

ARTICLE VII

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 7.01 Creation of the Lien and Personal Obligation to Pay Assessments. Each Owner, by acceptance of a deed to any dwelling Unit, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Dwelling Unit and shall be a continuing lien upon the property against which each assessment is made. Delinquent assessments, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Dwelling Unit at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to his/her successors in title unless expressly assumed by them.

Section 7.02 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Members and their guests, for the improvement and maintenance of the Common Area and for all purposes set forth in the Articles, By-Laws and this Declaration. The Board of Directors of the Association shall provide that Association dues, charges to assessments shall include an

adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area owned by the Association that must be replaced on a periodic basis. All such dues, charges and assessments imposed by the Association shall be paid on a periodic basis in regular installments rather than by special assessments, unless so determined by the Board as provided herein.

Section 7.03 Maximum Annual Assessment.

(a) Until January 1 of the year immediately following the conveyance of the first Dwelling Unit to an Owner, the maximum annual assessment shall be Sixty and No/100 Dollars (\$60.00). Within thirty (30) days prior to the end of each calendar year (January 1 through December 31) and subject to the provisions of Section 7.03(b) hereof, the Board of Directors shall estimate the total charges to be paid during the forthcoming year to determine the annual assessment (including a reasonable reserve for contingencies and less any expected surplus from the prior year).

(b) Subject to Section 7.03(c) hereof, the Board of Directors shall not increase the annual assessment by an amount greater than either (i) five percent (5%) of the amount of the preceding annual assessment; or (ii) the percentage increase in the cost of living as reflected by the column entitled "all items" in the Consumer Price Index on a national basis published by the Bureau of Labor Statistics of the United States Department of Labor (hereinafter called the "Cost of Living Index Number"). In the event that the Bureau of Labor Statistics shall fail to publish a comparable Cost of Living Index Number during any such years, but a comparable Cost of Living Index Number shall be published by any governmental agency of the United States in place thereof, then such comparable index number shall be used for the purpose of adjusting the annual assessment under the provisions of this Section 7.03 with the same force and effect as the Cost of Living Index Number of the Bureau of Labor Statistics.

(c) Any increase by the Board of Directors in the Annual Assessment which is greater than the amount permitted under Section 7.03(b) hereof must be first approved by two-thirds (2/3) vote of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose before such increase may be placed in effect and bind the members of the Association.

Section 7.04 Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital

improvement of the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the consent of two-thirds (2/3) of the vote of each Class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 7.05 Notice and Quorum for an Action Authorized Under Section 7.03(D) and Section 7.04. Written notice of any meeting called for the purpose of taking action authorized under Section 7.03(D) and Section 7.04 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of 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 held more than sixty (60) days following the preceding meeting.

Section 7.06 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Dwelling Units and may be collected on monthly basis. However, and subject to the limitations set forth in Section 7.03(b) hereof, said uniform rate may be revised periodically to reflect revisions in the annual assessments based on actual operating cost of the Association.

Section 7.07 Date of Commencement of Annual Assessments; Due Dates. The annual assessment provided for herein shall commence as to all Dwelling Units upon conveyance of Dwelling Unit to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Notwithstanding the preceding sentence or any other provision of this Declaration to the contrary, the annual assessment for all Dwelling Units annexed by the Declarant, shall not commence until the first day of the first month following the month in which the portion of the Annex able Property described in the Declaration of Annexation becomes irrevocable committed to PEDREGAL, and no annual, special or supplemental assessments may be levied against any such Dwelling Unit until such time. The Board of Directors shall fix the amount of the annual assessment against each Dwelling Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto in the event of its increase or decrease from the last annual assessment. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Dwelling Unit

have been paid. A properly executed certificate of the Association as to the status of the assessments on a Dwelling Unit is binding upon the Association as of the date of its issuance.

Section 7.08 Effect of Non-Payment of Assessments; Remedies of the Association. Each Owner shall be deemed to covenant and agree to pay to the Association the assessment provided for herein, and agrees to the enforcement of the assessment in the manner herein specified. All delinquent assessments shall bear interest at an interest rate not to exceed twelve percent (12%) annum, and late payments shall first be credited toward interest due, then towards assessments first due. In the event the Association employs an attorney for collection of any assessments, whether by suit or otherwise, or to enforce compliance with or specified performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner agrees to pay reasonable attorney's fees and costs thereby incurred, in addition to any other amounts due or any other relief or remedy obtained against said Owner. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in the manner provided by law or in equity, or without any limitation to the foregoing, by either or both of the following procedures.

A. Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgement rendered in any such action shall include the amount of the delinquency together with interest thereon from the date of delinquency until paid, court costs, and reasonable attorney's fees in such amount as the Court may adjudge against the delinquent Owner or Member.

B. Enforcement by Lien. There is hereby created a right of claim of lien on each and every Dwelling Unit to secure payment to the Association of any and all assessments levied against any and all Owners together with interest thereon from the date of delinquency until paid, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. At any time within one hundred twenty (120) days after occurrence of any default in the payment of any such assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner, on behalf of the Association. Said demand shall state the date and amount of delinquency. Each default shall constitute a separate

basis for demand or claim of lien but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or, even without such a written demand being made, the Association may elect to file such claim of lien on behalf of the Association against the Dwelling Unit of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

- (1) The name of the delinquent Owner;
- (2) The legal description of the Dwelling Unit against which claim of lien is made;
- (3) The total amount claimed to be due and owing for the amount of the delinquency interest thereon, collection costs, and reasonable attorney's fees (with any proper offset allowed);
- (4) That the claim of lien is made by the Association pursuant to this Declaration and
- (5) That a lien is claimed against said Dwelling Unit in an amount equal to the amount stated.
- (6) That the claim of lien will also extend to all assessments which became due but are not paid from the date of the filing of the claim of lien to the date of payment of all amounts set forth therein (including interest thereon, reasonable attorney's fees, costs and collection), and that payment of all such amounts.

Upon recordation of a duly executed original or copy of such a claim of lien, and the mailing of a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Dwelling Unit. Such a lien shall have priority over all claims of lien created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxed on any Dwelling Unit, assessments on any Dwelling Unit in favor of any municipal or other government assessing unit, and the lien of any first mortgage. Any such lien may be foreclosed by appropriate action in Court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Dwelling Unit. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner

hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

Section 7.09 No Exemption of Owner. No Owner is exempt from liability for payment of assessments by waiver of the use or enjoyment of the Common Area, or by abandonment of his/her Dwelling Unit except as specifically provided in Section 8.06.

Section 7.10 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Dwelling Unit shall not affect the assessment lien. However, the sale or transfer of any Dwelling Unit pursuant to mortgage foreclosure of a first mortgage, or a trustee's sale pursuant to power of sale or a foreclosure of a first deed of trust, or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Dwelling Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 7.11 Mortgage Protection and Additional Assessment as Common Expense. Notwithstanding and prevailing over any other provisions of this Declaration, or the Association's Articles or By-Laws, or the Rules, the following provisions shall apply to and benefit each holder of a first mortgage upon a Dwelling Unit (called the first mortgagee):

A. The first mortgagee 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 covenant, restriction, regulation, Rule, Article or By-Laws, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as hereinafter provided.

B. During the pendency of any proceeding to foreclose the first mortgage, including any period of redemption, the first mortgagee (or receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner of the mortgaged Dwelling Unit, including but not limited to, the right to vote as a member of the Association to exclusion of the Owner's exercise of such rights and privileges.

C. At such time as the first mortgagee shall become record Owner of a Dwelling Unit, said first mortgagee shall be subject to all of the terms and conditions of these Restrictions, including but not limited to the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any Owner.

D. The first mortgagee, or any other party acquiring title to a mortgage, such as, but not limited to, the taking

of a deed in lieu of foreclosure, shall acquire title to the mortgaged Dwelling Unit free and clear of any lien authorized by or arising out of any of the provisions of this Declaration or By-Laws which secured the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption.

Any such unpaid assessment shall nevertheless continue to exist as the personal obligation of the defaulting Owner of the respective Dwelling Unit to the Association, and the Board shall use reasonable efforts to collect the same from the Owner even after he/she is no longer a member of the Association. There shall be a lien upon the interest of the first mortgagee or other party which acquire title to a mortgaged Dwelling Unit by foreclosure suit or by equivalent procedures for all assessments authorized by this Declaration or the By-Laws which accrue and are assessed after the date the acquire has acquired title to the Dwelling Unit free and clear of any right of redemption.

E. Any provisions contained in this Declaration to the contrary notwithstanding, unless at least seventy-five percent (75%) of the Dwelling Unit Owners (other than the Declarant or Developer) have given their prior written approval, the Association shall not be empowered or entitled to: (a) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Dwelling Unit Owner; (b) by act or omission, change, waive or abandon the exterior maintenance of Common Property, walkways or perimeter walls and driveways, or the upkeep of lawns and planting areas in the Subdivision; (c) fail to maintain fire and extended coverage insurance on the Common Areas and Common Property on a current replacement cost basis in an amount of not less than one hundred percent (100%) of the insurable value (based on current replacement costs); and (d) use hazard insurance proceeds for losses to any Common Areas or Common Property for other than the repair, replacement or reconstruction of such Common Property.

F. First mortgagees are hereby granted the right to jointly, or singly pay taxes or other charges which are in default and which may or have become a charge against any Common Areas or other Common Property owned by the Association, and such first mortgagees may, jointly or singly, pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Areas or Common Property and any first mortgagees making such payments may be owed immediate reimbursement therefore from the Association.

G. Nothing in this Declaration shall in any manner be deemed to give a Dwelling Unit Owner, or any other

party, priority over any rights of a first mortgagee of a Dwelling Unit pursuant to the terms of such first mortgagee's mortgage in the case of a distribution to a Dwelling Unit Owner of insurance proceeds or condemnation awards for losses to or taking of any Dwelling Unit or any part of the Common Area owned by the Association. Each first mortgagee shall be entitled to timely written notice of such loss or taking.

H. Each first mortgagee shall, upon notice to the Association, be entitled to a written notification from the Association of any default in the performance by the Owner of a Dwelling Unit encumbered by the mortgage in favor of such mortgagee of any obligation under this Declaration or under the Articles of Incorporation, By-Laws, or Rules of the Association which is not cured within sixty (60) days.

I. Each first mortgagee shall, upon written notice to the Association, be entitled to (i) inspect the books and records of the Association during normal business hours; (ii) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association; and, (iii) receive written notice of all meetings of the Association, and designate a representative to attend such meetings.

J. Each first mortgagee shall, upon written notice to the Association, be entitled to written notice from the Association at least thirty (30) days prior to (i) abandonment or termination of the Association; (ii) any material amendment to the Declaration, Articles or By-Laws; and, (iii) the effectuation of any decision by the Association to terminate professional management and assume self-management of the Association.

K. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a first mortgage and the Dwelling Unit number or address, and Eligible Mortgage Holder, insurer or guarantor shall be entitled to written notice of any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.