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DECLARATION OF PROTECTIVE RESTRICTIONS AND COVENANTS

TUSCANY PROFESSIONAL PLAZA

We, the undersigned, hereinafter referred to as Grantors, being the owners of the property hereinafter described hereby adopt the following Protective Restrictions and Covenants in their entirety to apply to real property to be subdivided and contained in a subdivision to be known as Tuscany Professional Plaza located in Bannock County, Idaho, ~~being further described as follows:~~

~~Tuscany Professional Plaza, according to the plat thereof recorded in the records of Bannock County, Idaho as Instrument No. _____~~ JMA

ARTICLE 1. DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article 1 shall, for all purposes of this Declaration, have the meanings herein specified.

1.1 ARTICLES. The term "Articles" shall mean the Articles of Incorporation of the Tuscany Professional Plaza Property Owners' Association, Inc. which are or shall be filed in the Office of the Secretary of State of the State of Idaho, which said Articles are incorporated herein by this reference, as said Articles may from time to time be amended.

1.2 ASSOCIATION. The term "Association" shall mean the Tuscany Professional Plaza Property Owners' Association, Inc., the non-profit membership corporation, including its successors and assigns.

1.3 BOARD. The term "Board" shall mean the Board of Directors of the Association.

1.4 BY-LAWS. The term "By-Laws" shall mean the By-Laws of the Association which are or shall be adopted by the Board which are on file at the office of the Association and which are incorporated herein by this reference, as such By-Laws may from time to time be amended.

1.5 DECLARATION. The term "Declaration" shall mean the Declaration of Protective Restrictions and Covenants herein set forth in this entire document, as same may from time to time be amended.

1.6 IMPROVEMENTS. The term "Improvements" shall include buildings, outbuildings, roads, driveways, parking areas, fences, screening walls, stairs, decks, hedges, windbreaks, plants,

planted trees and shrubs, poles (including light poles), signs and all other structures or landscaping improvements of every type and kind.

1.7 LOT. The term "Lot" shall mean any parcel of real property designated for professional office use on any subdivision map or plat pertaining to property which is subject to this Declaration. Tuscany Professional Plaza includes nine (9) lots; however Lot Nine (9) is not subject to this Declaration.

1.8 MEMBER. The term "Member" shall mean and refer to every person or entity who holds membership in the Association.

1.9 OWNER. The term "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any lot and without any limitation of the foregoing.

- a. Owner shall include the purchaser or buyer of a lot under an executory contract for the sale of real property; and
- b. For the purposes of Article 2, unless the context requires otherwise, those governed by said Article 2 shall include the family, invitees, licensees and lessees of any Owner together with any other person or persons holding any possessory interest granted by such Owner in any lot.

The foregoing is not intended to include persons or entities who hold an interest in any lot merely as security for the performance of an obligation.

1.10 TUSCANY PROFESSIONAL PLAZA. The term "Tuscany Professional Plaza" shall mean all of the real property and improvements referred to in the preamble together with such other real property as may from time to time be added thereto or covered thereby.

1.11 TUSCANY PROFESSIONAL PLAZA RULES. The term "Tuscany Professional Plaza Rules" shall mean the Rules adopted by the Board as they may be in effect from time to time.

1.15 PROFESSIONAL OFFICE. The term "Professional Office" shall mean a building or buildings, including outbuildings, used for professional office purposes.

1.16 GRANTOR. The term "Grantor" shall mean Tuscany Hills Development Co., L.L.C.

1.17 GRANTEE. The term "Grantee" shall mean any present and future Owners Of lots within the Subdivision.

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ARTICLE 2. RESTRICTIONS AND COVENANTS

2.1 LOTS. The real estate within Tuscan Professional Plaza is divided into nine (9) lots in compliance with local and state regulations and laws.

2.2 COVENANTS RUN WITH LAND. These protective restrictions and covenants shall run with the land described therein and shall be binding upon the parties hereto and all successors in title of interest to said real property or any part thereof, hereinafter referred to as "Grantees", for a period of thirty (30) years, at which time said Protective Restrictions and Covenants shall be automatically extended for successive periods of ten (10) years unless the owners of legal title to not less than two thirds (2/3) of the platted professional tracts or platted lots, by an instrument or instruments in writing, duly signed and acknowledged by them shall then terminate or amend said Protective Restrictions and Covenants, and such termination or amendment shall become effective upon filing of such instrument or instruments for record in the office of the Recorder of Bannock County, Idaho. Such Instrument or instruments shall contain proper references by volume and page numbers to the recorded Declaration in which the Protective Restrictions and Covenants are set forth and all amendments hereof.

Should any Grantee violate or attempt to violate any of the provisions of these Protective Restrictions and Covenants, any other person or persons owning any real property embraced in the said subdivision plat shall have full power and authority to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any of the said Protective Restrictions and Covenants, and either to prevent the violation or to recover damages sustained by reason of such violation or both.

Should the Grantee of any property covered by these restrictions fail, neglect or refuse to satisfy and discharge any obligation or lien which arises by reason of the enforcement of any of the Protective Restrictions and Covenants hereunder within thirty (30) days after the same becomes due, the Grantor or Grantor's successor's in interest including any person or persons seeking enforcement of these Protective Restrictions and Covenants shall have the right to recover interest on such obligation or lien at the maximum rate of interest allowable by the laws of the State of Idaho.

Should any party entitled to enforce any of the Protective Restrictions and Covenants hereunder bring an action for the enforcement of the same, the prevailing party in such suit or action shall be entitled to recover all legal costs in said suit or action, including the reasonable attorney's fees fixed by the court in such suit or action.

Where any restrictions, easement or dedication herein varies from the requirements of the subdivision or other ordinances of the City of Pocatello and the requirements of the city ordinances relating to his subdivision are more restrictive, said more restrictive requirements shall be deemed to be a part hereof as if set forth herein as part of these Protective Restrictions and Covenants. This limitation shall apply in particular to locations, public easements and ways where the same are particularly required by such ordinances but not set forth herein.

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2.3 ARCHITECTURAL COMMITTEE. The Board shall serve as the Architectural Committee. No structure or complex shall be constructed on any lot without prior written approval of the Architectural Committee. Plans and specifications showing the nature, kind, shape, height, materials, exterior colors, and location of same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Committee.

A. Grantee agrees that actions of the Committee shall be wholly discretionary and shall be binding. If the Committee does not approve or discharge plans and specifications within thirty (30) days after submission to it, such approval will not be required and the provisions hereof will be deemed to have been fully complied with.

B. As to all improvements, construction and alterations upon any lot, the Committee shall have the right to refuse to approve any design, plan or color for such improvements, construction or alterations which, in its opinion, is not suitable or desirable for any reason, aesthetic or otherwise. In so passing on such design the Committee shall have the privilege in the exercise of its discretion to take into consideration the suitability of the proposed building or of the structure, the materials of which it is to be built and the exterior color scheme in relation to the site upon which it is proposed to be erected. The Committee may specify the required grading of the lot and retaining walls which may be necessary. The Committee may also consider whether the proposed structure and design shall be in harmony with the surroundings, the effect of the building or of the structure or alteration therein as planned when viewed from adjacent or neighboring property, the effect or impairment that said structure will have, on the view of surrounding lots and any and all other facts which, in the Committee's opinion, shall affect the desirability of such proposed structure, improvement or alteration. Actual construction shall comply substantially with the plans and specifications approved.

C. The initial Board and all subsequent Boards shall constitute the Committee. No member of such Committee shall be entitled to any compensation for services performed pursuant to this covenant, nor shall they incur liability by reason of any act or omission in exercising the duties herein established by said Committee.

The powers and duties of such Committee or of its designated successors shall be perpetual and shall include new structures as well as the remodel of existing structures.

2.4 BUILDING RESTRICTIONS.

A. Reserved Right: Grantor reserves the right to construct professional office buildings and other improvements upon any lot and to offer the same with completed structures thereon for sale to individual grantees and owners.

B. Height: No structure shall be constructed on the lots in said subdivision having a height of more than thirty-five (35) feet from ground level nor more than two and one-half (2½)

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stories.

C. Minimum Floor Area: All professional office buildings erected upon said property shall have a finished floor area of not less than 2000 square feet (exclusive of patios, breeze ways, storage rooms, porches, or similar structures).

D. Type of Building: All buildings shall be of frame, stone or brick construction and, if other than brick or stone, shall be finished, painted and kept in good repair, and said property shall be used in such manner as to be inoffensive to any other property owners thereof. Exterior colors shall be flat, non-gloss type and shall be limited to subdued tones.

E. No Manufactured Homes or Production Buildings: No production buildings produced off site, manufactured homes, mobile homes or buildings manufactured off site and moved to the premises for occupancy as a professional office building shall be allowed, without the prior approval of the Architectural Committee.

F. Moving of Building: Construction of outbuildings--no buildings or structures shall be moved onto said real property or building site except a new fabricated structure of a type and design approved by the Architectural Committee. A new fabricated outbuilding or structure shall have a HUD-FHA structural engineering bulletin issued and be in current existence. No trailer houses or mobile homes shall be parked in any street or within building setback lines. No trailer, recreational vehicle, mobile home, basement, tent, shack, garage, barn or other outbuildings erected or placed on a building site shall at any time be used as a residence, whether temporarily or permanently, nor shall any residence of a temporary character be permitted. At the discretion of the undersigned original Grantor only, a temporary material and tool storage building or enclosure and/or constructor's construction or sales office will be permitted during the initial development of said subdivision, all of which shall be removed as soon as practical or on the direction of the Grantor no later than termination of development.

G. Parking: No parking is allowed on any street. Each lot must meet the requirements of the City of Pocatello for off street parking. Nothing in these Covenants, Condition and Restrictions shall be construed to prohibit interconnecting the parking areas of the various lots, nor the sharing of parking between the various lots. Both practices are encouraged by Grantors.

H. No Resubdivision: No lots shall be resubdivided or divided again.

I. Sight Distance at Intersections: No fence, wall, hedge or shrub planting which obstruct sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

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J. Fences-Hedges: No fence, wall, hedge or shrub planting which obstruct the view shall be placed nearer to the front lot line than the building setback line. Fences or walls shall be constructed of new materials and shall be wood, block, or brick, or a combination thereof. No fence shall be greater than six (6) feet in height above finished graded surface of the ground upon which such fence, wall, hedge or shrub planting is situated. Fences shall be approved by the Architectural Committee.

K. Exterior antennas: No outside television antennas radio acrials, ham radio antennas or other such acrials or antennas shall be installed on any lot or the exterior of any building except satellite dishes smaller than 36" in diameter.

L. Mail and Paper Delivery Boxes and Building Addresses: The address of the Tuscany Professional Plaza is 444 Hospital Way. Lots one through eight shall have the right to use any numbers in the hundred series which corresponds to the lot number. For example, lot 5 could be addressed as:

444 Hospital Way, # 517 or 444 Hospital Way, Suite 532.

In the example above, if there is more than business, rental or building on a lot, each will use a separate number in the 500 series for identification and mail service. The sequence shall be in a logical manner for each so as to minimize confusion as to identity or location and, in the event of a dispute as to the numbers or sequence assigned, the Architectural Committee shall have the final decision as to the numbers used and the sequence assigned to each building, rental or business.

Grantor has agreed with the U.S. Postal Service that all mail and paper deliveries will be to the building and not to an exterior mail box or delivery area.

M. Landscaping: All landscaping must approved by the Architectural Committee and must be completed within 60 days from the date of occupancy of a professional building. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of the Architectural Committee. Special landscaping requirements may be required by the purchase and sale agreement and said requirements may be enforced by the Grantor.

2.6 USE RESTRICTIONS.

A. Oil and Mining Operations: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in a lot or tract, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot or tract. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot or tracts.

B. Excavation, Defacing of Landscape, Ditches: No excavation for stone, sand, gravel, earth or minerals shall be made upon a building site unless such excavation is necessary in

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connection with the erection of an improved structure thereon. No irrigation drain or waste water shall be permitted to flow in open ditches to or on any lot or tract in said subdivision except as follows: Ditches, if any, to be located only within easement or street right of way lines shown on the plat of said subdivision.

C. Billboards - Signs: No sign of any kind shall be displayed to the public view on any building site except one professional sign at the entrance to each lot. The design of all proposed signs must be submitted to the Architectural Committee which may establish a common sign design for Tuscan Professional Plaza. All building signage must comply with any applicable sign ordinance of the City of Pocatello and must be approved by the Architectural Committee. A professional sign advertising development of said subdivision may be used and will be removed upon completion of said subdivision or at the direction of the Grantor but no later than completion of the sale of lots.

D. Noxious Use of Property: No portion of the real property or of a building site or any structure thereon shall be used for the conduct of any undesirable acts, or undesirable use of any portion of the real property is prohibited and shall not be permitted or maintained. The determination of the undersigned owners that any activity or use is undesirable or noxious shall be conclusive upon all parties.

E. Spite Fences: The construction or maintenance of a spite fence or a spite tree or hedge shall be prohibited upon any building site. The determination by the undersigned Grantor or Grantor's successors in interest that any wall, hedge, fence or tree falls within the latter category shall be conclusive upon all parties.

F. Storage of vehicles, materials, and refuse: No working or commercial vehicles of one and a half ton or greater or any trailer shall be regularly or as a matter of practice be parked in any lot and shall not be parked on any street adjacent to the property. No unsightliness shall be permitted on any lot. Without limiting the generality of the foregoing, all unsightly facilities, equipment or structures shall be enclosed within approved structures or appropriately screened from view. Trailers, campers, recreational vehicles, boats, tractors, and vehicles other than automobiles shall not be allowed. All refuse, garbage and trash shall be kept at all times in covered, reasonably noiseless containers, which shall be kept and maintained within an enclosed structure or appropriately screened from view, except when necessarily placed for pickup by garbage removal service providers. Storage piles, compost piles and facilities for hanging, drying or airing clothes or household fabrics shall not be allowed. No lumber, grass, shrubs or tree clippings or scraps, refuse or trash shall be kept, stored or allowed to accumulate on any lot.

G. Building Material Storage: No building materials of any kind shall be placed or stored upon a building site until the Grantee or builder is ready and able to commence construction, and then such material shall be placed within the property lines of the building site upon which the structure is to be erected. The Architectural Committee and/or its agents shall have the right to enter upon any vacant building site for the purpose of burning or removing weeds, brush, growth or refuse.

H. Unreasonable bright light, loud noise, or offensive odors: No light shall be

emitted from any lot which light is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any lot or common area which is unreasonably loud or annoying and no odors shall be emitted on any lot or property which are noxious or offensive to others.

I. Animals and Pets: No animals, livestock or poultry of any kinds shall be raised, bred or kept on any lot. This restriction shall not preclude the operation of a veterinarian specializing in small animals within the subdivision; however no overnight boarding of animals shall be permitted on any lot.

J. Professional Buildings: All lots within the area shall be used exclusively for professional office building purposes and such uses as are customarily incidental hereto. No building shall be used for living purposes or as a residence.

2.7 RESTRICTIONS AGAINST USES DETRIMENTAL TO NEIGHBORHOOD.

No part of any building site shall be used or occupied as a residence or otherwise, so as to have injurious effect upon the use, occupancy or value of any adjacent premises for the usual and customary professional office purpose as established by the manner of use in the general area or neighborhood. As to whether any use of occupancy violates the above provisions, the Grantor may make such determination based upon any reason, aesthetic or otherwise, including failure to maintain the premises, that any activity or use violates this provision. In addition to enforcing the provisions of Article 2 hereof which is a further condition of the grants made, the Grantor, upon a determination of violation of this paragraph, may give a notice in writing to the owner and occupant of the premises involved and, if such violation is not corrected within 6 months after the mailing of said notice to the owner and occupant, the Grantor may at its option repurchase the said premises from the original Grantee or said original Grantee's successors in interest at the fair market value thereof by tendering said price, less the balance due on any mortgage, and in which event, upon said tender or payment of said purchase price to the then said owner of the premises, the owner shall make, execute and deliver to the Grantor a deed reconveying to the said Grantor the said premises, subject to any mortgage, which execution and delivery may be specifically enforced by court action. This covenant shall attach to and pass with all property within the subdivision and shall be binding upon anyone owning or claiming any right, title or interest in and to any of said property. In the event that Grantor and Grantee or then owner cannot agree upon a fair market value, said disputes shall be submitted for arbitration under the Rules of the American Arbitration Society and the laws of the State of Idaho, and the decision rendered therefrom shall be binding upon the parties hereto.

2.8 UTILITIES. All lots will be served by underground utility, electrical and telephone lines, and no above surface distribution lines or poles shall be installed. The services shall be installed in road or easement rights of way as platted. Each Grantee agrees at Grantee's sole expense to pay all connection charges as established by any applicable utility entity for underground service facilities as a condition precedent to connecting thereto. The undersigned Grantor shall not be liable for the cost thereof and may recover funds advanced, if any, to obtain initial installation.

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2.9 DRIVEWAY ACCESS TO LOTS. Grantor has planted trees at fifty (50) foot intervals around the private road which provides access to the lots. It is the responsibility of each lot owner to build the access road from the mail road to the lot owner's building and/or parking area observing the following conditions:

- A. Each access road shall be build in conformance with the specifications included in Exhibit B attached hereto.
- B. Each access shall be centered in the fifty (50) foot spacing between trees.
- C. If more than one access is constructed to a lot, the sign required by section 2.6(C) shall be located at the main access to the lot.

2.10 PRIVATE STREETS, STREET LIGHTS AND LANDSCAPING. Tuscany Way is a private street owned by the Association. It is the responsibility of the Association to maintain said street and the street lighting. The landscaping at the two islands is owned by the Association and the Association shall be responsible for maintenance of that landscaping as well as the trees that border Tuscany Way.

2.11 AMENDMENTS. These Protective Restrictions and Covenants may be amended by an instrument in writing, signed by the owners, including the undersigned Grantor, of not less than two-thirds of the lots platted in said subdivision. Any amendment must be recorded, and the same shall become effective upon the filing of such instrument or instruments in the office of the County Recorder of Bannock County, Idaho.

2.12 EXCLUSION OF LOT NINE. Lot Nine of Tuscany Professional Plaza is not subject to these Covenants, Conditions and Restrictions and shall not be made part of or subject to these Covenants, Conditions and Restrictions in the future.

ARTICLE 3. TUSCANY PROFESSIONAL PLAZA PROPERTY OWNERS' ASSOCIATION, INC.

3.1 ORGANIZATION AND MEMBERSHIP.

- a. **THE ASSOCIATION.** The Association is a non-profit membership corporation charged with the duties and invested with the powers set forth herein. It was created by the Articles, and its affairs shall be governed by the Articles and By-Laws which shall not for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.
- b. **BOARD OF DIRECTORS AND OFFICERS.** The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles of Incorporation and the By-Laws of the Association, as same may be amended from time to time.

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3.2 MEMBERSHIP.

- a. **OWNER MEMBERS.** Membership in the Association, except for membership of the Grantor, or any of its successors or assigns thereto, shall be limited to owners of lots in Tuscan Professional Plaza. Each Owner shall be entitled to one membership in the Association. Ownership of a lot shall be the sole qualification and criteria for membership. The foregoing is intended to preclude persons or entities who hold an interest merely as security for the performance of an obligation from being members. Each owner, by virtue of being an owner and for so long as is an owner, shall be a member of the Association, or, in the event of its dissolution, a member of the unincorporated association succeeding to the Association. The rights and obligations of an owner and membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership to the owner's lot and then only to the transferee of ownership to such lot, or by intestate succession, testamentary disposition, foreclosure of mortgage of record, or other legal process as now in effect or as may hereafter be established. Any attempt to make a prohibited transfer is void and shall not be recognized by the Association. In the event an owner of any lot should fail or refuse to transfer the membership registered in that owner's name to the transferee of such lot, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the transferee and the old membership outstanding in the name of the Seller shall be null and void as though the same had been surrendered.
- b. **MEMBER'S RIGHTS AND DUTIES** The rights, duties, privileges and obligations of an owner as a member of the Association or its succeeding unincorporated association, shall be those set forth in, and shall be exercised and imposed in accordance with, the provisions of this Declaration, the Articles and the By-Laws.
- c. **RIGHTS UPON DISSOLUTION.** If the Association dissolves, each lot owner shall be a member an unincorporated association which will succeed to the rights of the Association. Each member of the unincorporated association shall have an underlying beneficial interest in all of the Association's property transferred to or for the account or benefit of the unincorporated association, such interest being in direct proportion to the number of lots owned by such member; provided, however, that there shall be no judicial partition of such property, or any part thereof, nor shall any such member or other person acquiring any interest in said property, or any part thereof, seek judicial partition, the right to do so being expressly waived.

3.3 VOTING CLASS. The Association shall have one (1) class of voting membership. There shall be one vote for each lot regardless of the number of owners having an interest therein. The vote for each lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint owners are unable to agree among themselves as to how their vote or votes shall

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be cast, they shall lose their right to vote on the matter in question. In the event more than one vote is cast for a particular lot, none of said votes shall be counted as said votes shall be deemed void. If any owner or owners casts a vote representing a certain lot, it will thereafter be conclusively presumed for all purposes that the owner or group were acting with the authority and consent of any other owners of the same lot.

The right to vote may not be severed or separated from the lot ownership to which it is appurtenant, and any sale, transfer or conveyance of such lot to a new owner or owners shall operate to transfer the appurtenant vote without the requirement of any express reference thereto. An owner may grant a proxy to another owner for purposes of voting; provided however if the owner granting the meeting attends a meeting in person, that proxy may be withdrawn by that owner unless the proxy, on its face, is irrevocable.

3.4 DUTIES OF THE ASSOCIATION. The Association shall have the duty, subject to and in accordance with this Declaration, to do and perform the following for the benefit of the owners and for the maintenance and improvement of the subdivision and shall be responsible for maintenance of the road system, street landscaping including the entrance to the subdivision and island near the entrance as well as the storm water drainage system within the subdivision. The Association shall pay all taxes and assessments levied upon any of the real or personal property of the Association, and all costs for fees, licenses and other permits necessary for the operation of the Association to the extent not assessed to the owners. Any such taxes and assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring the payment is posted prior to the sale or other disposition of any property to satisfy the payment of such taxes. The Association may obtain and maintain in force such policies of insurance as may be deemed necessary by the Board. The insurance referred to above, where applicable, shall name as separately protected insureds, the Association, the Board, any committees appointed by the Board, all Officers of the Association, and their representatives, agents, members and employees, and the owners (as a class) with respect to any liability arising out of the activities of the Association and the maintenance and use of any common area or property of the Association under the jurisdiction of the Association. The Association may make, establish, promulgate, amend and repeal the Tuscany Professional Plaza Rules as provided in Section 3.6. The Association may take such action as may be reasonably necessary to enforce the covenants, conditions and restrictions of this Declaration and the subdivision Rules. The Association may notify any owner of any violation or breach of any of the matters contained in this Declaration or the subdivision Rules. The Association may do and carry out the duties of the Association set forth in other sections of this Declaration, the Articles and the By-Laws, and such other duties as may reasonably be inferred from this Declaration, the Articles and the By-Laws. In addition to the foregoing, the Association shall have the duty to maintain the storm water drainage system which serves the subdivision.

3.5 POWERS AND AUTHORITY OF THE ASSOCIATION. The Association shall have all of the powers of a non-profit corporation organized under the laws of the State of Idaho in operating for the benefit of its members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the By-Laws and this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to

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be done by the Association under and by virtue of this Declaration, including all things which may be reasonably inferred therefrom, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety or general welfare of the owners. Without in any way limiting the generality of the foregoing, the Association shall have the power and authority at any time:

- A. **ENFORCEMENT.** The Association shall have the power and authority, from time to time, in its own name and on its own behalf, or on the behalf of any owner or owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration and to enforce, by mandatory injunction or otherwise, all of the provisions of this Declaration. When in the discretion of the Board it is determined that an owner or other person has failed, refused or neglected to comply with any provision contained herein, the Board or any Officer of the Association or other authorized person shall give such owner ten (10) days notice in writing of the failure to comply with said provision, setting forth the nature of the failure to comply and the change required. If upon the expiration of said ten (10) days from the date of such notification, the owner fails to remedy such non-compliance, the Association may thereupon cause same to be performed or remedy the non-compliance and in such event the owner shall reimburse the Association for all expenses incurred in connection therewith upon demand, including, as such expenses, and without limitation costs, investigation and collection fees. If such expenses are not promptly paid by the owner to the Association, the Association acting through the Board shall levy in reimbursement a special individual assessment against such owner pursuant to Section 4.6 hereof.
- B. **EASEMENTS AND RIGHTS OF WAY.** The Association may grant and convey to any third party, easements, rights of way, parcels or strips of land, in, on, over or under any Common Area under its jurisdiction, for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder (1) roads, streets, walks, driveways, parkways and park areas, (2) underground wires and conduits or other devices for the transmission of electricity for lighting, heating, cable television, power, telephone and other purposes, (3) public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and (4) any similar public or quasi-public improvements or facilities.
- C. **EMPLOYMENT OF AGENTS.** The Association may employ the services of a secretary, manager, architect, engineer, consultant, other employee or employees, and attorneys and accountants, to manage and carry out the affairs of the Association, and, to the extent not inconsistent with the laws of the State of Idaho and upon such conditions as are otherwise deemed advisable by the Board, to delegate to any of said persons any of its rights, powers and duties.
- D. **PUBLIC SERVICE.** The Association may contract for or provide (to the extent

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adequate services are not provided by a public authority) police and fire protection, refuse disposal, street light maintenance, security patrol and such other services, facilities and maintenance of a public or quasi public nature as may be deemed necessary or desirable by the Board for the effectuation of the purposes of this Declaration. In connection with providing such facilities and services, the Association may contract with or assign its duties to any public authority, governmental body or special district, or other private entity deemed appropriate by the Board.

- E. **WITHDRAWAL OF RIGHTS AND PRIVILEGES OF OWNERS.** In the event any owner fails to perform or breaches or violates any provision, restriction, or requirement contained in this Declaration or incorporated herein by reference, the Board may, without in any way limiting any of its other rights, and in its sole discretion, withdraw from the owner any of the rights and privileges of the owner or take any other action deemed appropriate by the Board.
- F. **USE OF FUNDS.** The Association may borrow money and lend or invest its funds upon such terms and conditions as shall be determined by the Board in accordance with the intent and purposes of this Declaration.
- G. **PROPERTY.** The Association may own and hold the title to real and personal property.
- H. **COMMITTEES.** The Board may, in its sole discretion, establish whatever committees it deems necessary, either temporary or permanent, to carry out the intent and purposes of this Declaration, the Articles and the By-Laws. Any Committee member may be a member of the Board, an owner, or such other person as the Board may appoint, for whatever term or terms the Board deems appropriate. To the extent not inconsistent with the laws of the State of Idaho, and upon such conditions as are otherwise deemed advisable by the Board, the Board may delegate to any such Committee or Committees any of its rights, powers and duties.
- I. **VARIANCES.** The Association may grant to any owner a right of variance or modification of and from any of the provisions of this Declaration, the Articles or By-Laws, upon the unanimous approval of the Board, whenever it is determined by the Board that same would be in the best interests of the Association.
- J. **ESTOPPEL CERTIFICATE.** Upon such terms and conditions as the Board may determine, the Association may issue an Estoppel Certificate binding the Association to the position or determination stated therein, and anyone interested therein shall be entitled to rely on the matters stated therein. Said Certificate to be valid and binding on the Association shall be executed by at least one member of the Board, or the President of the Association, or such other person or persons as the Board in its discretion may determine and designate.

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- K. **APPEAL.** Any owner aggrieved by any action taken by the Board or any Committee shall have a right of appeal to the Association to consider same, the Association having the final right to approve, rescind or modify any action taken by the Board or by any Committee, by a majority vote of the votes entitled to be cast by the owners present at any regular meeting or special meeting called therefor. Any aggrieved owner desiring a special meeting of the Association to consider same may call for same in the manner set forth in the By-Laws of the Association.
- L. **EQUAL TREATMENT OF OWNERS.** No action shall at any time be taken by the Association or its Board which in any manner would unreasonably discriminate against any owner or owners in favor of any other owner or owners.

3.6 TUSCANY PROFESSIONAL PLAZA RULES.

- a. **RULEMAKING POWER.** The Association may, from time to time, and subject to the provisions of this Declaration, adopt, declare, amend, modify and repeal Rules and Regulations to be known as the "Tuscany Professional Plaza Rules", by a majority vote of the members of the Board. Said Tuscany Professional Plaza Rules may relate to any matter or thing involving the Association, the Board, any Committee, any Lot Area or Common Area, any property owned or controlled by the Association, the Articles, By-Laws and this Declaration. Said Tuscany Professional Plaza Rules shall become effective when passed upon by the Board and notice thereof is given to the owners in accordance with paragraph 7.5 of this Declaration.
- b. **RECORDATION OF RULES.** A copy of the Tuscany Professional Plaza Rules, as they may from time to time be adopted, amended or repealed, may be recorded and shall be on file and available for inspection by any owner.

3.7 LIABILITY OF MEMBERS OF THE BOARD, THE COMMITTEE AND OFFICERS. No member of the Board or any Committee or any officer of the Association shall be personally liable to any owner or to any other person, including the Association, for negligence or for any error or omission of the Board, the Association, its representatives and employees or any Committee, except for the wilful and intentional misconduct of any such person.

ARTICLE 4. FUNDS AND ASSESSMENTS

4.1 DECLARATION OF ASSESSMENT AND AGREEMENT OF PAYMENT. The Grantor, for each lot owned within the properties except for Lot Nine, covenants, and each owner of any lot by the acceptance of a deed therefore or acceptance of an agreement to purchase, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association the assessments made as hereafter provided in Section 4.3.

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4.2 PURPOSE OF ASSESSMENTS. The annual and special assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the lot owners and lot occupants of Tuscan Professional Plaza, and in particular for the improvement and maintenance of the common areas, services and facilities devoted to these purposes. No owner of a building may exempt that owner from liability for contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by the abandonment of owner's building.

4.3 ASSESSMENTS. The initial assessment shall be Fifty Dollars (\$50.00) per lot (except for Lot Nine) per month beginning with the month of closing the first sale of a lot. Thereafter the following procedure shall govern such assessments.

- a. At least thirty (30) days prior to the commencement of each fiscal year, the Board shall estimate the costs and expenses to be incurred by the Association during such fiscal year in performing its functions under this Declaration (including a reasonable provision for contingencies and replacements), and shall subtract from such estimate an amount equal to the anticipated balance (exclusive of any reserves) in the operating fund at the start of such fiscal year which is attributable to fees and assessments received for the prior fiscal year. The foregoing computations shall constitute the budget, which shall be presented to the owners at the Annual Meeting of the Association. The Directors shall determine the amount of an annual assessment necessary to meet the Budget. The amount so determined shall be levied as an assessment against each lot in Tuscan Professional Plaza and against each owner individually. The amount of each assessment may vary from year to year.
- b. PAYMENT OF ANNUAL ASSESSMENT. The time of the first conveyance or occupancy (whichever occurs first) of each unit and from time to time thereafter, the Board shall notify the owner or owners of each lot as to the amount of the annual assessment and shall each month collect for each lot one-twelfth (1/12) of said lot's proportional share of said annual assessment.
- c. SPECIAL ASSESSMENTS. In addition to other assessments authorized by this Declaration, the Board shall have the right and power to levy a special assessment applicable for the purpose of providing for the construction of additional recreational and other common facilities, unexpected repairs, or the alteration, replacement, demolition or removal of existing recreational and other common facilities, from time to time, as in its discretion appears to be in the best interests of the Association. Any such alternation, demolition, removal, construction, improvements or additions increasing the owner's assessment for that year over the then maximum limitation shall be authorized by an affirmative vote of a majority of the Board at a duly called meeting at which a quorum is present, and ratified and approved by a majority vote of the members who shall vote in person or by proxy at a meeting called for that purpose.

- d. **UNIFORM RATE OF ASSESSMENT.** Both annual and special assessments must be fixed at a uniform rate for all lots, and may be collected on a lump sum or on a monthly installment basis.

4.4 **SPECIAL INDIVIDUAL ASSESSMENT.** The Board may levy a special assessment against any owner and owner's lot as a result of whose failure to comply with this Declaration, or the Tuscany Professional Plaza Rules, monies are about to be or were expended by the Association from the operating fund in performing its functions under the Declaration, the Articles and By-Laws. Such assessments shall include, but not be limited to, reimbursement to the Association for any amount so expended or to be expended, and shall be due and payable to the Association when levied. Special individual assessments shall be enforced in the same manner as annual or other special assessments.

4.5 **OPERATING FUND.** There shall be an operating fund from which the Association shall make disbursements in performing the functions of the Association, and into which the Association shall deposit all monies paid to it as:

- a. Annual Assessments;
- b. Special Assessments;
- c. Miscellaneous fees; and
- d. Income and profits attributable to the operating fund.

4.6 **ENFORCEMENT OF ASSESSMENTS.** Each assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the owner or owners against whom same is assessed, and shall constitute a lien and charge upon the lot in Tuscany Professional Plaza to which the assessment relates or is owned by said owner. Each owner of any lot becoming an owner of any lot or by acceptance of a deed relating thereto or by acceptance of any other document or instrument conveying an ownership interest therein, whether or not it shall be so expressed in any such deed or other document or instrument, is and shall be deemed to covenant and agree to pay to the Association the assessments provided for herein, and agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each owner agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due from the owner or any other relief or remedy obtained against said owner. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

- a. **ENFORCEMENT BY SUIT.** The Association may bring a suit at law against each owner or owners to enforce each such assessment obligation. Each owner agrees that any judgment rendered in any such action shall include a sum for reasonable attorneys' fees in such amount as the court may adjudge against the

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defaulting owner, plus all Court costs and necessary expenses and accounting fees incurred by the Association, plus interest on the amount of said assessment at the maximum legal rate allowed by law from the date the assessment becomes delinquent until paid in full.

- b. **ENFORCEMENT BY LIEN.** The Association shall give notice to each lot owner whose assessment is due and unpaid by mailing to said owner a copy of the notice and claim of lien which shall state the following:
1. The last known name of the delinquent owner;
 2. The legal description and street address of the lot against which claim of lien is made;
 3. The amount claimed to be due and owing (with any offset allowed);
 4. That the claim of lien is made by the Association pursuant to the terms of the Declaration; and
 5. That a lien is claimed against the lot in an amount equal to the amount of the stated delinquency.

The Association shall immediately record a duly executed original or copy of such notice and claim of lien and the lien claimed therein shall immediately attach and become effective as a lien upon the lot against which such assessment was levied. Each default in payment of an assessment shall constitute a separate basis for a claim of lien or a lien, but any number of defaults may be included within a single notice and claim of lien. The amount of the lien shall include the amount of all unpaid assessments, plus interest on the amount of the assessment at the maximum legal rate from the date the assessment becomes delinquent until paid in full, plus a lien charge to cover recording, legal and accounting expenses incident thereto. The amount of said lien charge may be increased or decreased by the Board in its sole discretion. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Idaho, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other lot owners. The Association shall have the power to bid in its interest at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any lot. In the event such foreclosure is by action in court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each owner, by becoming an owner of a lot in Tuscany Professional Plaza, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner and also hereby expressly waives the defense of the Statute of Limitations applicable to the bringing of any suit or action thereon.

- c. **ESTOPPEL CERTIFICATE.** Any owner shall be entitled to an Estoppel Certificate from the Board setting forth the amount of any due and unpaid assessments with respect to said owner's lot (or the fact that all assessments due are paid if such is the case) within a reasonable time after demand therefor and upon payment of a reasonable fee to be determined by the Board.

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- d. NOTIFICATION. The Association may notify all owners of the names of all persons who have defaulted in the payment of any assessment when due and the amount thereof in the discretion of the Board.


4.7 SUBORDINATION TO MORTGAGES

- a. SUBORDINATION. The lien or liens created hereby upon any lot shall be subject to and shall not affect the rights of the holder of an indebtedness made in good faith, for value, and secured by a duly executed mortgage or deed of trust upon such lot recorded prior in time to the recording of the notice and claim of lien provided for above, in favor of or for the benefit of an institutional lender (meaning a bank, insurance company or savings and loan or building and loan association). However, after the foreclosure of any such mortgage by any such institutional lender, there may be a lien created pursuant to Section 4.6 on the interest of the purchaser at such foreclosure sale to secure all assessments hereunder assessed to such purchaser as an owner after the date of such foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided herein.
- b. AMENDMENT. No amendment to Paragraph (a) above shall affect the rights of the holder of any such mortgage recorded prior to the recordation of such amendment who does not join in the execution thereof.
- c. RIGHT UPON FORECLOSURE. In the event of a foreclosure, the foreclosing party (or the receiver appointed in such action) shall not have the right nor the power to exercise any of the rights or privileges of an owner, including voting, until such party has acquired title and any redemption period has expired. At such time as the first mortgagee shall become record owner of the lot and improvements, said first mortgagee shall be subject to all of the terms and conditions of these covenants, conditions and restrictions, including but not limited to the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any owner.

IN WITNESS WHEREOF, the Grantor has executed this Declaration of Protective Restrictions and Covenants on this 15th day of August, 2001.

GRANTOR:

Tuscany Hills Development Co., L.L.C.


Billy B. Isley, Member

Frasure Construction Co., a partnership, Member

By: 
Brad Frasure, Partner

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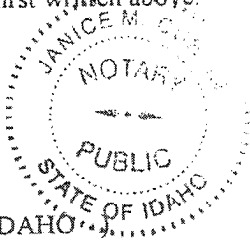
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STATE OF IDAHO)
:SS
County of Bannock)

On this 18th day of August, 2001, before me, the undersigned Notary Public, in and for said State, personally appeared Brad Frasure, a general partner of Frasure Construction Co., a member of Tuscany Hills Development Co., L.L.C., known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same on behalf of Frasure Construction Co. as a member of Tuscany Hills Development Co., L.L.C.

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

(SEAL)



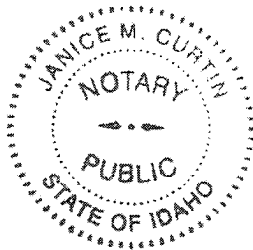
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County of Bannock)

Janice M. Curtin
NOTARY PUBLIC-STATE OF IDAHO
Commission Expires: 11-2-06

On this 18th day of August, 2001, before me, the undersigned Notary Public, in and for said State, personally appeared Billy B. Isley, member of Tuscany Hills Development Co., L.L.C., known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same as a member of said Tuscany Hills Development Co., L.L.C.

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

(SEAL)



STATE OF IDAHO)
:SS
County of Bannock)

Janice M. Curtin
NOTARY PUBLIC-STATE OF IDAHO
Commission Expires: 11-2-06

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