declaration and to delegate in such contract all or any part of the powers and duties of the Association.

13. To contract for services to be provided to, or for the benefit of, the Association, Club Owner, Owners, the Common Areas, Tuscawilla, and the Club as provided in the Declaration and Club Plan, such as, but not limited to, Telecommunications Services, maintenance,

garbage pick-up, and utility services. The foregoing shall not be deemed to impose any obligation on the Association to provide such services.

14. To establish committees and delegate certain of its functions to those committees.

15. The obligation to operate and maintain the Surface Water Management System within Tusawilla (including, without limitation, all lakes, retention areas, culverts and related appurtenances, if any) in a manner consistent with the applicable SFWMD Permit requirements and applicable SFWMD rules, and to assist in the enforcement of the Declaration which relate to the Surface Water Management System. The Association shall be responsible for assessing and collecting assessments for the operation, maintenance, and if necessary, repairs of the Surface Water Management System within Tusawilla.

ARTICLE VI MEMBERS

The Members of the Association shall consist of Declarant (for as long as it owns a Lot or Unit in Tusawilla) and the record property Owners of all of the Lots and Units, in Tusawilla, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member. Membership shall be established effective immediately upon becoming an Owner; provided, however, that such new Member's rights shall not become effective until the new Member presents the Association with a recorded copy of the deed of conveyance or other muniment of title conveying the title to the Unit so conveyed, and such membership shall pass with title to the Lot or Unit in question as an appurtenance thereto with no such membership or rights arising therefrom being transferable in any manner except as an appurtenance to such Lot or Unit. Each and every Member shall be entitled to the benefits of membership and shall be bound to abide by the provisions of these Articles of Incorporation, the Declaration and the Bylaws of the Association, as amended from time to time.

ARTICLE VII CLASSES OF MEMBERS, VOTING AND ASSESSMENTS

A. The Association shall have two (2) classes of membership (Class A and Class B) as follows:

1. Class A Members shall be all those Owners as defined in Article V hereof with the exception of EF Minus S, LLC, a Florida limited liability company ("Declarant"). Prior to Turnover (as hereinafter defined), Class A Members shall have no voting rights, unless otherwise set forth in the Declaration or the Board of Directors requests the vote of the Members on any action. After Turnover, Class A Members shall be entitled to one (1) vote for each Lot or Unit owned in which they hold the interests required for membership by Article V hereof. Two Lots may be combined to form one Unit in accordance with the terms of the Declaration, in which event the Owner shall have a total of only one (1) vote for such Lot or Unit. When more than one person holds such interest or interests in any Lot or Unit, all of such persons shall be Members, and the vote for such Unit shall be exercised as they among themselves determine, but, in no event shall more than one vote be cast with respect to any such Lot or Unit. "Turnover" shall mean three (3) months after the date Ninety Percent (90%) of all Lots within Tusawilla have been sold and conveyed by Declarant (or its affiliates or assigns), or sooner at the sole election of Declarant, at which time the

Class A Members shall be obligated to elect the Board of Directors (other than any Director entitled to be appointed by Declarant) and assume control of the Association.

2. Declarant shall be the only Class B Member. Declarant, as the Class B Member, shall be entitled to one (1) vote for each Lot or Unit which Declarant owns in Tusawilla. The Class B Membership shall cease and terminate when Declarant ceases to own any Lot or Unit in Tusawilla. Prior to Turnover, Declarant shall have the right to control the Association as provided in the Declaration. After Turnover, Declarant shall have the right to vote on any matter submitted to a vote of the Class A Members by the Board of Directors and on any other matter specifically set forth in these Articles of Incorporation, the Declaration or the Bylaws.

B. The Bylaws of the Association shall provide for an annual meeting of Members and may make provisions for regular and special meetings of Members other than the annual meeting. Unless a greater or lesser vote is specifically required according to these Articles of Incorporation or the Declaration, the affirmative vote of at least a majority of the votes entitled to be cast of the Members present or represented at any meeting of the Members duly called at which a quorum has been attained, shall be binding upon the Members. Prior to Turnover, a quorum shall be established by Declarant's presence, in person or by proxy at any meeting. After Turnover, a quorum for the transaction of business at any meeting of Members shall exist if thirty percent (30%) of the total number of votes entitled to be cast by the Members shall be present or represented at the meeting. Fractional voting is prohibited. There shall be no cumulative voting.

C. After Turnover, the Members shall be entitled to vote on the following matters: (i) any amendment to these Articles of Incorporation, in accordance with Article X of these Articles of Incorporation; (ii) the election of directors, in accordance with Article VIII of these Articles of Incorporation; (iii) the dissolution and liquidation of the Association, in accordance with Article XIV of these Articles of Incorporation; (iv) the amendment of the Declaration, where such amendment requires the consent of the Members pursuant to the terms of the Declaration; (v) the decision to commence or prosecute a judicial or administrative proceeding by the Association pursuant to the terms of the Declaration; and (vi) any other matter the Board of Directors elects to submit to a vote of the Members.

D. The Association will obtain funds with which to operate by assessment of its Members in accordance with the provisions of the Declaration.

ARTICLE VIII BOARD OF DIRECTORS

A. The affairs of the Association shall be managed and conducted by a Board of Directors consisting of not less than three (3) members. The number of directors may be increased or decreased from time to time as the Board of Directors may determine; however, the number of directors shall not be less than three (3). Prior to Turnover, Directors need not be Members of the Association and need not be residents of Tusawilla; thereafter, Directors shall be Members of the Association (except for any Director who is appointed by Declarant).

B. Prior to Turnover, all Directors shall be appointed by Declarant. Prior to Turnover, Declarant shall have the right to remove any Director, with or without cause. All Directors may also be removed from office, with or without cause, whether before or after Turnover, by the vote or agreement in writing by a majority of all votes of the Members of the Association at a special

meeting of the Members called for that purpose. The procedures for a removal by the Members shall be in accordance with Section 617.0808 of the Florida Statutes. Any Director appointed by Declarant shall serve at the pleasure of Declarant. Prior to Turnover, all vacancies in the Board of Directors shall be filled by a majority vote of the remaining Directors.

C. After Turnover, Directors shall be elected by the Members of the Association at the annual meeting of the membership as provided in the Bylaws of the Association, and the Bylaws may provide for the method of voting in the election of Directors. Election shall be by majority vote of the votes entitled to be cast by the Members at any meeting where a quorum is present or represented. Notwithstanding anything to the contrary herein, at any time that Declarant owns at least five percent (5%) of the Lots in Tuscawilla, Declarant shall have the right to appoint one Director. Directors elected by the Members shall hold office until the next succeeding annual meeting of Members, and thereafter until qualified successors are duly elected and have taken office. After Turnover, all vacancies shall be filled by a majority vote of the remaining Directors; provided, however, that if the Director appointed by Declarant is removed or resigns from office, Declarant shall have the right to fill the vacancy created by the removal or resignation of such Director if Declarant has the right to appoint one Director at such time.

CORPORATE EXISTENCE

The Association shall have perpetual existence.

ARTICLE IX LIMITATIONS

A. No amendment may be made to these Articles which shall in any manner reduce, amend, affect or modify the terms, conditions, provisions, rights and obligations set forth in the Declaration.

B. There shall be no amendment to these Articles which shall abridge, reduce, amend, effect or modify the rights of the Declarant.

C. These Articles shall not be amended in a manner that conflicts with the Bylaws.

ARTICLE X AMENDMENT TO ARTICLES OF INCORPORATION

These Articles of Incorporation may be amended in the following manner:

A. Prior to Turnover, these Articles of Incorporation may be amended by a majority vote of the Board of Directors. No amendment of these Articles of Incorporation prior to Turnover shall require the execution of any Owner or the owner of any liens on any affected Lots or Units.

B. After Turnover, these Articles of Incorporation shall be amended in the following manner:

1. The Board of Directors, by majority vote, shall adopt a resolution setting forth the proposed Amendment and direct that it be submitted to vote at a meeting of the Members.

2. Notice of the subject matter of the proposed Amendment shall be included in the notice of any meeting (special or annual) at which such proposed Amendment is to be considered by the Members. Such notice shall set out in full the proposed amended article, section, subsection or paragraph of a subsection.

3. Such proposed Amendment shall be submitted to and approved by the Members at such meeting. Any number of Amendments may be submitted to the Members and voted upon at one meeting. The proposed Amendment shall be adopted upon receiving the affirmative vote of at least two-thirds (2/3) of the votes entitled to be cast by the Members present or represented at such meeting at which a quorum has been attained.

C. An amendment to these Articles of Incorporation may be made without a Members' meeting, without prior notice and without a vote of the Members if the action is taken by a written action of the Members entitled to vote having not less than the minimum number of votes necessary to authorize such action at a meeting at which all Members entitled to vote on such action were present.

D. Notwithstanding anything contained herein to the contrary, so long as Declarant owns at least one (1) Lot in Tusawilla, no amendment to these Articles of Incorporation affecting the rights or privileges of Declarant or its successors or assigns shall be effective without the prior written consent of Declarant (or its successors or assigns, as the case may be).

ARTICLE XI INCORPORATOR

The name of the Incorporator of this corporation is Cynthia C. Spall, Esq. whose mailing address is c/o Gunster, Yoakley & Stewart, P.A., 777 S. Flagler Drive, Suite 500 East, West Palm Beach, FL 33401.

ARTICLE XII INDEMNIFICATION OF OFFICERS AND DIRECTORS

Provided the person proposed to be indemnified satisfies the requisite standard of conduct for permissive indemnification by a corporation not for profit as set forth in the applicable provisions of the Florida Not For Profit Corporation Act, as the same may be amended from time to time, the Association shall indemnify its Officers and Directors, and may indemnify its employees and agents, to the fullest extent permitted by the provisions of such law, as the same may be amended and supplemented, from and against any and all of the expenses or liabilities incurred in defending a civil, criminal, administrative or investigative action, suit or proceeding (other than in an action, suit or proceeding brought by the Association upon authorization of the Board of Directors and Members) or other matters referred to in or covered by such provisions, including advancement of expenses prior to the final disposition of such proceedings and amounts paid in settlement of such proceedings, both as to actions in their official capacities and as to actions in any other capacity while an Officer, Director, employee or other agent. Expenses (including attorneys' fees) incurred by an Officer or Director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Director or Officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Association as authorized in this Article. Such expenses (including attorneys' fees) incurred by other

employees and agent shall also be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate. The indemnification and advancement of expenses provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of Members or Directors or otherwise, both as to actions in their official capacity and as to actions in another capacity while holding such office. Such indemnification shall continue as to a person who has ceased to be a Director, Officer, employee or agent, and shall inure to the benefit of the heirs and personal and other legal representatives of such a person. Except as otherwise provided above, an adjudication of liability shall not affect the right to indemnification for those indemnified. This Article shall apply only to persons for whom the Association is authorized to provide indemnification under applicable law.

ARTICLE XIII
TRANSACTIONS IN WHICH DIRECTORS OR OFFICERS ARE INTERESTED

A. No contact or transaction between the Association and one; (1) or more of its Directors or Officers or Declarant, or between the Association and any other corporation, partnership, association, or other organization in which one (1) or more of its Officers or Directors are officers, directors or employees or otherwise interested shall be invalid, void or voidable solely for this reason, or solely because the Officer or Director is present at, or participates in, meetings of the Board thereof which authorized the contract or transaction, or solely because said Officers' or Directors' votes are counted for such purpose. No Director or Officer of the Association shall incur liability by reason of the fact that such Director or officer may be interested in any such contract or transaction. Interested Directors shall disclose the general nature of their interest and may be counted in determining the presence of a quorum at a meeting of the Board which authorized the contract or transaction.

ARTICLE XIV
DISSOLUTION OF THE ASSOCIATION

A. Upon dissolution of the Association, all of its assets remaining after provision for creditors and payment of all costs and expenses of such dissolution shall be distributed in the following manner and order:

1. Real property contributed to the Association without the receipt of other than nominal consideration by Declarant (or its successors in interest) shall be returned to Declarant (whether or not a Member at the time of such dissolution) unless it refuses to accept the conveyance (in whole or in part);
2. Dedication to applicable municipal or other governmental authority of such property (whether real, personal or mixed) as determined by the Board of Directors of the Association to be appropriate for dedication and which the authority is willing to accept; and
3. The remaining assets shall be distributed among the Members, as tenants in common, each Member's share of the assets to be determined in accordance with his or her voting rights.

B. Prior to Turnover, the dissolution may be authorized by the Board of Directors, by a majority vote of the Directors then in office. After Turnover, the Board of Directors must adopt a resolution recommending that the Association be dissolved and directing that the question of such

dissolution be submitted to a vote at a meeting of the Members entitled to vote thereon (unless the Board of Directors determines that because of a conflict of interest or other substantial reason it should not make any recommendation). Written notice stating the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the Association must be given to each Member entitled to vote at such meeting in accordance with the terms of these Articles of Incorporation. A resolution to dissolve the Association shall be adopted by receiving at least two-thirds (2/3) of the votes that Members present or represented at such meeting are entitled to cast.

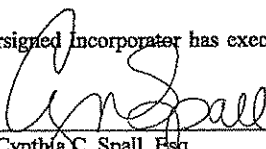
ARTICLE XV
DECLARATION

In the event of any conflict between the provisions of these Articles of Incorporation and the provisions of the Declaration, the provisions of the Declaration shall prevail.

ARTICLE XVI
DESIGNATION OF REGISTERED AGENT

GY Corporate Services, Inc. is hereby designated as the Association's Registered Agent for service of process within the State of Florida, and its street address is 777 S. Flagler Drive, Suite 500 East, West Palm Beach, FL 33401.

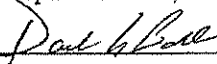
IN WITNESS WHEREOF, the undersigned Incorporator has executed these Articles of Incorporation this 7th day of August, 2006.


Cynthia C. Spall, Esq.
Incorporator

CONSENT OF REGISTERED AGENT

GY Corporate Services, Inc., whose street address is 777 S. Flagler Drive, Suite 500 East, West Palm Beach, FL 33401, hereby consents to its designation as Registered Agent in the foregoing Articles of Incorporation, and states that it is familiar with, and accepts, the obligations of that position as provided for in Section 617.0501, Florida Statutes.

GY Corporate Services, Inc., a Florida corporation

By:  _____

Print Name: David Bates

Title: Vice President

EXHIBIT "C"
BYLAWS

WPB 883160.11

BY-LAWS
of
TUSCAWILLA COMMUNITY ASSOCIATION, INC.
(a Florida corporation not for profit)

ARTICLE I
DEFINITIONS

Section 1. The term "Association" as used herein, shall mean Tusawilla Community Association, Inc., a Florida corporation not for profit, its successors or assigns.

Section 2. All terms which are defined in the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TUSCAWILLA COMMUNITY to be recorded in the Public Records of Martin County, Florida, and any amendments or supplements thereto (hereinafter referred to as the "Declaration") and the Articles of Incorporation of this Association, shall be used herein with the same meanings as defined in said Declaration or Articles of Incorporation, as the case may be.

ARTICLE II
LOCATION OF PRINCIPAL OFFICE

The principal office of the Association shall be located at 1601 Forum Place, Suite 805, West Palm Beach, FL 33401 Attn: Association President, or at such other place as may be established by resolution of the Board of Directors.

ARTICLE III
MEMBERS' VOTING RIGHTS

Section 1. Voting Rights shall be set forth in Article VII of the Articles of Incorporation of the Association.

Section 2. Each Owner and Declarant shall be a Member of Association. No One person who holds an interest in a Unit only as security for the performance of an obligation shall be a Member of Association. Membership shall be appurtenant to, and may not be separated from, ownership of the Unit. There shall be one vote appurtenant to each Unit. For the purposes of determining who may exercise the Voting Rights associated with each Unit the flowing rules shall govern:

- (a) In a Unit owned by Husband and Wife, either the husband or wife (but not both) may exercise the Voting Rights with respect to a Unit. In the event the husband and wife cannot agree, neither may exercise the Voting Rights.
- (b) In the event that any trust owns a Unit, Association shall have no obligation to review the trust agreement with respect to such trust. Association shall be governed by the following examples with respect to trusts:

- (i) If a Unit is owned by Robert Smith, as Trustee, Robert Smith shall be deemed the Owner of the Unit for all Association purposes.
 - (ii) If the Unit is owned by Robert Smith as Trustee for the Laura Jones Trust, then Robert Smith shall be deemed the Member with respect to the Unit for all Association purposes.
 - (iii) If the Unit is owned by Laura Jones Trust, and the deed does not reference a trustee, then Laura Jones shall be deemed the Member with respect to the Unit for all Association purposes.
 - (iv) If the Unit is owned by the Jones Family Trust, the Jones Family trust may not exercise its Voting Rights unless it presents to Association, the identification of the person who should be treated as the Member with respect to the Unit for all Association purposes.
 - (v) If Robert Smith and Laura Jones, as Trustees, hold title to a Unit, either trustee may exercise the Voting Rights associated with such Unit in the absence of a designation signed by both trustees that only one such trustee is authorized to vote. In the event of a conflict between trustees, the Voting Rights for the Unit in question cannot be exercised.
 - (vi) In the event that any other trust ownership is presented to the Association, the decision of the Board as to who may exercise the Voting Rights with respect to any Unit shall be final. Association shall have no obligation to obtain an attorney opinion letter in making its decision, which may be made on any reasonable basis whatsoever.
- (c) If a Unit is owned by a corporation, the corporation shall designate a person, an officer, employee, or agent who shall be treated as the Member who can exercise the Voting Rights associated with the Unit.
 - (d) If a Unit is owned by a limited partnership, any one of the general partners may exercise the Voting Rights associated with such Unit. By the way of example, if the general partner of a limited partnership is a corporation, then the provisions hereof governing corporations shall govern which person can act on behalf of the corporation as general partner of such a limited partnership. If a Unit is owned by a general partnership, any one of the general partners may exercise the Voting Rights associated with such Unit. In the event of a conflict among the general partners entitled to exercise the Voting Rights, the Voting Rights for such Unit cannot be exercised.
 - (e) If a Unit is owned by more than one individual, any one such individuals may exercise the Voting Rights with respect to such Unit. In the event that there is a conflict among such individuals, the Voting Rights for such Unit cannot be exercised.

- (f) Association may act in reliance upon any writing or instrument or signature, whether original or facsimile, which Association, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized to do so. So long as Association acts in good faith, Association shall have no liability or obligation with respect to the exercise of Voting Rights, and no election shall be invalidated (in the absence of fraud) on the basis that Association permitted or denied any person the right to exercise Voting Rights. In addition, the Board may impose additional requirements respecting the exercise of Voting Rights (e.g., the execution of a Voting Certificate).

ARTICLE IV **BOARD OF DIRECTORS**

Section 1. The affairs of the Association shall be managed by a Board of Directors consisting no less than three (3) persons and no more than nine (9) persons. Board members appointed by Declarant need not be Members of Association. Board of Directors elected by the other Members must be Members of Association.

Section 2. No Director shall receive compensation for any service rendered as a Director to Association; provided, however, any Director may be reimbursed for actual expenses incurred as Director.

Section 3. A majority of the Board of Directors shall constitute a quorum to transact business at any meeting of the Board, and the action of the majority present at a meeting at which a quorum is present shall constitute the action of the Board of Directors.

Section 4. Any vacancy occurring on the Board of Directors because of death, resignation or other termination of services of any Director, shall be filled by the Board of Directors; except that Declarant, to the exclusion of other Members and/or the Board itself, shall fill any vacancy created by the death, resignation, removal or other termination of services of any Director appointed by Declarant. A Director appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor in office and shall serve until his successor shall have been elected and/or appointed and qualified.

Section 5. Except to the extent prohibited by law, the Board of Directors shall have the right to take any action without meeting by obtaining the written approval of the required number of Directors. Any action so approved shall have the same effect as though at a meeting of the Directors.

ARTICLE V **ELECTION OF DIRECTORS;** **NOMINATING COMMITTEE; ELECTION COMMITTEE**

Section 1. Election to the Board of Directors shall be by written ballot (and not by proxy) as hereinafter provided. At such election, the Members may cast, in respect to each vacancy, as many

votes as they are entitled to exercise under the provisions of the Articles of Incorporation. Election shall be by plurality vote.

Section 2. Nominations for election to the Board of Directors shall be made by a Nominating Committee (as hereinafter defined) or by Members at the time of the meeting.

Section 3. The Nominating Committee shall consist of a Chairperson, who shall be a member of the Board of Directors, and two (2) or more Members. The Nominating Committee shall be appointed by the Board of Directors sufficiently in advance of each annual meeting of the Members in order for said Nominating Committee to properly perform its duties and responsibilities. The Nominating Committee shall serve from their appointment until the close of the annual meeting.

Section 4. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Nominations shall be placed on a written ballot as provided herein in Section 5 below and shall be made in advance of the time fixed in said Section 5 for the mailing of such ballots to Members.

Section 5. All elections to the Board of Directors shall be made by written ballot which shall:

- (a) describe the vacancies to be filled;
- (b) set forth the names of those nominated by the Nominating Committee for such vacancies; and
- (c) contain space for a write-in vote by the Members.

Such ballots shall be prepared and mailed by the Secretary to the Members at least twenty-one (21) days in advance of the date set forth therein for the annual meeting or special meeting called for elections.

Section 6. Each Member shall receive as many ballots as he has votes. Notwithstanding that a Member may be entitled to several votes, he shall exercise on any one (1) ballot only one (1) vote for each vacancy shown thereon. The completed ballots may be returned by mail to the Secretary or filed with the Secretary at the annual or special meeting. Only those ballots received by the Secretary on or before the date of the meeting shall be counted.

Section 7. An Election Committee, which shall consist of the members of the Nominating Committee, shall count the votes and shall establish such procedures as may be reasonable and appropriate to insure that only those Members who have the right to vote are able to cast votes and that the vote of any Member shall not be disclosed to anyone. Immediately after the announcement of the results, unless a recount is demanded by the Members, the ballots shall be destroyed.

ARTICLE VI

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. The Board of Directors shall have power:

- (a) To call special meetings of the Members whenever it deems necessary and it shall call a meeting at any time upon written request of thirty percent (30%) of the entire voting membership, as provided in Article X, Section 2 hereof.
- (b) To appoint and remove at pleasure all officers, agents and employees of the Association, except those appointed by Declarant; prescribe their duties; fix their compensation, if any; and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these By-Laws shall be construed to prohibit the employment of any Member, Officer or Director of the Association in any capacity whatsoever.
- (c) To exercise for the Association all powers, duties and authority vested in or delegated to the Association, except those reserved to the Members in the Declaration; in no event shall the Board of Directors expend capital improvement monies (as described in the Declaration) for any capital expenditures, in connection with the construction of a new capital improvement except as set forth in the Declaration.
- (d) In the event that any member of the Board of Directors of the Association (other than a member appointed by Declarant) shall be absent from three (3) consecutive regular meetings of the Board of Directors, the Board may by action taken at the meeting during which said third absence occurs, declare the seat of the absent Director to be vacant.

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

- (a) To cause to be kept minutes of all its acts and corporate affairs.
- (b) To supervise all officers, agents and employees of the Association.
- (c) To prepare financial reports required by the Florida Statutes.
- (d) To exercise all powers to vote, except where the Declaration, Articles, or these By-Laws specifically require a vote of the Members.
- (e) To fix the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of the Association's annual meeting.
- (f) To prepare a roster of Owners in Tusawilla and the assessments applicable thereto which shall be kept in the office of the Association fully and shall be open to inspection by any Member at reasonable times.
- (g) To issue, or to cause any appropriate officer (or any authorized agent) to issue, upon demand by any interested person certificate setting forth whether any assessment has been paid. Such certificate shall be conclusive evidence of any assessment therein stated to have been paid.

Section 3. Until the Date of Turnover, the Declarant shall have and is hereby granted the right to disapprove or veto any such action, policy, or program proposed or authorized by Association, the Board of Directors, the ARC, any committee of Association, or the vote of the Members. This right may be exercised by the Declarant at any time within ten (10) days following a meeting held pursuant to the terms and provisions thereof. This right to disapprove may be used to veto proposed actions but shall not extend to the requiring of any action or counteraction on behalf of Association, the Board, the ARC or any committee of the Association.

ARTICLE VII **DIRECTORS' MEETING**

Section 1. A regular meeting of the Board of Directors shall be held at least semi-annually. A regular meeting of the Board of Directors shall also be held immediately following the regular annual meeting of the Members. Meetings of the Board shall be open to all Members of Association.

Section 2. If the day for the regular annual meeting shall fall upon a holiday, the meeting shall be held at the same hour on the first day following which is not a holiday, and no notice thereof need be given.

Section 3. Special meetings of the Board of Directors shall be held when called by the President or Vice President of the Association or by any two Directors after not less than three (3) days' notice to each Director.

Section 4. In the event of an emergency involving immediate danger of injury or death to any person or damage to property, if a meeting of the Board of Directors cannot be immediately convened to determine a course of action, the President or, in his absence, any other officer or director, shall be authorized to take such action on behalf of Association as shall be reasonably required to appropriately respond to the emergency situation, including the expenditures of Association funds in the minimum amount as may be reasonably required under the circumstances. The authority of officers to act in accordance herewith shall remain in effect until the first to occur of the resolution of the emergency situation of meeting of the Board of Directors convened to act in response thereto.

Section 5. The transaction of any business at any meeting of the Board of Directors, however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held after regular call and notice if a quorum is present, and if either before or after the meeting, each of the Directors not present signs a written waiver of notice or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records of the Association and made a part of the minutes of the meeting.

Section 6. A majority of the Board of Directors shall constitute a quorum thereof.

Section 7. The Board of Directors shall cast votes in the manner provided in the Florida Statutes. In the absence of a statutory provision, the Board shall establish the manner in which votes will be cast.

Section 8. Nothing herein shall restrict or prohibit members of the Board of Directors from participation in a meeting of the Board by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participating by such means shall constitute presence in person at a meeting.

Section 9. Notices of meetings of the Board of Directors shall be posted in a conspicuous place on the Common Areas or in the Club at least 48 hours in advance, except in the event of an emergency. Alternatively, notice may be given to Members in any other manner provided by Florida Statute. For the purposes of giving notice, the area for notices to be posted within the Club shall be deemed a conspicuous place. Notices of any meetings of the Board of Directors at which Assessments against Units are to be established shall specifically contain a statement that Assessments shall be considered and a statement of the nature of such Assessments.

ARTICLE VIII

OFFICERS

Section 1. The Officers of the Association shall be a President, a Secretary and a Treasurer and such other Officers as may be deemed necessary or appropriate by the Board of Directors. The President shall be a member of the Board of Directors.

Section 2. The Officers shall be chosen by a majority vote of the Board of Directors.

Section 3. All Officers shall hold office during the pleasure of the Board of Directors.

Section 4. The President shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board of Directors are carried out and sign all notes, leases, mortgages, deeds and all other written instruments. The President shall not be the Secretary.

Section 5. The Secretary of the Association shall be the Secretary of the Board of Directors, shall record the votes and keep minutes of all proceedings in a minute book to be kept for that purpose. He shall sign certificates of membership, if any. He shall keep the official records of the Association. He shall record in a book kept for that purpose the names of all Members of the Association together with their addresses as registered by such Members (see Article X, Section 3 hereof).

Section 6. The Treasurer shall receive and deposit in appropriate bank accounts, insured by the FDIC or other applicable governmental or quasi-governmental entity, all monies of the Association and shall disburse such funds as directed by resolution of the Board; provided, however, that a resolution of the Board shall not be necessary for disbursements made in the ordinary course of business conducted within the limits of a budget adopted by the Board. The Treasurer may sign all checks of the Association, provided that such checks shall also be signed by one (1) Director. However, in the event that the Treasurer is unavailable, checks may be signed by any two (2) Directors. The Treasurer shall keep books of account according to generally accepted accounting principles consistently applied and cause an annual audit, review, or compilation, of the Association's books to be made by an auditor, accountant, or a certified public accountant at the completion of each fiscal year. He shall prepare an annual budget, an annual balance sheet statement

and an annual statement of operations, and the balance sheet statement and statement of operations shall be presented to the membership at its regular annual meeting.

ARTICLE IX COMMITTEES

Section 1. The Association may create committees including, but not limited to: (a) Recreation Committee; (b) Maintenance Committee; and (c) Finance and Audit Committee. Unless otherwise provided herein, each committee shall consist of a Chairman and two (2) or more members and shall include a member of the Board of Directors for Board contact. Committee members may be appointed by the Board of Directors to serve until the close of the next annual meeting. The Board of Directors may create, from time to time, such other committees as it deems desirable. All committees shall perform such functions as the Board in its sole discretion determines is necessary.

Section 2. The Recreation Committee, if created by the Board of Directors, shall advise the Board on all matters pertaining to the recreational program and activities of the Association, and shall perform such other functions as the Board, in its discretion, determines necessary.

Section 3. The Maintenance Committee, if created by the Board of Directors, shall advise the Board on all matters pertaining to the maintenance, repair or improvement of the property of the Association, and shall perform such other functions as the Board, in its discretion, determines necessary.

Section 4. The Finance and Audit Committee, if created by the Board of Directors, shall supervise the annual audit of the Association's books and approve the annual budget and balance sheet statement to be presented to the membership at a regular meeting. The Treasurer shall be an ex officio member of the committee.

Section 5. It shall be the duty of each committee, if created, to receive complaints and suggestions from Members on any matter involving Association functions, duties, and activities within its field of responsibility. It shall dispose of such complaints and suggestions, as it deems appropriate or refer them to such other committee, Director or Officer of the Association as is further concerned with the matter presented.

Section 6. The Declarant up until the turnover date shall appoint the Architectural Review Committee (ARC). Upon expiration of the right of Declarant to appoint members of the ARC as provided by the Declaration, the Board of Directors shall appoint the members of the ARC. As provided under the Declaration, Association shall have the authority and standing to seek enforcement in the courts of competent jurisdiction any decisions of the ARC.

ARTICLE X MEETINGS OF MEMBERS

Section 1. The regular annual meeting of the Members shall be held on or before the last day of the fourth month after the fiscal year end of the Association, or as soon as practicable thereafter at a time to be set by the Board of Directors. If the day for the annual meeting of the Members shall fall

upon a holiday, the meeting will be held at the same hour on the first day following which is not a holiday.

Section 2. Special meetings of the Members for any purpose may be called at any time by a majority of the Members of the Board of Directors, or upon written request of the Members who have the right to vote ten percent (10%) of all of the votes of the entire membership. The business to be conducted at a Special members meeting shall be limited to the extent required by Florida Statutes.

Section 3. Notice of any meeting of Members shall be given to the Members by the Secretary. Notice may be given to the Member either personally, or by sending a copy of the notice through the mail, postage prepaid, to his address appearing on the books of the Association. Each Member shall register his address with the Secretary, and notices of meetings shall be mailed by him to such address. Notice of any meeting, regular or special, shall be delivered or mailed at least seven (7) days in advance of the meeting (unless a different length of time is provided for elsewhere in these By-Laws, the Articles of Incorporation or the Declaration) and shall set forth in general the nature of the business to be transacted; provided, however, that if the business of any meeting shall involve an election governed by Article V hereof, or any action governed by the Articles of Incorporation or by the Declaration, notice of such meeting shall be given or sent as therein provided. The notice shall specify the place, day, and hour of the meeting and, in the case of a Special members meeting, the purpose of the meeting. Alternatively, and to the extent not prohibited by the Florida Statutes, the Board may adopt from time to time, other procedures for giving notice to the Members of the Annual meeting or a Special meeting.

Section 4. The presence at the meeting of Members, or their proxies, entitled to cast thirty percent (30%) of the votes of the entire membership shall constitute a quorum for any action governed by these By-Laws. Any action governed by the Articles of Incorporation or by the Declaration, shall require a quorum as therein provided. If however, a quorum shall not be present at the Members meeting, the meeting may be adjourned as provided in the Florida Statutes. In the absence of a provision in the Florida Statutes, the Members present shall have power to adjourn the meeting and reschedule it on another date.

ARTICLE XI

PROXIES

Section 1. At all meetings of Members, each Member may vote in person or by proxy except Members may not vote by proxy for elections to the Board of Directors.

Section 2. All proxies shall be in writing and filed with the Secretary. No proxy shall extend beyond a period of ninety (90) days after the date of the first meeting for which it was given, and every proxy shall automatically terminate upon sale by the Member of his Lot or interest therein in Tuscawilla.

Section 3. A Member shall not be entitled to appoint more than one (1) proxy to attend on the same occasion and an instrument of proxy shall be valid only for the occasion for which it is given and may be in the following form or any other form which the Directors shall approve:

I, _____ being a member in good standing of Tuscawilla Community Association, Inc. hereby appoint _____ as my proxy to vote for me and on my behalf at the meeting of Members to be held at _____ (location), on the _____ day of _____, _____ at _____ (time), and any adjournment(s) thereof.

Signed this _____ day of _____, _____.

Signature of Member

Lot/Site _____, as shown on the approved _____, in Tuscawilla known as Tuscawilla.

ARTICLE XII
OBLIGATIONS OF ASSOCIATION

Section 1. The Association must maintain and make available, during reasonable business hours, to inspection by any Member, the books, records and papers of the Association.

Section 2. The Association must supervise all officers, agents, and employees, and see to it that their duties are properly performed.

Section 3. The Association shall fix and collect the amount of the Assessments against, or due from. All assessments and installments thereof not paid when due shall be assessed a late charge as described in the Declaration, commencing from the due date, and costs of collection thereof, and may result in the suspension of a Member's right to use the Common Areas (without impairing the right of that Member to have vehicular and pedestrian ingress to and egress from its Lot) and any other privileges of membership during any period of such nonpayment.

Section 4. The Association shall have enforcement powers including but not limited to:

- (a) Issuing, or causing an appropriate officer or agent to issue, upon demand by any person, a certificate setting forth whether or not Assessments have been paid and any other amounts due to Association. A reasonable charge may be made by the appropriate officer or agent for the issuance of the certificate. If the certificate states that Assessments have been paid, such certificate shall, as against other than the Owner, be conclusive evidence of such payment.
- (b) Procuring and maintaining adequate bonds, liability, hazard, property, and/or casualty insurance, as required;
- (c) Administering the reconstruction after the casualty of improvements on the Common Areas, as required;
- (d) Operating, maintaining, repairing, and replacing the Common Areas

- (c) Enforcing the provisions of the Declaration, Articles, these By-laws, President, a Secretary, and, when required by Club Owner, the Club Plan.

ARTICLE XIII
CORPORATE SEAL

The Association may adopt a seal, and if adopted, shall be in circular form having within its circumference the words:

Tusawilla Community Association, Inc.

AMENDMENTS

Section 1. Prior to and including the date of Turnover, Declarant shall have the right to amend these By-Laws as it deems appropriate, without the joinder or consent of any person or entity whatsoever. The Declarant's right to amend under this provision is to be construed as broadly as possible. In the event that Association shall desire to amend these By-Laws prior to and including the date of Turnover, Association must first obtain Declarant's sole and absolute discretion. Thereafter, an amendment identical to that approved by Declarant may be adopted by Association pursuant to the requirements for amendments after the date of Turnover. Thereafter, Declarant shall join in such identical amendment so that its consent to the same will be reflected in the Public Records.

Section 2. These By-Laws may be amended, at any regular or special meeting of the Board of Directors at which there is a quorum, by a vote of a majority of the Directors present in person or by proxy, provided that those provisions of these By-Laws which are governed by the Articles of Incorporation of the Association may not be amended except as provided in the Articles of Incorporation or applicable law; and provided further that any matter stated herein to be or which is in fact governed by the Declaration may not be amended except as provided in said Declaration.

Section 3. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control, and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control; and in the event of any conflict between the Articles of Incorporation and the Declaration, the Declaration shall control.

Section 4. Notwithstanding the foregoing, no amendment to these By-Laws shall be effective which prejudices or otherwise detrimentally affects any of the rights or privileges of EF Minus S, LLC, a Florida limited liability company, or its successors or assigns, as Declarant of Tusawilla described in the Declaration, without Declarant's prior written consent.

ARTICLE XIV
MISCELLANEOUS

Section 1. The first fiscal year shall begin on the date of incorporation and end December 31 of that year. Thereafter, the fiscal year of Association shall begin on the first day of January and end on the 31st day of December of every year.

Section 2. Whenever these By-Laws refer to the Florida Statutes, it shall be deemed to refer to the Florida Statutes, as they exist on the date these By-Laws are recorded except to the extent provided otherwise as to any particular provision of the Florida Statutes.

Section 3. Invalidation of any of the provisions of these By-Laws by judgment or court order shall in no way affect any other provision, and the remainder of these By-Laws shall remain in full force and effect.

ARTICLE XV
GENDER

Whenever in these By-Laws the context so requires, the use of any gender shall be deemed to include all genders.

EXHIBIT "D"
SFWMD PERMIT

WPB 883160.11



FORM 80146
Rev. 04/96

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
ENVIRONMENTAL RESOURCE PERMIT NO. 43-01783-P
DATE ISSUED: MAY 10, 2006**

PERMITTEE: EF MINUS S, LLC
(TUSCAWILLA (AKA PLANTATION AT HAMMOCK CREEK))
C/O 4152 WEST BLUE HERON BLVD STE 128,
RIVIERA BEACH, FL 33404

JEFFREY H. SANDS
(TUSCAWILLA (AKA PLANTATION AT HAMMOCK CREEK))
C/O HILTON REALTY CO., 194 NASSAU STREET
PRINCETON, NJ 08542

PROJECT DESCRIPTION: CONSTRUCTION AND OPERATION OF A SURFACE WATER MANAGEMENT SYSTEM TO SERVE A 490.7-ACRE RESIDENTIAL PROJECT KNOWN AS TUSCAWILLA (AKA PLANTATION AT HAMMOCK CREEK).

PROJECT LOCATION: MARTIN COUNTY, SECTION 10, 11, 14, 15 TWP 38S RGE 40E

PERMIT DURATION: See Special Condition No.1. See attached Rule 40E-4.321, Florida Administrative Code.

This Permit is issued pursuant to Application No. 040218-10, date: February 18, 2004. Permittee agrees to hold and save the South Florida Water Management District and its successors harmless from any and all damages, claims or liabilities which may arise by reason of the construction, operation, maintenance or use of activities authorized by this Permit. This Permit is issued under the provisions of Chapter 373, Part IV Florida Statutes (F.S.), and the Operating Agreement Concerning Regulation Under Part IV, Chapter 373 F.S., between South Florida Water Management District and the Department of Environmental Protection. Issuance of this Permit constitutes certification of compliance with state water quality standards where necessary pursuant to Section 401, Public Law 92-500, 33 USC Section 1341, unless this Permit is issued pursuant to the net improvement provisions of Subsections 373.414(1)(b), F.S., or as otherwise stated herein.

This Permit may be transferred pursuant to the appropriate provisions of Chapter 373, F.S. and Sections 40E-1.6107(1) and (2), and 40E-4.351(1), (2), and (4), Florida Administrative Code (F.A.C.). This Permit may be revoked, suspended, or modified at any time pursuant to the appropriate provisions of Chapter 373, F.S. and Sections 40E-4.351(1), (2), and (4), F.A.C.

This Permit shall be subject to the General Conditions set forth in Rule 40E-4.381, F.A.C., unless waived or modified by the Governing Board. The Application, and the Environmental Resource Permit Staff Review Summary of the Application, including all conditions, and all plans and specifications incorporated by reference, are a part of this Permit. All activities authorized by this Permit shall be implemented as set forth in the plans, specifications, and performance criteria as set forth and incorporated in the Environmental Resource Permit Staff Review Summary. Within 30 days after completion of construction of the permitted activity, the Permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual, pursuant to the appropriate provisions of Chapter 373, F.S. and Sections 40E-4.361 and 40E-4.381, F.A.C.

In the event the property is sold or otherwise conveyed, the Permittee will remain liable for compliance with this Permit until transfer is approved by the District pursuant to Rule 40E-1.6107, F.A.C.

SPECIAL AND GENERAL CONDITIONS ARE AS FOLLOWS:

SEE PAGES 2 - 6 OF 9 (28 SPECIAL CONDITIONS).
SEE PAGES 7 - 9 OF 9 (19 GENERAL CONDITIONS).

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT, BY ITS GOVERNING BOARD

On _____ **ORIGINAL SIGNED BY:**
By ELIZABETH VEGUILLA
DEPUTY CLERK

PAGE 1 OF 9

SPECIAL CONDITIONS

1. The construction phase of this permit shall expire on May 10, 2011.
2. Operation of the surface water management system and maintenance of the wetland preserves shall be the responsibility of PLANTATION AT HAMMOCK CREEK HOMEOWNERS ASSOC., INC. Operation and maintenance of the by-pass ditch shall be the responsibility of Mr. Jeffrey H. Sands, co-permittee. Within one year of permit issuance or concurrent with the engineering certification of construction completion, whichever comes first, the permittee shall submit a copy of the recorded deed restrictions (or declaration of condominium, if applicable), a copy of the filed articles of incorporation, and a copy of the certificate of incorporation for the association.

3. Discharge Facilities:

Basin: 1A

1-6' WIDE SHARP CRESTED weir with crest at elev. 22' NGVD.
1-5.67' W X .76' H X 150 deg. V-NOTCH with invert at elev. 18' NGVD.

Receiving body : Bessey Creek
Control elev : 18 feet NGVD. /18 FEET NGVD DRY SEASON.

Basin: 1B

1-6' WIDE SHARP CRESTED weir with crest at elev. 21' NGVD.
1-5.84' W X .23' H X 171 deg. V-NOTCH with invert at elev. 17' NGVD.

Receiving body : Bessey Creek
Control elev : 17 feet NGVD. /17 FEET NGVD DRY SEASON.

Basin: 1C

1-3' WIDE SHARP CRESTED weir with crest at elev. 21' NGVD.
1-.3' W X .3' H RECTANGULAR ORIFICE with invert at elev. 16.5' NGVD.

Receiving body : Bessey Creek
Control elev : 16.5 feet NGVD. /16.5 FEET NGVD DRY SEASON.

Basin: 2A

1-6' WIDE SHARP CRESTED weir with crest at elev. 22' NGVD.
1-5.93' W X .47' H X 162 deg. V-NOTCH with invert at elev. 18' NGVD.

Receiving body : Bessey Creek
Control elev : 18 feet NGVD. /18 FEET NGVD DRY SEASON.

Basin: 2B

1-3' WIDE SHARP CRESTED weir with crest at elev. 21' NGVD.
1-.55' W X .55' H RECTANGULAR ORIFICE with invert at elev. 17' NGVD.

Receiving body : Bessey Creek
Control elev : 17 feet NGVD. /17 FEET NGVD DRY SEASON.

Basin: 3

1-6' WIDE SHARP CRESTED weir with crest at elev. 21' NGVD.
1-3.86' W X .8' H X 135 deg. V-NOTCH with invert at elev. 17' NGVD.

Receiving body : Bessey Creek
Control elev : 17 feet NGVD. /17 FEET NGVD DRY SEASON.

Basin: 4

1-6' WIDE SHARP CRESTED weir with crest at elev. 21' NGVD.
1-.33' W X .33' H RECTANGULAR ORIFICE with invert at elev. 16' NGVD.

Receiving body : Bessey Creek
Control elev : 16 feet NGVD. /16 FEET NGVD DRY SEASON.

Basin: 5

1-6' WIDE SHARP CRESTED weir with crest at elev. 21' NGVD.
1-.38' dia. CIRCULAR ORIFICE with invert at elev. 17' NGVD.

Receiving body : Bessey Creek
Control elev : 17 feet NGVD. /17 FEET NGVD DRY SEASON.

4. The permittee shall be responsible for the correction of any erosion, shoaling or water quality problems that result from the construction or operation of the surface water management system.
5. Measures shall be taken during construction to insure that sedimentation and/or turbidity violations do not occur in the receiving water.
6. The District reserves the right to require that additional water quality treatment methods be incorporated into the drainage system if such measures are shown to be necessary.
7. Lake side slopes shall be no steeper than 4:1 (horizontal:vertical) to a depth of two feet below the control elevation. Side slopes shall be nurtured or planted from 2 feet below to 1 foot above control elevation to insure vegetative growth, unless shown on the plans.
8. Facilities other than those stated herein shall not be constructed without an approved modification of this permit.
9. A stable, permanent and accessible elevation reference shall be established on or within one hundred (100) feet of all permitted discharge structures no later than the submission of the certification report. The location of the elevation reference must be noted on or with the certification report.
10. The permittee shall provide routine maintenance of all of the components of the surface water management system in order to remove all trapped sediments/debris. All materials shall be properly disposed of as required by law. Failure to properly maintain the system may result in adverse flooding conditions.
11. This permit is issued based on the applicant's submitted information which reasonably demonstrates that adverse water resource related impacts will not be caused by the completed permit activity. Should any adverse impacts caused by the completed surface water management system occur, the District will require the permittee to provide appropriate mitigation to the District or other impacted party. The District will require the permittee to modify the surface water management system, if necessary, to eliminate the cause of the adverse impacts.
12. Minimum building floor elevation:

BASIN: 1A - 22.50 feet NGVD.	BASIN: 1B - 22.50 feet NGVD.
	BASIN: 2A - 22.50 feet NGVD.
	BASIN: 2B - 22.50 feet NGVD.
BASIN: 3 - 20.76 feet NGVD.	BASIN: 4 - 21.50 feet NGVD.
	BASIN: 5 - 22.50 feet NGVD.
13. Minimum road crown elevation:

Basin: 1A - 20.50 feet NGVD.	Basin: 1B - 20.00 feet NGVD.
	Basin: 1C - 20.50 feet NGVD.

Basin: 2A - 21.00 feet NGVD.
20.00 feet NGVD.

Basin: 2B -
Basin: 3 - 20.00 feet NGVD.
Basin:

Basin: 4 - 19.00 feet NGVD.
5 - 20.00 feet NGVD.

14. Silt screens, hay bales, turbidity screens/barriers or other such sediment control measures shall be utilized during construction. The selected sediment control measures shall be installed prior to the commencement of construction in or adjacent to other surface waters in accordance with Exhibit No. 2 and shall remain in place until all adjacent construction is completed. All areas shall be stabilized and vegetated immediately after construction to prevent erosion into the wetlands and upland buffer zones.
15. Reference is made to Exhibit No. 2.02, consisting of drainage plans and detail sheets. The drawings, Sheets 1-4, and 6-65, have been signed and sealed by Michael J. Grzelka, P.E., of Schaefer Fagan & Associates on July 13, 2005, and have been included in this permit by reference (please see permit file).
16. Endangered species, threatened species and/or species of special concern have been observed onsite and/or the project contains suitable habitat for these species. It shall be the permittee's responsibility to coordinate with the Florida Fish and Wildlife Conservation Commission and/or the U.S. Fish and Wildlife Service for appropriate guidance, recommendations and/or necessary permits to avoid impacts to listed species.
17. A maintenance program shall be implemented in accordance with Exhibit No. 3.0 for the preserved wetland areas on a regular basis to ensure the integrity and viability of those areas as permitted. Maintenance shall be conducted in perpetuity to ensure that the conservation area is maintained free from Category 1 exotic vegetation (as defined by the Florida Exotic Pest Plant Council at the time of permit issuance) immediately following a maintenance activity. Coverage of exotic and nuisance plant species shall not exceed 5% of total cover between maintenance activities. In addition, the permittee shall manage the conservation areas such that exotic & nuisance plant species do not dominate any one section of those areas.
18. Prior to the commencement of construction resulting in wetland impacts and in accordance with the work schedule in Exhibit No. 3.4, the permittee shall submit two certified copies of the recorded conservation easement for the mitigation/preservation area and associated buffers. The data should also be supplied in a digital CAD (.dxf) or GIS (ESRI Coverage) format. The files should be in the Florida State Plane coordinate system, East Zone (3601) with a data datum of NAD83, HARN with the map units in feet. This data should reside on a CD or floppy disk and be submitted to the District's Environmental Resource Compliance Division in the service area office where the application was submitted.

The recorded easement shall be in substantial conformance with Exhibit No. 3.1. Any proposed modifications to the approved form must receive prior written consent from the District. The easement must be free of encumbrances or interests in the easement which the District determines are contrary to the intent of the easement. In the event it is later determined that there are encumbrances or interests in the easement which the District determines are contrary to the intent of the easement, the permittee shall be required to provide release or subordination of such encumbrances or interests.
19. Prior to the commencement of construction and in conformance with the work schedule in Exhibit No. 3.4, the permittee shall provide an original letter of credit in the amount of \$121,275.00 to ensure the permittee's financial ability and commitment to complete the proposed mitigation, monitoring and maintenance plan as shown on Exhibit No. 3.0. The letter of credit shall be in substantial conformance with Exhibit No. 3.2. The letter of credit shall remain in effect for the entire period of the mitigation and monitoring program. Notification of the District by the financial institution that the letter of credit or bond will not be renewed or is no longer in effect shall constitute non-compliance with the permit.

20. If prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, dugout canoes, or any other physical remains that could be associated with Native American cultures, or early colonial or American settlement are encountered at any time within the project site area, the permitted project should cease all activities involving subsurface disturbance in the immediate vicinity of such discoveries. The permittee, or other designee, should contact the Florida Department of State, Division of Historical Resources, Review and Compliance Section at (850) 245-6333 or (800) 847-7278, as well as the appropriate permitting agency office. Project activities should not resume without verbal and/or written authorization from the Division of Historical Resources. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes.
21. An average 25' wide, minimum 15', buffer of undisturbed upland vegetation shall be maintained between the proposed development and existing wetlands. Buffers shall be staked and roped and District environmental staff notified for inspection prior to clearing.
22. Impermeable liners shall be constructed in accordance with Exhibit No. 3.5. The permittee shall contact the District's post permit compliance staff to perform a site visit to confirm the depth of the confining layer prior to constructing the impermeable barrier. Photo documentation of the confining layer construction shall be included in the project progress reports.
23. The District reserves the right to require remedial measures to be taken by the permittee if monitoring or other information demonstrates that adverse impacts to onsite or offsite wetlands, upland conservation areas or buffers, or other surface waters have occurred due to project related activities.
24. A monitoring program shall be implemented in accordance with Exhibit No. 3.0. The monitoring program shall extend for a period of 5 years with annual reports submitted to District staff. If 80% coverage is not achieved within two years after exotic removal within Bessey Creek, then the permittee shall replant in accordance with Exhibit No. 3. The 80% survival rate shall be maintained throughout the remainder of the monitoring program, with replanting as necessary. If native wetland, transitional, and upland species do not achieve an 80% coverage within the initial two years of the monitoring program, native species shall be planted in accordance with the maintenance program. At the end of the 5 year monitoring program the entire mitigation and preserved areas shall contain an 80% survival of planted vegetation and an 80% coverage of desirable obligate and facultative wetland species.
25. Activities associated with the implementation of the mitigation, monitoring and maintenance plan(s) shall be completed in accordance with the work schedule attached as Exhibit No. 3.4. Any deviation from these time frames will require prior approval from the District's Environmental Resource Compliance staff. Such requests must be made in writing and shall include (1) reason for the change, (2) proposed start/finish and/or completion dates; and (3) progress report on the status of the project development or mitigation effort.
26. A mitigation program for Tuscawilla shall be implemented in accordance with Exhibit No. 3.0. The permittee shall enhance 18.83 acres of flood plain freshwater wetland areas along Bessey Creek, enhance 5.60 acres of wet prairies in Wetland 24, and preserve 65.30 acres of freshwater marsh areas onsite. The enhancement and preservation activities consist of the removal of exotic plant species from the mitigation area and replanting as necessary if coverage of native vegetation does not achieve 80% cover by the second year after exotic removal. A maintenance plan will be implemented within the mitigation/preserve areas in perpetuity.
27. At the time of project's engineer certification, the permittee shall provide proof of the impermeable barrier construction, including photo documentation of the impermeable liners construction and confining layer location as part of the

certification materials.

28. Prior to the commencement of construction activities on the site, the permittees shall formalize the agreement for the construction of the by-pass ditch on the Sands property and submit a copy of the agreement to the District's Environmental Resource Compliance staff in the service center that serves the county where the project is located.

GENERAL CONDITIONS

1. All activities authorized by this permit shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted activity and the conditions for undertaking that activity shall constitute a violation of this permit and Part IV, Chapter 373, F.S.
2. This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications shall be kept at the work site of the permitted activity. The complete permit shall be available for review at the work site upon request by District staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.
3. Activities approved by this permit shall be conducted in a manner which does not cause violations of State water quality standards. The permittee shall implement best management practices for erosion and pollution control to prevent violation of State water quality standards. Temporary erosion control shall be implemented prior to and during construction, and permanent control measures shall be completed within 7 days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the permitted work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. All practices shall be in accordance with the guidelines and specifications described in Chapter 6 of the Florida Land Development Manual; A Guide to Sound Land and Water Management (Department of Environmental Regulation, 1988), incorporated by reference in Rule 40E-4.091, F.A.C. unless a project-specific erosion and sediment control plan is approved as part of the permit. Thereafter the permittee shall be responsible for the removal of the barriers. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.
4. The permittee shall notify the District of the anticipated construction start date within 30 days of the date that this permit is issued. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the District an Environmental Resource Permit Construction Commencement Notice Form Number 0960 indicating the actual start date and the expected construction completion date.
5. When the duration of construction will exceed one year, the permittee shall submit construction status reports to the District on an annual basis utilizing an annual status report form. Status report forms shall be submitted the following June of each year.
6. Within 30 days after completion of construction of the permitted activity, the permittee shall submit a written statement of completion and certification by a professional engineer or other individual authorized by law, utilizing the supplied Environmental Resource/Surface Water Management Permit Construction Completion/Certification Form Number 0881A, or Environmental Resource/Surface Water Management Permit Construction Completion Certification - For Projects Permitted prior to October 3, 1995 Form No. 0881B, incorporated by reference in Rule 40E-1.659, F.A.C. The statement of completion and certification shall be based on onsite observation of construction or review of as-built drawings for the purpose of determining if the work was completed in compliance with permitted plans and specifications. This submittal shall serve to notify the District that the system is ready for inspection. Additionally, if deviation from the approved drawings are discovered during the certification process, the certification must be accompanied by a copy of the approved permit drawings with deviations noted. Both the original and revised specifications must be clearly shown. The plans must be clearly labeled as "as-built" or "record" drawings. All surveyed dimensions and elevations shall be certified by a registered surveyor.
7. The operation phase of this permit shall not become effective until the permittee has complied with the requirements of condition (6) above, and submitted a request

for conversion of Environmental Resource Permit from Construction Phase to Operation Phase, Form No. 0920; the District determines the system to be in compliance with the permitted plans and specifications; and the entity approved by the District in accordance with Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, accepts responsibility for operation and maintenance of the system. The permit shall not be transferred to such approved operation and maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the District, the permittee shall initiate transfer of the permit to the approved responsible operating entity if different from the permittee. Until the permit is transferred pursuant to Section 40E-1.6107, F.A.C., the permittee shall be liable for compliance with the terms of the permit.

8. Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the initiation of the permitted use of site infrastructure located within the area served by that portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the permitted plans and permit conditions prior to transfer of responsibility for operation and maintenance of the phase or portion of the system to a local government or other responsible entity.
9. For those systems that will be operated or maintained by an entity that will require an easement or deed restriction in order to enable that entity to operate or maintain the system in conformance with this permit, such easement or deed restriction must be recorded in the public records and submitted to the District along with any other final operation and maintenance documents required by Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit applications within the South Florida Water Management District, prior to lot or units sales or prior to the completion of the system, whichever comes first. Other documents concerning the establishment and authority of the operating entity must be filed with the Secretary of State, county or municipal entities. Final operation and maintenance documents must be received by the District when maintenance and operation of the system is accepted by the local government entity. Failure to submit the appropriate final documents will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system and any other permit conditions.
10. Should any other regulatory agency require changes to the permitted system, the permittee shall notify the District in writing of the changes prior to implementation so that a determination can be made whether a permit modification is required.
11. This permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 40E-4 or Chapter 40E-40, F.A.C..
12. The permittee is hereby advised that Section 253.77, F.S. states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the State, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement, or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.
13. The permittee must obtain a Water Use permit prior to construction dewatering, unless the work qualifies for a general permit pursuant to Subsection 40E-20.302(3), F.A.C., also known as the "No Notice" Rule.
14. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any system authorized by the

permit.

15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding, unless a specific condition of this permit or a formal determination under Section 373.421(2), F.S., provides otherwise.
16. The permittee shall notify the District in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of a permitted system or the real property on which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of Rules 40E-1.6105 and 40E-1.6107, F.A.C.. The permittee transferring the permit shall remain liable for corrective actions that may be required as a result of any violations prior to the sale, conveyance or other transfer of the system.
17. Upon reasonable notice to the permittee, District authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with the plans and specifications approved by the permit.
18. If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the appropriate District service center.
19. The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.

40E-4.321 Duration of Permits

(1) Unless revoked or otherwise modified the duration of an environmental resource permit issued under this chapter or Chapter 40E-40, F.A.C. is as follows:

(a) For a conceptual approval, two years from the date of issuance or the date specified as a condition of the permit, unless within that period an application for an individual or standard general permit is filed for any portion of the project. If an application for an environmental resource permit is filed, then the conceptual approval remains valid until final action is taken on the environmental resource permit application. If the application is granted, then the conceptual approval is valid for an additional two years from the date of issuance of the permit. Conceptual approvals which have no individual or standard general environmental resource permit applications filed for a period of two years shall expire automatically at the end of the two year period.

(b) For a conceptual approval filed concurrently with a development of regional impact (DRI) application for development approval (ADA) and a local government comprehensive plan amendment, the duration of the conceptual approval shall be two years from whichever one of the following occurs at the latest date:

1. the effective date of the local government's comprehensive plan amendment.
2. the effective date of the local government development order.
3. the date on which the District issues the conceptual approval, or
4. the latest date of the resolution of any Chapter 120.57, F.A.C., administrative proceeding or other legal appeals.

(c) For an individual or standard general environmental resource permit, five years from the date of issuance or such amount of time as made a condition of the permit.

(d) For a noticed general permit issued pursuant to chapter 40-E-400, F.A.C., five years from the date the notice of intent to use the permit is provided to the District.

(2)(a) Unless prescribed by special permit condition, permits expire automatically according to the timeframes indicated in this rule. If application for extension is made in writing pursuant to subsection (3), the permit shall remain in full force and effect until:

1. the Governing Board takes action on an application for extension of an individual permit,

or

2. staff takes action on an application for extension of a standard general permit.

(b) Installation of the project outfall structure shall not constitute a vesting of the permit.

(3) The permit extension shall be issued provided that a permittee files a written request with the District showing good cause prior to the expiration of the permit. For the purpose of this rule, good cause shall mean a set of extenuating circumstances outside of the control of the permittee. Requests for extensions, which shall include documentation of the extenuating circumstances and how they have delayed this project, will not be accepted more than 180 days prior to the expiration date.

(4) Substantial modifications to Conceptual Approvals will extend the duration of the Conceptual Approval for two years from the date of issuance of the modification. For the purposes of this section, the term "substantial modification" shall mean a modification which is reasonably expected to lead to substantially different water resource or environmental impacts which require a detailed review.

(5) Substantial modifications to individual or standard general environmental resource permits issued pursuant to a permit application extend the duration of the permit for three years from the date of issuance of the modification. Individual or standard general environmental resource permit modifications do not extend the duration of a conceptual approval.

(6) Permit modifications issued pursuant to subsection 40E-4.331(2)(b), F.A.C. (letter modifications) do not extend the duration of a permit.

(7) Failure to complete construction or alteration of the surface water management system and obtain operation phase approval from the District within the permit duration shall require a new permit authorization in order to continue construction unless a permit extension is granted.

Specific authority 373.044, 373.113 F.S. Law Implemented 373.413, 373.416, 373.419, 373.426 F.S. History—New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.07(4), Amended 7-1-86, 4/20/94, Amended 7-1-86, 4/20/94, 10-3-95