



PALM DESERT COUNTRY CLUB ASSOCIATION

**FIRST RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
PALM DESERT COUNTRY CLUB ASSOCIATION**



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FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF PALM DESERT COUNTRY CLUB ASSOCIATION

The Declaration of Restrictions for PALM CITY ASSOCIATION, a non-profit California corporation doing business as PALM DESERT COUNTRY CLUB ASSOCIATION, executed by Marnel Development Company ("Declarant:") is hereby amended and restated in its entirety to read as follows:

RECITALS

- A. Declarant was the original owner of that certain real property ("properties") now located in the City of Palm Desert, County of Riverside, and State of California, which is more particularly described in Exhibit "A" attached hereto. (hereinafter sometimes referred to as Tracts 2283 and 2137.)
- B. Declarant conveyed the Properties, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declarations, and amendments thereto as referred to above, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties, and all of which shall run with the Properties and be binding on all parties having or acquiring any right, title or interest in the properties, or any part thereof, their heirs, successors and assigns, and shall endure to the benefit of each Owner thereof.
- C. It was the further intention of the Declarant to sell and convey individual residential Lots originally constructed by the Declarant to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such Owners which are set forth in this Declaration and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Properties as a common interest development as that term is defined in Section 1351C of the California Civil Code.

It was the intention of Declarant that the "Common Areas" and Common Facilities" be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invitees, subject to the terms and conditions of the Governing Documents.

- D. It is also contemplated that additional properties may, from time to time, become subject to this declaration, pursuant to the annexation provisions of this Declaration.

ARTICLE I DEFINITIONS

Section 1. “Annexation” means any addition of property to the Properties subject to the jurisdiction of this Declaration and the Association (“Annexed Territory”), as more fully described in Article XVI herein.

Section 2. “Architectural Control Committee” means the Committee created in accordance with Article VII of this Declaration.

Section 3. “Articles” means the Articles of Incorporation of PALM CITY ASSOCIATION, a nonprofit California corporation doing business as PALM DESERT COUNTRY CLUB ASSOCIATION, filed on March 2, 1961 and the Certificate of Amendment thereto filed on April 19, 1977, in the Office of the Secretary of State of the State of California, and as such Articles may be amended from time to time.

Section 4. “Assessment” means any Regular, Special or Special Individual/Reimbursement Assessment made or assessed by the Association against an Owner and his or her Lot or Separate Interest in accordance with the provisions of Article V of this Declaration.

Section 5. “Association” means the PALM CITY ASSOCIATION, a nonprofit California corporation doing business as PALM DESERT COUNTRY CLUB ASSOCIATION (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an “association” as defined in California Civil Code Section 1351(a).

Section 6. “Association Rules” means the rules, regulations and policies adopted by the Board of Directors of the Association, pursuant to Article IV, Section 2 of this Declaration, as the same may be in effect from time to time.

Section 7. “Beneficiary” means a mortgagee under a mortgage or, as the case may be, the beneficiary of or holder of a note secured by a Deed of Trust, and/or the assignees of such mortgagee, beneficiary or holder.

Section 8. “Board of Directors” or “Board” means the Board of Directors of the Association.

Section 9. “Bylaws” means the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 10. “City” means the City of Palm Desert, and it’s various departments, divisions, employees and representatives.

Section 11. “Common Area” means Lot 27 of tract 2137, and the Recreation Area and recreational and club facilities located thereon. Unless the context clearly indicates a contrary intention, and reference herein to the “Common Area” shall also include any Common Facilities located thereon.

Section 12. “Common Expense” means any use of Common Funds authorized by this Declaration and Article VI of the Bylaws and includes, without limitations:

- (a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, taxes, operation, repairs, additions, alterations or reconstruction of the Common Area, Common Facilities;
- (b) All expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board of Directors;
- (c) Any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Area and Common Facilities and for non payment of any Assessments; and
- (d) The use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.
- (e) Any expense reasonably incurred to protect, preserve and maintain the Association in the discretion of the Board of Directors.

Section 13. “Common Facilities” means the recreational and club facilities, pool, and garden area located on Lot 27 of tract 2137, and structures and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area.

Section 14. “Declarant” means the original Developer of the Properties, namely Marnel Development Company.

Section 15. “Declaration” means this instrument, including all of the Exhibits referred to herein (all of which shall be deemed incorporated herein by reference), as the same may be amended from time to time. The “Original Declaration” means and refers to the documents referenced in the preamble to this Declaration.

Section 16. “Deed of Trust” or “Trust Deed” means a first mortgage or a first Deed of Trust, as the case may be.

Section 17. “Governing Documents” is a collective term that means and refers to this Declaration and to the Articles, the Bylaws and the Association Rules and Regulations, as they may be amended from time to time.

Section 18. “Improvement” includes, without limitations, the construction, installation, alteration, or remodeling of any buildings, walls, decks, fences swimming pools, landscaping, landscape structures, skylights, solar heating equipment, spas, antennas, utility lines, or any structure of any kind. In no event shall the term “Improvement” be interpreted to include improvements which are restricted to the interior of any Residence on a Lot.

Section 19. “Lot” means each of the Lots within the development which is subject to this Declaration including a single family residential Lot or one-fourth individual interest in any cooperative apartment Lot. When appropriate within the context of the Declaration, the term “Lot” shall also include the Residence and other Improvements constructed or to be constructed on a Lot.

Section 20. “Member” means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Article II, Section 1 hereof.

Section 21. “Mortgage” means any security devise encumbering all or any portion of the Properties, including any Deed of Trust. “Mortgagee” shall refer to the beneficiary of, or the holder of Note secured by a first Deed of Trust (Trust Deed) or, as the case may be, the mortgagee under a first mortgage, and/or the assignee of such beneficiary, holder or mortgagee.

Section 22. “Owner” means any person, firm, corporation or other entity which owns a fee simple interest in a Lot.

Section 23. “Owner of Record” and “Member of the Association” include an Owner and mean any person, firm, corporation or other entity in which title to a Lot has vested as shown by the official records of the Office of the County Recorder.

Section 24. “Properties” means all real property subject to this Declaration or which hereafter may be made subject to this Declaration, together with all buildings, structures, utilities, Common Facilities; and all other improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto.

Section 25. "Recreation Area" means the recreational and club facilities, pool and garden area located on Lot 27 of Tract 2137, and such other portions of the Common Area as shall be designated as such by the Board from time to time, except that the same shall not include any Private Street.

Section 26. "Regular Assessment" means an Assessment levied on an Owner and his or her Lot in accordance with Article V, Section 3 hereof.

Section 27. "Residence" means a residential dwelling constructed on a Lot, intended for use and occupancy by a single family.

Section 28. "Rules and Regulations" means such rules and regulations as may be adopted from time to time by the Board with respect to the use of the Common Area and Residences by the Owners and by their tenants, guests, invitees and licensees.

Section 29. "Single Family Residential Use" means occupancy and use of a Residence for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy single family residential dwellings.

Section 30. "Special Assessment" means an Assessment levied against an owner and his/her Lot in accordance with Article V, Section 4 hereof.

ARTICLE II MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 1. Membership. All Owners of Lots against which assessments are levied pursuant to this Declaration, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot. Each Owner is obligated promptly, fully and faithfully to comply with and conform to the Articles, this Declaration, the Bylaws and the Rules and Regulations adopted thereunder from time to time by the Board.

Section 2. Classes of Membership. The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents. The Board shall have the power to establish other classes of membership, including, but not limited to, associate memberships, for non-residents' use of the pool area and recreational facilities, and establish fees for such memberships, to limit the number of such memberships and use of such facilities by said members and to revoke memberships.

Section 3. Voting. Subject to the provisions of the Governing Documents, each Owner of a Lot against which assessments are levied shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to the Declaration and in accordance with the Articles and Bylaws which are incorporated herein. Each Lot against which assessments are levied shall be entitled to one (1) vote.

Section 4. Multiple Ownership. Multiple owners shall be deemed to be one Member for voting purposes, and are entitled to one vote per Lot owned and against which assessments are levied. Notwithstanding this Section, each Owner of Record shall have equal rights as Members to use and enjoy the Common Area and Common Facilities. Multiple Owners of a Lot shall designate one Owner of Record as the voting member, and shall give notice to the Secretary of the Association of such designation. If no such notification is received, the Secretary may accept the vote of any Owner of Record or the proxy holder of such Owner as the vote cast for that Lot. However, if the multiple Owners attempt to vote in a fashion inconsistent with that of the designated voting member, the Secretary or other persons designated by the Board of Directors as inspectors of election may refuse to count any ballot pertaining to said Lot.

Section 5. Transfer. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Lot to which it is appurtenant, and then only to the purchaser. The transfer of title or sale of a Lot and transfer of possession thereof to the purchaser shall automatically transfer the membership appurtenant to such Lot to the transferee. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in his or her name to the purchaser of such Lot, the Association shall have the right to record the transfer upon the books of the Association.

ARTICLE III PROPERTY RIGHTS AND OBLIGATIONS OF OWNERS

Section 1. Owner's Nonexclusive Easements of Enjoyment.

Every Member shall have a nonexclusive easement for use and enjoyment in and to the Common Area and the recreational and club facilities located thereon. Such right shall be appurtenant to and shall pass with the ownership of a Lot, subject to all the easement, covenants, conditions, restrictions and other provisions contained in this Declaration, including, without limitation, the following provisions:

- (A) The right of the Association to limit the number of guests of Members;
- (B) The right of the Association to limit the use of the recreational and club facilities located on the Common Area, by persons who own but who are not in possession of their Lot;
- (C) The right of the Association to establish reasonable Rules and Regulations pertaining to the use of the Common Area and recreational and club facilities located thereon;
- (D) The right of the Association to temporarily suspend the voting rights and right to use the recreational and club facilities by an Owner for any period during which any assessments remain unpaid. In addition, the Association may suspend a Member's right to use the recreational and club facilities for any infraction of this Declaration, the Bylaws and/or the published Rules and Regulations by that Member, his or her lessees, or guests. Any action to suspend a Member's right shall only be valid after hearing by the Board, in accordance with the provisions of the Bylaws and Section 7341 of the California Corporations Code.
- (E) The right of the Association to grant easements on, over and under the Common Area to public utilities or governmental entities or agencies; provided that such easement shall not unreasonably interfere with the right of any Owner to the use and enjoyment of his or her Lot and the Common Area and Common Facilities.

Section 2. Persons subject to Governing Documents.

All present and future Owners, tenants and occupants of Residences within the properties shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e. Owners, tenants, invitees, etc.). The acceptance of a deed to any Lot, the entering into a lease, sublease or contract of sale with respect to any Lot, or the occupancy of any Residence shall constitute the consent and agreement of such Owner, tenant or occupant that each and all of the provisions of this Declaration, as the same or any of them may be amended from time to time, shall be binding upon said person and that said person will observe and comply with the Governing Documents.

Section 3. Waiver of Use.

No member may exempt himself or herself from personal liability for assessments duly levied by the Association, nor release the Lot owned by him or her from the liens, charges and other provisions of this Declaration, the Articles, Bylaws and Rules and Regulations, by waiver of the use and enjoyment of the Common Area, Common Facilities or the abandonment of his or her Lot.

Section 4. Obligation of Owners.

Each Owner of a Lot within the Properties shall be subject to the following:

(A) *Owner's Duty to Notify Association of Tenants and Contract Purchaser's.* Each Owner shall notify the secretary of the Association or the Association's property manager, if any, of the names of any contract purchaser or tenant of the Owner's Separate Interest. Each Owner, contract purchaser or tenant shall also notify the secretary of the Association of the names of all persons to whom such Owner, contract purchaser or tenant has delegated any rights to use and enjoy the Properties and the relationship that each such person bears to the Owner, contract purchaser or tenant.

(B) *Payment of Assessments and Compliance With Rules.* Each Owner shall pay when due each Regular, Special and Special individual/Reimbursement Assessment levied against the Owner and his or her Lot and shall observe, comply with and abide by any and all rules and regulations set forth in, or promulgated by the Association pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

(C) *Discharge of Assessment Liens.* Each Owner shall discharge any Assessment lien that may hereafter become a charge against his or her Lot within the time prescribed in Article V of this Declaration.

(D) *Joint ownership of Lots.* In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this subparagraph shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(E) *Prohibition on Avoidance of Obligation.* No Owner, by non-use of the Common Area or Common Facilities, abandonment of the Owner's Lot, or otherwise may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Lot pursuant to this Declaration.

(F) *Termination of Obligations.* Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferor-Owner shall not be liable for any Assessments due after the date of recording of the deed evidencing said transfer and, upon such recording, all Association membership rights possessed by the transferor by virtue of the ownership of said Lot shall cease.

ARTICLE IV
POWER AND DUTIES OF THE ASSOCIATION

Section 1. Management and Control of the Board

The Association, through its Board, except as otherwise provided herein, shall have the obligation, sole authority, and duty to manage, make decisions, operate, control, repair, replace or restore all of the Common Area or any portion thereof, together with the improvements and landscape thereon, all as more fully set forth in this Declaration, the Articles and the Bylaws.

In the event the Board shall determine that any portion of the Properties which are required to be maintained by the Association is damaged or destroyed by any negligent or malicious act or omission of any Owner, his or her guests, tenants, servants, agents or licensees, such Owner shall be responsible for the cost of repairing the damage. In the event that the Owner fails to pay the cost for the repairs, then the Association shall make such repairs or replacements and the cost thereof shall be levied against such Owner and his/her Lot as a Special Assessment.

Subject to the provisions of the Governing Documents, the Board shall have the right to adopt reasonable rules and to amend the same from time to time relating to the use of the Common Area, and all other facilities situated thereon by Owners and by their tenants or guests, and the conduct of such persons with respect to, including but not limited to, automobile parking, use of the pool and recreational facilities, control of pets and other activities reasonably contemplated under the Association's Governing Documents. The Rules and Regulations may be amended by the vote of a majority of the Board.

Section 2. Powers and Responsibilities of the Board.

(A)*Rule-Making Power.* The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend reasonable rules and regulations governing the use, occupancy, and maintenance of all Properties which are subject to the Declaration, and which are not inconsistent with this Declaration, including the activities within the Lots which affect other portions of the Properties. A copy of such rules and regulations shall be:

- (i) Maintained in the office of the Association and be available for inspection at all reasonable times; and
- (ii) Given to each Owner within a reasonable time after the Association has notice of his or her occupancy of a Lot.

(B) *Enforcement Power.* The Board shall enforce use restrictions, Declaration and Bylaw provisions, and Rules and Regulations by the imposition of reasonable monetary fines, special assessments for costs incurred in compelling compliance with the Association's Governing documents (Articles, Declaration of Restriction, Bylaws and Rules and Regulations), and suspension of Owner's use of common facilities and voting privileges. These powers, however, shall not be construed to limit and other legal means of enforcing the use restrictions or rules and regulations of the Association. Any fines and/or special assessments so imposed shall be considered an assessment against the Lot and may be collected in the manner provided for collection of other assessments.

(C) The Board may grant permits, licenses, utility easements, and other easements, permits, or licenses necessary for the proper maintenance or operation of the Development under, through, or over the Common Area, as may be reasonably necessary to or desirable for the ongoing development and operation of the Properties.

(D) The Board shall maintain and otherwise manage all of the Common Area and Common Facilities, including all recreational facilities, improvements and landscaping thereon, and all property subsequently acquired by the Association.

(E) The Board shall maintain in good repair all Common Area structures, improvements and appurtenances, including walkways and fences.

(F) The Board may pay real or personal property taxes or other charges assessed against the Common Area.

(G) The Board shall provide water, sewer, gas, electrical, refuse collection and gardening service for the Common area. The Board may make cable television service and such other utilities available to owners as the Board may determine.

(H) The Board may borrow money for the purposes of improving or restoration of the Common Area and facilities thereon not to exceed ten percent (10%) of the Association's gross fiscal budget.

(I) The Board may suspend the voting rights and right to use the recreational and club facilities located on the Common Area of a Member who is in default in the payment of any assessment or for any infraction of its published Governing Documents, including published Rules and Regulations after notice and an opportunity for a hearing before the Board in accordance with California Corporations Code Section 7341.

(J) The Board may adopt and implement rules which may provide that the Owner of a Lot whose occupant stores or disposes of property in or around the Common Area in violation of the rules may be specially assessed, after appropriate notice and an opportunity for a hearing before the Board, to cover the expense incurred by the Association in removing such property and the storing or disposing thereof.

(K) The Board shall secure and maintain policies of insurance, as provided in Article XII herein.

Section 3. Right of Entry

The Association, and its officers, agents, or employees, shall have the right to enter onto a Lot for the purpose of inspecting any Lot and any structures, buildings or improvements located thereon to determine whether such Lot is in compliance with the provisions of the Governing Documents, for the benefit of the owners in common, to repair, restore or maintain a Lot which the Owner has failed to properly maintain as more fully set forth in Article X, Section 3, or for any other purpose reasonably related to the performance of the Board of its responsibilities under the Declaration. Such entry shall not be considered trespass on said Lot.

The Association shall give reasonable notice to the Owner(s) of the Lot prior to entering onto any Lot, or any portion thereof, and shall only have the right to enter/inspect the Lot during reasonable hours. For the purposes of this Section 3, "reasonable notice" shall mean at least five (5) days prior to entry. Entry shall be made with as little inconvenience to the Owner as possible, and the Association shall repair any damage caused by said entry.

In addition to and not in limitation of all other rights, the Association may enter into Residences for emergency, security, or safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. In an emergency situation, if practicable, prior to entering the Residence, a reasonable attempt will be made to notify the occupant and the Owner of the Residence of the Association's need and intent to enter the Residence.

Except during an emergency, there shall be no entry onto a Lot without the Owner's written consent, which consent shall not unreasonably be withheld.

Section 4. Limitation of Liability.

In discharging their duties and responsibilities, the Board acts on behalf of and as representative of the Association, which acts on behalf of and as representative of the Owners, and no Member of the Board of Directors shall be individually or personally liable or obligated for performance or failure of performance of such duties or responsibilities unless he or she fails to act in good faith.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 1. Assessments Generally.

(A) *Purpose of Assessments.* The assessments for common expenses provided for herein shall be used for the general purpose of the preservation and proper operation of the Development and promotion of the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and/or occupants of the Lots in the Development, as may be more specifically authorized from time to time by the Board.

(B) *No avoidance of Assessment Obligations.* No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Lot or other property owned by him or her from the liens and discharges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his or her Lot or any other portion of the Properties.

Section 2. Creation of lien and personal Obligation for Assessments.

Each Owner of any Lot, by acceptance of a deed therefore is deemed to covenant and agree to pay to the Association: (a) annual regular assessments or charges; (b) special assessments, to be established and collected as hereinafter provided; and (c) special individual assessments against any Lot which are established pursuant to the terms of the Association's Governing Documents.

(A) All such assessments, together with late charges, interest, costs, and all attorney's fees reasonably incurred, as provided in this Declaration and in the maximum amount permitted by the laws of the State of California, whichever is greater, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. Each Owner of a Lot shall be jointly and severally liable for the entire assessment coming due while he or she is the Owner of his/her Lot. Unless otherwise stated in the Association's Governing Documents or Collection Policy Statement issued in accordance with Civil Code Section 1365(d), assessments shall be considered delinquent if not paid fifteen (15) days after the date on which they are due.

(B) Assessments shall be paid in such manner and on such dates as may be fixed by the Board. Unless otherwise provided, annual assessments shall be due on the first day of the year, or are due within thirty (30) days of acquiring ownership of a Lot.

(C) The personal obligation to pay assessments shall not pass to an Owner's bona fide and for value successors in title, unless expressly assumed by them.

(D) The payment of assessments is for the mutual benefit and protection of the entire development and for all Members of the Association and may not be legally withheld, postponed, offset, or reduced for any reason, including, without limitation, (i) a Member elects to make no use of the Common Area or Common Facilities, (ii) a claim that the Association is not properly exercising its duties and powers as provided in the Association's governing documents.

(E) Any assessment not paid within thirty (30) days after the date due shall bear interest from the date due at the rate provided for in the Association's Governing Documents or California law, whichever is greater.

(F) Payments to the Association shall be applied first to payment of fines, special individual/reimbursement assessments, special assessments, if any, and then to attorney's fees, interest, and late charges, if any, and then to the principal of regular assessments due.

Section 3. Regular Assessments.

(A) *Establishment of Regular Assessments By Board/Membership Approval Requirements.* The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) shall be a guide to limiting the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in subparagraph (B) below, the Board of Directors may not impose a Regular Assessment that is more than 20 percent (20%) greater than the Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Members, constituting a quorum, casting a majority of the votes as a meeting or election of the Association.

(B) *Assessments to Address Emergency Situations.* The requirement of a membership vote to approve Regular Assessment increases in excess of 20 percent of the previous year's Regular Assessment shall not apply to assessment increases necessary to address emergency situations. For purposes of this subparagraph (B), an emergency situation is any of the following:

1. An extraordinary expense required by an order of a court;
2. An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the Properties which the Association is obligated to maintain where a threat to personal safety on said Properties is discovered; or

3. An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the Properties which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to subparagraph (A) above, provided that, prior to the imposition or collection of an assessment under this paragraph, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of Assessment.

(C) *Mailing Notice of Assessment.* The Board of Directors shall mail to each Owner at the street address of the Owner's Separate Interest, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year no less than 45 days prior to the beginning of the next fiscal year.

(D) *Failure to Make Estimate.* If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding year, together with any Special Assessment made pursuant to Article V, Section 4 for that year, shall be assessed against each Owner and his or her Separate Interest on account of the then current fiscal year, and the Assessments shall be payable on the regular payment dates established by the Association.

(E) *Ability to Change Assessments.* The Board of Directors may change the rate of assessments, subject to subsection (A) above, at any time upon thirty (30) days prior written notice to the Membership.

Section 4. Special Assessments.

In addition to the Regular Assessments, authorized above, the Board may levy Special Assessments for the purpose of defraying, in whole or in part, the cost of any capital improvement to the Common Area or such other purpose as may be determined by the Board; provided, however, that no Special Assessment shall exceed, in the aggregate during any fiscal year of the Association, an amount equal to five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the vote or written assent of a majority vote of the Association's Membership. All such Special Assessments shall be levied upon each Lot in the same proportions as regular assessments are levied.

Section 5. Special Individual/Reimbursement Assessments:

(A) Circumstances Giving Rise to Special Individual/Reimbursement Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 4 above, the Board of Directors may impose Special Individual/Reimbursement Assessments against an individual Owner in any of the circumstances, described, without limitation, in subparagraphs (1) through (3) below, provided that no Special Individual/Reimbursement Assessments may be imposed against an Owner pursuant to this Section 5 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Article IV, Section 2(I), hereof, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual/Reimbursement Assessments include, but not be limited to, the following:

1. Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, including any portion of the Lot structure which the Association is obligated to repair and maintain is caused by the willful misconduct or negligent act or omission of an Owner, any Member of his or her family, or any or his or her tenants, guests, servants, employees, licensees, or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual/Reimbursement Assessment.

2. Expenses Incurred in Gaining Membership Compliance. In the event that the Association incurs any costs or expenses, to accomplish (a) the payment of delinquent Assessments, (b) any repair, maintenance or replacement to any portion of the Properties that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (c) to otherwise bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorney's fees) shall be assessed and charged solely to and against such Owner as a Special Individual/Reimbursement Assessment.

3. Required Maintenance Of A Lot. As more particularly provided in Article X, Section 3, and without limiting the generality of that subparagraph, if any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash, junk automobiles, or improper weed or vegetation control, the Association shall have the right to enter said Lot, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Special Individual/Reimbursement Assessment against the offending Owner.

(B) *Levy of Special Individual/Reimbursement Assessment.* Once a Special Individual/Reimbursement Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed herein, notice thereof shall be mailed to the affected Owner and the Special Individual/Reimbursement Assessment shall thereafter be due and payable in full to the Association within 30 days after the mailing of notice of the Assessment.

Section 6. Notice

Annual written notice of an assessment shall be given to every Owner subject thereto. Assessments may be collected on an annual basis or otherwise as determined by the Board. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or other agent of the Association setting forth whether the assessments of a specified Lot have been paid.

Section 7. Exemption of Certain of the Properties From Assessment.

The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempted from the Assessments and the lien thereof provided herein:

- (A) Any portion of the Properties dedicated and accepted by a local public authority;
- (B) The Common Area and Common Facilities; and
- (C) Any Lot owned by the Association

Section 8. Remedies of the Association for Non-Payment of Assessments

The Association shall have the power to impose assessments as provided in these Governing Documents. Such assessments are the personal obligation of the Owner against whom they are assessed and are a lien against that Owner's Lot. The Association shall have the authority to create and enforce a lien with the power of sale on each Lot to secure payment of the amount of any Assessment, to the full extent permitted by applicable law. The obligation and the lien for assessments may also include:

- (A) a late or delinquency charge in the amount of (\$10.00) or ten percent (10%) of the amount of each assessment or installment, whichever is greater, not paid when due, or such higher amount as may be authorized by the laws of the State of California;

(B) interest on each assessment or installment not paid when due and on any delinquency fee or late charge pertaining thereto from the date the charge was first due and payable at the rate of twelve percent (12%) per annum, or such higher rate as may be authorized by the laws of the State of California;

(C) the costs of collection, including court costs, the expenses of sale, any expense required for the protection and preservation of the Lot, and reasonable attorney's fees actually incurred; and

(D) the fair rental value of the Lot from the time of institution of suit until the sale at foreclosure or other satisfaction of any judgment.

Section 9. Effect of Non-Payment of Assessments.

At any time after any assessments levied by the Association affecting any Lot have become delinquent, the Association may file for recording in the Office of Riverside County Recorder a notice of delinquency as to such Lot, which notice shall state all amounts which have become delinquent with respect to such Lot and the costs (including attorney's fees) and interest which have accrued thereon, the amount of any assessments relating to such Lot with respect to which the delinquent assessments are owed, and the name of the record or reputed record Owner of such Lot. Such notice shall be signed by the President or other officer of the Board, by a majority of the Members of the Board, or by the Association's attorney.

Immediately upon the recording of any notice of delinquency pursuant to the foregoing provisions of this Section the amounts delinquent, as set forth in such notice, together with the costs (including attorney's fees), penalties and interest accruing thereon, shall be and become a lien upon the Lot described therein, which lien shall also secure other payments and/or assessments which shall become due and payable with respect to said Lot following such recording, and all costs (including attorney's fees), penalties and interest accruing thereon. Said lien shall continue until all amounts secured thereby are fully paid or otherwise satisfied.

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Lot, together with all costs (including attorney's fees) and interest which have accrued on such amounts, are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and releasing of such lien.

Section 10. Assignment of Rents.

Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Lot owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association pursuant to this Declaration in the event of default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable, provided that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder. Upon revocation of such authority the Association may, pursuant to court order or by court-appointed receiver, collect and retain such monies, whether past due and unpaid or current. The Association's rights under this Section 10 shall be subordinate to the rights of any First Mortgagee.

Section 11. Foreclosure of Assessment Lien

Each assessment lien may be foreclosed upon as and in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to California *Civil Code* section 2924 and following and Section 1367 of the California *Civil Code*, and to that end, a power of sale is hereby conferred upon the Association.

Section 12. Subordination of Lien

The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage of record made in good faith and for value upon any Lot, provided that such subordination shall apply only to the assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage. Otherwise, sale or transfer of any Lot shall not affect the assessment lien.

**ARTICLE VI
USE RESTRICTIONS**

Section 1. Occupancy.

Use restrictions regarding the use of Lots and the Common Area may be adopted by the Board in accordance with the terms hereof and as specified in the Bylaws of the Association as follows: