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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TUSCANY

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TUSCANY is made effective as of the 26<sup>th</sup> day of September, 2003, by Tuscany Development, Inc., an Idaho corporation, ("Grantor" and "Class B Member").

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## ARTICLE I: RECITALS

1.1 Property Covered. The property potentially subject to this Declaration of Covenants, Conditions and Restrictions for Tuscany ("Declaration") is the Property legally described in Exhibit A attached hereto and made a part hereof (the "Property"). Grantor intends to develop the Property in stages or phases. Grantor, in its sole discretion, may amend or supplement this Declaration to add additional Property.

1.2 Residential Development. Tuscany is a residential development, which Grantor currently intends to develop into eight unique neighborhoods. Certain portions of the Property may be developed for quality detached single-family residential homes. The Property may contain parcels of Common Area, including water, park, open space, and recreational and landscaping facilities. Any development plans or schemes for the Property in existence prior to or following the effective date of this Declaration are subject to change at any time by Grantor, and impose no obligation on Grantor as to how the Property is to be developed or improved. The Developer currently intends to develop Tuscany as eight unique neighborhoods to be known as Messina Hills, Messina Village, Tuscany Fields, Tuscany Valley, Tuscany Lakes, Tuscany Village, Tuscany Hills, and Tuscany Country. Specific restrictions for each Neighborhood may be added by supplement or amendment in Grantor's sole discretion.

1.3 Purpose of Declaration. The purpose of this Declaration is to set forth the basic restrictions, covenants, limitations, easements, conditions and equitable servitudes (collectively "Restrictions") that will apply to the entire development and use of all portions of the Property. The Restrictions are designed to preserve the Property's value, desirability and attractiveness, to ensure a well integrated, high-quality development, and to guarantee adequate maintenance of the Common Area, and the Improvements located thereon in a cost effective and administratively efficient manner.

## ARTICLE II: DECLARATION

Grantor hereby declares that the Property, and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms, covenants, conditions, easements and restrictions set forth herein: shall run with the land constituting the Property, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; shall inure to the benefit of every lot, parcel or portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Grantor, Grantor's successors in interest and each grantee or Owner and such grantee's or Owner's respective successors in interest, and may be enforced by Grantor, by any Owner or such Owner's successors in interest, or by the Association.

Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit Grantor's right to complete development of the Property and to construct improvements thereon, nor Grantor's right to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Property, including the Common Area or any public right-of-way, nor Grantor's right to post signs incidental to construction, sales or leasing.

### ARTICLE III: DEFINITIONS

3.1 "Abandoned or Inoperable Vehicle" shall mean any vehicle which has not been driven under its own propulsion for a period of seven (7) days or longer.

3.2 "Architectural Committee" shall mean the committee created by the Grantor or an Association pursuant to Article XII hereof.

3.3 "Articles" shall mean the Articles of Incorporation of an Association or other organizational or charter documents of an Association.

3.4 "Assessments" shall mean those payments required of Owners, Association Members, including Regular, Special and Limited Assessments of any Association as further defined in this Declaration.

3.5 "Association" shall mean the Association.

3.6 "Association Rules" shall mean those rules and regulations promulgated by the Association governing conduct upon and use of the Property under the jurisdiction or control of the Association, the imposition of fines and forfeitures for violation of Association Rules and regulations, and procedural matters for use in the conduct of business of the Association.

3.7 "Board" shall mean the Board of Directors or other governing board or individual, if applicable, of the Association.

3.8 "Building Lot" shall mean one or more lots within the Property as specified or shown on any Plat and/or by Supplemental Declaration, upon which Improvements may be constructed. The term "Building Lot" shall include single-family residential lots, but shall not include the Common Area.

3.9 "Bylaws" shall mean the Bylaws of an Association.

3.10 "Common Area" shall mean any or all parcels of Tuscan Common Area, and shall include, without limitation, all such parcels that are designated as private streets or drives, common open space, common landscaped areas, and all areas designated on the final plat for any phase of Tuscan.



3.11 "Declaration" shall mean this Declaration as it may be amended from time to time.

3.12 "Grantor" shall mean Tuscany Development, Inc., or its successor in interest, or any person or entity to whom the rights under this Declaration are expressly transferred by Tuscany Development, Inc., or its successor.

3.13 "Improvement" shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed or placed upon, under or in any portion of the Property, including but not limited to buildings, fences, streets, drives, driveways, sidewalks, bicycle paths, curbs, landscaping, wildlife habitat improvements, signs, lights, mail boxes, electrical lines, pipes, pumps, ditches, recreational facilities, and fixtures of any kind whatsoever.

3.14 "Limited Assessment" shall mean a charge against a particular Owner and such Owner's Building Lot, directly attributable to the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration or any Supplemental Declaration, including interest thereon as provided in this Declaration or a Supplemental Declaration.

3.15 "Association" shall mean the limited liability company, its successors and assigns, established by Grantor to exercise the powers and to carry out the duties set forth in this Declaration or any Supplemental Declaration. Grantor shall have the power, in its discretion, to name the Association the "Tuscany Homeowners' Association, Inc.", or any similar name which fairly reflects its purpose.

3.16 "Member" shall mean each person or entity holding a membership in the Association.

3.17 "Owner" shall mean the person or other legal entity, including Grantor, holding fee simple interest of record to a Building Lot which is a part of the Property, and sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation.

3.18 "Person" shall mean any individual, partnership, corporation or other legal entity.

3.19 "Plat" shall mean any subdivision plat covering any portion of the Property as recorded at the office of the County Recorder, Ada County, Idaho, as the same may be amended by duly recorded amendments thereof.

3.20 "Property" shall mean those portions of the Property described on Exhibit A attached hereto and incorporated herein by this reference, including each lot, parcel and portion thereof and interest therein, including all water rights associated with or appurtenant to such property. Additional Property may be added in Grantor's sole discretion.

3.21 "Regular Assessment" shall mean the portion of the cost of maintaining, improving, repairing, managing and operating the Common Areas and all Improvements located thereon, and the other costs of an Association which is to be levied against the Property of and paid by each Owner to the Association, pursuant to the terms hereof or the terms of this Declaration or a Supplemental Declaration.

3.22 "Special Assessment" shall mean the portion of the costs of the capital improvements or replacements, equipment purchases and replacements or shortages in Regular Assessments which are authorized and to be paid by each Owner to the Association pursuant to the provisions of this Declaration or a Supplemental Declaration.

3.23 "Supplemental Declaration" shall mean any supplemental declaration including additional covenants, conditions and restrictions that might be adopted with respect to any portion of the Property.

3.24 "Tuscany Common Area" shall mean all real property in which the Association holds an interest or which is held or maintained, permanently or temporarily, for the common use, enjoyment and benefit of the entire Tuscany development and each Owner therein, which real property is legally described in Exhibit B attached hereto and made a part hereof. Tuscany Common Area may be established from time to time by Grantor on any portion of the Property by describing it on a plat, by granting or reserving it in a deed or other instrument, or by designating it pursuant to this Declaration or any Supplemental Declaration. Tuscany Common Area may include easement and/or license rights.

3.25 "Tuscany" or "Tuscany Neighborhoods" shall mean the Property.

3.26 "Waterway" shall mean any surface water amenity, including, without limitation, any irrigation system, lake, pond, channel, slough, stream, or reservoir, natural or artificial, which is located on the Property.

#### ARTICLE IV: GENERAL AND SPECIFIC RESTRICTIONS

4.1 Structures - Generally. All structures are to be designed, constructed and used in such a manner as to promote compatibility between the types of use contemplated by this Declaration.

4.1.1 Use, Size and Height of Dwelling Structure. All Building Lots shall be used exclusively for purposes allowed on the final plat which includes said lot. Specific categories of restrictions with respect to various phases are reflected on Exhibit C attached hereto. Additional restrictions for future phases may be added by amendment or supplement to these Restrictive Covenants in Grantor's sole future discretion. An Addendum will be recorded for each phase identifying which categories from Exhibit C will apply to each lot.

4.1.2 Architectural Committee Review. No Improvements which will be visible above ground or which will ultimately affect the visibility of any above ground Improvement shall be built, erected, placed or materially altered on or removed from the Property unless and until the building plans, specifications, and plot plan have been reviewed in advance by the Architectural Committee and the same have been approved in writing. The review and approval or disapproval may be based upon the following factors: design and style elements, mass and form, topography, setbacks, finished ground elevations, architectural symmetry, drainage, color, materials, physical or aesthetic impacts on other properties, including Common Areas, artistic conformity to the terrain and the other Improvements on the Property, and any and all other factors which the Architectural Committee, in its reasonable discretion, deem relevant. Said requirements as to the approval of the architectural design shall apply only to the exterior appearance of the Improvements. This Declaration is not intended to serve as authority for the Architectural Committee to control the interior layout or design of residential structures except to the extent incidentally necessitated by use, size and height restrictions.

4.1.3 Setbacks and Height. No residential or other structure shall be placed nearer to the Building Lot lines or built higher than permitted by the Plat in which the Building Lot is located, by any applicable zoning restriction, by any conditional use permit, or by a building envelope designated either by Grantor or the applicable Architectural Committee whichever is more restrictive.

4.1.4 Accessory Structures. Detached garages shall be allowed if in conformity with the provisions of this Declaration, and as approved by the applicable Architectural Committee. Garages and storage sheds shall be constructed of, and roofed with, the same materials, and with similar colors and design, as the residential structure on the applicable Building Lot. No playhouses, playground equipment, pools, pool slides, diving boards, hot tubs, spas, or similar items shall extend higher than five (5) feet above the finished graded surface of the Building Lot upon which such item(s) are located unless approved in advance.

4.1.5 Driveways. All access driveways shall have a wearing surface of asphalt, concrete, or other hard surface materials, and shall be properly graded to assure proper drainage.

4.1.6 Mailboxes. All mailboxes will be of consistent design, material and coloration and shall be located on or adjoining Building Lot lines at places designated by Grantor or the Architectural Committee.

4.1.7 Fencing. No fence, hedge or boundary wall situated anywhere upon a Building Lot shall have a height greater than six (6) feet above the finished graded surface of the Building Lot or Common Area upon which such fence, hedge, or boundary wall is situated. Any fence or boundary wall constructed on or near the lot line common to one or more Building Lots shall be constructed as a "good neighbor" fence or wall. No fence shall be constructed so as to extend toward the front of the Building Lot past the front plane of the dwelling structure constructed thereon, or closer than ten (10) feet to any side Building

Lot line of a corner of a Building Lot adjacent to a dedicated street and shall be in compliance with applicable Meridian City ordinances. All fencing and boundary walls constructed on any Building Lot shall be of compatible style and material to that other fencing constructed adjacent to or abutting Common Areas, public and private streets, and shall otherwise be as approved by the applicable Architectural Committee.

4.1.8 Lighting. Exterior lighting, including flood lighting, shall be part of the architectural concept of the Improvements on a Building Lot. Fixtures, standards and all exposed accessories shall be harmonious with building design, and shall be as approved by the applicable Architectural Committee. Lighting shall be restrained in design, and excessive brightness shall be avoided.

4.1.9 Garages. Each dwelling unit shall have an attached or detached fully enclosed garage adequate for a minimum of two (2), and a maximum of five (5) standard size automobiles. No carports shall be allowed.

4.2 Antennae. No exterior radio antenna, television antenna, satellite dish antenna or other antenna of any type shall be erected or maintained on the Property unless it is located or screened in a manner acceptable to the applicable Architectural Committee.

4.3 Insurance Rates. Nothing shall be done or kept on any Building Lot which will increase the rate of insurance on any other portion of the Property without the approval of the Owner of such other portion, nor shall anything be done or kept on the Property or a Building Lot which would result in the cancellation of insurance on any property owned or managed by any such Association or which would be in violation of any law.

4.4 No Further Subdivision. No Building Lot may be further subdivided.

4.5 Signs. No signs of any kind, including, without limitation, "For Sale" and "Open House" signs, shall be displayed on or from any portion of the Property except those signs approved by the Architectural Committee, or signs of Grantor or its representatives, agents, employees or assigns, or signs required by law.

4.6 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Property, including Common Area or vacant Building Lots, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to the Property or to its occupants, or to any other property in the vicinity thereof or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to the Property or to its occupants or to other property in the vicinity or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes which have been approved by the Association), flashing lights or search lights, shall be located, used or placed on the Property without the prior written approval of the Association.

4.7 Exterior Maintenance; Owner's Obligations. No Improvement shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair. In the event that any Owner shall permit any Improvement, including trees and landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, or damages property or facilities on or adjoining their Building Lot which would otherwise be the Associations' responsibility to maintain, the Board of the Association, upon fifteen (15) days prior written notice to the Owner of such property, shall have the right to correct such condition, and to enter upon such Owner's Building Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association, as the case may be, for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments set forth in Article IX of this Declaration. The Owner of the offending property shall be personally liable, and such Owner's property may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be added to the amounts payable by such Owner as Regular Assessments. Each Owner shall have the remedial rights set forth herein if the applicable Associations fail to exercise their rights within a reasonable time following written notice by such Owner.

4.8 Grading and Drainage. A site plan indicating the proposed grading and drainage of a Lot must be approved by the ACC before any construction is initiated. Lot grading shall be kept to a minimum and Buildings are to be located for preservation of the existing grade(s). Builder is expressly responsible to ensure proper drainage and run off from said Building Lot.

4.9 No Hazardous Activities. No activities shall be conducted on the Property, and no Improvements constructed on any property which are or might be unsafe or hazardous to any person or property.

4.10 Unsightly Articles. No unsightly articles shall be permitted to remain on any Building Lot so as to be visible from any other portion of the Property. Without limiting the generality of the foregoing, refuse, garbage and trash shall be kept at all times in such containers and in areas approved by the applicable Architectural Committee. No clothing or fabrics shall be hung, dried or aired in such a way as to be visible to other property, and no equipment, heat pumps, compressors, containers, lumber, firewood, grass, shrub or tree clippings, plant waste, metals, bulk material, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any Building Lot except within an enclosed structure or as appropriately screened from view. No vacant residential structures shall be used for the storage of building materials.

4.11 No Temporary Structures. No house trailer, mobile home, tent (other than for short term individual use), shack or other temporary building, improvement or structure shall be placed upon any portion of the Property, except temporarily as may be required by construction activity undertaken on the Property.

4.12 No Unscreened Boats, Campers and Other Vehicles. No boats, trailers, campers, all-terrain vehicles, motorcycles, recreational vehicles, bicycles, dilapidated or unrepaired and

unsightly vehicles or similar equipment shall be placed upon any portion of the Property (including, without limitation, streets, parking areas and driveways) unless the same are enclosed by a structure and/or fencing concealing them from view in a manner approved by the applicable Architectural Committee. To the extent possible, garage doors shall remain closed at all times.

4.13 Sewage Disposal Systems. No individual sewage disposal system shall be used on the Property. Each Owner shall connect the appropriate facilities on such Owner's Building Lot to the Meridian City Sewer System and pay all charges assessed therefor.

4.14 No Mining or Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, sand, gravel or earth. This paragraph 4.16 shall not prohibit exploratory drilling or coring which is necessary to construct a residential structure or Improvements.

4.15 Energy Devices, Outside. No energy production devices, including but not limited to generators of any kind and solar energy devices, shall be constructed or maintained on any portion of the Property without the written approval of the applicable Architectural Committee, except for heat pumps shown in the plans approved by the Architectural Committee. This paragraph 4.17 shall not apply to passive solar energy systems incorporated into the approved design of a residential structure.

4.16 Vehicles. The use of all vehicles, including but not limited to trucks, automobiles, bicycles, motorcycles and snowmobiles, shall be subject to all Association Rules, which may prohibit or limit the use thereof within Tuscany. No on-street parking shall be permitted except where expressly designated for parking use. Vehicles parked on a driveway shall not extend into any sidewalk or bike path or pedestrian path.

4.17 Animals/Pets. No animals, birds, insects, pigeons, poultry or livestock shall be kept on the Property unless the presence of such creatures does not constitute a nuisance. This paragraph 4.17 does not apply to the keeping of up to two (2) domesticated dogs, up to two (2) domesticated cats, and other household pets which do not unreasonably bother or constitute a nuisance to others. Without limiting the generality of the foregoing, consistent and/or chronic barking by dogs shall be considered a nuisance. Each dog in Tuscany shall be kept on a leash, curbed, and otherwise controlled at all times when such animal is off the premises of its owner. Such owner shall clean up any animal defecation immediately from the Common Area or public right-of-way. Failure to do so may result, at the Board's discretion, with a Limited Assessment levied against such animal owner. The construction of dog runs or other pet enclosures shall be subject to applicable Architectural Committee approval, shall be appropriately screened, and shall be maintained in a sanitary condition. Dog runs or other pet enclosures shall be placed a minimum of ten (10) feet from the side and/or rear Building Lot line, shall not be placed in any front yard of a Building Lot, and shall be screened from view so as not to be visible from Common Area or an adjacent Building Lot.

4.18 Landscaping. The Owner of any Building Lot shall sod the front and the side yards and shall seed the back yard and landscape such Building Lot in conformance with the landscape plan approved by the Association, and as approved by the applicable Architectural Committee, prior to occupancy, weather permitting. Backyard shall be sodded or seeded within six (6) months of occupancy. Prior to construction of Improvements, the Owner (or any Association to which such responsibility has been assigned) shall provide adequate irrigation and maintenance of existing trees and landscaping, shall control weeds, and maintain the Owner's (or Association's) property in a clean and safe condition free of debris or any hazardous condition. All trees located on common Building Lot lines shall be the joint responsibility of the adjoining Building Lot owners. All landscaped Common Areas shall be irrigated by an underground sprinkler system.

The Board and/or applicable Architectural Committee may adopt rules regulating landscaping permitted and required. In the event that any Owner shall fail to install and maintain landscaping in conformance with such rules or shall allow such Owner's landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive condition, the Board, upon fifteen (15) days' prior written notice to such Owner, shall have the right to correct such condition and to enter upon such Owner's property for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments as set forth in Article IX.

Following commencement of any construction of any Improvement, construction shall be diligently pursued and completed as soon as reasonably practical. All landscaping on a Building Lot, unless otherwise specified by the applicable Architectural Committee, shall be completed as soon as reasonably practical following completion of the residential structure on such Building Lot. The initial landscaping shall include, as a minimum, sod in the front and side yards, two (2) flowering trees of at least two inch (2") caliper or one (1) pine tree at least six feet (6') in height and one (1) flowering tree of at least two inch (2") caliper in the front yard, three (3)-five (5) gallon plants and five (5)-one (1) gallon shrubs in the front yard. The use of berms and sculptured planting areas are encouraged. Rear yard shall be sodded or seeded to grass within six (6) months of occupancy. The Supplemental Declarations for future phases may include more stringent landscaping requirements.

4.19 Exemption of Grantor. Nothing contained herein shall limit the right of Grantor to subdivide or resubdivide any portion of the Property, to grant licenses, to reserve rights-of-way and easements with respect to Common Area to utility companies, public agencies or others, or to complete excavation, grading and construction of Improvements to and on any portion of the Property owned by Grantor, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Grantor deems advisable in the course of development of the Property so long as any Building Lot in the Property remains unsold. Such right shall include, but shall not be limited to, erecting, constructing and maintaining on the Property such structures and displays as may be reasonably necessary for the conduct of Grantor's business of completing the work and disposing of the same by sales lease or otherwise. Grantor shall have the right at any time prior to acquisition of title to a Building Lot by a purchaser from Grantor to grant, establish and/or reserve on that Building Lot additional licenses, reservations and rights-of-way to Grantor, to utility companies, or to others as may from time to time be reasonably necessary to the

proper development and disposal of the Property. Grantor may use any structures owned by Grantor on the Property as model home complexes or real estate sales or leasing offices. Grantor need not seek or obtain Architectural Committee approval of any Improvement constructed or placed by Grantor on any portion of the Property owned by Grantor. The rights of Grantor hereunder may be assigned by Grantor to any successor in interest in connection with Grantor's interest in any portion of the Property, by an express written assignment recorded in the Office of the Ada County Recorder.

4.20 Water Rights Appurtenant to Subdivision Lands. Within 120 days of the date of the recording of this Declaration, Grantor shall transfer from the Property subject to this Declaration, and within the boundaries of an irrigation entity, as defined in said Section 31-3805, Idaho Code, all water rights and assessment obligations appurtenant to the Property to the Association.

4.21 Commencement of Construction. Any Owner of a Building Lot shall, within a period of one (1) year following the date of purchase of a Building Lot from Grantor, commence the construction of a dwelling structure in compliance with the restrictions herein, and such construction shall be completed within six (6) months thereafter. The term "commence the construction" as used in this paragraph 4.21, shall require actual physical construction activities upon such dwelling structure upon such Building Lot.

4.22 Roof Material. See Exhibit C.

4.23 Vehicles and Equipment. The use of all vehicles and equipment, including, without limitation, trucks, automobiles, bicycles, motorcycles, recreational vehicles, all-terrain vehicles, motor homes, motor coaches, campers, trailers, snowmobiles, aircraft, boats, snow removal equipment, garden maintenance equipment, and yard maintenance equipment shall be subject to any of the Project Documents which prohibit or limit the use thereof within the Property. Without limiting the foregoing, the following specific restrictions apply: 1) all on-street parking shall be limited to those specific areas where on-street parking is not expressly prohibited by the governmental or quasi-governmental agencies with responsibility therefore; 2) vehicles shall not extend or otherwise be permitted on or into any sidewalk, bicycle path, pedestrian path, or Waterway unless such vehicle is engaged in an emergency procedure, or as provided elsewhere in the Project Documents; 3) no motor homes, motor coaches, campers, trailers, snowmobiles, aircraft, boats, recreational vehicles, all-terrain vehicles, Abandoned or Inoperable Vehicles, Oversized Vehicles, dilapidated or unrepaired and unsightly vehicles or similar equipment such as snow removal equipment, garden maintenance equipment and all other unsightly equipment and machinery shall be placed upon any portion of the Property including, without limitation, streets, parking areas and driveways, unless the same are enclosed by a structure concealing them from view in a manner approved by the Design Committee; 4) to the extent possible, garage doors shall remain closed at all times; and 5) the use of any electronic, gas or other fuel operated gardening, yard or snow removal equipment shall only be allowed from 8:00 a.m. to 8:00 p.m.

4.24 Waterway Easements. Grantor hereby reserves an easement for all Waterways and



related pipes, pumps and other equipment over, across, under and through all Lots, Common Areas, and Restricted Areas to the extent reasonably required to maintain any Waterway system installed by Grantor on the Property, or pursuant to plans and specifications approved by the Design Committee. The Master Association or any Local Association shall have the right, but not the obligation, to maintain all Waterways to be maintained by a governmental or quasi-governmental authority, and to bill the applicable governmental or quasi-governmental authority for all such maintenance conducted by the Master Association. Any relocation of the water lines installed as a part of such system shall not be undertaken in any way which interrupts the flow of water through the system or damages the system in any other fashion. Grantor reserves the right to make any reconfiguration of any Waterway which it determines, in its discretion, to be necessary, expedient or desirable; provided, however, that nothing herein shall reserve unto Grantor the right to take any action which would disturb, encroach upon or endanger the foundation of any building, nor shall Grantor take any action which would materially alter any Waterway's proximity to improved property abutting such Waterway. Under no circumstances whatsoever shall the Waterways be used by any Owner, Member, tenants, invitees, and/or guests for recreational purposes including, without limitation, wading and/or swimming.

#### ARTICLE V: TUSCANY HOMEOWNERS' ASSOCIATION

5.1 Organization of Tuscany Homeowners' Association. Tuscany Homeowners' Association, Inc. ("Association") shall be initially organized by Grantor as a limited liability company under the provisions of the Idaho Code relating to general limited liability companies and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor the Bylaws shall be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.2 Membership. Each Owner, by virtue of being an Owner and for so long as such ownership is maintained, shall be a Member of the Association and no Owner shall have more than one membership in the Association. Memberships in the Association shall be appurtenant to the Building Lot or other portion of the Property owned by such Owner. The memberships in the Association shall not be transferred, pledged, assigned or alienated in any way except upon the transfer of Owner's title and then only to the transferee of such title. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Association.

5.3 Voting. Voting in the Association shall be carried out by Members who shall cast the votes attributable to the Building Lots which they own, or attributable to the Building Lots owned by Grantor. The number of votes any Member may cast on any issue is determined by the number of Building Lots which the Member, including Grantor, owns. When more than one person holds an interest in any Building Lot, all such persons shall be Members but shall share the votes attributable to the Building Lot. For voting purposes, the Association shall have two (2) classes of Members as described below.

5.3.1 Class A Members. Owners other than Grantor shall be known as Class A Members. Each Class A Member shall be entitled to cast one (1) vote for each Building Lot owned by such Class A Member on the day of the vote.

5.3.2 Class B Members. The Grantor shall be known as the Class B Member, and shall be entitled to ten (10) votes for each Building Lot of which Grantor is the Owner. The Class B Member shall cease to be a voting Member in the Association when the total cumulative votes of the Class A Members equal or exceed the total votes of the Class B Members so long as the Property has been fully platted (including future additions to the Property in Grantor's discretion), provided that the Class B membership shall not cease before the expiration of ten (10) years from the date on which the first Building Lot is sold to an Owner.

Fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter being put to a vote. When an Owner casts a vote, it will thereafter be presumed conclusively for all purposes that such Owner was acting with authority and consent of all joint Owners of the Building Lot(s) from which the vote derived. The right to vote may not be severed or separated from the ownership of the Building Lot to which it is appurtenant, except that any Owner may give a revocable proxy, or may assign such Owner's right to vote to a lessee, mortgagee, beneficiary or contract purchaser of the Building Lot concerned, for the term of the lease, mortgage, deed of trust or contract. Any sale, transfer or conveyance of such Building Lot to a new Owner shall operate automatically to transfer the appurtenant voting right to the Owner, subject to any assignment of the right to vote to a lessee, mortgagee, or beneficiary as provided herein.

5.4 Board of Directors and Officers. The affairs of the Association shall be conducted and managed by a Board of Directors ("Board") and such officers as the Board may elect or appoint, in accordance with the Articles and Bylaws, as the same may be amended from time to time. The Board of the Association shall be elected in accordance with the provisions set forth in the Association Bylaws.

#### 5.5 Power and Duties of the Association.

5.5.1 Powers. The Association shall have all the powers of a corporation organized under the general corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws, and this Declaration. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under Idaho law and under this Declaration, and the Articles and Bylaws, and to do and perform any and all acts which may be necessary to, proper for, or incidental to the proper management and operation of the Common Area and the Declaration's other assets, including water rights when and if received from Grantor, and affairs and the performance of the other responsibilities herein assigned, including without limitation:

5.5.1.1 Assessments. The power to levy Assessments on any Owner or any portion of the Property and to force payment of such Assessments, all in accordance with the provisions of this Declaration. An Association set up fee of \$350.00 shall be charged upon the closing of each Building Lot. The initial annual association fee shall be \$350.00 per year, which amount is subject to change by the Board of Directors of the Association. Additional fees may be reflected in each Lot Purchase and Sale Agreement.

5.5.1.2 Right of Enforcement. The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner who consents thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or the Articles or the Bylaws, including the Association Rules adopted pursuant to this Declaration, and to enforce by injunction or otherwise, all provisions hereof.

5.5.1.3 Delegation of Powers. The authority to delegate its power and duties to committees, officers, employees, or to any person, firm or corporation to act as manager, and to contract for the maintenance, repair, replacement and operation of the Common Area. Neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty or power so delegated.

5.5.1.4 Association Rules. The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Association deems reasonable. The Association may govern the use of the Common Areas, including but not limited to the use of private streets by the Owners, their families, invitees, licensees, lessees or contract purchasers; provided, however, that any Association Rules shall apply equally to all Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of any conflict between such Association Rules and any other provisions of this Declaration, or the Articles or Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency.

5.5.1.5 Emergency Powers. The power, exercised by the Association or by any person authorized by it, to enter upon any property (but not inside any building constructed thereon) in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Association.

5.5.1.6 Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements and rights-of-way in, on or under the Common Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Common Area, and for the preservation of the health, safety, convenience and the welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:

5.5.1.6.1 Underground lines, cables, wires, conduits or other devices for the transmission of electricity or electronic signals-for lighting, heating, power, telephone, television or other purposes, and the above ground lighting stanchions, meters, and other facilities associated with the provisions of lighting and services; and

5.5.1.6.2 Public sewers, storm drains, water drains and pipes, water supply systems, sprinkling systems, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities.

5.5.1.6.3 Mailboxes and sidewalk abutments around such mailboxes or any service facility, berm, fencing and landscaping abutting common areas, public and private streets or land conveyed for any public or quasi-public purpose including, but not limited to, bicycle pathways.

The right to grant such licenses, easements and rights-of-way are hereby expressly reserved to the Association and may be granted at any time prior to twenty-one (21) years after the death of the issue of the individuals executing this Declaration on behalf of Grantor who are in being as of the date hereof.

5.5.2 Duties. In addition to duties necessary and proper to carry out the power delegated to the Association by this Declaration, and the Articles and Bylaws, without limiting the generality thereof, the Association or its agent, if any, shall have the authority and the obligation to conduct all business affairs of the Association and to perform, without limitation, each of the following duties:

5.5.2.1 Operation and Maintenance of Tuscany Common Area. Operate, maintain, and otherwise manage or provide for the operation, maintenance and management of Tuscany Common Area (other than Local Common Area), including the repair and replacement of property damaged or destroyed by casualty loss.

Specifically, the Association shall, at Grantor's sole discretion, operate and maintain all properties owned by Grantor which are designated by Grantor for temporary or permanent use by Members of the Association.

5.5.2.2 Reserve Account. Establish and fund a reserve account with a reputable banking institution or savings and loan association or title insurance company authorized to do business in the State of Idaho, which reserve account shall be dedicated to the costs of repair, replacement, maintenance and improvement of the Common Area.

5.5.2.3 Maintenance of Berms, Retaining Walls and Fences. Maintain the berms, retaining walls, fences and water amenities within and abutting Common Area and abutting the Ridenbaugh Canal. Maintain the water amenities constructed by Grantor or Association located in that certain easement in, over and through Building Lots as shown on the Plat.

5.5.2.4 Taxes and Assessments. Pay all real and personal property taxes and Assessments separately levied against Tuscany Common Area or against Tuscany, the Association and/or any other property owned by the Association. Such taxes and Assessments may be contested or compromised by the Association, provided, however, that such taxes and Assessments are paid or a bond insuring payment is posted prior to the sale or disposition of any property to satisfy the payment of such taxes and Assessments. In addition, the Association shall pay all other federal, state or local taxes, including income or corporate taxes levied against the Association, in the event that the Association is denied the status of a tax exempt corporation.

5.5.2.5 Water and Other Utilities. Acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone and gas and other necessary services for Tuscany Common Area, and to manage for the benefit of Tuscany all water rights and rights to receive water held by the Association, whether such rights are evidenced by license, permit, claim, stock ownership or otherwise.

5.5.2.6 Insurance. Obtain insurance from reputable insurance companies authorized to do business in the State of Idaho, and maintain in effect any insurance policy the Board deems necessary or advisable, including, without limitation the following policies of insurance:

5.5.2.6.1 Fire insurance including those risks embraced by coverage of the type known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreed amount basis for the full insurable replacement value of all Improvements, equipment and fixtures located within Tuscany Common Area.

5.5.2.6.2 Comprehensive public liability insurance insuring the Board, the Association, the Grantor and the individual grantees and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of Tuscany Common Area.

Limits of liability of such coverage shall be as follows: Not less than One Million Dollars (\$1,000,000) per person and One Million Dollars (\$1,000,000) per occurrence with respect to personal injury or death, and One Million Dollars (\$1,000,000) per occurrence with respect to property damage.

5.5.2.6.3 Full coverage directors' and officers' liability insurance with a limit of at least Two Hundred Fifty Thousand Dollars (\$250,000).

5.5.2.6.4 Such other insurance, including motor vehicle insurance and Workmen's Compensation insurance, to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of any Association funds or other property.

5.5.2.6.5 The Association shall be deemed trustee of the interests of all Owners in connection with any insurance proceeds paid to the Association under such policies, and shall have full power to receive such Owner's interests in such proceeds and to deal therewith.

5.5.2.6.6 Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.

5.5.2.7 Rule Making. Make, establish, promulgate, amend and repeal such Association Rules as the Board shall deem advisable.

5.5.2.8 Newsletter. If it so elects, prepare and distribute a newsletter on matters of general interest to Association Members, the cost of which shall be included in Regular Assessments.

5.5.2.9 Architectural Committee. Appoint and remove members of the Architectural Committee, subject to the provisions of this Declaration.

5.5.2.10 Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably advisable or necessary to enforce any of the provisions of the Declaration, or of the Articles or Bylaws, including, without limitation, the recordation of any claim of lien with the Ada County Recorder, as more fully provided herein.

5.6 Personal Liability. No Member of the Board, or member of any committee of the Association, or any officer of the Association, or the Grantor, or the manager, if any, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of the Association, the Board, the manager, if any, or any other representative or employee of the Association, the Grantor, or the Architectural Committee, or any other committee, or any officer of the Association, or the Grantor, provided that such person, upon the basis of such information as may be possessed by such person, has acted in good faith without willful or intentional misconduct.

5.7 Budgets and Financial Statements. Financial statements for the Association shall be prepared regularly and copies shall be distributed to each Member of the Association as follows:

5.7.1 A pro forma operating statement or budget, for each fiscal year shall be distributed not less than sixty (60) days before the beginning of each fiscal year. The operating statement shall include a schedule of Assessments received and receivable, identified by the Building Lot number and the name of the person or entity assigned.

5.7.2 Within thirty (30) days after the close of each fiscal year, the Association shall cause to be prepared and delivered to each Owner, a balance sheet as of the last day of the Association's fiscal year and annual operating statements reflecting the income and expenditures of the Association for its last fiscal year. Copies of the balance sheet and operating statement shall be distributed to each Member within ninety (90) days after the end of each fiscal year.

5.8 Meetings of Association. Each year the Association shall hold at least one meeting of the Members, according to the schedule for such meetings established by the Bylaws; provided, that such meeting shall occur no earlier than April 15 and no later than May 31 each year. Only Members shall be entitled to attend Association meetings, and all other persons may be excluded. Notice for all Association meetings, regular or special, shall be given by regular mail to all Members, and any person in possession of a Building Lot, not less than ten (10) days nor more than thirty (30) days before the meeting and shall set forth the place, date and hour of the meeting and the nature of the business to be conducted. All meetings shall be held within the Property or as close thereto as practical at a reasonable place selected by the Board. The presence at any meeting in person of the Class B Member where there is such a Member, and of the Class A Members representing Owners holding at least thirty percent (30%) of the total votes of all Class A Members, shall constitute a quorum. If any meeting cannot be held because a quorum is not present, the Members present may adjourn the meeting to a time not less than ten (10) days nor more than thirty (30) days from the time the original meeting was scheduled. A second meeting may be called as the result of such an adjournment, provided notice is given as provided above. At any such meeting properly called, the presence of any Member shall constitute a quorum.

#### ARTICLE VI: LIGHT MAINTENANCE OF STORM WATER FACILITIES

Operation and maintenance of the storm water facilities at Tuscany shall be governed by the operation and maintenance manual of storm drainage system in Tuscany prepared by Briggs

Engineering, which manual may be modified from time to time at the direction of the Board of the Association.

## ARTICLE VII: RIGHTS TO COMMON AREAS

7.1 Use of Tuscany Common Area. Every Owner shall have a right to use each parcel of Tuscany Common Area, which right shall be appurtenant to and shall pass with the title to every Building Lot, subject to the following provisions:

7.1.1 The right of the Association to levy and increase Assessments;

7.1.2 The right of such Association to suspend the voting rights and rights to use of, or interest in, Common Area by an Owner for any period during which any Assessment or charge against such Owner's Building Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Association Rules; and

7.1.3 The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be permitted by the Articles and Bylaws and agreed to by the Members. No dedication or transfer of said Common Area shall be effective unless an instrument agreeing to such dedication or transfer signed by Members representing two-thirds (2/3) of each class of Members has been recorded.

7.1.4 The right of such Association to prohibit the construction of structures or Improvements, Improvements on all Common Areas.

7.1.5 The right of such Association to prohibit structures, Improvements, including manicured lawns and nursery plants.

7.2 Designation of Common Area. Grantor shall designate and reserve Tuscany Common Area in the Declaration, Supplemental Declarations and/or recorded Plats, deeds or other instruments and/or as otherwise provided herein.

7.3 Delegation of Right to Use. Any Owner may delegate, in accordance with the respective Bylaws and Association Rules of the Association, such Owner's right of enjoyment to the Tuscany Common Area, to the members of such Owner's family in residence, and such Owner's tenants or contract purchasers who reside on such Owner's Building Lot. Only Grantor or the Association shall have the right to delegate the right of enjoyment to the Tuscany Common Area, to the general public, and such delegation to the general public shall be for a fee set by Grantor or Association.

7.4 Damages. Each Owner shall be fully liable for any damage to any Common Area which may be sustained by reason of the negligence or willful misconduct of the Owner, such Owner's resident tenant or contract purchaser, or such Owner's family and guests, both minor and adult. In the case of joint ownership of a Building Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be a Limited Assessment against the Building Lot and may be collected as provided herein for the collection of other Assessments.



## ARTICLE VIII: PRESSURIZED IRRIGATION

8.1 Irrigation District Service. The Nampa & Meridian Irrigation District provides pressurized irrigation water service to all Lots in the Project. Lot Owners shall be required to pay an assessment based on Lot area to the District whether or not water is actually used. Lot Owners are prohibited from making any cross connection or tie in between the irrigation water system and their domestic water systems. WATER FROM THE IRRIGATION WATER SYSTEM IS NOT DRINKABLE; EACH LOT OWNER SHALL BE RESPONSIBLE TO ENSURE THAT IRRIGATION WATER WITHIN THE BOUNDARIES OF SUCH OWNER'S LOT IS NOT CONSUMED BY ANY PERSON OR USED FOR CULINARY PURPOSES.

8.2 No Private System. Lot Owners shall not construct any ditch, drain, well or water system upon any Lot or Common Area for domestic use or irrigation purposes.

8.3 Water Master. The Association shall elect or may contract for hire a Water Master to designate any rotation schedule required for the delivery of irrigation water. The Water Master shall serve as the liaison to Nampa & Meridian Irrigation District for all matters of Tuscany.

## ARTICLE IX: ASSESSMENTS

9.1 Covenant to Pay Assessments. By acceptance of a deed to any property in Tuscany, each Owner of such property hereby covenants and agrees to pay when due all Assessments or charges made by the Association, including all Regular, Special and Limited Assessments and charges made against such Owner pursuant to the provisions of this Declaration or other applicable instrument.

9.1.1 Assessment Constitutes Lien. Such Assessments and charges together with interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment or charge is made.

9.1.2 Assessment is Personal Obligation. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such property beginning with the time when the Assessment falls due. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them but shall remain such Owner's personal obligation regardless of whether he remains an Owner.

9.2 Regular Assessments. All Owners, including the Grantor, are obligated to pay Regular Assessments to the treasurer of the Association on a schedule of payments established by the Board.

9.2.1 Purpose of Regular Assessments. The proceeds from Regular Assessments are to be used to pay for all costs and expenses incurred by the Association, including legal and attorneys fees and other professional fees, for the conduct of its affairs, including without limitation the costs and expenses of construction, improvement,

protection, maintenance, repair, management and operation of the Common Areas, including all Improvements located on such areas owned and/or managed and maintained by such Association, and an amount allocated to an adequate reserve fund to be used for repairs, replacement, maintenance and improvement of those elements of the Common Area, or other property of the Association that must be replaced and maintained on a regular basis (collectively "Expenses").

9.2.2 Computation of Regular Assessments. The Association shall compute the amount of its Expenses on an annual basis. The Board shall compute the amount of Regular Assessments owed beginning the first day of the third month following the month in which the closing of the first sale of a Building Lot occurred in Tuscany for the purposes of the Association's Regular Assessment ("Initiation Date"). Thereafter, the computation of Regular Assessments shall take place not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of the Association. The computation of the Regular Assessment for the period from the Initiation Date until the beginning of the next fiscal year shall be reduced by an amount which fairly reflects the fact that such period was less than one year.

9.2.3 Amounts Paid by Owners. The Board can require, in its discretion or as provided in the Articles or Bylaws, payment of Regular Assessments in monthly, quarterly, semi-annual or annual installments. The Regular Assessment to be paid by any particular Owner, including Grantor, for any given fiscal year shall be computed as follows:

9.2.3.1 As to the Association's Regular Assessment, each Owner shall be assessed and shall pay an amount computed by multiplying the Association's total advance estimate of Expenses by the fraction produced by dividing the Building Lots attributable to the Owner by the total number of Building Lots in the Property.

### 9.3 Special Assessments.

9.3.1 Purpose and Procedure. In the event that the Board of the Association shall determine that its respective Regular Assessment for a given calendar year is or will be inadequate to meet the Expenses of such Association for any reason, including but not limited to costs of construction, reconstruction, unexpected repairs or replacement of capital improvements upon the Common Area, attorney's fees and/or litigation costs, other professional fees, or for any other reason, the Board thereof shall determine the approximate amount necessary to defray such Expenses and levy a Special Assessment against the portions of the Property within its jurisdiction which shall be computed in the same manner as Regular Assessments. No Special Assessment shall be levied which exceeds twenty percent (20%) of the budgeted gross Expenses of such Association for that fiscal year, without the vote or written assent of the Owners representing a majority of the votes of the Members of such Association. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid.

9.3.2 Consistent Basis of Assessment. Every Special Assessment levied by and for the Association shall be levied and paid upon the same basis as that prescribed for the levying and payment of Regular Assessments for such Association.

9.4 Limited Assessments. Notwithstanding the above provisions with respect to Regular and Special Assessments, a Board may levy a Limited Assessment against a Member as a remedy to reimburse the Association for costs incurred in bringing the Member and/or such Member's Building Lot into compliance with the provisions of the governing instruments for Tuscany.

9.5 Uniform Rate of Assessment. Unless otherwise specifically provided herein, Regular and Special Assessments shall be fixed at a uniform rate per Building Lot for all Members of the Association.

9.6 Assessment Period. Unless otherwise provided in the Articles or Bylaws, the Assessment period shall commence on January 1 of each year and terminate December 31 of the year in which the Initiation Date occurs. The first Assessment shall be pro-rated according to the number of months remaining in the fiscal year and shall be payable in equal monthly installments.

9.7 Notice and Assessment Due Date. Ten (10) days prior written notice of Regular and Special Assessments shall be sent to the Owner of every Building Lot subject thereto, and to any person in possession of such Building Lot. The due dates for installment payment of Regular Assessments and Special Assessments shall be the first day of each month unless some other due date is established by the Board. Each monthly installment of the Regular Assessment or Special Assessment shall become delinquent if not paid within ten (10) days after the levy thereof. There shall accrue with each installment that is not paid within thirty (30) days after the due date shall accrue a late fee of \$25.00. The Association may bring an action against the delinquent Owner and may foreclose the lien against such Owner's Building Lot as more fully provided herein. Each Owner is personally liable for Assessments, together with all interest, costs and attorneys' fees, and no Owner may exempt such Owner from such liability by a waiver of the use and enjoyment of the Common Areas, or by lease or abandonment of such Owner's Building Lot.

9.8 Estoppel Certificate. The Association, upon at least twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request, a statement in writing stating whether or not, to the knowledge of the Association, a particular Building Lot Owner is in default under the provisions of this Declaration, and further stating the dates to which any Assessments have been paid by the Owner. Any such certificate delivered pursuant to this paragraph 9.8 may be relied upon by any prospective purchaser or mortgagee of the Owner's Building Lot. Reliance on such Certificate may not extend to any default as to which the signor shall have had no actual knowledge.

9.9 Special Notice and Quorum Requirements. Notwithstanding anything to the contrary contained in either the Bylaws or the Articles, written notice of any meeting called for the purpose of levying a Special Assessment, or for the purpose of obtaining a membership vote in connection with an increase in the Regular Assessment, shall be sent to all Members of the

Association and to any person in possession of a Building Lot in the applicable Tract, not less than fifteen (15) days nor more than thirty (30) days before such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total votes of the Association shall constitute a quorum. If such quorum is not present, subsequent meetings may be called subject to the same notice requirement, and the required quorum at the subsequent meetings shall be fifty percent (50%) of the quorum required at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

#### ARTICLE X: ENFORCEMENT OF ASSESSMENTS; LIENS

10.1 Right to Enforce. The Association has the right to collect and enforce its Assessments pursuant to the provisions hereof. Each Owner of a Building Lot, upon becoming an Owner of such Building Lot, shall be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorney's fees in addition to any other relief or remedy obtained against such Owner. The Board or its authorized representative may enforce the obligations of the Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity, or the Board may exercise the power of foreclosure and sale pursuant to paragraph 10.3 to enforce the liens created hereby. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

#### 10.2 Assessment Liens.

10.2.1 Creation. There is hereby created a claim of lien with power of sale on each and every Building Lot to secure payment of any and all Assessments levied against such Building Lot pursuant to this Declaration together with interest thereon at the maximum rate permitted by law and all costs of collection which may be paid or incurred by the Association making the Assessment in connection therewith, including reasonable attorneys' fees. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on such respective Building Lots upon recordation of a claim of lien with the Ada County Recorder. Such lien shall be prior and superior to all other liens or claims created subsequent to the recordation of the notice of delinquency and claim of lien except for tax liens for real property taxes on any Building Lot and Assessments on any Building Lot in favor of any municipal or other governmental assessing body which, by law, would be superior thereto.

10.2.2 Claim of Lien. Upon default of any Owner in the payment of any Regular, Special or Limited Assessment issued hereunder, the Association may cause to be recorded in the office of the Ada County Recorder a claim of lien. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description of the Building Lot(s) against which the same have been assessed, and the name of the record Owner thereof. Each delinquency shall constitute a separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Association

of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction of relief of such delinquent sums and charges. The Association may demand and receive the cost of preparing and recording such release before recording the same.

10.3 Method of Foreclosure. Such lien may be foreclosed by appropriate action in court or by sale by the Association establishing the Assessment, its attorney or other person authorized to make the sale. Such sale shall be conducted in accordance with the provisions of the Idaho Code applicable to the exercise of powers of sale permitted by law. The Board is hereby authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in Idaho as trustee for the purpose of conducting such power of sale or foreclosure.

10.4 Required Notice. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of the notice of delinquency and claim of lien, whether judicially, by power of sale or otherwise, until the expiration of thirty (30) days after a copy of such claim of lien has been deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Building Lot(s) described in such notice of delinquency and claim of lien, and to the person in possession of such Building Lot(s), and a copy thereof is recorded by the Association in the Office of the Ada County Recorder.

10.5 Subordination to Certain Trust Deeds. The lien for the Assessments provided for herein in connection with a given Building Lot shall not be subordinate to the lien of any deed of trust or mortgage except the lien of a first deed of trust or first mortgage given and made in good faith and for value that is of record as an encumbrance against such Building Lot prior to the recordation of a claim of lien for the Assessments. Except as expressly provided in paragraph 10.6 with respect to a first mortgagee who acquires title to a Building Lot, the sale or transfer of any Building Lot shall not affect the Assessment lien provided for herein, nor the creation thereof by the recordation of a claim of lien, on account of the Assessments becoming due whether before, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

10.6 Rights of Mortgagees. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat the rights of the Beneficiary under any deed of trust upon a Building Lot made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such deed of trust such Building Lot shall remain subject to this Declaration as amended.

## ARTICLE XI: INSPECTION OF ASSOCIATION'S BOOKS AND RECORDS

11.1 Member's Right of Inspection. The membership register, books of account and minutes of meetings of the Board and committees of the Association shall be made available for inspection and copying by any Member of the Association or by such Member's duly appointed representatives, at any reasonable time and for a purpose reasonably related to such Member's interest as a Member at the office of the Association or at such other place as the Board of such Association shall prescribe. No Member or any other person shall copy the membership register for the purposes of solicitation of or direct mailing to any Member of the Association.

11.2 Rules Regarding Inspection of Books and Records. The Board shall establish reasonable rules with respect to:

11.2.1 Notice to be given to the custodians of the records by the persons desiring to make the inspection.

11.2.2 Hours and days of the week when such an inspection may be made.

11.2.3 Payment of the cost of reproducing copies of documents requested pursuant to this Article XI.

11.3 Director's Rights of Inspection. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association, and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

## ARTICLE XII: ARCHITECTURAL COMMITTEE

12.1 Creation. Within thirty (30) days of the date on which the Grantor first conveys a Building Lot to an Owner, Grantor shall appoint three (3) individuals to serve on Tuscany Architectural Committee ("Architectural Committee"). Each member shall hold office until such time as such member has resigned or has been removed, or such member's successor has been appointed, as provided herein. A member of the Architectural Committee need not be an Owner. Members of the Architectural Committee may be removed by the person or entity appointing them at any time without cause. Grantor shall be entitled to name two members until such time as all potential residential lots within the Property have been sold.

12.2 Grantor's Right of Appointment. At any time, and from time to time, prior to ten (10) years after the recording date of this Declaration in which Grantor is the Owner of any of the Property, Grantor shall have the exclusive right to appoint and remove all members of the Architectural Committee. At all other times, the Association Board shall have the right to appoint and remove all members of the Architectural Committee. If a vacancy on the Architectural Committee occurs and a permanent replacement has not yet been appointed, Grantor or the Board, as the case may be, may appoint an acting member to serve for a specified temporary period not to exceed one (1) year.

12.3 Review of Proposed Construction. The Architectural Committee shall consider and act upon any and all proposals or plans and specifications submitted for its approval pursuant to this Declaration, and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the Architectural Committee. The Board shall have the power to determine, by rule or other written designation consistent with this Declaration, which types of Improvements shall be submitted for Architectural Committee review and approval. The Architectural Committee shall have the power to hire an architect, licensed with the State of Idaho, to assist the Architectural Committee in its review of proposals or plans and specifications submitted to the Architectural

Committee. The Architectural Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the habitat of the Common Areas, or appearance of the surrounding area of the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association.

12.3.1 Conditions on Approval. The Architectural Committee may condition its approval of proposals or plans and specifications upon such changes therein as it deems appropriate, and/or upon the agreement of the Owner submitting the same ("Applicant") to grant appropriate easements to the Association for the maintenance thereof, and/or upon the agreement of the Applicant to reimburse the Association for the cost of maintenance, and may require submission of additional plans and specifications or other information before approving or disapproving material submitted.

12.3.2 Architectural Committee Rules and Fees. The Architectural Committee also may establish rules and/or guidelines setting forth procedures for and the required content of the applications and plans submitted for approval. Such rules may require a fee to accompany each application for approvals or additional factors which it will take into consideration in reviewing submissions. The Architectural Committee shall determine the amount of such fee in a reasonable manner. Such fees shall be used to defray the costs and expenses of the Architectural Committee, including the cost and expense of hiring an architect licensed by the State of Idaho, as provided above, or for such other purposes as established by the Board, and such fee shall be refundable to the extent not expended for the purposes herein stated.

Such rules and guidelines may establish, without limitation, specific rules and regulations regarding design and style elements, landscaping and fences and other structures such as animal enclosures as well as special architectural guidelines applicable to Building Lots located adjacent to public and/or private open space.

12.3.3 Detailed Plans. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, landscape plans, drainage plans, elevation drawings and descriptions or samples of exterior material and colors. Until receipt by the Architectural Committee of any required plans and specifications, the Architectural Committee may postpone review of any plan submitted for approval.

12.3.4 Architectural Committee Decisions. Decisions of the Architectural Committee and the reasons therefor shall be transmitted by the Architectural Committee to the Applicant at the address set forth in the application for approval within thirty (30) days after filing all materials required by the Architectural Committee. Any materials submitted pursuant to this Article XII shall be deemed approved unless written disapproval by the Architectural Committee shall have been mailed to the Applicant within thirty (30) days after the date of filing said materials with the Architectural Committee.

12.4 Meetings of the Architectural Committee. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may from time to time by resolution unanimously adopted in writing, designate a Architectural Committee representative (who may, but need not be one of its members) to take any action or perform any duties for and on behalf of the Architectural Committee, except the granting of variances pursuant to paragraph 12.9. In the absence of such designation, the vote of any two (2) members of the Architectural Committee, or the written consent of any two (2) members of the Architectural Committee taken without a meeting, shall constitute an act of the Architectural Committee.

12.5 No Waiver of Future Approvals. The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

12.6 Compensation of Members. The members of the Architectural Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder and except as otherwise agreed by the Board.

12.7 Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

12.7.1 Upon the completion of any work for which approved plans are required under this Article XII, the Owner shall give written notice of completion to the Architectural Committee.

12.7.2 Within sixty (60) days thereafter, the Architectural Committee or its duly authorized representative may inspect such Improvement. If the Architectural Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying the particular noncompliance, and shall require the Owner to remedy the same.

12.7.3 If upon the expiration of thirty (30) days from the date of such notification, or any longer time the Architectural Committee determines to be reasonable, the Owner shall have failed to remedy such noncompliance, the Architectural Committee shall notify the Board in writing of such failure. Upon notice and hearing, as provided in the Bylaws, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of the announcement of the Board ruling unless the Board specifies a longer time as reasonable. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may either remove the noncomplying improvement or remedy the noncompliance, and the Owner shall reimburse



the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Limited Assessment against such Owner for reimbursement pursuant to this Declaration.

12.7.4 If for any reason the Architectural Committee fails to notify the Owner of any noncompliance within sixty (60) days after receipt of the written notice of completion from the Owner, the work shall be deemed to be in accordance with the approved plans.

12.8 Non-Liability of Architectural Committee Members. Neither the Architectural Committee nor any member thereof, nor its duly authorized Architectural Committee representative, shall be liable to the Association, or to any Owner or Grantee for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee. The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and to the Property generally. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of building, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other codes.

12.9 Variances. The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. However no variances will be granted for construction of structures or Improvements, including without limitation manicured lawns, in the Common Areas. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Architectural Committee, and shall become effective upon recordation in the office of the County Recorder of Ada County. If such variances are granted, no violation of the covenants, conditions or restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Building Lot and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting such Owner's use of the Building Lot, including but not limited to zoning ordinances or requirements imposed by any governmental or municipal authority.

### ARTICLE XIII: EASEMENTS

13.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Building Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Building Lots due to the unwillful placement or settling or shifting of the Improvements including but not limited to structures, walkways, bike paths,

sidewalks and driveways constructed, reconstructed or altered thereon in accordance with the terms of this Declaration. Easements of encroachment shall be valid only so long as they exist, and the rights and obligations of Owners shall not be altered in any way because of encroachments, settling or shifting of the Improvements; provided, however, that in no event shall a valid easement for encroachment occur due to the willful act or acts of an Owner. In the event a structure on any Building Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Building Lot agree that minor encroachments over adjoining Building Lots that existed prior to the encroachment may be reconstructed pursuant to the easement granted by this paragraph 13.1.

13.2 Easements of Access. Grantor expressly reserves for the benefit of all the Property reciprocal easements of access, ingress and egress for all Owners to and from their respective Building Lots for installation and repair of utility services, for drainage of water over, across and upon adjacent Building Lots, and Common Areas, resulting from the normal use of adjoining Building Lots or Common Areas, and for necessary maintenance and repair of any Improvement including fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees and landscaping. Such easements may be used by Grantor, and by all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Building Lot or Common Area.

13.3 Drainage and Utility Easements. Notwithstanding anything expressly or impliedly contained herein to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Grantor for the installation and maintenance of utilities and drainage facilities that are required for the development of the Property. In addition, Grantor hereby reserves for the benefit of any Association the right to grant additional easements and rights-of-way over the Property and/or a Tract, as appropriate, to utility companies and public agencies as necessary or expedient for the proper development of the Property until close of escrow for the sale of the last Building Lot in the Property to a purchaser.

13.3.1 Improvement of Drainage and Utility Easement Areas. The Owners of Building Lots are hereby restricted and enjoined from constructing any Improvements upon any drainage or utility easement areas as shown on the Plat of Tuscany or otherwise designated in any recorded document which would interfere with or prevent the easement from being used for such purpose; provided, however that the Owner of such Building Lots and the Grantor, Association or designated entity with regard to the landscaping easement described in this Article XIII, shall be entitled to install and maintain landscaping on such easement areas, and also shall be entitled to build and maintain fencing on such easement areas subject to approval by the Association Architectural Committee, so long as the same would not interfere with or prevent the easement areas from being used for their intended purposes; provided, that any damage sustained to Improvements on the easement areas as a result of legitimate use of the easement area shall be the sole and exclusive obligation of the Owner of the Building Lot whose Improvements were so damaged.

13.4 Rights and Duties Concerning Utility Easements. The rights and duties of the Owners of the Building Lots within the Property with respect to utilities shall be governed by the following:

13.4.1 Wherever utility house connections are installed within the Property, which connections or any portions thereof lie in or upon Building Lots owned by an Owner other than the Owner of the Building Lot served by the connections, the Owner of the Building Lot served by the connections shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon any Building Lot or to have their agent enter upon any Building Lot within the Property in or upon which said connections or any portion thereof lie, to repair, replace and generally maintain the connections as and when it may be necessary.

13.4.2 Whenever utility house connections are installed within the Property, which connections serve more than one Building Lot, the Owner of each Building Lot served by the connections shall be entitled to full use and enjoyment of such portions of said connections as service such Owner's Building Lot.

13.5 Driveway Easements. Whenever a driveway is installed within the Property which in whole or in part lies upon a Building Lot owned by an Owner other than the Owner of the Building Lot served, or installed to serve more than one Building Lot, the Owner of each Building Lot served or to be served by such driveway shall be entitled to full use and enjoyment of such other Building Lot as required to service such Owner's Building Lot or to repair, replace or maintain such driveway.

13.6 Disputes as to Sharing of Costs. In the event of a dispute between Owners with respect to the repair or rebuilding of utility connections or driveways, or with respect to the sharing of the cost therefor, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board which shall decide the dispute and, if appropriate, make an appropriate Assessment against any or all of the Owners involved on behalf of the prevailing Owner(s), which Assessment shall be collected and enforced in the manner provided by this Declaration for Limited Assessments.

13.7 General Landscape Easement. An easement is hereby reserved to each appropriate Association, its contractors and agents, to enter those portions of Building Lots, for the purpose of installing, maintaining, replacing and restoring exterior landscaping, and natural vegetation and habitat. Such landscaping activity shall include, by way of illustration and not of limitation, the mowing of lawns, irrigation, sprinkling, tree and shrub trimming and pruning, walkway improvement, seasonal planting and such other landscaping activities within the Property as such Association shall determine to be necessary from time to time.

13.8 Overhang Easement. There shall be an exclusive easement appurtenant to each Building Lot over the Common Areas for overhanging eaves, and for any projections from the buildings, which projections shall not extend beyond the eave line.

13.9 Maintenance and Use Easement Between Walls and Lot Lines. Whenever the wall of a structure, or a fence or retaining wall, constructed on a Building Lot under plans and specifications approved by the Architectural Committee is located within three (3) feet of the lot line of such Building Lot, the Owner of such Building Lot is hereby granted an easement over and on the adjoining Building Lot (not to exceed 3 feet from the Building Lot line) for purposes of maintaining and repairing such wall or fence and eaves or other overhangs, and the Owner of such adjoining Building Lot is hereby granted an easement for landscaping purposes over and on the area lying between the lot line and such structure or fence so long as such use does not cause damage to the structure of fence.

#### ARTICLE XIV: MISCELLANEOUS

14.1 Term. The easements created hereunder shall be perpetual, subject only to extinguishment by the holders of such easements as provided by law. The covenants, conditions, restrictions and equitable servitudes of this Declaration shall run until December 31, 2030, unless amended as herein provided. After December 31, 2030, such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless extinguished by a written instrument executed by Members holding at least three-fourths (3/4) of the voting power of the Association and such written instrument is recorded with the Ada County Recorder. Further provided that the Association shall not be dissolved without the prior written approval of the City of Meridian and Ada County Highway District, such consent not to be unreasonably withheld provided that a responsible successor organization shall agree to perform those maintenance responsibilities arising from applicable city and county governmental requirements.

#### 14.2 Amendment.

14.2.1 By Grantor. Except as provided in paragraph 14.3 below, until the recordation of the first deed to a Building Lot in the Property, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to (collectively, "amendment") or terminated by Grantor by recordation of a written instrument setting forth such amendment or termination. Any amendment affecting only a particular Tract may be made by Grantor by an amendment to this Declaration at any time up to the recordation of the first deed to a Building Lot in such Tract.

14.2.2 By Owners. Except where a greater percentage is required by express provision in this Declaration, the provisions of this Declaration, other than this Article XIV, any amendment shall be by an instrument in writing signed and acknowledged by the president and secretary of the Association certifying and attesting that such amendment has been approved by the vote or written consent of Owners representing more than fifty percent (50%) of the votes in the Association, and such amendment shall be effective upon its recordation with the Ada County Recorder. Any amendment to this Article XIV shall require the vote or written consent of Members holding ninety-five percent (95%) of the voting power of the Association.

14.2.3 Effect of Amendment. Any amendment of this Declaration approved in the manner specified above shall be binding on and effective as to all Owners and their respective properties notwithstanding that such Owners may not have voted for or consented to such amendment. Such amendments may add to and increase the covenants, conditions, restrictions and easements applicable to the Property but shall not prohibit or unreasonably interfere with the allowed uses of such Owner's property which existed prior to the said amendment.

14.3 Mortgage Protection. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat or render invalid the rights of the beneficiary under any first deed of trust upon a Building Lot made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after foreclosure of any such first deed of trust such Building Lot shall remain subject to this Declaration, as amended.

14.4 Notices. Any notices permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association, as provided in this paragraph 14.4.

14.5 Enforcement and Non-Waiver.

14.5.1 Right of Enforcement. Except as otherwise provided herein, any Owner of any Building Lot shall have the right to enforce any or all of the provisions hereof against any property within the Property and Owners thereof.

14.5.2 Violations and Nuisances. The failure of any Owner of a Building Lot to comply with any provision hereof, or with any provision of the Articles or Bylaws of any Association, is hereby declared a nuisance and will give rise to a cause of action in the Grantor, the Association or any Owner Building Lot(s) within the Property for recovery of damages or for negative or affirmative injunctive relief or both. However, any other provision to the contrary notwithstanding, only Grantor, the Association, the Board, or a duly authorized agent of any of them, may enforce by self-help any of the provisions hereof only if such self-help is preceded by reasonable notice to the Owner.

14.5.3 Violation of Law. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration and any or all enforcement procedures in law and equity.

14.5.4 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

14.5.5 Non-Waiver. The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the right to enforce any such provision.

14.6 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property. This Declaration shall be construed and governed under the laws of the State of Idaho.

14.6.1 Restrictions Construed Together. All of the provisions hereof shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property as set forth in the recitals of this Declaration.

14.6.2 Restrictions Severable. Notwithstanding the provisions of the foregoing paragraph 14.6.1, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

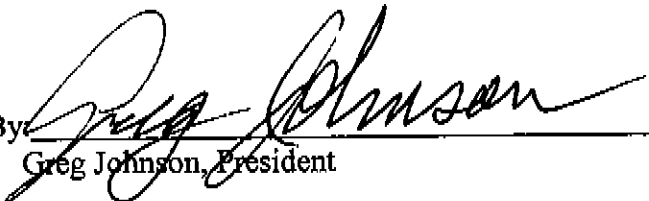
14.6.3 Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each including the masculine, feminine and neuter.

14.6.4 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

14.7 Successors and Assigns. All references herein to Grantor, Owners, any Association or person shall be construed to include all successors, assigns, partners and authorized agents of such Grantor, Owners, Association or person.

IN WITNESS WHEREOF, Grantor has set its hand this 26<sup>th</sup> day of September, 2003.

TUSCANY DEVELOPMENT, INC.

By   
\_\_\_\_\_  
Greg Johnson, President

STATE OF IDAHO        )  
                                  ) ss.  
County of Ada         )

On this 26<sup>th</sup> day of September, 2003, before me, the undersigned, a Notary Public in and for said state, personally appeared GREG JOHNSON, known or identified to me to be the President of TUSCANY DEVELOPMENT, INC., the Idaho corporation that executed the instrument, or the person who executed the instrument on behalf of said Idaho corporation, and acknowledged to me that such Idaho corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

*Lisa R. Caudill*

Notary Public for Idaho  
Residing at: Bowse, ID  
My Commission Expires: 6-11-09

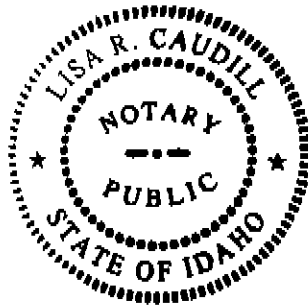


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY



DESCRIPTION FOR COMBINED PROJECTS  
OF  
TUSCANY LAKES, TUSCANY VILLAGE, MESSINA HILLS AND MESSINA VILLAGE  
EXCEPT LOT 11, BLOCK 5, MESSINA HILLS SUBDIVISION NO. 1 (SCHOOL LOT)

September 25, 2003

A parcel of land located in the north  $\frac{1}{2}$  of Section 29 and the NE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 30, Township 3 North, Range 1 East of the Boise Meridian, Meridian, Ada County, Idaho, being more particularly described as follows:

Commencing at the northwest corner of Section 29, T3N., R1E., B.M., thence S  $0^{\circ}14'24''$  W 1002.58 feet along the west line of said Section 29 to the **REAL POINT OF BEGINNING** of this description;

Thence S  $0^{\circ}14'24''$  W 320.28 feet along said west line to the northwest corner of the South  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of Section 29;

Thence S  $89^{\circ}36'13''$  E 520.48 feet along the north line of said south  $\frac{1}{2}$  to a point;

Thence N  $51^{\circ}58'04''$  E 87.93 feet to a point;

Thence N  $46^{\circ}00'49''$  W 150.80 feet to a point;

Thence N  $18^{\circ}01'28''$  E 385.82 feet to a point;

Thence S  $72^{\circ}47'45''$  E 841.76 feet to a point on the centerline of the Eight-Mile Lateral;

Along said centerline the following:

Thence S  $4^{\circ}45'54''$  E 111.17 feet to a point of curvature;

Thence 123.47 feet along a curve to the left, said curve having a radius of 250.00 feet, a central angle of  $28^{\circ}17'48''$ , a tangent of 63.02 feet and a chord of 122.22 feet which bears S  $18^{\circ}54'48''$  E to a point of tangency;

Thence S  $33^{\circ}03'42''$  E 16.09 feet to a point of curvature;

Thence 49.89 feet along a curve to the right, said curve having a radius of 350.00 feet, a central angle of  $08^{\circ}10'01''$ , a tangent of 24.99 feet and a chord of 49.85 feet which bears S  $28^{\circ}58'42''$  E to a point on the north line of the south  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of said Section 29;

Leaving said centerline:

Thence S  $89^{\circ}36'13''$  E 1193.74 feet to the northeast corner of said south  $\frac{1}{2}$  of the NW  $\frac{1}{4}$ ;

Thence S 89°36'44" E 670.56 feet along said north line of Section 29 to the northeast corner of the west ½ of the NE ¼ of the NE ¼ of said Section 29;

Thence S 0°28'30" W 1291.05 feet along east line of said west ½ of the NE ¼ of the NE ¼ of said Section 29 to a point;

Thence S 89°37'11" E 670.98 feet to a point on the east line of the NE ¼ of Section 29, being the centerline of Eagle Road;

Thence S 0°27'45" W 1290.94 feet along said east line of the NE ¼ to a point;

Thence N 89°37'43" W 1336.68 feet to a point on the east line of the SW ¼ of the NE ¼ of said Section 29;

Thence S 0°21'39" W 60.00 feet along east line of SW ¼ of the NE ¼ of said Section 29 to the southeast corner of the SW ¼ of the NE ¼ of said Section 29;

Thence N 89°37'43" W 1336.57 feet along south line of the SW ¼ of the NE ¼ of said Section 29 to the southwest corner of the NE ¼ (center ¼ corner) of said Section 29;

Thence N 89°38'09" W 2679.90 feet along south line of NW ¼ of said Section 29 to the southwest corner of NW ¼ (west ¼ corner) of said Section 29;

Thence N 0°14'24" E 1322.86 feet along said west line of said Section 29 to the southeast corner of the NE ¼ of the NE ¼ of Section 30, T 3 N., R 1 E., B.M.

Thence S 89°43'12" W 1315.72 feet to the southwest corner of said NE ¼ of the NE ¼;

Thence N 0°03'18" E 1322.50 feet to the northwest corner of said NE ¼ of the NE ¼;

Thence N 89°42'20" E 733.09 feet along the north line of said NE ¼ of the NE ¼ to a point;

Thence S 30°14'25" E 1157.00 feet to the **REAL POINT OF BEGINNING** of this description.

EXCEPT LOT 11, BLOCK 5, MESSINA HILLS SUBDIVISION NO. 1, described as follows:

A parcel of land located in the NE ¼ of Section 29, Township 3 North, Range 1 East of the Boise Meridian, Meridian, Ada County, Idaho, being more particularly described as follows:

Commencing at the northeast corner of Section 29, T.3N., R.1E., B.M., thence N 89°36'44" W 670.70 feet along the north line of said Section 29 to a point; thence S 00°28'30" W 698.00 feet to the **REAL POINT OF BEGINNING** of this description;

Thence continuing S 00°28'30" W 558.78 feet to a point;

Thence S 0°15'20" W 1042.84 feet along the east line of said south ½ of the NW ¼ to a point on the centerline of the Ridenbaugh Canal;

Along the centerline of the Ridenbaugh Canal the following:

Thence N 46°01'42" E 147.75 to a point of curvature;

Thence 161.84 feet along a curve to the left, said curve having a radius of 750.00 feet, a central angle of 12°21'48", a tangent of 81.23 feet and a chord of 161.52 feet which bears N 39°50'48" E to a point of tangency;

Thence N 33°39'54" E 488.53 feet to a point of curvature;

Thence 134.02 feet along a curve to the left, said curve having a radius of 750.00 feet, a central angle of 10°14'18", a tangent of 67.19 feet and a chord of 133.84 feet which bears N 28°32'45" E to a point of tangency;

Thence N 23°25'36" E 313.49 feet to a point on the north line of the south ½ of the NE ¼;

Leaving said centerline:

Thence S 89°37'11" E 4.91 feet to the southwest corner of the east ½ of the NW ¼ of the NE ¼;

Thence N 0°18'31" E 11.51 feet along the west line of the east ½ of the NW ¼ of the NE ¼ to a point on the centerline of the Ridenbaugh Canal;

Along said centerline the following:

Thence N 23°25'36" E 950.12 feet to a point of curvature;

Thence 148.92 feet along a curve to the left, said curve having a radius of 200.00 feet, a central angle of 42°39'48", a tangent of 78.10 feet and a chord of 145.51 feet which bears N 2°05'42" E to a point of tangency;

Thence N 19°14'12" W 150.61 feet to a point of curvature;

Thence 160.51 feet along a curve to the left, said curve having a radius of 250.00 feet, a central angle of 36°47'12", a tangent of 83.13 feet and a chord of 157.77 feet which bears N 37°37'48" W to a point of tangency;

Thence N 56°01'24" W 43.02 feet to a point on the north line of said Section 29;

Leaving said centerline:

Thence S 89°36'38" E 476.32 feet to the east 1/16 corner common to Sections 20 and 29;

Thence N 89°37'11" W 112.12 feet to a point;

Thence S 00°28'30" W 48.01 feet to a point on a curve;

Thence along a curve to the left 120.23 feet, said curve having a radius of 825.00 feet, a delta angle of 08°20'59", tangents of 60.22 feet, and a long chord bearing N 85°26'41" W 120.12 feet to a point of tangency;

Thence N 89°37'11" W 649.73 feet to a point of curvature;

Thence along a curve to the right 38.12 feet, said curve having a radius of 150.00 feet, a delta angle of 14°33'43", tangents of 19.16 feet, and a long chord bearing N 82°20'19" W 38.02 feet to a point;

Thence N 04°11'34" E 98.88 feet to a point;

Thence N 23°25'36" E 498.00 feet to a point;

Thence N 66°34'24" W 115.00 feet to a point;

Thence N 23°25'36" E 42.00 feet to a point;

Thence S 66°34'24" E 120.71 feet to a point;

Thence S 89°36'44" E 697.13 feet to the **REAL POINT OF BEGINNING** of this description, containing 11.37 acres, more or less

The combined parcel contains 215.67 acres, more or less, after the exception and includes portions of the rights of way of Eagle Road, Locust Grove Road and Victory Road adjacent to the Tuscany Lake, Tuscany Village, Messina Hills and Messina Village Projects.

Michael E. Marks, P.L.S. No. 4998



EXHIBIT B

LEGAL DESCRIPTION OF  
TUSCANY COMMON AREA

See final plat of each phase.

**EXHIBIT C**  
**"Lot Categories"**

<b>Tuscany A.C.C. Guidelines</b>			
<b>Description</b>	<b>A</b>	<b>B</b>	<b>C</b>
Minimum Square Footage	2200+	2000+	1600+
Roofing Requirements	30-year architectural or better Weathered Wood Pabco Brand, or as approved by AC	30-year architectural or better Weathered Wood Pabco Brand, or as approved by AC	30-year architectural or better Weathered Wood Pabco Brand, or as approved by AC
Roof Pitch	6/12 or better unless approved by AC down to 4/12 for the Tuscany Look	6/12 or better unless approved by AC down to 4/12 for the Tuscany Look	6/12 or better unless approved by AC down to 4/12 for the Tuscany Look
Landscape Requirements	Full Landscaping	Front and side yards	Front and side yards
Landscape Plan	Require AC Approval	Require AC Approval	Require AC Approval
Sprinkler Systems	Full Sprinklers	Front & side yards	Front & side yards
Garage Features	3 car min - 5 car max- max of 3 bay openings or as approved by AC	3 car min. - 5 car max- max of 3 bay openings	2 car min. - 5 car max- max of 3 bay openings
Shops & Sheds	OK - AC Approval Only	OK - AC Approval Only	OK - AC Approval Only
Recreational Vehicles	Enclosed or as approved by AC	Screened From View	Screened From View
Monument Yard Light	Required	Optional	Optional
Colored stamped concrete sidewalks, Accents on driveway and as approved by AC	Required	Optional	Optional

Front Brick, Stone, Masonry, or Stucco	25% required or as approved by AC	20% required or as approved by AC	15% required or as approved by AC
Data Wiring	Per AC rules/ regulations	Per AC rules/ regulations.	Per AC rules/ regulations
Basketball Hoops	Detached only allowed only with prior AC approval.	Detached only. Allowed only with prior AC approval.	Detached only. Allowed only with prior AC approval.
Fence	<ul style="list-style-type: none"> <li>• Wrought Iron, Black</li> <li>• Privacy, Taupe Vinyl</li> </ul>	<ul style="list-style-type: none"> <li>• Wrought Iron, Black</li> <li>• Privacy, Taupe Vinyl</li> </ul>	<ul style="list-style-type: none"> <li>• Wrought Iron, Black</li> <li>• Privacy, Taupe Vinyl</li> </ul>
Additional Landscaping Requirements (see paragraph 4.18)	<ul style="list-style-type: none"> <li>• 2-3" Trees</li> <li>• 4-5 gallon shrubs</li> <li>• berming and sculptured planting areas required</li> </ul>	<ul style="list-style-type: none"> <li>• 1-3" Trees</li> <li>• 2-5 gallon shrubs</li> <li>• berming and sculptured planting required</li> </ul>	Base Requirements
Vinyl Siding	No Vinyl/Siding	No Vinyl/Siding	No Vinyl/Siding

ADA COUNTY RECORDER J. DAVID NAVARRO  
BOISE IDAHO 09/26/03 11:52 AM  
DEPUTY Bonnie Oberbillig  
RECORDED - REQUEST OF  
Spink Butler  
AMOUNT 33.00

11

After Recording  
Return to:

Michael T. Spink  
Spink Butler Clapp, LLP  
P.O. Box 639  
Boise, ID 83701



COPY

FOR RECORDING INFORMATION

**FIRST AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TUSCANY**

This First Amendment to Declaration of Covenants, Conditions and Restrictions for Tuscany ("First Amendment") is made this 26<sup>th</sup> day of September, 2003, by Tuscany Development, Inc., an Idaho corporation ("Grantor" and "Class B Member").

**RECITALS**

A. Grantor is the owner of, or has an interest in, certain real property located in Ada County which real property is commonly known as Tuscany (the "Property").

B. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163972, that certain Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Declaration").

C. Grantor now desires to amend the Declaration as set forth below, and declare the Property and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions hereinafter set forth.

D. Grantor has the right to record this First Amendment to add phases known as Messina Village Subdivision No. 1 and Messina Hills Subdivision No. 1 pursuant to paragraphs 1.1, 1.2 and 14.2.1 of the Declaration.

NOW THEREFORE, Grantor hereby declares the new phases of the Property, and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to



enhance the value, desirability and attractiveness of the Property. The terms, covenants, conditions, easements and restrictions set forth herein shall run with the land constituting the Property, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; shall enure to the benefit of any lot, parcel or portion of the Property and any interest therein; and shall enure to the benefit of and be binding upon Grantor, Grantor's successors in interest, and each Grantee or Owner and such Grantee or Owner's respective successors in interest, including tenants, and may be enforced by Grantor, or by any Owner or such Owner's successors in interest.

1. The Declaration shall be amended to add phases to the Property covered by the Declaration as specifically added by new paragraph 1.1.1 below:

1.1.1 Additional Property Covered.

1.1.1.1 Messina Village Subdivision No. 1, according to the official plat thereof recorded on the 4<sup>th</sup> day of August, 2003, as Instrument No. 103130031 in Book 86 of plats on pages 9758-9759, records of Ada County, Idaho. A copy of the final plat is attached hereto as Exhibit A. All lots in Messina Village Subdivision No. 1 are designated as Class B lots as specified on Exhibit C to the Declaration. The Common Area lots are as reflected on Exhibit A attached hereto.

1.1.1.2 Messina Hills Subdivision No. 1, according to the official plat thereof recorded on the 10<sup>th</sup> day of September, 2003, as Instrument No. 103153762 in Book 87 of plats on pages 9829-9832, records of Ada County, Idaho. A copy of the final plat is attached hereto as Exhibit B. All lots in Messina Hills Subdivision No. 1 are designated as Class C lots as specific on Exhibit C to the Declaration. The Common Area lots are as reflected on the final plat attached hereto as Exhibit B. Lot 11, Block 5, is a school site, and is excluded from the Declaration and this First Amendment thereto.

Upon the recording hereof, the terms and provisions set forth in the Declaration recorded as Instrument No. 103163972 shall be amended by the terms hereof. If there is any conflict between the terms of this First Amendment and/or the Declaration, this First Amendment shall control.



# **EXHIBIT A**



MESSINA VILLAGE SUBDIVISION NO. 1

CERTIFICATE OF OWNERS

KNOW ALL MEN BY THESE PRESENTS, THAT THE STATE OF MARYLAND... A PARCEL OF LAND LOCATED IN THE EAST 1/2 OF THE NE 1/4 OF SECTION 29, TOWNSHIP 3 NORTH...



CITY ENGINEER

I HAVE RECEIVED THE CITY ENGINEER'S PLAN AND FOR THE CITY OF ANNAPOLIS, MARYLAND...

[Signature]

COUNTY ENGINEER

I HAVE RECEIVED THE COUNTY ENGINEER'S PLAN AND FOR THE COUNTY OF ANNAPOLIS, MARYLAND...

[Signature]

REGISTER

I HAVE RECEIVED THE REGISTER'S PLAN AND FOR THE REGISTER OF MESSINA VILLAGE SUBDIVISION NO. 1...

[Signature]

STATE OF MARYLAND )
COUNTY OF ANNAPOLIS )
ON THIS DAY OF April 2003...

[Signatures]

APPROVAL OF GENERAL DISTRICT HEALTH DEPARTMENT

I HAVE RECEIVED THE HEALTH DEPARTMENT'S PLAN AND FOR THE HEALTH DEPARTMENT OF ANNAPOLIS, MARYLAND...

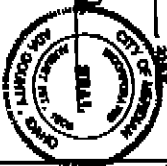
[Signature]



CITY COUNCIL

I HAVE RECEIVED THE CITY COUNCIL'S PLAN AND FOR THE CITY OF ANNAPOLIS, MARYLAND...

[Signature]



COUNTY TREASURER

I HAVE RECEIVED THE COUNTY TREASURER'S PLAN AND FOR THE COUNTY OF ANNAPOLIS, MARYLAND...

[Signature]

COUNTY RECORDER

I HAVE RECEIVED THE COUNTY RECORDER'S PLAN AND FOR THE COUNTY OF ANNAPOLIS, MARYLAND...

[Signature]

RECORDED IN BOOK 56 OF PLATS AT PAGES 975E AND 575E
2003 MAY 13

# **EXHIBIT B**

PLAT OF  
 MESSINA HILLS SUBDIVISION NO. 1

A PORTION OF THE NE 1/4 SECTION 28,  
 TOWNSHIP 3 NORTH, RANGE 1 EAST, S.14,  
 MERRIAM, ADA COUNTY, DAKOTA  
 2003



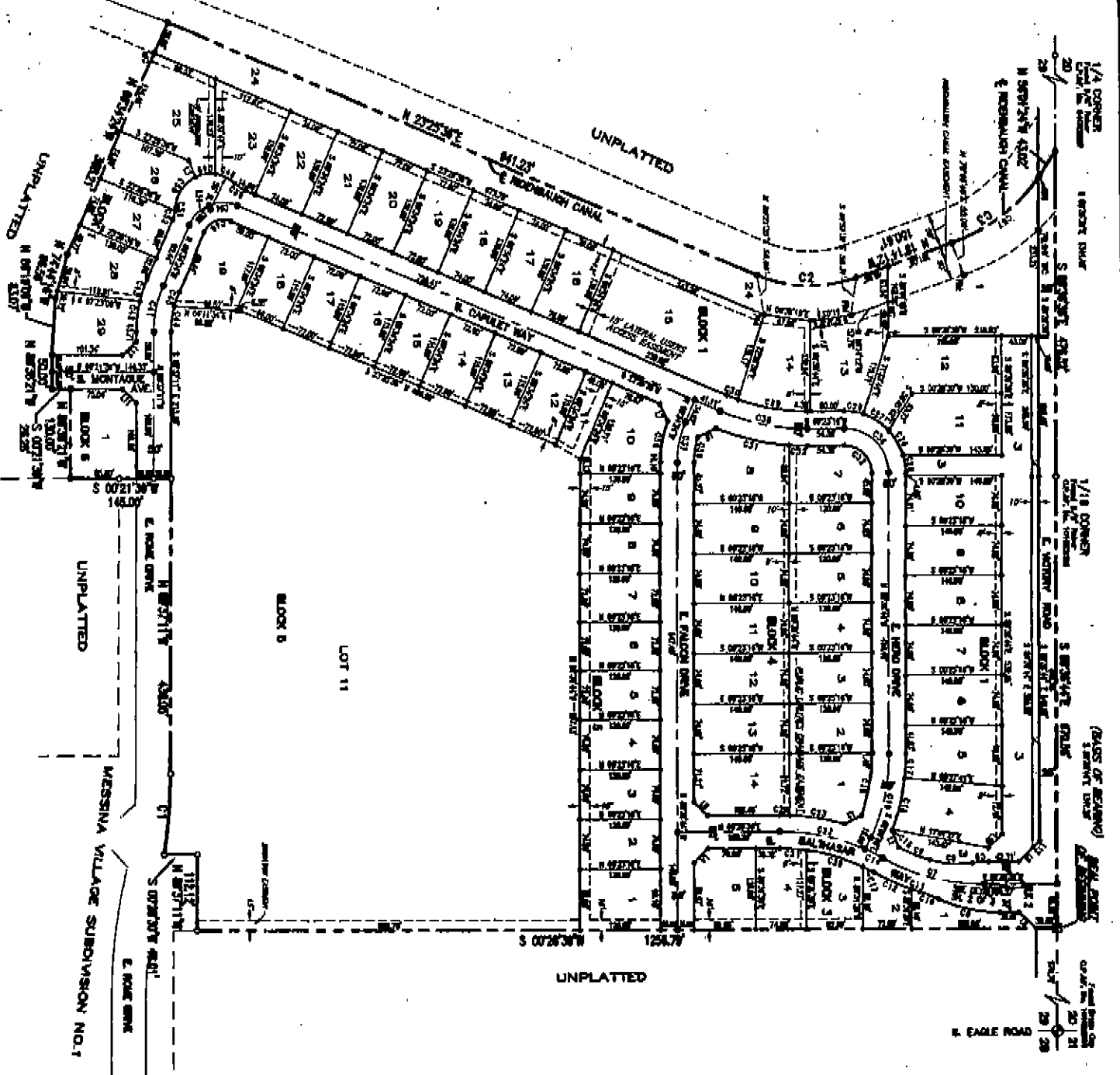
**LEGEND**

- Boundary Line
- Section Line
- Right-of-Way Line
- Contour
- 1st Line
- Easement by
- Point of Beginning and 1/2" x 3/4" Flag with Boundary Line
- Found Stone or Monument (if any shown)
- 5/8" x 3/4" Marker with Plastic Cap
- 3/4" x 1/2" Marker with Plastic Cap
- Found 1/2" Marker with Plastic Cap
- Contoured Point - 1st Set
- Station Corner on Property Line of Adjacent Section
- Adjoining Section or Township Lines

SEE SHEET 2 OF 4 FOR NOTES AND LINE & CURVE DATA



TERRILL ENGINEERING, INC.  
 Consulting Engineers  
 Bismarck, North Dakota









Px 37 N9 9882

# MESSINA HILLS SUBDIVISION NO. 1

## ACKNOWLEDGMENTS

STATE OF ILLINOIS }  
COUNTY OF ADAMS } SS

ON THIS 27<sup>th</sup> DAY OF August, 2022, before me, the undersigned, a Notary Public for said State, personally appeared Gregory B. Hovatt and he has acknowledged to me to be the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation existed the same.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.



STATE OF ILLINOIS }  
COUNTY OF ADAMS } SS

ON THIS 27<sup>th</sup> DAY OF August, 2022, before me, the undersigned, a Notary Public for said State, personally appeared Gregory B. Hovatt and he has acknowledged to me to be the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation existed the same.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.



STATE OF ILLINOIS }  
COUNTY OF ADAMS } SS

ON THIS 27<sup>th</sup> DAY OF August, 2022, before me, the undersigned, a Notary Public for said State, personally appeared Gregory B. Hovatt and he has acknowledged to me to be the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation existed the same.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.



STATE OF ILLINOIS }  
COUNTY OF ADAMS } SS

ON THIS 27<sup>th</sup> DAY OF August, 2022, before me, the undersigned, a Notary Public for said State, personally appeared Gregory B. Hovatt and he has acknowledged to me to be the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation existed the same.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.



After Recording  
Return to:

Michael T. Spink  
Spink Butler, LLP  
P.O. Box 639  
Boise, ID 83701

FOR RECORDING INFORMATION

**SECOND AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TUSCANY**

This Second Amendment to Declaration of Covenants, Conditions and Restrictions for Tuscany ("Second Amendment") is made this 4 day of November, 2004, by Tuscany Development, Inc., an Idaho corporation ("Grantor" and "Class B Member").

**RECITALS**

- A. Grantor is the owner of, or has an interest in, certain real property located in Ada County which real property is commonly known as Tuscany (the "Property").
- B. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163972, that certain Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Declaration").
- C. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163973, that certain First Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "First Amendment").
- D. Grantor now desires to amend the Declaration as set forth below, and declare the Property and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions hereinafter set forth.
- E. Grantor has the right to record this Second Amendment to add the phase known as Tuscany Village Subdivision No. 1 pursuant to paragraphs 1.1, 1.2 and 14.2.1 of the Declaration.

NOW THEREFORE, Grantor hereby declares the new phase of the Property, and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms, covenants, conditions, easements and restrictions set forth herein shall run with the land constituting the Property, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof, shall enure to the benefit of any lot, parcel or portion of the Property and any interest therein; and shall enure to the benefit of and be binding upon Grantor, Grantor's successors in interest, and each Grantee or Owner and such Grantee or Owner's respective successors in interest, including tenants, and may be enforced by Grantor, or by any Owner or such Owner's successors in interest.

1. The Declaration shall be amended to add a new phase to the Property covered by the Declaration as specifically added by new paragraph 1.1.1.3 below:

1.1.1.3 Tuscany Village Subdivision No. 1, according to the official plat thereof recorded on the 1<sup>st</sup> day of September, 2004, as Instrument No. 104112989 in Book 89 of plats on pages 10398 through 103400, records of Ada County, Idaho. A copy of the final plat is attached hereto as Exhibit A. All lots in Tuscany Village Subdivision No. 1 are designated as Class B lots as specified on Exhibit C to the Declaration. The Common Area lots are as reflected on Exhibit A attached hereto.

2. The Declaration shall be amended to add a new paragraph 7.5 relating to ACHD maintenance as set forth below:

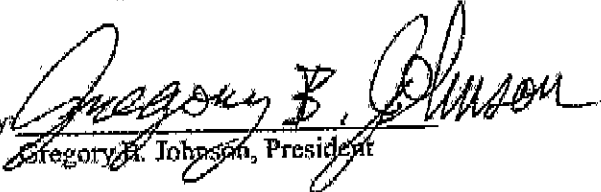
7.5 ACHD Maintenance. Notwithstanding the fact that the Association is obligated to maintain the Common Area and facilities contained therein, it is hereby provided that the Ada County Highway District ("ACHD") may elect to maintain any part or facility of the Common Area should the Association fail to maintain the Common Area. In the event that ACHD determines, in its sole reasonable discretion, that the Association is not adequately maintaining the Common Area, ACHD shall, before undertaking maintenance of the Common Area, provide written notice of its intention to begin maintenance of the Common Area within a thirty (30) day period, within which time frame the Association may undertake to initiate and conclude all maintenance defects as identified by ACHD. In the event the Association shall fail to commence and conclude maintenance of the Common Area to the extent such items of specific maintenance are identified by ACHD within the prescribed thirty (30) days, then in such event, ACHD may begin to undertake maintenance of the Common Area.

If the Association fails to maintain the Common Area, ACHD is hereby granted a license to enter upon any portion of the Common Area to perform inspection and maintenance of its drainage facilities. Should ACTID engage in maintenance of the Common Area after having provided notice to the Association, and having provided the Association an opportunity to undertake such maintenance, ACHD shall be entitled to and empowered to file a ratable lien against all Building Lots within the Property with power of sale, in accordance with Idaho State statutes, as to each Building Lot to secure payment of the costs in connection with such maintenance. The prior written approval of ACHD is required to amend this section or dissolve the Association.

Upon the recording hereof, the terms and provisions set forth in the Declaration recorded as Instrument No. 103163972, as amended by the First Amendment recorded as Instrument No. 103163973, shall be amended by the terms hereof. If there is any conflict between the terms of this Second Amendment, the First Amendment and/or the Declaration, this Second Amendment shall control.

IN WITNESS WHEREOF, the undersigned has caused this Second Amendment to be duly executed the day and year first above written.

TUSCANY DEVELOPMENT, INC.,  
an Idaho corporation

By   
Gregory B. Johnson, President



# **EXHIBIT A**





**PLAN OF**  
**PISCANY VILLAGE SUBDIVISION NO. 1**  
 A PORTION OF THE NE 1/4 OF THE NE 1/4 OF SECTION 20  
 T. 50 N. 16. E. R. 10  
 MUNICIPAL AREA 005.500.000  
**22004**

PLAN # 14 (05) 14

**NOTES**

1. ALL DIMENSIONS SHOWN ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
2. THE PROPERTY LINES ARE SHOWN BY THE DOTTED LINES.
3. THE PROPERTY LINES ARE TO BE SET BY THE SURVEYOR.
4. THE PROPERTY LINES ARE TO BE SET BY THE SURVEYOR.
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16. THE PROPERTY LINES ARE TO BE SET BY THE SURVEYOR.
17. THE PROPERTY LINES ARE TO BE SET BY THE SURVEYOR.
18. THE PROPERTY LINES ARE TO BE SET BY THE SURVEYOR.
19. THE PROPERTY LINES ARE TO BE SET BY THE SURVEYOR.
20. THE PROPERTY LINES ARE TO BE SET BY THE SURVEYOR.

**LINE TABLE**

STATION	BEARING	DISTANCE	CUMULATIVE DISTANCE
1	N 00° 00' 00" E	100.00	100.00
2	N 00° 00' 00" E	100.00	200.00
3	N 00° 00' 00" E	100.00	300.00
4	N 00° 00' 00" E	100.00	400.00
5	N 00° 00' 00" E	100.00	500.00
6	N 00° 00' 00" E	100.00	600.00
7	N 00° 00' 00" E	100.00	700.00
8	N 00° 00' 00" E	100.00	800.00
9	N 00° 00' 00" E	100.00	900.00
10	N 00° 00' 00" E	100.00	1000.00
11	N 00° 00' 00" E	100.00	1100.00
12	N 00° 00' 00" E	100.00	1200.00
13	N 00° 00' 00" E	100.00	1300.00
14	N 00° 00' 00" E	100.00	1400.00
15	N 00° 00' 00" E	100.00	1500.00
16	N 00° 00' 00" E	100.00	1600.00
17	N 00° 00' 00" E	100.00	1700.00
18	N 00° 00' 00" E	100.00	1800.00
19	N 00° 00' 00" E	100.00	1900.00
20	N 00° 00' 00" E	100.00	2000.00

**CURVE TABLE**

STATION	BEARING	DISTANCE	CUMULATIVE DISTANCE	CURVE DATA
1	N 00° 00' 00" E	100.00	100.00	
2	N 00° 00' 00" E	100.00	200.00	
3	N 00° 00' 00" E	100.00	300.00	
4	N 00° 00' 00" E	100.00	400.00	
5	N 00° 00' 00" E	100.00	500.00	
6	N 00° 00' 00" E	100.00	600.00	
7	N 00° 00' 00" E	100.00	700.00	
8	N 00° 00' 00" E	100.00	800.00	
9	N 00° 00' 00" E	100.00	900.00	
10	N 00° 00' 00" E	100.00	1000.00	
11	N 00° 00' 00" E	100.00	1100.00	
12	N 00° 00' 00" E	100.00	1200.00	
13	N 00° 00' 00" E	100.00	1300.00	
14	N 00° 00' 00" E	100.00	1400.00	
15	N 00° 00' 00" E	100.00	1500.00	
16	N 00° 00' 00" E	100.00	1600.00	
17	N 00° 00' 00" E	100.00	1700.00	
18	N 00° 00' 00" E	100.00	1800.00	
19	N 00° 00' 00" E	100.00	1900.00	
20	N 00° 00' 00" E	100.00	2000.00	

**BROOKS ENGINEERING, INC.**  
 Consulting Engineers  
 Bill E. Lingo  
 SHEET 2 OF 3  
 220 PINE DR. DENVER



# PUSCANY VILLAGE SUBDIVISION NO. 1

## CERTIFICATE OF COMPLETION

BEFORE ME, the undersigned authority, on this \_\_\_\_\_ day of \_\_\_\_\_, 2004, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing plat, and acknowledged to me that he executed the same for the purposes and consideration therein expressed. He acknowledged that he executed the same as his free act and deed. I, the undersigned authority, do hereby certify that the foregoing plat is a true and correct copy of the original as the same appears of record in my office. Witness my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

### RECORDS OF DEEDS, DISTRICT OF COLUMBIA DEPARTMENT



APPROVED BY THE CITY ENGINEER

*[Signature]*  
CITY ENGINEER



### RECORDS OF DEEDS, DISTRICT OF COLUMBIA DEPARTMENT

APPROVED BY THE COUNTY RECORDER

*[Signature]*  
COUNTY RECORDER

### RECORDS OF DEEDS, DISTRICT OF COLUMBIA DEPARTMENT

APPROVED BY THE COUNTY RECORDER

*[Signature]*  
COUNTY RECORDER



### RECORDS OF DEEDS, DISTRICT OF COLUMBIA DEPARTMENT

APPROVED BY THE COUNTY RECORDER

*[Signature]*  
COUNTY RECORDER



### RECORDS OF DEEDS, DISTRICT OF COLUMBIA DEPARTMENT

APPROVED BY THE COUNTY RECORDER

*[Signature]*  
COUNTY RECORDER



### RECORDS OF DEEDS, DISTRICT OF COLUMBIA DEPARTMENT

APPROVED BY THE COUNTY RECORDER

*[Signature]*  
COUNTY RECORDER



### RECORDS OF DEEDS, DISTRICT OF COLUMBIA DEPARTMENT

APPROVED BY THE COUNTY RECORDER

*[Signature]*  
COUNTY RECORDER

APPROVED BY THE COUNTY RECORDER

*[Signature]*  
COUNTY RECORDER

APPROVED BY THE COUNTY RECORDER

*[Signature]*  
COUNTY RECORDER



After Recording  
Return to:

Michael T. Spink  
Spink Butler, LLP  
P.O. Box 639  
Boise, ID 83701

FOR RECORDING INFORMATION

**THIRD AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TUSCANY**

This Third Amendment to Declaration of Covenants, Conditions and Restrictions for Tuscany ("Third Amendment") is made this 22<sup>nd</sup> day of March, 2005, by Tuscany Development, Inc., an Idaho corporation ("Grantor" and "Class B Member").

**RECITALS**

A. Grantor is the owner of, or has an interest in, certain real property located in Ada County which real property is commonly known as Tuscany (the "Property").

B. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163972, that certain Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Declaration").

C. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163973, that certain First Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany ("the First Amendment").

D. On November 9, 2004, Grantor caused to be recorded against the Property, as Instrument No. 104143092, that certain Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany ("the Second Amendment").

E. Grantor now desires to amend the Declaration as set forth below, and declare the Property and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions hereinafter set forth.

F. Grantor has the right to record this Third Amendment pursuant to paragraphs 1.1, 1.2 and 14.2.1 of the Declaration.

NOW THEREFORE, Grantor hereby declares the new phase of the Property, and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms, covenants, conditions, easements and restrictions set forth herein shall run with the land constituting the Property, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; shall enure to the benefit of any lot, parcel or portion of the Property and any interest therein; and shall enure to the benefit of and be binding upon Grantor, Grantor's successors in interest, and each Grantee or Owner and such Grantee or Owner's respective successors in interest, including tenants, and may be enforced by Grantor, or by any Owner or such Owner's successors in interest.

1. The Declaration shall be amended to add a new phase to the Property covered by the Declaration as specifically added by new paragraph 1.1.1.4 below:

1.1.1.4 Messina Hills Subdivision No. 2, according to the official plat thereof recorded on the 8<sup>th</sup> day of March, 2005, as Instrument No. 105027896 in Book 91 of plats on pages 10,752 through 10,754, as Exhibit A. Lots 2 through 12 in Block 6, and Lots 1 and 2 in Block 10, in Messina Hills Subdivision No. 2 are designated as Class C Lots as specified on Exhibit C to the Declaration. All other Lots in Messina Hills Subdivision No. 2 are designated as Class B Lots as specified on Exhibit C to the Declaration. The Common Area lots are as reflected on the final plat attached hereto as Exhibit A.

2. The Declaration shall additionally be amended to add new sections to Article XIV, as follows:

14.8 Roadside Swale Development Agreement. On August 13, 2004, Grantor entered into a Roadside Swale Development Agreement with Ada County Highway District. A copy of this Agreement is to be maintained with the corporate records for the Association. Notice is given to residents of Messina Hills Subdivision No. 2, and all future phases of Tuscany, that this Agreement may govern improvements and maintenance of drainage swales located on individual Lots within Tuscany Neighborhoods.

14.9 No Rental Signs. No "for rent" or other similar signs may be displayed on residential properties located within all phases of Tuscany Neighborhoods.

3. The Declaration shall be amended and ratified to add a new phase to the Property covered by the Declaration as specifically added by new paragraph 1.1.1.5 below. All construction in this phase is in conformance with this new paragraph:

1.1.1.5 TuscanY Lakes Subdivision No. 1, according to the official plat thereof recorded on the 27<sup>th</sup> day of January, 2004, as Instrument No. 104009359 in Book 88 of plats on pages 10,057 and 10,058, records of Ada County, Idaho. A copy of the final plat is attached hereto as Exhibit B. All lots in TuscanY Lakes Subdivision No. 1 are designated as Class A Lots as specified on Exhibit C to the Declaration. The Common Area lots are as reflected on the final plat attached hereto as Exhibit B.

4. The Declaration shall be amended and ratified to add a new phase to the Property covered by the Declaration as specifically added by new paragraph 1.1.1.6 below. All construction in this phase is in conformance with this new paragraph:

1.1.1.6 Messina Village Subdivision No. 2, according to the official plat thereof recorded on the 14<sup>th</sup> day of June, 2004, as Instrument No. 104073714 in Book 89 of plats on pages 10,280 and 10,281, records of Ada County, Idaho. A copy of the final plat is attached hereto as Exhibit C. All lots in Messina Village Subdivision No. 2 are designated as Class B Lots as specified on Exhibit C to the Declaration. The Common Area lots are as reflected on the final plat attached hereto as Exhibit C.

5. The Declaration shall be amended and ratified to add a new phase to the Property covered by the Declaration as specifically added by new paragraph 1.1.1.7 below. All construction in this phase is in conformance with this new paragraph:

1.1.1.7 TuscanY Village Subdivision No. 1, according to the official plat thereof recorded on the 1<sup>st</sup> day of September, 2004, as Instrument No. 104112989 in Book 89 of plats on pages 10,398 through 10,400, records of Ada County, Idaho. A copy of the final plat is attached hereto as Exhibit D. All lots in TuscanY Village Subdivision No. 1 are designated as Class C Lots as specified on Exhibit C to the Declaration, with the sole exception that not more than 10% of the lots in TuscanY Village Subdivision No. 1 may have a minimum area of 1,400 square feet. The Common Area lots are as reflected on the final plat attached hereto as Exhibit D.

Upon the recording hereof, the terms and provisions set forth in the Declaration recorded as Instrument No. 103163972, as amended by the First Amendment recorded as Instrument No. 103163973, and as further amended by the Second Amendment recorded as Instrument No. 104143092, shall be amended by the terms hereof. If there is any conflict between the terms of this Third Amendment, the First Amendment and/or the Second Amendment, this Third Amendment shall control.

IN WITNESS WHEREOF, the undersigned has caused this Third Amendment to be duly executed the day and year first above written.

TUSCANY DEVELOPMENT, INC.,  
an Idaho corporation

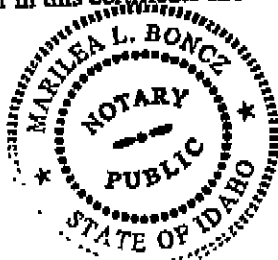
By: Gregory B. Johnson  
Gregory B. Johnson, President

ACKNOWLEDGMENT

STATE OF IDAHO )  
County of Ada ) ss.

On this 22 day of March, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Gregory B. Johnson, known or identified to me to be the President of Tuscany Development, Inc., the corporation that executed the instrument, or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Marilea L. Boncz  
Notary Public for Idaho  
Residing at Meridian, Idaho  
My commission expires: 8/30/07

# **EXHIBIT A**





**PLAT OF  
MESSINA HILLS SUBDIVISION NO. 2**  
A PORTION OF THE N 1/2 SECTION 24,  
RANGE 3 NORTH, RANGE 1 EAST, B.L.  
MENDOTA, ADA COUNTY, IOWA  
2005

**NOTES**

1. ALL LOT CORNERS SHALL BE SET BY THE SURVEYOR IN ACCORDANCE WITH THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION.
2. ALL LOT CORNERS SHALL BE SET BY THE SURVEYOR IN ACCORDANCE WITH THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION.
3. ALL LOT CORNERS SHALL BE SET BY THE SURVEYOR IN ACCORDANCE WITH THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION.
4. ALL LOT CORNERS SHALL BE SET BY THE SURVEYOR IN ACCORDANCE WITH THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION.
5. ALL LOT CORNERS SHALL BE SET BY THE SURVEYOR IN ACCORDANCE WITH THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION.
6. ALL LOT CORNERS SHALL BE SET BY THE SURVEYOR IN ACCORDANCE WITH THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION.
7. ALL LOT CORNERS SHALL BE SET BY THE SURVEYOR IN ACCORDANCE WITH THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION.
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11. ALL LOT CORNERS SHALL BE SET BY THE SURVEYOR IN ACCORDANCE WITH THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION.
12. ALL LOT CORNERS SHALL BE SET BY THE SURVEYOR IN ACCORDANCE WITH THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION.
13. ALL LOT CORNERS SHALL BE SET BY THE SURVEYOR IN ACCORDANCE WITH THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION.
14. ALL LOT CORNERS SHALL BE SET BY THE SURVEYOR IN ACCORDANCE WITH THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION.
15. ALL LOT CORNERS SHALL BE SET BY THE SURVEYOR IN ACCORDANCE WITH THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION, AND THE IOWA SURVEYING CODE, 1997 EDITION.

**LINE TABLE**

LINE NO.	START POINT	END POINT	BEARING	DISTANCE
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**CURVE TABLE**

LINE NO.	START POINT	END POINT	BEARING	DISTANCE	CURVE DATA
1	...	...	...	...	...
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**TUSCULY DEVELOPMENT, INC.** 2005  
 Developer  
 Mendota, Idaho

**BOGGS ENGINEERING, INC.**  
 Consulting Engineers  
 Boise, Idaho

SHEET 2 OF 3  
 DATE: 10/15/05





# **EXHIBIT B**





**EXHIBIT C**







# EXHIBIT D

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After Recording  
Return to:

Michael T. Spink  
Spink Butler, LLP  
P.O. Box 639  
Boise, ID 83701

FOR RECORDING INFORMATION

**FOURTH AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TUSCANY**

This Fourth Amendment to Declaration of Covenants, Conditions and Restrictions for Tuscany ("Fourth Amendment") is made this 6 day of June, 2005, by Tuscany Development, Inc., an Idaho corporation ("Grantor" and "Class B Member").

**RECITALS**

A. Grantor is the owner of, or has an interest in, certain real property located in Ada County which real property is commonly known as Tuscany (the "Property").

B. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163972, that certain Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Declaration").

C. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163973, that certain First Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "First Amendment").

D. On November 9, 2004, Grantor caused to be recorded against the Property, as Instrument No. 104143092, that certain Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Second Amendment").

E. On March 23, 2005, Grantor caused to be recorded against the Property, as Instrument No. 105034795, that certain Third Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Third Amendment").

F. Grantor now desires to amend the Declaration as set forth below, and declare the Property and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions hereinafter set forth.

G. Grantor has the right to record this Fourth Amendment pursuant to paragraphs 1.1, 1.2 and 14.2.1 of the Declaration.

NOW THEREFORE, Grantor hereby declares the new phase of the Property, and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms, covenants, conditions, easements and restrictions set forth herein shall run with the land constituting the Property, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; shall enure to the benefit of any lot, parcel or portion of the Property and any interest therein; and shall enure to the benefit of and be binding upon Grantor, Grantor's successors in interest, and each Grantee or Owner and such Grantee or Owner's respective successors in interest, including tenants, and may be enforced by Grantor, or by any Owner or such Owner's successors in interest.

1. The Declaration shall be amended to add a new phase to the Property covered by the Declaration as specifically added by new paragraph 1.1.1.8 below:

1.1.1.8 Tuscan Village Subdivision No. 2, according to the official plat thereof recorded on the 26<sup>th</sup> day of May, 2005, as Instrument No. 105067121 in Book 92 of plats on pages 10,893 and 10,894, records of Ada County, Idaho. A copy of the final plat is attached hereto as Exhibit A. All lots in Tuscan Village Subdivision No. 2 are designated as Class C Lots as specified on Exhibit C to the Declaration. The Common Area lots are as reflected on the final plat attached hereto as Exhibit A.

Upon the recording hereof, the terms and provisions set forth in the Declaration recorded as Instrument No. 103163972, as amended by the First Amendment recorded as Instrument No. 103163973, as amended by the Second Amendment recorded as Instrument No. 104143092, and as further amended by the Third Amendment recorded as Instrument No. 105034795, shall be amended by the terms hereof. If there is any conflict between the terms of this Fourth Amendment, the First Amendment, the Second Amendment and/or the Third Amendment, this Fourth Amendment shall control.



# EXHIBIT A

**(See Attached Final Recorded Plat of  
Tuscany Village Subdivision No. 2)**

PLAT OF  
TUSCANY VILLAGE SUBDIVISION NO. 2  
A PORTION OF THE NE 1/4 OF THE NE 1/4 OF SECTION 30  
T.3N., R.1E., B.M.  
KOHMAN, ADA COUNTY, IOWA  
2005

E. VICTORY ROAD  
1/8 CORNER  
PLS. 4988  
19

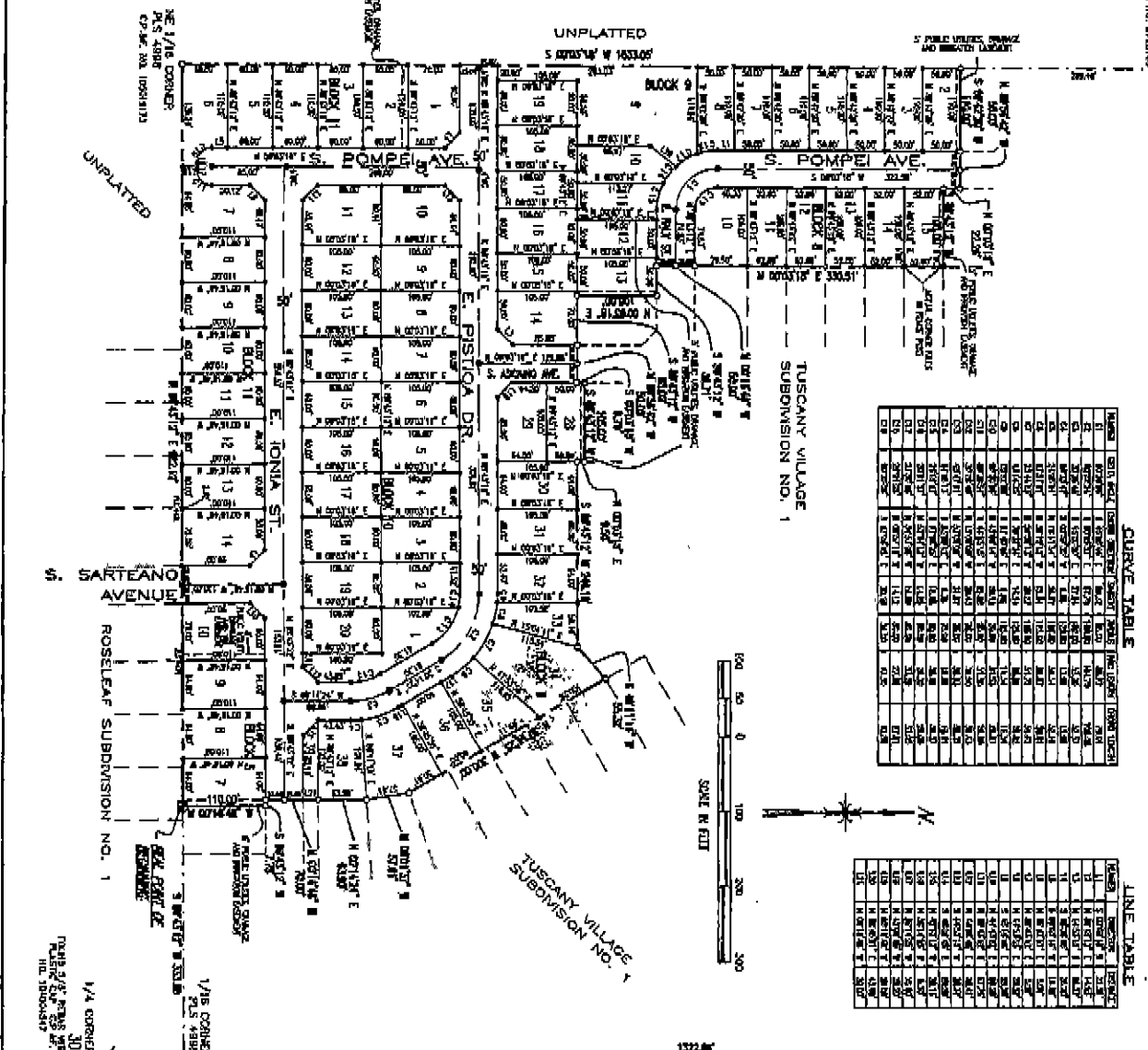
19 20  
LOCUST GROVE ROAD  
(BASIS OF BEARING)  
S 87°42'14" W 264.573'

CLUSTER TABLE

BLK	LOT	AREA	ACRES	PERCENT
1	1	1.0000	0.0228	0.228
1	2	1.0000	0.0228	0.228
1	3	1.0000	0.0228	0.228
1	4	1.0000	0.0228	0.228
1	5	1.0000	0.0228	0.228
1	6	1.0000	0.0228	0.228
1	7	1.0000	0.0228	0.228
1	8	1.0000	0.0228	0.228
1	9	1.0000	0.0228	0.228
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1	100	1.0000	0.0228	0.228

LINE TABLE

LINE NO.	FROM	TO	BEARING	DIST.
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2	2	3	N 89° 59' 54" W	100.00
3	3	4	N 89° 59' 54" W	100.00
4	4	5	N 89° 59' 54" W	100.00
5	5	6	N 89° 59' 54" W	100.00
6	6	7	N 89° 59' 54" W	100.00
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98	98	99	N 89° 59' 54" W	100.00
99	99	100	N 89° 59' 54" W	100.00



**NOTES**

1. VARIATIONS SHOWN, ALL LOTS ARE HEREBY RESERVED AS UNDEVELOPED EXCEPT FOR PUBLIC UTILITIES, PAVED DRIVEWAYS, AND UTILITY LINES. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF ALL UTILITIES AND DRIVEWAYS TO BE ON LOTS.
2. LOTS 1 THROUGH 100 ARE RESERVED FOR PUBLIC UTILITIES, PAVED DRIVEWAYS, AND UTILITY LINES. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF ALL UTILITIES AND DRIVEWAYS TO BE ON LOTS.
3. ANY DEVELOPMENT OF THIS PLAT SHALL COMPLY WITH THE APPLICABLE ZONING ORDINANCES OF THE CITY OF IOWA CITY, IOWA.
4. THE OWNER HAS PROVIDED EVIDENCE FOR THE SUBDIVISION UNDER SECTION 203.1 OF THE IOWA CODE.
5. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF ALL UTILITIES AND DRIVEWAYS TO BE ON LOTS.
6. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF ALL UTILITIES AND DRIVEWAYS TO BE ON LOTS.
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36. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF ALL UTILITIES AND DRIVEWAYS TO BE ON LOTS.
37. THE DEVELOPER SHALL BE RESPONSIBLE FOR





ADA COUNTY RECORDER J. DAV  
BOISE (IDAHO 11/03/05 04:17 PM  
DEPUTY Nikola Olson  
RECORDED - REQUEST OF  
Spink Butler

AMOUNT 24.00

8



After Recording  
Return to:

Michael T. Spink  
Spink Butler, LLP  
P.O. Box 639  
Boise, ID 83701

FOR RECORDING INFORMATION

**FIFTH AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TUSCANY**

**(MESSINA HILLS NO. 3)**

This Fifth Amendment to Declaration of Covenants, Conditions and Restrictions for Tuscany ("Fifth Amendment") is made this 3<sup>rd</sup> day of November, 2005, by Tuscany Development, Inc., an Idaho corporation ("Grantor" and "Class B Member").

**RECITALS**

A. Grantor is the owner of, or has an interest in, certain real property located in Ada County which real property is commonly known as Tuscany (the "Property").

B. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163972, that certain Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Declaration").

C. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163973, that certain First Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "First Amendment").

D. On November 9, 2004, Grantor caused to be recorded against the Property, as Instrument No. 104143092, that certain Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Second Amendment").

E. On March 23, 2005, Grantor caused to be recorded against the Property, as Instrument No. 105034795, that certain Third Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Third Amendment").

F. On June 7, 2005, Grantor caused to be recorded against the Property, as Instrument No. 105073654, that certain Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Fourth Amendment").

G. Grantor now desires to amend the Declaration as set forth below, and declare the Property and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions hereinafter set forth.

H. Grantor has the right to record this Fifth Amendment pursuant to paragraphs 1.1, 1.2 and 14.2.1 of the Declaration.

NOW THEREFORE, Grantor hereby declares the new phase of the Property, and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, Improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms, covenants, conditions, easements and restrictions set forth herein shall run with the land constituting the Property, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; shall enure to the benefit of any lot, parcel or portion of the Property and any interest therein; and shall enure to the benefit of and be binding upon Grantor, Grantor's successors in interest, and each Grantee or Owner and such Grantee or Owner's respective successors in interest, including tenants, and may be enforced by Grantor, or by any Owner or such Owner's successors in interest.

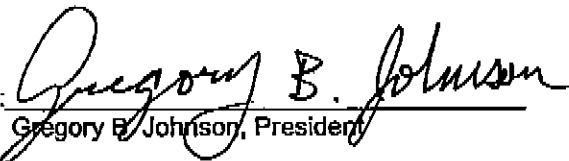
1. The Declaration shall be amended to add a new phase to the Property covered by the Declaration as specifically added by new paragraph 1.1.1.9 below:

1.1.1.9 Messina Hills Subdivision No. 3, according to the official plat thereof recorded on the 14<sup>th</sup> day of October, 2005, as Instrument No. 105153786 in Book 93 of plats on pages 11221 through 11224, records of Ada County, Idaho. A copy of the final plat is attached hereto as Exhibit A. All lots in Messina Hills Subdivision No. 3 are designated as Class A Lots as specified on Exhibit C to the Declaration. The Common Area lots are as reflected on the final plat attached hereto as Exhibit A.

Upon the recording hereof, the terms and provisions set forth in the Declaration recorded as Instrument No. 103163972, as amended by the First Amendment recorded as Instrument No. 103163973, as amended by the Second Amendment recorded as Instrument No. 104143092, as amended by the Third Amendment recorded as Instrument No. 105034795, and as further amended by the Fourth Amendment recorded as Instrument No. 105073654, shall be amended by the terms hereof. If there is any conflict between the terms of this Fifth Amendment, the First Amendment, the Second Amendment, the Third Amendment and/or the Fourth Amendment, this Fifth Amendment shall control.

IN WITNESS WHEREOF, the undersigned has caused this Fifth Amendment to be duly executed the day and year first above written.

TUSCANY DEVELOPMENT, INC.,  
an Idaho corporation

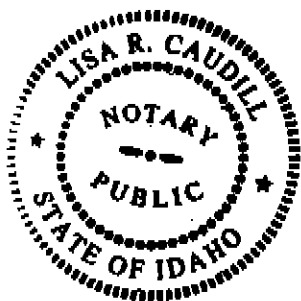
By:   
Gregory B. Johnson, President

ACKNOWLEDGMENT

STATE OF IDAHO     )  
                                  ) ss.  
County of Ada        )

On this 3rd day of November, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Gregory B. Johnson, known or identified to me to be the President of Tuscany Development, Inc., the corporation that executed the instrument, or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



*Lisa R. Caudill*  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at       Nampa, ID        
My commission expires:       6-11-09

# **EXHIBIT A**

**(See Attached Final Recorded Plat of  
Messina Hills Subdivision No. 3)**











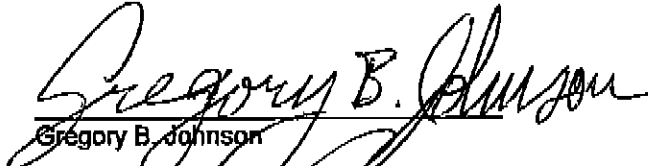
**MINUTES OF SPECIAL MEETING  
OF  
ARCHITECTURAL COMMITTEE**

The undersigned, being 100% of the members of the Architectural Committee ("AC"), hereby grant a waiver of the Restrictive Covenants for Messina Hills Subdivision No. 3 with respect to the following four homes:

Lot 66, Block 1, Messina Hills Subdivision No. 3  
Lot 1, Block 12, Messina Hills Subdivision No. 3  
Lot 18, Block 12, Messina Hills Subdivision No. 3  
Lot 9, Block 13, Messina Hills Subdivision No. 3

The Restrictive Covenants are waived only in the following respect. With respect to these four homes/lots, the AC waives the requirement that the homes comply with the requirements for a Category "A" (Exhibit C) home, and substitutes the requirement that these four homes comply with the requirements for a Category "B" (Exhibit C) home. This waiver is given because these lots were reserved, and the plans were drawn, at a time when it was anticipated that the homes in this phase would be required to meet Category "B" (Exhibit C) requirements. The remaining homes in the Messina Hills Subdivision No. 3 must hereafter comply with Category "A" (Exhibit C) requirements.

DATED this 14<sup>th</sup> day of November, 2005.

  
\_\_\_\_\_  
Gregory B. Johnson

  
\_\_\_\_\_  
Mike Pennington

  
\_\_\_\_\_  
R. Craig Groves



106005864

After Recording  
Return to:

Michael T. Spink  
Spink Butler, LLP  
P.O. Box 639  
Boise, ID 83701

FOR RECORDING INFORMATION

**SIXTH AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TUSCANY**

**(TUSCANY LAKES NO. 2)**

This Sixth Amendment to Declaration of Covenants, Conditions and Restrictions for Tuscany ("Sixth Amendment") is made this 11<sup>th</sup> day of January, 2006, by Tuscany Development, Inc., an Idaho corporation ("Grantor" and "Class B Member").

**RECITALS**

A. Grantor is the owner of, or has an interest in, certain real property located in Ada County which real property is commonly known as Tuscany (the "Property").

B. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163972, that certain Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Declaration").

C. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163973, that certain First Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "First Amendment").

D. On November 9, 2004, Grantor caused to be recorded against the Property, as Instrument No. 104143092, that certain Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Second Amendment").

E. On March 23, 2005, Grantor caused to be recorded against the Property, as Instrument No. 105034795, that certain Third Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Third Amendment").

F. On June 7, 2005, Grantor caused to be recorded against the Property, as Instrument No. 105073654, that certain Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Fourth Amendment").

G. On November 3, 2005, Grantor caused to be recorded against the Property, as Instrument No. 105166750, that certain Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Fifth Amendment").

H. Grantor now desires to amend the Declaration as set forth below, and declare the Property and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions hereinafter set forth.

I. Grantor has the right to record this Sixth Amendment pursuant to paragraphs 1.1, 1.2 and 14.2.1 of the Declaration.

NOW THEREFORE, Grantor hereby declares the new phase of the Property, and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms, covenants, conditions, easements and restrictions set forth herein shall run with the land constituting the Property, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; shall enure to the benefit of any lot, parcel or portion of the Property and any interest therein; and shall enure to the benefit of and be binding upon Grantor, Grantor's successors in interest, and each Grantee or Owner and such Grantee or Owner's respective successors in interest, including tenants, and may be enforced by Grantor, or by any Owner or such Owner's successors in interest.

1. The Declaration shall be amended to add a new phase to the Property covered by the Declaration as specifically added by new paragraph 1.1.1.10 below:

1.1.1.10 Tuscany Lakes Subdivision No. 2, according to the official plat thereof recorded on the 15<sup>th</sup> day of December, 2005, as Instrument No. 105191290 in Book 94 of Plats at pages 11351 through 11354, records of Ada County, Idaho. A copy of the final plat is attached hereto as Exhibit A. All lots in Tuscany Lakes Subdivision No. 2 are designated as Class A Lots as specified on Exhibit C to the Declaration. The Common Area lots are as reflected on the final plat attached hereto as Exhibit A.

Upon the recording hereof, the terms and provisions set forth in the Declaration recorded as Instrument No. 103163972, as amended by the First Amendment recorded as Instrument No. 103163973, as amended by the Second Amendment recorded as Instrument No. 104143092, as amended by the Third Amendment recorded as Instrument No. 105034795, as amended by the Fourth Amendment recorded as Instrument No. 105073654, and as further amended by the Fifth Amendment recorded as Instrument No. 105166750, shall be amended by the terms hereof. If there is any conflict between the terms of this Sixth Amendment, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and/or the Fifth Amendment, this Sixth Amendment shall control.

IN WITNESS WHEREOF, the undersigned has caused this Sixth Amendment to be duly executed the day and year first above written.

TUSCANY DEVELOPMENT, INC.,  
an Idaho corporation

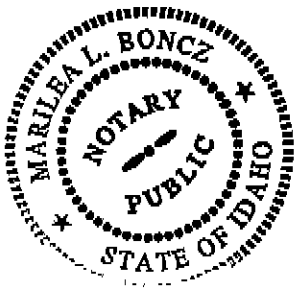
By:   
Gregory B. Johnson, President

ACKNOWLEDGMENT

STATE OF IDAHO        )  
                                  ) ss.  
County of Ada         )

On this 11 day of January, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Gregory B. Johnson, known or identified to me to be the President of Tuscany Development, Inc., the corporation that executed the instrument, or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Marilea L. Boncz  
Notary Public for Idaho  
Residing at Meridian Idaho  
My commission expires: 8/30/05

# **EXHIBIT A**

**(See Attached Final Recorded Plat of  
Tuscany Lakes Subdivision No. 2)**











ADA COUNTY RECORDER J. DAVID NAVARRO  
BOISE IDAHO 05/03/06 12:33 PM  
DEPUTY Bonnie Oberbillig  
RECORDED - REQUEST OF  
Spink Butler

AMOUNT 18.00 6



After Recording  
Return to:

Michael T. Spink  
Spink Butler, LLP  
P.O. Box 639  
Boise, ID 83701

**FOR RECORDING INFORMATION**

**SEVENTH AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TUSCANY**

**(TUSCANY LAKES NO. 3)**

This Seventh Amendment to Declaration of Covenants, Conditions and Restrictions for Tuscany ("Seventh Amendment") is made this 3<sup>rd</sup> day of May, 2006, by Tuscany Development, Inc., an Idaho corporation ("Grantor" and "Class B Member").

**RECITALS**

- A. Grantor is the owner of, or has an interest in, certain real property located in Ada County which real property is commonly known as Tuscany (the "Property").
- B. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163972, that certain Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Declaration").
- C. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163973, that certain First Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "First Amendment").
- D. On November 9, 2004, Grantor caused to be recorded against the Property, as Instrument No. 104143092, that certain Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Second Amendment").
- E. On March 23, 2005, Grantor caused to be recorded against the Property, as Instrument No. 105034795, that certain Third Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Third Amendment").
- F. On June 7, 2005, Grantor caused to be recorded against the Property, as Instrument No. 105073654, that certain Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Fourth Amendment").
- G. On November 3, 2005, Grantor caused to be recorded against the Property, as Instrument No. 105166750, that certain Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Fifth Amendment").

H. On January 12, 2006, Grantor caused to be recorded against the Property, as Instrument No. 106005864, that certain Sixth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Sixth Amendment").

I. Grantor now desires to amend the Declaration as set forth below, and declare the Property and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions hereinafter set forth.

J. Grantor has the right to record this Seventh Amendment pursuant to paragraphs 1.1, 1.2 and 14.2.1 of the Declaration.

NOW THEREFORE, Grantor hereby declares the new phase of the Property, and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms, covenants, conditions, easements and restrictions set forth herein shall run with the land constituting the Property, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; shall enure to the benefit of any lot, parcel or portion of the Property and any interest therein; and shall enure to the benefit of and be binding upon Grantor, Grantor's successors in interest, and each Grantee or Owner and such Grantee or Owner's respective successors in interest, including tenants, and may be enforced by Grantor, or by any Owner or such Owner's successors in interest.

1. The Declaration shall be amended to add a new phase to the Property covered by the Declaration as specifically added by new paragraph 1.1.1.11 below:

1.1.1.11 Tuscany Lakes Subdivision No. 3, according to the official plat thereof recorded on the 26<sup>th</sup> day of April, 2006, as Instrument No. 106063998 in Book 95 of plats at pages 11,613 and 11,614, records of Ada County, Idaho. A copy of the final plat is attached hereto as Exhibit A. All lots in Tuscany Lakes Subdivision No. 3 are designated as Class A Lots as specified on Exhibit C to the Declaration. The Common Area lots are as reflected on the final plat attached hereto as Exhibit A.

Upon the recording hereof, the terms and provisions set forth in the Declaration recorded as Instrument No. 103163972, as amended by the First Amendment recorded as Instrument No. 103163973, as amended by the Second Amendment recorded as Instrument No. 104143092, as amended by the Third Amendment recorded as Instrument No. 105034795, as amended by the Fourth Amendment recorded as Instrument No. 105073654, as amended by the Fifth Amendment recorded as Instrument No. 105166750, and as further amended by the Sixth Amendment recorded as Instrument No. 106005864, shall be amended by the terms hereof. If there is any conflict between the terms of this Seventh Amendment, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment and/or the Sixth Amendment, this Seventh Amendment shall control.

IN WITNESS WHEREOF, the undersigned has caused this Seventh Amendment to be duly executed the day and year first above written.

TUSCANY DEVELOPMENT, INC.,  
an Idaho corporation

By:   
Gregory B. Johnson, President

ACKNOWLEDGMENT

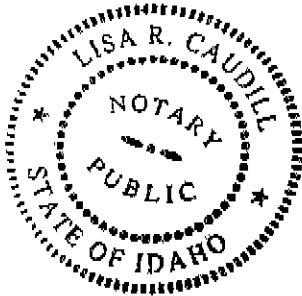
STATE OF IDAHO        )  
                              ) ss.  
County of Ada         )

On this 3<sup>rd</sup> day of May, 2006, before me, the undersigned, a Notary Public In and for said State, personally appeared Gregory B. Johnson, known or identified to me to be the President of Tuscany Development, Inc., the Idaho corporation that executed the within and foregoing instrument, or the person who executed the instrument on behalf of said Idaho corporation, and acknowledged to me that such Idaho corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

*Lisa R Caudill*

Notary Public for Idaho  
Residing at       Nampa, ID        
My commission expires:       6-11-09      



# **EXHIBIT A**

**(See Attached Final Recorded Plat of  
Tuscany Lakes Subdivision No. 3)**







ADA COUNTY RECORDER J. DAVID NAV  
BOISE IDAHO 05/03/06 03:16 PM  
DEPUTY Bonnie Oberling  
RECORDED - REQUEST OF  
Splink Butler

AMOUNT 18.00 8



**After Recording  
Return to:**

**Michael T. Splink  
Splink Butler, LLP  
P.O. Box 639  
Boise, ID 83701**

**FOR RECORDING INFORMATION**

**EIGHTH AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TUSCANY**

**(TUSCANY VILLAGE NO. 2)**

This Eighth Amendment to Declaration of Covenants, Conditions and Restrictions for Tuscany ("Eighth Amendment") is made this 3<sup>rd</sup> day of May, 2006, by Tuscany Development, Inc., an Idaho corporation ("Grantor" and "Class B Member").

**RECITALS:**

- A. Grantor is the owner of, or has an interest in, certain real property located in Ada County which real property is commonly known as Tuscany (the "Property").
- B. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163972, that certain Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Declaration").
- C. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163973, that certain First Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "First Amendment").
- D. On November 9, 2004, Grantor caused to be recorded against the Property, as Instrument No. 104143092, that certain Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Second Amendment").
- E. On March 23, 2005, Grantor caused to be recorded against the Property, as Instrument No. 105034795, that certain Third Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Third Amendment").
- F. On June 7, 2005, Grantor caused to be recorded against the Property, as Instrument No. 105073654, that certain Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Fourth Amendment").
- G. On November 3, 2005, Grantor caused to be recorded against the Property, as Instrument No. 105166750, that certain Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Fifth Amendment").

**EIGHTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR TUSCANY - 1**

S:\Docs\Tuscany Development, Inc\Tuscany Subdivisions\CCRE\Eighth Amendment to CCRs (5-3-06 final).DOC

H. On January 12, 2006, Grantor caused to be recorded against the Property, as Instrument No. 106005864, that certain Sixth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Sixth Amendment").

I. On May 3, 2006, Grantor caused to be recorded against the Property, as Instrument No. 106069260, that certain Seventh Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "Seventh Amendment").

J. Grantor now desires to clarify and amend the Declaration as set forth below, and declare the Property and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions hereinafter set forth.

K. Grantor has the right to record this Eighth Amendment pursuant to paragraphs 1.1, 1.2 and 14.2.1 of the Declaration.

NOW THEREFORE, Grantor hereby clarifies the Declaration and the Third Amendment as follows. The terms, covenants, conditions, easements and restrictions set forth herein shall run with the land constituting the Property, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; shall enure to the benefit of any lot, parcel or portion of the Property and any interest therein; and shall enure to the benefit of and be binding upon Grantor, Grantor's successors in interest, and each Grantee or Owner and such Grantee or Owner's respective successors in interest, including tenants, and may be enforced by Grantor, or by any Owner or such Owner's successors in interest.

1. The Declaration shall be amended and ratified to add a new phase to the Property covered by the Declaration as specifically added by new paragraph 1.1.1.12 below. All construction in this phase is in conformance with this new paragraph.

1.1.1.12 Tuscany Village Subdivision No. 2, according to the official plat thereof recorded on the 26<sup>th</sup> day of May, 2005, as Instrument No. 105067121 in Book 92 of plats on pages 10,893 and 10,894, records of Ada County, Idaho. A copy of the final plat is attached hereto as Exhibit A. All lots in Tuscany Village Subdivision No. 2 are designated as Class C Lots as specified on Exhibit C to the Declaration, with the sole exception that not more than 10% of the lots in Tuscany Village Subdivision No. 2 may have a minimum area of 1,400 square feet. The Common Area lots are as reflected on the final plat attached hereto as Exhibit A.

This Eighth Amendment is intended to clarify the fact that the Third Amendment was intended to, and does, apply to Tuscany Village Subdivision No. 2.

Upon the recording hereof, the terms and provisions set forth in the Declaration recorded as Instrument No. 103163972, as amended by the First Amendment recorded as Instrument No. 103163973, as amended by the Second Amendment recorded as Instrument No. 104143092, as amended by the Third Amendment recorded as Instrument No. 105034795, as amended by the Fourth Amendment recorded as Instrument No. 105073654, as amended by the Fifth Amendment recorded as Instrument No. 105166750, as amended by the Sixth Amendment recorded as Instrument No. 106005864, and as further amended by the Seventh Amendment recorded as Instrument No. 106069260, shall be amended by the terms hereof. If there is any conflict between the terms of this Eighth Amendment, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment and/or the Seventh Amendment, this Eighth Amendment shall control.

IN WITNESS WHEREOF, the undersigned has caused this Eighth Amendment to be duly executed the day and year first above written.

TUSCANY DEVELOPMENT, INC.,  
an Idaho corporation

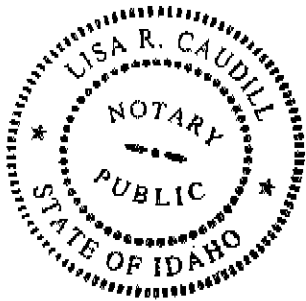
By: Gregory B. Johnson  
Gregory B. Johnson, President

ACKNOWLEDGMENT

STATE OF IDAHO        )  
                                  ) ss.  
County of Ada         )

On this 3<sup>rd</sup> day of May, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Gregory B. Johnson, known or identified to me to be the President of Tuscany Development, Inc., the Idaho corporation that executed the within and foregoing instrument, or the person who executed the instrument on behalf of said Idaho corporation, and acknowledged to me that such Idaho corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Lisa R. Caudill  
Notary Public for Idaho  
Residing at Nampa, ID  
My commission expires: 6-11-09

# **EXHIBIT A**

**(See Attached Final Recorded Plat of  
Tuscany Village Subdivision No. 2)**









After Recording  
Return to:

Michael T. Spink  
Spink Butler, LLP  
P.O. Box 639  
Boise, ID 83701

FOR RECORDING INFORMATION

**NINTH AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TUSCANY**

**(MESSINA MEADOWS NO. 1)**

This Ninth Amendment to Declaration of Covenants, Conditions and Restrictions for Tuscany ("Ninth Amendment") is made this 20<sup>th</sup> day of February, 2007, by Tuscany Development, Inc., an Idaho corporation ("Grantor" and "Class B Member").

**RECITALS:**

- A. Grantor is the owner of, or has an interest in, certain real property located in Ada County which real property is commonly known as Tuscany (the "**Property**").
- B. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163972, that certain Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**Declaration**").
- C. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163973, that certain First Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**First Amendment**").
- D. On November 9, 2004, Grantor caused to be recorded against the Property, as Instrument No. 104143092, that certain Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**Second Amendment**").
- E. On March 23, 2005, Grantor caused to be recorded against the Property, as Instrument No. 105034795, that certain Third Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**Third Amendment**").
- F. On June 7, 2005, Grantor caused to be recorded against the Property, as Instrument No. 105073654, that certain Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**Fourth Amendment**").
- G. On November 3, 2005, Grantor caused to be recorded against the Property, as Instrument No. 105166750, that certain Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**Fifth Amendment**").



H. On January 12, 2006, Grantor caused to be recorded against the Property, as Instrument No. 106005864, that certain Sixth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**Sixth Amendment**").

I. On May 3, 2006, Grantor caused to be recorded against the Property, as Instrument No. 106069260, that certain Seventh Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**Seventh Amendment**").

J. On May 3, 2006, Grantor caused to be recorded against the Property, as Instrument No. 106069308, that certain Eighth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**Eighth Amendment**").

K. Grantor now desires to amend the Declaration as set forth below, and declare the Property and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions hereinafter set forth.

J. Grantor has the right to record this Ninth Amendment pursuant to paragraphs 1.1, 1.2 and 14.2.1 of the Declaration.

NOW THEREFORE, Grantor hereby declares that the new phase of the Property, and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms, covenants, conditions, easements and restrictions set forth herein shall run with the land constituting the Property, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; shall enure to the benefit of any lot, parcel or portion of the Property and any interest therein; and shall enure to the benefit of and be binding upon Grantor, Grantor's successors in interest, and each Grantee or Owner and such Grantee or Owner's respective successors in interest, including tenants, and may be enforced by Grantor, or by any Owner or such Owner's successors in interest.

1. The Declaration shall be amended to add a new phase to the Property covered by the Declaration as specifically added by new paragraph 1.1.1.13 below:

1.1.1.13 Messina Meadows Subdivision No. 1, according to the official plat thereof recorded on the 29th day of December 2006, as Instrument No. 106201392 in Book 97 of plats on pages 12,176 through 12,183, records of Ada County, Idaho. The final plat is described on **Exhibit A** attached hereto. The lots in Messina Meadows Subdivision No. 1 are classified in accordance with Exhibit C-1 to the Declaration (attached to this Ninth Amendment as **Exhibit B**), as follows:

1.1.1.13.1 Lots 2 through 25, Block 1; Lots 1 through 10, Block 2; Lots 1 through 10, Block 3; Lots 2 through 14 and 16 through 24, Block 4; and Lots 2 through Lot 6, Block 6 in Messina Meadows Subdivision No. 1 are classified as Lot Category D.

1.1.1.13.2 Lots 25 through 32, 34 through 41, 43 through 58, 60 through 63, and 65 through 68, Block 4; Lots 2 through 13, 15 through 26, 28 through 39, 41 through 52, 54 through 59, and 61 through 66, Block 5 in Messina Meadows Subdivision No. 1 are classified as Lot Category E.

1.1.1.13.3 Lots 2 through 11, Block 7; Lots 2 through 7 and 9 through 14, Block 8; Lots 1 through 10, Block 9; Lots 2 through 5, Block 10; Lots 2 through 10, Block 11; Lots 2 through 9 and 11 through 18, Block 12; Lots 1 through 3, Block 13; Lots 1 through 8 and 10 through 14, Block 14; Lots 2 through 17 and 19

through 27, Block 15; Lots 2 through 5, Block 16; Lots 2 through 6, Block 17; Lots 2 through 5 and 7 through 11, Block 18; Lots 2 through 10, Block 19; and Lots 2 through 5, 7 and 8, Block 20 in Messina Meadows Subdivision No. 1 are classified as Lot Category B.

1.1.1.13.4 All Common Area lots in Messina Meadows Subdivision No. 1 are as reflected on the final plat attached hereto as Exhibit A.

1.1.1.13.5 A walking path shall be maintained by Tuscan Homeowners' Association, Inc. on Lot 8, Block 6; Lot 12, Block 7; and Lot 12, Block 9 per that certain License Agreement entered into by and between the United States Bureau of Reclamation and Grantor.

2. The Declaration shall be amended to add a new section to Article IV, as follows:

4.1.1.1 Exhibit C. Exhibit C of the Declaration is amended as Exhibit C-1 to add two (2) new lot categories (Lot Category D and Lot Category E), as more fully reflected on **Exhibit B** attached hereto this Ninth Amendment and incorporated herein.

3. The Declaration shall be amended to add a new section to Article XIII, as follows:

13.10 Side-Yard Easements – Western Boundary. Notwithstanding anything expressly or impliedly contained in the Declaration to the contrary, each of the following Building Lots (individually the "**Dominant Building Lot**") shall have a permanent, perpetual, and exclusive easement (the "**Side-Yard Easement**") on, across, over, under, and through five (5) feet into any Building Lot or Common Area (individually the "**Servient Lot**") adjacent to and along the western boundary of such Dominant Building Lot:

Messina Meadows Subdivision No. 1 Lots 29 through 32, 38 through 41, 47 through 50, 55 through 58, 65 through 68, Block 4; Lots 8 through 13, 21 through 26, 34 through 39, 47 through 52, and 61 through 66, Block 5.

Each Side-Yard Easement shall terminate on the north and south at the structure of the residential dwelling, if any, located on the Servient Lot, or if the Servient Lot contains no residential dwelling, the Side-Yard Easement shall terminate on the north and south at the structure of the residential dwelling on the Dominant Building Lot.

13.11 Side-Yard Easements – Eastern Boundary. Notwithstanding anything expressly or impliedly contained in the Declaration to the contrary, each of the following Building Lots (individually the "**Dominant Building Lot**") shall have a permanent, perpetual, and exclusive easement (the "**Side-Yard Easement**") on, across, over, under, and through five (5) feet into any Building Lot or Common Area (individually the "**Servient Lot**") adjacent to and along the eastern boundary of such Dominant Building Lot:

Messina Meadows Subdivision No. 1 Lots 25 through 28, 34 through 37, 43 through 46, 51 through 54, 60 through 63, Block 4; Lots 2 through 7, 15 through 20, 28 through 33, 41 through 46, 54 through 59, Block 5.

Each Side-Yard Easement shall terminate on the north and south at the structure of the residential dwelling, if any, located on the Servient Lot, or if the Servient Lot contains no residential dwelling, the Side-Yard Easement shall terminate on

the north and south at the structure of the residential dwelling on the Dominant Building Lot.

- 13.12 Purpose and Maintenance of Side-Yard Easements. The purpose and use of the Side-Yard Easements created in Sections 13.10 and 13.11 shall be to allow the Owner of the Dominant Building Lot the right to perpetually use and maintain, on an exclusive basis (except as expressly provided otherwise herein this Section 13), the area within the Side-Yard Easement for any purpose for which the Dominant Building Lot may be used subject to applicable setbacks as provided in the Declaration or required by the applicable ordinance of the City of Meridian, Idaho. The Owner of the Dominant Building Lot shall timely perform, at such Owner's sole costs and expense, all maintenance, upkeep, and repair required to keep and maintain such Side-Yard Easement, and all portions thereof, in a high quality condition and appearance.
- 13.13 Easements Appurtenant. Each Side-Yard Easement shall be an easement appurtenant to the Dominant Building Lot and cannot be separated from the Dominant Building Lot or transferred or assigned by the Owner of the Dominant Building Lot separate from the conveyance of fee title to the Dominant Building Lot. A conveyance of fee title to the Dominant Building Lot shall constitute a conveyance, transfer and assignment of all right, title and interest in and to the Side-Yard Easement to the recipient of fee title to the Dominant Building Lot notwithstanding any provision in the document(s) of conveyance to the contrary or if such document(s) of conveyance is silent with respect to such Side-Yard Easement.
- 13.14 Covenants Running with Land - No Termination. Each Side-Yard Easement shall be a perpetual easement running with the land and shall inure to the benefit of and be binding upon the Owner of the Servient Lot and the Dominant Building Lot and their respective successors and assigns including, without limitation, all subsequent owners of the Servient Lot and/or the Dominant Building Lot and all persons claiming under and through them. Each Side-Yard Easement shall not terminate by lapse of time, non-use, or the lack of maintenance.
- 13.15 Right of Access by Servient Lot. Notwithstanding the exclusive nature of the Side-Yard Easements, the Owner or Occupant of the Servient Lot, and their employees, agent and contractors, shall have the right to enter upon the Side-Yard Easement located on the Servient Lot, if such entry is necessary for the maintenance, repair or restoration of the improvements located on the Servient Lot. Any such entry by the Owner or Occupant of the Servient Lot, or their employees, agents or contractors, shall be at such time(s) and intervals as shall minimize the inconvenience of the owner or Occupant of the Dominant Building Lot, and, when possible, shall be made after notice, written or oral, given to the Owner or Occupant of the Dominant Building Lot. The Owner or Occupant of the Servient Lot shall be responsible for the repair of any damage to any property, including landscaping, located on the Side-Yard Easement resulting from such entry, which repair shall be made promptly after such entry, but in no event more than ten (10) days thereafter.
- 13.16 Acceptance and Succession. Each Owner of the Servient Lot, and each successor Owner of the Servient Lot, by the acceptance of a deed to the Servient Lot, shall be deemed to agree to, and to be bound by, the terms, conditions and covenants of this Section 13. The rights and obligations contained in this Section 13 shall bind each Owner of a Lot within the Subdivision, such Owner's Occupants, heirs, personal representatives, successors and assigns.

13.17 Indemnification. The Owner of each Dominant Building Lot shall indemnify, save and hold harmless the Owner of the Servient Lot, and such Owner's heirs, personal representatives, successors and assigns, from and against any claim, liability, damage, judgment, cost or expense, or whatever kind or nature, including attorneys' fees, arising from or relating to the use by the Owner of the Dominant Building Lot of the Side-Yard Easement located on the Servient Lot.

4. The Declaration shall be amended to add new sections to Article XIV, as follows:

14.10 Swale Restrictions. Lots in Messina Meadows Subdivision No. 1 shall be subject to the following drainage swale restrictions, in addition to the restrictions provided by Section 14.8. Stormwater drainage swales located within Ada County Highway District's right-of-way shall be maintained by the Association and/or the individual homeowner. The stormwater drainage swales are specifically designed to accommodate water runoff from the streets within Tuscany Neighborhoods. Ada County Highway District is responsible for "heavy maintenance" of the stormwater drainage swales, as described in the Operation and Maintenance Manual which is available at Ada County Highway District, and at the Association's office. However, "light maintenance" of the stormwater drainage swales is the responsibility of the Association, which shall maintain the swales as provided in the Operation and Maintenance Manual. Ada County Highway District maintains the right to inspect the stormwater drainage swales within Messina Meadows Subdivision No. 1 at any time. If Ada County Highway District finds that the Association is not keeping up with the "light maintenance" as required in the Operation and Maintenance Manual, Ada County Highway District will have the right to perform needed repairs to the swales if the Association does not initiate corrective action within thirty (30) days of receipt of written notice from Ada County Highway District itemizing the repairs it believes are required.

14.10 Maximum Driveway Width in Ada County Highway District's Right-of-Way. The maximum width of any driveway located within any Ada County Highway District right-of-way in Messina Meadows Subdivision No. 1 shall be limited to a maximum width established by Ada County Highway District to give the stormwater drainage swales enough room between each driveway to function properly.

Upon the recording hereof, the terms and provisions set forth in the Declaration recorded as Instrument No. 103163972, as amended by the First Amendment recorded as Instrument No. 103163973, as amended by the Second Amendment recorded as Instrument No. 104143092, as amended by the Third Amendment recorded as Instrument No. 105034795, as amended by the Fourth Amendment recorded as Instrument No. 105073654, as amended by the Fifth Amendment recorded as Instrument No. 105166750, as amended by the Sixth Amendment recorded as Instrument No. 106005864, as amended by the Seventh Amendment recorded as Instrument No. 106069260, and as further amended by the Eighth Amendment recorded as Instrument No. 106069308, shall be amended by the terms hereof. If there is any conflict between the terms of this Ninth Amendment, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, the Seventh Amendment and/or the Eighth Amendment, this Ninth Amendment shall control.

IN WITNESS WHEREOF, the undersigned has caused this Ninth Amendment to be duly executed the day and year first above written.

TUSCANY DEVELOPMENT, INC.,  
an Idaho corporation

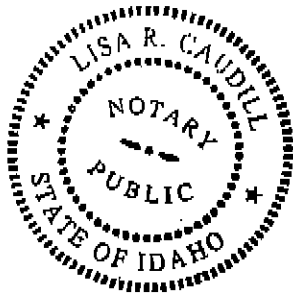
By Gregory B. Johnson  
Gregory B. Johnson, President

ACKNOWLEDGMENT

STATE OF IDAHO        )  
                                  ) ss.  
County of Ada         )

On this 20<sup>th</sup> day of February, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Gregory B. Johnson, known or identified to me to be the President of Tuscany Development, Inc., the Idaho corporation that executed the within and foregoing instrument, or the person who executed the instrument on behalf of said Idaho corporation, and acknowledged to me that such Idaho corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Lisa R. Caudill  
Notary Public for Idaho  
Residing at: Boise, ID  
My commission expires: 6-11-09

**EXHIBIT A**

The Final Plat of Messina Meadows Subdivision No. 1, recorded in Book 97 of Plats, pages 12,176 through 12, 183, Records of Ada County, Idaho, as Instrument No. 106201392, recorded on the 29<sup>th</sup> Day of December, 2006.

**EXHIBIT B**  
**EXHIBIT C-1 TO DECLARATION**  
**"Lot Categories"**

Description	A	B	C	D	E
Minimum Square Footage	2200+	2000+	1600+	1400+	1200+
Roofing Requirements	30-year architectural or better Weathered Wood Pabco Brand, or as approved by AC	30-year architectural or better Weathered Wood Pabco Brand, or as approved by AC	30-year architectural or better Weathered Wood Pabco Brand, or as approved by AC	30-year architectural or better Weathered Wood Pabco Brand, or as approved by AC	30-year architectural or better Weathered Wood Pabco Brand, or as approved by AC
Roof Pitch	6/12 or better unless approved by AC down to 4/12 for the Tuscany Look	6/12 or better unless approved by AC down to 4/12 for the Tuscany Look	6/12 or better unless approved by AC down to 4/12 for the Tuscany Look	4/12 or better	4/12 or better
Landscape Requirements	Full Landscaping	Front and side yards	Front and side yards	Full landscape including fencing	Full landscape including fencing
Landscape Plan	Require AC Approval	Require AC Approval	Require AC Approval	Require AC Approval	Require AC Approval
Sprinkler Systems	Full Sprinklers	Front and side yards	Front and side yards	Full sprinklers	Full sprinklers
Garage Features	3 car min - 5 car max- max of 3 bay openings or as approved by AC	3 car min. - 5 car max- max of 3 bay openings	3 car min. - 5 car max- max of 3 bay openings	2 car min.	2 car min.
Shops & Steads	OK - AC Approval Only	OK - AC Approval Only	OK - AC Approval Only	OK - AC Approval Only	OK - AC Approval Only

Description	A	B	C	D	E
Recreational Vehicles	Enclosed or as approved by AC	Screened from view	Screened from view	Screened from view	Screened from view
Monument Yard Light	Required	Optional	Optional	Optional	Optional
Colored stamped concrete sidewalks, Accents on driveway and as approved by AC	Required	Optional	Optional	Optional	Optional
Front Brick, Stone, Masonry or Stucco	25% required or as approved by AC	20% required or as approved by AC	20% required or as approved by AC	20% required or as approved by AC	20% required or as approved by AC
Data Wiring	Per AC rules/regulations	Per AC rules/regulations	Per AC rules/regulations	Per AC rules/regulations	Per AC rules/regulations
Basketball Hoops	Detached only - allowed only with prior AC approval	Detached only - allowed only with prior AC approval	Detached only - allowed only with prior AC approval	Detached only - allowed only with prior AC approval	Detached only - allowed only with prior AC approval
Fence	Wrought Iron, Black Privacy, Taupe Vinyl	Wrought Iron, Black Privacy, Taupe Vinyl	Wrought Iron, Black Privacy, Taupe Vinyl	Taupe Vinyl Installed by Builder	Wrought Iron, Black Installed by Builder
Additional Landscaping Requirements (see paragraph 4.18)	2-3" Trees 4-5 gallon shrubs berming and sculptured planting areas required	1-3" Trees 2-5 gallon shrubs berming and sculptured planting required	Base Requirements	Base Requirements	Base Requirements



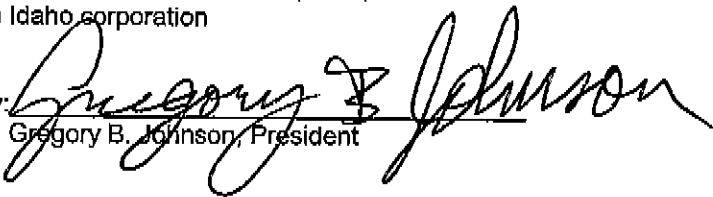
Description	A	B	C	D	E
Vinyl Siding	No Vinyl/Siding	No Vinyl/Siding	No Vinyl/Siding	No Vinyl/Siding	No Vinyl/Siding

**CONSENT OF OWNERS TO  
TENTH AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR TUSCANY**

The undersigned Owners of more than fifty percent (50%) of the votes in the Tuscany Homeowners' Association, Inc., hereby consent to and approve the Tenth Amendment to Declaration of Covenants, Conditions and Restrictions for Tuscany.

DATED this 30 day of May 2008.

TUSCANY DEVELOPMENT, INC.,  
an Idaho corporation

By:   
Gregory B. Johnson, President



After Recording  
Return to:

Michael T. Spink  
Spink Butler, LLP  
P.O. Box 639  
Boise, ID 83701

FOR RECORDING INFORMATION

**TENTH AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TUSCANY**

This Tenth Amendment to Declaration of Covenants, Conditions and Restrictions for Tuscany ("**Tenth Amendment**") is made this \_\_\_\_ day of May, 2008, by Tuscany Development, Inc., an Idaho corporation ("**Grantor**" and "**Class B Member**") and Tuscany Homeowners' Association, Inc., an Idaho nonprofit corporation ("**Association**").

RECITALS:

- A. Grantor and Association are the owners of, or have an interest in, certain real property located in Ada County, Idaho, which real property is commonly known as "Tuscany" and defined in the Declaration (the "**Property**").
- B. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163972, official records of Ada County, Idaho, that certain Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**Initial Declaration**").
- C. On September 26, 2003, Grantor caused to be recorded against the Property, as Instrument No. 103163973, official records of Ada County, Idaho, that certain First Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**First Amendment**").
- D. On November 9, 2004, Grantor caused to be recorded against the Property, as Instrument No. 104143092, official records of Ada County, Idaho, that certain Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**Second Amendment**").
- E. On March 23, 2005, Grantor caused to be recorded against the Property, as Instrument No. 105034795, official records of Ada County, Idaho, that certain Third Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**Third Amendment**").
- F. On June 7, 2005, Grantor caused to be recorded against the Property, as Instrument No. 105073654, official records of Ada County, Idaho, that certain Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**Fourth Amendment**").
- G. On November 3, 2005, Grantor caused to be recorded against the Property, as Instrument No. 105166750, official records of Ada County, Idaho, that certain Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**Fifth Amendment**").
- H. On January 12, 2006, Grantor caused to be recorded against the Property, as Instrument No. 106005864, official records of Ada County, Idaho, that certain Sixth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**Sixth Amendment**").

I. On May 3, 2006, Grantor caused to be recorded against the Property, as Instrument No. 106069260, official records of Ada County, Idaho, that certain Seventh Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**Seventh Amendment**").

J. On May 3, 2006, Grantor caused to be recorded against the Property, as Instrument No. 106069308, official records of Ada County, Idaho, that certain Eighth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**Eighth Amendment**").

K. On February 20, 2007, Grantor caused to be recorded against the Property, as Instrument No. 107024582, official records of Ada County, Idaho, that certain Ninth Amendment to the Declaration of Covenants, Conditions and Restrictions for Tuscany (the "**Ninth Amendment**").

L. Grantor and Association now desire to amend the Initial Declaration as set forth below, and declare the Property and each Building Lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions hereinafter set forth. The Initial Declaration, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, the Seventh Amendment, the Eighth Amendment, the Ninth Amendment, and this Tenth Amendment shall be collectively referred to as the "**Declaration.**"

M. Grantor and Association have the right to record this Tenth Amendment pursuant to paragraphs 1.1, 1.2, 14.2.1 and 14.2.2 of the Declaration.

NOW THEREFORE, Grantor and Association hereby declare that the Property, and each Building Lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms, covenants, conditions, easements and restrictions set forth herein shall run with the land constituting the Property, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; shall inure to the benefit of every Building Lot, parcel or portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon the Association and each Owner and such Owner's respective successors in interest, and may be enforced by any Owner or such Owner's successors in interest, or by the Association.

1. The Declaration shall be amended to delete paragraphs 9.2, 9.2.3, 9.2.3.1, 9.3.1, and 9.4 in their entirety, and replace each respective paragraph as follows:

9.2 Regular Assessments. All Owners, excluding the Grantor, are obligated to pay Regular Assessments to the treasurer of the Association on a schedule of payments established by the Board.

9.2.3 Amounts Paid by Owners. The Board may require, in its discretion or as provided in the Articles or Bylaws, payment of the Regular Assessments in monthly, quarterly, semi-annual or annual installments. The Regular Assessment to be paid by any particular Owner, excluding Grantor, for any given fiscal year shall be computed as follows:

9.2.3.1 As to the Association's Regular Assessment, each Owner (except Grantor) shall be assessed and shall pay an amount computed by multiplying the Association's total advance estimate of Expenses by the fraction produced by dividing the Building Lots attributable to each Owner (except Grantor) by the total number of Building Lots in the Property.

9.3.1 Purpose and Procedure. In the event that the Board of the Association shall determine that its respective Regular Assessment for a given calendar year is or will be inadequate to meet the Expenses of such Association for any reason, including but not limited to costs of construction, reconstruction, unexpected repairs or replacement of capital improvements upon the Common Area, attorney's fees and/or litigation costs, other professional fees, or for any other reason, the Board thereof shall determine the approximate amount necessary to defray such Expenses and levy a Special Assessment against the portions of the Property within its jurisdiction, excluding Building Lots owned by Grantor, which shall be computed in the same manner as Regular Assessments. No Special Assessment shall be levied which exceeds twenty percent (20%) of the budgeted gross Expenses of such Association for that fiscal year, without the vote or written assent of the Owners representing a majority of the votes of the Members of such Association. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid.

9.4 Limited Assessments. Notwithstanding the above provisions with respect to Regular and Special Assessments, a Board may levy a Limited Assessment against a Member, excluding Grantor, as a remedy to reimburse the Association for costs incurred in bringing the Member and/or such Member's Building Lot into compliance with the provisions of the governing instruments for Tuscany Subdivisions.

2. The Declaration shall be amended by renumbering certain sections in Article XIV, as follows:

14.10 Swale Restrictions. [Section number and text remain unchanged.]

14.11 Maximum Driveway Width in Ada County Highway District's Right-of-Way. [Section number changed from 14.10 to 14.11. Text remains unchanged.]

3. The Declaration shall be amended to add a new paragraph 14.12, as follows:

14.12 Messina Meadows Sub-Association. Grantor may create a sub-association comprised of the following Building Lots ("**Sub-Association Building Lots**") within Messina Meadows Subdivision No. 1 (the "**Messina Meadows Sub-Association**") for the purpose of providing landscaping, snow removal and maintenance services:

Messina Meadows Subdivision No. 1 Lots 25 through 32, 34 through 41, 43 through 58, 60 through 63, 65 through 68, Block 4; Lots 2 through 13, 15 through 26, 28 through 39, 41 through 52, 54 through 59, 61 through 66, Block 5.

Grantor shall maintain full and complete control of the Messina Meadows Sub-Association until Grantor no longer owns any Sub-Association Building Lots within Messina Meadows Subdivision No. 1. Grantor may establish rules and regulations for landscaping, snow removal and maintenance of Sub-Association Building Lots within Messina Meadows Subdivision No. 1, which rules and regulations may be amended by a majority of the votes in the Messina Meadows Sub-Association subsequent to when Grantor no longer owns any Sub-Association Building Lots within Messina Meadows Subdivision No. 1. Messina Meadows Sub-Association shall possess, with respect to the Sub-Association Building Lots only, all voting, Assessment and enforcement rights held by the Association, as set forth in the Declaration, as amended, and such provisions shall be reflected in the Articles of Incorporation of the Messina Meadows Sub-Association and the Bylaws of the Messina Meadows Sub-Association.

4. As required by Section 14.2.2 of the Declaration, the President and Secretary of the Association hereby certify and attest that this Tenth Amendment has been approved by written consent of the Owners representing more than fifty percent (50%) of the total voting power in the Association.

5. Capitalized terms used but not defined herein shall have the same meaning as found in the Declaration, as amended.

6. Except as amended by this Tenth Amendment, all terms and provisions of the Declaration, as previously amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have caused this Tenth Amendment to be duly executed the day and year first above written.

**GRANTOR:**

TUSCANY DEVELOPMENT, INC.,  
an Idaho corporation

By: *Gregory B. Johnson*  
Gregory B. Johnson, President

**ASSOCIATION:**

TUSCANY HOMEOWNERS' ASSOCIATION, INC.,  
an Idaho nonprofit corporation

By: *Greg Johnson*  
Greg Johnson, President

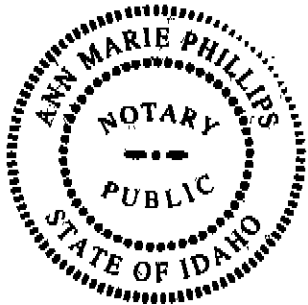
By: *R. Craig Groves*  
R. CRAIG GROVES, Secretary

**ACKNOWLEDGMENT**

STATE OF IDAHO        )  
                                  ) ss.  
County of Ada         )

On this 30<sup>th</sup> day of May, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared Gregory B. Johnson, known or identified to me to be the President of Tuscany Development, Inc., the corporation that executed the within and foregoing instrument, or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

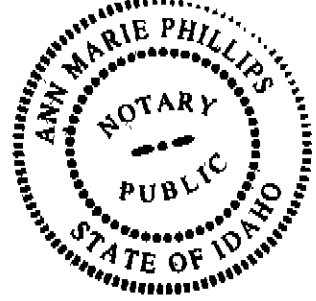


*Ann Marie Phillips*  
Notary Public for Idaho  
Residing at: Boise, ID  
My commission expires: 3/8/2013

STATE OF IDAHO )  
County of Ada ) ss.

On this 30<sup>th</sup> day of May, 2008, before me, the undersigned, a Notary Public in and for said state, personally appeared Greta Johnson and R. Craig Gimes, known or identified to me to be the President and Secretary, respectively, of Tuscany Homeowners' Association, Inc., an Idaho nonprofit corporation, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Ann Marie Phillips  
Notary Public for Idaho  
Residing at Borise, ID  
My commission expires: 3/8/2013