

ARTICLE V

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed or contract to purchase therefore, whether or not it shall be so expressed in such deed or contract, 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 land and shall be a continuing lien upon the Lot or other property within the Properties against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in titles unless expressly assumed by them, except such assessments will be a lien on the land when recorded, notice of such claim is made by the Association.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and of the homes situated at the Properties.

Section 3. Special Assessments for Capital Improvements. In addition to the annual assessments, 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 upon easements and/or right of ways, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Association who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4. Notice and Quorum for any Action Authorized Under Section 3. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 immediately above shall be sent to all members not less than thirty (30) days and not 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 the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, 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.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, or annual basis.

Section 6. Date of Commencement of Annual Assessments: Due Dates: The Annual assessments provided for herein shall commence as to all Lots when thirty percent (30%) of Lot sales have been reached or within three (3) years of the date of the conveyance of the first Lot within the Properties sold to a Public Purchaser, whichever comes first. The first annual assessment shall be adjusted according to the number of months remaining in the calendar

year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the

Docket 550 Page 473

annual assessment shall be sent to every Owner subject thereto. 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 specific Lot have been paid.

Section 7. Effect of Nonpayment of Assessments: Remedies of the Association. Each Owner of any Lot on becoming an Owner of any Lot or by becoming a member of the Association in any manner, is and shall be deemed to covenant and agree to pay to the Association the assessments provided for herein, and agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any assessment, whether by Suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner and member 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 or member. 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 any manner provided by law or in equity, or without any litigation of 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 or member to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the maximum legal rate per annum from the date of delinquency, 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 claim of lien with power of sale, on each and every Lot within the Properties to secure payment to the Association of any and all assessments levied against any and all Owners of such Lots under the Properties restrictions, together with interest thereon at the maximum legal rate per annum from the date of delinquency, 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 ninety (90) days after the 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 the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a 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 a claim of lien on behalf of the Association against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by an officer of the Association, and shall contain substantially the following information:

1. The name of the delinquent Owner;

2. The legal description and street address of the Lot 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 the Properties Restrictions; and
5. That a lien is claimed against said Lot in an amount equal to the amount stated. including

Docket 550 Page 474

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing 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 Lot against which such assessment was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing unit, and the liens which are specifically described in Section 8 hereinafter. 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 Lot Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event such foreclosure is by action in court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a Lot in the Properties, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner and also hereby expressly waives the defense of the Statute of Limitation applicable to the bringing of any suite or action thereon.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage of an "institutional holder"; a mortgage company which is a bank or savings and loan association, insurance company, mortgage company, or other entity chartered under federal or state law, or any federal or state agency which owns an obligation, the repayment of which is in whole or in part, secured by a mortgage recorded against any Lot or other property within the Properties. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.