

SECOND AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TUSCAN VILLAS, A PLANNED UNIT DEVELOPMENT

THIS SECOND AMENDMENT TO MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE TUSCAN VILLAS, A PLANNED UNIT DEVELOPMENT, (hereafter the "Second Amendment") is made on the date hereinafter set forth by Gunsmoke Properties, L.L.C., a Utah limited liability company (hereinafter "Declaration") and the undersigned owners of Lots in Tuscan Villas, a Planned Unit Development.

RECITALS

A. The Master Declaration of Covenants, Conditions and Restrictions of the Tuscan Villas, a Planned Unit Development was recorded in the office of the County Recorder of Utah County, State of Utah on August 10, 23006, as Entry No. 103104:2006 (hereinafter the "Declaration") and the Subdivision Plat of Phase 1 of The Tuscan Villas, a Planned Unit Development was recorded in the office of the County Recorder of Utah County, State of Utah on June 19, 2006, as Entry No. 76155:2006 and was amended by the Subdivision Plat of Phase 1 Amended of the Tuscan Villas, a Planned Unit Development was recorded December 4, 2006, as Entry No. 162435:2006 (hereinafter the "Phase 1 Plat").

B. The First Amendment to Master Declaration of Covenants, Conditions and Restrictions of the Tuscan Villas, a Planned Unit Development was recorded in the office of the County Recorder of Utah County, State of Utah on September 28, 23006, as Entry No. 128604:2006 (hereinafter the "First Amendment").

C. The First Supplementary Declaration of Covenants, Conditions and Restrictions of the Tuscan Villas, a Planned Unit Development (hereafter the "First Supplementary Declaration") was recorded in the office of the County Recorder of Utah County, State of Utah on May 25, 2007 as Entry No. 77686:2007 (hereinafter the "First Supplementary Declaration") and the Subdivision Plat of Phase 2 of the Tuscan Villas, a Planned Unit Development was recorded in the office of the County Recorder of Utah County, State of Utah on July 30, 2007 as Entry No. 110892:2007 (hereafter the "Phase 2 Plat").

D. The Second Supplementary Declaration of Covenants, Conditions and Restrictions of the Tuscan Villas, a Planned Unit Development was recorded in the office of the County Recorder of Utah County, State of Utah on August 1, 2007 as Entry No. 110893:2007 (hereinafter the "Second Supplementary Declaration") and the Subdivision Plat of Phase 2 of the Tuscan Villas, a Planned Unit Development was recorded in the office of the County Recorder of Utah County, State of Utah on July 30, 2007 as Entry No. 110892:2007 (hereafter the "Phase 3 Plat").

E. The Declaration, the First Amendment, the First Supplementary Declaration and the Second Supplementary Declaration of Covenants, Conditions and Restrictions encumber that certain real property located in Utah County, State of Utah and more particularly described on Exhibits "A", "B", "C" and "D" attached hereto and incorporated herein by reference.

F. Declarant and the undersigned owners are the owners of not less than seventy-five percent (75%) of the Lots of Tuscan Villas, a Planned Unit Development and desires to make certain amendments to the Declaration as previously amended and supplemented.

DECLARATION

NOW, THEREFORE, the Declaration, the First Amendments, the First Supplementary Declaration and the Second Supplementary Declaration are hereby amended as follows, with such amendment to be

binding and effective upon all property described on Exhibits "A", "B", "C" and "D" and all Lots in all phases of Tuscan Villas, a Planned Development upon the recording of this Second Amendment to the Declaration.

**Section 1.9 shall be amended to read as follows:**

1.9 "Common Areas" shall mean all parts of each Lot which are from time to time devoted primarily to parking, approaches, exists, entrances, sidewalks, exterior landscaping incidental and interior roadways, service roads and other similar areas and the Definition Bases as hereafter described and as shown on the Phase 3 Plat.

**Section 1.10 shall be amended to read as follows:**

1.10 "Common Expense" shall mean the actual and estimated costs of:

(a) maintenance, management, operation, repair, and replacement of the Common Facilities, and all other areas within the Property and outside of the Property which are maintained by the Association, including, without limitation, the landscaped areas, the roadways, the sidewalks and the parking areas, as provided in this Declaration or pursuant to agreement with the City, or any other city, or other governmental agency or authority;

(b) unpaid Regular, Special, Reconstruction and Capital Improvement Assessments;

(c) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(d) the costs of utilities, trash pickup and disposal, gardening and other services benefitting the Owners and their Lots to the extent such services are paid for by the Association.

(e) the costs of fire, casualty, liability, workmen's compensation and other insurance covering the Common Facilities;

(f) the costs of any other insurance obtained by the Association;

(g) reasonable reserves as deemed appropriate by the Board;

(h) the costs of bonding the members of the Board, any professional managing agent or any other person handling the funds of the Association;

(i) taxes paid by the Association;

(j) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Facilities or portions thereof;

(k) Costs incurred by the Architectural Committee or other committees for the Association;

(l) The Tuscan Villas share of the Regular, Special, Reconstruction and Capital Improvement Assessments from the master association to which the Detention Basin, as more particularly described hereafter, is conveyed for the share of such assessments relative to the Detention Basin as are allocated to Tuscan Villas in accordance with the Declaration, Articles or By-laws of such Master Association.

(m) The Tuscan Villas share of the Regular, Special, Reconstruction and Capital Improvement Assessments from the master association to which the Clubhouse, including pool, are conveyed for the share of such assessments relative to the Clubhouse as are allocated to Tuscan Villas in accordance with the Declaration, Articles or By-laws of such Master Association, and

(n) the costs of any other item or items approved by the Board and incurred in connection with the Common Facilities, this Declaration, the Articles or the Bylaws, or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration.

**Section 1.11 shall be amended to read as follows:**

1.11 "Common Facilities" shall mean:

(a) all real property and the improvements and fixtures thereto and the personal property thereon owned by or leased to the Association from time to time for the common use and benefit of the Owners including, without limitation, streets, landscaped areas, parks, open spaces, paths, trails and slopes;

(b) all property rights, improvements, fixtures and personal property owned by or leased to the association from time to time for the common use and benefit of the Owners and situated upon public property or the private property of the Owners, including, without limitation, all easements running in favor of the Association and the improvements, fixtures and personal property situated within or upon said easements, landscaping, irrigation systems and associated pumps and hardware, sewer systems, street lighting systems, project identification, directional and street signs, and street furniture.

The Common Facilities shall be designated in each final subdivision plat recorded by Declarant with regard to the Property and except for (I) the Detention Basin described in the Second Supplementary Declaration, this Second Amendment and the Phase 3 Plat, and (in) the Clubhouse shall be conveyed by Declarant to the Association concurrently with the recording thereof. Declarant shall convey the Common Facilities to the Association free of all liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of the conveyance), title exceptions of record and the covenants, conditions, reservations, restrictions and easements contained in this Declaration.

**Section 8.1 (b) is amended to read as follows:**

(b) acquire, maintain and otherwise manage all of the Common Facilities and all facilities, improvements and landscaping thereof, and all personal property acquired by the Association, and maintain all other areas within and in the vicinity of the Property which the Association deems appropriate to maintain or is obligated to maintain, including, without limitation, the landscaped areas, the roadways, the sidewalks and the parking areas, as provided in this Declaration or pursuant to agreement with the City or other governmental agency or authority;

**Section 14 of the Declaration is hereby amended by adding thereto the following Sections 14.4 and 14.5:**

14.4 Grant of Easement to Milano Village, Florence Village, Torino Village and Italian Villages Owners Association: Declarant hereby grants to the Milano Village Condominiums, a Utah Condominium Project (hereafter "Milano Village"), the Florence Village Condominiums, a Utah Condominium Project (hereafter "Florence Village"), Torino Village Condominiums, a Utah Condominium Project (hereafter "Torino Village"), and to the owner of the Clubhouse Unit as described in the Declaration of Condominiums of Milano Village Condominiums, Florence Village Condominiums and Torino Village Condominiums (hereafter the "Clubhouse Unit" and which owner of the Clubhouse Unit is intended to be the Italian Villages Owners Association, Inc.) an easement for vehicular ingress and egress over, upon, and across the established entryway, streets, and driveways for access from 960 North/960 West to Milano Village, Florence Village, Torino Village and the Clubhouse Unit and over, upon and across the sidewalks or walkways of Tuscan Villas for pedestrian access fo Milano Village, Florence Village, Torino Village and the Clubhouse Unit. Declarant further

grants to Milan Village, Florence Village, Torino Village and the Clubhouse Unit an easement for the entryway to Milano Village, Florence Village, Torino Village and/or the Clubhouse Unit for the construction, reconstruction, repair, replacement and maintenance of the said entryway. Declarant and the Tuscan Villas Homeowners Association shall have the right to make adjustments to the locations of the streets, driveways, sidewalks, and walkways provided that the ingress and egress to Milano Village, Florence Village, Torino Village and the Clubhouse Unit are not substantially and materially impaired. Declarant hereby grants to Milano Village, Florence Village, Torino Village, the Clubhouse Unit, Sorrento Park, Marino Park, Palermo Park, and Venice Park an easement under or across the Common Areas of Tuscan Villas for such portions, if any, of the private sewer system servicing said projects which may traverse such Common Areas of Tuscan Villas, for the construction, reconstruction, upkeep, repair, replacement and maintenance of the private sewer system which services Tuscan Villas, Milano Village, Florence Village, Torino Village, Sorrento Park, Marino Park, Palermo Park, and Venice Park.

14.5 Maintenance of Improvements to Entryway Easement. Italian Villages Owners Association, Inc. or the owner of the Clubhouse Unit, or in the event it shall fail to do so, Milano Village, Florence Village and Torino Village shall be obligated to keep and maintain the entryway from 960 North/960 West to Milano Village, Florence Village, Torino Village and the Clubhouse Unit in good order, condition and repair. The costs of such repair and maintenance and of any replacement or reconstruction thereof shall be a common expense of the Italian Villages Owners Association which shall be allocated to the member associations or the members thereof, including the Tuscan Villas Homeowners Association.

**Section 16.4 (a) is amended to read as follows:**

(a) The lien provided of in ARTICLES 3 & 4 hereof for the payment of Assessments shall be subordinate to the lien of any Mortgage which is recorded prior to the date any such Assessment becomes due.

**Paragraph 2 of the Second Supplementary Declaration is amended to read as follows and shall be binding upon all Lots in all Phases of Tuscan Villas, a Planned Unit Development:**

2. Detention Basin. A storm water detention basin (the "Detention Basin") and a storm water easement in favor of the City of Orem for the construction, operation and maintenance of a storm water detention basin are more particularly described in the Phase 3 Plat. The Detention Basin shall not be altered without the written permission of the Orem City Engineer. It is anticipated that the Project, Milano Village Condominiums, a Utah Condominium Project, a condominium development being developed by Declarant or an affiliate of Declarant on property located immediately north and west of the Project ("Milano Village"), Florence Village Condominiums, a Utah Condominium Project, a condominium development being developed by Declarant or an affiliate of Declarant on property located immediately North and West of the Project, Torino Village Condominiums, a Utah Condominium Project, a condominium development being developed by Declarant or an affiliate of Declarant on property located immediately North and West of the Project, ("Torino Village"), Sorrento Village Condominiums, a condominium development being developed by Declarant or an affiliate of Declarant, on property located immediately West of the Project and adjacent to the Detention Basin ("Sorrento Park"), Marino Park Condominiums, a condominium development being developed by Declarant or an affiliate of Declarant, on property located immediately West of the Project and adjacent to the Detention Basin ("Marino Park"), Palermo Park Condominiums, a condominium development being developed by Declarant or an affiliate of Declarant, on property located immediately West of the Project and adjacent to the Detention Basin ("Palermo Park"), Venice Park Condominiums, a condominium development being developed by Declarant or an affiliate of Declarant, on property located immediately West of the Project and adjacent to the Detention

Basin ("Venice Park") and any development hereafter developed on land owned by Northgate Village Development, LC at the corner of 1200 West and 900 North Street and identified on the Phase 3 Plat (the "Northgate Development") shall have the right to convey their storm water into the Detention Basin. The Detention Basin is included in and made a part of the joint Common Areas of the Project, Milano Village, Florence Village, Torino Village, Sorrento Park, Marino Park, Palermo Park, and Venice Park provided that Declarant hereby reserves the right, without seeking the consent or agreement of the Owners, to convey the Detention Basin to Italian Villages Owners Association, Inc. or another master association of which such projects separate owners associations or the members of such separate owners associations are members that will be charged with the responsibility of maintaining and landscaping the Detention Basin in compliance with the requirements of this Section 2 for the use and benefit of the City of Orem, the Project, Milano Village, Florence Village, Torino Village, Sorrento Park, Marino Park, Palermo Park, Venice Park and the Northgate Development. The Association, the Master Association or the homeowners' associations for Milano Village, Florence Village, Torino Village, Sorrento Park, Marino Park, Palermo Park and Venice Park and the Northgate Development shall be responsible for maintaining the area of the Detention Basin in grass and in a neat and attractive manner in accordance with good landscaping practices. The Detention Basin shall be maintained in a manner that does not diminish the capacity, operation or effectiveness of the Detention Basin. The outlet structures adjacent to 900 North Street are to be maintained by the City of Orem.

**Paragraph 4 of the First Amendment, Paragraph 2 of the First Supplementary Declaration and Paragraph 3 of the Second Supplementary Declaration are amended to read as follows:**

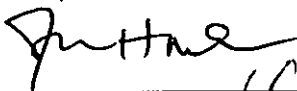
Capitalized Terms. Unless otherwise defined in this Agreement and except to the extent that the Declaration is amended by this Agreement or is hereafter amended, capitalized terms used in this Agreement shall have the meanings given to them in the Declaration.


Except as modified herein, the Declaration, as previously amended and supplemented shall remain in full force and effect and the parties ratify and confirm all of the terms and provisions of the Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 14 day of August, 2008.

DECLARANT:

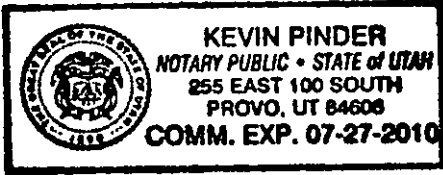
GUNSMOKE PROPERTIES, L.L.C.  
a Utah Corporation

By:   
Name: Scott W. Hansen  
Title: Member

By:   
Name: Kirk D. Williamson  
Title: Member

STATE OF UTAH )  
 ) ss.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 14 day of August, 2008, by SCOTT W. HANSEN, and KIRK D. WILLIAMSON, the Members of GUNSMOKE PROPERTIES, L.L.C., a Utah limited liability company who executed the same on behalf of the limited liability company.



[Signature]  
NOTARY PUBLIC

\_\_\_\_\_  
President and \_\_\_\_\_, Secretary of the Association of Owners of the Tuscan Villas, a Utah nonprofit corporation, hereby confirm that the above Second Amendment to the Master Declaration of Covenants, Conditions and Restrictions of the Tuscan Villas, a planned unit development, was approved by the unit development, was approved by the owners of Lots and Members of the Association in accordance with Section 18.6 of the Declaration.

Dated and signed this 14 day of August, 2008.

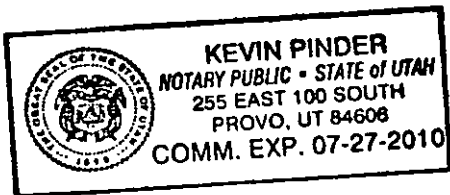
Association of Owners of the Tuscan Villas, a Utah nonprofit corporation

By: [Signature]  
\_\_\_\_\_  
, President

By: [Signature]  
\_\_\_\_\_  
, Secretary

STATE OF UTAH )  
 ) ss:  
COUNTY OF UTAH )

On this 14 day of August, 2008, personally appeared before me Scott Hansen, and Kirk D. Williamson whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that Scott Hansen is the President and Kirk D. Williamson is the Secretary of Association of Owners of the Tuscan Villas, a Utah nonprofit corporation and that said document was signed by them in behalf of said corporation by authority of its bylaws (or of a Resolution of its Board of Directors), and said Scott Hansen and Kirk D. Williamson acknowledged to me that said corporation executed the same.



[Signature]  
Notary Public

**EXHIBIT "A"****DESCRIPTION OF PROPERTY**

That certain real property located in Utah County, State of Utah and more particularly described as follows:

Commencing at a point located North 00°39'38" West along the Section line 578.38 feet and West 700.47 feet from the East quarter corner of Section 9, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence along the arc of a 20.00 foot radius curve to the left 31.28 feet (chord bears North 45°11'54" West 28.19 feet); thence West 518.46 feet; thence along the arc of a 20.00 foot radius curve to the left 31.42 feet (chord bears South 45°00'00" West 28.28 feet); thence West 44.00 feet; thence along the arc of a 20.00 foot radius curve to the left 31.42 feet (chord bears North 45°00'00" West 28.28 feet); thence North 44.00 feet; thence along the arc of a 20.00 foot radius curve to the left 31.42 feet (chord bears North 45°00'00" East 28.28 feet); thence North 29.36 feet; thence along the arc of a 666.41 foot radius curve to the right 160.89 feet (chord bears North 05°36'22" East 160.50 feet); thence along the arc of a 246.00 foot radius curve to the left 98.95 feet (chord bears North 01°05'31" East 98.29 feet); thence North 79°34'06" East 161.17 feet; thence South 05°56'37" East 103.32 feet; thence East 56.74 feet; thence North 64.63 feet; thence East 73.24 feet; thence North 35.94 feet; thence East 92.02 feet; thence North 13.82 feet; thence East 190.85 feet; thence South 00°23'49" East along the Westerly boundary line of 900 West Street 412.04 feet to the point of beginning.

# EXHIBIT "A"

ENT 95809:2008 PG 8 of 28

Tax Serial No. 53-371-

**Parcel #1:**

Units 1 through 50 inclusive, Phase 1 Amended, Tuscan Villas Planned Unit Development, including a vacation of Phase 1, Tuscan Villas Planned Unit Development, Orem, Utah, according to the official plat thereof on file in the office of the Recorder, Utah County, Utah.

**Parcel #2:**

TOGETHER WITH a right and easement of enjoyment in and to the Common Areas as set forth in Declaration of Covenants recorded August 10, 2006 as Entry No. 103104:2006 of official records, which may be amended or supplemented.



**EXHIBIT "B"**  
**DESCRIPTION OF EXPANSION PROPERTY**

That certain real property located in Utah County, State of Utah and more particularly described as follows:

Commencing at a point located North  $00^{\circ}39'38''$  West along the Section line 990.44 feet and West 698.58 feet from the East quarter corner of Section 9, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence along the Northerly boundary line of Phase 1, Tuscan Villas, Planned Unit Development as follows: West 190.85 feet, South 13.82 feet, West 92.02 feet, South 35.94 feet, West 73.24 feet, South 64.63 feet, West 56.74 feet, North  $05^{\circ}56'37''$  West 103.32 feet, South  $79^{\circ}34'06''$  West 117.17 feet; thence along the arc of a 290.00 foot radius curve to the left 408.74 feet (chord bears North  $50^{\circ}48'35''$  West 375.74 feet); thence South  $88^{\circ}48'45''$  West 55.30 feet; thence along the arc of a 590.00 foot radius curve to the left 217.12 feet (chord bears South  $78^{\circ}16'12''$  West 215.90 feet); thence South  $67^{\circ}43'39''$  West 179.31 feet; thence along the arc of a 605.37 foot radius curve to the right 63.24 feet (chord bears South  $69^{\circ}27'07''$  West 63.21 feet); thence North 598.17 feet; thence North  $89^{\circ}29'45''$  East 531.00 feet; thence South 367.99 feet; thence along the arc of a 390.85 foot radius curve to the right 431.36 feet (chord bears South  $53^{\circ}31'28''$  East 409.80 feet; thence North  $45^{\circ}00'00''$  East 431.10 feet; thence North  $88^{\circ}36'24''$  East 153.95 feet; thence South  $00^{\circ}23'49''$  East 369.23 feet to the point of beginning.

**EXHIBIT "C"**  
**DESCRIPTION OF THE PHASE 2 ANNEXED LAND**

That certain real property located in Utah County, State of Utah and more particularly described as follows:

Commencing at a point located North 00°39'38" West along the Section line 990.44 feet and West 647.86 feet from the East quarter corner of Section 9, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence West along the Northerly boundary line of Phase 1, Tuscan Villas Planned Unit Development 243.59 feet; thence North 261.34 feet; thence East 114.19 feet; thence South 11.95 feet; thence East 76.95 feet; thence North 00°23'49" West 131.50 feet; thence East 52.58 feet; thence South 00°32'47" East along the Easterly boundary line of 900 West Street 131.50 feet; thence South 00°06'36" West along the Easterly boundary line of 900 West Street 249.39 feet to the point of beginning.

## EXHIBIT "A"

ENT 95809:2008 PG 11 of 28

Tax Serial No. 53-371-

Parcel #1:

Unit 51 through 59 inclusive and 63 through 71 inclusive, Phase 2, Tuscan Villas Planned Unit Development, Orem, Utah, according to the official plat thereof on file in the office of the Recorder, Utah County, Utah.

Parcel #2:

TOGETHER WITH a right and easement of enjoyment in and to the Common Area as set forth in Declaration of Covenants recorded August 10, 2006 as Entry No. 103104:2006 of official records, which may be amended or supplemented.

**EXHIBIT "D"**  
**DESCRIPTION OF THE PHASE 3 ANNEXED LAND**

That certain real property located in Utah County, State of Utah and more particularly described as follows:

Commencing at a point located North 00°39'38" West along the Section line 1239.84 feet and West 697.43 feet from the East quarter corner of Section 9, Township 6 South, Range 2 East, Salt Lake Base and Meridian' thence along the Northerly boundary line of Phase 2, Tuscan Villas, Planned Residential Development as follows: West 76.95 feet, North 11.95 feet, West 114.19 feet; thence South along the Westerly boundary line of Phase 2, Tuscan Villas, Planned Residential Development 261.33 feet; thence along the Northerly boundary line of Phase 1, Tuscan Villas, Planned Residential Development as follows: East 2.02 feet, South 13.82 feet, West 92.02 feet, South 35.94 feet, West 73.24 feet, South 64.63 feet, West 56.74 feet, North 05°56'37" West 103.32 feet, South 79°34'06" West 161.17 feet; thence along the arc of a 246.00 foot radius curve to the left 182.14 feet(chord bears North 31°38'32" West 178.00 feet); thence North 52°51'09" West 1.77 feet; thence along the arc of a 278.00 foot radius curve to the left 186.00 feet (chord bears North 72°01'12" West 182.55 feet); thence South 88°48'45" West 25.97 feet; thence along the arc of a 478.00 foot radius curve to the left 175.91 feet (chord bears South 78°16'12" West 174.91 feet); thence South 67°43'39" West 228.05 feet; thence along the arc of a 649.00 foot radius curve to the right 240.28 feet (chord bears South 78°20'01" West 238.91 feet); thence South 88°56'24" West 4.42 feet; thence South 00°31'26" East 4.56 feet; thence South 88°48'34" West 399.09 feet; thence along the arc of a 20.00 foot radius curve to the left 31.21 feet (chord bears South 44°06'41" West 28.13 feet); thence North 00°35'11" West 94.52 feet; thence along the arc of a 25.00 foot radius curve to the left 39.48 feet (chord bears South 45°49'23 East 35.50 feet); thence North 88°56'24" East 397.72 feet; thence along the arc of a 605.00 foot radius curve to the left 223.99 feet (chord bears North 78°20'01" East 222.71 feet); thence North 67°43'39" East 228.05 feet; thence along the arc of a 522.00 foot radius curve to the right 8.39 feet (chord bears North 68°11'17" East 8.39 feet); thence East 151.01 feet; thence East 28.70 feet; thence along the arc of a 15.00 foot radius curve to the left 23.92 feet (chord bears North 44°29'20" East 21.46 feet); thence East 168.13 feet; thence along the arc of a 452.00 foot radius curve to the right 493.26 feet (chord bears South 58°44'13" East 469.15 feet); thence North 44°40'41" East 88.20 feet; thence North 45°00'00" West 18.00 feet; thence North 45°00'00" East 44.49 feet; thence South 45°00'00" East 18.00 feet; thence North 45°00'00" East 265.82 feet; thence East 159.62 feet; thence South 00°23'49" East 131.50 feet to the point of beginning.

EXHIBIT "A"

ENT 95809:2008 PG 13 of 28

Tax Serial No. 53-390-

Parcel #1:

Units 60, 61, 62 and 72 through 114 inclusive, Phase 3, <sup>Amended</sup> Tuscan Villas Planned Unit Development, Orem, Utah, according to the official plat thereof on file in the office of the Recorder, Utah County, Utah.

Parcel #2:

TOGETHER WITH a right and easement of enjoyment in and to the Common Area as set forth in Declaration of Covenants recorded August 10, 2006 as Entry No. 103104:2006 of official records, which may be amended or supplemented.

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**BY-LAWS**  
**OF**  
**TUSCAN VILLAS HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I OFFICES**

1.01 Registered Office. The initial registered office of the corporation shall be located at such place as is set forth in the Articles of Incorporation of the corporation. The registered office of the corporation may be changed from time to time by resolution of the Board of Directors and pursuant to the provisions of the Utah Revised Nonprofit Corporation Act (the "Act").

1.02 Other Offices. The principal place of business of the corporation shall be located at 1210 East 930 North, Provo, Utah 84604. The corporation may have such other offices within the State of Utah as the Board of Directors may designate or as the business of the corporation may require.

**ARTICLE II MEMBERSHIP**

2.01 Classes of Members. The corporation shall have one class of members. Members shall consist of persons or entities owning one (1) or more of the Units (hereinafter designated the "Units") contained within Tuscan Villas, a Planned Unit Development, Orem, Utah County, State of Utah, (hereinafter designated the "Project"). There shall be one membership in the corporation appurtenant to each of the Units. No member who has conveyed or otherwise disposed of his ownership interest in a Unit shall thereafter be entitled to hold or retain the membership in the corporation which is appurtenant to said Unit. The conveyance or other disposition by a person entitled to membership in the corporation of all of such person's ownership interest in a Unit shall be deemed to constitute, and may be treated by the corporation as a transfer and conveyance by such person to such person's successor in interest in ownership of said Unit of the membership appurtenant to said Unit, and the corporation shall be entitled to cancel any membership certificate with relation to such membership, whether or not said certificate is surrendered, and reissue the same to the new owner or owners upon such terms and conditions as the Board of Directors shall direct.

2.02 Suspension and Termination of Membership. After reasonable notice and an appropriate hearing, the Board of Directors by the affirmative vote of two-thirds of all of the Directors may suspend the rights of or expel a member or terminate a membership for cause. By a majority vote of those present at any regularly constituted Board of Directors meeting, the Board of Directors may suspend or expel any member or terminate the membership of a member who shall be in default in the payment of assessments as hereinafter provided.

2.03 Resignation. Any member may resign by filing a written resignation with the secretary.

2.04 Effect of Suspension, Expulsion, Termination, or Resignation on the Membership. In the event of the suspension, expulsion, termination or resignation of a Member, such Member shall no longer have the right to attend meetings of Members, to vote on any matter brought before the Members or, subject to any easements or rights granted in the Declaration of Covenants, Conditions and Restrictions of Tuscan Villas, a Planned Unit Development, Orem, Utah County, Utah, (hereinafter the "Declaration") which are independent of Membership, to have any of the



rights of Membership in the corporation. However, except for the termination of a membership by the sale, conveyance, or other transfer of the Unit appurtenant to such membership, no suspension of the rights of a member, nor the expulsion or resignation of a member, nor the termination of a membership shall relieve the member of any of the duties or obligations imposed by the Declaration, including but not limited to the obligation to pay assessments thereunder or to comply with the terms thereof.

2.05 Reinstatement. Upon written request signed by a former member and filed with the secretary, the Board of Directors may, by the affirmative vote of a majority of the members of the Board, reinstate a former member to membership upon such terms as the Board of Directors may deem appropriate.

2.06 Voting Rights. Each member shall be entitled to one (1) vote per Unit owned by such Member on each matter submitted to the vote of the members. In the event there is more than one person or entity holding an interest in any particular Unit, the vote relating to such Membership shall be exercised as such Members may determine between or among themselves, but in no event shall more than the one (1) vote appurtenant to such membership be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any such members, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the membership concerned unless an objection is made at the meeting or in writing by another Owner of the same membership, in which event no vote will be counted with respect to such membership except to determine the presence or absence of a quorum.

2.07 Compliance with Rules and Regulations. Each member shall comply with all reasonable rules and regulations adopted by the Board of Directors for the use, enjoyment, care, maintenance and operation of the Common Areas as defined in the Declaration.

2.08 Cause for Termination. The substantial repeated violations of the Articles of Incorporation, By-Laws and/or Rules and Regulations of the corporation or the Declaration shall constitute cause for the suspension or expulsion of the member or termination of the membership.

2.09 Assessments.

2.09.01 Annual Assessments. Subject to any restrictions set forth in and in accordance with any procedures set forth in the Declaration, the Board of Directors shall determine the amount of the annual and special assessments of the members in accordance with the provisions of the Declaration.

2.09.02 Default. If any member shall fail to make payment of any installment of an annual or special assessment within fifteen (15) days of the due date, such installment shall bear interest from the due date at the rate of eighteen percent (18%) per annum until paid. In addition, such late payment shall be subject to a late charge equal to five percent of the late payment. If any member shall be in default in the payment of assessments for over thirty (30) days after the recording and mailing of a notice of lien as provided in the Declaration, the corporation may (a) bring an action at law against the member personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or (b) may foreclose the lien against the Unit(s) of the member in accordance with the laws of the State of Utah applicable to the foreclosure of mortgages or trust deeds, or in any other manner permitted by law, and/or (c) may restrict, limit, or totally terminate any or all services performed by the corporation in behalf of the delinquent member. There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee, together with an amount equal to the reasonable rental for the Unit from the time of commencement of the foreclosure. The

corporation shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

### ARTICLE III MEMBERS' MEETINGS

3.01 Annual Meeting. The annual meeting of the members shall be held on the first Tuesday of June of each year, commencing in the year 2009, at the hour of 5:00 o'clock p.m. If the day fixed for the annual meeting shall be a legal holiday, the meeting shall be held on the next succeeding business day. If the election of Directors is not held on the day designated herein for an annual meeting, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the members as soon thereafter as conveniently may be.

3.02 Special Meetings. Special meetings of the members may be called by the Board of Directors, the President, or by written demand stating the purpose of the meeting, signed by no less than ten percent (10%) of the members entitled to cast votes on the issue.

3.03 Place of Meeting. The Board of Directors may designate any place, either within or without the State of Utah, as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors. A waiver of notice signed by all members may designate any place, either within or without the State of Utah, as the place for the holding of such meeting. If no designation is made, or if a special meeting is otherwise called, the place of meeting shall be at the principal office of the corporation in the State of Utah.

3.04 Notice of Meeting. Unless notice of a meeting of members is waived, written or printed notice stating the place, day and hour of the meeting, and in the case of a special meeting shall be delivered as follows:

(a) if notice is mailed by first class or registered mail, not less than ten (10) days before the date of the meeting, nor more than sixty (60) days before the meeting date; or

(b) if notice is mailed by other than first-class or registered mail, no fewer than thirty (30) days, nor more than sixty (60) days before the meeting date; or

(c) if notice is given by newspaper as provided in Section 16-6a-103(2) of the Act, by publication three separate times with the first of the publications no more than sixty (60) days before the meeting and the last of the publications no fewer than ten (10) days before the meeting date.

If mailed, such notice shall be deemed to be delivered, the earliest of: (i) when received, (ii) five (5) days after deposited in the United States mail, or (iii) when signed for in the case of registered or certified mail or other mail which is signed for by the Member. All mail must be addressed to the member at his or her address as it appears on the records of the corporation, with postage thereon prepaid. If three successive notices given to a member pursuant to this paragraph have been returned as undeliverable, further notices to that member are not necessary until another address of the member is made known to the nonprofit corporation.

The notice of an annual or regular meeting of the members may include a description of any matter that must be approved by the members or for which the members approval is sought under Sections 16-6a-825, 16-6a-910, 16-6a-1003, 16-6a-1010, 16-6a-1102, 16-6a-1202, 16-6a-1402. The notice of any special meeting of members shall include a description of the purpose or purposes for which the meeting is called.

If an annual or special meeting is adjourned to a different date, time, or place and if the new date, time or place is announced prior to the adjournment, no additional notice need be given of the new date, time or place.

3.05 Waiver of Notice. Any member may waive notice of any meeting or any other notice required by the Act, the Articles of Incorporation or these By-laws either before or after the date and time of the meeting or action for which notice is required. Such waiver shall be in writing, and signed by the member entitled to notice and delivered to the corporation for inclusion in the corporate minutes or other corporate records. A member's attendance at a meeting shall constitute a waiver of objection to lack of or a defective notice of the meeting unless the member at the beginning of the meeting objects to holding the meeting or transacting business thereat because of such lack of or defective notice and also constitutes a waiver of objection to the consideration of a particular matter at a meeting that is not within the purposes set forth in the notice of such meeting unless the member objects to considering the matter when it is presented.

3.06 Fixing the Record Date. For the purpose of determining members entitled to be given notice of a members' meeting, to determine members entitled to take action without a meeting, to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other purpose or action, the Board of Directors of the corporation may fix a record date, provided that any such record date may not be more than seventy (70) days, prior to the meeting or action requiring a determination of members. A determination of members entitled to notice of or to vote at a members' meeting is valid for any adjournment of the meeting unless the Board of Directors shall fix a new record date. The Board of Directors must fix a new record date if the meeting is adjourned to a date which is more than one hundred twenty (120) days after the date fixed for the original meeting. If the Board of Directors of the corporation does not fix a record date for determining members entitled to notice of and to vote at any members' meeting the record date shall be the close of business on the day before the first notice is delivered to the members or if notice is waived, at the close of business on the day before the meeting is to be held.

3.07 Member's List for Meeting. After the record date is fixed for a meeting of members, the Corporation shall prepare a list of all members entitled to be given notice of and the right to vote at the meeting, or any adjournment thereof. The list shall be arranged by voting group, in alphabetical order within each group, and shall include the address of each member and the number of votes held by each member. The member list shall be available for inspection by any member from the earlier of ten (10) days before the meeting or two (2) business days after the notice of the meeting is given, and shall be available for inspection throughout, and at the adjournment of, the members meeting for which it was prepared. The list must also be available at the corporation's principal office, or in a location identified in the notice of the meeting, available for inspection in the same city as the meeting. Any refusal or failure to prepare or make available the members' list shall not affect the validity of any action taken at the meeting for which it was or should have been prepared. Members, or agents, entitled to vote at the meeting, may, upon written demand, inspect or copy the list, subject to sections 16-6a-1602(3) and 16-6a-1603(2) and (3) of the Act.

3.08 Quorum. The presence, in person or by proxy, of the members who are entitled to cast a majority of the votes of the Association shall constitute a quorum; provided, however, if a quorum for such a meeting is not present and if another meeting is called, on at least fifteen (15) days advance written notice and is held within sixty (60) days of the first meeting, then the required quorum at such subsequent meeting shall be one-half the required quorum at the preceding meeting. If less than the required quorum of the members are represented at a meeting, the chairman of the meeting or a majority of the members so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be

present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The members at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

3.09 Voting. If a quorum is present, the affirmative vote of a majority of the votes, present at the meeting or represented by proxy shall be the act of the members, unless the vote of a greater number is required by the Act, the Articles of Incorporation, these By-Laws or the Declaration in which case it shall require the affirmative vote of such greater number. If two or more voting groups vote on a matter, no action may be taken until all groups have voted and been counted separately. Members do not have the right to cumulate their votes for directors.

3.10 Proxies. At all meetings of members, a member may vote by proxy, if executed in writing by the member or by his duly authorized attorney-in-fact. Such proxy shall be effective when received by the corporation. No proxy shall be valid after eleven (11) months from the date of its execution, unless so provided in the proxy. A proxy must be revoked upon notice to the corporation of the death or incapacity of a member giving authority for the proxy. Proxy may be revoked by a member attending and voting at a meeting, or by signed writing, delivered to an officer of the corporation.

3.11 Informal Action By Members. Except for the election of Directors, any action which may take place at an annual, regular or special members' meeting, may be taken without a meeting or prior notice if one or more consents, in writing, setting forth the action so taken and signed by members having not less than the minimum number of votes that would be necessary to authorize or take action at a meeting at which all members entitled to vote thereon were present and voted. Directors may be elected without a meeting and without prior notice by unanimous written consent by all members entitled to vote for the election of Directors. Action taken under this section shall have the same effect as if taken at a members' meeting and may be so described in any document.

All written consents for action must be received by the Corporation within sixty (60) days of the date of the first consent. Action taken by the members pursuant to this Section are effective as of the date of the last written consent necessary to effect the action is received by the corporation. Consents may be received by the Corporation by means of electronically transmitted facsimile or other technical means that include a complete copy of the consent signed by the member. Written consent to an action may be revoked by a written revocation if such revocation is received by the Corporation prior to the effectiveness of the action.

Notice of any member action approved without a meeting shall be given at least ten (10) days prior to the consummation of the approved action to all members entitled to vote thereon who have not consented to the action. Such notice shall contain the same material which would have been required in a notice of meeting to submit the proposed action to the members.

3.12 Supervision of Meetings. The chairman of the board or, in his absence, the president, shall preside at all meetings of the members. The secretary shall keep or cause to be kept, in books provided for that purpose, the minutes of the meetings of the members.

3.13 Meeting by Telecommunication. Any and all members may participate in an annual or special meeting of the members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting can hear each other at the meeting. Any member participating in a meeting by this means is considered to be present in person at the meeting.

3.14 Action by Written Ballot. Members, or their agents, entitled to vote on a particular matter at a meeting, may do so in person, or by written ballot. Such a meeting may take place where interested members vote by written ballot only. A written ballot shall set forth each action proposed, and allow the member to vote for or against each action individually. Members must be given a fair and reasonable time to return their ballots. Members must be given fifteen (15) days from the date of mailing by first-class or registered mail; thirty (30) days if mailed some other way; or in consideration of all other circumstances, an amount of time otherwise reasonable. After the required time has passed, approvals for an action must equal or exceed the number of votes required for approval in a normal meeting with a quorum of members. A written ballot may not be revoked by a member.

## ARTICLE IV DIRECTORS

4.01 General Powers. All corporate powers of the corporation shall be exercised by or under the authority of and all business and affairs of the corporation shall be managed under the direction of the Board of Directors.

4.02 Number, Tenure, and Qualifications. The number of Directors which shall constitute the Board of Directors shall be three (3). The Directors shall be elected by the members. The Directors initially elected by the Members shall serve for the following terms: one Director for a one (1) year term; one Director for a two (2) year term; and one Director for a three (3) year term. The terms for successor Directors shall be three (3) years. Each Director shall hold office until his or her successor shall have been elected and qualified. Directors shall be Unit Owners, spouses of Unit Owners, or an officer, director, agent or employee of a Unit Owner who is not an individual. Directors need not be residents of the State of Utah. The number of Directors may be changed from time to time by amendment to the By-Laws by a majority vote of the members or the Board of Directors. No reduction of the authorized number of Directors shall have the effect of removing any Director prior to the expiration of his or her term of office.

4.03 Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this by-law, immediately after, and at the same place as, the annual meeting of members. The Board of Directors may provide, by resolution, the time and place for the holding of additional regular meetings without other notice than such resolution. Meetings may be conducted by any means of communication by which all Directors participating in the meeting can hear each other during the meeting. A Director participating in a meeting by such means is considered to be present in person at the meeting.

4.04 Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the president or the chairman. The person or persons authorized to call a special meeting of the Board of Directors may fix any place, within the State of Utah, as the place for holding any special meeting of the Board of Directors called by them.

4.05 Notice of Meetings. Notice of any special meeting shall be given at least two (2) days notice before the meeting by written notice delivered personally, or mailed to each Director at his or her address. Notice by mail shall be deemed to be delivered three (3) days after it is deposited in the United States mail, addressed to the Director with postage on the letter prepaid. Any Director may waive notice of any meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of the meeting.

4.06 Waiver of Notice. Any Director may waive notice of any meeting, either before or after the date and time of the meeting. Such waiver shall be in writing, signed by the Director and delivered to the corporation for inclusion in the corporate minutes or other corporate records.

The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director, at the beginning or upon the Director's later arrival, objects to holding the meeting or the transaction of any business because of lack of notice or defective notice, and after objecting, the Director does not vote for or assent to action taken at the meeting.

4.07 Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, provided that, if less than a majority of such number of Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

4.08 Manner of Action. At all meetings of the Board of Directors, each Director shall have one vote on each issue to be decided. The act of the majority of Directors shall be the act of the Board of Directors, unless the vote of a greater number is required by the Declaration, the Act, the Articles of Incorporation or these By-Laws. Action taken under this section shall have the same effect as if taken at a members' meeting and may be so described in any document.

4.09 Informal Action by Board of Directors. Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if all of the Directors in writing either vote for the action, or vote against the action, or abstain from voting and waive the right to demand that action not be taken without a meeting. Action is taken under this section only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take the action at a meeting at which all of the directors then in office were present and voted. Action taken under this section is not effective unless the corporation receives written notice signed by all the Directors describing the action and satisfying the preceding provisions. Votes or consents may be received by the corporation by means of electronically transmitted facsimile or other technical means that include a complete copy of the vote or consent signed by the Director. Action by the Board of Directors is effective when the last Director signs the consent describing the action taken unless writings describing the action establish a different effective date. Any Director may revoke his consent if the revocation is in writing and is received by the Secretary or any other officers authorized by the Board of Directors to receive the revocation, prior to the date the last writing necessary to effect the action is received by the corporation. Action taken under this section shall have the same effect as if taken at a meeting of directors and may be described as such in any document.

4.10 Presumption of Assent. A Director of the Corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be considered to have assented to the action taken unless: (a) The Director objects at the beginning of the meeting or promptly upon arrival to holding the meeting or transacting business at the meeting and does not vote for or assent to any action taken at the meeting; (b) the Director contemporaneously requests his or her dissent or abstention to any specific action to be entered into the minutes of the meeting, or (c) the Director causes written notice of a dissent or abstention to any specific action to be received by the presiding officer of the meeting before adjournment or by the Corporation promptly after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of any such action. Absence of a member of the Board of Directors from any meeting of the Board shall in no way give rise to any presumption of assent.

4.11 Vacancies. Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining Directors though the remaining Directors constitute less than a quorum of the number of the Board of Directors specified hereunder. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any Directorship to be filled by reason of an increase in the number of Directors shall be filled by election at an annual meeting or at a special meeting of the members called for that purpose.

4.12 Removals. During the time that Declarant has the right to appoint Directors, the Declarant may remove Directors, with or without cause, at any time. Thereafter Directors may be removed with or without cause at any time by a vote of the members holding a majority of the votes required to elect a Director. Such vacancy shall be filled by the remaining Directors then in office, though less than a quorum, to hold office until the next annual meeting or until his or her successor is duly elected and qualified, except that any Directorship may be filled by election by the members at the meeting at which the Director is removed.

4.13 Resignation. A Director may resign at any time by delivering written notification thereof to the President or Secretary of the corporation. Resignation shall become effective on the date designated in the notice of resignation or in the event no designation is made in the notice, it shall be effective upon its acceptance by the Board of Directors; provided, however, that if the Board of Directors has not acted thereon within nine (9) days from the date of its delivery, the resignation shall upon the tenth (10th) day be deemed acceptable.

4.14 Compensation. The Directors shall receive such compensation for the services that he or she may render to the corporation as a Director as the members shall determine. In addition, a Director may be reimbursed for expenses incurred in performance of his or her duties as a Director to the extent such expenses are approved by the Board of Directors. No such payment shall preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

## ARTICLE V OFFICERS

5.01 Officers. The officers of the corporation shall be a president, one or more vice presidents (the number thereof to be determined by the Board of Directors), a treasurer, and a secretary, and such assistant treasurers, assistant secretaries, or other officers as may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person. Officers shall be a natural person age 18 or older.

5.02 Election and Term of Office. The officers of the corporation shall be elected annually by the Board of Directors at the meeting of the Board of Directors held after each annual meeting of members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Vacancies may be filled or new offices filled at any meeting of the Board of Directors. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided. Election or appointment of an officer or agent shall not of itself create contract rights.

5.03 Removal. Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

5.04 Vacancies. A vacancy in any office because of death, resignation, removal, disqualifications, or otherwise may be filled by the Board of Directors.

5.05 President. The president shall be the chief executive officer of the corporation and shall in general supervise and control all of the business and affairs of the corporation. He or she shall preside at all meetings of the corporation and the Board of Directors. He may sign, with the secretary or any other proper officer of the corporation thereunto authorized by the Board of Directors, membership certificates of the corporation which the Board of Directors has authorized to be issued, any titles, mortgages, bonds, contracts, or other instruments which the Board of

Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed; and in general shall have such powers and perform such duties generally vested in similar corporations as may be prescribed or assigned by the Board of Directors from time to time.

5.06 Vice Presidents. In the absence of the president or in the event of his or her inability or refusal to act, the vice president (or in the event there may be more than one vice president, the vice presidents in the order designated, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of, and be subject to all the restrictions upon the president. Any vice president shall perform such other duties as from time to time may be assigned to him by the president or by the Board of Directors or the chairman of the Board of Directors.

5.07 Treasurer. The treasurer shall:

(a) Have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article VI of these By-Laws.

(b) In general perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him or her by the president or by the Board of Directors.

5.08 Secretary. The secretary shall:

(a) Keep the minutes of the members' and the Board of Directors' meetings in one or more books provided for that purpose;

(b) See that all notices are duly given in accordance with the provisions of the Declaration, these By-Laws or as required by law;

(c) Be custodian of the corporate records and of the seal of the corporation and see that the seal of the corporation is affixed to all documents, the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provisions of these By-Laws, and the seal may be attested by his or her signature;

(d) Keep a register of the post office address of each member which shall be furnished to the secretary by such member;

(e) In general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the chairman of the Board of Directors or the Board of Directors.

5.09 Compensation. The officers shall receive such compensation for any services that he or she may render to the corporation as an officer, as the Board of Directors shall determine. In addition, an officer may be reimbursed for expenses incurred in performance of his or her duties as an officer to the extent such expenses are approved by the Board of Directors and may also be compensated for services rendered to the corporation other than in his or her capacity as an officer.



## ARTICLE VI CONTRACTS, LOANS, CHECKS, AND DEPOSITS

6.01 Contracts. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

6.02 Loans. No loans shall be contracted on behalf of the corporation and no evidence on indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

6.03 Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes, or other evidence of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents, of the corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

6.04 Deposits. All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the Board of Directors may select.

## ARTICLE VII CERTIFICATES OF MEMBERSHIP

7.01 Certificates of Membership. The Board of Directors may provide for the issuance of certificates evidencing membership in the corporation which shall be in such form as may be determined by the Board. Such certificates shall bear a legend substantially in the following form: "The transfer of this Certificate is subject to restrictions contained within the Declaration of Easements, Covenants, Conditions and Restrictions of Tuscan Villas, an Expandable Condominium Project, Provo, Utah County, Utah, and the By-Laws of the Corporation. Any transfer in violation of such restrictions is void and ineffectual." Such certificates shall be signed by the president or a vice president and by the secretary or an assistant secretary and shall bear the corporation's seal which may be in facsimile. The name and address of each member shall be entered on the records of the Board of Directors. If any certificate shall become lost, mutilated, or destroyed, a new certificate may be issued therefor upon such terms and conditions as the Board of Directors may determine.

## ARTICLE VIII BOOKS AND RECORDS

8.01 Books and Records.

8.01.01 The corporation shall keep as permanent records the following:

- (a) its articles of incorporation;
- (b) its bylaws;
- (c) minutes of all meeting of its members and board of directors;
- (d) a record of all actions taken by the members or board of directors without a meeting;
- (e) a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation; and

(f) a record of all waivers of notices of meetings of members and of the Board of Directors or any committee of the Board of Directors.

(g) appropriate accounting records;

(h) a record of its members in a form that permits preparation of a list of the name and address of all members in alphabetical order, by class; and showing the number of votes each member is entitled to vote.

8.01.02 The corporation shall keep a copy of each of the following records at its principal office:

(a) its articles of incorporation;

(b) its bylaws;

(c) resolutions adopted by its Board of Directors relating to the characterizations, qualifications, rights, limitations, and obligations of members or any class or category of members;

(d) the minutes of all members' meeting for a period of three years;

(e) records of all action taken by members without a meeting, for a period of three years;

(f) all written communications to members generally as members for a period of three years;

(g) a list of the names and business or home addresses of its current directors and officers;

(h) a copy of its most recent annual report delivered to the division under Section 16-6a-1607; and

(i) all financial statements prepared for periods ending during the last three years that a member could have requested under Section 16-6a-1606.

#### 8.02 Inspection of Records by Directors and Members.

A director or member is entitled to inspect and copy any of the records of the corporation described in Section 8.01.02 during regular business hours at the nonprofit corporation's principal office, provided the director or member gives the corporation written demand, at least five business days before the date on which the member wishes to inspect and copy the records. A director or member is also entitled to inspect and copy any of the other records of the nonprofit corporation, during regular business hours, at a reasonable location specified by the nonprofit corporation; provided that (1) at least five business days before the date on which the director or member wishes to inspect and copy the records, the director or member gives the corporation written demand, (2) the demand of the director or member is made in good faith and for a proper purposes; (3) the director or member describes with reasonable particularity the purpose and the records the director or member desires to inspect; and (4) the records requested to be inspected and copied are directly connected with the described purposes.

## ARTICLE IX WAIVER OF NOTICE

9.01 Waiver of Notice. Whenever any notice is required to be given to any member or Director of the corporation under the provisions of these By-Laws or under the provisions of the Declaration, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

## ARTICLE X AMENDMENTS

10.01 Amendments. Until seventy-five percent (75%) of the Units have been sold or the expiration of five (5) years after the first conveyance of a Unit (other than to Declarant), whichever occurs first, Declarant shall have the right to amend these By-laws. Thereafter, except as otherwise provided by law, by the Declaration, or by these By-laws, these By-laws may be amended, altered, or repealed and new by-laws may be made and adopted by the members upon the affirmative vote of a majority of the members.

## ARTICLE XI INDEMNIFICATION

11.01 Indemnification. The corporation may indemnify an individual made a party to a proceeding because the individual is or was an officer or a director, against liability incurred in the proceeding if: (a) the individual's conduct was in good faith; (b) the individual reasonably believed that the individual's conduct was in, or not opposed to, the corporation's best interests; and (c) in the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

The corporation may not indemnify an officer or director under this section: (a) in connection with a proceeding by or in the right of the corporation in which the officer or director was adjudged liable to the corporation; or (b) in connection with any other proceeding charging that the officer or director derived an improper personal benefit, whether or not involving action in the officer's or director's official capacity, in which proceeding the officer or director was adjudged liable on the basis that the officer or director was adjudged liable on the basis that the officer or director derived an improper personal benefit.

The corporation shall indemnify an officer or director who was successful, on the merits or otherwise, in the defense of: (a) Any proceeding to which the officer or director was a party because the officer or director is or was a director of the corporation; or (b) any claim, issue, or matter in the proceeding, to which the director was a party because the officer or director is or was an officer or director of the corporation against reasonable expenses incurred by the officer or director in connection with the proceeding or claim with respect to which the officer or director has been successful.

The corporation may pay for or reimburse the reasonable expenses incurred by an officer or director who is a party to a proceeding in advance of final disposition of the proceeding if: (a) the officer or director furnishes the corporation a written affirmation of the officer's or director's good faith belief that the officer or director has met the applicable standard of conduct described in U.C.A. § 16-6a-902; (b) the officer or director furnishes the corporation a written undertaking, executed personally or on the officer's or director's behalf, to repay the advance, if it is ultimately determined that the officer or director did not meet the standard of conduct; and (c) a determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

The corporation, its Directors, officers, employees and agents shall be fully protected in taking any action or making any payment, or in refusing so to do in reliance upon the advice of counsel.

11.02 Other Indemnification. The indemnification herein provided shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any By-Law, agreement, vote of members or disinterested Director, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer or employee, and shall inure to the benefit of the heirs, executors and administrators of such person.

11.03 Insurance. The corporation may purchase and maintain insurance on behalf of any person who is or was a Director, officer or employee of the corporation, or is or was serving at the request of the corporation as a Director, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against liability under the provisions of this section or of the laws of the State of Utah or the United States of America.

11.04 Settlement by Corporation. The right of any person to be indemnified shall be subject always to the right of the corporation by its Board of Directors, in lieu of such indemnity, to settle any such claim, action, suit or proceeding at the expense of the corporation by the payment of the amount of such settlement and the costs and expenses in connection therewith.

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Secretary