

Bylaws

The Pointe South Mountain Residential Association

Master
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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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