

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
TUSCANY PLAZA

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**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
TUSCANY PLAZA**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF TUSCANY PLAZA is made this 28<sup>th</sup> day of August, 2006, by Tuscanly of Yuma Development, Inc, hereafter referred to as "Declarant".

**WITNESSETH:**

Declarant is the owner of certain property in Yuma County, Arizona, which is more particularly described as:

**A subdivision of a portion of the southwest one quarter of section 5, township 9 south, range 23 west G. & S.R.B. & M., Yuma County, Arizona.**

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. The covenants, conditions, restrictions, uses, limitations, obligations, easements and equitable servitudes, charges and liens, set forth herein shall run with the Property; shall be binding upon, and shall be enforceable by Delcarant, all Owners and their successors in interest.

No provision contained herein shall be construed to prevent or limit Declarant's right to complete development of the Property and construction of improvements thereon, nor Declarant's right to post signs incidental to construction, sales or leasing, nor Declarant's right to do anything that is reasonably necessary and proper for the full development of the Property.

## **ARTICLE I**

### **DEFINITIONS**

Unless the context otherwise specifies or requires, the following words, phrases when used herein shall have the meanings hereinafter assigned.

Section 1.01 "Association" shall mean the Tuscany of Yuma Lot Owner's Association, an Arizona non-profit corporation, which shall be responsible for the maintenance of the "Common Areas" within the Property after the maintenance of the Common Areas are transferred by the Delcarant to the Association.

Section 1.02 "Building(s)" shall mean any improvements placed within the confines of any Lot.

Section 1.03 "Common Areas" shall mean all area on the Plat which is not a Lot.

Section 1.04 "Declarant" shall mean Tuscany of Yuma Development, Inc., its nominees, successors or assigns.

Section 1.05 "Declaration" shall mean this instrument and any amendment hereto.

Section 1.06 "Lot" or "Lots" shall mean and refer to any numbered parcel of real property shown on the Plat, together with the Building(s), if any, thereon.

Section 1.07 "Owner(s)" shall mean a record holder of title to the fee simple interest in any Lot. Owner shall not include: (a) Persons having an interest in a Lot merely as security for the performance of an obligation; or (b) a tenant of a Lot. Owner shall not include a purchaser

under a purchase contract and receipt, escrow instructions, or similar executory contract that is intended to control the rights and obligations of the parties to executory contracts pending the closing of a sale and purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the Lot shall be deemed to be the Owner. If fee simple title to a Lot is vested in a trustee pursuant to A.R.S. §§ 33-801 et. seq., for purposes of this Declaration legal title shall be deemed to be held by the trustor or the trustor's successor of record, and not by the trustee. An Owner shall include any person who holds record title to a Lot in joint ownership or as an undivided fee interest.

Section 1.08 "Person" shall mean a natural individual or any other entity with the legal right to hold title to the real property.

Section 1.09 "Plat" shall mean the subdivision plat recorded in Book \_\_\_ of Maps and Plats at Page \_\_\_\_, in the office of the County Recorder of Yuma County, Arizona, under the name "Tuscany Plaza".

Section 1.10 "Property" or "Subdivision" shall mean all that real property identified on the Plat.

## **ARTICLE II**

### **USE, DESIGN, CONSTRUCTION AND MAINTENCE OF LOTS**

All Property within the Subdivision shall be held, used and enjoyed, subject to the following limitations and restrictions:

Section 2.01 Professional, Business or Commercial Purposes. Lots shall be occupied and used by the respective Owners solely for professional, business or commercial use of the

Owner, tenants, customers, employees and invitees and for no other purpose. No residential use shall be conducted on a Lot.

Section 2.02 Architectural Design and Control. Declarant shall have exclusive control over the review and approval of the design of all Buildings to be constructed upon the Property to ensure the systematic, contemporaneous and harmonious design and development of the Property. Declarant shall have an Architectural Review and Approval Committee selected by Declarant. Prior to the development of any plans and designs of a Building, Lot Owners are encouraged to meet with the Architectural Committee to discuss the Lot Owner's proposal for development of a Building/s upon a Lot. All plans and designs for Buildings to be constructed upon any Lot shall be first submitted to the Declarant for its' review and comment prior to submission to the City of Yuma for approval. Declarant may in its' sole discretion reject and plan or design Declarant determines to be inconsistent with the other Buildings constructed or planned upon the Property.

Section 2.03 Maintenance of Vacant Lots. Prior to the development of any Lot, the Owner shall keep the Lot free and clear of any weeds, rubbish or debris of any kind. In the event the Owner fails to clear or clean any weeds, rubbish or debris within 30 days of receipt of a written notice from Declarant or the Association, the Declarant, or the Association, may clear or clean the weeds, rubbish and debris and assess the cost to the Owner which shall be a lien against the Lot together with interest at the rate of twelve percent (12%) per annum until the Owner pays the Declarant, or the Association, the cost in full.

Section 2.04 Construction upon Lots. Upon the commencement of construction upon a Lot the Owner shall complete construction within a reasonable time frame for the development of a professional, business or commercial building. The construction upon any Lot shall be

conducted in such a manner so as not to unreasonably interfere with the use and enjoyment of the other Lot Owners, their tenants, customers and guests. All construction materials and equipment shall be stored and maintained upon the Lot, unless the Owner obtains the prior written consent of the Declarant or the Association to store or maintain construction material or equipment in a different location upon the Property. Owner shall use adequate noise and dust control measures. Owners shall be required to repair or replace any improvement within the Common Areas damaged during the course of construction upon any Lot. In the event an Owner fails to repair or replace any improvement within the Common Areas damaged during the course of construction upon the Owner's Lot, the Declarant, or the Association, after 10 days written notice to Owner may repair or replace the improvement and assess the cost to the Owner which shall be a lien against the Lot together with interest at the rate of twelve percent (12%) per annum until the Owner pays the Declarant, or the Association, the cost in full.

Section 2.05 Maintenance of Developed Lots. At no time shall any weeds, rubbish or debris of any kind be placed or permitted to accumulate upon the Property or any Lot, and no odors shall be permitted to arise therefrom so as to render any Lot or any portion of the Property unsanitary, unsightly, offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on the Property.

Section 2.06 Maintenance of Buildings. Each Owner has a duty and obligation, at such Owner's sole cost and expense, to maintain the exterior of the Building(s) constructed on a Lot in a neat and attractive manner so as to reflect a first-class professional, business or commercial subdivision.



Section 2.07 Landscaping of Lots. Each Owner of a Lot with a Building(s) constructed thereon shall also install first-class landscaping thereon, which landscaping shall thereafter be maintained in a neat and attractive manner so as to reflect a first-class professional, business or commercial subdivision. All landscaping installed and maintained on each Lot shall be the sole cost and expense of the Owner of the Lot.

Section 2.08 Unsightly Articles. No unsightly articles, materials, supplies and equipment shall be permitted to remain so as to be visible from adjoining Buildings or from the street or public way. Grass, shrub or tree clippings and all machinery, storage piles, wood piles, garbage or trash containers shall be kept within an enclosed structure or appropriately screened from view of adjoining property or from streets or public way except when necessary to effect such collection. No storage containers or structures shall be permitted upon a Lot or any portion of the Property.

Section 2.09 Diseases and Insects. No Owner shall permit anything or any condition to exist upon a Lot which shall induce, breed or harbor infectious plant or animal diseases or noxious insects.

Section 2.10 Right of Inspection. During reasonable hours, Declarant, the Association, or any Lot Owner or any authorized representative shall have the right upon reasonable notice to another Lot Owner to enter upon and inspect a Lot (except the interior of Buildings), for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

Section 2.11 Drainage. Except as provided by Declarant in the course of development of the Property, there shall be no interference with the established drainage pattern over the Property, including any private drainage ways or easements, within the Property, except by

Declarant in the course of development. For purposes hereof, “established drainage” is defined as the drainage which existed at the time the overall grading of the Property was completed, or which is shown on the Plat or on any plans conforming to applicable rules, regulations, ordinances and drainage criteria approved by the City of Yuma.

Section 2.12 Exemption of Declarant. Nothing in this Declaration shall limit the right of Declarant to complete excavation, grading and construction of improvements to any of the Property, or to alter the foregoing or to construct such additional improvements as Declarant in its sole discretion deems advisable in the course of development of the Property. The rights of Declarant hereunder or elsewhere in this Declaration may be assigned by Declarant.

### **ARTICLE III**

#### **COMMON AREAS, ASSESSMENTS AND EASEMENTS**

Section 3.01 Common Areas. The Common Areas as identified on the Plat shall be for the mutual use and benefit of the Owners, tenants, customers, employees and invitees for the purposes set forth therein. No Owner, tenant, customer, employee or invitee shall use the Common Areas in such a manner as to interfere or impede the use and enjoyment of the Common Areas by other Owners, tenants, guests, employees or invitees.

Section 3.02 Ownership, Improvement and Management of Common Areas. The Common Areas shall be owned, improved and managed by the Declarant until the sale of the final Lot set forth on the Plat, or the sale of the final Lot in Phase II of the Tuscan Plaza development whichever event shall occur later . After the sale of the final Lot set forth on the Plat, or the sale of the final Lot in Phase II of the Tuscan Plaza development whichever event shall occur later the Declarant shall transfer the ownership of the Common Areas to the Association which shall assume the responsibility for the maintenance and improvement of the

Common Areas. Until the ownership of the Common Areas is transferred by the Declarant to the Association, the Association shall pay the expenses for the maintenance of the Common Areas as determined by the Declarant.

Section 3.03 Membership in the Association. All Owners, with the exception of the Declarant, shall be members of the Association. An Owner's membership percentage in the Association shall be equal to a percentage equal to the square footage of the Owner's Lot/s divided by the total square footage of the Lots within the Property which are not owned by the Declarant.

Section 3.04 Assessments. Upon receipt of written notice from the Declarant that the Common Areas are available for use by the Owners the Association shall commence assessing each Owner a monthly sum equal to the Owner's membership percentage multiplied by the monthly maintenance and improvement budget for the Common Areas, including any necessary reserves, as determined by the Declarant until the ownership of the Common Areas is transferred to the Association. Upon the transfer of the Common Areas to the Association, the Association shall determine the monthly maintenance and improvement budget for the Common Areas, including any necessary reserves. All monthly assessments shall be paid in full no later than the fifteenth (15<sup>th</sup>) day of each month commencing with the month following the Owner's purchase of a Lot/s. Any monthly assessments paid after the 15<sup>th</sup> of any month shall include a late charge of \$50.00 together with interest equal to twelve percent (12%) per annum until the assessment is paid in full. The Association may also impose special assessments for improvements to the Common Areas as determined by the Association. All special assessments shall be paid in full no later than 30 days of the special assessment, or the date selected by the Association, whichever date is later. All monthly and special assessments shall be the personal obligation of

the Owner and shall be a lien against the Owner's Lot/s in accordance with the provisions of Arizona law until paid in full. The Association may elect to proceed with collection of any unpaid monthly or special assessments against the Owner/s and/or Lot/s 30 days after sending the Owner/s by certified mail, return receipt requested at the Owner/s last known address written notice of the amount of the delinquent assessments, late charges and interest as of the date of the notice. The notice shall notify the Owner/s that if the full amount of the delinquent assessments, late charges and interest are not paid in full with 30 days of the date of the notice, the Association may elect to immediately proceed with the Association's rights and remedies under this Declaration, the Articles of Incorporation, Bylaws and any Rules and Regulations of the Association, or as provided by Arizona law including, but not limited to, judicial foreclosure of the lien securing the delinquent, assessment/s.

Section 3.05 Easement for Encroachments. Each Lot shall be subject to an easement for encroachments created by construction, settling and overhangs, including footings and walls thereon. A valid easement for such encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event Buildings are partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments on parts of the adjacent Lot due to construction shall be permitted and that a valid easement for the encroachments and the maintenance thereof shall exist.

Section 3.06 Drainage Easements. Drainage easements may have been established as shown on the Plat or by separate instrument duly recorded over and across certain Lots for the exclusive use and benefit of other Lots. Each Owner of a Lot on which a drainage easement is located shall be responsible for maintaining that easement and keeping it free and clear from all debris, refuse and any other foreign matter which shall in any way interfere with or hinder the

free flow of water in the easement as originally constructed. In the event of the failure of any Owner to so maintain an easement, other Owners of Lots benefited by such easements shall proceed solely against that Owner.

Section 3.07 Blanket Utility Easements. In addition to any specific easements shown on the Plat, there is hereby created a permanent blanket reciprocal easement upon, across, over and under the Property for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communications lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Property and to affix and maintain wire, circuits and conduits on, in, and under the roofs and walls of the Buildings. This easement shall in no way affect any other recorded easements on the Property. The blanket easement created by this Section shall also include an access easement for the delivery and collection of the U.S. Mail.

Section 3.08 Creation of a Reciprocal Ingress/Egress and Parking Easement. A permanent reciprocal easement is hereby created over, upon, across and under the roadways, driveways and parking areas within the Property (the "Reciprocal Easement Area") for the purpose of ingress, egress and parking for the benefit of all Owners, and their tenants, customers, employees and invitees, of the Property. The Reciprocal Easement Area may not be altered or modified in a manner that would cause the Property to be in violation of applicable City of Yuma ordinances regulating parking, ingress and egress. Further the location of the driveway presently constructed on the Property which provides ingress and egress to and from the Property onto and from the Property, shall not be changed without the prior approval of the City of Yuma.

Notwithstanding this Declaration, this Declaration may not be amended in a manner that would be in conflict with the provisions of this Section 3.07.

#### **ARTICLE IV**

##### **SUBDIVISION SIGNAGE**

Section 4.01 Allocation of Subdivision Signage. Each Lot/Lot Owner shall be allocated a pro rata share of signage area on the Subdivision Sign, which prorated share shall be equal to the Owner's membership percentage in the Association. Each Owner shall be responsible for all costs of installation, modification and repair of sign panels for its allocated portion of the Subdivision Sign. The Subdivision Sign shall be maintained by the Association.

#### **ARTICLE V**

##### **GENERAL PROVISIONS**

Section 5.01 Term. The covenants, conditions and restrictions of this Declaration shall remain in full force and effect in perpetuity.

Section 5.02 Amendments. This Declaration may be amended by an instrument in writing signed by Owners of not less than seventy-five percent (75%) of the total square footage of the Lots within the Property, and such amendment shall be effective upon its recordation with the County Recorder of Yuma County, Arizona; provided, however, so long as Declarant owns a Lot, no such amendment shall be valid or enforceable unless it has been approved, in writing, by Declarant, and the written approval is appended to, and recorded as a part of, the amendment. Declarant's decision to approve or disapprove an amendment proposed by the Owners shall be in Declarant's sole and absolute discretion.

Section 5.03 Enforcement and Non-Waiver.

A. Enforcement. Except as otherwise provided herein, any Owner, or the Association, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by this Declaration. In the event an Owner, or the Association, shall commence any civil action in connection with this Declaration against another Owner, the prevailing party in said civil action shall be awarded reasonable attorney's fees, court costs and other costs and expenses incidental thereto, in addition to all other relief, all of which shall be set by the judge and not by jury, to which the prevailing party may be entitled. Failure by any Owner, or the Association, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so after. Nothing herein shall obligate the Association or its' Directors' to enforce any restriction, condition, covenant, reservation, lien or charge imposed by this Declaration.

B. Violation of Law. Each and every provision of this Declaration and any amendment hereto shall be subject to all applicable governmental ordinances and subdivision regulations and any future amendments thereto. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of the Property is hereby declared to be a violation of these Restrictions and subject to any or all of the enforcement procedures set forth herein or in the Associations By-Laws or any Rules and Regulations.

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

Section 5.04 Construction.

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

B. Restrictions Severable. Notwithstanding any other provision hereof, 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.

C. Rule Against Perpetuities. In the event the provisions hereunder are declared void by a Court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event the periods of time shall be reduced to a period of time which shall not violate the rules against perpetuities as set forth in the laws of the State of Arizona.

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

E. Captions. All captions and titles used in this Declaration are intended solely for convenience or reference purposes only and in no way define, limit or describe the true intent and meaning of the provisions hereof.

Section 5.05 Binding Effect. By acceptance of a deed or acquiring any ownership interest in any of the Property included within this Declaration, each person or entity, for himself/herself, itself or his/her heirs, personal representatives, successors, transferees and



assigns to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person or entity by so doing thereby acknowledges that his Declaration sets forth a general scheme for the Property and hereby evidences a intent that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person and entity fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day, month and year first above written.

Tuscany of Yuma Development, Inc.

By: \_\_\_\_\_

Its: President

State of Arizona            )  
  )ss.  
County of Yuma            )

On this 29th day of August, 2006, before me the undersigned Notary of Public, personally appeared Robert G. Kammann who acknowledges himself to be President, and has executed the foregoing instrument for the purposes therein contained.

By: \_\_\_\_\_

SUBSCRIBED AND SWORN to before me this \_\_\_ day of \_\_\_\_\_, 2006.

My Commission Expires: \_\_\_\_\_