

ARTICLE 6
COVENANT FOR ASSESSMENTS

- 6.01 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot (excluding Declarant), by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association, for each Lot owned by such Owner, all assessments and charges levied pursuant to this Declaration. Such assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge and a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with such interest and costs, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when such assessment fell due.
- 6.02 Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Members of the Association and, in particular, without limiting the foregoing, for maintenance, repair, replacement, improvement and additions of and to the Maintenance Area and the improvements thereon, for all taxes, insurance, utilities, professional and other services, materials, supplies, equipment and other costs and expenses incident to the ownership of the Maintenance Area and all facilities and improvements thereon and for otherwise carrying out the duties and obligations of the Board and of the Association as stated herein and in its Articles of Incorporation and By- laws.
- 6.03 Assessment Procedure - Annual Assessments.
- a. Each year, on or before December 1, the Board shall prepare a budget for the Association for the ensuing calendar year which shall include estimated cash expenditures and reasonable amounts as a reserve for repairs to and replacement of the improvements on the Maintenance Area and those portions of the Lots for which the Association is responsible, and for such other contingencies as the Board may deem proper, and shall, on or before December 15, notify each Owner in writing of the amount of such estimate, with reasonable itemization thereof. The budget shall also take into account the estimated net available cash income for the year, if any, that may be received by the Association. On or before January 1 of the ensuing year, each Owner, jointly and severally, shall be personally liable for and obligated to pay the Board or as it may direct, one-twelfth (1/12) of the assessment made pursuant to this Section. On or before April 15 of each year following the initial meeting, the Board shall supply to all Owners an itemized accounting of actual expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimate provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited to the next

- monthly installment due under the current year's estimate, until exhausted, and one-third (1/3) of any net shortage shall be added to the installments due in each of the succeeding three (3) months after rendering of the account. Such adjustment shall be allocated among the Lots that were subject to assessment during the prior year in the proportion that the annual assessment against each Lot during the year bears to the annual assessment against all the Lots during that year.
- b. If said annual assessments prove inadequate for any reason, including nonpayment of any owner's assessment, the Board may, subject to the limitations on the use of capital reserves, charge the deficiency against existing reserves subject to assessment, or may levy a further assessment which shall be assessed equally against all Lots. The Board shall serve notice of such further assessment on all Owners by a statement in writing showing the amount due and reasons therefor, and such further assessment shall become effective with the monthly installment which is due more than fifteen (15) days after delivery or mailing of such notice of further assessment. All Owners shall be personally liable for and obligated to pay their respective adjusted annual/semiannual/monthly assessment as determined by the Board.
 - c. When the first Board elected hereunder takes office, it shall prepare a budget for the period commencing thirty (30) days after said election and ending on December 31 of the year in which said election occurs. Annual/semiannual/monthly assessments shall be levied against all Lots subject to assessment during said period as provided in Section 6.01 hereof.
 - d. The failure or delay of the Board to prepare or serve the annual or adjusted-estimate on any Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay his annual/semiannual/monthly installment at the then existing rate established for the previous period until the annual/semiannual/monthly installment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.
- 6.04 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of constructing or purchasing a specified capital improvement upon or to the Maintenance Area, and for the necessary fixtures and personal property related thereto, provided that, unless otherwise provided in the By-laws, any such assessments which in one year exceed \$5,000.00 shall first be approved by a majority of the Board and thereafter by a majority of the votes cast by Members at a general or special meeting duly called for that purpose or, in lieu of such member's meeting, by an instrument signed by the Members owning two-thirds (2/3) of the Lots. Special assessments

levied hereunder shall be due and payable at such time or times and in such manner as shall be fixed by the Board, or, where applicable, as approved by the Members and shall be used only for the specific purpose for which such assessment was levied.

- 6.05 Capital Reserves. To the extent the annual budget includes an amount specifically designated as a capital reserve, each Owner shall, as to each installment of the annual assessment paid by him, be deemed to have made a non-refundable capital contribution to the Association in the proportion that the amount of such designated capital reserve bears to the total annual budget. Such proportion of each annual assessment installment paid to the Association shall be earmarked as a special capital reserve account to be used solely for making major repairs and replacements to the Maintenance Area, to those portions of the Lots and the improvements thereon which the Association is obligated to repair and replace in accordance with the provisions of this Declaration, and for the purchase of equipment to be used by the Association in connection with its duties hereunder. **AT THE ELECTION OF THE DEVELOPER, THE RESERVE ACCOUNT MAY OR MAY NOT BE FUNDED, AND THE ANNUAL BUDGET MAY OR MAY NOT PROVIDE FOR THE COLLECTION OF CAPITAL RESERVES DURING THE PERIOD THAT THE DEVELOPER CONTROLS THE ASSOCIATION, EXCEPT AS SET FORTH IN 6.06 HEREINBELOW.**
- 6.06 Initial Capital Contribution. At each closing of the sale of a Lot by the Declarant after the recording of this Declaration, the Owner purchasing such Lot will be required to make a capital contribution to the Association in an amount equal to twice the annual installment of the annual assessment for such Lot then in effect. Such payment shall be held and used by the Association as a working capital reserve.
- 6.07 Notice and Quorum. Written notice of any meeting called for the purpose of authorizing special assessments which require approval of the Members shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of voting Members, in person or by proxy, having twenty percent (20%) of the votes entitled to be cast 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 meeting shall be held more than sixty (60) days following the preceding meeting.
- 6.08 Uniform Assessments. Both annual and special assessments must be fixed as a uniform rate for all Lots, provided that no Lot owned by the Declarant shall be subject to assessment unless the dwelling thereon is completed and is occupied.

- 6.09 Commencement of Annual Assessments. After the recording of this Declaration, and at Declarants' option, annual/semiannual/biannual/quarterly/monthly assessments shall commence upon conveyance of the first Lot by Declarant or as set forth in Article 6, subsection 6.03(d).
- 6.10 Assessments on Lots Owned by Declarant or Developer. While the Declarant or Developer holds title to unoccupied Lots and in lieu of paying assessments on unsold Lots, the Developer shall pay to the Association only the amount, if any, by which actual operating expenses exceed the aggregate of the assessments established and received from Owners (excluding Declarant) pursuant to this paragraph. Actual operating expenses means those expenses actually incurred that are reasonably necessary to normal maintenance and operation of the Maintenance Area, and does not include capital expenditures, reserves, prepaid items, inventory items or similar expenses to the extent attributable to any subsequent period. Except as set forth herein, the developer shall have no obligation to pay assessments for unsold or unoccupied Lots.
- 6.11 Collection of Assessments. If a Owner is in default in the monthly payment of the aforesaid charges or assessments for thirty (30) days, the members of the Board may bring suit for and on behalf of themselves and as representatives of all Owners, to enforce collection thereof or to foreclose the lien therefor as hereinafter provided; and there shall be added to the amount due the costs of said suit, and other fees and expenses together with legal interest and reasonable attorneys' fees to be fixed by the court. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest, costs, and fees as above provided, shall be and become a lien or charge against the Owner involved when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of liens against real estate. Such lien shall take effect and be in force when and as provided in the Act; provided, however, that encumbrances owned or held by any bank, insurance company, savings and loan association, or other lender shall be subject as to priority after written notice to said encumbrancer of unpaid Assessments only to the lien of all Assessments on the encumbered Lots which become due and payable subsequent to the date the encumbrancer either takes possession of the Lot, accepts a conveyance of any interest in the Lot or has a receiver appointed in a suit to foreclose its lien. In addition to the foregoing, the Board or its agents shall have such other rights and remedies to enforce such collection as shall otherwise be provided or permitted by law from time to time. Without limiting the generality of the foregoing, if any Owner shall fail to pay the proportionate share of the Assessment or of any other expenses required to be paid hereunder upon due, such rights and remedies shall include: (i) the right to enforce the collection of such defaulting Owner's share of such expenses (whether due by acceleration or otherwise), together with penalties as approved by the Board and interest thereof, at the maximum rate permitted by law, and all fees and costs (including attorneys' fees) incurred in the collection thereof; (ii) the right, by giving such defaulting Owner five (5) days' written

notice of the election of the Board to do so, to accelerate the maturity of the unpaid installments of such expenses accruing with respect to the balance of the assessment year; and (iii) the right to take possession of such defaulting Owner's interest in the Property, to maintain for the benefit of all the other Owners an action for possession in the manner prescribed in "an act in regard to Forcible Entry and Detainer, approved February 16, 1874, as amended, and to execute leases of such defaulting Unit Owner's interest in the Property and apply the rents derived therefrom against such expenses.

- 6.12 No Waiver of Liability. No Owner may waive or otherwise escape liability for assessments provided for herein by any act or omission including without limitation non-use of the services provided by the Association, the Maintenance Area or abandonment of his Lot.
- 6.13 Subordination of the Lien or Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage placed at any time on a Lot by a bona fide lender. Each holder of a first mortgage on a Lot who obtains title, or comes into possession of that Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or by deed (or assignment) in lieu of foreclosure, or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid assessments or charges which have accrued prior to such acquisition of title or possession.