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"THE POINTE"

RESORT RESIDENTIAL COMMUNITY

RESTATED DECLARATION OF HOMEOWNER BENEFITS AND ASSURANCES

GOSNELL DEVELOPMENT CORPORATION

Portions of this Declaration have been emphasized by underlining solely for convenience and ease of reference and should not be taken to detract from the remaining portions of this Declaration or to limit, construe or affect in any way its meaning or interpretation.

JUN 30 1980 -3 00

STATE OF ARIZONA }
County of Maricopa } ss

I hereby certify that the within instrument was filed and recorded at request of

Lawyers Title of Arizona

in Docket 14514
on page 552-585

Witness my hand and official seal the day and year aforesaid.

Bill Henry
County Recorder
By M. Levantini
Deputy Recorder

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RESTATED DECLARATION OF HOMEOWNER BENEFITS AND ASSURANCES

THIS RESTATED DECLARATION is made this 30th day of June 1980, by LAWYERS TITLE OF ARIZONA, an Arizona corporation, hereinafter "Declarant," being the owner in fee, as Trustee under Trust No. 1332, for the benefit of GOSNELL DEVELOPMENT CORPORATION, an Arizona corporation, as Beneficiary, hereinafter "Developer."

WITNESSETH:

WHEREAS, Declarant is the record owner of real property in Maricopa County, Arizona, hereinafter the "Property", which is more particularly described as THE POINTE, a subdivision according to the plat recorded in Book 194 of Maps, page 42, records of Maricopa County, Arizona, as and if amended, together with the nonexclusive easement for ingress and egress appurtenant thereto as recorded in Docket 12618, page 104, records of Maricopa County, Arizona; and,

WHEREAS, Developer intends to sell and convey the Property, or portions thereof, and, in doing so, desires to subject and place upon the Property mutual and beneficial assurances, restrictions, covenants, conditions, reservations, easements, liens, charges and development standards, hereinafter collectively the "Assurances," under a general plan of improvement for the benefit of the Property and its owners; and,

WHEREAS, to accomplish the foregoing purposes, Declarant and Developer executed a ^{Unofficial Document} "Declaration of Homeowner Benefits and Assurances," and "Restated Declarations of Homeowner Benefits and Assurances" as recorded in the records of Maricopa County, Arizona, in Docket 12651, page 51, in Docket 13124, page 70, and in Docket 13210, page 306, respectively (the "Superseded Declarations"). In accordance with the provisions of paragraphs 2 and 14.7 of the Superseded Declarations (the sale of the last Residence to an Owner other than Developer having not yet occurred), Declarant, at the direction of Developer, has determined to amend the Superseded Declarations and to replace them in their entirety with this Declaration and, further, to annex to THE POINTE additional property within the immediate geographical area, as depicted in "The Pointe Courthomes Two Plat" as recorded in Book 223 of Maps, page 49, records of Maricopa County, Arizona. Accordingly, the Superseded Declarations are hereby withdrawn and nullified and shall have no further force or effect. All references herein to the "Declaration" shall refer to this document and not the Superseded Declarations, and all references to the "Property" shall refer to the combined properties in the plats recorded in Book 194 of Maps, page 42 and in Book 223 of Maps, page 49, records of Maricopa County, Arizona, together with the easement for ingress and egress described above; and,

WHEREAS, Developer has incorporated, as a nonprofit corporation, THE POINTE COMMUNITY ASSOCIATION, for the purpose of the efficient preservation of the values and amenities of the Property and to which is delegated the power of maintaining and administering the Common Area, administering and enforcing the Assurances and collecting and disbursing the assessments herein created;

. . .

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1 NOW, THEREFORE, at the direction of Developer, Declarant
 2 declares that the Property shall be held, sold, conveyed, used
 3 and improved subject to this Declaration and the following
 4 Assurances, all of which are for the purpose of enhancing and
 5 protecting the value, desirability and attractiveness of the
 6 Property, and all of which are hereby declared to be for the
 7 benefit of the Association, the Property, and the owners thereof,
 8 their heirs, successors, grantees and assigns. This Declaration
 9 establishes a general plan for the improvement and development of
 10 the Property and its use, occupancy and enjoyment. All of the
 11 provisions hereof shall be construed as covenants running with
 12 the land and equitable servitudes for the benefit of and binding
 13 upon all parties having or acquiring any right, title or interest
 14 in the Property or any portion thereof, irrespective of whether
 15 or not referenced in a deed or other applicable instrument of
 16 conveyance.

9
 10 1. Definitions.

11 1.1 "Architectural Committee" shall mean the committee
 12 created pursuant to paragraph 8.

13 1.2 "Architectural Committee Rules" shall mean the
 14 rules adopted by the Architectural Committee.

15 1.3 "Articles" shall mean the Articles of Incorpora-
 16 tion of the Association which are, or shall be, filed with the
 17 Arizona Corporation Commission, as and if amended.

18 1.4 "Assessment Rate" shall be the pro rata portion of
 19 assessments to be borne by a Residence as provided in paragraph
 20 7.6.

21 1.5 "Association" shall mean and refer to THE POINTE
 22 COMMUNITY ASSOCIATION, an Arizona nonprofit corporation, its
 23 successors and assigns.

24 1.6 "Assurances" shall mean the restrictions,
 25 covenants, conditions, reservations, easements, liens, charges
 26 and development rights set forth herein.

27 1.7 "Board" shall mean the Board of Directors of
 28 the Association.

29 1.8 "Bylaws" shall mean the Bylaws of the Association,
 30 as and if amended.

31 1.9 "Common Area" shall mean all property to be
 32 owned by the Association for the mutual use and enjoyment of
 the Owners together with the Improvements, fixtures, equipment
 and personal property located on or used in conjunction therewith.
 The Common Area encompasses all of the Property so designated in
 the Plat or any Tract Declaration, the fence or wall enclosing
 the Property if located in the Common Area, and shall include,
 without limitation, the roadways, sidewalks, curbs, gutters,
 parking areas, trails, drainage courses, natural areas, swimming
 pools, if any, and all utility lines and systems located on the
 Property and outside of the Exterior Residence Lines.

1.10 "Courthome" shall mean a Residence within the
 Property so designated by the Plat and shall include a structure
 devoted to multifamily residential use by three single families.

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1 1.11 "Courthome Exterior Maintenance" shall mean the
2 maintenance described in paragraph 6.2.

3 1.12 "Declarant" shall mean Lawyers Title of Arizona,
4 an Arizona corporation, as Trustee under its Trust No. 1332,
5 its successors and assigns.

6 1.13 "Declaration" shall mean the provisions and
7 Assurances herein set forth in this document, as and if amended,
8 together with any and all Tract Declarations which may be recorded
9 by Declarant, as and if amended.

10 1.14 "Developer" shall mean Gosnell Development
11 Corporation, an Arizona corporation, and its successors and
12 assigns if such successors or assigns acquire more than one
13 Residence from Developer for the purpose of development.

14 1.15 "Entryway" shall mean the roadway and improve-
15 ments therein contained by which access to the Property has been
16 granted pursuant to the appurtenant, nonexclusive easement set
17 forth in the description of the Property above.

18 1.16 "Exterior Residences Lines" shall mean the
19 outside boundary lines or perimeters of a Courthome, Garden Home
20 or Single Family Residence as depicted on the Plat which encloses
21 the entire dimension of the land and Improvements conveyed by
22 Declarant to the Owner. For a Courthome, the Exterior Residence
23 Lines, for purposes of Courthome Exterior Maintenance only (as
24 described in paragraph 6.2), shall consist of the horizontal and
25 vertical planes forming the boundary of each Courthome which
26 coincide with the top of the floor slab, the bottom of the
27 finished roof and the interior face of finished walls, together
28 with the air conditioning unit, carport and storage space appur-
29 tenant thereto, if any.

30 1.17 "First Mortgage" shall mean any mortgage, deed of
31 trust or agreement for sale made in good faith, for value and
32 duly executed and recorded so as to create a lien that is prior
to the lien of any other mortgage, deed of trust or agreement for
sale. The mortgagee, beneficiary and vendor of a mortgage, deed
of trust or agreement for sale, respectively, shall be referred
to as the "mortgagee."

1 1.18 "Garden Home" shall mean an attached Single Family
2 Residence within the Property so designated by the Plat and shall
3 include a structure devoted to multi-family residential use by
4 two single families, except as to Residence Nos. 18, 43, 132, 135,
5 162, 187, 200 and 205 which shall be Garden Homes notwithstand-
6 ing that they are unattached structures.

7 1.19 "Improvements" shall mean the buildings, garages,
8 carports, streets, roads, driveways, parking areas, fences, walls,
9 docks, hedges, plantings, trees and shrubs, and all other struc-
10 tures or landscaping of every type and kind located on the
11 Property.

12 1.20 "Member" shall mean any person, corporation,
13 partnership, joint venture or other legal entity who is a member
14 of the Association as provided in paragraph 5.

15 . . .

16 . . .

1 1.21 "Multifamily Residence" shall mean any Residence
2 so separated or divided as to be used and occupied by more than
3 one Single Family under one roof, including Courthomes and Garden
4 Homes.

5 1.22 "Owner" shall mean and refer to the record owner,
6 whether one or more persons or entities, of equitable or bene-
7 ficial title (or legal title if same has merged) of any Residence.
8 "Owner" shall include the purchaser of a Residence under an execu-
9 tory contract for the sale of real property. "Owner" does not
10 include persons or entities who hold an interest in any Residence
11 merely as security for the performance of an obligation.

12 1.23 "The Pointe" shall mean the Property and such
13 additions thereto or subtractions therefrom as may be made by
14 Declarant through Tract Declaration or otherwise.

15 1.24 "The Pointe Rules" shall mean the rules adopted
16 by the Association as provided in paragraph 5.3.

17 1.25 "Plat" means the subdivision plats of the Property
18 recorded in Book 194 of Maps, page 42, and in Book 223 of Maps,
19 page 49, records of Maricopa County, Arizona, as and if amended
20 or supplemented.

21 1.26 "The Property" shall mean and refer to the
22 Property as described above and such additions thereto or sub-
23 tractions therefrom as may be made by Declarant at the direction
24 of Developer.

Unofficial Document

25 1.27 "Residence" shall mean any portion of the
26 Property, and the Improvements thereon or used in conjunction
27 therewith, which has been divided into a separate component
28 for use as a Single Family or Multifamily Residence whether
29 by the Plat or a Tract Declaration and regardless of whether any
30 Improvements have been constructed thereon. Each separate
31 portion of a Multifamily Residence within the Exterior Residence
32 Lines shall constitute one Residence. The Residences include all
of the Property excluding the Common Area.

 1.28 "Restaurant and Resort Hotel" refers to the
restaurant and resort known as The Pointe of View and The Pointe
Resort Hotel located adjacent westerly of the Property and
through which the Entryway traverses, as they are now constructed
or as they may be expanded or diminished hereafter, together with
any additional resort hotels, convention centers, restaurants,
offices, shops, shopping centers, condominiums, apartments or
other facilities which may be constructed by Developer, either
individually, or in combination with others, within the adjacent
property owned by Developer or any additional property in the
vicinity which hereafter may be acquired by Developer by purchase,
lease or otherwise.

 1.29 "Single Family" shall mean a group of one or more
persons each related to the other by blood, marriage or legal
adoption, or a group of not more than three persons not all so
related, together with their domestic servants, who maintain a
common household in a Residence.

 1.30 "Single Family Residence" shall mean a Residence
occupied and used by a Single Family in conformity with this
Declaration and the requirements imposed by applicable zoning
laws or other state, county or municipal statutes, ordinances,
rules and regulations.

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1.31 "Superseded Declarations" shall mean the Declaration of Homeowners Benefits and Assurances recorded January 13, 1978 in Docket 12651, beginning at page 51, and the Restated Declarations of Homeowner Benefits and Assurances recorded August 31, 1978 in Docket 13124, beginning at page 70, and recorded October 12, 1978 in Docket 13210, beginning at page 396, records of Maricopa County, Arizona, which have been withdrawn and replaced by this Declaration.

1.32 "Tract Declaration" shall mean any statement of Assurances which may be recorded by Declarant at the direction of Developer, relating to all or part of The Pointe or any subdivision plat and which add or subtract property therefrom, in the manner provided in paragraph 2.

1.33 "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property or adjacent roadway at an elevation no greater than the designed elevation of the adjacent roadway, viewing property, finished floors or yard grade.

2. Establishment. Developer intends to develop The Pointe in accordance with the general plan depicted in the Plat whereby the Property shall be developed as a planned community with a mixture of Single and Multifamily Residences mutually utilizing the Common Area in conjunction with the guests of the Restaurant and Resort Hotel. Portions of the Property may be deleted or additional property within the immediate geographical area may be annexed to The Pointe by DUnofficial Document at the direction of Developer from time to time without the consent of the Owners upon the recordation by Declarant of one or more Tract Declarations together with an amendment to the Plat or a separate subdivision or other plat or property description. A Tract Declaration shall incorporate and refer to this Declaration and may contain supplemental provisions applicable to the Property or the property so annexed or deleted.

3. Uses

3.1 Residential. Each Residence shall be used, improved and devoted exclusively to first class residential use and no gainful occupation, profession, trade, business, religion, or other nonresidential use shall be conducted upon or from any Residence. Carports, garages and other areas within a Residence not initially designed as a living area shall not be used as a living area regardless of the presence or absence of alterations therein. Public or private auctions, gargage sales and similar events and activities shall be prohibited. The roofs of the Residences, particularly those above the carports of the Court-homes, are not designed to be and shall not be used as walk decks, sun decks or the like and no persons shall be permitted on the roofs except for such time as is required for repair and maintenance. No Residence shall be used for hotel or other lodging or transient service or purpose. No Residence shall be leased or rented except in its entirety. No Residence shall be leased or rented for a term of less than two years. No Residence shall be leased or rented for any period without the prior written approval of the Board and all rental and lease agreements shall contain a provision whereby they shall be terminable by the Board in its discretion at any time upon ten days' advance written notice to the Owner. Owners are responsible for

1 the conduct of lessees, tenants, guests, children and other
 2 family members, agents, contractors and all others in, on or
 3 about a Residence or any part of the Property at the request,
 4 invitation or sufferance of an Owner such that any violation of
 5 this Declaration or The Pointe Rules by any such person shall
 6 constitute a violation by such Owner.

7 3.2 Construction. No building or structure of
 8 any kind may be erected, placed or maintained on any Residence
 9 unless of new construction. Trailers, mobile homes, modular
 10 homes or prefabricated structures of any kind; structures of a
 11 temporary character used as a residence either temporarily or
 12 permanently; solar glass and unsightly window coverings
 13 such as aluminum foil, reflective coatings, newspaper, cardboard,
 14 or the like; metal patio covers, sunscreens, covers or screen
 15 doors; and hospitals, sanitariums or other places for the care
 16 or treatment of the sick or disabled, mentally or physically,
 17 all shall be prohibited. Prefabricated fireplace flues (treated
 18 architecturally with lath and plaster), wood shutters, timber
 19 lattices and canvas awnings will be permitted with the prior
 20 approval of the Architectural Committee.

21 3.3 Accessories. Evaporative coolers, pre-coolers
 22 and the like shall be prohibited. No clotheslines, service
 23 yards, wood piles, basketball apparatus, free-standing mail-
 24 boxes or newspaper receptacles, exterior storage areas, sheds
 25 or structures, heating or air conditioning equipment, or other
 26 exterior fixtures, machinery or equipment shall be permitted
 27 except with the prior written approval of the Architectural Com-
 28 mittee. Any such use or equipment as is approved and authorized
 29 shall be attractively screened or concealed (subject to all
 30 required approvals as to architectural control) so as not to be
 31 Visible From Neighboring Property. No automobile, truck or other
 32 vehicle, regardless of ownership, age, condition or appearance,
 33 shall remain on any Residence in any manner which could be
 34 construed as being stored, neglected, abandoned or otherwise not
 35 in active use.

36 3.4 Utilities. All gas, electric, power, telephone,
 37 water, sewer, television and other utility and service connec-
 38 tions and lines shall be located either underground or concealed
 39 within or under buildings or other structures, except when
 40 prohibited by law. Service pedestals, transformers, switch
 41 cabinets and similar installations may be located above ground.
 42 Radio, television and other receivers, transmitters and antennas
 43 which are visible from Neighboring Property all shall be pro-
 44 hibited. No outside speakers or amplifiers shall be permitted
 45 except with the prior approval of the Architectural Committee.
 46 All speakers, amplifiers, radios and other means of emitting
 47 sound, whether located inside or outside of a Residence, shall be
 48 subject to regulation by the Association as to noise levels and
 49 time of use. All outside lighting, except porch lights and other
 50 customary, indirect noncolored lighting, shall be subject to
 51 prior approval by the Architectural Committee.

52 3.5 Signs. No advertising sign, "For Sale," "For
 53 Rent," "For Lease," or other sign, billboard or display of any
 54 kind shall be permitted. Street and Residence names and
 55 numbers, mailing addresses and other identifications and
 56 directory designations, markings and insignia shall be permis-
 57 sible only as installed by the Developer or as approved by the
 58 Architectural Committee.

1 3.6 Walls. Walls and fences shall be of uniform
2 height and constructed of black wrought iron or masonry painted
3 the same color as the Residence. Fences or walls adjacent to or
4 part of a Residence must conform to the material and finish used
5 on such Residence with heights not exceeding six feet for the
6 front of such Residence and on sides adjacent to such Residence.
7 All exterior fences, wall designs and colors must be approved by
8 the Architectural Committee. No entry, ornamental or sign wall
9 constructed or installed by Developer may be altered or removed.

6 3.7 Landscaping. Trees, shrubs, hedges, grass,
7 plantings and landscaping of every kind and nature shall be
8 installed by the Owner within sixty days from the date of his
9 acquisition of the Residence and, failing that, the Association
10 shall have the option of installing the landscaping at the
11 expense of the Owner (not to exceed \$5,000.00), or of treating each
12 day of delay beyond sixty days as a separate violation subject
13 to the fine and lien provided in paragraph 5.3. The landscaping
14 for Courthomes must include not less than 4 one-gallon size
15 bougainvillea, 2 five-gallon size bougainvillea and 2 fifteen-
16 gallon size of whichever of the following the Owner may select:
17 olive, eucalyptus rostrada or African sumac. Garden Homes and
18 Single Family Residences must include not less than 4 one-gallon
19 size bougainvillea, 2 five-gallon size bougainvillea and 4
20 fifteen-gallon size of whichever of the following the Owner may
21 select: olive, eucalyptus rostrada or African sumac. At least
22 one-half of the foregoing minimum landscaping requirements for
23 Garden Homes and Single Family Residences must be installed in
24 the front yard. The Owner of a Residence which includes or is
25 adjacent to an excavation Unofficial Document area shall be responsible for
26 and bear the cost of fully landscaping the excavation or fill
27 area (even if the excavation or fill area is located in the
28 Common Area) with such landscaping to include, without limitation,
29 bougainvillea, Palo Verde and fountain grass of not less than
30 one-gallon size and of reasonable mix, two foot on center or as
31 otherwise prescribed by the Architectural Committee. When an
32 excavation or fill area includes or is adjacent to a curb or
sidewalk, the required landscaping shall be installed along and
abutting such curb or sidewalk. No more than one-fifth of the
landscaping of such excavation or fill area by an Owner shall con-
sist of hard surface or rock (exclusive of retaining walls which
shall be limited to six feet in height and shall be approved by
the Architectural Committee). No tree, shrub, or other landscap-
ing shall overhang or otherwise encroach upon any sidewalk,
street or any portion of the Common Area without the prior
written consent of the Architectural Committee. No deciduous
trees shall be permitted without the prior written approval of
the Architectural Committee. Excluding natural desert terrain
and drainageways left substantially undisturbed by the Developer
(which shall not be landscaped or otherwise disturbed but shall
remain in the natural state), desert landscaping of a Residence,
whether characterized by rocks, cactus or unaided nature, shall
not comprise more than one-tenth of the landscaping Visible From
Neighboring Property with the result that at least nine-tenths of
such landscaping shall be vegetation (grass, etc.) of which at
least 70% shall be a common variety domestic grass. As part of
the required landscaping for each Residence, each Owner shall
install automatic irrigation (sprinkler) systems (the config-
uration and extent of the system shall be as required by the
Architectural Committee) and must overseed all lawn areas

...

1 with rye or equivalent winter grass promptly as soon as the summer
 2 grass becomes dormant. No Owner shall allow any condition which
 shall induce, breed or harbor plant disease or noxious insects.

3 3.8 Maintenance. No Residence shall be permitted
 4 to fall into disrepair. All Residences shall be kept in good
 5 condition and repair, with surfaces adequately painted and with
 6 windows, doors, screens, awnings and the like properly cleaned
 7 and maintained. Landscaping shall be maintained and if any shrub
 8 or other component perishes, it shall be replaced immediately
 9 with an identical component of equal or greater size. Outdoor
 10 grills and barbecues shall be the only outdoor burning permitted.
 11 No garbage, rubbish, trash or debris shall be placed or allowed
 12 to accumulate on the Property except on the days of scheduled
 13 removal (pick-up) and then only within sealed, disposable heavy-
 14 duty garbage bags or other disposable containers complying with
 15 City of Phoenix standards. The placement and maintenance of such
 16 bags and containers shall be subject to regulation by the Associa-
 17 tion and the Architectural Committee. Any and all residue
 18 remaining after removal of such bags and containers shall be
 19 eliminated promptly by the Owner. Each Residence must include an
 20 automatic garbage disposer in operating condition. Natural areas
 21 and drainage courses within the Common Area shall not be used for
 22 dumping or vehicular traffic and shall be maintained fully open,
 23 unobstructed and watered by the sprinkling system where installed
 24 by Developer. No Residence shall be allowed to present an
 25 unsightly appearance, endanger the health of Owners, emanate
 26 offensive noises or odors or constitute an aggravation, annoyance
 27 or nuisance. No furniture or equipment, either portable or
 28 permanent, shall be placed Unofficial Document within the front yard, balconies
 29 or other areas Visible from Neighboring Property without the
 30 prior written approval of the Board. The interiors of all
 31 carports and garages shall be maintained in a neat, clean and
 32 sightly condition. The interiors of all carports and garages
shall be maintained in a neat, clean and sightly condition.
Garage doors shall remain closed at all times except while in
actual, active use to permit ingress and egress of vehicles. No
carport or open garage shall be used for storage, for the main-
tenance of power equipment, hobby shops or carpenter shops, or for
the conduct of any automobile overhaul, repair or maintenance
work. Motor vehicles shall be parked and kept only in carports,
garages, designated parking areas or the streets. On-street
parking shall be restricted to deliveries and short term guests.
The parking of trucks, buses, commercial vehicles, recreational
vehicles, trailers, boats, dune buggies, and the like shall not be
permitted where Visible from Neighboring Property, except in areas
designated by the Association which shall be subject to its control
and regulation including the charging of fees for the use thereof.

33 3.9 Architecture. No structures, improvements,
 34 pools, courts, additions, changes, expansions, alterations,
 35 repairs, painting, landscaping, excavation or other work which in
 36 any way affects or alters the exterior appearance of any Resi-
 37 dence or the Improvements thereon shall be initiated without the
 38 prior written approval of the Architectural Committee. No
 39 excavation, fill or other alteration of the topography or
 40 drainage of any Residence shall be initiated without the prior
 41 written approval of the Architectural Committee. Pursuant
 42 to its rulemaking power, the Architectural Committee shall
 establish a procedure for the preparation, submission and deter-
 mination of applications for any such work. The Architectural
Committee shall have the right to refuse to approve any plans or

1 specifications or grading plan, which are not suitable or desir-
 2 able, in its sole opinion, for aesthetic or other reasons, and in
 3 so passing upon such plans, specifications and grading plans, and
 4 without any limitation of the foregoing, it shall have the right
 5 to take into consideration the suitability of the proposed
 6 building, structure or other Improvement, the color, texture and
 7 materials of which it is to be built, the site upon which it is
 8 proposed to be erected, the harmony thereof with the surroundings
 9 and the effect of the Improvements as planned, on the outlook
 10 from the adjacent or neighboring property. In granting approval,
 11 the Architectural Committee may impose such conditions and stipu-
 12 lations as it may deem appropriate including, without limitation,
 13 requirements concerning restoration of natural terrain, landscaping
 14 of fill slopes, restrictions against interference with drainage,
 15 burial and camouflage of utility lines, duration of construction
 16 activities (not to exceed ninety days from commencement to
 17 completion) and the like. All subsequent additions to, changes
 18 or alterations in any Improvements, including exterior texture or
 19 color scheme (exterior colors shall not be changed from that
 20 used by Developer), shall be subject to the the prior approval
 21 of the Architectural Committee. No changes or deviations in
 22 or from such plans and specifications once approved shall be
 23 made without the prior written approval of the Architectural
 24 Committee. All decisions of the Architectural Committee shall
 25 be final and no Owner or other party shall have recourse
 26 against the Architectural Committee for its approval or dis-
 27 approval of any plans and specifications.

15 3.10 Mining. No exploration or mining operations of
 16 any kind shall be permitted whether involving discovery, explora-
 17 tion, location, removal, milling or refining and whether relating
 18 to water, oil, gas, hydrocarbons, gravel, uranium, geothermal
 19 steam or otherwise.

18 3.11 Animals. No animals, reptiles, birds, fowl,
 19 poultry, fish or livestock shall be permitted or kept on or in
 20 connection with any Residence or the Property. Commonly accepted
 21 household pets such as dogs, cats, birds and fish in reasonable
 22 numbers may be maintained within a Residence for domestic but not
 23 commercial purposes. Household pets shall be restrained by fence,
 24 cage or leash at all times and shall not be allowed to commit a
 25 trespass or to eliminate excrement in the Common Area or other
 26 Residences. Owner's shall be liable for any and all damage to
 27 property and injuries to persons and other animals, fish and fowl
 28 (domestic and wildlife) caused by their household pets. Horses
 29 may be ridden only within riding trails and other areas designated
 30 by the Association and shall be housed or stabled only within
 31 areas previously designated by the Association. All Owners shall
 32 be deemed to have waived the right to object to the presence of
 33 present and future resorts, restaurants, centers, offices, shops,
 34 apartments, tennis courts, lights, helicopter landing sites,
 35 horses, trails, stables and the like within the Common Area or
 36 any property outside of, but within the vicinity of, the Property.

29 3.12 Subdivision. No Residence shall be further
 30 subdivided or separated into smaller or different portions
 31 or conveyed or encumbered in less than the full original dimen-
 32 sion as set forth in the Plat. Dedication, conveyance or the
 33 granting of easements to public utilities or other public or
 34 quasi-public entities may be permitted with the prior approval of
 35 the Association.

31 3.13 Compliance. No Residence shall be used or main-
 32 tained in violation of any applicable statute, ordinance, code

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1 or regulation of any governmental authority, the provisions
2 of this Declaration or the rules and regulations of the Association or the Architectural Committee.

3 3.14 Exemption. In developing the Property and
4 constructing Residences, Developer shall not be subject to the
5 limitations of this paragraph 3 and nothing contained in this
6 Declaration shall prohibit or interfere with such activities
7 by Developer or its agents. Developer may utilize any portion of
8 the Property (except Residences previously conveyed to Owners
9 other than Developer) for any and all construction and sales
10 activities. During such time as it retains ownership, all
11 Residences owned by Developer are free of the use and other
12 restrictions of this Declaration and Developer may make such
13 use of its Residences as is permitted by law notwithstanding
14 that such use otherwise would be prohibited by this Declaration.
15 All improvements constructed or installed by Developer expressly
16 shall be permissible without necessity for approval by the
17 Architectural Committee or others and notwithstanding any
18 restriction or prohibition to the contrary anywhere set forth
19 herein.

12 4. Party Walls. The rights and duties of Owners of
13 Residences containing party walls, partitions, dividers, or
14 fences, hereinafter "walls," shall be as follows:

15 4.1 Definition. Each wall, including patio walls,
16 which is constructed so that any part is placed on or as the
17 dividing line between separate Residences, shall constitute a
18 party wall. With respect to any such wall, each of the adjoining
19 Owners shall assume the burdens and be entitled to the benefits
20 of these provisions, and, to the extent not inconsistent herewith,
21 the general rules of law regarding party walls and of liability
22 for negligent or willful acts or omissions shall be applied
23 thereto. Walls separating adjacent property not included within
24 the Property are not party walls and shall be the responsibility
25 of the Owner of the Residence containing the wall.

21 4.2 Damage. In the event any party wall is damaged or
22 destroyed through the act of one adjoining Owner, or any of his
23 guests, tenants, licensees, agents or members of his family
24 (whether or not such act is negligent or otherwise culpable)
25 then such Owner shall forthwith proceed to rebuild and repair the
26 same to as good a condition as formerly without cost to the
27 adjoining Owner.

25 4.3 Repairs. In the event any party wall is damaged
26 or destroyed (including ordinary wear and tear and deterioration
27 from lapse of time), by some cause other than the act of one of
28 the adjoining Owners, his agents, tenants, licensees, guests or
29 family, both such adjoining Owners shall proceed forthwith
30 to rebuild or repair the same to as good a condition as formerly
31 at their joint and equal expense.

29 4.4 Negligence. Notwithstanding any other provision
30 hereof, an Owner who by his negligent or willful act or omission
31 causes any party wall to be exposed to the elements shall bear
32 the whole cost of furnishing the necessary protection against
such elements and repairing damage caused thereby.

32 4.5 Alterations. In addition to meeting the other
requirements of this Declaration, any Owner proposing to modify,
make additions to or rebuild his Residence in any manner which
requires the extension or other alteration of any party wall
shall first obtain the written consent of the adjoining Owner

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1 and the Architectural Committee. As constructed by Developer,
 2 the party walls are not retaining walls and shall not be altered
 3 to become retaining walls whether through filling above the
 4 foundation line or other means or methods.

5 4.6 Arbitration. In the event of any dispute between
 6 Owners with respect to the repair or rebuilding of a party wall,
 7 or with respect to any other matter in connection therewith, then
 8 upon written request of one of such Owners addressed to the
 9 Association, the matter shall be submitted to arbitration under
 10 such rules as may from time to time be adopted by the Association.
 11 If such rules have not been adopted by the Association, then the
 12 matter shall be submitted to three arbitrators, one chosen by
 13 each of the Owners and the third by the two so chosen, or if the
 14 two arbitrators cannot agree as to the selection of the third
 15 arbitrator within ten days, then by any Judge of the Superior
 16 Court of Maricopa County, Arizona. A determination of the matter
 17 signed by any two of the three arbitrators shall be binding upon
 18 the Owners, who shall share the cost of arbitration equally. In
 19 the event one party fails to choose an arbitrator within ten
 20 days after receipt of a request in writing for arbitration from
 21 the other party, then the other party shall have the right and
 22 power to choose both arbitrators.

23 4.7 Application. The right of any Owner to contribu-
 24 tion from any other Owner under this paragraph shall be appur-
 25 tenant to the Residence and shall pass to and be binding upon such
 26 Owner's heirs, assigns and successors in title.

27 5. The Pointe Community Association.

28 5.1 Organization.

29 5.1.1 The Association. The Association shall be
 30 a nonprofit Arizona corporation charged with the duties and
 31 invested with the powers prescribed by law and as set forth in
 32 the Articles, Bylaws, and this Declaration. Neither the Articles
 33 nor Bylaws shall, for any reason, be amended or otherwise changed
 34 or interpreted so as to be inconsistent with this Declaration.
 35 The Association shall comply with the provisions of § 528 of the
 36 Internal Revenue Code of 1954, as amended, so as to attain and
 37 continue the status of a tax exempt "Residential Real Estate
 38 Management Association."

39 5.1.2 Subsidiary Associations. The Association
 40 shall have the right to form one or more subsidiary associations
 41 for any purpose or purposes deemed appropriate by the Board.
 42 Without limiting the generality of the foregoing, one or more
 43 subsidiary associations may be formed for the operation and
 44 maintenance of any specific area located within The Pointe.
 45 However, such subsidiary associations shall be subject to this
 46 Declaration and may not take any action to lessen or abate the
 47 rights of the Owners.

48 5.1.3 Board of Directors and Officers. The
 49 affairs of the Association shall be conducted by a Board of
 50 Directors and such officers as the Directors may elect or appoint,
 51 in accordance with the Articles and the Bylaws.

52 5.2 Powers and Duties of the Association. The Asso-
 53 ciation shall have such rights, duties and powers as are set
 54 forth herein and in the Articles and Bylaws.

1 **5.3 The Pointe Rules.** By a majority vote of the
 2 Board, the Association may, from time to time and subject to the
 3 provisions of this Declaration, adopt, amend, and repeal rules
 4 and regulations to be known as "The Pointe Rules." The Pointe
 5 Rules may restrict and govern the use of any area by any Owner,
 6 by the Family of such Owner, or by any invitee, licensee or
 7 lessee of such Owner; provided, however, that The Pointe Rules
 8 may not discriminate among Owners and shall not be inconsistent
 9 with this Declaration, the Articles or Bylaws. A copy of The
 10 Pointe Rules as they may from time to time be adopted, amended or
 11 repealed, shall be mailed or otherwise delivered to each Owner
 12 and may be recorded. Upon such Recordation, the Rules shall have
 13 the same force and effect as if they were set forth in and were a
 14 part of this Declaration. The Board shall have the right to
 15 impose fines and penalties for violations of this Declaration
 16 and The Pointe Rules and if such fines or penalties are not paid
 17 within ten days after written notice to the Owner in violation,
 18 the fines or penalties shall become a lien on the Residence of the
 19 Owner and be enforceable as any other lien created by paragraph 7.
 20 The fines and penalties shall be in the amount of \$100.00 for
 21 each offense, or such other amount as the Board may determine.
 22 Each occasion of violation and each day during which such viola-
 23 tion continues shall be deemed a separate offense subject to a
 24 separate fine and penalty.

14 **5.4 Personal Liability.** No member of the Board, any
 15 Committee of the Association, any officer of the Association,
 16 any compensated or voluntary manager, or any employee or agent
 17 shall be personally liable to any Owner, or to any other party,
 18 including the Association Unofficial Document for any damage, loss or prejudice
 19 suffered or claimed on account of any act, omission, error, or
 20 negligence of the Association, the Board, the manager or any
 21 other representative or employee of the Association, the Architec-
 22 tural Committee, any other Committee, or any officer of the
 23 Association, provided that such person has, upon the basis of
 24 such information as may be possessed by him, acted in good faith,
 25 without willful or intentional misconduct. Officers and Directors
 26 of the Association shall be indemnified against personal liability
 27 for acts or omissions in the manner set forth in the Articles.

21 **5.5 Membership.** Every Owner of a Residence shall
 22 be a member of the Association. Membership shall be appurte-
 23 nant to and may not be separated from ownership of the Residence.
 24 The rights and obligations of an Owner and membership in the
 25 Association shall not be assigned, transferred, pledged, conveyed,
 26 or alienated in any way except upon transfer of ownership to the
 27 Owner's Residence and then only to the transferee of ownership to
 28 such Residence. Any attempt to make a prohibited transfer shall
 29 be void. Any transfer of ownership to a Residence shall operate
 30 to transfer membership to the new Owner.

27 **5.6 Voting Rights.** The Association shall have two
 28 classes of voting:

28 **5.6.1 Class A.** Class A shall consist of all
 29 Owners except Developer and each shall be entitled to one vote for
 30 each Residence owned until Class B membership ceases at which
 31 time each Owner shall be entitled to the following number of
 32 votes depending upon the kind of Residence owned: Courthouse -
 33 one vote; Garden Home - two votes and Single Family Residence -
 34 four votes.

34 . . .

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1 5.6.2 Class B. Class B shall be the Developer
 2 who shall be entitled to twenty votes for each Residence owned
 3 either directly or beneficially through Declarant. The Class B
 4 membership shall cease and be converted to Class A membership on
 5 the happening of either of the following events, whichever occurs
 6 earlier:

7 (a) Upon conveyance to an Owner other
 8 than Developer of the last Residence owned by
 9 Developer, or

10 (b) Fifteen years from the date of
 11 this Declaration.

12 5.6.3 Suspension. If any Owner shall be in arrears
 13 in the payment of any amounts due under any of the provisions of
 14 this Declaration for a period of fifteen days, or shall be in
 15 default in the performance of any of the terms of this Declaration
 16 for a period of fifteen days, that Owner's right to vote as a
 17 member of the Association shall be suspended automatically and
 18 shall remain suspended until all payments are made and defaults
 19 cured.

20 5.6.4 Procedure. The votes for each such Residence
 21 must be cast as a unit, and a division of votes shall not be
 22 allowed. If joint Owners are unable to agree among themselves as
 23 to how their vote or votes shall be cast, they shall lose their
 24 right to vote on the matter in question. If any Owner or Owners
 25 casts a vote or votes representing a certain Residence, it will
 26 thereafter be conclusively deemed for all purposes that he or
 27 they were acting with the authority and consent of all other
 28 Owners of the same Residence. In the event more than one voter
 29 casts the vote or votes for a particular Residence, none of the
 30 votes shall be counted and such votes shall be void. The candi-
 31 dates receiving the highest number of votes, up to the number of
 32 the Board members to be elected, shall be deemed elected.

 5.6.5 Articles and Bylaws. Each member shall have
 such other rights, duties, and obligations as are set forth in the
 Articles and Bylaws.

6. Covenant for Maintenance.

6.1 Owners. Each Owner shall be responsible for and
 bear the expense of the initial construction and landscaping and
 all subsequent repair and maintenance of the exterior and interior
 of his Residence to its Exterior Residence Lines including all
 areas and features not expressly herein provided to be maintained
 by the Association or, as to Courthomes, by the Courthome Owners
 collectively. In such repair and maintenance, an Owner shall not
 interfere with, hinder or damage any Common Area or the area or
 Improvements of any other Residence. The removal, replacement,
installation or repair of any fence, wall or other component of
a Residence, placed or constructed by the Developer or any Owner,
on, within or about any utility easement or service line or system
shall be the responsibility of the Owner, either directly or
through increased assessment at the option of the Board. The Owner
of a Residence fronting on Dreamy Draw Drive shall landscape and
maintain that portion of the right-of-way for Dreamy Draw Drive
as now or hereafter established which is not surfaced and which
is in front of the Residence within the extension of the side
yard Exterior Residence Lines. In addition, if the need for

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1 repair or maintenance of areas to be repaired and maintained by
 2 the Association, or collectively by the Courthouse Owners, is
 3 caused through the negligent or willful acts or omissions of
 4 the Owner, his family, licensees, guests, tenants or invitees,
 5 the cost of such repair or maintenance shall be the responsibility
 6 of the Owner, either directly or through increased assessment,
 7 at the option of the Board. Further, repair and maintenance
 8 of the interior and exterior of any Residence which is undertaken
 9 by the Association, or collectively by the Courthouse Owners
 10 because of the failure or neglect of the Owner, shall be the
 11 responsibility of the Owner, either directly or through assessment
 12 by the Association, at the option of the Board.

13 6.2 Courthouse Owners. In addition to the responsibili-
 14 ties of an Owner set forth in paragraph 6.1, all of the Courthouse
 15 Owners collectively, through separate assessment by the Association
 16 solely to all Courthouse Owners in the manner provided in para-
 17 graph 7, shall be responsible for and bear the expense of the
 18 repair and maintenance of the lawns, landscaping, driveways,
 19 carports and exterior of the Courthouses including painting,
 20 repairing, replacing and caring for the roofs, exterior walls and
 21 building surfaces, awnings, gutters, downspouts, pipes, ducts,
 22 flues, sewer, water and other utility lines, landscaping and
 23 other improvements located outside the Exterior Residence Lines
 24 of a Courthouse including, without limitation, the floor slab and
 25 below; on, in or outside the exterior walls; the roofs, upon the
 26 roof or above the roofs; or on or upon the lawns or driveways
 27 (excluding glass surfaces and air conditioning), hereinafter the
 28 "Courthouse Exterior Maintenance." For example, (a) plumbing pipes
 29 located inside the Exterior Residence Lines shall be the responsi-
 30 bility of the individual Courthouse Owner but plumbing pipes
 31 located inside the building containing the Courthouse but outside
 32 the Exterior Residence Lines of any Courthouse therein shall be
 maintained as a part of the Courthouse Exterior Maintenance, and
 (b) the installation of the landscaping required by paragraph 3.7
 shall be the responsibility of the individual Courthouse Owner
 but overseeding with rye and replacement of dead or diseased
 landscaping shall be a part of Courthouse Exterior Maintenance.
 Courthouse Owners shall be responsible individually for such
 portion of the Courthouse Exterior Maintenance as shall be caused
 by or the result of their neglect, willfulness or omission in the
 same fashion that any other Owner would be so responsible pursuant
 to paragraph 6.1.

23 6.3 Association. The Association shall be responsible
 24 for and bear the expense of the repair and maintenance of the
 25 Common Area and facilities including sewer and water lines,
 26 booster stations and pumps serving more than one Residence even
 27 if not located in the Common Area; signs, street signs, sign
 28 walls and the like as installed by Developer even if not located
 29 in the Common Area; all portions of the Property up to the
 30 Exterior Residence Lines (except that portion of the right-of-way
 31 for Dreamy Draw Drive to be maintained by the Owners as provided
 32 in paragraph 6.1); such Residences, or portions thereof, as are
 not properly constructed, landscaped or maintained by Owners; and
 the Property's proportion of the Entryway repair and maintenance
 expense (which has been allocated pursuant to that certain Ease-
 ment and Agreement recorded in Docket 12618, page 104, between
 the Declarant and the Developer as the owner of the Restaurant
 and Resort Hotel through which the Entryway traverses). The
 costs and expenses of the repair and maintenance undertaken
 by the Association shall be distributed and allocated among the
 Owners pursuant to the provisions of paragraph 7.

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1 7. Covenant for Assessments.

2 7.1 Creation of Lien and Personal Obligation. The
 3 Declarant at the direction of Developer, for each Residence within
 4 The Pointe, hereby covenants, and each Owner of any Residence by
 5 acceptance of such Residence, whether or not it shall be so
 6 expressed in the instrument of conveyance, is deemed to covenant
 7 and agree to pay to the Association: (1) regular assessments and
 8 charges, (2) special assessments for capital improvements and
 9 other purposes, and (3) for Courthome Owners only, assessments
 10 provided in paragraph 6.2. Assessments and charges shall be
 11 established and collected as hereinafter provided. The assessments,
 12 together with interest, costs, and reasonable attorney's fees,
 13 shall be a charge on the land and shall be a continuing lien upon
 14 the Residence against which each such assessment is made. Each
 15 such assessment, together with interest, costs, and reasonable
 16 attorney's fees, shall also be the personal obligation of the
 17 Owner of such property at the time when the assessment falls due.
 18 The personal obligation for delinquent assessments shall not pass
 19 to successors in title unless expressly assumed by them. The
 20 obligation of an Owner to pay assessments shall not be affected
 21 by the incompleteness of or any diminished use with respect to
 22 the Common Area or the abandonment of a Residence. Residences
 23 owned by Developer either directly or beneficially through
 24 Declarant shall not be subject to assessment. Notwithstanding
 25 any provision herein to the contrary, Declarant shall not be
 26 liable in any way for assessments or charges of any kind for any
 27 reason.

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16 7.2 Purpose of Assessments. The assessments levied by
 17 the Association shall be used to promote the recreation, health,
 18 safety, and welfare of the Owners, and for the improvement and
 19 maintenance of the Property and the Common Area including, without
 20 limitation, the payment of taxes and governmental assessments,
 21 insurance premiums, repair, maintenance and construction costs,
 22 and supervision, management and related expenses.

20 7.3 Establishment of Assessments. Declarant as record
 21 title holder and each Owner, for themselves, their heirs, succes-
 22 sors and assigns, covenant that each Residence shall be subject
 23 to regular assessment in an amount to be determined by the
 24 Association in the following manner:

23 7.3.1 Repair and Maintenance. Each Residence's
 24 pro rata share of the actual cost to the Association of the repair
 25 and maintenance to be performed by the Association as provided in
 26 paragraph 6.3.

26 7.3.2 Operations. Each Residence's pro rata
 27 share of the actual cost to the Association of the operation,
 28 maintenance and security of the Common Area and such additional
 29 portions of the Property as are to be repaired and maintained by
 30 the Association as provided in paragraph 6.3.

29 7.3.3 Taxes and Insurance. Each Residence's pro
 30 rata share of the actual cost to the Association of taxes and
 31 governmental assessments on the Common Area and insurance to be
 32 maintained by the Association.

31 7.3.4 Utilities. Each Residence's pro rata share
 32 of the actual cost to the Association of water and other systems
 and services, if any, not separately metered or charged directly

1 to a Residence. In determining a Residence's pro rata share, the
 2 Association may vary the assessment to a Residence to reflect the
 3 extent of use as by increased water charges for swimming pools
 4 and the like.

5 7.3.5 Reserves. Each Residence's pro rata share
 6 of the sums determined by the Board to be prudent for the estab-
 7 lishment of reserves for repair, maintenance, taxes, insurance,
 8 capital improvements and other charges for the benefit of the
 9 Owners and the Property.

10 7.3.6 Miscellaneous. Each Residence's pro rata
 11 share of such additional sums as the Board may determine to
 12 be necessary to fulfill the purposes of the Association.

13 7.3.7 Procedure. Regular assessments shall be
 14 determined by the Board in such manner as shall be set forth
 15 in the Bylaws. Written notice of the amount of assessments and
 16 the due date shall be provided to the Owners not less than thirty
 17 days prior to the due date if payable annually or not less than
 18 ten days prior to the due date if payable monthly, although
 19 failure to provide such notice shall not relieve any Owner from
 20 the obligation to pay such assessment. The first assessment
 21 period shall not commence earlier than the first day of the first
 22 month following conveyance of the first Residence to an Owner
 23 other than Declarant. Upon demand and for a reasonable charge,
 24 the Board shall furnish to any Owner a certificate setting forth
 25 whether the assessments and charges on his Residence are paid
 26 and, if unpaid, the amount unpaid. The certificate when signed
 27 by an officer or director shall be binding upon the Association
 28 as of the date of issuance.

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29 7.4 Special Assessments. In addition to regular
 30 assessments, the Board shall have the right and power to provide
 31 for the construction of additional recreational and other common
 32 facilities, or the alteration, demolition, removal or reconstruc-
 33 tion of existing recreational and other common facilities, from
 34 time to time, as in their discretion appears to be in the best
 35 interest of the Association and the Property. Any such altera-
 36 tion, demolition, removal, construction, or addition shall be
 37 authorized by an affirmative vote of two-thirds of the Board
 38 at a duly called meeting at which a quorum is present, and
 39 ratified and approved by the affirmative vote of two-thirds of
 40 each class of the Members present in person or by proxy at a duly
 41 called meeting at which a quorum is present. For purposes of
 42 this paragraph, the presence at a duly called meeting of Members
 43 or of proxies entitled to cast fifty percent of the votes of each
 44 class of membership shall constitute a quorum. If the required
 45 quorum is not forthcoming at any meeting, another meeting may be
 46 called by sending written notice to all Members not less than ten
 47 days nor more than thirty days in advance of the meeting, setting
 48 forth the purpose of the meeting, and the required quorum at any
 49 such subsequent meeting shall be one-half of the required quorum
 50 at the preceding meeting. Special assessments shall be payable
 51 at the same time and in addition to regular assessments or, at
 52 the option of the Board, at different times or in one installment.

53 7.5 Maximum Assessment. Until January 1 of the year
 54 immediately following the conveyance of the first Residence by
 55 Developer to an Owner (other than Developer), the maximum assess-
 56 ment, regular and special, for a Residence shall be \$600.00
 57 (not including Courthouse Exterior Maintenance). Notwithstanding
 58 any other provision herein to the contrary, Residences, whether

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1 improved or unimproved, owned by Developer either directly or
 2 beneficially through Declarant shall not be subject to assessment
 3 of any kind or in any amount at any time until conveyed to an
 4 Owner other than Developer.

5 7.6 Assessment Rate. The pro rata share of the total
 6 assessment to be borne by each Residence shall be the Assessment
 7 Rate for that Residence. The Assessment Rate shall be a percent-
 8 age determined as the product of "1" as the numerator, and the
 9 total number of all Residences then subject to assessment, as the
 10 denominator. If and as any Residences are combined or deleted or
 11 additional property is annexed to the Property in the manner pro-
 12 vided in paragraph 2, the total number of Residences so combined
 13 or deleted shall reduce or enlarge the denominator of the Assess-
 14 ment Rate calculation, as appropriate, at such time as such Resi-
 15 dences become subject to assessment. All assessments must be
 16 uniform for all Residences, except when penalty assessments are
 17 issued because of maintenance or other expenses incurred by the
 18 Association as a result of the neglect or the like by an Owner.
 19 Assessments for Courthome Maintenance, Courthome Insurance and the
 20 like shall be allocated only among Courthome Owners and not among
 21 Owners of other Residences. The separate Assessment Rate for
 22 Courthome assessments for each Courthome shall be a percentage
 23 determined as the product of "1", as the numerator, and the total
 24 number of Courthomes then subject to assessment, as the denominator.

25 7.7 Remedies of the Association. Each Owner shall be
 26 deemed to covenant and agree to pay to the Association the assess-
 27 ments provided for herein on or before the due date thereof as
 28 established by the Board and agrees to the enforcement of the
 29 assessments in the manner herein specified. Unofficial Document In the event the
 30 Association employs attorneys for collection of any assessment,
 31 whether by suit or otherwise, or to enforce compliance with or
 32 specific performance of the terms and conditions of this Declara-
 33 tion, each Owner shall pay reasonable attorney's fees and costs
 34 thereby incurred in addition to any other amounts due or any other
 35 relief or remedy obtained against such Owner. In the event of a
 36 default in payment of any assessment when due, the assessment
 37 shall be deemed delinquent, and in addition to any other remedies
 38 herein or by law provided, the Association may enforce each such
 39 obligation in any manner provided by law or in equity, or without
 40 any limitation of the foregoing, by either or both of the follow-
 41 ing procedures:

42 7.7.1 Suit. The Board may cause a lawsuit to be
 43 commenced and maintained in the name of the Association against
 44 an Owner to enforce the payment of any delinquent assessment. Any
 45 judgment rendered in any such action shall include, without limita-
 46 tion, the amount of the delinquency, interest at the lesser of
 47 18 percent per annum or the highest permissible lawful rate from
 48 the date of delinquency, court costs, and reasonable attorneys'
 49 fees fixed by the Court.

50 7.7.2 Lien. There is hereby created a lien,
 51 with private power of sale, on each and every Residence to secure
 52 payment to the Association of any and all assessments levied
 53 against any and all Owners, interest thereon at the lesser of
 54 18 percent per annum or the highest permissible lawful rate from
 55 the date of delinquency, and all costs of collection which may
 56 be paid or incurred by the Association in connection therewith,
 57 including, without limitation, costs and reasonable attorneys'
 58 fees. After the occurrence of any default in the payment of any
 59 assessment, the Association, or any authorized representative
 60 may, but shall not be required to, make a written demand for

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1 payment to the defaulting Owner, on behalf of the Association.
 2 The demand shall state the date and amount of the delinquency.
 3 Each default shall constitute a separate basis for a demand or a
 4 lien, but any number of defaults may be included within a single
 5 demand or lien. If such delinquency is not paid after delivery
 6 of such demand, or, even without such a written demand being
 7 made, the Association may elect to file a claim of lien on behalf
 8 of the Association against the Residence of the defaulting Owner.
 9 However, a claim of lien is not required and any and all delin-
 10 quent assessments shall be a continuing lien on the Residence
 11 with or without the preparation or recording of a claim of lien.
 12 A claim of lien may be executed, acknowledged and recorded by any
 13 officer of the Association, and shall contain substantially the
 14 following information: (a) the name of the delinquent Owner; (b)
 15 the legal description and street address of the Residence; (c)
 16 the amount due and owing including interest thereon, collection
 17 costs, and reasonable attorneys' fees; (d) and that the lien is
 18 claimed by the Association pursuant to this Declaration. Upon
 19 the occurrence of a delinquent assessment or the recordation of a
 20 duly executed original or copy of a claim of lien, the lien shall
 21 immediately attach and become effective in favor of the Associ-
 22 ation as a lien upon the Residence against which such assessment
 23 was levied. Except as provided in subparagraph 7.7.3 hereof, the
 24 lien shall have priority over all liens or claims created subse-
 25 quent to the due date of the first delinquent assessment for
 26 which the lien is claimed. Any lien may be foreclosed by appro-
 27 priate action in court in the manner provided by law for the
 28 foreclosure of a realty mortgage or enforcement of a trust deed,
 29 with private power of sale, as set forth by the laws of Arizona,
 30 as and if amended. The lien shall be in favor of the Association
 31 and shall be for the benefit of all other Owners. The Association
 32 shall have the right to purchase at a sale and the power to bid
 in at any foreclosure sale and to purchase, acquire, hold, lease,
 mortgage, and convey any Residence. In the event such foreclosure
 is by action in court, reasonable attorneys' fees, court costs,
 title search fees, interest at the lesser of 18 percent per annum
 or the highest permissible lawful rate, and all other costs and
 expenses shall be allowed to the extent permitted by law. Each
 Owner, by becoming an Owner of a Residence, hereby expressly
 waives any objection to the enforcement and foreclosure of this
 lien in this manner.

22 **7.7.3 Subordination of Lien.** The lien for the assess-
 23 ments provided for herein shall be subordinate to the lien of the
 24 First Mortgage on the Residence. Sale or transfer of any Residence
 25 shall not affect the assessment lien. However, the sale or trans-
 26 fer of any Residence pursuant to mortgage foreclosure or any
 27 proceeding similar to or in lieu thereof, shall extinguish the
 28 lien of such assessment as to payments which became due prior to
 such sale or transfer. No sale or transfer shall relieve such
 Residence from liability for any assessments thereafter becoming
 due or from the lien thereof. Sale or transfer shall not relieve
 the previous Owner from personal liability for assessments that
 became due while such Owner was the Owner.

29 **8. Architectural Control.**

30 **8.1 Organization.** There shall be an Architectural
 31 Committee, organized as follows:

32 **8.1.1 Committee Composition.** The Architectural
 Committee shall consist of three regular members and two alternate
 members. None of such members shall be required to be an Owner,
 an architect, or to meet any other particular qualifications for
 membership.

1 **8.1.2 Alternate Members.** In the event of the
2 absence or disability of one or two regular members of the Com-
3 mittee, the remaining regular member or members, even though less
4 than a quorum, may designate either or both of the alternate
5 members to act as substitutes for the absent or disabled regular
6 member or members for the duration of such absence or disability.

7 **8.1.3 Initial Members.** The following persons are
8 hereby designated as the initial members of the Architectural
9 Committee:

10 Office No. 1 - Robert A. Gosnell, regular
11 member

12 Office No. 2 - Craig Bisch, regular
13 member

14 Office No. 3 - Donald K. Johnson, regular
15 member

16 Office No. 4 - Bruce Berres, alternate
17 member

18 Office No. 5 - Edward J. Avery, alternate
19 member.

20 **8.1.4 Terms of Office.** The initial and all
21 successor members of the Architectural Committee shall serve
22 until resignation or removal.

23 **8.1.5 App^{Unofficial Document} and Removal.** The right to
24 appoint and remove all regular and alternate members of the
25 Architectural Committee at any time, shall be and is hereby
26 vested solely in the Board of the Association, provided, however,
27 that no regular or alternate member may be removed from the Archi-
28 tectural Committee by the Board except by the vote or written
29 consent of four-fifths of all of the members of the Board.
30 Exercise of the right of appointment and removal, as set forth
31 herein, shall be evidenced by a declaration identifying each new
32 regular or alternate member appointed to the Committee and each
regular or alternate member replaced or removed therefrom.

8.1.6 Resignations. Any regular or alternate
member of the Architectural Committee may at any time resign from
the Committee by giving written notice thereof to the Board.

8.1.7 Vacancies. Vacancies on the Architectural
Committee however caused, shall be filled by the Board. A
vacancy or vacancies on the Architectural Committee shall be
deemed to exist in case of the death, resignation or removal of
any regular or alternate member.

8.2 Duties. It shall be the duty of the Architectural
Committee to consider and act upon any and all proposals or plans
submitted to it pursuant to the terms hereof, to adopt Architec-
tural Committee Rules, to perform other duties delegated to it by
the Board, and to carry out all other duties imposed upon it by
this Declaration or The Pointe Rules.

8.3 Meetings and Compensation. The Architectural
Committee shall meet from time to time as necessary to perform
its duties hereunder. Subject to the provisions of paragraph
8.1.2, the vote or written consent of any two regular members, at

1 a meeting or otherwise, shall constitute the act of the Committee.
 2 The Committee shall keep and maintain a written record of all
 3 actions taken by it at such meetings or otherwise. Members of
 4 the Architectural Committee shall be entitled to compensation
 5 for their services only as may be provided by the Board in its
 6 discretion.

7 8.4 Rules. The Architectural Committee may, from time
 8 to time and in its sole and absolute discretion, adopt, amend and
 9 repeal, by unanimous vote or written consent, rules and regulations
 10 to be known as "Architectural Committee Rules." The Rules shall
 11 interpret and implement this Declaration by setting forth the
 12 standards and procedures for Architectural Committee review and
 13 the guidelines for architectural design, placement of buildings,
 14 landscaping, color schemes, exterior finishes and materials and
 15 other features which are recommended for use in The Pointe.
 16 After, but not prior, to the conveyance of the Common Area to the
 17 Association as provided in paragraph 9.4, the Architectural
 18 Committee Rules may be amended or waived only with the approval
 19 of three-fourths of the Members.

20 8.5 Waiver. The approval or disapproval by the Archi-
 21 tectural Committee of any plans, drawings or specifications for
 22 any work done or proposed, or for any other matter requiring the
 23 approval of the Architectural Committee shall be in writing and
 24 shall not be deemed to constitute a waiver of any right to approve
 25 or withhold approval of any similar plan, drawing, specification
 26 or matter subsequently submitted for approval.

27 8.6 Liability. ^{Unofficial Document} Whether the Architectural Committee
 28 nor any member thereof shall be liable to the Association, any
 29 Owner, or to any other party, for any damage, loss or prejudice
 30 suffered or claimed on account of the approval or disapproval of
 31 any plans, drawings, or specifications, whether or not defective;
 32 the construction or performance of any work, whether or not pur-
 33 suant to approved plans, drawings and specifications; the develop-
 34 ment of any property within The Pointe; or the execution and
 35 filing of any estoppel certificate, whether or not the facts
 36 therein are correct; provided, however, that with respect to the
 37 liability of a member of the Committee, such member has acted in
 38 good faith on the basis of such information as may be possessed
 39 by him. Without in any way limiting the generality of any of the
 40 foregoing provisions, the Architectural Committee, or any member
 41 thereof, may, but is not required to, consult with or hear the
 42 views of the Association or any Owner with respect to any plans,
 43 drawings, specifications, or any other proposal submitted to the
 44 Architectural Committee. The Architectural Committee shall not
 45 be deemed to have approved or disapproved any proposal unless in
 46 writing signed by at least two current, regular members.

47 8.7 Time for Approval. In the event the Committee
 48 fails to approve or disapprove in writing within forty-five days
 49 after complete plans and specifications have been submitted to
 50 it, approval will not be required and this paragraph will be
 51 deemed to have been waived as to such plans and specifications.

52 9. Property Rights and Easements.

53 9.1 Owners' Easements of Enjoyment. Every Owner shall
 54 have a nonexclusive right and easement of enjoyment in and to the
 55 Common Area which shall be appurtenant to and shall pass with the
 56 title to every Residence, subject to the following provisions:

1 **9.1.1 Fees.** The right of the Association to
 2 limit the number of guests of the Owners or to charge reasonable
 3 admission and other fees for the use of any portion of the Common
 4 Area except private streets and walks; provided, however, that the
 5 Association shall not charge an aggregate amount of such admission
 6 or other fees which, when taken together with all other items of
 7 "nonexempt function income" of the Association for the taxable
 8 year thereof, exceeds 30 percent of the gross income of the
 9 Association for such taxable year, and shall not permit any
 10 part of such admission or other fees, "nonexempt function income"
 11 or net earnings of the Association to inure to any member or
 12 other parties, such that the Association shall in all events
 13 comply with the provisions and restrictions of § 528 of the
 14 Internal Revenue Code of 1954, as amended, to the end that the
 15 Association shall attain and continue the status of a tax exempt
 16 "Residential Real Estate Management Association" within the
 17 meaning thereof.

18 **9.1.2 Suspension.** The right of the Association
 19 to suspend the voting rights and right to use of the Common Area
 20 by an Owner for any period during which any assessment against
 21 his Residence remains unpaid; and for a period not to exceed sixty
 22 days for any other infraction of this Declaration or The Pointe
 23 Rules.

24 **9.1.3 Dedication.** The right of the Association
 25 to dedicate or transfer all or any part of the Property to any
 26 public agency, authority, or utility for such purposes and
 27 subject to such conditions as may be agreed to by the Board.

28 **9.1.4 Joint Use.** Unofficial Document The right of the Declarant or the
 29 Association to establish a nonexclusive easement and right-of-use
 30 of all or any portion of the Property in favor of the owner,
 31 guests, or invitees of the Restaurant and Resort Hotel for any
 32 and all purposes including, without limitation, shared enjoyment
 33 of common facilities and the installation of helicopter landing
 34 sites. Neither the Association nor any Owner shall have any
 35 right to charge fees or rentals, assess costs or interfere with
 36 or restrict in any other way the joint use of the Property by
 37 the owner or guests of the Restaurant and Resort Hotel without
 38 the prior written approval of the owner thereof. No action of
 39 the Association or any Owner which tends in any way to affect
 40 such joint use or the facilities subject thereto shall be valid
 41 unless approved by the then owner or owners of the Restaurant and
 42 Resort Hotel.

43 **9.1.5 Conveyance.** The right of Declarant or the
 44 Association to create easements and rights-of-use appurtenant to
 45 and for the benefit of properties in the vicinity of The Pointe
 46 or one or more Residences whether for parking, access or
 47 otherwise.

48 **9.1.6 Delegation.** Any Owner may delegate, in
 49 accordance with the Bylaws, his right of enjoyment to the Common
 50 Area and facilities to the members of his family, guests, tenants
 51 or invitees.

52 **9.2 Blanket Easement.** There is hereby created a
 53 blanket easement upon, across, over and under the Property and
 54 Residences for ingress, egress, installation, replacing, repair-
 55 ing and maintaining all utility and service lines and systems,
 56 including, but not limited to, water, sewer, gas, telephone,
 57 electricity, television cable or communication lines and systems.

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1 By virtue of this easement, it shall be expressly permissible for
 2 the providing utility, service company, the Association or their
 3 agents to install and maintain facilities and equipment on the
 4 Property and to affix and maintain wires, circuits and conduits
 5 on, in and under the roofs and exterior walls of Residences.
 6 Notwithstanding anything to the contrary contained herein, no
 7 sewers, electrical lines, water lines, or other utilities or
 8 service lines may be installed or relocated except as initially
 9 programmed and approved by Developer or thereafter approved by
 10 the Architectural Committee. This easement shall in no way
 11 affect any other recorded easements. There shall be an access
 12 easement over the Common Area for the delivery and collection of
 13 the U.S. Mail. Each Residence and Common Area shall be subject
 14 to an easement for encroachments created by construction, settl-
 15 ing and overhangs, and to an easement for drainage and runoff
 16 from other Residences or the Common Area, as the Residences and
 17 the Common Area are originally designed and constructed by
 18 Developer, or as later designed and constructed with the approval
 19 of the Architectural Committee. A valid easement for encroachments
 20 and for the maintenance of same, so long as it stands, shall and
 21 does exist and shall include, without limitation, all carport and
 22 patio extensions or other improvements appurtenant to a Residence
 23 as initially constituted by Developer. In the event any structure
 24 is partially or totally destroyed and then rebuilt, Owners agree
 25 that minor and reasonable encroachments on parts of the adjacent
 26 Residences or Common Area due to construction shall be permitted
 27 with approval of the Architectural Committee and that a valid
 28 easement for encroachment and the maintenance thereof shall
 29 exist. The Association and Developer shall have an easement
 30 upon, across, over and under the Property and Residences to
 31 repair, maintain and operate those areas and facilities described
 32 in paragraph 6.3.

9.3 Common Driveways. As the Residences are originally
 18 designed and constructed by Developer, each Owner is to have
 19 vehicular access to his Residence by means of a driveway. Some
 20 of the driveways will be located within the Exterior Residence
 21 Lines of the applicable Residence while others will be common
 22 driveways located wholly or partially upon an adjacent Residence
 23 or the Common Area. Each Owner of a Residence served by a common
 24 driveway shall have and is hereby granted a nonexclusive easement
 25 for free and unrestricted pedestrian and vehicular access to his
 26 Residence by means of the common driveway. The easement shall be
 27 for the benefit of and appurtenant to each Residence served by
 28 the common driveway. Neither the Association nor any Owner of
 29 any Residence over which any portion of a common driveway traverses
 30 shall in any way interfere with the easement or access thereby.
 31 Except with respect to the foregoing easement, the existence of a
 32 common driveway shall not affect ownership or maintenance rights
 or responsibilities and each Owner (or the Association as to that
 portion of a common driveway located within the Common Area)
 shall own and maintain that portion of the common driveway
 located within the Owner's Exterior Residence Lines with no right
 of contribution from any other Owner sharing the common driveway.

9.4 Title to Common Area. In its discretion, Developer
 29 may cause Declarant to deed and convey the Common Area, or any
 30 other property, to the Association at any time. Developer shall
 31 cause Declarant to deed and convey the Common Area to the Associa-
 32 tion within one year following the conveyance to an Owner other
 than Developer of the last Residence owned by Developer or
 fifteen years from this date, whichever earlier occurs.

1 10. Damage or Destruction. In the event any Residence
2 is damaged or destroyed from any cause, its Owner shall, within
3 thirty days from the date of the occurrence of the damage or
4 destruction, begin repair and rebuilding the Residence (and
5 any damage to adjacent Residences or property for which such
6 Owner may be legally responsible) in a good workmanlike manner
7 in conformance with the original plans and specifications
8 used in the construction thereof, subject to such changes
9 as are then required by applicable laws, ordinances and
10 governmental rules and regulations, and shall complete same
11 in a reasonably expeditious manner not to exceed ninety
12 days from the date of damage or destruction, except that
13 such 90-day period shall be extended by the period of any
14 delays resulting from occurrences or circumstances which are
15 beyond the control of the Owner and his contractor. Except as
16 provided as to Courthomes in paragraph 11.2, such repair and
17 reconstruction shall be at the expense of the Owner, although
18 the Board shall reimburse to the Owner any such expenses
19 covered by insurance proceeds received by the Association
20 therefor, if any. In the event such Owner refuses or fails to
21 commence to repair and rebuild any and all such damage within
22 the thirty day period or to complete within the ninety day
23 period, the Association, by and through its Board, is hereby
24 irrevocably authorized by such Owner to undertake such repair
25 and rebuilding in a good workmanlike manner in conformance with
26 the original plans and specifications of the Residences and the
27 then applicable law. The Owner shall then repay to the Association,
upon demand, the amount actually expended for such repairs
together with interest at the lesser of 18 percent per annum or
the highest permissible lawful rate from the date of expenditure
until paid. Each Owner further agrees that charges for repairs,
if not paid within ten days after demand, shall be delinquent and
shall become a lien upon the Residence and the personal obligation
of the Owner in the manner provided for Assessments in paragraph
7. Such charges shall bear interest at the lesser of 18 percent
per annum or the highest permissible lawful rate and shall
constitute a debt collectible by the Association from the Owner
through any lawful procedures. Each Owner vests in the Association,
or its agents, the right and power to bring all actions
against such Owner for the collection of such charges and to
enforce the lien by all methods available for the enforcement of
such liens, including those specified in paragraph 7, and such
Owner grants to the Association a private power of sale in
connection with the lien. The lien shall be subordinate to the
lien of any First Mortgage. Nothing contained herein shall be
construed in any way so as to relieve any insurance company from
the payment of any and all amounts which would be payable under
any policy or policies. In the event of a dispute between an
Owner and the Board with respect to the extent of repairs necessi-
tated or the cost thereof, then upon written request of either
the Owner or Association, the matter shall be submitted to
Arbitration in the manner provided in paragraph 4.6.

28 11. Insurance.

29 11.1 General. The Board or its authorized agent
30 shall have the authority to and may obtain insurance for all
31 Improvements situated on the Common Area, against loss or damage
32 by fire or other hazards under the broadest reasonably available
coverage and in an amount sufficient to cover the full replacement
cost of any repair or reconstruction work in the event of damage

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1 or destruction from any insurable hazard; may obtain a broad
 2 form public liability policy covering all Common Area, and all
 3 damage or injury caused by the negligence of the Association or
 4 any of its agents; and may obtain such other insurance as it
 5 deems necessary at any time for any purpose. At the Board's
 6 direction, premiums for all such insurance may be common expenses
 7 subject to inclusion in the assessments pursuant to paragraph
 8 7. All such insurance shall be written in the name of the
 9 Association. The Board may require that fire and extended
 10 coverage insurance and public liability insurance on individual
 11 Residences be written by the carrier selected by the Board. The
 12 Board may establish minimum coverages for insurance on individual
 13 Residences. Except as to Courthomes, premiums for insurance
 14 obtained on individual Residences, either by the Board or by
 15 the Owner, shall not be part of the common expense, but shall
 16 be an expense of the specific Residence so covered and a debt
 17 owed by the Owner, and shall be collectible by any lawful
 18 procedures. In addition, if the debt is not paid within ten
 19 days after notice of such debt, such amount may, at the Board's
 20 direction, become a lien upon such Owner's Residence and, if
 21 so, it shall continue to be such lien until fully paid. The
 22 lien shall be subordinate to the lien of any First Mortgage,
 23 and shall be enforceable in the same manner as any lien created
 24 by paragraph 7. In addition to the insurance required to be
 25 carried by the Owners and/or the Association, any Owner may, if
 26 he wishes, at his own expense, insure his own Residence for his
 27 own benefit and carry any and all other insurance he deems
 28 advisable. It shall be the individual responsibility of each
 29 Owner, at his own expense, to provide as he sees fit, homeowners'
 30 liability insurance, theft and other insurance covering personal
 31 property damage and loss. In the event of damage or destruction
 32 by fire or other casualty to any Property covered by insurance
 written in the name of the Association, the Board shall, upon
 receipt of the insurance proceeds, contract to rebuild or
 repair such damaged or destroyed portions of the Property to as
 good condition as formerly. All such insurance proceeds shall
 be deposited in a bank or other financial institution, the
 accounts of which bank or institution are insured by a federal
 governmental agency, with the proviso agreed to by said bank or
 institution that such funds may be withdrawn only by signature
 of at least one-third of the members of the Board, or by an
 agency duly authorized by the Board. The Board shall contract
 with any licensed contractor, who may be required to provide a
 full performance and payment bond for the repair, reconstruction
 or rebuilding of such destroyed building or buildings. In the
 event the insurance proceeds are insufficient to pay all the
 costs of repairing or rebuilding to the same condition as
 formerly, the Board may utilize reserves, levy a special
 assessment in the manner provided in paragraph 7.4, or proceed
 as otherwise herein provided.

11.2 Courthome Insurance. The Board, or its author-
 ized agent, shall obtain insurance against loss or damage to
 Courthomes by fire or other commonly insured hazards under the
 broadest reasonably available coverage and in an amount sufficient
 to cover the full replacement cost of any repair or reconstruction
 work and shall also obtain public liability insurance with
 coverage at reasonable limits but not less than \$100,000. Such
 insurance shall be for the benefit of the Owners of Courthomes
 and the Association. In the event of damage or destruction, the
 Association shall apply the proceeds and contract to repair or
 rebuild in the manner provided in paragraph 11.1. In the
 event the insurance proceeds are insufficient to pay the costs

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1 of such repair or reconstruction, then each Courthome Owner
 2 shall bear and be liable for the costs applicable to his
 3 Residence, and any other property the Owner would be required
 4 to repair as provided in paragraph 10 (less the insurance
 5 proceeds received by the Association therefor), all in the
 6 manner provided in paragraph 10. Except as provided in the
 7 preceding sentence, Courthome Owners shall have no claim to the
 8 proceeds of such insurance and the premiums therefor shall be
 9 allocated among all Courthome Owners in the same manner as is
 10 provided for Courthome Exterior Maintenance in paragraph 6.2.
 11 Each Courthome Owner may, but need not, provide as he sees fit
 12 for homeowners' liability insurance, theft and other insurance
 13 covering personal property damage and loss.

8 12. Alienation.

9 12.1 Right of First Refusal. If an Owner other than
 10 the Developer shall desire at any time to sell a Residence, he
 11 shall first give the Developer and the Association written notice
 12 of the proposed sale stating the name and address of the purchaser
 13 and including financing and character references and a copy of
 14 the contract for sale and escrow instructions. During the period
 15 of twenty days following the receipt by the Developer of such
 16 written notice of sale, the Developer shall have the first right
 17 at its option to purchase such Residence upon the same terms as
 18 described in the notice of sale. If the Developer shall give
 19 written notice to such Owner within such twenty-day period that
 20 it has elected not to exercise such option, or if the Developer
 21 shall fail to give written notice within the twenty-day period
 22 that it does or does not elect to purchase such Residence, then
 23 the Owner shall give the Association (through the Board) written
 24 notice of the expiration of the Developer's option to purchase.
 25 During the period of twenty days following the receipt by the
 26 Association of such written notice of the expiration of the
 27 Developer's option, the Association shall have the right at its
 28 option to purchase such Residence upon the same terms as the
 29 proposed sale described in the notice. If the Association shall
 30 give written notice to such Owner within that twenty-day period
 31 that it has elected not to exercise such option, or if the
 32 Association shall fail to give written notice within the twenty-
day period that it does or does not elect to purchase such
Residence, then such Owner may proceed to close the sale trans-
action at any time within the next ninety days thereafter; and if
he fails to close the sale transaction within ninety days, his
Residence shall again become subject to the rights of first
refusal herein provided.

25 12.2 Exemption. This right of first refusal shall not
 26 be applicable or be enforceable by the Developer or the Association
 27 with respect to any of the following: the mortgaging of any
 28 Residence to a First Mortgagee; any sale, transfer or conveyance
 29 to a First Mortgagee pursuant to the provisions of the First
 30 Mortgage, or a sale, transfer or conveyance pursuant to a fore-
 31 closure proceeding or a deed in lieu of foreclosure of a First
 32 Mortgage; any rental, with or without a written lease, for a term
of less than three years; a transfer of title by testamentary
disposition or intestate succession or by gift to a member or
members of the Owner's immediate family; a transfer of title to a
trustee holding for the benefit of the transferor or for the
benefit of a member or members of the transferor's immediate
family; or a transfer of title to a corporation provided that a
majority of the issued and outstanding voting stock of the

1 corporation is, and at all times continues to be, owned by the
2 transferor or a member or members of his immediate family.

3 12.3 Acquisition. In the event the Developer or the
4 Association elects to exercise this right of first refusal, the
5 purchase shall be closed and consummated within thirty days after
6 notification to the Owner of the exercise of such right. If the
7 Association is to be the purchaser, it shall have the authority
8 to make such mortgage or other financing arrangements and to make
9 such assessments proportionately among the respective Owners and
10 to make such other arrangements as it may deem desirable in order
11 to close and consummate such purchase. If the Association shall
12 make any such purchase, the Board shall have the authority at any
13 time thereafter to sell, lease or sublease such Residence upon
14 such terms as it shall deem desirable without complying with the
15 foregoing provisions relating to the right of first refusal and
16 all of the net proceeds or deficits therefrom shall be retained
17 by the Association or applied among all of the Owners in such
18 manner as the Association shall determine.

19 12.4 Violation. If any sale of a Residence is made or
20 attempted by any Owner without complying with the foregoing
21 provisions, such sale shall be void and of no effect and, in
22 addition to all other legal remedies, within 120 days of the
23 date that the Developer or any member of the Board learns of such
24 sale, the Developer and then the Association shall have the right
25 to purchase the Residence from the purchaser upon the same terms
26 and conditions as he acquired the Residence and in accordance
27 with the procedure set forth in this paragraph 12.
28 Unofficial Document

29 13. First Mortgagee. Notwithstanding and prevailing over
30 any other provisions of this Declaration, the Articles, Bylaws,
31 or any rules or regulations, the following provisions shall apply
32 to and benefit each holder of a First Mortgagee upon a Residence:

1 13.1 Exoneration. Except as hereinafter provided, the
2 first mortgagee shall not in any case or manner be personally
3 liable for the payment of any assessment or charge, nor for the
4 observance or performance of any Assurance, except for those
5 matters which are enforceable by injunctive or other equitable
6 actions, not requiring the payment of money.

7 13.2 Substitution. During the pendency of any proceed-
8 ing to foreclose the First Mortgagee, including any period of
9 redemption, the first mortgagee (or any receiver appointed in
10 such action) may, but need not, exercise any or all of the rights
11 and privileges of the Owner, including, but not limited to the
12 right to vote as a Member to the exclusion of the Owner's exercise
13 of such rights and privileges.

14 13.3 Acquisition. At such time as the first mortgagee
15 shall become record owner of a Residence the first mortgagee
16 shall be subject to all of the terms and conditions of this
17 Declaration, including, but not limited to, the obligation to pay
18 for all assessments and charges accruing thereafter, in the same
19 manner as any Owner.

20 13.4 Foreclosure. The first mortgagee, or any other
21 party acquiring title to a mortgaged Residence through foreclosure
22 suit or through any equivalent proceedings such as, but not
23 limited to, the taking of a deed in lieu of foreclosure, shall
24

1 acquire title to the Residence free and clear of any lien author-
 2 ized by or arising out of any of the provisions of this Declara-
 3 tion which secures the payment of any assessment or charges
 4 accrued prior to the final conclusion of any such foreclosure
 5 suit or equivalent proceeding, including the expiration date of
 6 any period of redemption, except as follows: Any such unpaid
 7 assessment against the Residence foreclosed against may be
 8 treated as an expense common to all of the Residences including
 9 the Residence foreclosed against, which expense may be collected
 10 by a pro rata assessment or charge against all Residences subject
 11 to assessment. Any such unpaid assessment or charge shall never-
 12 theless continue to exist as the personal obligation of the
 13 defaulting Owner of the Residence to the Association. There
 14 shall be a lien upon the interests of the first mortgagee or
 15 other party which acquires title to a mortgaged Residence by
 16 foreclosure or equivalent proceedings for all assessments and
 17 charges authorized by this Declaration which accrue or are
 18 assessed after the date the acquirer has acquired title to the
 19 Residence free and clear of any right of redemption.

11 14. General Provisions.

12 14.1 Enforcement. The provisions of this Declaration
 13 shall run with the land and shall be binding upon all persons
 14 purchasing, owning, leasing, subleasing, occupying or otherwise
 15 having any right, title or interest in any of the Property, their
 16 heirs, executors, administrators, successors, grantees and
 17 assigns. After the date on which this Declaration has been
 18 recorded, this Declaration may be enforced by any one or more of
 19 the following: The Association or its Board; Declarant; Developer;
 20 or the Owner or Owners of ^{Unofficial Document} Residence. The Developer or
 21 Declarant, or both, may but shall have no obligation to enforce
 22 this Declaration. Prior to initiating legal action to enforce
 23 this Declaration against the Association, Declarant or Developer,
 24 an Owner shall notify Declarant, Developer and the Association in
 25 writing of the grievance and nature of any asserted violation
 26 hereof and Declarant, Developer and the Association shall have
 27 forty-five days thereafter within which to cure or eliminate such
 28 violation. All instruments of conveyance of any interest in all
 29 or any part of a Residence may contain the provisions herein by
 30 reference to this Declaration. However, the terms and conditions
 31 of this Declaration shall be binding upon all persons affected by
 32 its terms, regardless of whether referenced in the deed or other
instrument of conveyance. Enforcement shall be by proceedings at
law or in equity against any person or persons violating or
attempting to violate any provision whether to restrain violation,
to recover damages or otherwise. If any party employs attorneys
to enforce a lien or the collection of any amounts due pursuant
to this Declaration, or to enforce compliance with or specific
performance of the terms and conditions of this Declaration, the
Owner and parties against whom the action is brought shall pay
all reasonable attorneys' fees and costs thereby incurred by any
such enforcing party prevailing in any such action. Nothing
herein shall be deemed to indicate that damages at law constitute
an adequate remedy for violations hereof.

30 14.2 Waiver or Abandonment. The waiver of, or failure
 31 to enforce, any breach or violation of any Assurance shall not be
 32 deemed to be a waiver or abandonment of such Assurance, or a
 waiver of the right to enforce any subsequent breach or violation
 of such Assurance. The foregoing shall apply regardless of
 whether any person affected hereby (or having the right to enforce

DKT 14514 PG 584

1 these Assurances) had knowledge of the breach or violation. No
 2 Assurance contained herein shall be deemed to have been waived or
 3 abandoned unless this Declaration is amended to delete such
 4 Assurance.

5 **14.3 Equal Protection.** These Assurances shall be
 6 applied to all similarly situated Owners without discrimination.

7 **14.4 Severability.** The invalidity of any one or more
 8 provisions hereof shall not affect the remaining portions of this
 9 instrument or any part thereof, all of which are inserted condi-
 10 tionally on their being held valid in law, and in the event that
 11 one or more of the provisions should be invalid or should operate
 12 to render this Declaration invalid, this Declaration shall be
 13 construed as if such invalid provision had not been inserted.

14 **14.5 Gender.** The singular, wherever used herein, shall
 15 be construed to mean the plural when applicable, and the necessary
 16 grammatical changes required to make the provisions hereof apply
 17 either to corporations or individuals, men or women, shall in all
 18 cases be assumed as though in each case fully expressed.

19 **14.6 Topical Headings.** The marginal or topical headings
 20 of the paragraphs contained in this Declaration are for convenience
 21 only and do not define, limit or construe the contents of the
 22 paragraphs or of this Declaration.

23 **14.7 Amendment.** This Declaration shall remain in full
 24 force and effect for a period of fifteen years from the date
 25 hereof. Thereafter, it shall be deemed to have been renewed for
 26 successive terms of ten years, Unofficial Document unless revoked or amended by an
 27 amendment in writing, executed and acknowledged by the then
 28 Owners of not less than three-fourths of the Residences within
 29 ninety days prior to the expiration of the initial effective
 30 period hereof, or any ten year extension. These assurances may
 31 be amended at any time by the then Owners of not less than
 32 seven-eighths of the Residences. Notwithstanding the foregoing,
 or any other provision herein to the contrary, this Declaration
 may be revoked or amended by Declarant at the direction of
 Developer acting alone, without the consent or approval of any
 Owner or others, at any time on or before one year after the
 sale of the last Residence to an Owner other than Developer, or
 at any time then or thereafter if required by the Federal
 Housing Administration (HUD) or the Veterans Administration.

DATED this 30th day of June, 1980.

LAWYERS TITLE OF ARIZONA,
 as Trustee

GOSNELL DEVELOPMENT CORPORATION

By 

By 

Its Trustee

Robert A. Gosnell, President

"DECLARANT"

"DEVELOPER"

DKT 14514PS 585

1 STATE OF ARIZONA)
) ss.
2 County of Maricopa)

3 This instrument was acknowledged before me this 30th
4 day of June, 1980, by Robert A. Gosnell as the President of
5 GOSNELL DEVELOPMENT CORPORATION, an Arizona corporation, on
6 behalf of the corporation.

Karen A. Blaum
Notary Public

7 My commission expires:
8 My Commission Expires Dec. 19, 1981

9 STATE OF ARIZONA)
10) ss.
11 County of Maricopa)

12 This instrument was acknowledged before me this 30th
13 day of June, 1980, by John A. Finch as the
14 Trust Officer of LAWYERS TITLE OF ARIZONA, an Arizona
15 corporation, on behalf of the corporation, as Trustee.

James H. Sledge
Notary Public

16 My commission expires:
17 3-21-84

Unofficial Document

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Recorded at the Request of:

AmendPCA-4-1-1--
Garcia

WHEN RECORDED, MAIL TO: Beth Mulcahy Mulcahy Law Firm, P.C. 3001 E. Camelback Road, Suite 130 Phoenix, Arizona 85016

The Pointe Community Association

FIRST AMENDMENT TO RESTATED DECLARATION OF HOMEOWNER BENEFITS AND ASSURANCES

THIS FIRST AMENDMENT TO "THE POINTE" RESORT RESIDENTIAL COMMUNITY RESTATED DECLARATION OF HOMEOWNER BENEFITS AND ASSURANCES ("Declaration") is made this 9th day of July, 2021, by The Pointe Community Association ("Association").

RECITALS

A. The Restated Declaration of Homeowner Benefits and Assurances for "The Pointe" Resort Residential Community was recorded on June 25, 1980, at Docket No. 14514, Page 552, and amended on November 12, 2004, in Document No. 2004-1326132, official records of Maricopa County, Arizona ("Declaration"), and subjected the real property described in the Declaration to the Declaration and required that the property be held, sold, used, and conveyed subject to the easements, restrictions, covenants and conditions, which run with the title to the real property subject to this Declaration.

B. The Declaration is binding on all parties having any right, title or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the properties.

C. The Members of the Association wish to amend the Declaration.

D. Pursuant to Paragraph 14.7 of the Declaration, the Declaration may be amended at any time by the then Owners of not less than seven-eighths of the Residences.

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. **Amend Paragraph 14.7 as follows:**

~~14.7 Amendment. This Declaration shall remain in full force and effect for a period of fifteen years from the date hereof. Thereafter, it shall be deemed to have been renewed for successive terms of ten years, unless revoked or amended by an amendment in writing, executed and acknowledged by the then Owners of not less than three-fourths of the Residences within ninety days prior to the expiration of the initial effective period hereof, or any ten-year extension. These assurances may be amended at any time by the~~

~~then Owners of not less than seven eighths of the Residences. THE DECLARATION MAY BE AMENDED AT ANY TIME BY THE THEN OWNERS OF NOT LESS THAN SIXTY-SEVEN PERCENT (67%) OF THE RESIDENCES VOTING IN FAVOR OF A PROPOSAL TO REVOKE OR AMEND THE DECLARATION FOLLOWING NOT LESS THAN THIRTY (30) DAYS NOTICE OF THE PROPOSAL BEING MAILED ELECTRONICALLY OR BY U.S. MAIL TO ALL OWNERS AT ADDRESSES ON FILE WITH THE COMMUNITY. Notwithstanding the foregoing, or any other provision herein to the contrary, this Declaration may be revoked or amended by Declarant at the direction of Developer acting alone, without the consent or approval of any Owner or others, at any time on or before one year after the sale of the last Residence to an Owner other than Developer, or at any time then or thereafter if required by the Federal Housing Administration (HUD) or the Veterans Administration~~

2. **Add Paragraph 14.8 to the Declaration as follows:**

AT ANY TIME, AND WITH A MAJORITY VOTE OF THE BOARD OF DIRECTORS AT A PROPERLY-NOTICED MEETING, A MAJORITY OF THE BOARD OF DIRECTORS MAY AMEND THE DECLARATION, BYLAWS OR ARTICLES OF INCORPORATION FOR THE PURPOSE OF BRINGING THE DOCUMENT(S) INTO COMPLIANCE WITH ARIZONA LAW.

3. The terms used in this Amendment without definition shall have the same meanings given to such terms in the Declaration (as amended).
4. By attesting to this Amendment, the undersigned certify that the amendments to the Declaration set forth in this Amendment were properly adopted in accordance with the requirements of the Declaration.
5. Except as expressly amended by this Amendment, the Declaration shall remain in full force and effect. In the event of any inconsistency or conflict between the provisions of this Amendment and the Declaration this Amendment shall prevail.

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the date set forth above.

[SIGNATURE PAGES FOLLOW]

HOMEOWNER BENEFITS AND ASSURANCES
AMENDMENTS

2/26/88 AMENDMENT TO PARAGRAPH 3.7: "Landscape" -- "With the approval of the Architectural Committee, the following ground covers may be permitted in place of grass: Myoporum, Vinca Major, Algerian Ivy, Trailing African Daisy, Verbena and Hall's Honeysuckle. If used, these ground covers shall be planted at intervals not more than 6 inches on center and shall be neatly maintained. In lieu of the common variety domestic grass, each owner may install ground cover up to a maximum area of 150 square feet."

1/01/88 AMENDMENT TO PARAGRAPH 3.1: "Residential Lease Requirement" -- "No Residence shall be leased or rented for a term of less than one year."



OFFICIAL RECORDS OF
 MARICOPA COUNTY RECORDER
 HELEN PURCELL
 2004-1326132 11/12/04 16:11
 2 OF 14
 SOTOR

When recorded, return to:

Ekmark & Ekmark, L.L.C.
 6720 N. Scottsdale Road, Suite 261
 Scottsdale, Arizona 85253

RETURN TO
 FLEMING ATTORNEY
 SERVICE

NOTICE OF LANDSCAPING REQUIREMENTS
 AND RECORDING OF EXISTING AMENDMENTS TO
 THE POINTE RESORT RESIDENTIAL COMMUNITY

RESTATED DECLARATION OF HOMEOWNER BENEFITS AND ASSURANCES

WHEREAS, "THE POINTE" RESORT RESIDENTIAL COMMUNITY RESTATED DECLARATION OF HOMEOWNER BENEFITS AND ASSURANCES (HBAs) was recorded at Docket number 14514, Pages 552 through 585, official records of Maricopa County, Arizona, and governs all property located on the PLAT OF DEDICATION for THE POINTE, recorded in Book 194 of Maps, page 42, records of Maricopa County, Arizona, and the Plat of THE POINTE COURT HOMES TWO, recorded in Book 223 of Maps, page 49, records of Maricopa County, Arizona (all property shall be collectively described as "The Pointe");

WHEREAS, two amendments to the HBAs were approved by the members of The Pointe Community Association ("Association") in 1988 but do not appear to have been recorded in the official records of Maricopa County, Arizona;

WHEREAS, the HBAs contain specific landscaping requirements of the portions of lots that are Visible From Neighboring Property;

WHEREAS, the Association wishes to put present and future owners of any property in The Pointe on notice that, effective immediately, the Association intends to enforce the specific landscaping requirements set forth in the HBAs;

NOW, THEREFORE, the Association records this Notice and Amendment to set forth the amendments previously adopted by the Association and to remind present and future owners of the landscaping requirements of the HBAs:

A. The following two amendments were added to the HBAs in 1988:

1. Paragraph 3.7 of the HBAs was amended to add the following language to the provision:

“With the approval of the Architectural Committee, the following ground covers may be permitted in place of grass: Myoporum, Vinca Major, Algerian Ivy, Trailing African Daisy, Verbena and Hall’s Honeysuckle. If used, these ground covers shall be planted at intervals not more than 6 inches on center and shall be neatly maintained. In lieu of the common variety domestic grass, each owner may install ground cover up to a maximum area of 150 square feet.”

2. Paragraph 3.1 was amended to change the seventh sentence in its entirety as follows:

“No Residence shall be leased or rented for a term of less than one year.”

B. **NOTICE REGARDING LANDSCAPING REQUIREMENTS:** Effectively April 1, 2004, any owner wishing to modify the landscaping on their lot must comply with the requirements of the HBAs, as amended. Section 3.7 of the HBAs states in part:

Excluding natural desert terrain and drainageways left substantially undisturbed by the Developer (which shall not be landscaped or otherwise disturbed but shall remain in the natural state), desert landscaping of a Residence, whether characterized by rocks, cactus or unaided nature, shall not comprise more than one-tenth of the landscaping Visible From Neighboring Property with the result that at least nine-tenths of such landscaping shall be shall be vegetation (grass, etc.) of which at least 70% shall be a common variety domestic grass. With the approval of the Architectural Committee, the following ground covers may be permitted in place of grass: Myoporum, Vinca Major, Algerian Ivy, Trailing African Daisy, Verbena and Hall’s Honeysuckle. If used, these ground covers shall be planted at intervals not more than 6 inches on center and shall be neatly maintained. In lieu of the common variety domestic grass, each owner may install ground cover up to a maximum area of 150 square feet.

Additionally, the HBAs require an owner to submit for architectural approval prior to modifying the landscaping.

Do not assume because a certain type of landscaping exists on someone else’s lot that you will be able to install similar landscaping. Although some violations may presently exist within The Pointe to the above provisions of the HBAs, effective April 1, 2004, the Association intends to enforce the above landscaping requirements for any future modifications. Any changes made to the landscaping on the lot must comply with the above requirements and must be submitted to the Architectural Committee for approval.

The President of the Association hereby executes this Notice of Landscaping Requirements and Recording of Existing Amendments at the direction of the Board of Directors of the Association.

DATED this 8th day of Nov, 2004.

THE POINTE COMMUNITY ASSOCIATION

By: Katherine Elaine Nefzer
Its: President

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 8 day of Nov, 2004, before me the undersigned Notary Public, personally appeared _____, who acknowledged to me that he is the President of the Association and that he executed the foregoing agreement on behalf of the Association for the purposes expressed therein.

Joann L. Eneix
Notary Public

My Commission expires:
April 29, 2007

