

ARTICLE IV

ASSESSMENTS

4.01. The Declarant covenants and agrees for each Lot owned by it in the Project, and each Owner by acceptance of the deed to such Owners lot is deemed to covenant and agree, to pay to the Council or Association the regular and special assessments levied pursuant to the provisions of this Declaration. All moneys collected shall be put into a maintenance fund to be used to defray expenses attributable to the ownership, operation, and maintenance of common interests by the Association or Council. The Owner may not waive or otherwise escape liability for these assessments by nonuse of the Common Elements or by abandonment of such Owners Lot.

4.02. Regular and special assessments shall be made in accordance with the following:

- (a) Within sixty (60) days prior to the beginning of each calendar year, the Board shall estimate the net charges to be paid during such year, including a reasonable provision for contingencies and replacements with adjustments made for any expected income and surplus from the prior year's fund. Such estimated cash requirement shall be assessed to each Owner according to the ratio of the number of Lots owned by the Owner assessed to the total number of Lots in the Project subject to assessment. Each Owner is obligated to pay assessments to the Board in equal monthly, quarterly, semi-annually or annually on or before the first day of each month or within five (5) days after becoming due and payable.
- (b) If the board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year due to the cost of any construction, unexpected repairs or replacements of capital improvements on the Common Elements, or for any other reason, it shall make a special assessment for the additional amount needed. Such special assessments shall be levied and collected in the same manner as regular assessments.

4.03. The Board may not, without the approval of a majority of the voting power of the Association of Council residing in Members other than Declarant, impose a regular annual assessment per Lot which is more than twenty-five (25) percent greater than the regular annual assessment for the preceding year, nor levy special assessments which in the aggregate exceed ten (10) percent of the budgeted gross expenses of the Association or Council for that year. These limitations shall not apply to a special assessment levied against a Co-Owner to reimburse the Council for funds expended in order to bring the Co-Owner into compliance with the provisions of the Council's Governing Instruments.

4.04. Regular assessments shall commence on the first day of the month after the date of closing of the first sale of a Lot in the Project.

4.05. Each monthly portion of a regular assessment and each special assessment shall be a separate, distinct, and personal debt and obligation of the Co-Owner against whom the same are assessed. The amount of any assessment not paid when due shall be deemed to be delinquent.

4.06. On the sale or conveyance of any lot, all unpaid assessments against a Co-Owner for his share in the expenses to which Paragraph 4.02 refers shall first be paid out of the sale price or by the purchaser in preference over any other assessments or charges of whatever nature, except the following:

- (a) Assessments, liens, and charges in favor of the state or any political subdivision thereof for taxes past due and unpaid on the Lot or improvement thereon;
- (b) Amounts due under mortgage instruments duly recorded.

ARTICLE V

RESTRICTIONS AND COVENANTS

5.01. The right of a Owner and his guests to occupy or use his Lot and any improvements thereon, or to use the Common Elements or any facilities thereon, is subject to the Protective Covenants for Pine Tree Estates #2 attached hereto and incorporated herein by reference for all purposes.

5.02. Except for those portions which the Association or Council is required to maintain and repair, each Co-Owner shall at his sole cost and expense, maintain and repair his Lot and the improvements thereon, keeping the same in good condition and repair. Each Co-Owner shall also maintain and repair those portions of the Common Element subject to an exclusive easement appurtenant to his Lot.

5.03. Each Co-Owner shall be liable to the Council or Association for all damage to the Common Elements or other Council or Association property that is sustained by reason of the negligence or willful misconduct of that Co-Owner, his family, guests, or tenants.

5.04. Declarant shall be exempt from the restrictions of Section 5.01 to the extent necessary for completion of construction, sales, or additions to the Project. Such exemption includes, but is not limited to, maintaining Lots and the improvements thereon as model homes, placing advertising signs on Project property, and generally making such use of the Project lots and the improvements and Common Elements as is necessary to carry on construction activity.

ARTICLE VI

DAMAGE OR DESTRUCTION

6.01. If the Project is damaged by fire or any other disaster, the insurance proceeds, except as provided below shall be applied to reconstruct the project.

6.02. Reconstruction shall not be compulsory if it comprises the whole or more than two-thirds (2/3) of the building as determined by the Association or Council. In such case and unless otherwise unanimously agreed to by the Co-Owners, the proceeds shall be delivered pro rata to the Co-Owners or their mortgagees, as their interest may appear, entitled to it in accordance with the percentages or fractions of ownership as set forth in this Declaration.

6.03. When the insurance proceeds are insufficient to cover the cost of reconstruction and reconstruction is required by Paragraph 6.01 above, the cost in excess of the insurance proceeds shall be paid by all of the Co-Owners directly affected by the damage, in proportion to the percentages or fractions assigned to their respective lots. If any one or more of those composing the minority shall refuse to make such payments, the majority may proceed with the reconstruction at the expense of all the Co-Owners benefited thereby, on proper resolution setting forth the circumstances of the case and the cost of the work. The provisions of this Paragraph may be changed by unanimous resolution of the parties concerned adopted subsequent to the date on which the fire or other disaster occurs.

6.04. The board shall obtain firm bids, including the obligation to obtain a performance bond, from two or more responsible contractors to rebuild the project in accordance with its original plans and specifications and shall, as soon as possible thereafter, call a special meeting of the Co-Owners to consider such bids. If the board fails to do so within sixty (60) days after the casualty occurs, any Co-Owner may obtain such bids and call and conduct such meeting as herein provided. At such meeting, the Co-Owners may, by sixty six and two thirds (66 2/3) percent vote, elect to reject all of such bids, or by fifty-one (51) percent vote, elect to reject all such bids requiring amounts more than five hundred (500) in excess of available insurance proceeds. If all bids are rejected, the Board shall obtain additional bids for presentation to the Co-Owners. Failure to reject all bids shall authorize the Board to accept the unrejected bid in considerations most favorable.

ARTICLE VII

RIGHTS OF BENEFICIARIES UNDER DEEDS OF TRUST

7.01. Declarant hereby warrants that beneficiaries under deeds of trust to Lots and improvements thereon in the Project shall be entitled to the following rights and guaranties:

- (a) Should any of the Council's Governing Instruments provide for a "right of first refusal," such right shall not impair the rights of a beneficiary under a first lien deed of trust to:
 - (i) Exercise the power of sale, foreclose, or take title to any Lot or improvement thereon pursuant to the remedies provided in the deed of trust;
 - (ii) Accept a deed (or assignment) in lieu of sale or foreclosure in the event of default by a grantor;
 - (iii) Interfere with a subsequent sale or lease of a Lot and the improvement thereon so acquired by the beneficiary.
- (b) A beneficiary under a first lien deed of trust, on request, will be entitled to written notification from the Council of any default in the performance by the grantor of any obligation under the Council's Governing Instruments which is not cured within sixty (60) days.
- (c) Any beneficiary under a first deed of trust who obtains title to a Lot pursuant to the remedies provided in the deed of trust will not be liable for such Lot's unpaid assessments which accrue prior to the acquisition of title to said Lot by the beneficiary.
- (d) Unless at least two-thirds (2/3) of the beneficiaries under first deeds of trust, or Co-Owners other than Declarant have given their prior written approval, the Council or Association shall not be entitled to:
 - (i) By act or omission, seek to abandon to terminate the Project;
 - (ii) Change the pro rata interest or obligations of any individual Lot for the Purpose of:
 - (A) Levying assessments or charges, or allocating distributions of hazard insurance proceeds or condemnation awards;

- (B) Determining the pro rata share of ownership of each Lot in regard to the Common Elements and the improvements thereon.
- (iii) Partition or subdivide any Lot;
- (iv) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements;
- (v) Use hazard insurance proceeds for losses to any Project property for other than the repair, replacement, or reconstruction of such property, except as provided by statute in case of substantial loss to the Common Elements of the Project.
- (e) All taxes, assessments, and charges which may become liens prior to the first mortgage under local law, shall relate only to the individual lot and not to the Project as a whole.
- (f) No provision of the Governing Instruments of the Council or Association gives any Co-Owner or any other party, priority over any rights of the beneficiary under a first deed of trust to the Lots or Common Areas pursuant to its deed of trust in the case of a distribution to such Co-Owner of insurance proceeds or condemnation awards for losses to or taking of any Lot or the Common Elements or portions thereof.
- (g) Council or Association assessments shall be large enough to provide for an adequate reserve fund for maintenance, repairs, and replacement of those common elements that must be replaced on a periodic basis. Such a reserve fund will be funded through the regular monthly assessments rather than by special assessments.

ARTICLE VIII

RIGHTS AND RESPONSIBILITIES OF THE DEVELOPER

- 8.01. The Developer shall retain voting rights for any units that have not been sold by the time control of the project is transferred to the Owners Association.
- 8.02. Prior to the time control of the Project is transferred to the Owners Association the Developer will be classified as a Class B member of the Council or Association and shall be entitled to three votes for each lot unsold and remaining in the possession of the Developer or Declarant.
- 8.03. The Developer shall transfer control of the Owners Association to the Co-Owners no later than the earlier of:
- (a) Four (4) months after seventy-five (75) percent of the units in the Project have been conveyed to Lot purchasers;
 - (b) or one (1) year from the date the first Lot with improvement thereon has been transferred to an owner.
- 8.04. The Developer has the right to enter into a contract before control of the Project is passed to the Owners Association to provide for professional management of the development. The Developer cannot directly or indirectly bind the Owners Association to a contract unless the contract includes a right of termination without cause that the Owners Association can exercise at any time after the