

MAJOR STREETS AND ROUTES COVENANT

This Major Streets and Routes Covenant (“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 is the owner of that certain real property located in Pima County, Arizona, legally described in Exhibit A (the “Subject Property”), addressed as

Street address of the Subject Property

B. The City of Tucson has adopted a Major Streets and Routes Plan (“MS&R Plan”) that (among other things) designates major roadways and their future right-of-way widths. The land between the MS&R Plan right-of-way lines is referred to in this Declaration as the “MS&R Right-of-Way Area”.

C. City of Tucson Unified Development Code section (“UDC §”) 5.4.5.F provides for the use of the MS&R Right-of-Way Area, and requires property owners who use the MS&R Right-of-Way Area to execute and record a covenant indicating how the project will comply with UDC requirements when the MS&R Right-of-Way Area can no longer be used as part of the site.

D. Declarant wishes to utilize the MS&R Right-of-Way Area located on the Subject Property, and this Declaration is the covenant required by UDC § 5.4.5.F.

Covenants, Conditions and Restrictions

1.1. *Declaration.* Declarant hereby declares 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 a project that includes the use of MS&R Right-of-Way Area, and which shall run with the Subject Property and be binding upon 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 inure to the benefit of the City of Tucson.

1.2. *Modification of Development.* Not later than ninety days after the City of Tucson notifies Declarant or the then-owner of the Subject Property that the MS&R Right-of-Way Area on the Subject Property can no longer be used as part of the site,
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Declarant or the then-owner of the Subject Property shall modify the MS&R Right-of-Way Area to conform to the site plan attached as Exhibit B, provided that Exhibit B remains in conformance with all then-existing codes and regulations, after first obtaining any necessary permits from the City of Tucson. The ninety-day period shall not include any days or portions of days the City of Tucson is reviewing applications or submittals for any necessary permits. If Exhibit B needs to be revised to conform with then-existing codes and regulations, the notice from the City of Tucson shall include (a) notice of the need to revise Exhibit B and (b) copies of any new code provisions and regulations that necessitate the revision.

1.3. *Notice.* All notices, requests, demands, and other communications under this Declaration shall be in writing and shall be deemed given if (a) personally delivered or (b) mailed via United States Mail or other similar delivery service, with return receipt or other similar receipt signed by the notice recipient. For purposes of calculating timeliness of performance under this Declaration, the date of any such notice shall be the date the notice is received. Notice to Declarant or the then-owner of the Subject Property shall be given to the address identified in the records of the Pima County Assessor for purposes of paying real estate property taxes, unless Declarant or the then-owner of the Subject Property provides some other address by written notice to the City of Tucson, which notice shall also be recorded in the office of the Pima County Recorder and shall include the name of the Declarant and the recording information for this Declaration.

1.4. *Enforcement.* Declarant and the City of Tucson shall have the right to enforce the conditions, covenants, restrictions, lien, charges and obligations imposed by this Declaration. Specifically and without limitation, if Declarant or the then-owner of the Subject Property fails to perform in accordance with paragraph 1.2, the City of Tucson shall have the right to remove any and all improvements located within the MS&R Right-of-Way Area and to modify the Subject Property to conform to the site plan attached as Exhibit B and to charge Declarant or the then-owner of the Subject Property all reasonable costs associated with such removal and modification. In addition, the Lien established pursuant to paragraph 1.5 may be enforced by foreclosure of the Subject Property in the same manner as a mortgage on real property. In any such foreclosure, Declarant or the then-owner of the Subject Property shall be required to pay the costs and expenses of such proceedings, including reasonable attorneys' fees.

1.5. *Creation of Lien.* The City of Tucson's costs associated with removal and modification incurred in accordance with paragraph 1.4 shall be a charge and shall be a continuing lien upon the Subject Property (the "Lien"). Recordation of this Declaration creates and perfects the Lien.

1.6. *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.

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

“DECLARANT”:

By: _____
Signature of Declarant or authorized officer

Printed name of signer

Its: _____
Title of signer

STATE OF ARIZONA)
 ss.
County of Pima)

The foregoing Major Streets and Routes Covenant (Declaration) was acknowledged before me this _____ day of _____, 20__, by _____, the _____ of Declarant.

Notary Public

My Commission Expires: _____

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List of Exhibits

Exhibit A. Legal description of the Subject Property

Exhibit B. Approved site plan indicating how the project will comply with UDC requirements when the MS&R Right-of-Way can no longer be used as part of the site

FOR CITY USE ONLY

Approved as to form this _____ day of _____, 20_____.

Assistant City Attorney

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PROJECT # _____