

Adopted by SPCE Board of Directors on February 16, 2011 based on the review and advice of SPCE's legal counsel.

NOTE: The Governing Documents have the following hierarchy of authority or order of precedence –

- 1) Restrictions (CC&R's)
- 2) Articles of Incorporation
- 3) Bylaws
- 4) Board Resolutions – Rules – Policies – Procedures passed by Board

The Bylaws and Board Resolutions must be consistent with the Articles of Incorporation. Generally, the declaration (CC&R's) controls if there is a conflict with any of the other documents. Resolving such conflicts in the documents depends on the specific facts and legal issues involved.

Articles of Incorporation of San Pedro Creek Estates Homeowners' Association

ARTICLE I second paragraph

"The Corporation shall not afford, directly or indirectly, pecuniary gain or profit to its members."

*Meaning: As a not for profit organization and as a requirement of its favorable tax status, the Corporation may not use any **net income** it generates to personally benefit its members. This paragraph addresses this requirement. In other words, the Association shall not make payments, (typically in the form of dividends or owner distributions), to its members from the net income of the Corporation.*

This paragraph does not restrict the Corporation from making any payments to its members for services they provide to the Corporation. The Corporation may engage the services of its members and pay for those services if done in the ordinary course of operating the Association. In such event, the fee for the services should be competitive with other non-member service providers and there should be no conflict of interest on the part of the member or the Association regarding the transaction.

Restrictions of San Pedro Creek Estates Subdivision (CC&R's, Covenants, Conditions and Restrictions)

Section 6.03 Maintenance Assessment

- a) Within thirty (30) days prior to the commencement of each fiscal year the Association shall estimate the costs and expenses to be incurred by the Association during the year, including a reasonable provision for contingencies, and reserves for

major repair and replacement, and shall subtract from such estimate an amount equal to the anticipated balance, exclusive of any reserves for contingencies, and reserves for major repair and replacement, in the operating fund at the start of such year. The sum of net estimate so determined shall be assessed to all Lot Owners in shares: one (1) share for each Lot owned

Meaning: This wording is the same as Section 7.05 1 of the Bylaws. Refer to that section below for the meaning of this paragraph and an example of the calculation.

- b) If, at any time and from time to time, during any fiscal year, the maintenance assessment proves or appears likely to prove inadequate for any reason, including non-payment of any Owner's share thereof, the Association may levy a further maintenance assessment in the amount of such actual or estimated inadequacy, which shall be assessed to all Lot Owners apportioned as provided in subsection a, **if approved by the Owner's of two-thirds (2/3) of the Lots.**

Meaning: This paragraph provides for the levy of an additional maintenance assessment during the year for the purpose of covering an anticipated deficit in operations for the Association that year regardless of the cause of the deficit AND requires 2/3 vote of the members to levy such additional assessment. Please note Section 7.05 2 of the Bylaws also provides for this type assessment but does not require a 2/3 vote. However, a 2/3 vote will be required because this provision of the CC&R's takes precedence over the Bylaws.

- c) Maintenance assessments shall be due and payable to the Association on such due dates as the Board shall designate.
- d) The Board shall not levy assessments to defray the costs of any action or undertaking on behalf of the Association which in aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year and which are not part of such budgeted gross expenses without the vote or written consent of Owners of two-thirds (2/3) of the Lots.

*Meaning: This paragraph expands the restriction described in Section 7.05 4 of the Bylaws to require 2/3 vote for the levy of **any** assessment for a cost or action that exceeds 5% of budgeted gross expenses **and** is not included in the budget. **BOTH** conditions (exceeds 5% and is not included in the budget) must be met as explained below in the meaning for Bylaws Section 7.05 4. When **BOTH** conditions exist, a 2/3 vote of approval is needed to levy this type of assessment.*

- e) From and after the December 31st immediately following the conveyance of the first Lot by Grantor, the maximum maintenance assessment may be increased each year

not more than an increase equal to 10% percent (10%) from the previous year without a vote of the owners of two-thirds (2/3) of the Lots and approval of the Grantor, if the Grantor continues to own any Lots. The percent of increase shall be cumulative from year to year so that an increase not used in one year may be used in a subsequent year without a vote of the members.

Meaning: This wording is essentially the same as Section 7.05 5 of the Bylaws. Refer to that section below for the meaning of this paragraph and an example of the calculation.

Section 6.05 Assessments for Capital Improvements and Indebtedness

The Association may also levy in any year an assessment for paying or returning, in whole or in part, the cost or proposed cost of acquisition and construction of a described capital improvement (whether the improvement constitutes real or personal property) in an amount greater than can be included in the maintenance assessment, provided it has been approved by Owners of two-thirds (2/3) of the Lots, which assessment shall be assessed to Lot Owners as provided for in Section 6.03.

*Meaning: This section is the same as Section 7.07 of the Bylaws, except the Bylaws provides more clarification. The Bylaws state “. . . provided **such assessment** has been approved by the members holding two-thirds (2/3) of the voting power of the Association . . . “ whereas this section 6.05 of the Restrictions state “. . . provided **it** has been approved by Owners of two-thirds (2/3) of the Lots, . . . ”*

*The “**it**” in the Restrictions refers to the **additional assessment**. The additional assessment, to cover the cost of acquisition and construction of a capital improvement in an amount greater than the amount that could be included in the costs and expenses estimate described in Section 6.03 of the CC&R's or Section 7.05 of the Bylaws, requires approval of Owners of two-thirds (2/3) of the Lots.*

By-Laws of San Pedro Creek Estates Homeowners' Association, Inc.

Section 7.04 ASSESSMENTS

“Each member is subject to the following charges and assessments payable to the Association:

1. Maintenance assessments;
2. Delinquency assessments;
3. Assessments for capital improvements; and
4. All other fees or other monies due to the Association for such member.”

Meaning: The Association provides for 4 types of assessments as defined in more detail in subsequent sections.

Section 7.05 MAINTENANCE ASSESSMENT

"1. Within thirty (30) days prior to the commencement of each fiscal year the Association shall estimate the costs and expenses to be incurred by the Association during the year, including a reasonable provision for contingencies, as well as reserves for major repair and replacement, and shall subtract from such estimate an amount equal to the anticipated balance, exclusive of any reserves for contingencies, and reserves for major repair and replacement in the operating fund at the start of such year. The sum of net estimate so determined shall be assessed to all the Owners in shares – one (1) share for each Lot owned."

Meaning: The formula for developing the maintenance assessment is –

- a) **Estimate the costs and expenses** to be incurred during the year – in other words, estimate all possible disbursements the Association needs to incur for the year **including** an estimate for contingencies and funding for reserves for major repairs and replacement.
- b) **Estimate** the operating balance anticipated at the end of the current year and deduct from this balance the amount needed for future operating contingencies or major repair and replacement.
- c) **Subtract b from a.** The result is the total dollar amount needed from homeowners.
- d) **Divide c by the number of Lots owned (currently SPCE has 379 Lots)** The end result is the annual Maintenance Assessment per Lot Owned.
- e) In other words, the formula is **$(a - b)/379$** .
- f) The Maintenance Assessment is commonly referred to as "Dues" or "Homeowner Assessments" by SPCE Owners.

*As an example of the calculation, the **2011 Dues of \$886** is calculated as follows:*

Refer to the 2011 Budget for the amounts shown in this calculation.

- a) **Total costs and expenses** = \$114,660 (estimated disbursements which includes a \$5,000 contingency and a \$4,000 landscaping project in the line items) + \$227,904 (estimated transfers to road reserves for future road repairs) = **\$342,564**
- b) **Operating reserves balance** = \$29,254 (anticipated balance at 12/31/10) - \$29,254 (the amount retained as a contingency for potential legal expenses related to the SPCE protest of Aquifer Science well application) = **\$0**
- c) \$342,564 minus \$0 = **\$342,564** (the amount to collect from homeowners).
- d) \$342,564 divided by 379 owner lots = **\$904 per Lot Owned**
- e) However, the Association expects to collect a net amount of \$6,770 in other income during the year and has subtracted this amount from the total to collect from Lot Owners. The modified calculation is:

$\$342,564$ (total need) less $\$6,770$ (other expected receipts) = **$\$335,794$ modified need**
 $\$335,794$ divided by 379 owner lots = $\$886$ dues per Lot Owned for 2011

“2. If, at any time, and from time to time during any fiscal year, the maintenance assessment proves or appears likely to prove inadequate for any reason, including nonpayment of any Owner’s share thereof, the Association may levy a further maintenance assessment in the amount of such actual or estimated inadequacy.”

Meaning: The Board may levy an additional assessment during the year if the Association’s income collected during the year is insufficient to cover actual costs and expenses for the year, regardless of the reason for the shortfall. The limit on the amount of the increase is described in paragraph 5 below. Please note, Section 6.03 (b) of the CC&R’s also provides for this additional assessment but requires approval of 2/3 of the Lots owned. A 2/3 vote of approval would be needed to levy this type of additional assessment since the CC&R’s take precedence over the Bylaws.

“3. Maintenance assessments shall be due and payable to the Association when levied or in such installments during the year, and on such due dates as the Board shall designate.”

“4. The maintenance assessment shall not include any amount for the capital improvement of Common Area which, in any fiscal year, exceeds five percent (5%) of the budgeted gross expenses of the Association and which is not part of such budgeted gross expenses. Such assessments for extraordinary capital improvements may be levied pursuant to Article 7.07.”

*Meaning: **BOTH** conditions need to be met for a capital improvement of Common Area **not** to be included in the maintenance assessment as calculated in Section 7.05 1 above, i.e. the improvement must exceed 5% of the budgeted gross expenses **AND** the cost of the improvement must not be part of such gross expenses. In this event, the improvement is considered “**extraordinary**” and Section 7.07 of the Bylaws applies. If the improvement **is** included in the estimated costs and expenses to be incurred during the year as described in paragraph 7.05 1 above, then the improvement is being funded by the maintenance assessment during the normal course of the Association’s operations and no additional approval is required.*

*Please note, Section 6.03 (d) of the CC&R’s has a similar provision. The CC&R’s requires 2/3 vote for the levy of **any** assessment for a cost or action that exceeds 5% of budgeted gross expenses **and** is not included in the budget. Again, **BOTH** conditions*

(exceeds 5% and is not included in the budget) must be met before 2/3 approval is needed. When BOTH conditions exist, a 2/3 vote of approval would be needed to levy this type of additional assessment since the CC&R's take precedence over the Bylaws.

“5. Until the December 31st immediately following the conveyance of the first Lot by Grantor, the annual assessment per assessment share shall be determined by the Board of Directors. From and after said December 31st, the maximum maintenance assessment may be increased each year not more than a 10% percent (10%) increase above the maximum assessment for the previous year without a vote of members holding two-thirds (2/3) of the voting power of the Association. The percent of increase shall be cumulative from year to year so that an increase not used in one year may be used in a subsequent year, without a vote of the members.”

Meaning: The total of the maintenance assessment determined in paragraphs 1 and 2 above may not exceed more than a 10% increase over total maximum maintenance assessments for the previous year without a 2/3 vote of the members. In other words, this is not the actual amount of the annual assessment charged for the prior year but, rather, the maximum amount that could have been charged, based on the 10% increase allowed each year. A 2/3 vote of the members is not needed if the proposed maintenance assessment is less than the amount of the maximum maintenance assessment that could have been charged for the previous year increased by 10%.

Based on the language of the Declaration, the 2011 maximum maintenance assessment is \$1,595. This is based on the original assessment charged, \$420 as of January 1, 1997. Multiplying this number by 1.1 for each year until now makes the maximum maintenance assessment allowed for 2011 \$1,595.

Section 7.07 ASSESSMENTS FOR CAPITAL IMPROVEMENTS

“The Association may also levy in any year an assessment for paying or returning, in whole or in part, the cost or proposed cost of acquisition and construction of a described capital improvement (whether the improvement constitutes real or personal property), in an amount greater than can be included in the maintenance assessment, provided such assessment has been approved by the members holding two-thirds (2/3) of the voting power of the Association, which assessment shall be assessed to members as provided for in maintenance assessments.”

Meaning: An additional levy may be assessed for the year for the purpose of paying or reimbursing the Association for the cost or partial cost of acquisition and construction of a capital improvement which could not be included in the estimated costs and expenses budgeted for the year as described in Section 7.05 1 above. In such event, the levy of

such additional assessment requires approval by 2/3 of the voting power of the Association.