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AMENDED AND RESTATED  
DECLARATION OF COVANANTS, CONDITIONS AND RESTRICTIONS  
FOR DESERT CROSSINGS AT RITA RANCH

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR DESERT  
CROSSINGS AT RITA RANCH**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR DESERT CROSSINGS AT RITA RANCH (this "Declaration") is made this 22 day of June, 2018, by the owners (the "Owners") of the real property described as:

Lots 1 through 255 and Common Area "A," of DESERT CROSSINGS AT RITA RANCH, a Pima County subdivision, as shown in Book 49 of Maps and Plats at Page 32 thereof, in the office of the County Recorder of Pima County, Arizona (the "Properties").

**RECITALS**

WHEREAS, LAWYERS TITLE OF ARIZONA, an Arizona Corporation, as Trustee under Trust Number 7823-T executed and recorded a Declaration of Conditions, Covenants and Restrictions, dated January 31, 1997, and recorded in the Office of the County Recorder of Pima County, Arizona on February 27, 1997, in Book 10491, at Page 1530 et seq., which shall be referred to herein as the "Original Declaration;" and

WHEREAS, Desert Crossings at Rita Ranch is also subject to the Declaration of Protective Restrictions for Rita Ranch Recorded December 26, 1984 in Book 7435, at Page 674 in the office of the Pima County Recorder, the First Amendment to Declaration of Protective Restrictions for Rita Ranch recorded in Docket 7942 at Page 1675 in the Office of the Pima County Recorder, Establishment of Design Guidelines for Residential Development of Rita Ranch recorded in Docket 7991 at Page 620 in the Office of the Pima County Recorder, the Declaration of Special Covenants and Requirements for The Rita Ranch Recorded on December 20, 1984 in Docket 7434 at Page 775 in the Office of the Pima County Recorder, Second Amendment to Declaration of Protective Restrictions for Rita Ranch recorded in Docket 8247 at Page 693 in the Office of the Pima County Recorder and Declaration of Special Maintenance Covenants for Rita Ranch recorded in Docket 9313 at Page 1005 in the Office of the Pima County Recorder (the "Master Documents") and is subject to all of the applicable, provisions therein; and

WHEREAS, this Declaration amends, restates, replaces and fully supersedes the Original Declaration; and

WHEREAS, at least two-thirds (2/3rds) of the votes cast in a duly-held election of the Members of the Association were in favor of the adoption of this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Desert Crossings at Rita Ranch.

**NOW THEREFORE**, the Owners hereby declare that the Properties are and shall be held, conveyed, encumbered, leased, and used subject to the following covenants, conditions, uses, restrictions, limitations, obligations, easements, equitable servitudes, charges and liens (hereinafter collectively referred to as the "Restrictions"), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties. The Restrictions set forth herein shall run with the Properties, shall be binding upon all persons having or acquiring any right, title or interest therein, and shall inure to the benefit of, be binding upon and enforceable by all Owners, the Association and their successors and assigns in interest.

**ARTICLE I**  
**DEFINITIONS**

The following words, phrases or terms used in this Declaration shall have the following meanings:

A. "Annual Assessment" shall mean the charge levied and assessed each year against each Lot or Owner pursuant to Article VII, Section 2, hereof.

B. "Architectural Committee" shall mean the committee of the Association to be created pursuant to Article XI below.

C. "Articles" shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.

D. "Assessment" shall mean an Annual Assessment, Special, Assessment, Covenant Charge and/or Maintenance Charge.

E. "Assessment Lien" shall mean the lien created and imposed by Article VII.

F. "Assessment Period" shall mean the term set forth in Article VII, Section 2.

G. "Association" shall mean the Arizona non-profit corporation organized to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. The Association shall be named the "Desert Crossings at Rita Ranch Association".

H. "Association Land" shall mean such part or parts of Desert Crossings at Rita Ranch, together with the buildings, structures and improvements thereon, and other real property which the Association may at any time own in fee or in which the Association may at any time have a leasehold interest, for as long as the Association is the owner of the fee or leasehold interest.

I. "Board" shall mean the Board of Directors of the Association.

J. "Bylaws" shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

K. "Common Area and Common Areas" shall mean (a) all Association Land; (b) all land within Desert Crossings at Rita Ranch, which this Declaration or other Recorded instrument, makes available for use by Members of the Association; (c) all land within Desert Crossings at Rita Ranch, which the recorded subdivision plat indicates is to be used for landscaping, drainage, and/or flood control for the benefit of Desert Crossings at Rita Ranch and/or the general public and is to be dedicated to the public or the City of Tucson; and (d) areas on a Lot within easements granted to the Association or its Members for the location, construction, maintenance, repair and replacement of a wall, which easement may be granted or created on a recorded subdivision plat or by a deed or other conveyance signed and acknowledged by the Association.

L. "Covenants" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth herein.

M. "Covenant Charge" shall mean any Assessment levied and assessed pursuant to Article VII, Section 9.

N. "Declaration" shall mean this Declaration as amended or supplemented from time to time.

O. "Dwelling Unit" shall mean any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a Single Family.

P. "Exempt Property" shall mean the following parts of Desert Crossings at Rita Ranch:

i. All land and improvements owned by, or dedicated to and accepted by, the United States, the State of Arizona, the City of Tucson, or any political subdivision thereof, for as long as any such entity or political subdivision is the Owner thereof or for so long as said dedication remains effective;

ii. All Association Land, for as long as the Association is the Owner thereof.

Q. "Governing Documents" shall mean the Articles, Bylaws, this Declaration, and all Rules adopted by the Board of Directors or policies, procedures, guidelines and standards adopted by the Architectural Committee.

R. "Lot" shall mean any area of real property within Desert Crossings at Rita Ranch designated as a Lot on the Recorded subdivision plat.

S. "Maintenance Charges" shall mean any and all costs, assessed pursuant to Article X, Sections 3 or 4.

T. "Master Development Plan" shall mean the Desert Crossings at Rita Ranch Development Plan approved by the City of Tucson or other applicable governmental agencies as the same may be from time to time amended.

U. "Master Documents" shall mean those documents designated as such in the recitals above, and by which Desert Crossings at Rita Ranch is subject to all provisions contained therein.

V. "Member" shall mean any person holding a Membership in the Association pursuant to this Declaration.

W. "Membership" shall mean a Membership in the Association and the rights granted to the Owners pursuant to Article VI to participate in the Association.

X. "Owner" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot including contract sellers, but excluding others who hold such title merely as security. In the case of Lots the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., legal title shall be deemed to be in the Trustee. An Owner shall include any person who holds record title to a Lot in joint ownership with any other person or holds an undivided fee interest in any Lot.

Y. "Rules and Regulations" shall mean the rules for Desert Crossings at Rita Ranch adopted by the Board pursuant to Article V, Section 3.

Z. "Resident" shall mean:

i. Each buyer under a contract of sale as defined in A-R.S. 33-741 covering any Lot, regardless of whether the contract is Recorded, and each Tenant actually residing on any Lot; and

ii. Any Tenant, as that term is defined in this Declaration, regardless of whether there is a written lease; and

iii. Members of the immediate family of each Owner, Tenant, or buyer under a contract for sale, actually living in the same household with such Owner, Tenant, or buyer; and

iv. Guests or invitees of any such Member, Owner, Tenant or buyer.

Every Resident shall be subject to such rules and regulations as the Association may hereinafter specify.

AA. "Single Family" shall mean a group of one (1) or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Dwelling Unit.



BB. "Special Assessment" shall mean any Assessment levied and assessed pursuant to Article. VII, Section 4.

CC. "Special Use Fees" shall mean special fees authorized by this Declaration which an Owner, Resident or any other person is obligated to pay to the Association over, above, and in addition to, any Annual or Special Assessments or Maintenance Charges imposed or payable hereunder.

DD. "Tenant" shall mean any person who occupies property located on Desert Crossings at Rita Ranch under any type of rental or leasing arrangement.

EE. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is, or would be, visible to a person six (6) feet tall, standing at ground level on any part of such neighboring property.

## **ARTICLE II**

### **EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS**

#### **Section 1. Easements of Enjoyment**

Every Member, Owner, or Resident of the Association shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to, and shall pass with, the title to every Lot, subject to the following provisions:

A. The right of the Association to charge reasonable admission and other Special Use Fees for the use of any, recreational or other facility situated upon the Common Areas. Fees shall be uniform among Members.

B. The right of the Association to suspend the voting rights and right to use of the Common Areas by any Member and/or Resident(s) (i) for any period during which any Assessment against his Lot remains delinquent; (ii) for a period not to exceed sixty (60) days after notice and opportunity to be heard for any infraction of this Declaration or the Desert Crossings at Rita Ranch Rules; and (iii) for successive sixty (60) day periods if any such infraction is not corrected during any sixty (60) day suspension period.

C. The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association. Unless otherwise required by zoning stipulations or agreements with the City of Tucson effective prior to the date hereof or specified on a Recorded subdivision plat, no such dedication or transfer shall be effective unless an instrument signed by the Owners of two-thirds (2/3rds) of the Membership agreeing to such dedication or transfer has been Recorded, except that the Board shall have authority to transfer to such public agencies or authorities any utility easements and rights-of-way which are intended to benefit Desert Crossings at Rita. Ranch and which do not have any substantial adverse effect on the enjoyment of the Common Areas by the Members.

D. The right of the Association to regulate the use of the Common Areas through the Desert Crossings at Rita Ranch Rules and to prohibit access to those Common Areas, such as landscaped rights-of-way, not intended for use by the Members. The Desert Crossings at Rita Ranch Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Common Areas for the safety and convenience of the users thereof or otherwise shall serve to promote the best interests of the Owners and Residents.

**Section 2. Delegation of Use**

Any Member may, in accordance with the Desert Crossings at Rita Ranch Rules and the limitations therein contained and this Declaration (a) delegate his right of enjoyment in the Common Areas and facilities to the members of his family, his Tenants, or his guests or Invitees; or (b) designate another person to exercise all of his rights (but not liabilities or voting rights), which other person shall, during the period of such designation, have the sole right to delegate rights of enjoyment pursuant to Subsection (a) of this Section. Such delegation of use is subject to approval by the Board.

**ARTICLE III**  
**PERMITTED USES AND RESTRICTIONS**

**Section 1. Permitted Uses and Restrictions**

The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots:

A. Animals. No animal, bird, fowl, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No such pet(s) shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any pet(s) shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet, whether such a pet is a nuisance, or whether the number of pets on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein.

B. Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a

dwelling on any property shall be removed immediately after the completion of construction.

C. Nuisance and Condition of Lots. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot and no odors shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Property. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, and trash and debris shall not be permitted to accumulate.

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

E. Repair of Building. No building or structure on any Lot shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event that any building or structure is damaged or destroyed, then such building or structure shall be immediately repaired or rebuilt or shall be demolished.

F. Antennae and Exterior Devices. Subject to the Telecommunications Act of 1996 and any other applicable law, no exterior antennas or other devices for the transmission or reception of communication, television or radio signals, including satellite dishes, which are not in keeping with similar devices already present and approved within the Properties, shall be used, erected or maintained outdoors on any Lot, whether attached to a Dwelling Unit, building, structure or otherwise, without prior written authorization of the Board of Directors or the Architectural Committee. No other exterior devices, modifications, or additions, shall be constructed on the exterior of a Lot (including the roof) without the prior written authorization of the Board or the Architectural Committee, and no satellite dish or antenna may be installed or attached to a common or party wall.

G. Mineral Exploration. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

H. Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot except in covered containers. Except in the instance where such garbage or trash containers are placed out for collection, such garbage or trash containers will be stored in garages, rear yards, or in a side yard against the exterior wall of the Dwelling Unit behind the plane of the front of the garage or Dwelling Unit, as applicable, such that visibility of such containers to neighboring property is minimized and limited to only these areas, except to make the same available for collection and then only for the shortest time reasonably necessary to affect such collection. No outdoor incinerators shall be kept or maintained on any Lot.

I. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be Visible From Neighboring Property.

J. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to a Lot except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other improvements; (ii) that which the Association may require for the operation and maintenance of Desert Crossings at Rita Ranch.

K. Flags. The following flags may be displayed in the front yard or backyard of a Dwelling Unit:

i. The American flag or an official or replica of a flag of the United States army, navy, air force, marine corps or coast guard may be displayed on a Lot if the American flag or military flag is displayed in a manner consistent with the federal flag code (P.L. 94 344; 90 Stat./ 810; 4 U.S. Code §4-10).

ii. The POW/MIA flag.

iii. The Arizona state flag.

iv. An Arizona Indian nation's flag.

v. The Gadsden flag.

vi. Other Flags, subject to written approval of the Architectural Committee after proper submission and review in accordance with any rules established by the Board or Architectural Committee.

L. Signs. No sign of any kind shall be permitted on the Common Area, except signs or other postings which may be required by legal proceedings; or "Open House" signs for Lots that are for sale or for rent, and which are in place not more than two hours before and after the time of the event. No signs whatsoever

(including, but not limited to, commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

- i. Signs required by legal proceedings or as a matter of law;
- ii. No more than two (2) identification signs for individual residences (i.e. house numbers, address placards, etc.), each with a face area of seventy-two (72) square inches or less;
- iii. One commercially-produced "For Sale" or "For Rent" sign of industry standard size (18" x 24") on the Lot. Said sign shall be removed within one week after close of escrow. The sign shall be the standard type used by real estate professionals without additional advertising or adornment, except one sign rider that does not exceed 6" x 24";
- iv. Indoor and outdoor display of political signs visible no earlier than 71 days prior to an election, and no later than three days after an election day in accordance with A.R.S. §33-1808 and applicable Pima County ordinances; and
- v. Such other signs, including, but not limited to, signs posted by a security or alarm company, construction job identification signs, builder identification signs and subdivision signs, which are in conformance with the requirements of the City of Tucson or other governmental agencies.

M. Restriction on Further Subdivision and Divisions; Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without such Owner giving notice to all Owners of record and obtaining the prior written approval of (i) the Board, which approval must be evidenced on the plat or a recorded easement, or similar instrument, and (ii) the Mayor and Council of the City of Tucson.

N. Utility Easements. There is hereby created a blanket easement upon, across, over and under each Lot for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all utility and service lines and systems, including, but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc., as such utilities are installed in connection with the initial development of the Lot and the construction of the first Dwelling Unit or other building thereon. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Lots. Notwithstanding anything to the contrary contained in this Subsection, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on any Lot except as approved by the Architectural Committee and the City of Tucson, or other governmental agency.

O. Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

P. Solar Energy Devices. The installation and use of solar energy devices (as defined in ARS §44-1761) is encouraged by the Association to provide individual Lots with heating/cooling, electrical power, and solar lighting; to reduce mechanical power; or provide any combination of the foregoing by means of collecting and transferring solar generated energy into such use either by active or passive means. Passive systems are required to be designed as a solar energy device, and not part of a normal structure. The Architectural Review Committee has developed rules for placement of solar devices that do not impair the function of any device and do not adversely impact the cost or efficiency of the device. Written approval by the Architectural Review Committee is required prior to the installation of any solar device(s). Approval may, in some cases, require placement of a roof façade to block solar devices from view.

Q. Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, or pedestrian way from ground level to a height of eight (8) feet.

R. Trucks, Trailers, Campers and Boats. No mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot in Desert Crossings at Rita Ranch so as to be Visible From Neighboring Property, the Common Areas or the streets; provided, however, the provisions of this Section shall not apply to pickup trucks with bed toppers not exceeding seven (7) feet in height measured from ground level, which are parked as provided in Subsection T below and are used on a regular and recurring basis for daily transportation. Temporary parking of such vehicles otherwise prohibited by this Section may be allowed only for loading and unloading of such vehicles in accordance with Rules and Regulations as may be approved and adopted by the Board.

S. Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot in Desert Crossings at Rita Ranch, and no inoperable or unlicensed vehicle may be stored or parked on any such Lot so as to be Visible From Neighboring Property or to be visible from Common Areas or streets; provided, however, that the provisions of this Section shall not apply to minor emergency vehicle repairs, and minor regular vehicle

maintenance (i.e. washing and waxing, oil and fluid changes, minor repairs, tire changes) on a temporary basis so long as such minor repairs or maintenance does not cause the vehicle to become inoperable; or vehicles parked in garages on Lots so long as such vehicles are in good operating condition and appearance and are not under major repair.

T. Parking. Vehicles of all Members, Owners, and Residents are to be kept in garages, carports, residential driveways of the Owner, and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot; provided, however, this Section shall not be construed to permit the parking in the above described areas of any vehicle whose parking on Desert Crossings at Rita Ranch is otherwise prohibited or the parking of any inoperable or unlicensed vehicle. Parking in the street is prohibited in areas so designated by signage and/or painted curbs, and should otherwise be limited to short-term convenience parking when necessary and safe to do so.

U. Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, any member of the Architectural Committee, any member of the Board, or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot, and the improvements thereon, except for the interior portions of any completed residence, for the purpose of ascertaining whether or not the provisions of the Declaration have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.

V. Health, Safety and Welfare. In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety, or welfare of Owners, and Residents, the Board may make rules restricting or regulating their presence on Desert Crossings at Rita Ranch as part of the Desert Crossings at Rita Ranch Rules and Regulations or may direct the Architectural Committee to make rules governing their presence on Lots as part of its guidelines and standards.

W. Business Activities. All Lots shall be used for single-family residential purposes only. The following applies with respect to home business activities within the Property:

i. Criteria for Home Business. No trade or business may be conducted on or from any Lot, except that an Owner or occupant residing in any Lot may conduct business activities within the Lot so long as (1) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (2) the business activity conforms to all zoning requirements and any other governmental requirements for the Properties; (3) the business activity does not involve any person conducting such business who does not reside in the Lot or

door-to-door solicitation of residents of the Properties; (4) the existence or operation of the business does not increase that Lot's use of Common Area facilities over the standard for a single family dwelling; (5) the existence or operation of the business does not require more than a reasonable number of customers or delivery trucks to visit the Lot; and (6) the business activity does not constitute a nuisance, or a hazardous or offensive use, or cause the owners to violate any other provisions of this Declaration, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

ii. Business; Trade. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally-accepted meanings.

iii. Yard Sales or Garage Sales. Yard sales, garage sales and estate sales are allowed, subject to limitations as to time and duration in accordance with Rules and Regulations as may be approved and adopted by the Board.

X. Rentals. An Owner may rent his/her entire Dwelling Unit subject to the following requirements and conditions.

i. Obligations of Tenants. All provisions of the Governing Documents which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to tenants. The Owner shall provide his/her tenant with copies of the Governing Documents. If the Owner fails to do so, the Association may provide copies to the tenant and charge the Owner the cost of doing so.

ii. Requirements for Leases. All leases shall be in writing and shall specifically provide: (a) The lease is subject in all respects to the provisions of the Declaration and Desert Crossings at Rita Ranch Rules and Regulations; (b) The failure of the Tenant(s) and/or their guest or invitees to comply with the terms and conditions of the Declaration and Rules constitutes a material default of the lease, and the Owner shall be entitled to reenter and retake possession of the premises pursuant to the provisions of the Arizona Landlord Tenant Act, A.R.S. §33-1301 et seq.; and (c) All leases shall be for a minimum of 30 days.

iii. Notification to Association. Within 10 days of lease inception, an Owner leasing his/her Lot shall give the Association, in writing, the name of the Tenant(s), contact information for the Tenant(s); the time period of the lease, including the beginning and ending dates of the tenancy; a description and the license plate numbers of the Tenant's(s') vehicles.

iv. Enforcement of Leasing Restrictions. An Owner shall be responsible for any violation of the Governing Documents by his/her Tenant(s) and their guests or invitees. In the event of any violation, the Owner, upon demand of the



Association, shall immediately take all necessary actions to correct any such violations.

**ARTICLE IV**  
**PARTY WALLS**

**Section 1. Owners' Rights, Duties, and Obligations**

Except as hereinafter provided, the rights, duties, and obligations of Owners with respect to party walls between Lots or party fences between Lots shall be as follows:

A. The Owners of contiguous Lots who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

B. In the event that any party wall or party fence is damaged or destroyed through the act of an Owner or any of his Tenants, agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall or party fence without cost to the Owner of the adjoining Lot. Any dispute over an Owner's liability for such damage shall be resolved as provided in Subsection E below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.

C. In the event any party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his Tenants, agents, guests or family, it shall be the obligation of all Owners whose Lots adjoin such party wall or party fence to rebuild and repair such wall or fence at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their Lots on the party wall or party fence.

D. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

E. In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining Owners may submit the dispute to the Board, the decision of which shall be binding. Anything in the foregoing to the contrary notwithstanding.

F. In the case of party walls or fences (1) between Common Areas and Lots, or (2) constructed by the developer or the Association on Common Areas within

a Lot, the Association shall be responsible for all maintenance thereof, subject to the provisions of Article X, Sections 3 and 4, except that each Owner of a Lot shall be responsible for painting the portion of the party fence facing his Lot or the portion thereof which is not a portion of the Common Area.

**ARTICLE V**  
**ORGANIZATION OF ASSOCIATION**

**Section 1. Formation of Association**

The Association shall be a non-profit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

**Section 2. Board of Directors and Officers**

The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The initial Board shall be composed of three (3) members. The Board may also appoint various committees and appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association.

**Section 3. The Desert Crossings at Rita Ranch Rules and Regulations**

By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the Desert Crossings at Rita Ranch Rules and Regulations. The Rules and Regulations may restrict and govern the use of any Common Area by any Member or Resident, by the family and designees of such Member; provided, however, that the Desert Crossings at Rita Ranch Rules shall not discriminate among Members. The Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said Rules and Regulations are not inconsistent with the provisions of this Declaration, the Articles or Bylaws. Rules and Regulations shall have the same force and effect as if they were set forth in and were a part of this Declaration.

**Section 4. Personal Liability**

No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other persons, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager, any representative or

employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional, misconduct.

**ARTICLE VI**  
**MEMBERSHIPS AND VOTING**

**Section 1. Owners of Lots**

Every Owner of a Lot which is subject to Assessment shall be a Member of the Association. Each such Owner shall have one (1) Membership for each Lot owned by the Member, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable. There shall be only one (1) Membership for each Lot which Membership shall be shared by any joint Owners of, or Owners of undivided interests in, a Lot.

**Section 2. Right to Vote**

No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and, is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit, and fractional votes shall not be allowed. In the event that a Membership is owned by more than one (1) person or entity and such owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event that more than one (1) vote is cast for a particular Membership, none of the said votes shall be counted and all said votes shall be deemed void.

**Section 3. Cumulative Voting for Board Members**

In any election of the members of the Board, every owner of a Membership entitled to vote at such an election shall have the number of votes for each Membership equal to the number of directors to be elected. Each Member shall have the right to cumulate his votes for one (1) candidate or to divide such votes among any number of the candidates. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected.

**Section 4. Membership Rights**

Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws, as the same may be amended from time to time.

**Section 5. Transfer of Membership**

The rights and obligations of the owner of a Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot. A transfer of ownership to a Lot may be effected by Deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership(s) appurtenant to said Lot to the new Owner thereof.

**ARTICLE VII**

**COVENANT FOR ASSESSMENTS AND CREATION OF LIEN**

**Section 1. Creation of Lien and Personal Obligation of Assessments and Maintenance Charges**

Each Owner by acceptance of a Deed therefor (whether or not it shall be so expressed in such Deed) is deemed to covenant and agree, to pay to the Association the following Assessments and charges: (a) Annual Assessments established by this Article VII, (b) Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article VII, (c) Maintenance Charges established by Article X, Sections 2 and 3, and (d) Covenant Charges established and assessed pursuant to the Declaration of Special Maintenance Covenants for Rita Ranch recorded in Docket 9313 at Page 1005, all such Assessments to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments, Maintenance Charges and Covenant Charges, together with costs and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing servitude and lien upon the Lot against which each such Assessment is made. The Annual and Special Assessments and Covenant Charges against each Lot shall be based on the number of Memberships appurtenant to the Lot. Each such Annual and Special Assessment, Covenant Charge and Maintenance Charge, together with costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

**Section 2. Annual Assessments**

In order to provide for the uses and purposes specified in Articles IX hereof, including the establishment of replacement and maintenance reserves, the Board in each year shall assess against each Lot an Annual Assessment. The determination of the amount of the Annual Assessment shall be in the sole discretion of the Board, subject to any limitation as set forth by applicable Arizona statutes, but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purposes specified in Article IX. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year and shall terminate on December 31 of such year.

**Section 3. Uniform Rate of Assessment**

All Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots.

**Section 4. Special Assessments for Capital Improvements and Extraordinary Expenses**

In addition to the Annual Assessments authorized above, the Association may levy one (1) or more Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association Land, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that any such Assessment shall have the assent of two-third (2/3) of the Members who are voting in person or by absentee ballot at a meeting duly called for such purpose. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes.

Written notice of any meeting called for the purpose of taking any action authorized under this Section shall be sent to all Members no less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence in person or by absentee ballot of Members entitled to cast ten percent (10%) of all the eligible votes (exclusive of suspended voting rights) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 5. Billing and Collection Procedures**

The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Annual and Special Assessment, the Covenant Charges and

the Maintenance Charges provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Member on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period; successor Owners of Lots and successor shall be given credit for prepayments, on a prorated basis, made by prior Owners.

**Section 6. Collection Costs and Interest on Delinquent Assessments**

Any Assessment or installment thereof not paid within thirty (30) days of the due date shall be deemed delinquent and shall bear interest at a rate of twelve percent (12%) per annum, in addition to a flat ten dollar (\$10.00) penalty charge per late occurrence. The Board may also record a Notice of Delinquent Assessment against any Lot as to which an Assessment is delinquent and constitutes a lien, and may establish a fixed fee to reimburse the Association for the Association's cost in Recording such Notice, processing the delinquency and Recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

**Section 7. Evidence of Payment**

Upon receipt of a written request by a Member or any other person, the Association within a reasonable period of time thereafter shall issue to such Member or other person a written certificate stating (a) that all Annual and Special Assessments, Covenant Charges and Maintenance Charges (including costs and attorney's fees, if any, as provided in Section 6 above) have been paid with respect to any specified Lot as of the date of such certificate, or (b) if all Annual and Special Assessments, Covenant Charges and Maintenance Charges have not been paid, the amount of such Annual and Special Assessments, Covenant Charges and Maintenance Charges (including interest, costs and attorney's fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot or Rental Apartment in question.

**Section 8. Property Exempted from the Annual Assessments and Assessment Lien**

Exempt Property shall be exempted from the assessment of the Annual and Special Assessments, Covenant Charges and, except as provided in Article X, Section 3, from Maintenance Charges and the Assessment Lien; provided, however, that in the event that any change of ownership of Exempt Property results in all or any part thereof losing its exempt status in any year, the same shall be subject to the assessment of the Annual and Special Assessments, Covenant Charges and, if exempt therefrom, Maintenance Charges (prorated as of the date it lost its exempt status) and the Assessment Lien.

**Section 9. Covenant Charges**

The Board in each year shall assess against each Lot a Covenant Charge equal to the amounts due by such Lot and the Owner thereof pursuant to the Declaration of Special Maintenance Covenants for Rita Ranch recorded in Docket 9313 at Page 1005 in the Office of the Pima County Recorder. Such Covenant Charge shall be added to, and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Assessment Lien.

**ARTICLE VIII**

**ENFORCEMENT OF PAYMENT OF ANNUAL AND SPECIAL ASSESSMENTS AND MAINTENANCE CHARGES AND OF ASSESSMENT LIEN**

**Section 1. Association as Enforcing Body**

The Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration. However, if the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce them on behalf of the Association, but not at the expense of the Association, by any appropriate action, whether in law or in equity.

**Section 2. Association's Remedies to Enforce Payment of Annual and Special Assessments, Covenant Charges and Maintenance Charges**

If any Member fails to pay the Annual or Special Assessments, Covenant Charges or installments when due, or to pay Maintenance Charges assessed pursuant to Article X, Sections 2 and 3, the Association may enforce the payment of the Annual or Special Assessments, Covenant Charges, Maintenance Charges and/or this Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

A. Bring an action at law and recover judgment against the Member personally obligated to pay the Annual or Special Assessments or the Maintenance Charges.

B. Foreclose the Assessment Lien against the Lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), and the Lot may be redeemed after foreclosure sale as provided by law.

In any action taken pursuant to this Section, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual and Special Assessments, Covenant Charges and Maintenance Charges together with costs and attorney's fees charges specified in Article VII, Section 6.

**Section 3. Subordination of Assessment Lien to Mortgage or Deed of Trust; Priority of Lien**

The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or deed of trust of which the beneficiary is, a lender who has lent funds with the Lot as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot. Sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all Annual and Special Assessments, Covenant Charges and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take subject to all Annual and Special Assessments, Covenant Charges, Maintenance Charges and the Assessment Lien thereof according subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.



**ARTICLE IX**  
**USE OF FUNDS; BORROWING POWER**

**Section 1. Purposes for Which Association's Funds May be Used**

The Association shall apply all funds and property collected and received by it (including the Annual and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of Desert Crossings at Rita Ranch and the Members, Owners, and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without Desert Crossings at Rita Ranch, which may be necessary, desirable or beneficial to the general common interests of Desert Crossings at Rita Ranch, the Members, Owners, and Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents, maintenance of landscaping on Common Areas and public right of way and drainage areas within Desert Crossings at Rita Ranch or the greater Rita Ranch Community, recreation (including liability insurance, communications, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association). The Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter. The Association shall apply the Covenant Charges as required by the terms of the Declaration of Special Maintenance Covenants for Rita Ranch recorded in Docket 9313 at Page 1005 in the Office of the Pima County Recorder.

**Section 2. Borrowing Power**

The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such period of time as is necessary or appropriate, provided, however, that the Association may not mortgage the Common Areas without approval of at least two-thirds (2/3) of the members.

**Section 3. Association's Rights in Spending Funds from Year to Year**

The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surpluses as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

**Section 4. Administration of Special Use Fees**

The Association is authorized to bill for, sue for, collect, administer and disburse all Special Use Fees and the payment thereof shall be secured by the Assessment Lien; provided, however, that all Special Use Fees collected shall, if imposed in connection with a particular improvement, be separately accounted for as to each separate improvement pertaining to which they are collected and shall be expended on the particular improvement to which they pertain.

**Section 5. Insurance**

The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas. The Board in its discretion may determine additional insurance needs for the Association.

**ARTICLE X**  
**MAINTENANCE**

**Section 1. By the Association**

The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas provided, however, the Association shall not be responsible for providing or maintaining the landscaping or structures on any Common Areas which are part of Lots unless (i) such landscaping or structures are available for use by all Owners and Residents or are within easements intended for the general benefit of Desert Crossings at Rita Ranch and (ii) the Association assumes in writing the responsibility for such maintenance or such responsibility is set forth in a recorded instrument as hereinafter provided.

The Association shall also maintain any landscaping and other improvements not on Lots, which are within the exterior boundaries of Desert Crossings at Rita Ranch, but which are within areas shown on a subdivision plat or other plat of dedication for Desert Crossings at Rita Ranch, and which is intended for the general benefit of the Owners and Residents of Desert Crossings at Rita Ranch, except the Association shall not maintain areas which (i) the City of Tucson or other governmental entity is maintaining or (ii) are to be maintained by the Owners of a Lot pursuant to Article IV, Section 1(D), of this Declaration, unless the Association elects to maintain such areas and as to which the Association has made such an election to maintain. The Association shall maintain the landscaping within the westernmost five feet of the right of way adjacent to Desert Crossings along Houghton Road. Specific areas to be maintained by the Association may be identified on a recorded subdivision plat or in a deed or other conveyance signed and acknowledged by the Association, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect to such Common Areas and other areas intended for the general benefit of Desert Crossings at Rita Ranch.

The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of said property so that the Desert Crossings at Rita Ranch development will reflect a high pride of ownership. In connection to this the Association may, in the discretion of the Board:

A. Reconstruct, repair, replace or refinish any improvement or portion thereof upon Association Land except that no permanent improvements shall be made by the Association on any Common Area that is not Association Land and the Association shall provide only maintenance on Common Areas which are on Association Land.

B. Replace injured and diseased trees and other vegetation in any Common Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil for aesthetic purposes.

C. Place and maintain upon any Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof.

D. Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all Common Areas and other properties maintained by the Association (except that the City of Tucson will have the right to determine the appropriate level of maintenance for any public right of way maintained by the Association). Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

In the event any subdivision plat, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots will be responsible for maintenance of certain Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Members, Owners, and Residents of Desert Crossings at Rita Ranch for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board.

The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Article and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

**Section 2. By the Lot Owner**

Each Owner of a Lot shall maintain and repair his Lot, including the Dwelling Unit and all other improvements and landscaping on the Lot, except that such Owner shall not be responsible for maintenance of any area over which (1) the Association assumes the responsibility in writing; (2) the Association has been given such responsibility by a recorded instrument as provided in Article X, Section 1 of this Declaration; or (3) the City of Tucson assumes responsibility, for so long as the Association or the City of Tucson assumes or has responsibility as provided in (1), (2) or (3) above. The Board shall be the sole judge as to the appropriate maintenance of all Lots and adjacent right-of-ways.

Each Lot Owner shall also be responsible to maintain the landscaping within the following areas:

A. The public right-of-way areas between sidewalks (or bike paths) and the street curb in front of his property, if any,

B. The public right-of-way or easement area which abuts the Owner's Lot and which is located between the boundary line of his Lot and the paved area of any street, sidewalk, bike path or similar area, and

C. Any non-street public right-of-way or easement area adjacent to his Lot.

All landscaped areas shall be kept neatly trimmed, and the Lot Owner shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material, and sufficiently covered with appropriate rock, gravel, or decomposed granite material, subject to any rules or guidelines established by the Association or the Architectural Committee.

**Section 3. Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas**

In the event that the need for maintenance or repair of Common Areas and other areas maintained by the Association is caused through the willful or negligent act of any Member, his family, guests, invitees or designees, the cost of such maintenance or repairs shall be added to, and become a part of, the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to Section 1 of this Article in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

**Section 4. Improper Maintenance and Use of Lots**

In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of Desert Crossings at Rita Ranch which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under this Declaration or the architectural guidelines and standards of the Architectural Committee, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the costs thereof shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

**ARTICLE XI**

**ARCHITECTURAL CONTROL AND THE ARCHITECTURAL COMMITTEE**

**Section 1. Architectural Control**

All properties at Desert Crossings at Rita Ranch are subject to architectural control as established by the Architectural Committee. No improvements, alterations, repairs, excavation, grading, landscaping or other work which in any way alters the exterior appearance of any property within Desert Crossings at Rita Ranch, or the improvements located thereon, from its natural or improved state, shall be made or done without prior approval of the Architectural Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered, or made without the prior written approval of the Architectural Committee. All subsequent additions to, or changes or alterations in, any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots, shall be subject to the prior written approval of the Architectural Committee. No changes or deviations in or from the plans and specifications once approved by the Architectural Committee shall be made without prior written approval of the Architectural Committee. No decorative yard art, including, but not limited to sculptures, statues, large pots and containers, reused or recycled mechanical parts, implements, equipment, or similar decorative items, whether determined to be unsightly or not, may be installed, placed, or erected on any Lot without prior written approval from the Architectural Committee.

**Section 2. Architectural Committee**

There shall be an Architectural Committee to perform the functions set forth in this Declaration. The Architectural Committee shall consist of such number of members as the Board may designate and such committee members shall be appointed by the Board. The appointees shall be Members of the Association, and need not be architects or possess any special qualifications of any type except such as the Board may, in its discretion, require. The Architectural Committee shall hold meetings only as necessary to consider submissions from Members or to otherwise adopt or revise its rules, policies, procedures, and guidelines and standards. A majority vote of the committee members shall be necessary for any decision of the Architectural Committee. The Architectural Committee shall adopt the procedural rules and regulations for the performance of such duties by the Architectural Committee, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration, including but not limited to architectural guidelines and standards to be used in rendering its decisions. Subject to the provisions of Section 3 of this Article, the decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration.

**Section 3. Appeal**

Any Member, Owner, or Resident aggrieved by a decision of the Architectural Committee may appeal the decision to the Board in accordance with procedures to be established by the Architectural Committee. Such procedures would include the requirement that the appellant has modified the requested action or has information which would in the Board's opinion warrant reconsideration. The decision of the Board shall be final.

**Section 4. Fee**

The Board may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals, which fee shall be paid at the time the request for approval is submitted.

**Section 5. Limited Liability of Architectural Committee Approval**

Approval by the Architectural Committee shall relate only to the conformity of plans and specifications to general architectural and landscaping plans for the area covered by these restrictions, and such plans, drawings, and specifications are not approved for engineering design or architectural competence. By approving such plans, drawings, and specifications, the Architectural Committee does not assume liability or responsibility therefore, or for any defect in any structure constructed from such plans, drawings and specifications. Members of the Architectural Committee or the Board shall have absolutely no personal responsibility to any person with regard to any actions taken by them in their capacity as such members.

**ARTICLE XII**  
**RIGHTS AND POWERS OF ASSOCIATION**

**Section 1. Association's Rights and Powers as Set Forth in Articles and Bylaws**

In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration.

**Section 2. Right to Enforce**

The Association or any Owner has 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 the provisions of this Declaration. This includes enforcement of Rules adopted by the Board of Directors and the policies, procedures, guidelines and standards adopted by the Architectural Committee to carry out the Association's purposes and duties under this Declaration, as well as any other contract, agreement, or instrument that otherwise indicate that it is intended to be enforced by the Association or any Owner. At the Board's discretion, a violation of the Governing Documents by a Member, Owner, and/or Resident, may be referred to the Association's attorney for enforcement action in Superior Court or any other court or agency of appropriate jurisdiction. Alternatively, the Board may levy a monetary penalty or other sanction against an Owner in accordance with the Governing Documents, applicable law and procedures set forth by the Board of Directors.

A. **Attorneys' Fees.** The prevailing party in any legal, administrative, or similar proceeding shall be awarded reasonable attorneys' fees and costs. In the event that the Association does not initiate any such proceeding against a Member, Owner, and/or Resident to enforce the provisions of the Governing Documents, the Owner(s) shall pay all expenses incurred by the Association in enforcing the Governing Documents, including but not limited to, all attorneys' fees and costs.

B. **No Waiver.** No delay or omission on the part of the Association in exercising its right to enforcement of the Governing Documents shall be construed as a waiver of or acquiescence in any breach, and no right of action shall accrue against the Board of Directors, the Association or any Owner for their neglect or refusal to exercise such right of enforcement. No right of action shall accrue against the Association or Board of Directors for including herein conditions, covenants or restrictions which may be unenforceable.

C. Protection of Mortgagee. No breach of the foregoing provisions, conditions, restrictions or covenants shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any portion of the Properties. These Restrictions shall be enforceable against any portion of the Properties acquired by any Person through foreclosure for any breach occurring after such acquisition.

**Section 3. Notice of Violation**

If any Member, Owner, or Resident are in violation of any of the provisions of the Governing Documents, the Association, after providing notice and an opportunity to cure the violation, has the right to record a "Notice of Violation" with the Pima County Recorder's Office, stating the name of the Owner, the Lot and the nature of the violation, and the Association's intent not to waive any of its rights of enforcement. The Notice shall remain of record until the violation is cured.

**Section 4. No Obligation to Enforce**

The Association is not obligated to take any enforcement action if the Board determines, in its sole discretion, that because of considerations pertaining to the Association's finances, possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Governing Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Governing Documents in the future.

**Section 5. Cumulative Rights and Remedies**

All rights and remedies of the Association under the Governing Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy.

**Section 6. Other Laws**

Each and every provision of this Declaration, as amended from time to time, is subject to any and all applicable federal, state and local governmental rules and regulations, ordinances and subdivision regulations.

**Section 7. Contracts with Others for Performance of Association's Duties**

Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with other parties, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee is employed by or otherwise connected with the other party to the contract or



transaction or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above and may vote to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

**Section 8. Change of Use of Association Land; Procedure**

Upon (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Association Land or of the Association's interest in other Common Areas is no longer in the best interests of the Owners and Residents and (b) the approval of such resolution by a majority of the votes of Members who are voting in person or by absentee ballot at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any deed restrictions (or zoning regulations) restricting or limiting the use of the Association Land.

**ARTICLE XIII**  
**TERMINATION; AMENDMENT**

**Section 1. Termination**

The Declaration may be terminated at any time by written consent of the Owners of seventy-five percent (75%) of the Lots. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from the holders of recorded first mortgages or deeds of trust to which the Assessment Lien is subordinate pursuant to Article VIII, Section 3 above, or seventy-five percent (75%) of the Lots upon which there are such recorded first mortgages and deeds of trust. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Pima County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested to by the Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles. Anything herein to the contrary notwithstanding, for so long as the Association is legally obligated to

maintain landscaping within any public right of way, this Declaration shall not be terminated without the approval of the City of Tucson.

**Section 2. Amendment**

This Declaration may be amended by recording with the County Recorder of Pima County, Arizona, a Certificate of Amendment, duly signed by the President or Vice President and attested to by the Secretary of the Association, with their signatures acknowledged. The Certificate of Amendment shall certify that at an election duly called and held pursuant to the provisions of the Articles and Bylaws, the Members casting two-thirds (2/3) of the eligible votes at the election voted affirmatively for the adoption of the amendment.

**ARTICLE XIV**  
**MISCELLANEOUS**

**Section 1. Interpretation of the Covenants**

Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the Covenants and provisions hereof.

**Section 2. Severability**

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

**Section 3. References to the Covenant in Deeds**

Deeds to and instruments affecting any Lot or any part of Desert Crossings at Rita Ranch may contain the Covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the Covenants shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

**Section 4. Gender and Number**

Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

**Section 5. Captions and Titles**

All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

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\*\*\* CERTIFICATION AND SIGNATURES ON NEXT PAGE \*\*\*

