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THE POINTE
SOUTH MOUNTAIN
RESIDENTIAL ASSOCIATION
RESTATED DECLARATION OF
HOMEOWNER BENEFITS AND ASSURANCES

10/1/04

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RESTATED DECLARATION OF
HOMEOWNER BENEFITS AND ASSURANCES FOR
THE POINTE SOUTH MOUNTAIN RESIDENTIAL ASSOCIATION

THIS RESTATED DECLARATION OF HOMEOWNER BENEFITS AND ASSURANCE attempts to incorporate the original Declaration of Homeowner Benefits and Assurances dated April 2, 1982, and the twelve subsequent amendments thereto, as more fully identified below, for the convenience of the Members of The Pointe South Mountain Residential Association, and restates the Declaration in its entirety, as set forth below.

WITNESSETH:

WHEREAS, Declarant and Developer executed that certain Declaration of Homeowner Benefits and Assurances dated April 2, 1982 and recorded in Docket No. 15938, Page 1, Records of the Maricopa County, Arizona Recorder, as previously amended by the First Tract Declaration dated August 9, 1982 and recorded August 10, 1982 in Docket No. 16210, Page 835; Second Supplemental Declaration dated April 27, 1983 and last recorded May 5, 1983 as Document No. 83 169106; Third Supplemental Declaration dated February 6, 1984 and recorded February 7, 1984 as Document No. 84 051084; Fourth Supplemental Declaration dated May 20, 1985 and recorded May 22, 1985 as Document No. 85 232910; Fifth Supplemental Declaration dated February 24, 1988 and recorded February 26, 1988 as Document No. 88 091015; Sixth Supplemental Declaration dated September 2, 1988 and recorded September 7, 1988 as Document No. 88 444668; Seventh Supplemental Declaration dated January 20, 1989 and recorded January 26, 1989 as Document No. 89 037073; Eighth Supplemental Declaration dated November 1, 1990 and recorded April 9, 1991 as Document No. 91 148782; Ninth Supplemental Declaration dated May 28, 1991 and recorded June 4, 1991 as Document No. 91 252897; Tenth Supplemental Declaration dated September 1, 1992 and recorded September 28, 1992 as Document No. 92 0538630; and Eleventh Supplemental Declaration dated September 30, 1992 and recorded October 9, 1992 as Document No. 92 0570527; Certificate of Amendment to Amended Declaration of Homeowner Benefits and Assurances for the Pointe South Mountain Residential Association dated March 30, 2000 and recorded April 4, 2000 as Document No. 00-0254184 (collectively the "Declaration"); and (Amended 9/30/02)

WHEREAS, Declarant and Developer desire that the Declaration comply with the requirements of the Federal Housing Administration and the Veterans Administration with respect to obtaining their approval of the Property for FHA insurance and VA guarantees, and certain amendments of the Declaration are required to satisfy the requirements of such agencies; and (Amended 9/30/92)

WHEREAS, as provided in Paragraph 14.7 of the Declaration, Declarant and Developer have the authority to amend the Declaration to comply with the requirements

of FHA and VA, without necessity for the consent or approval of any Owner or other Person. (Amended 9/30/02)

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

1. DEFINITIONS.

1.1 “Architectural Committee” **Error! Bookmark not defined.** shall mean the committee created pursuant to paragraph 8.

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 to be filed with the Arizona Corporation Commission, as and if amended.

1.4 “Assessment Rate” shall be the prorata portion of assessments to be borne by a Residence as provided in paragraph 7.6.

1.5 “Association” shall mean and refer to THE POINTE SOUTH MOUNTAIN RESIDENTIAL ASSOCIATION, an Arizona nonprofit corporation to be formed, its successors and assigns.

1.6 “Assurances” shall mean the restrictions, covenants, conditions, reservations, easements, liens, charges and development rights set forth herein.

1.7 “Board” shall mean the Board of Directors of the Association. “Directors” shall mean the members of the Board.

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

1.9 “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 Supplemental Declaration, the fence or wall enclosing the Property if located in the Common Area, and shall include, without limitation, the roadways, sidewalks, curbs, gutters, trees, landscaping, parking areas, trails, drainage courses, natural areas, swimming pools, courts, and all utility lines and systems located on the Property but 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 Multifamily Residential structure divided into three separate Residences with each Residence occupied by one Single Family.

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

1.12 "Declarant" shall mean Lawyers Title of Arizona, an Arizona corporation, as Trustee under its Trust No. 1454, its successors and assigns.

1.13 "Declaration" shall mean this instrument, as and if amended or restated, together with any and all Supplemental Declarations which may be recorded by Declarant, as and if amended.

1.14 "1.14 Developer" shall mean Gosnell Development Corporation, an Arizona corporation, and its successors and assigns, if such successors or assigns are so designated by Developer and acquire more than one Residence from Developer for the purpose of development.

1.15 "Exterior Residence 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 conveyed by Declarant to Owner. For a Courthome, the Exterior Residence Lines, for purposes of Courthome Exterior Maintenance only (as described in Paragraph 6.2), shall consist of the horizontal and vertical planes forming the boundary 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.

1.16 "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 any such mortgage, deed of trust or agreement for sale, respectively, shall be referred to as the "First Mortgage."

1.17 "Garden Home" shall mean an attached Single Family Residence within the Property so designated by the Plat and shall include a multifamily Residential structure divided into two, separate Residences with each Residence occupied by one Single Family.

1.18 "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.

1.19 "Member" shall mean any Person who is a member of the Association as provided in paragraph 5.

1.20 "Multifamily Residence" shall mean a structure separated or divided into separate Residences with each Residence to be occupied by one Single Family. Courthomes and Garden Homes are Multifamily Residences.

1.21 "Owner" shall mean and refer to the record owner, whether one or more Persons, 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 First Mortgages or other Persons who hold an interest in any Residence merely as security for the performance of an obligation.

1.22 "Person" shall mean any natural person, a partnership, a domestic or foreign corporation, a trust, an association and any other entity, group of persons or organization.

1.23 "The Pointe South Mountain Resort Residential Community" shall mean the property and such additions thereto or subtractions therefrom as may be made by Declarant through Supplemental Declaration or otherwise.

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

1.25 "Plat" means the subdivision plat of the Property as recorded in Book 240 of Maps, page 36, records of Maricopa County, Arizona, as and if amended or supplemented.

1.26 "Property" shall mean and refer to The Pointe South Mountain Resort Residential Community and such additions thereto or subtractions therefrom as may be made by Declarant at the direction of Developer.

1.27 "Residence" shall mean each separate lot or other separate portion of the Property as so depicted by the Plat, together with the Improvements thereon or used in conjunction therewith, which has been divided into a separate component for use as a Single Family Residence whether by the Plat or a Supplemental Declaration and regardless of whether any Improvements have been constructed thereon. Each Courthome or Garden Home within a Multifamily Residence shall constitute one Residence. The Residences include all of the Property except the Common Area.

1.28 "Restaurant and Resort Hotel" refers to the restaurants and resorts to be known as "Rustlers Rooste," "Another Pointe of View" and "Pointe South Mountain Resort Hotel" to be located adjacent to the Property, as they may be constructed and expanded or diminished hereafter, together with any additional resort hotels, convention centers, restaurants, offices, shops, shopping centers, condominiums, apartments, business parks, industrial parks 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 and other state, county and municipal statutes, ordinances, rules and regulations.

1.31 "Supplemental Declaration" shall mean any statement which may be recorded by Declarant at the direction of Developer, so as to amend this Declaration or to add or subtract property from the Property in the manner provided in paragraph 2.

1.32 "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.

1.33 "Annexable Property" shall be that real property described on Exhibit 1 to the Eleventh Supplemental Declaration. (Amended 9/30/92)

1.34 "Conditional Annexation" and "Conditionally Annexed" shall mean that real property has been subjected to the Declaration by recordation of a Supplemental Declaration, but (a) the same shall not be subject to the jurisdiction of the Association or obligated for the payment of assessments, and (b) the Owner thereof shall not be entitled to voting or other rights of a Member with respect to such property, until it is Irrevocably Annexed. (Amended 9/30/92)

1.35 "Irrevocable Annexation" and "Irrevocably Annexed" shall mean that the conditions for Irrevocable Annexation stated in Paragraph 2 of the Eleventh Supplemental Declaration have been satisfied with respect to real property which had previously been Conditionally Annexed." (Amended 9/30/92)

2. ESTABLISHMENT. Developer intends to develop the Property 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. Except as provided in Paragraph 3 of the Eleventh Supplemental Declaration with respect to the Annexable Property, Declarant and Developer will have no further right to add or withdraw real property to or from the Property and agree that (a) the Property shall be limited to, and shall not be changed from that described in the Declaration and (b) all of the Property described in the Declaration is fully subject to the Declaration; provided, however, that the individual tracts or phases of Property subjected to the Declaration by the Tenth Supplemental Declaration are only Conditionally Annexed to the Property and individually will be Irrevocably Annexed to the Property only when the following conditions to Irrevocable Annexation have all occurred: (y) all Common Area therein has been fully completed and conveyed to the Association in accordance with the requirements of the Veterans Administration and/or the Federal Housing Administration, and (z) the first Residence therein has been conveyed to an Owner. Voting rights, assessment obligations, and Association responsibility for Common Area shall commence only when any such Property is Irrevocably Annexed. Such assessment obligations will commence upon Irrevocable Annexation without necessity for the notice from the Association under Paragraph 7 below. (Amended 9/30/92)

2.1 Declarant and Developer hereby expressly reserve the right, until five (5) years from the recording of the Eleventh Supplemental Declaration, to annex and subject to this Declaration, without the consent of any Owner or lienholder, all or any portion of that certain real property described on the attached Exhibit 1 which is incorporated herein by this reference (the "Annexable Property"). The Conditional Annexation of all or any portion of the Annexable Property shall be accomplished by the Declarant and Developer recording a Supplemental Declaration with the Maricopa County, Arizona Recorder stating (a) the legal description of the Annexable Property being annexed; and (b) a description of any portion of the Annexable Property being added which will be Common Area. Any portion of the Annexable Property Conditionally Annexed pursuant to this paragraph shall not become Irrevocably Annexed to the Property until the date on which all of the conditions to Irrevocable Annexation set forth in Paragraph 2 above have been satisfied. If any Supplemental Declaration recorded pursuant to this paragraph divides a portion of the Annexable Property being annexed into separate phases, then each phase of the property being Conditionally Annexed shall not become Irrevocably Annexed to the Property until the date all of the conditions to Irrevocable Annexation set forth in Paragraph 2 above have been satisfied with respect to such phase. Declarant and Developer shall have the right to amend any Supplemental Declaration recorded pursuant to this paragraph, to change the description of phases within the property being annexed, except that the Declarant and Developer may not change any portion of the Annexable Property which has already become Irrevocably Annexed to the Property. (Amended 9/30/92)

2.2 The voting rights of the Owners of Residences annexed pursuant to this paragraph shall be effective as of the date the Residences have become irrevocably

Annexed to the Property. The Owners' obligation to pay assessments shall commence when the Residences are Irrevocably Annexed to the Property without necessity for the notice from the Association under Paragraph 7 below. The Association will have no responsibility for Common Area in Property annexed until it has become Irrevocably Annexed. (Amended 9/30/92)

2.3 The Annexable Property may be added from time to time in one or more portions or as a whole, with no limitations or restrictions as to the order of annexation or the boundaries of annexed Property. The portions of Annexable Property annexed into the Property need not be contiguous. There are no limitations on the locations or dimensions of improvements to be located on the Annexable Property. No assurances are made as to what, if any, further improvements will be made by Developer on any portion of the Annexable Property, provided that any such structures and improvements placed, constructed, replaced or restructured on the Annexable Property will be compatible with any improvements, including houses, in the Property as to quality of construction and materials and architectural style. (Amended 9/30/92)

2.4 Declarant and Developer make no assurance as to the exact number of Residences which shall be added to the Property by annexation of all or any portion of the Annexable Property, but the number of Residences added by such annexation shall not exceed 200. All improvements to be constructed on any portion of the Annexable Property annexed into the Property (excluding single-family houses and related improvements) will be substantially completed prior to the time at which such portion of the Annexable Property is Irrevocably Annexed in accordance with the provisions of this paragraph. If the Annexable Property is divided into phases, only those improvements to be located on phases Irrevocably Annexed to the Property must be completed prior to the time that such phases are so Irrevocably Annexed. All taxes, assessments, mechanics' liens and other charges affecting the Common Area in a new phase or portion of the Annexable Property, covering any period prior to the Irrevocable Annexation of said real property to this Declaration, shall be paid or otherwise provided for by Declarant and Developer (or their successors or assigns seeking to bring the same within this Declaration) in a manner satisfactory to the Federal Housing Administration or Veteran's Administration before Irrevocably Annexing the real property to this Declaration, so that any liens arising in connection with said phase of Annexable Property will not adversely affect the rights of existing Residence Owners. Prior to Irrevocably Annexing any portion of the Annexable Property to this Declaration, Declarant and Developer (or their successors and assigns) shall purchase, at their sole expense, a liability insurance policy if required and in an amount determined by the Federal Housing Administration or the Veterans' Administration, to cover any liability to which Owners of Residences in the Property might be exposed by reason of the new phase, or the construction of improvements thereon. This policy shall be endorsed "as Owner's interest might appear." (Amended 9/30/92)

3. USES.

3.1 Residential. Each Residence shall be used, improved and devoted exclusively to personal, 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, garage sales 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 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 six (6) months. Owners leasing their Residences shall inform the Association thereof when and as required by the Association in its published policies. 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 South Mountain Rules by any such person shall constitute a violation by such Owner. (Amended 9/30/92)

3.2 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 and 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 and the like; metal patio covers, sunscreens, covers of screen doors; and hospitals, sanitariums and 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.

3.3 Accessories. Evaporative coolers, pre-coolers and the like shall be prohibited. No clotheslines, service yards, wood piles, basketball apparatus, free-standing mailboxes 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.

3.4 Utilities. All gas, electric, power, telephone, water, sewer, television and other utility and service connections, conduits 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 antennae which are Visible From Neighboring Property are prohibited. No outside speakers or amplifiers shall be permitted except with the prior approval of the Architectural Committee. All speakers, amplifiers, radios and other means of emitting sound, whether located inside or outside of a Residence, shall be subject to regulation by the Board 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.

3.5 Signs. No advertising, "For Sale," "For Rent," "For Lease," or other sign, billboard or display of any kind shall be permitted. Street and Residence names and numbers, mailing addresses and other identifications and directory designations, markings and insignia shall be permissible only as installed by the Developer or as approved by the Architectural Committee. The distribution of leaflets, handbills, brochures and all other form and manner of solicitation shall be prohibited.

3.6 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 Developer may be altered or removed.

3.7 Landscaping. Trees, shrubs, hedges, grass, plantings and all other requisite landscaping of every kind and nature shall be installed by the Owner within the Exterior Residence Lines of his Residence on or before sixty days from the date of his acquisition of the Residence and, failing that, the Association shall have the option of installing the landscaping at the expense of the Owner (not to exceed \$5,000.00) or of treating each day of delay beyond sixty days as a separate violation subject to the fine and lien provided in paragraph 5.4. The landscaping within the Exterior Residence Lines of Courthomes must include not less than 1 five-gallon size Robusta Palm, 4 one-gallon size bougainvillea, 2 five-gallon size bougainvillea and 2 fifteen-gallon size of whichever of the following the Owner may select: olive, eucalyptus rostrada or African sumac. Garden Homes and Single Family Residences must include not less than 4 one-gallon size bougainvillea, 2 five-gallon size bougainvillea and 4 fifteen-gallon size of whichever of the following Owner may select: olive, eucalyptus rostrada or African sumac. In addition, Garden Homes must include not less than 2 five-gallon size Robusta Palms, and Single Family Residences shall include not less than 3 five-gallon size Robusta Palms. At least one-half of the foregoing minimum landscaping requirements for Garden Homes and Single Family Residences must be installed in the front yard and all of the foregoing minimum landscaping requirements for Courthomes must be installed within the Exterior

Residence Lines. The Owner of a Residence which includes or is adjacent to an excavation or fill area shall be responsible for and bear the cost of fully landscaping the excavation or fill area (even if the excavation or fill area is located in the Common Area) with such landscaping to include, without limitation, bougainvillea, Palo Verde and fountain grass of not less than one-gallon size and of reasonable mix, two foot on center or as otherwise prescribed by the Architectural Committee. When an 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 consist 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 landscaping shall over hang 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. 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. (Amended 2/26/88) As part of the required landscaping for each Residence, each owner shall install automatic irrigation (sprinkler) systems (the configuration and extent of the systems shall be as required by the Architectural Committee) and must overseed all lawn areas with rye or equivalent winter grass promptly as soon as the summer grass becomes dormant. No Owner shall allow any condition which shall induce, breed or harbor plant disease or noxious insects.

3.8 Maintenance. No Residence shall be permitted to fall into disrepair. All Residences shall be kept in good, clean condition and repair with surfaces adequately painted and with windows, doors, screens, awnings and the like properly cleaned and maintained. Awnings shall be cleaned and treated with Armour All or similar preservative at least semi-annually. Landscaping shall be maintained and if any shrub or other component perishes, it shall be replaced immediately with an identical component of equal or greater size. Lawns and shrubs shall be mowed and trimmed and palm trees shall be trimmed to eliminate all dried fronds. Outdoor grills and barbecues shall be the only outdoor burning permitted. 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, disposable heavy-duty garbage bags or other disposable containers complying with City of Phoenix standards. The placement and maintenance of such bags and containers shall be subject to regulation by the Association and the Architectural Committee. Any and all residue remaining after removal of such

bags and containers shall be eliminated promptly by the Owner. Each Residence must include an automatic garbage disposal in operating condition. Natural areas and drainage courses within the Common Area shall not be used for dumping or vehicular traffic and shall be maintained fully open, unobstructed and watered by the sprinkling system where installed by Developer. No Residence shall be allowed to present an unsightly appearance, endanger the health of Owners, emanate offensive noises or odors or constitute an aggravation annoyance or nuisance. No furniture or equipment either portable or permanent shall be placed on or within the front yard, balconies, or other areas Visible From Neighboring Property without the prior written approval of the Board. 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 maintenance 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 except on East Hazel Drive, East Siesta Drive, and the 8800 block of South 51st Street, on which owners and/or their residents shall be allowed to park in designated parking spaces subject to rules and regulations established by the Board of Directors. Boats shall not be parked in the streets at any time for any reason. 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, if any, designated by the Board which shall be subject to its control and regulation including the charging of fees for the use thereof.

3.9 Architecture. No structures, improvements, pools, courts, additions, changes, expansions, alterations, repairs, painting, landscaping, excavation or other work of any kind which in any way affects or alters the exterior appearance of any Residence or the Improvements thereon 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. Pursuant to its rulemaking power, the Architectural Committee shall establish a procedure for the preparation, submission and determination of applications for any such work. The Architectural Committee shall have the right to refuse to approve any plans or specifications or grading plan, which are not suitable or desirable, in its sole opinion, 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 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 and conduit, 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 (exterior colors shall not be changed from that used by Developer), 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. All decisions of the Architectural Committee shall be final and no Owner or other Person shall have any recourse against the Architectural Committee for its approval or disapproval of any plans and specifications.

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

3.11 Animals. No animals, reptiles, birds, fowl, poultry, fish or livestock shall be permitted or kept on or in connection with any Residence or the Property. Commonly accepted household pets such as dogs, cats, birds and fish in reasonable numbers may be maintained within a Residence for domestic but not commercial purposes. Household pets shall be restrained by fence, cage or leash at all times and shall not be allowed to commit a trespass or to eliminate excrement in the Common Area or other Residences. In order to protect birds and other wildlife, dogs and cats shall be required to wear bells at all times and all cats shall have their claws removed. Owners shall be liable for any and all damage to Property and injury to persons and animals, fish and fowl (domestic and wildlife) caused by their household pets. Horses may be ridden only within riding trails and other areas designated by the Association and shall be housed or stabled only within areas previously designated by the Association.

3.12 Subdivision. No Residence shall be further subdivided or separated into smaller or different portions 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.

3.13 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.

3.14 Approval. All Owners shall be deemed to have approved all present resorts, restaurants, centers, offices, shops, apartments, tennis courts, lights, helicopter landing sites, horses, trails, stables and the like within any property outside of, but in the vicinity of, the Property. (Amended 9/30/92)

3.15 Exemption. In developing the Property and constructing Residences, Developer and/or any other builder may utilize portions of the Property

owned by such party) but not including any Common Area (except for access purposes) or Residences owned by any other party) for models, sales offices, construction or sales trailers, construction staging and storage and related purposes reasonably associated with development and sale. (Amended 9/30/92)

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

4.1 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.

4.2 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.

4.3 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.

4.4 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.

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

4.6 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.

4.7 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.

5. THE POINTE SOUTH MOUNTAIN RESIDENTIAL ASSOCIATION.

5.1 Organization.

5.1.1 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, the Bylaws and this Declaration. The provisions of this Declaration shall supersede any inconsistent provision of the Articles or the Bylaws. The Articles and the Bylaws shall not be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. The Association may comply with the provisions of § 528 of the Internal Revenue Code of 1954, as amended, so as to attain and continue the status of tax exempt "Residential Real Estate Management Association." The Association shall have no power to issue stock. The business of the Association shall be conducted by the Board and such officers as the Board may appoint as provided in the Articles and the Bylaws.

5.1.2 Subsidiary Association. The Association shall have the right to form one or more subsidiary associations for any purpose deemed appropriate by the Board. Without limiting the generality of the foregoing, one or more subsidiary associations may be formed for the operation and maintenance of any specific area located within the Property. However, such subsidiary associations shall be subject to this Declaration and may not take any action to lessen or abate the rights of the Owners or Developer.

5.1.3 Directors. The Board shall consist of five, seven or nine Directors as specified in the Bylaws. Each Director shall have one vote with respect to any matter to be determined by the Board. Directors shall be elected for staggered terms as provided in the Bylaws and shall hold office until their successors are duly elected. Directors may succeed themselves and may resign at any time by written notice to the Board. Directors may be removed by the Members of the Association as provided in the

Bylaws. Any vacancy occurring in the Board of Directors may be filled as provided in the Bylaws. (Amended 9/30/92)

5.2 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 the Bylaws.

5.3 Membership. Every Owner of a Residence automatically 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 or ownership to a Residence shall operate to transfer membership to the new Owner. In order to assist the Board in maintaining its books and records and in the orderly transaction of its business, all requests and other communications by the Members to the Association shall be in writing and the Board and the officers of the Association may disregard any other form of communication.

5.3.1 The Members shall be entitled to vote to elect all Directors as provided in the Bylaws. From and after the recording of the Eleventh Supplemental Declaration, there shall be only one class of membership. All Members shall be entitled to the following number of votes for each Residence owned depending upon the kind of Residence: Courthome – one vote; and Garden Home and Single Family Residence – two votes. All contrary provisions of the Declaration, Articles, Bylaws or other project documents are hereby deemed amended to be consistent with this provision for all purposes. (Amended 9/30/92)

5.3.2 Suspension. In 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.

5.3.3 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 Member or Members casts a vote or votes representing a certain Residence, it thereafter will 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. (Amended 9/30/92)

5.4 The Pointe South Mountain Rules. By a majority vote of the Directors of the Board, from time to time and subject to the provisions of this

Declaration, the Association may adopt, amend, and repeal rules and regulations to be known as "The Pointe South Mountain Rules." The rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that the rules shall not be inconsistent with this Declaration, the Articles or the Bylaws. A copy of the rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. Upon such Recordation, the rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. The Board shall have the right to impose fines and penalties for violations of this Declaration and the rules and if such fines or penalties are not paid within ten days after written notice to the Owner in violation, the fines or penalties shall become a lien on the Residence of the Owner and be enforceable as any other lien created by paragraph 7. The fines and penalties shall be in the amount of \$100.00 for each offense, or such other amount as the Board may determine. Each occasion of violation and each day during which such violation continues shall be deemed a separate offense subject to a separate and additional fine and penalty.

5.5 Personal Liability. No Director, member of any Committee of the Association, officer of the Association, compensated or voluntary manager, or employee or agent of the Association shall be personally liable to any Owner, or to any other Person, 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.

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 within 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 and 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. 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.

6.2 Courthome Owners. In addition to the responsibilities of an Owner set forth in paragraph 6.1, all of the Courthome Owners collectively, through separate assessment by the Association solely to all Courthome Owners in the manner provided in paragraph 7, shall be responsible for and bear the expense of the repair and maintenance of the exterior of the Courthomes including paint, repairing, replacing and caring for the driveways, carports, roofs, exterior walls, 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 driveways (excluding glass surfaces and air conditioning), herein the "Courthome Exterior Maintenance." For example, (1) plumbing pipes located inside the Exterior Residence 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 the Courthome shall be maintained as a part of the Courthome Exterior Maintenance, and (2) the installation of the landscaping required by paragraph 3.7 shall be the responsibility of the individual Courthome Owner but the installation of landscaping outside the Courthome Exterior Residence Lines shall be the responsibility of the Association as 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 6.1.

6.3 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 installed by Developer even if not located in the Common Area; all portions of the Property outside the Exterior Residence Lines; and may repair and maintain such Residences, or portions thereof, as are not properly constructed, landscaped or maintained by the Owners. The costs and expenses of the repair and maintenance undertaken by the Association shall be a common expense to be distributed and allocated among the Owners pursuant to the provisions of paragraph 7.

7. COVENANT FOR ASSESSMENTS.

7.1 Creation of Lien and Personal Obligation. The Declarant at the direction of Developer, for each Residence within the Property, hereby covenants, and each Owner of any Residence by acceptance of such Residence, 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 and charges as provided in paragraph 6.2. Assessments and charges shall be established and collected as hereinafter provided. The assessments and charges, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Residence against which each such assessment and charge is made. Each such assessment and charge, together with interest, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Owner of such Residence at the time when the assessment or charge becomes due. The personal obligation for delinquent assessments and charges shall not pass to successors in title unless expressly assumed by them albeit the lien shall continue irrespective of a change in ownership. The obligation of an Owner to pay assessments and charges shall not be affected by the incompleteness of or any diminished use with respect to the Common Area or the abandonment of a Residence. (Amended 9/30/92)

Notwithstanding anything to the contrary contained in the Declaration, Declarant and Developer shall be obligated to pay only twenty-five per cent (25%) of the regular assessment levied under Paragraph 7.3 with respect to Residences owned by them, and shall pay said percentage of the regular assessment amount in the same manner established for payment of the regular assessment by other Residence Owners. In the event said reduced assessment amount for Residences owned by Declarant or Developer is insufficient to cover the reasonable share of those Residences' contribution toward insurance costs and depreciation reserves for the Property, as determined by generally accepted cost accounting methods, Declarant and Developer shall also pay such amounts monthly or quarterly, as applicable, in addition to said reduced regular assessment amount for the Residences, as is necessary to cover those Residences' contribution toward the insurance cost and capital replacement reserves. Further, Declarant and Developer shall be responsible for a prorata share of any annual (fiscal year) deficits of the Association, equal to the amount of the deficit multiplied by a fraction, the numerator of which is the number of Residences owned by Declarant or Developer as of December 31 of the year in question which are Irrevocably Annexed and the denominator of which is the total number of Residences irrevocably Annexed as of December 31 of the year in question, but Declarant and Developer shall not be responsible in any manner for the remainder of such deficits, directly or indirectly. (Amended 9/30/92)

Notwithstanding the foregoing, Declarant and Developer shall pay and be liable for the full regular assessment amount for any Residence owned by Declarant or Developer after said Residence and the house constructed thereon are first rented or leased to or occupied by another person. If a reduced (25%) annual assessment has been levied against any such Residence and thereafter during the calendar or fiscal year covered by that reduced assessment that Residence is rented or leased to or occupied by another person, Declarant and Developer shall pay an amount equal to the prorated full assessment for that Residence for the remainder of such year less a credit for the prorated reduced amount previously paid for the remainder of that year. At any time Declarant or Developer may elect to pay full regular assessments for any or all of its Residences, and thereafter Declarant or Developer will have the same assessment and other financial

obligations to the Association with respect to such Residences as any other Owner.
(Amended 9/30/92)

7.2 Purpose of Assessments. The assessments and charges levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owner, 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, security and related expenses.

7.3 Establishment of Assessments. Declarant as record title holder and each Owner, for themselves, their heirs, successors and assigns, covenant that each Residence shall be subject to regular assessments in an amount to be determined by the Board in the following manner:

7.3.1 Repair and Maintenance. Each Residence's prorata 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.

7.3.2 Operations. Each Residence's prorata 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 repaired and maintained by the Association as provided in paragraph 6.3.

7.3.3 Taxes and Insurance. Each Residence's prorata share of the actual cost to the Association of taxes and governmental assessments on the Common Area and insurance maintained by the Association.

7.3.4 Utilities. Each Residence's prorata 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 prorata 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.

7.3.5 Reserves. Each Residence's prorata 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.

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

7.3.7 Procedure. Subject to the provisions of this Declaration, 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. The first assessment period shall not commence earlier than the first day of the first month following conveyance of the first Residence to an owner other than Declarant. Upon written 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. (Amended 9/30/92)

Notwithstanding anything to the contrary in the Declaration, regular annual assessments and special assessments shall not be used for the initial development or construction of capital improvements within the Annexable Property or the Property annexed by the Tenth Supplemental Declaration, and shall not be used to maintain property not owned by the Association, except for the Courthome assessments, which will be used for Courthome Exterior Maintenance and insurance, but only for those Courthomes Irrevocably Annexed. (Amended 9/30/92)

7.4 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, any alteration, demolition, removal and reconstruction of existing recreational and other common facilities, from time to time, as in its discretion appears to be in the best interests of the Association and the Property. The Board may levy a special assessment applicable to that year only or for multiple years for the purpose of defraying the cost for any of the foregoing items or any unanticipated or underestimated expense normally covered by regular annual assessments, provided, however, that in all events no such special assessment shall be made without (a) the affirmative vote of two thirds (2/3) of the votes of the Members voting in person or by proxy at a meeting duly called for this purpose or (b) the affirmative vote of two thirds (2/3) of the votes of the Members voting by timely returning ballots concerning the issue, if the Association conducts a mail vote, and the quorum and other voting procedures set forth in Paragraph 7.5 shall apply thereto. (Amended 9/30/92)

Notwithstanding the foregoing, the Board may impose a special assessment to obtain funds to install individual water and/or sewer meters in any one or more groups of Residences, provided (a) such special assessment shall be levied solely against the Residences which will, by such work, obtain individual water and/or sewer meters, (b) the Owners of the Residences to be specially assessed under (a) above approve the special assessment by the two thirds (2/3) vote according to the procedures set forth above, and (c) after installation of such separate meters, the Owners of the Residences with such separate meters will be solely responsible for their own water and/or sewer charges, as applicable, but such Owners will be entitled to the credit described in Paragraph 7.5, as amended by the Eleventh Supplemental Declaration. (Amended 9/30/92)

7.4.1 Collecting Cost of Water and Sewer. Notwithstanding any other language contained within Section 7.4, upon the approval of the Board of Directors,

any Owner of a Residence may choose to install a submeter at his expense using a submeter that is approved by the Association and measures the entire amount of water used by the Residence.

Because the Association will continue to receive the water and sewer bills for the Residence, the Owner shall be responsible for paying to the Association (or to the entity designated by the Association) as a Special Assessment on a periodic basis (monthly or bimonthly) as determined by the Board of Directors the cost to the Association for the water and sewer used by the Owner as determined by the reading of the submeter for the Residence. The Special Assessment shall also include a monthly service charge for the cost of reading the meter. The Owner's bill for water and sewer may be sent from the Association or directly from the company hired by the Association to read the meters. The Association is not acting in the role of a water company in any manner but is using the submeters solely to determine the amount of water used by each Owner with a submeter so that the Association may charge as a Special Assessment the appropriate cost for the water actually used by the Owner of the Residence.

If the Owner fails to pay the amount due within twenty five (25) days of the billing date, the Association may impose a late fee. All amounts due shall be secured by a lien, as described in Section 7.7.2 herein, and the Association may pursue collection of all amounts due, including late fees, costs of collection, and attorney fees, in the same manner as any other Annual or Special Assessment. Once the submeter is installed, the Owner of the Residence shall be responsible for maintaining, repairing and replacing the submeter. If the Owner fails to repair the submeter as necessary for the Association to obtain proper meter readings, the Association may make the required repairs and charge the Owner for the cost thereof. The cost shall be collectible in the same manner as any other Annual or Special Assessment.

In the event of a sale of a Residence, if an Owner whose Residence is submetered (or a title company or agent of the Owner) requests a statement from the Association as to the amount of assessments owed by the Owner for the purpose of transferring title to the Residence, the Association shall charge to the Owner's account as an assessment and include in the statement given to the title company an amount equal to the highest water bill of the Owner and a charge for the cost of a special meter reading to determine the amount of water used as of the date requested. The title company shall collect such amounts at close of escrow in the same manner as any assessments owed to the Association and shall provide such funds to the Association. After the meter is read and a final bill is determined, the Association shall refund to the Owner the difference between the amount actually owed and the amount received by the Association. If the amount received is insufficient to cover the cost of the bill, the Owner shall be personally liable for the additional amount owed. In the event that the sale does not close escrow, the Association shall remove the charge for the highest water bill from the Owner's account. However, the Owner shall be liable to the Association for the cost of any meter reading and reinstatement of service. If such a statement is requested for any other reason (including, but not limited to, refinancing of the Residence), the Association shall state the amount of assessments (including Special Assessments for water use) owed

through the date requested and will also state that water has been used for which the Owner has not yet been assessed. However, the Association will not collect additional funds for water use at the time this information is requested as is required when a Residence is sold and title is transferred.

7.5 Maximum Assessment. Until January 1, 1993, the maximum regular annual assessment for all Residences except Courthomes shall be \$1,320.00 (the "Base Maximum Annual Assessment"), and the maximum regular annual assessment for Courthomes shall be \$1,620.00, composed of the Base Maximum Annual Assessment plus the assessment for Courthome Exterior Maintenance and insurance. Without the vote or approval of the Members of the Association, the Base Maximum Annual Assessment amount set forth above shall be automatically increased each calendar year (commencing 1993) by the greater of ten percent (10%) of the previous year's Base Maximum Annual Assessment or a percentage equal to the percentage increase, if any, in the Consumer Price Index – United States City Average for Urban Wage Earners and Clerical Workers – All Items (published by the Department of Labor, Washington, D.C.) for the year ending with the preceding July (or a similar index chosen by the Board if the above-described Index is no longer published). The Base Maximum Annual Assessment amount may be increased by an amount in excess of the amount produced by the foregoing formula only if such increase is approved by (a) the affirmative vote of two thirds (2/3) of the votes of the Members voting in person or by proxy at a meeting duly called for this purpose, or (b) the affirmative vote of two thirds (2/3) of the votes of the Members voting by timely returning ballots concerning the issue, if the Association conducts a mail vote. The Board shall annually apply the foregoing formula and other provisions and determine and fix the amount of the regular annual (calendar year) assessment against each Residence, including those owned by Declarant and Developer (subject to the twenty-five percent (25%) rate therefore under Paragraph 6 of the Eleventh Supplemental Declaration) in an amount not exceeding the then current Base Maximum Annual Assessment allowed under the preceding provisions, with respect to all Residences except Courthomes, and in an amount not exceeding the sum of the then current Base Maximum Annual Assessment amount plus the amount necessary to pay for Courthome Exterior Maintenance and Courthome insurance, with respect to Courthomes. (Amended 9/30/92)

Written notice of any meeting called for the purpose of taking any action authorized under the preceding provisions to increase the maximum annual assessment above that amount allowed by the formula described above, or to approve any special assessment under Paragraph 7.4, shall be sent to all Owners not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or proxies therefore entitled to cast sixty percent (60%) of all of the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meetings shall be held more than sixty (60) days following the preceding meeting. (Amended 9/30/92)

If the Association conducts a mail vote on the issue, the vote will not be binding or valid unless a ballot is sent to all Members with a required return date stated which shall be not less than ten (10) nor more than sixty (60) days after the ballot is mailed to all Members. Only those ballots returned by 5:00 p.m. on the specified return date shall be counted, and for the vote to be valid or binding, ballots from Owners representing at least sixty percent (60%) of the voting power of the Association must be timely returned to satisfy the "quorum" requirement, which "quorum" requirement will be thirty percent (30%) if a second mail vote is conducted because a "quorum" is not established for the first mail vote. Further, for the increase in the Base Maximum Annual Assessment amount to be approved, the matter must receive the affirmative vote from two thirds (2/3) of the votes of Members who timely return mail ballots. (Amended 9/30/92)

Further, if and to the extent any Residences are separately metered for water and/or sewer services and the Owners of those Residences are required to pay the monthly charges for water and/or sewer service (see Paragraph 7.4 of the Declaration), the Owners of those Residences shall be entitled to a credit against the regular annual assessment amount equal to the amount reasonably determined by the Board from time to time to represent the savings to the Association from such separate metering. In addition, Jeff Blandford Development Corp., the Owner of Unit 10, is installing separate water and/or sewer meters for its Residences in that Property. With respect to those Residences and any others hereafter constructed with individual water and/or sewer meters, as the Board shall determine either (a) the Association will pay the water and/or sewer charges of those Residences, notwithstanding the existence of individual meters, or (b) the Owners thereof will pay such charges but will be entitled to the credit described above, provided, however, that if other Residences are converted to individual meters under Paragraph 7.4, then upon the Owners thereof being responsible for their water and/or sewer charges, alternative (b) shall be utilized thereafter. (Amended 9/30)

In addition, if all Residences except Courthomes are, at any time, separately metered for water and sewer and the Owners thereof are individually paying their water and sewer service charges under the provisions of Paragraph 7.4, the Base Maximum Annual Assessment amount for such Residences shall be reduced by an amount reasonably determined by the Board to reflect the annual savings per Residence as a result of the Association not paying their water and sewer charges, which reduction will establish a proportionate relationship between the Base Maximum Annual Assessment for the Courthomes and the Base Maximum Annual Assessment for all other Residences, which proportionate relationship shall be permanently maintained thereafter as the Base Maximum Annual Assessment changes, and the same proportionate relationship will be used to set actual regular annual assessments for all Residences. (Amended 9/30/92)

7.6 Assessment Rate. The prorata 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

and as any Residences are combined or deleted or additional property is annexed to the Property in the manner provided in paragraph 2, the total number of Residences so combined or deleted shall reduce or enlarge the denominator of the Assessment Rate calculation, as appropriate, at such time as such Residences 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 the neglect or the like by an Owner. Assessments for Courthouse Maintenance, Courthouse insurance and the like shall be allocated only among Courthouse Owners and not among Owners of other Residences. The separate Assessment Rate for Courthouse assessments for each Courthouse shall be a percentage determined as the product of "1," as the numerator, and the total number of Courthouses then subject to assessment, as the denominator.

7.7 Remedies of the Association. Each Owner shall be deemed to covenant and agree to pay to the Association the assessments and charges provided for herein on or before the due date thereof as established by the Board and agrees to the enforcement of the assessments and charges in the manner herein specified. In the event the Association employs attorneys for collection of any assessment or charge, 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 attorneys' 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 or charge when due, the assessment or charge 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:

7.7.1 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 or charge. Any judgment rendered in any such action shall include, without limitation, the amount of the delinquency, interest from the date of delinquency until paid at the "Default Rate" which shall be twelve percent (12%) per annum, court costs and reasonable attorneys' fees as determined by the court. Interest at the Default Rate shall commence to accrue as of the due date of the assessment or charge in question if the same is not paid within thirty (30) days from its due date, and the provisions of Paragraph 7.7.2 are modified to be consistent with this paragraph. Further, notwithstanding anything to the contrary in the Declaration, Articles or Bylaws, the Association shall not institute suit or take action to collect any assessment or realize upon its lien therefore unless the same is not paid within thirty (30) days of its due date. (Amended 9/30/92)

7.7.2 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 and charges levied against any and all Owners, interest thereon at the Default 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 or charge, 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 and charges 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 charge 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 or charge was levied. Except as provided in paragraph 7.7.3 hereof, the lien shall have priority over all liens or claims created subsequent to the due date of the first delinquent assessment or charge 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 Default 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.

7.7.3 Subordination of Lien. The lien for the assessments and charges provided for herein shall be subordinate to the lien of the First Mortgage on the Residence. Sale or transfer of any Residence shall not affect the 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 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 or charges thereafter becoming due or from the lien thereof. Sale or transfer shall not relieve the previous Owner from personal liability for assessments or charges that became due while such Owner was the Owner.

8. ARCHITECTURAL CONTROL.

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

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.

8.1.2 Alternate Members. In the event of the absence or disability of one or two regular members of the Committee, the remaining regular member or members, even though less than a quorum, may designate either or both of the alternate members to act as substitutes for the absent or disabled regular member or members for the duration of such absence or disability.

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

Office No. 1 - Robert A Gosnell, regular member

Office No. 2 - Craig Bisch, regular member

Office No. 3 - Edward J. Avery, regular member

Office No. 4 - Stewart C. Berres, alternate member

Office No. 5 – Robert T. Hardison, alternate member

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

8.1.5 Appointment and Removal. The right to appoint and remove all regular and alternate members of the Architectural Committee at any time, shall be and is hereby vested solely in the Board of the Association, provided, however, that no regular or alternate member may be removed from the Architectural Committee by the Board except by the vote or written consent of a majority of the Directors. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by a declaration identifying each new 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 resign at any time 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 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 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 South Mountain Rules.

8.3 Meetings and Compensations. 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 a meeting or otherwise, 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. Members of the Architectural Committee shall be entitled to compensation for their services only as may be provided by the Board in its discretion.

8.4 Rules. The Architectural Committee may, from time to time and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent of the regular members, rules and regulations to be known as "Architectural Committee 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 Property.

8.5 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.

8.6 Liability. Neither the Architectural Committee nor any member thereof shall be liable to the Association, any Owner, or to any other Person, 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 South Mountain; 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.

8.7 Time for Approval. In the event the Committee fails to approve or disapprove in writing within forty-five 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.

9. PROPERTY RIGHTS AND EASEMENTS.

9.1 Owner's 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:

9.1.1 Fees. The right of the Board to limit the number of guests of the Owners or to charge reasonable admission and other fees for the use of any portion of the Common Area except private streets and walks. If the Association has elected to comply with § 528 of the Internal Revenue Code as permitted by paragraph 5.1.1, then the Association shall not charge an aggregate amount for such admission or other fees which, when taken together with all other items of "nonexempt function income" of the Association for the taxable year thereof, exceeds 30 percent of the gross income of the Association for such taxable year, and shall not permit any part of such admission or other fees, "nonexempt function income" or net earnings of the Association to inure to any Member or other parties, such that the Association shall in all events comply with the provisions and restrictions of § 528 to the end that the Association shall attain and continue the status of a tax exempt "Residential Real Estate Management Association" within the meaning thereof.

9.1.2 Suspension. The right of the Association to suspend the voting rights and right to use the recreational Common Area by an Owner for any period during which any assessment or charge against his Residence remains unpaid or such Owner otherwise is in violation of this Declaration or The South Mountain Rules. This provision shall not apply to any private drives or walks. Except for suspensions while an Owner is delinquent in payment of assessments, no suspension shall exceed sixty (60) days in length for any violation. Further, each Owner whose Residence is accessible across private drives shall have an irrevocable, nonexclusive right and easement of ingress, egress and access over and across such private drives which shall run with the title to the Residence, and neither the Association, the Board, Declarant, Developer, and other Owner, and Lienholder or any other person shall have any right, ability or power to deny or deprive such Residence and the Owner thereof of the continuous right of ingress, egress and access to his Residence over and across such private drives. (Amended 9/30/92)

9.1.3 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.

9.1.4 Joint Use. (Deleted by Amendment 9/30/92)

9.1.5 Conveyance. The right of the Association to create easements and rights-of-use appurtenant to and for the benefit of properties in the vicinity of the Property or one or more Residencies whether for parking, access or otherwise. (Amended 9/30/92)

9.1.6 Delegation. Any Owner may delegate his right of enjoyment to the Common Area and facilities to the members of his family, guests, tenants and invitees.

9.2 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, electricity, television cable and communication lines and systems. By virtue of this easement, it shall be permissible for the providing utility, service company, the Association and 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 initially programmed and approved by Developer or thereafter 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 the 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 originally designed and constructed with the approval of the Architectural Committee. A valid easement for encroachments and for the maintenance of same, so long as they remain, shall and does exist and shall include, without limitation, all carport and patio extensions or other improvements appurtenant to a Residence as initially constituted by Developer. 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 the approval of the Architectural Committee and that a valid easement for such encroachment and the maintenance thereof shall exist. The Association and Developer 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 6.3.

9.3 Common Driveways. As the Residences are originally designed and constructed by Developer, 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 of 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.

9.4 Title to Common Area. All Common Area within the Property shall be conveyed to the Association free and clear of all liens and encumbrances prior to or concurrently with the recordation of the Eleventh Supplemental Declaration, and by recording said document Declarant and Developer certify that that conveyance has occurred, but expressly excluding (a) any Common Area within the Property conditionally annexed to the Property by the Tenth Supplemental Declaration as described in Paragraph 2 above, which Common Area shall be conveyed to the Association as provided in Paragraph 3 above, and (b) any Common Area within any Annexable Property subjected to the Declaration under Paragraph 3 above which will be conveyed to the Association as required above prior to the conveyance of the first Residence within such Annexable Property, fully in compliance with the requirements of Paragraph 3 above and the requirements of FHA and VA. (Amended 9/30/92)

10. DAMAGE OR DESTRUCTION. Notwithstanding the provisions of Paragraphs 3.7, 3.8, 10.1 and all other provisions of the Declaration, Owners (excluding the Owners of Courthomes) shall not be required to rebuild their Residences after destruction by fire or other casualty loss, but such Owners shall promptly clear the Residence of debris and improvements not to be repaired in a manner reasonably satisfactory to the Association. Owners of Courthomes are required to rebuild after destruction in accordance with the provisions of Paragraph 10.1 of the Declaration, but the Association shall not be empowered to rebuild a Courthome and assess the cost to the Owner. However the Association may specifically enforce through legal action the obligation of the Courthome Owner to rebuild as provided in Paragraph 10.1. (Amended 9/30/92).

10.1 In the event any Residence is damaged or destroyed from any cause, within thirty days from the date of the occurrence of the damage or destruction, its Owner shall 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 ninety-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 in Paragraph 11.2, 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 therefore, 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 Default Rate provided in paragraph 7.7.1 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 Default Rate and shall constitute a debt collectible by the Association from the Owner through any lawful procedures. Each Owner vests in the Association, and 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 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 4.6. (Amended 9/30/92)

11. INSURANCE.

11.1 General. The Board or its authorized agent shall be authorized to 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 any 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 paragraph 7. 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 coverage for insurance on individual Residences. 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, at the Board's direction, such amount may 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 or any First Mortgage, and shall be enforceable in the same manner as any other lien created by paragraph 7. 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, to 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 casualty to any Property covered by insurance written in the name of the Association, upon receipt of the insurance proceeds the Board shall 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 Directors, 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 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 \$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 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 paragraphs 10 and 10.1 (less the insurance proceeds received by the Association therefor), all in the manner provided in paragraphs 10 and 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 6.2. Each Courthome Owner may, but need not, provide as he

sees fit for homeowners' liability insurance, theft and other insurance covering personal property damage and loss.

12. ALIENATION. (Deleted 9/30/92)

13. FIRST MORTGAGE. Notwithstanding and prevailing over any other provisions of this Declaration, the Articles, the Bylaws, or any rules or regulations, the following provisions shall apply to and benefit each holder of a First Mortgage upon a Residence:

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

13.2 Substitution. During the pendency of any proceeding to foreclose the First Mortgage, including any period of redemption, the First Mortgagee (or any receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner including, but not limited to, the right to vote as a Member to the exclusion of the Owner's exercise of such rights and privileges.

13.3 Acquisition. At such time as the First Mortgage shall become record owner of a Residence, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration, including, but not limited to, the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any other Owner.

13.4 Foreclosure. The First Mortgagee, or any other Person acquiring title to a mortgaged Residence through foreclosure suit or through any equivalent proceedings such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the Residence free and clear of any lien authorized by or arising out of any of the provisions of this Declaration which secures the payment of any assessment or charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption, except as follows: Any such unpaid assessment against the Residence foreclosed against may be treated as an expense common to all of the Residences including the Residence foreclosed against, which expense may be collected by a prorata assessment or charge against all Residences subject to assessment. Any such unpaid assessment or charge shall nevertheless continue to exist as the personal obligation of the defaulting Owner of the Residence to the Association. There shall be a lien upon the interest of the First Mortgagee or other Person which acquires title to a mortgaged Residence by foreclosure or equivalent proceedings for all assessments and charges authorized by this Declaration which accrue or are assessed after the date the acquirer has acquired title to the Residence free and clear of any right of redemption.

14. GENERAL PROVISIONS.

14.1 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; Declarant; Developer; or the Owner or Owners of any Residence. The Developer or Declarant, or both, may but shall have no obligation to enforce this Declaration. Prior to initiating legal action to enforce this Declaration against the Association, Declarant or Developer, an Owner shall notify the Association, Declarant and, Developer in writing of the grievance and nature of any asserted violation hereof and the Association, Declarant and, Developer shall have forty-five days thereafter within which to cure or eliminate such violation; provided that Declarant and Developer shall have no right to enforce the Declaration after such party no longer owns any Residence within the Property. 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 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. (Amended 9/30/92)

14.2 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 these Assurances) 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.

14.3 Equal Protection. These Assurances shall be applied to all similarly situated Owners without the discrimination based on race, creed, color, national origin, sex, or age.

14.4 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.

14.5 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 and women, shall in all cases be assumed as though in each case fully expressed.

14.6 Interpretation. 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. In the event of any conflict or ambiguity in the interpretation hereof, the decision of the majority of the Board shall be conclusive.

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. This Declaration may be amended at any time by the then Owners of not less than two thirds (2/3) of the Residences. Notwithstanding the foregoing, or any other provision herein to the contrary, this Declaration may and shall be amended (a) by Declarant at the direction of Developer acting alone, without the consent or approval of any Owner or other Person, while Declarant or Developer owns any Residence, or (b) thereafter by the Association's Board without the consent or approval of any Owner or other person, and at anytime the Association Board may and shall enter into any necessary agreement, but in either event solely for the purpose of complying with any requirement of the Federal Housing Administration (FHA), the Veterans Administration (VA), the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC). (Amended 9/30/92)

15. PROPERTY ADJACENT TO GOLF COURSE. Certain Property owned by the Association and individual Owners is adjacent to or near the Pointe Golf Club on South Mountain (the "Golf Course"). Due to the nature of the activities conducted on the Golf Course, it is possible that golf balls hit from the Golf Course may hit persons or property adjacent to or near the Golf Course causing injury and/or damage. While the Association does not intend by this document to render any legal opinion regarding rights available to Owners, Owners' agents, tenants, licensees, guests, invitees and family members, Owners should be aware that the Association, a corporation separate and distinct from the owners of the Golf Course, and the owners of the Golf Course will deny liability for any claims of golfball damage or injury to person or property. Various defenses may be raised in the event any suit is brought by an Owner arising out of any claim of damage or injury, including assumption of the risk, negligence and contributory negligence. Further, as the Association does not purport to give any legal opinion regarding the viability of any right or defense related to golfball damage or injury, each

Owner who is or may be affected by any golf balls hit from the Golf Course should seek the independent advice or legal counsel regarding rights, obligations and responsibilities. (Amended 9/30/92)

16. MISCELLANEOUS.

16.1 Notwithstanding any other provision of the Declaration or any other document to the contrary, the Common Area cannot be mortgaged, conveyed or dedicated, nor can there be a merger, consolidation or dissolution of the Association without the consent of at least two thirds (2/3) of the Members, and, with respect to dissolution of the Association, satisfaction of any greater requirements for Member votes as required by Arizona law. (Added 9/30/92)

16.2 Notwithstanding any other provision to the contrary within the Declaration or any other documents, the liability of the Owners of the Residences for damage to Common Area or Residences within the Property shall be limited to that provided for in the statutory or case laws of the State of Arizona. (Added 9/30/92)

16.3 Except as provided herein to the contrary, all terms and provisions of the Declaration shall remain in full force and effect as previously set forth. In the event of a conflict between the terms and provisions of the Eleventh Supplemental Declaration and the terms and provisions of the Declaration, the terms and provisions of the Eleventh Supplemental Declaration shall prevail. (Added 9/30/92)

17. ADDITIONAL INSTITUTIONAL LENDER PROVISIONS.

Notwithstanding any other provision to the contrary within the Declaration or any other document relating to The Pointe South Mountain Resort Residential Community, the Association, Board, and Owners (to the extent applicable because they own Residences whose mortgages are owned, insured or guaranteed by FHA, VA, FNMA, or FHLMC) shall at all times carry, maintain in good standing and pay for all hazard, liability, fidelity and other insurance policies, binders and bonds required by any of such agencies or their rules, regulations or requirements in effect from time to time, and shall provide satisfactory evidence thereof promptly to any First Mortgagee or any insurer or guarantor of any First Mortgage which requests such evidence. All such policies, binders and bonds shall comply with and be consistent in form and substance with all such agencies applicable requirements as they change from time to time and shall include all Mortgagee clauses and endorsements required by any of such agencies from time to time. (Added 9/30/92)

18. CONFLICTS BETWEEN DOCUMENTS. In the event of a conflict between the terms and provisions of the Declaration and either the Articles or the Bylaws, the terms and provisions of the Declaration shall govern. In the event of a conflict between the terms and provisions of the Articles and Bylaws, the terms and provisions of the Articles shall govern. (Added 9/30/92)

The President of the Association hereby certifies that, to the best of the Association's ability, the provisions contained within this Restated Declaration are a true and accurate restatement of the original Declaration with the incorporation of all amendments thereto. No alterations or amendments have been made to the Declaration, except for the amendments previously approved by the membership.

DATED this 28 day of January, 2005.

THE POINTE SOUTH MOUNTAIN RESIDENTIAL ASSOCIATION

By: [Signature]

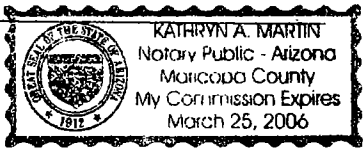
Its: President

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 28 day of January, 2005, before me the undersigned Notary Public, personally appeared [Signature], who acknowledged to me that s/he is the President of the Association and that s/he executed the foregoing agreement on behalf of the Association for the purposes expressed therein.

[Signature]
Notary Public

My Commission Expires:



Pointe South Mountain

Articles of Incorporation



FirstService
RESIDENTIAL

THE POINTE
SOUTH MOUNTAIN
RESIDENTIAL ASSOCIATION
ARTICLES OF AMENDMENT TO
RESTATATED
ARTICLES OF INCORPORATION
as of 10/21/92

JAN

ARTICLES OF AMENDMENT TO
RESTATED
ARTICLES OF INCORPORATION
OF
THE POINTE SOUTH MOUNTAIN RESIDENTIAL ASSOCIATION

These [Amended] Articles of Incorporation correctly set forth [] the provisions of the Articles of Incorporation as amended and supersede the original Articles of Incorporation and all amendments to the original Articles of Incorporation.

1. Name. The name of this corporation, which is a nonprofit Arizona corporation, is THE POINTE SOUTH MOUNTAIN RESIDENTIAL ASSOCIATION, hereinafter called the "Association."

2. Incorporators. The name, residence and mailing address of each of the incorporators are as follows: Robert A. Gosnell, 2728 N. 24th Street, Phoenix, Arizona 85008; Daniel G. Gosnell, 2728 N. 24th Street, Phoenix, Arizona 85008; and Craig W. Bisch, 2728 N. 24th Street, Phoenix, Arizona 85008.

3. Board of Directors. The business of this Association shall be conducted by a Board of five (5), seven (7) or nine (9) Directors (with the exact number to be specified in the Bylaws) and such officers and committees as may from time to time be appointed by the Directors. (Amended 10/21/92)

3.1 Voting Power of Directors. Each Director shall have one vote with respect to any matter to be determined by the Board. (Amended 10/21/92)

3.2 Initial Board. [Except as set forth above,] the Board of Directors shall consist of four Directors and they shall serve until their successors are elected and qualify. The names and addresses of the persons who are to serve on the initial Board of Directors are:

Edward J. Avery (Class 2)
2728 North 24th Street
Phoenix, Arizona 85008

Craig W. Bisch (Class 2)
2728 North 24th Street
Phoenix, Arizona 85008

Daniel G. Gosnell (Class 1)
2728 North 24th Street
Phoenix, Arizona 85008

Robert A. Gosnell (Class 1)
2728 North 24th Street
Phoenix, Arizona 85008

3.3 Selection of Directors. Each Director shall be selected in accordance with the procedures described in the Articles and Bylaws. (Amended 10/21/92)

3.4 Term of Directors. Directors shall hold office for staggered terms as specified in the Bylaws, but in any event until their successors are duly elected. Directors may succeed themselves and may resign at any time by written notice to the Board. (Amended 10/21/92)

3.5 Officers. The following persons shall serve as officers until their successors are elected at any time by the Directors:

J. Patrick Downey	President
R. Gael Boden	Vice President
Daniel F. Kelly, Jr.	Secretary/Treasurer

4. Principal Place of Business. The principal place of business shall be the office of the Association's current managing agent, as the same is changed from time to time. (Amended 10/21/92)

5. Statutory Agent. L and R Service Corporation, an Arizona corporation, whose address is 100 West Washington, Phoenix, Arizona 85003, is hereby appointed the lawful agent of this Association upon whom all notices and process, including summons, may be served and which, when so served, shall be lawful, personal service upon the Association. The Directors may, at any time, appoint another agent for such purpose and the filing of such other appointment shall revoke this or any other previous appointment of such agent.

6. Powers and Purpose of the Association. The Association is established as a nonprofit corporation and does not contemplate pecuniary profit, gain or private advantage for the incorporators, Directors, officers or the Association. No part of the net earnings, if any, of the Association shall inure to the benefit of any member or private individual other than by acquiring, constructing or providing management, maintenance and care of Association property including areas privately owned but which affect the overall appearance and structure of the subdivision and other than by rebate of excess dues, fees or assessments. The specific purpose for which the Association is formed is to provide for maintenance, preservation and architectural control of the Residences and Common Area (the "Property") within The Pointe South Mountain, a subdivision according to the plat recorded in Book 240 of Maps, page 36, records of Maricopa County, Arizona, as and if amended. The Property is subject to the Declaration of Homeowner

Benefits and Assurances recorded in the office of the Maricopa County recorder in Docket 15938, beginning at page 1, as and if amended (the "Declaration"), which contemplates the establishment of this Association and the enactment of these Articles upon the terms and conditions and subject to the provisions of such Declaration. Any capitalized terms used in these Articles or in the Bylaws of the Association and not otherwise defined shall have the meaning established in the definitions section of the Declaration. Neither the Articles nor the Bylaws shall be construed or amended to be inconsistent with the Declaration.

The Association shall promote the health, safety and welfare of the owners of the Property and in that connection shall:

(a) exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in the Declaration as the same may be amended from time to time as therein provided, the Declaration being incorporated herein by reference as if set forth at length;

(b) fix, levy, collect and enforce payment by any lawful means of all charges or assessments pursuant to the terms of the Declaration; pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the Property;

(c) acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(d) borrow money, mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) dedicate, sell or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, sale or transfer shall be effective unless an instrument has been signed by two thirds (2/3) of the Members agreeing to such dedication, sale or transfer; (Amended 10/21/92)

(f) enter into, perform and carry out contracts of any kind necessary to, in connection with, or incidental to, the accomplishment of the purposes of the Association; and

(g) have and exercise any and all powers, rights and privileges which a corporation organized under the nonprofit corporation law of the State of Arizona now or hereafter lawfully

may have or exercise.

7. Membership. The Association shall be a non-stock corporation owned by its Members. Every person or entity who is a record owner of a fee or undivided fee interest in any Residence within the Property, including contract vendees, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Residence within the Property. It shall be discretionary with the Board of Directors as to whether membership certificates shall be issued.

The votes for each 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 Member or Members casts a vote or votes representing a certain Residence, it thereafter will 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. (Amended 10/21/92)

8. One Class of Membership. From and after the execution of the Articles of Amendment, there shall only be one class of membership in the Association. (Amended 10/21/92)

9. Time of Commencement. The Association shall come into existence on the date of the filing of these Articles with the Arizona Corporation Commission.

10. Dissolution. The Association may be dissolved only with the vote of the requisite number of Members as required by Arizona law. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes. (Amended 10/21/92)

11. Exemption of Private Property. The private property of each and every officer, Director and Member of this Association shall at all times be exempt from all debts and liabilities of the Association.

12. Indemnification of Officers, Directors, Employees, and Agents. Subject to the further provisions hereof, the Association shall indemnify any and all of its existing and former Directors

NOTE:

This document incorporates the Restated Articles of Incorporation dated November 10, 1982 and Articles of Amendment thereto dated October 21, 1992.

Pointe South Mountain

Bylaws



FirstService
RESIDENTIAL

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THE POINTE
SOUTH MOUNTAIN
RESIDENTIAL ASSOCIATION
AMENDED
BYLAWS
as of 10/21/92

B-5

11/11/92

AMENDED
BYLAWS
OF
THE POINTE SOUTH MOUNTAIN RESIDENTIAL ASSOCIATION
An Arizona Nonprofit Corporation

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ARTICLE I

OFFICES

Section 1. Principal Office. In addition to its known place of business, which shall be the office of its managing agent, THE POINTE SOUTH MOUNTAIN RESIDENTIAL ASSOCIATION (the "Association") shall maintain a principal office in Maricopa County, Arizona. (Amended 10/21/92)

Section 2. Other Offices. The Association may also maintain offices at such other place or places, either within or without the State of Arizona, as may be designated from time to time by the Board of Directors, where the business of the Association may be transacted with the same effect as though done at the principal office.

ARTICLE II

DEFINITIONS

Any capitalized terms not defined herein shall have the same meaning as that which appears in the Declaration, defined below.

Section 1. "Association" shall mean and refer to THE POINTE SOUTH MOUNTAIN RESIDENTIAL ASSOCIATION, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in the Declaration, and such additions thereto as hereafter may be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all property so designated in the Declaration.

Section 4. "Residence" shall mean and refer to each separate plot of land shown upon any recorded subdivision plat of the Properties with the exception of the Common Area and as so designated in the Declaration.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Residence which is a part of the Properties, including contract vendees, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Developer" shall mean and refer to Gosnell Development Corporation, an Arizona corporation, its successors and assigns, if such successors or assigns are so designated by Developer and acquire more than one Residence from Developer for the purpose of development.

Section 7. "Declaration" shall mean and refer to the Declaration of Homeowner Benefits and Assurances applicable to the Properties recorded in Docket 15938, beginning at page 1, records of Maricopa County, Arizona, as and if amended.

Section 8. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration and Articles of Incorporation.

ARTICLE III

SELECTION OF DIRECTORS

Section 1. Number, Qualifications and Term of Directors. The Board shall consist of seven (7) Directors who shall serve staggered terms as follows: The first three (3) Directors (being the three Directors with the most votes) elected at the first annual meeting of the Association or the first mail vote of the Association held after adoption of the Amendment to Bylaws shall serve a three (3) year term, the two (2) Directors with the next highest vote totals elected shall serve a two (2) year term, and the remaining two (2) Directors shall serve a one (1) year term. Thereafter, all Directors shall be elected to three (3) year terms. All elections and appointments of Directors under these Bylaws

shall be for such terms as will preserve the staggering of terms as provided in this section. If an Owner is a corporation, partnership or trust, a Director may be an officer, partner, trustee, or beneficiary of such Owner. If a Director shall fail to meet such qualifications during his term, he will thereupon cease to be a Director and his place on the Board shall be deemed vacant. (Amended 10/21/92)

Section 2. Election of Directors; Removal of Directors; and Vacancies. Nominations for election to the Board of Directors may be made from the floor at the annual meeting of the Association or by notice to the Association from any Member during a reasonable period before the mailing of ballots (if a mail vote is to occur), which period shall be prescribed by the Board in a notice to all Members. Alternatively, the Board may appoint a Nominating Committee which shall consist of a chairman (who shall be a member of the Board of Directors) and two or more Members of the Association. If the Board determines to appoint a Nominating Committee, the Committee shall be appointed at least thirty (30) days prior to the annual meeting of the Members or the mailing of ballots for a mail vote, to serve until completion of such election, and shall make as many nominations for election to the Board of Directors as it in its sole discretion shall determine but not less than the number of vacancies to be filled.

Election of the Board Members by the Association membership shall be by secret written ballot, either at an annual meeting or by a mail vote, as determined by the Board from time to time. If a mail vote is to be utilized, the Board will specify reasonable procedures therefor in a notice to all Members accompanying the mailing of ballots, including but not limited to setting a required return date for ballots which is not less than thirty (30) nor more than sixty (60) days after the mailing to all Members, and only ballots returned by 5:00 p.m. on the specified return date shall be counted. Further, for any vote by mail to be valid, ballots from at least ten per cent (10%) of each class of membership must be returned by the specified return date to establish a "quorum" for the election by mail. Any directors elected by a mail vote procedure shall take office effective as of the next annual meeting of the Association. Cumulative voting shall not be permitted except as may be required by law. In the event of a tie for any position, a runoff election shall be held and the successful candidate may be determined by a secret vote or, if inconclusive, by another balloting of the Members.

The entire Board or any individual Director may be removed from office by an affirmative vote of Members holding a majority of the voting power of the membership entitled to vote at an election of Directors. If any Director is so removed, a new Director may be elected at the same meeting.

Vacancies in the Board caused by any reason shall be filled by a vote of the majority of the remaining Directors, and each person so appointed shall be a Director for the remainder of the term of the Director he replaces. (Amended 10/21/92)

Section 3. Compensation. No Director shall receive compensation for any service he may render to the Association except as provided in the Declaration. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

ARTICLE IV

MEETING OF MEMBERS

Section 1. Meetings. Regular meetings of the Members of the Association shall be held annually on the Property or such other suitable place convenient to the Members as may be designated by the Board at the time and on the date set by the Board for such annual meeting. Special meetings of the Members of the Association may be called by the President of the Association, by the Board upon the vote for such a meeting by a majority of the Board, or upon receipt of a written request therefor signed by Members representing at least twenty-five per cent (25%) of the total votes entitled to be cast at such meeting. (Amended 10/21/92)

Section 2. Notice of Meetings. Written notice of any meeting of the Members called shall be given by, or at the direction of, the secretary by mailing a copy of such notice, postage prepaid, at least ten (10) and not more than fifty (50) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of Notice. Such notice shall specify the place, day and hour of the meeting, and the purpose of the meeting which shall be to elect Directors. (Amended 10/21/92)

Section 3. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, at least ten per cent (10%) of the total votes of the membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. (Amended 10/21/92)

Section 4. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Residence.

ARTICLE V

MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors may be held without notice, at such time and place as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday. (Amended 10/21/92)

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any Director, after not less than two (2) days' notice to each Director by phone or by mail.

Section 3. Quorum and Minutes. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. At each meeting, a Director shall be selected by the Board to keep the minutes of the meeting.

Section 4. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

Section 5. Chairman of the Board. (Deleted 10/21/92)

ARTICLE VI

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the right to vote for Directors and the right to use of the Common Area of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing for infraction of published rules and regulations; (Amended 10/21/92)

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

(d) declare the office of a member of the Board of Directors to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) employ a manager, an independent contractor, or such other employees, consultants, attorneys, accountants and the like, as they deem necessary, and to prescribe their duties. Any agreement for professional management of the Property or any agreement providing for services by Declarant or Developer (or any affiliate of either), shall provide for termination by either party without cause or payment of a termination fee upon thirty (30) days' or less written notice or for cause upon thirty (30) days' or less written notice and without payment of a termination fee. Such agreement shall further provide for a reasonable contract term of from one to three years and be renewable only by consent of the Association and the other party. In addition to the foregoing provisions regarding Association management contracts and contracts with Declarant and Developer and their affiliates, Declarant and Developer shall not, and shall not have the authority or power to, bind the Association prior to termination of Class B membership, either directly or indirectly, to contracts or leases unless the Association is provided with a right of termination of any such contract or lease, without cause, which is exercisable without penalty or the payment of a termination fee at any time after the first Board of Directors elected after Class B membership expires takes office, upon not more than thirty (30) days' notice. (Amended 10/21/92)

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the assessment against each Residence at least thirty (30) days in advance of each assessment period if determined annually, or at least ten (10) days in advance if determined monthly;

(2) subject to the provisions of Paragraph 7.3.7 of the Declaration and to the extent not inconsistent therewith, send

written notice of each assessment to every Owner subject thereto;
(Amended 10/21/92)

(3) foreclose the lien against any property for which assessments are not paid after due date or to bring an action at law against the Owner personally obligated to pay the same, or both;

(d) issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

(g) cause the Common Area to be maintained.

ARTICLE VII

OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president, vice-president, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create. Officers must be members of the Board of Directors. (Amended 10/21/92)

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors each year.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other offices as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time

specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

8.1 President. The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and may co-sign all checks and promissory notes.

8.2 Vice-President. The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

8.3 Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Members and, when a Director is not selected to do so, keep the minutes of all meetings and proceedings of the Board. The secretary shall also keep the corporate seal of the Association, if any, and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members when it is necessary to do so; keep appropriate current records showing the Members of the Association together with their address, and shall perform such other duties as required by the Board.

8.4 Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of the fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meetings, and deliver a copy of each to the Members.

ARTICLE VIII

COMMITTEES

The Board may appoint a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purposes.

ARTICLE IX

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member upon at least three (3) days prior written notice. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE X

ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessments are made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid after the due date, the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and [the cost and expense of the] action shall be added to the amount of such assessments. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Residence.

ARTICLE XI

AMENDMENTS

Section 1. These Bylaws may be amended at any meeting of the Association membership at which a quorum is established by the vote or written assent of Members holding fifty-one percent (51%) of the total votes entitled to be cast by Members who are present in person or by proxy at such meeting. Further, if the Board determines to utilize a mail vote for a proposed amendment, the amendment will be deemed adopted if approved by fifty-one percent (51%) of the total votes entitled to be cast by Members who return ballots by a return date for ballots specified in a notice from the Board accompanying the ballots, which return date shall be not less

than thirty (30) or more than sixty (60) days after the ballots are mailed to Members, provided that ballots are returned from at least ten percent (10%) of the Members of each class by the specified return date to establish a "quorum". Only ballots returned by 5:00 p.m. on the specified return date shall be counted. (Amended 10/21/92)

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XII

LIMITATIONS ON ASSOCIATION ACTIVITIES

The Association initially will act as a 'Residential Real Estate Management Association' within the meaning of § 528 of the Internal Revenue Code of 1954, as amended, such that, notwithstanding any other provision herein to the contrary, this corporation shall not engage in any activities which may result in the revocation of its status as such an association and no part of the net earnings of this corporation shall inure (other than by acquiring, constructing or providing management, maintenance and care of the property of the corporation, and other than by rebate of excess membership dues, fees or assessments) to the benefit of any Member, Owner, Director or other individual. If the Board of Directors determines that the above limitations are no longer advantageous, it may at any time, subject to applicable legal restrictions on doing so, adopt by a majority vote a resolution voiding the above restrictions on Association activities.

ARTICLE XIII

MISCELLANEOUS

Section 1. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year except that the first fiscal year shall begin on the date of incorporation.

Section 2. Except as provided herein to the contrary, all terms and provisions of the Bylaws shall remain in full force and effect as originally set forth. In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Bylaws, the terms and provisions of this Amendment shall prevail. (Amended 10/21/92)

NOTE: This document incorporates the Bylaws dated October 22, 1982, and amendments thereto dated October 21, 1992.

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