

Article VIII
ASSESSMENTS

8.1. Creation of and Obligation for Assessments.

(a) Purposes and Types. There are hereby created, and the Association is hereby authorized to levy assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under this Declaration, any Supplemental Declaration, the Articles and the By-Laws, specifically including but not limited to: expenses of maintaining, repairing, replacing, improving, operating, and insuring the Area of Common Responsibility and all improvements located thereon, including amounts due to third parties who perform such tasks on behalf of the Association, and the costs of labor, equipment, materials, management, supervision and utilities; taxes, if any, imposed on the Association or the Common Area; the cost of insurance and fidelity bond coverage obtained pursuant to **Article VI**; expenses of monitoring and enforcing compliance with the provisions of this Declaration and all exhibits hereto and all instruments referenced herein; expenses arising out of the Association's indemnification obligations under **Section 4.6**; expenses arising out of any measure undertaken to enhance the safety of the Owners and occupants of Units and the Properties pursuant to **Section 4.8**; expenses of the New Construction Committee and Modifications Committee in exercising their responsibilities for architectural control under **Article IX**; expenses of managing the Association, including compensation of management personnel, maintaining books and records, handling Association funds, providing financial reports, and corresponding with Members; administrative expenses such as postage, copying expense, office supplies and equipment; legal, accounting, and other professional fees; and such other expenses as the Board deems necessary or desirable to keep the Properties in good, clean, and attractive condition and to maintain and enhance property values and marketability of Units within the Properties. Such assessments shall commence at the time and in the manner set forth in **Section 8.8**.

There shall be three types of assessments: (a) General Assessments as described in **Section 8.3**; (b) Special Assessments as described in **Section 8.5**; and (c) Specific Assessments as described in **Section 8.6**. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

(b) Personal Obligation and Lien. All assessments, together with interest (computed from the due date of such assessment at a rate of 18% per annum or such higher rate as the Board may establish, subject to the limitations of North Carolina law), late charges in such amount as the Board may establish by resolution (subject to the limitations of North Carolina law), costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in **Section 8.7**. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage or by conveyance in lieu of foreclosure,

and no subsequent direct or remote transferee of such title by such first Mortgagee shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. The General Assessment shall be an annual assessment due and payable in two equal installments payable on January 1 and July 1 of each fiscal year; provided, the Board may by resolution require payment in one installment or permit payment in more than two installments. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

8.2. Declarant's Obligation for Assessments. During the Class "B" Control Period, Declarant shall pay the assessments levied on its unsold Units pursuant to **Section 8.8**. Declarant's Units shall be considered in computing the General Assessment rate under **Section 8.3**. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, the Declarant shall pay assessments on its unsold Units in the same manner as any other Owner in accordance with the applicable rate of assessment under **Section 8.8**.

8.3. Computation of General Assessments.

(a) At least 30 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in **Section 8.4**.

Except as otherwise provided in **Section 8.8**, General Assessments shall be fixed at a uniform rate for all Units. Subject to the provisions of this **Section 8.3**, such assessment rate shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years, any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to partial or full assessment during the fiscal year, and any income expected to be generated from Specific Assessments pursuant to **Sections 8.6(a), (b), and (c)**.

So long as the Declarant has the right unilaterally to annex additional property pursuant to **Section 7.1**, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under **Section 8.2**), which may be treated in the Declarant's discretion, in whole or in part, as a contribution, an advance against future assessments due from the Declarant, and/or an interest free loan by Declarant to the Association to be repaid by the Association as soon as reasonably possible from future assessments, but in any event prior to the termination of the Class "B" Control Period. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and the treatment of such subsidy shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall within thirty (30) days following the Board's adoption of a proposed budget for the Association, mail a summary of such proposed budget to each Owner at the mailing address of each Unit or any other mailing address designated in writing by an Owner. In such notice, the Board shall specify the date and time of the meeting of the Association to consider ratification of such proposed budget and such notice shall also note that the proposed budget may be ratified at the meeting regardless of whether or not a quorum of the Members are present at such meeting. The meeting called for in such notice shall be no less than ten (10) nor more than sixty (60) days following the mailing of the budget summary and the notice of meeting. The budget proposed by the Board shall automatically be deemed ratified at such meeting unless at such meeting, a majority of all the Members in the Association rejects the budget. If the proposed budget is rejected, the periodic budget last ratified by the Members shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board. In addition to Member approval of the budget as provided above, if the proposed General Assessment set forth in the budget would exceed the applicable Maximum General Assessment, the proposed General Assessment shall become effective only upon approval by 67% of the Class "A" votes represented at a duly called meeting of the membership at which a quorum is present, and the consent of the Class "B" Member. If a quorum is not present at the meeting when originally called, a second meeting may be called and the quorum for the second meeting shall be reduced to one-half of the quorum originally required.

(b) Except as specifically provided herein, the maximum General Assessment which may be levied on any Unit without a vote of the membership shall be TWO HUNDRED SEVENTY-

FIVE DOLLARS (\$275.00) for each calendar year; provided that the Board may increase the maximum General Assessment up to FIVE HUNDRED FIFTY DOLLARS (\$550.00) for each calendar year without a vote of the membership for the calendar year in which Declarant's completed construction of the Pool and Clubhouse will occur based upon the estimated increase in General Assessment required for the remainder of the calendar year during which the Pool and Clubhouse will be completed and for each calendar year thereafter. The maximum General Assessments as set forth above, shall automatically increase for each subsequent fiscal year by 10% or the percentage increase in the Consumer Price Index during the previous fiscal year, whichever is greater (the "Maximum General Assessment"). The "Consumer Price Index" shall refer to the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers (South Region; Base: 1982-84 = 100). If the compilation and/or publication of the CPI shall be substantially revised, transferred to any other governmental department or bureau or agency or shall be discontinued, then the index (or a substitute procedure which reasonably reflects and monitors fluctuations in consumer prices) most nearly the same as the CPI shall be used to make the calculations envisioned herein, or in the event no such alternative index exists or a dispute arises concerning the selection of such alternative index, the Board shall have the final right and power to select and/or formulate such an alternate index. The Maximum General Assessment for any year may be increased by an amount greater than that set forth above with the assent of at least 67% of the Class "A" votes represented at a duly called meeting of the membership at which a quorum is present and the consent of the Class "B" Member.

8.4. Reserve Budget and Capital Contribution. The Board shall annually prepare a reserve budget which takes into account the number and nature of replaceable assets, if any, within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual General Assessments over the budget period.

8.5. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in this Declaration, any Special Assessment which, when combined with the General Assessment, would result in payments due in any fiscal year in excess of the Maximum General Assessment permitted for such fiscal year, shall require the affirmative vote or written consent of Members representing a majority of the total Class "A" votes in the Association, and the affirmative vote or written consent of the Class "B" Member, if such exists. ~~Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.~~ Except as otherwise provided in **Section 8.8**, Special Assessments shall be levied equally on all Units.

8.6. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item, or service as a deposit against charges to be incurred by the Owner;

(b) to cover the Unit's pro rata share of the costs of owning, operating, maintaining, repairing, replacing, and insuring any Exclusive Common Area assigned to the Unit, as described in **Article XII**; and

(c) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with By-Laws Section 3.24, before levying any Specific Assessment under this subsection (c).

8.7. Lien for Assessments. Pursuant to N.C.G.S. 47E-3-116, the Association shall have a lien against each Unit to secure payment of assessments which are not paid within thirty (30) days of their due date, as well as fees, fines, interest, late charges and other charges (subject to the limitations of North Carolina law) imposed pursuant to N.C.G.S. 47E-3-102, 107, 107A and 115 and costs of collection (including attorneys' fees) upon filing by the Association of a claim of lien in the office of the clerk of court in the County where the Unit is located. A claim of lien shall set forth the name and address of the Association, the name of the record owner of the Unit at the time the claim of lien is filed, a description of the Unit, and the amount of the lien claimed. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages are foreclosed under North Carolina law.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) ~~each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association.~~ The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer except to the extent that North Carolina law grants

priority over Mortgages to liens of owners associations such as the Association. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title except to the extent of any priority granted to the Association's lien by North Carolina law. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under this Declaration, including such acquirer, its successors and assigns.

8.8. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the first calender month following the calender month in which the Unit is made subject to this Declaration; provided, however, if the Unit consists of vacant land which has not been subdivided into individual building lots, then assessments on such vacant land shall not commence until a subdivision plat subdividing the vacant land into individual building lots has been recorded; provided, further that if a subdivision plat subdividing the vacant land is recorded, then the assessments shall only commence as to those lots shown on the subdivision plat, and not any vacant land which remains to be subdivided. Notwithstanding the above, until the first day of the first calender month following the calender month in which a particular Unit is first occupied for residential purposes such Unit shall be assessed only one-third (1/3) of the full General Assessment rate and shall pay only one-third (1/3) of any Special Assessment which would otherwise be payable during such period. The first annual General Assessment levied on each Unit, whether levied at the partial or full rate, shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

8.9. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.10. Exempt Property. The following property shall be exempt from payment of assessments:

(a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to **Section 5.1**; and

(b) Any property dedicated to and accepted by any governmental authority or public utility.