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The Pointe Community Association

**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

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**AMENDED AND RESTATED RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE POINTE
COMMUNITY ASSOCIATION**

THIS AMENDMENT AND RESTATEMENT TO the Declaration of Covenants, Conditions and Restrictions for The Pointe Community Association ("Amendment") is made this 30 day of November, 2022, 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; amended on November 12, 2004, in Document No. 2004-1326132, official records of Maricopa County, Arizona; amended on July 9, 2021, in Document No. 2021-0750965, 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 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. The Association has obtained the affirmative vote representing the above-mentioned requirements. Any amendment to this Declaration, past, present or future, shall be subject to a presumption that sufficient notice of such amendment was provided to the Owners by the original Declaration, and that such amendment was reasonable and foreseeable to the Owners at the time of purchase. This amendment to the Declaration does not create any new affirmative obligations for Owners of Lots within the Association; rather, the amendments set forth herein refine the Declaration, correct an error, fill in a gap, and/or change the Declaration in a particular way.

**ARTICLE 1
DEFINITIONS**

1.1 "Architectural Committee" shall mean the Committee created pursuant to Article 7.

1.2 “**Architectural Committee Rules**” shall mean the rules adopted by the Architectural Committee.

1.3 “**Articles**” shall mean the Articles of Incorporation of the Association which are, or shall be, filed with the Arizona Corporation Commission, as and if amended.

1.4 “**Assessment Rate**” shall be the pro-rata portion of assessments to be borne by a Residence as provided in paragraph 6.6.

1.5 “**Association**” shall mean and refer to THE POINTE COMMUNITY ASSOCIATION, an Arizona nonprofit corporation, its successors and assigns.

1.6 “**Board**” shall mean the Board of Directors of the Association.

1.7 “**Bylaws**” shall mean the Bylaws of the Association, as and if amended.

1.8 “**Common Area**” shall mean all property to be 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.

1.9 “**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.

1.10 “**Courthome Exterior Maintenance**” shall mean the maintenance described in paragraph 6.2.

1.11 “**Declaration**” shall mean the provisions herein set forth in this document, as and if amended, together with any and all Tract Declarations which may be recorded by the Association, as and if amended.

1.12 “**Entry**” shall mean the roadway and improvements therein contained by which access to the Property has been granted pursuant to the appurtenant, nonexclusive easement set forth in the description of the Property above.

1.13 “**Exterior Residences Lines**” shall mean the outside boundary lines or perimeters of a Courthome, Garden Home or Single Family Residence as depicted on the Plat which encloses the entire dimension of the land and Improvements for a Courthome, the Exterior Residence Lines, for purposes of Courthome Exterior Maintenance only (as described in paragraph 5.2), shall consist of the horizontal and Vertical planes forming the entry of each Courthome which coincide with the top of the floor slab, the bottom of the finished roof and

the interior face of finished walls, together with the air conditioning unit, carport and storage space appurtenant thereto, if any.

1.14 **“First Mortgage”** shall mean any mortgage, deed of trust or agreement for sale made in good faith, for value and 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.

1.15 **“Garden Home”** shall mean an attached Single Family Residence within the Property so designated by the Plat and shall include a structure devoted to multi-family residential use by two single families, except as to Residence Nos 18, 43, 132, 135, 162, 187, 200, and 205 which shall be Garden Homes notwithstanding that they are unattached structures.

1.16 **“Improvements”** shall mean the buildings, garages, carports, streets, roads, driveways, parking areas, fences, walls, docks, hedges, plantings, trees, and shrubs, and all other structures or landscaping of every type and kind located on the Property.

1.17 **“Member”** shall mean any person, corporation, partnership, joint venture or other legal entity who is a member of the Association as provided in paragraph 4.5.

1.18 **“Multifamily Residence”** shall mean any Residence so separated or divided as to be used and occupied by more than one Single Family home, under one roof, including Courthomes and Garden Homes.

1.19 **“Owner”** shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any Residence. **“Owner”** shall include the purchaser of a Residence under an executory contract for the sale of real property. **“Owner”** does not include persons or entities who hold an interest in any Residence merely as security for the performance of an obligation.

1.20 **“The Pointe”** shall mean the Property and such additions thereto or subtractions therefrom as may be made by the Association through Tract Declaration or otherwise.

1.21 **“The Pointe Rules”** shall mean the rules adopted by the Association as provided in paragraph 5.3.

1.22. **“Plat”** means the subdivision plats of the Property recorded in Book 194 of Maps, page 42, and in Book 223 of Maps, page 49, records of Maricopa County, Arizona, as and if amended or supplemented.

1.23 **“The Property”** shall mean and refer to the Property as described above and such additions thereto or subtractions therefrom as may be made by the Association.

1.24 **“Residence”** shall mean any portion of the Property, and the Improvements thereon or used in conjunction therewith, which has been divided into a separate component for use as a Single Family or Multifamily Residence whether by the Plat or a Tract Declaration and

regardless of whether any improvements have been constructed thereon. Each separate portion of a Multifamily Residence within the Exterior Residence Lines shall constitute one Residence. The Residences include all of the property, excluding the Common Area.

1.25 **“Restaurant and Resort Hotel”** refers to the resort known as the Pointe Resort Hotel located adjacent to and south of the Property and through which the Entryway traverses, as they are now constructed, together with its water park, convention centers, restaurants, offices, shops, shopping centers, condominiums, apartments or other facilities.

1.26 **“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, who maintain a common household in a Residence.

1.27 **“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.

ARTICLE 2 USES

2.1 **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. Further, no trade or business of any kind may be conducted in or from any Lot except that an Owner may conduct a business activity within a single-family house located on a Lot so long as the existence or operation of the business activity (a) is not apparent or detectable by sight, sound, or smell from the exterior of the single-family house; (b) conforms to all zoning requirements for the Project; (c) does not increase the liability or casualty insurance obligation or premium of the Association; and (d) is consistent with the residential character of the Association and does not constitute a nuisance or a hazardous or offensive use including, without limitation, excessive or unusual traffic or parking of vehicles in the vicinity of any Lot or the Common Area as may be determined in the sole discretion of the Board. The terms "business" and "trade," as used in the previous sentence, shall be construed to have their ordinary and generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves providing goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration regardless of whether (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; (c) a license is required therefor. 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 and similar events and activities shall be prohibited. The roofs of the Residences, particularly those above the carports of the Courthomes, are not designed to be and shall not used as walk decks, sun decks or the like and no persons shall be permitted on the roofs except or such time as is require or 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 one year. Owners are responsible for the conduct of lessees, tenants, guests, children and other family members, agents, contractors and all others in, on or about a Residence or any part of the Property at the request, invitation or sufferance of an Owner such that any violation of this Declaration or The Pointe Rules by any such person shall constitute a violation by such Owner. Homeowners are required to submit tenant applications to the management company. Tenant information must be kept current by the Owner.

2.2 Construction. No building or structure of any kind may be erected, placed or maintained on any Residence unless of new construction Trailers, mobile homes, modular homes or prefabricated structures of any kind; structures of a temporary character used as a residence either temporarily or permanently; solar glass and unsightly window coverings, such as aluminum foil, reflective coatings, newspaper, cardboard, or the like metal patio covers, sunscreens, covers or screen doors; and hospitals, sanitariums or other places for the care or treatment of the sick or disabled, mentally or physically all shall be prohibited.

Prefabricated fireplace flues (treated architecturally with lath and plaster), wood shutters, timber lattices and canvas awnings will be permitted with the prior approval of the Architectural Committee.

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

2.4 Utilities. All gas, electric, power, telephone, water, sewer, television and other utility and service connections and lines shall be located either underground or concealed within or under buildings or other structures, except when prohibited by law. Service pedestals, transformers, switch cabinets and similar installations may be located above ground. Radio, television and other receivers, transmitters and antennas which are visible from Neighboring Property all shall be prohibited. No outside speakers or amplifiers shall be permitted except with the prior approval of the Architectural Committee. All outside speakers, amplifiers, radios and other means of emitting sound, whether located inside or outside of a Residence, shall be subject to regulation by the Association as to noise levels and time of use. All outside lighting, except porch lights and other customary, indirect noncolored lighting, shall be subject to prior approval by the Architectural Committee.

2.5 Signs. No signs or flags shall be erected, placed or permitted to remain on a Lot, except as permitted by A.R.S. Section 33-1808, as it may from time to time be amended. For

Sale, For Lease, For Rent and Open House signs will be allowed subject to policy and procedures as authorized by the Board of Directors in the Pointe Rules. Street and Residence names and numbers, mailing addresses and other identifications and, directory designations, markings and insignia shall be permissible only as approved by the Architectural Committee.

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

2.7 **Landscaping.** Any landscaping to be installed or replaced by an Owner shall comply with Architectural Committee Rules, and Owners must request Architectural Committee approval prior to the installation or replacement of any landscaping. No tree, shrub, or other landscaping 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 Owner shall allow any condition which shall induce, breed or harbor plant disease or noxious insects.

2.8 **Maintenance.** No Residence shall be permitted to fall into disrepair. All Residences shall be kept in good condition and repair, with surfaces adequately painted and with windows, doors, screens, awnings and the like properly cleaned and maintained. Landscaping shall be maintained and if a shrub or other component perishes, it shall be replaced in accordance with the Pointe Rules governing landscaping. Outdoor grills, barbecues and fire pits shall be only outdoor burning permitted. No Residence shall be allowed to present an unsightly appearance, endanger the health of community members, emanate offensive noises or odors or constitute an aggravation, annoyance or nuisance.

2.9 **Garbage.** No garbage, rubbish, trash or debris shall be placed or allowed to accumulate on the Property except on the days of scheduled removal (pick-up) and then only within sealed containers complying with City of Phoenix standards. The placement and maintenance of such bags and containers subject to regulation by the Board of Director as stated in Pointe Rules. Any residue remaining after removal of such bags and containers shall be eliminated promptly by the Owner.

2.10 **Natural Areas and Drainage Courses.** Natural areas and drainage courses within the common area shall not be used for dumping or vehicular traffic and shall be maintained fully open and unobstructed.

2.11 **Carports.** The interiors of all carports shall be maintained in a neat, and clean condition. No carport shall be used for storage, or for the maintenance of power equipment, hobby shops or carpenter shops or for the conduct of any automobile overhaul, repair or maintenance work.

2.12 **Garages.** Garages shall be used as the primary motor vehicle parking location for single family residences in the Pointe Community. At a minimum, garages must accommodate one vehicle (automobile or pick-up truck) for residents. Garages shall not be used for storage, the maintenance of power equipment, hobby shops or carpenter shops or for the conduct of any automobile overhaul, repair or maintenance work that would impede its use for parking at least one vehicle. Doors shall remain closed at all times except while in actual, active use.

2.13 **Parking.** Motor vehicles shall be parked and kept only in carports, garages, designated parking areas or the streets. On-street parking shall be permitted only as prescribed by the Board in The Pointe Rules. The parking of trucks, buses, commercial vehicles, recreational vehicles, trailers, boats, dune buggies, and the like shall not be permitted 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. Overnight parking for residents and guests and long-term curbside parking for residents shall be permitted as allowed by the Pointe Rules.

2.14 **Garage Sales.** The Association may host community-wide garage/sidewalk sales not more than twice a year on behalf of the community. No other garage or sidewalk sales shall be allowed in the Pointe Community.

2.15 **Architecture.** No structures, improvements, pools, courts, additions, changes, expansions, alterations, repairs, painting, landscaping, excavation or other work which in any way affects or alters the exterior appearance of any Residence or the Improvements thereon, visible to the community, shall be initiated without the prior written approval of the Architectural Committee. No excavation, fill or other alteration of the topography or drainage of any Residence shall be initiated without the prior written approval of the Architectural Committee. The procedure for the preparation, submission and determination of applications for any such work may be found in the Pointe Rules. The Architectural Committee shall have the right to refuse to approve any plans or specifications or grading plan, which are not suitable or desirable, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building, structure or other improvement, the color, texture and materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings and the effect of the Improvements as planned, on the outlook from the adjacent or neighboring property. In granting approval, the Architectural Committee may impose such conditions and stipulations as it may deem appropriate including, without limitation, requirements concerning restoration of natural terrain landscaping of fill slopes, restrictions against interference with drainage, burial and camouflage of utility lines, duration of construction activities (not to exceed ninety days from commencement to completion) and the like. All subsequent additions to, changes or alterations in any improvements, including exterior texture or color scheme shall be subject to the prior approval of the Architectural Committee. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Committee. Decisions of the Architectural Committee may be challenged by appeal to the Board of Directors. A vote of two-thirds of the members of the Board shall be

required to overturn a decision by the Architectural Committee. The appeals process and documentation required may be found in Pointe Rules.

2.16 Mining. No exploration or mining operations of any kind shall be permitted involving discovery, exploration location, removal, milling or refining and whether relating to water, oil, gas, hydrocarbon, gravel, uranium, geothermal steam or otherwise.

2.17 Animals. No reptiles, fowl, poultry, fish, or livestock shall be permitted or kept on or in connection with any Residence or the Property. No animals other than commonly accepted household pets such as dogs, cats, birds, fish in reasonable numbers may be maintained within a Residence for domestic but not commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, cause an odor, or to become a nuisance. All dogs shall be kept on a leash when outside a Residence, and shall be directly under the Owner's control at all times. Any person bringing a dog onto the Common Area shall immediately remove any feces deposited on the Common Area by the dog. Owners shall be liable for any and all damage to property and injuries to persons and other animals, fish and fowl (domestic and wildlife) caused by their household pets.

2.18 Subdivision. No Residence shall be further subdivided or separated into smaller or different portion or conveyed or encumbered in less than the full original dimension as set forth in the Plat. Dedication, conveyance or the granting of easements to public utilities or other public or quasi-public entities may be permitted with the prior approval of the Association.

2.19 Compliance. No Residence shall be used or maintained in violation of any applicable statute, ordinance, code or regulation of any governmental authority, the provisions of this Declaration or the rules and regulations of the Association or the Architectural Committee.

ARTICLE 3 **PARTY WALLS**

The rights and duties of Owners of Residences containing party walls, partitions, dividers, or fences, hereinafter "walls," shall be as follows:

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

3.2 Damage. In the event any party wall is damaged or destroyed through the act of one adjoining Owner, or any of his guests, tenants, licensees, agents or members of his

family (whether or not such act is negligent or otherwise culpable) then such Owner shall forthwith proceed to rebuild and repair the same to as good a condition as formerly without cost to the adjoining Owner.

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

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

3.5 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 and the Architectural Committee. As initially constructed, the party walls are not retaining walls and shall not be altered to become retaining walls through filling above the foundation line or means or methods.

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

3.7 Application. The right of any Owner to contribution from any other Owner under this paragraph shall be appurtenant to the Residence and shall pass to and be binding upon such Owner's heirs, assigns and successors in title.

ARTICLE 4

THE POINTE COMMUNITY ASSOCIATION

4.1 Organization.

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

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

4.2 **Powers and Duties of the Association.** The Association shall have such rights, duties and powers as are set forth herein and in the Articles and Bylaws.

4.3 **The Pointe Rules.** The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to (i) the management, operation and use of the Common Areas including, but not limited to, any recreational facilities situated upon the Common Areas, (ii) minimum standard for any maintenance of Lots, or (iii) any other subject within the jurisdiction of the Association. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail.

4.4 **Personal Liability.** No member of the Board, any Committee of the Association, any officer of the Association, any compensated or voluntary manager, or any employee or agent shall be personally liable to any Owner, or to any other party, including the Association for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager or any other representative or employee of the Association, the Architectural Committee, any other Committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct. Officers and Directors of the Association shall be indemnified against personal liability for acts or omissions in the manner set forth in the Articles.

4.5 **Membership.** Every Owner of a Residence shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of the Residence. The rights and obligations of an owner and membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership to the Owner's Residence and then only to the transferee of ownership to such Residence. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Residence shall operate to transfer membership to the new Owner.

4.6 **Voting Rights.** The Association shall have one class of voting which shall consist of all Owners. Each Member will be entitled to one vote.

4.6.1 **Suspension.** If any Owner shall be in arrears in the payment of any amounts due under any of the provisions of this Declaration for a period of fifteen days, or shall be in default in the performance of any of the terms of this Declaration for a period of fifteen

days, that Owner's right to vote as a member of the Association shall be suspended automatically and shall remain suspended until all payments are made and defaults cured.

4.6.2 **Procedure.** The votes for each such Residence must be cast as a unit, and a division of votes shall not be allowed. If joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners casts a vote or votes representing a certain Residence, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other Owners of the same Residence. In the event more than one voter casts the vote or votes for a particular Residence, none of the votes shall be counted and such votes shall be void. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected.

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

ARTICLE 5

COVENANT FOR MAINTENANCE

5.1 **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 Association or an 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 or within the extension of the side yard Exterior Residence Lines. In addition, if the need for repair or maintenance of areas to be repaired and maintained by the Association, or collectively by the Courthome Owners, is caused through the negligent or willful acts or omissions of the Owner, his family, licensees, guests, tenants or invitees, the cost of such repair or maintenance shall be the responsibility of the Owner, either directly or through increased assessment at the option of the Board. Further, repair and maintenance of the interior and exterior of any Residence which is undertaken by the Association, or collectively by the Courthome Owners because of the failure or neglect of the Owner, shall be the responsibility of the Owner, either directly or through assessment by the Association, at the option of the Board.

5.2 **Courthome Owners.** In addition to the responsibilities of an owner set forth in paragraph 5.1, all of the Courthome owners collectively, through separate assessment by the Association solely to all Courthome owners in the manner provided in paragraph 6.6 shall be

responsible for and bear the expense of the repair and maintenance of the lawns, landscaping, driveways, carports and exterior of the Courthomes including painting, repairing, replacing and caring for the roofs, exterior walls and building surfaces, awnings, gutters, downspouts, pipes, ducts, flues, sewer, water and other utility lines, landscaping and other Improvements located outside the Exterior Residence Lines of a Courthome including, without limitation, the floor slab and below; on, in or outside the exterior walls; the roofs, upon the roof or above the roofs; or on or upon the lawns or driveway (excluding glass surfaces and air conditioning), hereinafter the Courthome Exterior Maintenance. For example: (a) plumbing located inside the Exterior Lines shall be the responsibility of the individual Courthome Owner but plumbing pipes located inside the building containing the Courthome but outside the Exterior Residence Lines of any Courthome therein shall be maintained as a part of the Courthome Exterior Maintenance, and (b) the installation of the landscaping required by paragraph 5.1 shall be the responsibility of the individual Courthome Owner but overseeding with rye and replacement of dead or diseased landscaping shall be a part of Courthome Exterior Maintenance. Courthome Owners shall be responsible individually for such portion of the Courthome 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 5.1.

5.3 **Association.** The Association shall be responsible for and bear the expense of the repair and maintenance of the Common Area and facilities including sewer and water lines, booster stations and pumps serving more than one Residence even if not located in the Common Area; signs, street signs, sign walls and the like as originally installed even if not located in the Common Area; all portions of the Property up to the Exterior Residence Lines (except that portion of the right-of-way or Dreamy Draw Drive to be maintained by the Owners as provided in paragraph 5.1); 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 easement and Agreement recorded in Docket 12618, page 104). 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 Article 7.

ARTICLE 6

COVENANT FOR ASSESSMENTS

6.1 **Creation of Lien and Personal Obligation.** Each Owner of any Residence, by acceptance of a deed therefor, whether or not it shall be so expressed in the instrument of conveyance, is deemed to covenant and agree to pay to the Association: (1) regular assessments and charges, (2) special assessments for capital improvements and other purposes, and (3) for Courthome Owners only, assessments provided in paragraph 6.6. Assessments and charges shall be established and collected as hereinafter provided. The assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Residence against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property at the time when the assessment falls due. The personal obligation for delinquent assessments shall not pass to successors in title unless

expressly assumed by them. The obligation of an Owner to pay assessments shall not be affected by the incompleteness of or any diminished use with respect to the Common Area or the abandonment of a Residence.

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

6.3 Establishment of Assessments. Each Owner, for themselves, their heirs, successors and assigns, covenant that each Residence shall be subject to regular assessment in an amount to be determined by the Association in the following manner:

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

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

6.3.3 Taxes and Insurance. Each Residence's pro-rata share of the actual cost to the Association of taxes and governmental assessments on the Common Area and insurance to be maintained by the Association.

6.3.4 Utilities. Each Residence's pro rata share of the actual cost to the Association of water and other systems and services, if any, not separately metered or charged directly to a Residence. In determining a Residence's pro rata share, the Association may vary the assessment to a Residence to reflect the extent of use as by increased water charges for swimming pools and the like.

6.3.5 Reserves. Each Residence's pro rata share of the sums determined by the Board to be prudent for the establishment of reserves for repair, maintenance, taxes, insurance, capital improvements and other charges for the benefit of the Owners and the Property.

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

6.3.7 Procedure. Regular assessments shall be determined by the Board in such manner as shall be set forth in the Bylaws. Written notice of the amount of assessments and the due date shall be provided to the Owners not less than thirty days prior to the due date if payable annually or not less than ten days prior to the due date if payable monthly, although failure to provide such notice shall not relieve any Owner from the obligation to pay such

assessment. Upon demand and for a reasonable charge, the Board shall furnish to any Owner a certificate setting forth whether the assessments and charges on his Residence are paid and, if unpaid, the amount unpaid. The certificate when signed by an officer or director shall be binding upon the Association as of the date of issuance.

6.4 Special Assessments. In addition to regular assessments, the Board shall have the right and power to provide for the construction of additional recreational and other common facilities, or the alteration, demolition, removal or reconstruction of existing recreational and other common facilities, from time to time, as in their discretion appears to be in the best interest of the Association and the Property. Any such alteration, demolition, removal, construction, or addition shall be authorized by an affirmative vote of two-thirds of the Board at a duly called meeting at which a quorum is present, and ratified and approved by the affirmative vote of two-thirds of the Members present in person or by mail-in/absentee ballot at a duly called meeting at which a quorum is present. For purposes of this paragraph, the presence at a duly called meeting of Members in person or by mail-in/absentee ballot entitled to cast fifty percent (50%) of the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called by sending written notice to all Members not less than ten days nor more than thirty days in advance of the meeting, setting forth the purpose of the meeting, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. Special assessments shall be payable at the same time and in addition to regular assessments or, at the option of the Board, at different times or in one installment. Subject to the terms and conditions hereof, Special Assessments may be levied solely against Courthome Owners upon the approval of two-thirds (2/3rds) of Courthome Owners voting in person or via mail-in/absentee ballot at a duly-called meeting at which a quorum is present.

6.5 Maximum Assessment. The Association shall not impose an Annual Assessment that is greater than permitted by Arizona law.

6.6 Assessment Rate. The pro rata share of the total assessment to be borne by each Residence shall be the Assessment Rate for that Residence. The Assessment Rate shall be a percentage determined as the product of "1" as the numerator, and the total number of all Residences then subject to assessment, as the denominator. If any Residence is combined or deleted, the total number of Residences to be combined or deleted shall reduce or enlarge the denominator of the Assessment Rate calculation, as appropriate, at such time as such Residence become subject to assessment. All assessments must be uniform for all Residences, except when penalty assessments are issued because of maintenance or other expenses incurred by the Association as a result of neglect or the like by an Owner. Assessments for Courthome Maintenance, Courthome Insurance and the like shall be allocated only among Courthome Owners and not among Owners of other Residences. The separate Assessment Rate for Courthome assessments for each Courthome shall be a percentage determined as the product of "1" as the numerator, and the total number of Courthomes then subject to assessment as the denominator.

6.7 Remedies of the Association. Each Owner shall be deemed to covenant and agree to pay to the Association the assessments herein on or before the due date thereof as

established by the Board and agrees to the enforcement of the assessments in the matter herein specified. In the event the Association employs attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner shall pay reasonable attorney's fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against such Owner. In the event of a default in payment of any assessment when due, the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

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

6.7.2 Lien. There is hereby created a lien, with private power of sale, on each and every Residence to secure payment to the Association of any and all assessments levied against any and all Owners, interest thereon at the lesser of 18 percent per annum or the highest permissible lawful rate from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including, without limitation, costs and reasonable attorneys' fees. After the occurrence of any default in the payment of any assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner, on behalf of the Association. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or a lien, but any number of defaults may be included within a single demand or lien. If such delinquency is not paid after delivery of such demand, or, even without such a written demand being made, the Association may elect to file a claim of lien on behalf of the Association against the Residence of the defaulting Owner. However, a claim of lien is not required and any and all delinquent assessments shall be a continuing lien on the Residence with or without the preparation or recording of a claim of lien. A claim of lien may be executed, acknowledged and recorded by any officer of the Association, and shall contain substantially the following information: (a) the name of the delinquent Owner; (b) the legal description and street address of the Residence; (c) the amount due and owing including interest thereon, collection costs, and reasonable attorneys' fees; (d) and that the lien is claimed by the Association pursuant to this Declaration. Upon the occurrence of a delinquent assessment or the recordation of a duly executed original or copy of a claim of lien, the lien shall immediately attach and become effective in favor of the Association as a lien upon the Residence against which such assessment as levied. Except as provided in subparagraph 6.7.3 hereof, the lien shall have priority over all liens or claims created subsequent to the due date of the first delinquent assessment for which the lien is claimed. Any lien may be foreclosed by appropriate action in court in the manner provided by law for the foreclosure of a realty mortgage or enforcement of a trust deed, with private power of sale, as set forth by the laws of Arizona, as and if amended. The lien shall be in favor of the Association and shall be for the benefit of all

other Owners. The Association 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.

6.7.3 Subordination of Lien. The lien for the assessments provided for herein shall be subordinate to the lien of the Mortgage on the Residence. Sale or transfer of any Residence shall not affect the assessment lien. However, the sale or transfer of any Residence pursuant to mortgage foreclosure or any proceeding similar to or in lieu thereof, shall extinguish the 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.

6.8 Capital Contribution Fee. Except as provided below, each Person or entity that purchases or otherwise becomes the owner of a Lot, whether by Deed, by a Trustee's Deed upon Sale, by a Deed in Lieu of Foreclosure, or any similar means, on or after the recording date of this Declaration, shall pay to the Association, immediately upon becoming the owner of the Lot, a Capital Contribution Fee in an amount of \$1,000.00. The amount of the Capital Contribution Fee may be increased by the Board from time to time, provided any such increase is approved by more than fifty percent (50%) of the Owners.

6.8.1 No Capital Contribution Fee is payable in the following circumstances: (i) the transfer or conveyance of a Lot by devise or intestate succession or by gift without the payment of any consideration by the transferee; (ii) a transfer or conveyance of a Lot for estate planning purposes; or (iii) a transfer or conveyance to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transferor conveyance was to avoid payment for the Capital Contribution Fee in which event a Capital Contribution Fee shall be payable with respect to such transfer or conveyance.

6.8.2 All Capital Contribution Fees will be deposited in the Association's reserve account and will be deemed to be a contribution to the capital of the Association. Capital Contribution Fees are non-refundable and will not be considered as an advance payment of assessments.

6.8.3 Capital Contribution Fees will exclusively be used by the Association as required under A.R.S. §33-442 for the construction or installation of buildings in the Common Area or for additions, repairs, maintenance or other improvements to existing buildings, roads, or other improvements in the Common Area. The collection and expenditure of the Capital Contribution Fees touch and concern the Property and are appurtenant to the title of each and every Lot.

6.8.4 Capital Contribution Fees will only be collected on the sales of Lots that are sold/listed for sale after the date this Declaration is recorded. Any Lot that is currently listed for sale as of the date this Declaration is recorded is exempt from the payment of the Capital Contribution Fee.

ARTICLE 7

ARCHITECTURAL CONTROL

7.1 **Organization.** There shall be an Architectural Committee organized as follows:

7.1.1 **Committee Composition.** The Architectural Committee shall consist of five regular members, one of whom must be a member of the Board of Directors. The Chair shall be a director appointed by the Board on an annual basis. Committee members shall consist of homeowners representing the Courthomes, SFA and SFD homes.

7.1.2 **Terms of Office.** Members of the Architectural Committee shall serve two one-year terms, subject to reappointment.

7.1.3 **Appointment and Removal.** The right to appoint and remove all members of the Architectural Committee at any time shall be and is hereby vested solely in the Board of the Association, provided, however, prior to the expiration of their term, that no member may be removed from the Architectural Committee by the Board except by the vote or written consent of a majority of the members of the Board.

7.1.4 **Resignations.** Any member of the Architectural Committee may at any time resign from the Committee by giving written notice thereof to the Board.

7.1.5 **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 member.

7.2 **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 Architectural 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.

7.3 **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 7.1.1, the vote or written consent of a majority of members, at a meeting at which a quorum of three (3) members is present, shall constitute the act of the Committee. The Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise.

7.4 **Rules.** The Architectural Committee may, from time to time and by majority vote, adopt rules and regulations to be known as Architectural Committee Rules, and included in the Pointe Rules. The Rules shall interpret and implement this Declaration by setting forth the standards and procedures for Architectural Committee review and the guidelines for

architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and other features which are recommended for use in The Pointe. Changes to the Architectural Committee Rules are subject to approval by the Board.

7.5 Waiver. The approval or disapproval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee shall be in writing and shall not be deemed to constitute a waiver of any right to approve or withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

7.6 Liability. Neither the Architectural Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of the approval or disapproval of any plans, drawings, or specifications, whether or not defective; the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; the development of any property within The Pointe; or the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member of the Committee, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any of the foregoing provisions, the Architectural Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Committee. The Architectural Committee shall not be deemed to have approved or disapproved any proposal unless in writing signed by at least two current, regular members.

7.7 Time for Approval. In the event the Committee fails to approve or disapprove in writing within forty-five (45) days after complete plans and specifications have been submitted to it, approval will not be required and this paragraph will be deemed to have been waived as to such plans and specifications.

ARTICLE 8

PROPERTY RIGHTS AND EASEMENTS

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

8.1.1 Fees. The right of the Association to limit the number of guests of the Owners or to charge reasonable admission or other fees for the use of any portion of the Common Area except private walkways.

8.1.2 Suspension. The right of the Association to suspend the voting rights and right to use of the Common Area by an Owner for any period during which any assessment

against his Residence remains unpaid; and for a period not to exceed sixty days for any other infraction of this Declaration or The Pointe Rules.

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

8.1.4 Joint Use. The right of the Association to establish a nonexclusive easement and right-of-use of all or any portion of the Property in favor of the owner, guests, or invitees of the Restaurant and Resort Hotel any and all purposes including without limitation, shared enjoyment of common facilities. Neither the Association or any Owner shall have right to charges fees or rentals, assess costs or interfere with or restrict in any other way the joint use of Property by the owner guests, of the Restaurant and Resort Hotel without the prior written approval of the owner thereof. No action of the Association or any Owner which tends in any way to affect such joint use or the facilities subject thereto shall be valid unless approved by the owner or owners of the Restaurant and Resort Hotel.

8.1.5 Conveyance. The right of the Association to create easements and right of use appurtenant to and for the benefit of properties in the vicinity of The Pointe or one or more Residences whether for parking, access or otherwise.

8.1.6 Delegation. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, guests, tenants or invitees.

8.2 Blanket Easement. There is hereby created a blanket easement upon, across, over and under the Property and Residences for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewer, gas, telephone, electricity, television cable or communication lines, and systems. By virtue of this easement, it shall expressly permissible for the providing utility, service company, the Association or their agents to install and maintain facilities and equipment on the Property and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of Residences. Notwithstanding anything to the contrary contained herein, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated except as approved by the Architectural Committee. This easement shall in no way affect any other recorded easements. There shall be an access easement over the Common Area for the delivery and collection of the U.S. Mail. Each Residence and Common Area shall be subject to an easement for encroachments created by construction, settling, and overhangs, and to an easement for drainage and runoff from other Residences or the Common Area, as the Residences and the Common Area are designed and constructed with the approval of the Architectural Committee. A valid easement for encroachment and for the maintenance of same, so long as it stands, shall and, does exist shall include, without limitation, all carport and, patio extensions or other improvements appurtenant to a Residence as initially constructed. In the event any structure is partially or totally destroyed and then rebuilt, Owners agree that minor and reasonable encroachments on parts of the adjacent Residences or Common Area due to

construction shall be permitted with approval of the Architectural Committee and that a valid easement for encroachment and the maintenance thereof shall exist. The Association shall have an easement upon, across, over and under the Property and Residences to repair, maintain and operate those areas and facilities described in paragraph 5.3.

8.3 Common Driveways. As the Residences were originally designed and constructed, each Owner is to have vehicular access to his Residence by means of a driveway; some of the driveways will be located within the Exterior Residence Lines of the applicable Residence while others will be common driveways located wholly or partially upon an adjacent Residence or the Common Area. Each Owner of a Residence served by a common driveway shall have and is hereby granted a nonexclusive easement for free and unrestricted pedestrian and vehicular access to his Residence by means of the common driveway. The easement shall be for the benefit of and appurtenant to each Residence served by, the common driveway. Neither the Association nor any Owner of any Residence over which any portion of a common driveway traverses shall in any way interfere with the easement or access thereby. Except with respect to the foregoing easement, the existence of a 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.

8.4 Change of Use. Upon (i) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Common Area is no longer in the best interests of the Owners, and (ii) the approval of such resolution by Members casting more than fifty percent (50%) of the votes entitled to be cast by Members who are present in person or by mail-in or absentee ballot at a meeting duly called for such purpose and who are entitled to use such Common Area under the terms of this Declaration, the Board shall have the power and right to change the buildings, structures and Improvements thereon in any manner deemed necessary by the Board to accommodate the new use, provided such new use shall be for the benefit of the Owners.

ARTICLE 9

DAMAGE OR DESTRUCTION

In the event any Residence is damaged or destroyed from any cause, its Owner shall, within thirty days from the date of the occurrence of the damage or destruction, begin repair and rebuilding the Residence (and any damage to adjacent Residences or property for which such Owner may be legally responsible) in a good workmanlike manner in conformance with the original plans and specifications used in the construction thereof, subject to such changes as are then required by applicable laws, ordinances and governmental rules and regulations, and shall complete same in a reasonably expeditious manner not to exceed ninety days from the date of damage or destruction, except that such 90-day period shall be extended by the period of any; delays resulting from occurrences or circumstances which are beyond the control of the

Owner and his contractor. Except as provided as to Courthomes herein, such repair and reconstruction shall be at the expense of the Owner, although the Board shall reimburse to the Owner any such expenses covered by insurance proceeds received by the Association, therefor, if any. In the event such Owner refuses or fails to commence to repair and rebuild any and all such damage within the thirty day period or to complete within the ninety-day period, the Association, by and through its Board, is hereby irrevocably authorized by such Owner to undertake such repair and rebuilding in a good workmanlike manner in conformance with the original plans and specifications of the Residences and the 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 annual or 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 Article 6. Such charges shall bear interest at the lesser of 18 percent 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, 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 Article 6, 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 in connection 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 Owner and the Board with respect to the extent of repairs necessitated 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 3.6.

ARTICLE 10 **INSURANCE**

10.1 **General.** The Board or its authorized agent shall have the authority to and may obtain insurance for all Improvements situated on the Common Area, against loss or damage 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 or destruction from insurable hazard; may obtain a broad form public liability policy covering all Common Area, and all damage or injury caused by the negligence of the Association or any of its agents, and may obtain such other insurance as it deems necessary at any time for any purpose. At the Board's direction, premiums for all such insurance may be common expenses subject to inclusion in the assessments pursuant to Article 6. All such insurance shall be written in the name of the Association. The Board may require that fire and extended coverage insurance and public liability insurance on individual Residences be written by the carrier selected by the Board. The Board may establish minimum coverages for insurance on individual Residences. Except as to Courthomes, premiums for insurance

obtained on individual Residences, either by the Board or by the Owner, shall not be part of the common expense, but shall be an expense of the specific Residence so covered and a debt owed by the Owner, and shall be collectible by any lawful procedures. In addition, if the debt is not paid within ten days after notice of such debt, such amount may, at the Board's direction, become a lien upon such Owner's Residence and, if so, it shall continue to be such lien until fully paid. The lien shall be subordinate to the lien of any First Mortgage and shall be enforceable in the same manner as any lien created by Article 6. In addition to the insurance required to be carried by the Owners and/or the Association, any Owner may, if he wishes, at his own expense, insure his own Residence for his own benefit and carry any and all other insurance he deems advisable. It shall be the individual responsibility of each Owner, at his own expense, provide as he sees fit, homeowners' liability insurance, theft and other insurance covering personal property damage and loss. In the event of damage or destruction by fire or other casualties 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 6.4, or proceed as otherwise herein provided.

10.2 Courthome Insurance. The Board, or its authorized 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 \$2,000,000.00. 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 10.1. In the event the insurance proceeds are insufficient to pay the costs of such repair or reconstruction, then each Courthome owner shall bear and be liable for the costs applicable to his Residence, and any other property the owner would be required to repair as provided in paragraph 10.1 (less the insurance proceeds received by the Association therefor), all in the manner provided in paragraph 10.1. Except as provided in the preceding sentence, Courthome Owners shall have no claim to the proceeds of such insurance and the premiums therefor shall be allocated among all Courthome Owners in the same manner as is provided for Courthome Exterior Maintenance in paragraph 5.2. Each Courthome Owner may, but need not, provide as he sees fit for homeowners liability insurance, theft and covering personal property damage and loss.

ARTICLE 11
GENERAL PROVISIONS

11.1 **Enforcement.** The provisions of this Declaration shall run with the land and shall be binding upon all persons purchasing, owning, leasing, subleasing, occupying or otherwise having any right, title or interest in any of the Property, their heirs, executors, administrators, successors, grantees and assigns. After the date on which this Declaration has been recorded, this Declaration may be enforced by any one or more of the following: the Association or its Board, or the Owner or Owners of the Residences. All instruments of conveyance of any interest in all or any part of a Residence may contain the provisions herein by reference to this Declaration. However, the terms and conditions of this Declaration shall be binding upon all persons affected by 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, whether or not a lawsuit is filed. Nothing herein shall be deemed to indicate that damages at law constitute an adequate remedy for violations hereof. an adequate remedy for violations hereof.

11.2 **Waiver or Abandonment.** The waiver of, or failure to enforce, any breach or violation of any Assurance shall not be 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 this Declaration) had knowledge of the breach or violation. No Assurance contained herein shall be deemed to have been waived or abandoned unless this Declaration is amended to delete such Assurance.

11.3 **Equal Protection.** This Declaration shall be applied to all similarly situated Owners without discrimination.

11.4 **Severability.** The invalidity of any one or more provisions hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law, and in the event that one or more of the provisions should be invalid or should operate to render this Declaration invalid, this Declaration shall be construed as if such invalid provision had not been inserted.

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

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

11.7 **Amendment.** The Declaration may be amended at any time by approval of the Owners of not less than sixty-seven percent (67%) of the Residences voting in person or via mail-in/absentee ballot at a meeting duly called for the purpose of amending the Declaration at which a quorum is present, 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.

11.8 **Amendment to Comply With Arizona Law.** 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.

(SIGNATURE PAGES FOLLOW)

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

THE POINTE COMMUNITY ASSOCIATION

BY: [Signature]
ITS: BOARD MEMBER

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 30th day of November, 2022, by Jacqueline Barnette, a Member of the Board of Directors of The Pointe Community Association, an Arizona non-profit corporation, for and on behalf thereof.

[Signature]
Notary Public

My Commission Expires: JULY 28, 2026



THE POINTE COMMUNITY ASSOCIATION

BY: [Signature]
ITS: BOARD MEMBER

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 30th day of NOVEMBER, 2022, by Amanda Carrillo, a Member of the Board of Directors of The Pointe Community Association, an Arizona non-profit corporation, for and on behalf thereof.

[Signature]
Notary Public

My Commission Expires: JULY 28, 2026



THE POINTE COMMUNITY ASSOCIATION

BY: [Signature]
ITS: BOARD MEMBER

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 30th day of November, 2022, by Princess Crump, a Member of the Board of Directors of The Pointe Community Association, an Arizona non-profit corporation, for and on behalf thereof.

[Signature]
Notary Public

My Commission Expires: July 28, 2026



THE POINTE COMMUNITY ASSOCIATION

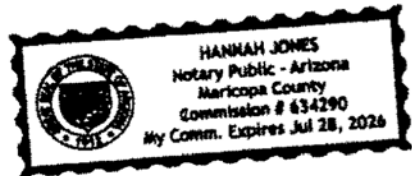
BY: [Signature]
ITS: BOARD MEMBER

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 30th day of November, 2022, by Dennee McKelvy, a Member of the Board of Directors of The Pointe Community Association, an Arizona non-profit corporation, for and on behalf thereof.

[Signature]
Notary Public

My Commission Expires: July 28, 2026



THE POINTE COMMUNITY ASSOCIATION

By: [Signature]
ITS: BOARD MEMBER

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 30th day of November, 2022, by Susan Stowe, a Member of the Board of Directors of The Pointe Community Association, an Arizona non-profit corporation, for and on behalf thereof.

[Signature]
Notary Public

My Commission Expires: July 28, 2026



THE POINTE COMMUNITY ASSOCIATION

By: [Signature]
ITS: BOARD MEMBER

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 30th day of November, 2022, by Eric Toll, a Member of the Board of Directors of The Pointe Community Association, an Arizona non-profit corporation, for and on behalf thereof.

[Signature]
Notary Public

My Commission Expires: July 28, 2026



THE POINTE COMMUNITY ASSOCIATION

BY: *Amelaine*
ITS: BOARD MEMBER

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 30th day of November, 2022, by Lucille Wagner, a Member of the Board of Directors of The Pointe Community Association, an Arizona non-profit corporation, for and on behalf thereof.

Hannah Jones
Notary Public

My Commission Expires: July 28, 2026



THE POINTE COMMUNITY ASSOCIATION

BY: *Jennifer Walker*
ITS: BOARD MEMBER

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022, by Jennifer Walker, a Member of the Board of Directors of The Pointe Community Association, an Arizona non-profit corporation, for and on behalf thereof.

Hannah Jones
Notary Public

My Commission Expires: July 28, 2026

