

Prepared By:
Carmen Fanego, Esq.
Akerman Senterfitt
One Southeast 3rd Avenue
Miami, Florida 33131

**SECOND AMENDMENT TO DECLARATION OF CONDOMINIUM
OF
TOSCANO CONDOMINIUM**

THIS SECOND AMENDMENT TO DECLARATION is made as of the 7th day of May, 2008 by FAIRFIELD DADELAND LIMITED PARTNERSHIP, a Delaware limited partnership (the "Declarant").

RECITALS:

A. WHEREAS, Declarant is the Developer under that certain DECLARATION OF CONDOMINIUM OF TOSCANO CONDOMINIUM, recorded January 24, 2007 in Official Records Book 25303, Page 1182, as amended by that certain Amendment to Declaration of Toscano Condominium recorded September 11, 2007 in Official Records Book 25917, at Page 3358, all of the Public Records of Miami-Dade County, Florida, (collectively, the "Declaration"). Unless the context otherwise requires, any capitalized term not defined but used herein shall have the meaning given to such word in the Declaration.

B. Paragraph 6.2 of the Declaration provides that Developer has the right to amend the Declaration without the approval or joinder of any other party.

C. Declarant desires to amend the Declaration as hereinafter provided. The new or added text is underlined, and the deleted text is lined through.

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

1. Section 6.1 of the Declaration is hereby amended as follows:

6.1 **By the Association.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which it will a proposed amendment is to be considered. A resolution to adopt the an amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than one-third of the members of the Association. (1/3) of the Unit Owners. Except as elsewhere provided, approvals must be by an affirmative vote representing ~~in excess of 66 2/3%~~ at least 67 percent of the voting interest of all Unit Owners. The consent of the Unit Owners to which at least 67 percent of the votes in the Association are allocated and the approval of a Majority of Institutional First Mortgagees shall be required to amend any provisions included in the Declaration, By-laws or equivalent documents of the Condominium which are for the express benefit of holders or insurers of first mortgages on Units in the Condominium.

2. Section 6.3 of the Declaration is hereby amended as follows:

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6.3 Mortgagee's Consent. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to any Institutional First Mortgagees or the Primary Institutional First Mortgagee without the consent of the aforesaid Institutional First Mortgagees in each instance; nor shall an amendment make any change in the sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty", or "Condemnation" unless such amendment is joined into by the Primary Institutional First Mortgagees of Units to which at least 67% of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant shall join in the amendment. Except as specifically provided herein or if required by FNMA or FHLMC, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld. The failure of any eligible Institutional First Mortgagee to respond to any written proposal for an amendment within sixty (60) days after delivery of such proposal to the Institutional First Mortgagee shall be deemed an approval by such Institutional First Mortgagee to the proposed amendment.

3. Section 10 of the Declaration is hereby amended as follows:

10. Changes in Developer-Owned Units. Without limiting the generality of the provisions of Subsection 9.3 above, and anything to the contrary notwithstanding, the Developer shall, subject to any limitations set forth in the Master Covenants, have the right, without the vote or consent of the Association or Unit Owners, to (i) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or non-structural, interior or exterior, ordinary or extraordinary; (ii) change the layout or number of rooms in any Developer-owned Units; (iii) change the size of Developer-owned Units by combining Developer-owned Units into a single apartment (although being kept as two separate legal Units), or otherwise; and (iv) reapportion among the Developer-owned Units affected by such change in size pursuant to the preceding clause, their appurtenant interests in the Common Elements and share of the Common Surplus and Common Expenses; provided, however, that the percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of any Units (other than the affected Developer-owned Units) shall not be changed by reason thereof unless the Owners of such Units and a Majority of Institutional First Mortgagees shall consent thereto and, provided further, that Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing. In making the above alterations, additions and improvements, the Developer may relocate and alter Common Elements adjacent to or near such Units, ~~incorporate portions of the Common Elements into adjacent Units and incorporate Units, or portions thereof, into adjacent Common Elements, provided that such relocation and alteration does not materially adversely affect the market value or ordinary use of Units owned by Unit Owners other than the Developer.~~ Developer may also incorporate portions of the Common Elements into adjacent Units and incorporate Units, provided that the consent of Owners to which at least 67 percent of the votes in the Association are allocated and the approval of a Majority of Institutional First Mortgagees is obtained. ~~Except for the foregoing sentence, Any amendments to this Declaration required by changes of the Developer made pursuant to this Section 10, shall be effected by the Developer alone pursuant to Subsection 6.5, without the vote or consent of the Association or Unit Owners (or their mortgagees) required, except to the extent that any of same constitutes a Material Amendment, in which event, the amendment must be approved as set forth in Subsection 6.2 above.~~ Without limiting the generality of Subsection 6.5 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer.

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4. Section 13.3 of the Declaration is amended to add the following paragraph as follows:

If the Assessments on a Unit encumbered by a mortgage in favor of an Institutional First Mortgagee remains unpaid after sixty (60) days, the Association shall provide such Institutional First Mortgagee with timely written notice of such delinquency.

5. Section 14.1(a) of the Declaration is amended to read as follows:

(a) **Purchase.** Subject to the provisions of the Master Covenants, all insurance policies described herein covering portions of the Condominium and Association Property shall be purchased by the Association and shall be issued in compliance with the Master Covenants and shall meet all standards and/or qualifications of FNMA or FHLMC, but otherwise by an insurance company or companies authorized to do business in Florida, or by a surplus lines carrier offering policies for Florida properties reasonably acceptable to the Board.

6. Section 14.1 (e) of the Declaration is amended to read as follows:

(e) **Copies to Mortgagees.** One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements, shall be furnished by the Association, upon request, to each Institutional First Mortgagee holding a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than 10 days prior to the beginning of the term of the policy or not less than 10 days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate. Notwithstanding the foregoing, the Association shall provide Institutional First Mortgagees timely written notice of any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

7. Paragraph 14.2(b) of the Declaration is amended to read as follows:

(b) **Liability.** Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors, or prevailing market conditions, but with combined single limit liability of not less than ~~\$300,000~~ \$1,000,000 for each accident or occurrence, \$100,000 per person and \$50,000 property damage, and with a cross liability endorsement to cover liabilities of Owners as a group to any Owner, and vice versa. The Association may also obtain and maintain liability insurance for its directors and officers and for the benefit of the Association's employees, in such amounts and under such terms and conditions as the Association deems appropriate in its sole and absolute discretion.

8. Paragraph 14.2(c) of the Declaration is amended to read as follows:

(c) **Worker's Compensation.** Worker's compensation and other mandatory insurance, when applicable or as required by FNMA or FHLMC.

9. Section 14.2(g) of the Declaration is hereby deleted in its entirety and replaced with the following paragraph:

(g) **Fidelity Insurance.** The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse Association funds which shall include,

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without limitation, those individuals authorize to sign Association checks and the president, secretary and treasurer of the Association. The insurance policy or fidelity bond shall be in such amount as shall be determined by a majority of the Board, but must be sufficient to cover the maximum funds, including reserve funds, that will be in the custody of the Association or its management agent at any one time. However, in no event may the aggregate amount of such bonds be less than a sum equal to three (3) months aggregate assessments on all Units plus reserve funds. Such bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The premiums on such bonds and/or insurance shall be paid by the Association as a Common Expense. Such bonds shall provide that they may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association or Insurance Trustee (if any) and the FNMA servicer, on behalf of FNMA.

10. Section 14.2(i) of the Declaration is amended to read as follows:

(i) **Other Insurance.** Such other insurance as the Board of Directors shall determine from time to time to be desirable or which may be required by FNMA or FHLMC.

When required by FNMA or FHLMC, or when appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and Owners individually and as a group, (ii) pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss. . .

11. Section 15.2 of the Declaration is amended to read as follows:

15.2 **Plans and Specifications.** Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and the building code then applicable to the repairs to be made; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association and the building code then applicable to the repairs to be made, and, if provided, however, in the latter event, approval of a Majority of Eligible Institutional Mortgagees shall be required. If the damaged property which is to be altered is the Building or the Optional Property, by the Owners of not less than 80% of the applicable interests in the Common Elements and a Majority of Eligible Institutional First Mortgagees, as well as the Owners of all Units and other portions of the Optional Property (and their respective mortgagees) the plans for which are to be altered. As used in this Section 15.2, the term "Eligible Institutional First Mortgagees" shall mean an Institutional First Mortgagee which has requested notice in accordance with the provisions of Section 20.3 below.

12. Section 16.2 is amended to read as follows:

16.2 **Determination Whether to Continue Condominium.** Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the

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taking by eminent domain also shall be deemed to be a casualty, and Institutional First Mortgagees shall have the right to receive timely written notice of such taking.

13. The following paragraph shall be added to Section 16.4 (c) of the Declaration and shall read as follows:

No reallocation of interests in the Common Elements resulting from a partial destruction of the Condominium Property may be effected without the approval of a Majority of Eligible Institutional Mortgagees. As used in this Section 16.4, the term "Eligible Institutional First Mortgagees" shall mean an Institutional First Mortgagee which has requested notice in accordance with the provisions of Section 20.3 below.

14. Section 20.2 of the Declaration is amended to read as follows:

20.2 Amendments. Subject to the other provisions of this Declaration and except as provided elsewhere to the contrary, an amendment directly affecting any of the following shall require the approval of a Majority of Institutional First Mortgagees: (a) voting rights; (b) increases in assessments by more than 25% over the previous assessment amount, assessment liens or the priority of assessment liens; (c) reductions in reserves for maintenance, repair and replacement of Common Elements and/or Association Property; (d) responsibility for maintenance and repairs; (e) reallocation of interests in the Common Elements (including Limited Common Elements) or rights to their use; (f) redefinition of Unit boundaries; (g) conversion of Units into Common Elements or Common Elements into Units; (h) expansion or contraction of the Condominium; (i) hazard or fidelity insurance requirements; (j) imposition of restrictions on leasing of units; (k) imposition of restrictions on the selling or transferring of title to Units; (l) restoration or repair of the Condominium after a casualty or partial condemnation; (m) any action to terminate the Condominium after casualty or condemnation; ~~and~~ (n) establishment of self-management by the Association where professional management has been required by any insurers of first mortgages on Units in the Condominium; and (o) any provision that expressly benefits mortgage holders, insurers or guarantors as a class. The types of amendments described in this Section as requiring the consent of a Majority of Institutional First Mortgagees, shall also require the approval of Owners to which no less than 67 percent of the votes in the Association are allocated, or such higher minimum thresholds for Unit Owner consent required by the Act or expressly provided elsewhere. In accordance with Section 718.110(11), Florida Statutes, any consent required of a mortgagee may not be unreasonably withheld.

15. Section 20.3 of the Declaration is amended to read as follows:

20.3 Notices. Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing from the Association, (such request to state the name and address of such holder, insurer or guarantor and the unit number), the right to timely written notice of: . . .

16. The Amendment to By-Laws attached hereto as Exhibit "4-2", is hereby incorporated into the Declaration as an amendment and supplement to Exhibit "4" of the Declaration.

ALL OTHER TERMS AND PROVISIONS of the Declaration not affected by this Amendment remain in full force and affect, unaltered and unamended. In the case of any conflict between any term or provision set forth in the Declaration, By-Laws or Articles of Incorporation, the terms and provision of this Amendment shall control.

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IN WITNESS WHEREOF, Developer has executed this Amendment as of the day and year first above written.

Witnessed by:

FAIRFIELD DADELAND LIMITED
PARTNERSHIP, a Delaware limited partnership

By: FF Dadeland LLC, a Delaware limited liability
company, its general partner

By: FF Properties, Inc., a Delaware corporation,
its Manager

[Signature]
Name: Sandra L. Hill

By: [Signature]
Name: Brent Ball
Title: Vice President

[Signature]
Name: Scott Jackson

STATE OF TEXAS)
) SS:
COUNTY OF TARRANT)

The foregoing Amendment to Declaration of Condominium was acknowledged before me, this 7th day of May 2008, by BRENT BALL as VICE PRESIDENT of FF Properties, Inc. a Delaware corporation, the Manager of FF Dadeland LLC, a Delaware LLC, the general partner of Fairfield Dadeland Limited Partnership, a Delaware limited partnership on behalf of said entities. He is personally known to me or has produced _____ as identification.

My Commission Expires:

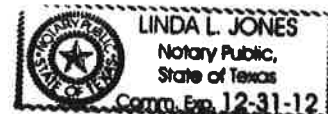
12/31/12

[Signature]
Name: LINDA L. JONES

Notary Public, State of Texas

Commission No.: _____

(Notarial Seal)



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CERTIFICATE AS TO AMENDMENT TO BY-LAWS

The undersigned, as Secretary of **TOSCANO CONDOMINIUM ASSOCIATION, INC.**, a corporation not for profit duly organized and existing under the laws of the State of Florida (the "**Association**"), hereby certifies as follows:

1. As Secretary of the Association, I have full power and authority to make and deliver this Certificate. I am the keeper of the records and minutes of the proceedings of the meetings of the members and Board of Directors of the Association.

2. The Association is a corporation duly organized, validly existing, and in good standing under the laws of the State of Florida.

3. That the copy of the Amendment to By-Laws attached to this Certificate and made a part of this Certificate is a true, correct, and complete copy of the Amendment to By-Laws of the Association which was duly adopted by the Association, and which are in full force and effect and have not otherwise been modified, amended, or rescinded as of the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Association as the Secretary of the Association this 7th day of May, 2008.

Signed, Sealed, and Delivered in the Presence of:



TOSCANO CONDOMINIUM
ASSOCIATION, INC, a Florida not-for-profit corporation

By: 
Sandra L. Hill Secretary

(CORPORATE SEAL)

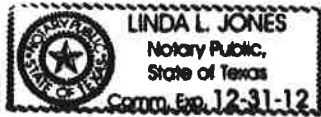
[ACKNOWLEDGMENT ON THE FOLLOWING PAGE]

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STATE OF TEXAS)
) ss.:
COUNTY OF TARRANT)

The foregoing instrument was acknowledged before me this 7th day of May, 2008, by SANDRA L. HILL, as Secretary of FAIRFIELD TOSCANO CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, on behalf of the Association, who is personally known to me or who has produced _____ as identification.

OFFICIAL NOTARIAL SEAL:



Linda L. Jones
LINDA L. JONES
(type, print, or stamp name)
Notary Public

My Commission Expires: 12/31/12

Commission No. _____

EXHIBIT "4-2"

**AMENDMENT TO BY-LAWS OF
TOSCANO CONDOMINIUM**

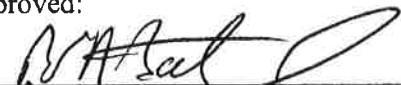
THIS AMENDMENT TO BY-LAWS of TOSCANO CONDOMINIUM ASSOCIATION, INC. (the "Association"), a corporation not for profit incorporated under the laws of the State of Florida, and organized for the purposes set forth in its Articles of Incorporation and as set forth in that certain Declaration of Condominium of TOSCANO CONDOMINIUM, recorded January 24, 2007 in Official Records Book 25303, Page 1182, as amended by that certain Amendment to Declaration of Toscano Condominium recorded September 11, 2007 in Official Records Book 25917, at Page 3358, all of the Public Records of Miami-Dade County, Florida, is hereby adopted as of the _____ day of March, 2008.

Section 4.15 is hereby amended as follows. The new or added text is underlined, and the deleted text is lined through.

4.15 Proviso. Notwithstanding anything to the contrary contained in this Section 4 or otherwise, the Board shall consist of three directors during the period that the Developer is entitled to appoint a majority of the Directors, as hereinafter provided. The Developer shall have the right to appoint all of the members of the Board of Directors until Unit Owners other than the Developer own fifteen percent (15%) or more of the Units in the Condominium. When Unit Owners other than the Developer own fifteen percent (15%) or more of the Units in the Condominium that will be operated ultimately by the Association, the Unit Owners other than the Developer shall be entitled to elect not less than one-third (1/3) of the members of the Board of Directors. Upon the election of such director(s), the Developer shall forward to the Division of Florida Land Sales, Condominiums and Mobile Homes the name and mailing address of the director(s) elected. Unit Owners other than the Developer are entitled to elect not less than a majority of the members of the Board of Directors: (a) five years after the first conveyance of a Unit to a purchaser; (a) (b) three years after fifty (50%) percent of the Units that will be operated ultimately by the Association have been conveyed to purchasers; (c) 120 days after the date by which seventy-five (75%) percent of the Units have been conveyed to purchasers; (b)-(d) three months after ninety (90%) percent of the Units that will be operated ultimately by the Association have been conveyed to purchasers; (e) (e) when all of the Units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business; (d) (f) when some of the Units have been conveyed to purchasers, and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business; or (e) (g) seven (7) years after recordation of the Declaration, whichever occurs first. The Developer is entitled (but not obligated) to elect at least one (1) member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business five percent (5%) of the Units that will be operated ultimately by the Association, provided, that upon the entitlement of Unit Owners other than the Developer to elect a majority of the members of the Board as set forth in this section, Developer shall not control, direct, modify, or veto any action of the Association, the Board of Directors, or a majority of Unit Owners.

The foregoing amendment to the By-Laws of TOSCANO CONDOMINIUM ASSOCIATION, INC., a corporation not for profit under the laws of the State of Florida, as of the 7th day of MaY, 2008.

Approved:



BRENT A. BALL, as President



Sandra L. Hill, as Secretary

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