

Recording Requested By:  
John Frankovich, Esq.

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When Recorded Mail To:  
John Frankovich, Esq.  
P.O. Box 2670  
Reno, NV 89505

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Space above for Recorder's Use

Documentary Transfer Tax: None

By: \_\_\_\_\_

**THIRD AMENDED AND RESTATED DECLARATION  
OF MUTUAL RESTRICTIONS AND COVENANTS**

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THIRD AMENDED AND RESTATED DECLARATION  
OF MUTUAL RESTRICTIONS AND COVENANTS

THIS AMENDED AND RESTATED DECLARATION is made this 16 day of Oct, 1998, by THE POINTE HOMEOWNERS ASSOCIATION ("PHA"), and THIRD CREEK HOMEOWNERS' ASSOCIATION ("TCHA").

WHEREAS, TCHA through its members are owners of more than sixty-seven percent (67%) of the condominium units located in the Third Creek Condominiums in Washoe County, Nevada, described in Exhibit "A" attached and incorporated by reference, which property is referred to as the "Condominium Property"; and

WHEREAS, PHA through its members are the owners of more than 67% of the units located on the property adjacent to the Condominium Property known as the Pointe Condominiums, more particularly described in Exhibit "B" attached and incorporated by reference, which property is referred to as the "Pointe Property"; and

WHEREAS, a DECLARATION OF MUTUAL RESTRICTIONS AND COVENANTS encumbering the Condominium Property and Pointe Property was recorded in the Office of the County Recorder of Washoe County, Nevada, on September 14, 1981, as Document No. 758576 (hereinafter "Original Declaration"); and

WHEREAS, an Amended Declaration of Mutual Covenants and Restrictions encumbering the Condominium Property and the Pointe Property was recorded in the Office of the County Recorder of Washoe County, Nevada, on February 12, 1992, as Document No. 1545652; and

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WHEREAS, a Second Amended Declaration of Mutual Restrictions and Covenants was recorded in the Office of the County Recorder of Washoe County, Nevada, on September 22, 1992, as Document No. 1606985; and

WHEREAS, it has been determined that a residential condominium project will be and has been developed on the Pointe Property; and

WHEREAS, it is the intent and purpose of this Third Amended and Restated Declaration to modify, amend and supersede the original Declaration, the Amended Declaration and the Second Amended Declaration; and

WHEREAS, the rights and obligations of the parties relating to their respective property are restated as follows:

NOW, THEREFORE, the parties hereby declare that the Condominium Property described in Exhibit "A" and the Pointe Property described in Exhibit "B" are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following limitations, covenants, conditions, restrictions, all of which are declared and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of both said properties and every part and portion thereof, and to mutually benefit and burden each parcel and to create mutual equitable servitudes upon each of said parcels in favor of each other and to create reciprocal rights and privity of contract and estate between all persons acquiring or owning an interest in either of said parcels including the parties and their members, grantees, heirs, devisees, successors, and

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assigns, and shall be deemed to run with the land or any portion thereof or interest therein, and be a burden and benefit to such parcels and persons, including the parties, their members, their grantees, heirs, devisees, successors and assigns.

1. The Pointe Property and all occupants, guests, residents, visitors and/or owners are granted the non-exclusive right to use the area and facilities located on the Condominium Property known as the Trinity Circle common area and facilities as more particularly depicted on Exhibit "C", including, without limitation, the Club House, tennis court, swimming pool, Jacuzzi and parking areas (Joint Use Property). The right to use such common area facilities and amenities shall be in accordance with the provisions of this Declaration and the rules and regulations adopted by TCHA relating to such amenities as applied to the owners of the condominium units on the Condominium Property.

2. The Condominium Property and all owners, occupants, guests, residents and/or visitors are granted the non-exclusive right to use the parking spaces in the parking area on the Pointe Property depicted on Exhibit "D" (Parking Area) which parking is for the mutual use and benefit of the owners of the Condominium Property and the owners of the Pointe Property.

3. There shall be no "exclusive use" area on the Condominium Property for the benefit of the Pointe

Property, and TCHA shall not have the right to use any of the Pointe Property or amenities thereof except the Parking Area. Specifically and without limitation, TCHA shall not have any right to use the underground parking, Jacuzzi, or any swimming pool or other amenities that may be constructed now or in the future on the Pointe Property.

4. No new or additional improvements or facilities shall be constructed on or around that portion of the Condominium Parcel located on and within Trinity Circle and the Joint Use Property without the express written permission of TCHA and PHA.

5. The common entrance to the Condominium Property and the Pointe Property, together with the roadway improvements comprising Trinity Circle, shall be maintained in accordance with best maintenance practices for the benefit of the Condominium Property and the Pointe Property.

6. PHA shall pay its proportionate share for the maintenance of the joint entrance to the Condominium Property and the Pointe Property, Trinity Circle roadway and the parking areas thereon, and the Joint Use Property, which cost shall include, without limitation, maintenance, repairs, and snow removal. The proportionate share of such common area expenses to be paid by the Pointe Property shall be 26/177 of the entire

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cost. The obligation of the Pointe Property to pay such maintenance or repairs shall not include any management or administrative costs or fees of TCHA. The Pointe Property shall only be responsible for its proportionate share of such expenses actually incurred.

7. The payment of the Pointe Property's proportional share of the costs of maintenance and repairs as reflected in the preceding paragraph shall commence September 1, 1998. TCHA shall have primary responsibility to undertake the maintenance and repair of such joint use facilities and shall submit invoices for expenses actually incurred on a quarterly basis to the Pointe. The owners of the Pointe Property, through PHA, shall pay to TCHA their proportional share within thirty (30) days of receipt of the invoice from TCHA. In the event that TCHA does not undertake or otherwise fulfill its obligation for the maintenance and repair of the entrance to the Pointe Property, the Joint Use Property and Trinity Circle, PHA shall have the right to undertake such repairs or maintenance and to collect from TCHA its proportional share (151/177) of such costs. Before undertaking any such maintenance and repair, PHA shall notify TCHA of its failure to maintain the joint use facilities in a manner consistent with the quality of the respective projects and with other similar condominium projects in the Incline Village area. Thereafter, TCHA

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will have thirty (30) days to undertake such maintenance and repair, and only on its failure to do so shall PHA have the right to perform or have such maintenance and repair work performed.

8. PHA shall have the right at any time to elect to not use some or all of the joint use facilities located on the Joint Use Property, but not including the entrance and Trinity Circle roadway. Such selection shall be implemented by the recordation of an Addendum to this Declaration by PHA which shall identify the specific joint use facilities which PHA will no longer utilize. Thereafter, PHA, including all owners of the condominiums on the Pointe Property, shall have no right to use the specified facilities. In addition, after such time, the Pointe Property's proportional share of the costs for maintenance and repair as set forth above shall not include any expenses related to the facility identified as no longer being utilized by the Pointe Property.

9. In the event that there is litigation commenced in connection with the interpretation or enforcement of this Amended and Restated Declaration, the prevailing party shall be entitled to an award of all costs and reasonable attorneys' fees.

10. This Third Amended and Restated Declaration supersedes the original Declaration of Mutual Restrictions and Covenants, the Amended Declaration of

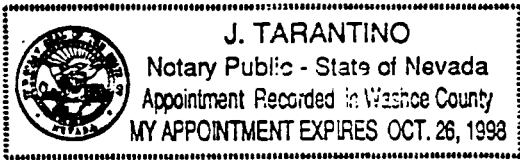
Mutual Covenants and Restrictions and the Second Amended Declaration of Mutual Restrictions and Covenants as more fully identified in the recitals, and the same are hereby rescinded.

THE POINT HOMEOWNERS ASSOCIATION

By [Signature]  
Name: PATT MOORE  
As: PRESIDENT

STATE OF NEVADA )  
: ss.  
COUNTY OF WASHOE )

On this 19 day of October, 1998, personally appeared before me, a Notary Public, Patt Moore as President of THE POINTE HOMEOWNERS ASSOCIATION, known (or proved) to me to be the person whose name is subscribed to the above instrument who acknowledged that he executed the above instrument.



[Signature]  
Notary Public

THIRD CREEK HOMEOWNERS ASSOCIATION

By [Signature]  
Name: LAUREL SCHULEE  
As: Vice President HOA

STATE OF NEVADA )  
: ss.  
COUNTY OF WASHOE )

See attached

On this \_\_\_\_\_ day of \_\_\_\_\_, 1998, personally appeared before me, a Notary Public, \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, known (or

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proved) to me to be the person whose name is subscribed to the above instrument who acknowledged that he executed the above instrument.

\_\_\_\_\_  
Notary Public

SEE ATTACHED NOTARY

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