

## **ARTICLE 8 ASSESSMENTS**

### **Section 8.1 Power to Levy Assessments**

The Association, through its Board, has the power to levy Assessments against the Owners and the Lots in accordance with the Governing Documents. Each Owner, upon the recordation of a deed or other instrument reflecting a transfer of any interest in any Lot, whether or not it is stated in that deed, covenants and agrees to pay to the Association:

- (1) Annual Assessments or charges;**
- (2) Special Assessments; and**
- (3) Reimbursement Assessments. All Assessments, together with interest, late fees, costs, litigation expenses and reasonable attorney fees, will be a charge and a continuing lien against the Lot Delinquent Assessments, together with interest, late fees, costs, and reasonable attorney fees, are the personal obligation of the Owner of the Lot.**

### **Section 8.2 Annual Assessments**

#### **Section 8.2.1 Establishing the Annual Assessments**

The Board will determine the amount of the Annual Assessment based upon the operating budget of the Association. The annual Assessment will include a reasonable amount for reserves, as determined by the Board.

#### **Section 8.2.2 Increases in the Assessments**

The amount of the annual Assessment may not be increased more than 20% over the amount of the previous year's Assessment (or such larger percentage as provided for in the Act, A.R.S. §33-1801, et. Seq.) without the approval of a majority of the Members of the Association (or in compliance with any other voting requirements set forth in the Act, as amended from time to time).

#### **Section 8.2.3 Notice to Owners of Annual Assessments**

The Board will provide notice to the Owners of any change to the amount of the Annual Assessment at least 30 days before January 1 of each year. The Board may determine that the Annual Assessment is payable in equal monthly installments or on any other periodic basis. If the Board does not set the amount of the annual Assessment by December 1 of each year, then any increase goes into effect 30 days after notice is provided to the Owners.

#### **Section 8.2.4 Deficiencies in the Operating Account**

If there is a deficiency in the operating account in any fiscal year and if the Board did not increase the amount of that year's Assessments by 20% on January 1 of that year, the Board has the right to increase the amount of the remainder of the year's Assessments up to the 20% of the previous year's Assessment in order to fund the shortfall.

#### **Section 8.2.5 Acceleration of Payment of Annual Assessment**

In the event that the Board determines that the annual Assessment is payable in installments, at such time as any Owner is delinquent in the payment of such installments, the Board has the right to accelerate the balance of the year's Assessment, all of which will be due within thirty days of written notice provided by the Board to the Owner.

#### **Section 8.2.6 Due Dates for Annual Assessments**

Each Owner will begin paying the Annual Assessments on the first day of the month following the conveyance of a Lot to that Owner. This amount will be adjusted according to the number of months remaining in the calendar year.

#### **Section 8.3 Special Assessments**

In addition to the Annual Assessment, the Board may levy Special Assessments for any of the following purposes:

- (1) constructing capital improvements;
- (2) correcting an inadequacy in the current operating account;
- (3) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair Or replacement of improvements in the Common Areas; or
- (4) Paying for such other matters that the Board may deem appropriate.

Special Assessments must be approved by a vote of a majority of the Owners voting in person or by absentee ballot at any meeting of the Association at which a quorum is present. The Board will determine the due date of any Special Assessment.

#### **Section 8.4 Uniform Rate of Assessment**

All Assessments must be set at a uniform rate for all lots.

#### **Section 8.5 Reimbursement Assessments**

The Association has the right to impose a Reimbursement Assessment against any Owner if a failure to comply with the Governing Documents has:

- (1) necessitated an expenditure of money by the Association to bring the Owner, his/her Lot or the Common Areas (in the event that the Common Areas are damaged or destroyed by the negligent or willful acts of the Owner) into compliance, including any attorney fees which were incurred by the Association; or
- (2) resulted in the imposition of a fine or penalty by the Board, after notice of the violation and an opportunity for a hearing has been given to the Owner.

#### **Section 8.6 Effect of Nonpayment of Assessments; Remedies of the Association**

**Section 8.6.1** In addition to all other remedies provided by law, the Association, or its authorized representative, such as its attorney, may enforce the obligations of any Owner to pay the Assessments in any manner provided by law or by either or both of the following procedures:

**Section 8.6.1.1 Lawsuit:** The Association may file a lawsuit against any Owner who is personally obligated to pay the Assessments, which are delinquent. Any judgment obtained in the Association's favor will include the amount of the delinquent Assessments, any additional charges incurred by the Association, attorney fees and court costs, litigation expenses, collection costs and any other amounts, which the court may award. A proceeding to obtain a judgment for unpaid Assessments may be maintained without the necessity of foreclosing or waiving the Association's lien.

**Section 8.6.1.2 Foreclosure of the Lien:** The Association's lien for any unpaid Assessment arises when any Assessment is not paid within thirty days of its due date. As more fully provided for in A.R.S. §33-1807 of the Act, the recording of the Declaration of Covenants, Conditions and Restrictions for Canoa Seca Estates II, Inc., on October 4, 1989 in Docket 8636 at page 1125 et. Seq. provides record notice and perfection of the Association's lien. The Association is not required to record a lien, but may do so to provide notice to third parties of its interest in the lot. Except for the transfer of a Lot pursuant to a foreclosure proceeding, the sale or

transfer of a Lot does not affect the Association's lien. The Association may commence and maintain proceedings to foreclose its lien in the same manner as the foreclosure of mortgages. The lien for Assessments is prior and superior to all other liens, except:

- (1) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto; and
- (2) the lien of any mortgage or deed of trust which is recorded before October 4, 1989, which is the date that the original Declaration was recorded.

### **Section 8.6.2 Additional Charges**

In addition to any other amounts due or any other relief or remedy obtained against a delinquent Owner, each Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur in the process of collecting funds from any Owner. All additional charges will be included in any judgment in any suit to collect delinquent Assessments or may be levied against a Lot as a reimbursement Assessment. Additional charges will include, but not be limited to, the following:

**Section 8.6.2.1 Attorney Fees:** Reasonable attorney fees and costs incurred in the event an attorney is employed to collect any assessment or sum due, including the recordation of the lien, or the filing of a suit or otherwise;

**Section 8.6.2.2 Late Charges:** A late charge, in an amount to be determined by the Board, but in no event greater than the maximum amount authorized under the Act, which as of the date of the adoption of this Declaration is 10% of the amount due or \$25.00, whichever is greater. An assessment becomes delinquent if it is not paid within 30 days from the date it is due;

**Section 8.6.2.3 Costs of Suit:** Litigation expenses and court costs incurred;

**Section 8.6.2.4 Interest:** Interest on all sums due from the Owner, including delinquent Assessments, costs of collection, attorney fees and late charges, at an annual percentage rate as established by the Board; and

**Section 8.6.2.5 Other:** Any other additional costs, which the Association

may incur in the process of collecting delinquent Assessments or other sums due to the Association.

#### **Section 8.7 Application of Payments**

All payments received by the Association will be applied first to the principal amount due which includes the late charges and any collection costs and attorney fees incurred by the Association, and then to any interest, which has accrued on these sums.

#### **Section 8.8 Statement of Assessment Lien**

Upon the written request of any Owner, the Owner's agent, or a lien holder, the Association will furnish the Person making the request with a written certificate, in a recordable form, signed by an officer or authorized agent of the Association stating the amount of any Assessment which is due and any additional charges secured by the lien upon his/her Lot. The Board may charge a reasonable fee to issue that certificate.

#### **Section 8.9 No Exemption of Owner**

No Owner is exempt from liability for the payment of Assessments because he/she does not use or enjoy the Common Areas, or has abandoned his/her Lot, or for any other reason, including any allegation that the Board is not performing its obligations under the Governing Documents.

#### **Section 8.10 Right to Foreclose**

Merely because the Association obtains a personal judgment against an Owner for delinquent Assessments does not waive the Association's lien or any action to foreclose that lien.

#### **Section 8.11 Subordination the Lien to the First Mortgagee**

The lien for Assessments is subordinate to the lien of any first mortgage or deed of trust recorded against the Lot. The sale or transfer of any Lot does not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to a foreclosure of the first mortgage or deed of trust, or any proceeding in lieu thereof, extinguishes the lien for such Assessments but only as to those payments, which became due prior to such sale or transfer. No sale or transfer of any Lot shall relieve the Lot from liability

for any Assessments, which become due before the sale or transfer or from the lien for Assessments.

#### **Section 8.12 Membership in Green Valley Recreation, Inc.**

**Green Valley Recreation, Inc. ("G.VR") is a non-profit corporation organized under the laws of the State of Arizona that has been formed for the purpose of maintaining facilities and services for social and recreational facilities in Green Valley. On November 8, 1978, Green Valley Recreation, Inc. recorded a Master Deed Restriction in Docket 5900 on page 894, Pima County records, establishing a method to incorporate land within its jurisdictional area. The Properties are a part of that area, and each purchaser of a Lot within the Properties, by acceptance of a deed, agrees for himself, his heirs, successors and assigns, to become and remain a member of Green Valley Recreation, Inc or its successors and assigns, to be bound by the rules and regulations, to pay all membership assessments imposed by Green Valley Recreation, Inc., and to comply with all provisions of the Articles of Incorporation and By-Laws of Green Valley Recreation, Inc. Each Lot within the Properties is subject to this Master Deed Restriction and there is a lien with power of sale, encumbering each Lot to secure payment of the Green Valley Recreation annual membership assessments. The lien for assessments in favor of GVR will be subordinate to the lien of any first mortgage holder and first mortgage holder will not be liable for payment of such assessments. A first mortgage holder or any party acquiring title to a mortgaged Lot through foreclosure or any equitable proceeding arising from said first mortgage, such as taking of a deed in lieu of foreclosure, will acquire title to a Lot free and clear of any lien authorized by any provisions of this section which secures the payment of the assessment to GVR occurring prior to the conclusion of the foreclosure suit or equivalent proceeding. Any such unpaid assessment will continue to exist as a personal obligation of the defaulting Owner to GVR. Any assessment imposed after an Owner takes title to a Lot which is unpaid will become a lien on the Lot as herein provided.**