

COVENANT REGARDING DEVELOPMENT AND USE OF REAL PROPERTY

This Covenant Regarding Development and Use of Real Property (“**this Declaration**”) is a declaration of covenants, conditions and restrictions made by undersigned “**Declarant**”, whose true and full name is:

Declarant’s name and place of incorporation, if applicable

Recitals

A. Declarant owns and is in sole possession and control of the real property located in the City of Tucson, Pima County, Arizona described in Exhibit A, all of which is collectively referred to in this Declaration as the “**Subject Property**”.

B. This Declaration is made to facilitate the submission and approval of a development plan or site plan for the Subject Property (the “**Development/Site Plan**”). The Development/Site Plan is identified in City of Tucson Development Services Center records as Case No. _____.

C. Although the buildings shown on the Development/Site Plan will be constructed on only a portion of the Subject Property, the City of Tucson requires the subject Property is interrelated for purposes of certain Tucson City Code regulations, as they may be amended from time to time, and particularly (but not by way of limitation) the Unified Development Code, the various technical and building codes and regulations adopted by City Code Chapter 7, the Fire Code and related regulations adopted by City Code Chapter 13, the development compliance review regulations adopted by the Unified Development Code Chapter 23B, and the Floodplain and Erosion Hazard Management ordinance and regulations adopted by City Code Chapter 25. All of these Tucson regulations affecting the development of property are collectively referred to in this Declaration as the “**Development Regulations**”.

D. Declarant makes this Declaration for the purpose of securing the City of Tucson’s consent to use the Subject Property as a single unified building site for all purposes under the Development Regulations.

Covenants, Conditions and Restrictions

NOW, THEREFORE, based on the foregoing recitals, which are incorporated here by reference, Declarants hereby establish the following covenants, conditions and restrictions for the Subject Property:

Article 1. Use and Development of the Subject Property.

1.1 *Declaration.* Declarants hereby declare that the Subject Property shall be held, sold and conveyed subject to the covenants, conditions and restrictions set forth in this Declaration, which are for the purpose of receiving City of Tucson approval of the Development/Site Plan, and which shall run with the Subject Property and be binding upon and shall inure to the benefit of Declarant and all parties having any right, title or interest in the Subject Property or any part thereof, their heirs, personal representatives, successors and assigns, and shall also inure to the benefit of the City of Tucson.

1.2 *Modification of Development.* Any and all development, redevelopment, modification, use, or sale of the Subject Property or any portion of it shall satisfy one of the following conditions:

1.2.1 It shall conform to the Development/Site Plan as approved by the City of Tucson.

1.2.2 It shall conform to the then-existing Development Regulations and shall not cause or increase a nonconformance to such regulations elsewhere on the Subject Property.

1.2.3 It shall conform to an approved modified development plan submitted by or with the written consent of all then-owners of all portions of the Subject Property affected by the modified development plan.

Article 2. Unified Treatment of the Subject Property

2.1 *Effect on Development Regulations.* Declarant understands and acknowledges that the literal application of the requirements of the Development Regulations would not allow a building to straddle property lines without meeting various requirements, including, among other things, the following:

2.1.1 The construction of fire separation walls without openings along all property lines.

2.1.2 Separate consideration of construction type, allowable heights, allowable area, fire sprinkler systems, standpipes, fire alarms, smoke control systems, emergency systems, and exit systems for each separate lot or parcel.

2.1.3 The provision of free and unobstructed egress from all portions of

all buildings to a public way without crossing boundary lines of adjoining property.

2.1.4 The establishment of required building setbacks from each lot or parcel line.

2.1.5 The provision of separate electric, water, sewer, automatic fire sprinkler, fire alarm, heating and ventilating systems on each separate lot or parcel.

2.2 *Unified Parcels.* To provide an alternate method of meeting the safety objectives of the Development Regulations while allowing construction across property lines within the Subject Property, Declarant hereby covenants, conditions, and restricts all future use and development of the Subject Property so as to treat the Subject Property as a single lot for purposes of compliance with all applicable provisions of the Development Regulations.

2.3 *Effect of Violation.* Declarant hereby acknowledges and consents that any voluntary or involuntary action by or on behalf of an owner of any portion of the Subject Property that has the effect of separating the use and operation of any portion of a building constructed across a lot or parcel line from the remainder of that building creates a potential public safety hazard that justifies the City of Tucson to require the building to be closed to the public immediately and to remain closed to the public unless and until the building is modified to satisfy the requirements of the then-existing Development Regulations. Such modifications may include, but are not limited to, the following:

2.3.1 Construction of a demising wall on the boundary of the separately used and operated portions of the building and physical and operational separation of all electric, water, sewer, automatic fire sprinkler, fire alarm, heating and ventilating systems.

2.3.2 Demolition of portions of the building that cannot reasonably be modified to satisfy the requirements of the then-existing Development Regulations.

2.4 *Other Use of Unified Parcels.* Nothing in this Article 2 shall restrict the Subject Property from enjoying the rights and benefits that would otherwise apply to the Subject Property if they were in fact a single lot, including without limitation the ability of one or more owners of the Subject Property to divide the Subject Property for purposes for development or sale, provided that such development or sale can be accomplished without violating the terms of this Declaration.

Article 3. Enforcement

3.1 *Enforcement Generally.* Declarants and the City of Tucson shall have the right to enforce the conditions, covenants and restrictions imposed by this Declaration

by any legal procedure or action.

3.2 *City Enforcement.* In addition to the enforcement rights set forth in paragraph 3.1, the City of Tucson is expressly authorized to enforce this Declaration by withholding any and all development approvals, permits, certificates of occupancy, or other government authorizations or approvals unless and until all violations are corrected.

3.3 *Costs and Attorneys Fees.* In addition to any damages or remedies otherwise available, the prevailing party in any action to enforce this Declaration shall be awarded their costs and expenses of such proceedings, including reasonable attorneys' fees.

3.4 *No Waiver.* Failure by Declarant or the City of Tucson to enforce this Declaration shall not be deemed a waiver of the right to do so thereafter.

3.5 *Release.* Declarant may be released from this Covenant Regarding Development and Use of Real Property and the covenants, conditions and restrictions of this Declaration, when/if Declarant presents proof to the City that the tax parcels associated with the Development/Site Plan, identified in this Declaration as Case No. _____, have been combined into one tax ID parcel. Upon such proof and written request by Declarant, the City shall record the release in the same manner as this Covenant. Release from this Covenant Regarding Development and Use of Real Property shall not affect compliance with any conditions, agreements, and/or restrictions otherwise associated with the approval of the Development/Site Plan by the City, and separate from this Covenant.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration effective as of this _____ day of _____, 20__.

"DECLARANT":

Declarant's name and place of incorporation, if applicable

By: _____
Signature of Declarant or authorized officer

Printed name of signer

Its: _____
Title of signer

State of _____)
County of _____) ss.

The foregoing Covenant Regarding Development and Use of Real Property (Declaration) was acknowledged before me this _____ day of _____, 20____, by _____, the _____ of Declarant,

Declarant's name and place of incorporation, if applicable

My Commission Expires:

Notary Public