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For Recorder's Use

2005 AMENDED AND RESTATED

DECLARATION OF RESTRICTIONS

FOR

JASMINE STREET aka BEAR VALLEY HOMES

A Residential Planned Development Community

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to section 12956.1 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

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2005 AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
FOR
JASMINE STREET

THIS 2005 AMENDED AND RESTATED DECLARATION OF RESTRICTIONS is made on the day and year hereinafter written, by Jasmine Street Homeowners Association, a California nonprofit mutual benefit corporation ("Declarant"), with reference to the following Recitals.

RECITALS

A. Declarant is a corporation that owns the Common Area lots and whose Members are the Owners of all the residential Lots within that certain real property in the City of Victorville, County of San Bernardino, State of California, more particularly described in Exhibit "A" attached hereto and made a part hereof ("*Community*").

B. The Community was developed as a Planned Development, as defined in section 1351(k) of the California Civil Code, and consists of three hundred and nine residential Lots and fourteen Common Area Lots.

C. The Community is currently subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges set forth in the following documents:

1. The Declaration of Restrictions Bear Valley Homes recorded June 22, 1984 as File/Page No. 84-146937;
2. The Supplementary Declaration of Restrictions for Bear Valley Homes recorded September 27, 1984 as File/Page No. 84-232040;
3. The Supplemental Declaration of Covenants, Conditions and Restrictions and Annexation Bear Valley Homes recorded September 12, 1984 as File/Page No. 84-218641;
4. The Supplemental Declaration of Covenants, Conditions and Restrictions and Annexation Bear Valley Homes recorded September 12, 1984 as File/Page No. 84-218642;

5. The Supplemental Declaration of Covenants, Conditions and Restrictions and Annexation for Bear Valley Homes recorded June 13, 1989 as File/Page No. 89-212743;
6. The Supplemental Declaration of Covenants, Conditions and Restrictions and Annexation for Bear Valley Homes recorded June 13, 1989 as File/Page No. 89-212744;
7. The Supplemental Declaration of Covenants, Conditions and Restrictions and Annexation for Bear Valley Homes recorded June 14, 1989 as File/Page No. 89-215663;
8. The Supplemental Declaration of Covenants, Conditions and Restrictions and Annexation for Bear Valley Homes recorded February 23, 1990 as File/Page No. 90-071143;
9. The Supplemental Declaration of Covenants, Conditions and Restrictions and Annexation for Bear Valley Homes recorded February 23, 1990 as File/Page No. 90-071145;
10. The Supplemental Declaration of Covenants, Conditions and Restrictions and Annexation for Bear Valley Homes recorded February 23, 1990 as File/Page No. 90-071147;
11. The Supplemental Declaration of Covenants, Conditions and Restrictions and Annexation for Bear Valley Homes recorded November 7, 1990 as File/Page No. 90-460809;

all of Official Records of the County Recorder of San Bernardino County, hereinafter referred to together as "*Declaration*," unless the context clearly indicates otherwise.

D. Declarant now desires to amend and restate the Declaration and replace it in its entirety with this Restated Declaration. Declarant further desires that, upon recordation of this Restated Declaration, the Community shall be subject to the covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens, and charges contained herein, and that this Restated Declaration take the place of and relate back in time to the recording of the original Declaration.

E. The Declaration, in Article XV, Section 5, provides that it may be amended by the affirmative vote or written consent of seventy-five percent (75%) of the total voting power of the Association. The undersigned President and Secretary of the Association certify that, to the best of their knowledge, the affirmative vote or written consent of at least the required percentage of Association Members has been obtained.

NOW, THEREFORE, Declarant hereby declares that all of the Community is and shall continue to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the declarations, limitations, covenants, conditions, restrictions, reservations, rights, and easements set forth in this Restated Declaration, and as may be amended from time to time, all of which are declared and agreed to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Community. All provisions of this Restated Declaration shall constitute covenants running with the land and enforceable equitable servitudes upon the Community, and shall be binding on and for the benefit of all of the Community and all parties having or acquiring any right, title, or interest in all or any part of the Community, including the heirs, executors, administrators, and assigns of these parties and all subsequent owners and lessees of all or any part of a Lot.

DECLARATION

ARTICLE 1 - DEFINITIONS

1.1 **"Architectural Rules"** means the Rules and Regulations regulating modifications and alterations to the Lots adopted by the Board pursuant to Section 8.6 herein.

1.2 **"Articles"** means the Articles of Incorporation of Jasmine Street Homeowners Association, filed in the Office of the Secretary of State of the State of California on May 10, 1984 as File No. 1307100, and any amendments thereto now existing or hereafter adopted.

1.3 **"Association" and "Declarant"** means Jasmine Street Homeowners Association, a California nonprofit mutual benefit corporation created for the purpose of managing a common interest development.

1.4 **"Board"** means the Board of Directors of the Association. One or more members of the Board of Directors may be referred to as a "Director" or "Directors."

1.5 **"Bylaws"** means the Bylaws of the Association and any amendments thereto.

1.6 **"Common Area" or "Common Area Lots"** means those portions of the Community and all improvements thereon owned by the Association for the common use and enjoyment of the Owners, consisting of the Common Area Lots described in Exhibit "A" attached hereto.

1.7 **"Community"** means the entire common interest development as described in Exhibit "A" attached hereto, including all improvements thereon.

1.8 **"Director" or "Directors"** means one or more members of the Board of Directors.

1.9 **" Dwelling "** means a residential structure or structures, including any enclosed yard, balconies, patio areas and garages located on a Lot.

1.10 **" Electronic Transmission "** means a communication delivered by facsimile, electronic mail or other means of electronic communication as more fully described in California Corporations Code sections 20 and 21.

1.11 **" Eligible Lender "** means a holder, insurer or guarantor of a First Mortgage that provides a written request to the Association stating the name and address of such holder, insurer or guarantor and the Lot number, and requesting notice to which such Eligible Lender is due under the Governing Documents.

1.12 **" Governing Documents "** means this Restated Declaration and any other documents such as the Articles, Bylaws, Rules and Regulations, or Architectural Rules which govern the operation of the Association.

1.13 **" Lender "** means a Person to whom a Mortgage is made and includes the beneficiary of a deed of trust and any guarantor or insurer of a mortgage. "Institutional Lender" means a mortgagee that is a financial intermediary or depository, such as a bank, savings and loan, or mortgage company, that is chartered under federal or state law and that lends money on the security of real property or invests in such loans, or any insurance company or governmental agency or instrumentality, including the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA). "First Lender" means a mortgagee that has priority over all other mortgages or holders of mortgages encumbering the same Lot or other portions of the Community. The term "Beneficiary" shall be synonymous with the term "Lender."

1.14 **" Lot "** shall refer to all the residential Lots within the Community, including all improvements now or hereafter thereon, with the exception of the Common Area.

1.15 **" Member "** means every person or entity entitled to membership in the Association as provided in this Restated Declaration.

1.16 **" Mortgage "** means a mortgage or deed of trust encumbering a Lot or any other portion of the Community. "First Mortgage" means a mortgage that has priority over all other mortgages encumbering the same Lot or other portions of the Community.

1.17 **" Officers "** means the Officers of the Association appointed by the Board of Directors pursuant to the Bylaws.

1.18 **"Owner"** means any natural person, firm, corporation, partnership, trust or other entity which owns a fee simple interest in any Lot, as shown on the most recent deed for the Lot recorded in the Office of the San Bernardino County Recorder, including Association, and any contract sellers under recorded contracts of sale. "Owner" shall not include any persons or entities who hold an interest in a Lot merely as security for performance of an obligation. For purposes of exercising membership rights, including the right to serve as a Director, and incurring membership obligations when an Owner is a corporation, firm, limited liability company or other entity, any director, officer, employee or agent designated in writing by the Owner may exercise the membership rights attributable to the Owner. When an Owner is a trust, the trustee may exercise the membership rights attributable to the trust unless otherwise designated in writing by the trustee.

1.19 **"Person"** means a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

1.20 **"Restated Declaration"** means this Amended and Restated Declaration of Restrictions and any amendments hereto.

1.21 **"Rules and Regulations"** means any Rules and Regulations, including the Architectural Rules, for the Association regulating the use of the Lots, the Common Areas, the Community and any facilities located thereon adopted by the Board pursuant to Subsection 3.5.1 and Section 8.6 herein.

ARTICLE 2 - THE COMMUNITY

2.1 **Community Subject to Restated Declaration.** The entire Community shall be subject to this Restated Declaration upon recordation hereof.

2.2 **Equitable Servitudes.** The covenants and restrictions set forth in this Restated Declaration shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners. These servitudes may be enforced by any Owner or by the Association or by both.

2.3 **Prohibition Against Partition.** There shall be no judicial partition of the Community or any part of it, nor shall the Association or any person acquiring an interest in the Community or any part of it seek any judicial partition, except upon showing that such partition is consistent with the requirements of section 1359 of the California Civil Code.

2.4 **Prohibition Against Severance of Elements.** Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Lot shall include all interests and appurtenances as shown in the original deed of conveyance. Any conveyance, judicial sale, or other voluntary or involuntary transfer of the Owner's entire estate shall also

include the Owner's membership interest in the Association, as provided in Article 3 herein. Any transfer that attempts to sever those component interests shall be void.

2.5 Annexation Pursuant to Approval. Upon the vote or written assent of not less than sixty-six and two-thirds percent of the Association voting power, any person who desires to add real property to the plan of this Restated Declaration and to subject such property to the jurisdiction of the Association, may file of record a Supplementary Declaration. A certificate of the President and the Secretary of the Association attached to any Supplementary Declaration recorded pursuant to this Section verifying that the required sixty-six and two-thirds percent of the Association voting power has approved the recordation of such Supplementary Declaration shall be deemed conclusive proof thereof.

2.6 Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, which merger or consolidation must be approved by sixty-six and two-thirds percent of the Association voting power, the Association's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Restated Declaration within the Community, together with the covenants and restrictions established upon any other property as one plan.

2.7 Drainage Easements. The Owner of a Lot shall permit free access by Owners of adjacent or adjoining Lots, or the Association and its agents, to slopes or drainageways located on his or her Lot, when such access is essential for the maintenance or permanent stabilization of said slopes, or maintenance of the drainage facilities for the protection and use of property other than the Lot on which the slopes or drainageway is located. The Owner of any Lot shall not in any way interfere with established slope ratios or create erosion or sliding problems. The Owner of any Lot shall not interfere with the established drainage pattern over his or her Lot from adjacent or adjoining Lots, without prior Board approval and unless the Owner makes adequate provisions for continued drainage over his or her Lot from adjacent or adjoining Lots. For the purpose herein, "established drainage" is defined as the drainage which occurred at the time a Lot was first conveyed from the Community developer to an Owner.

2.8 Association Easements Over Lots. The Association has an easement over each Lot, as the servient tenement, for the purpose of allowing the Association's agents to enter the Lot to perform such duties and exercise such powers as may be set forth by the Governing Documents.

2.9 Owner Easements Over Common Area. Each Owner shall have a nonexclusive easement for use and enjoyment of the Common Area now or hereafter owned by the Association and for ingress, egress, and support over and through the Common Area. These easements shall be appurtenant to, and shall pass with the title to

each Lot and shall be subordinate to any exclusive easements granted elsewhere in this Restated Declaration, as well as to the right of the Association pursuant to the Governing Documents to perform its obligations under this Restated Declaration, or otherwise regulate the Common Area as provided in the Governing Documents. Each of the easements reserved or granted herein shall be covenants running with the land for the use and benefit of the Owners and their Lots superior to all other encumbrances applied against or in favor of any portion of the Community. Individual grant deeds to Lots may, but shall not be required to, set forth the easements specified in this Article.

2.10 **Association Grant of Easements.** The Association may grant to third parties easements in, on, and over the Common Area for the purpose of constructing, installing, or maintaining necessary utilities and services, or for any other purpose reasonably related to the operation and maintenance of the Community. No such easement may be granted, however, if it would interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of his or her Lot without the approval of the affected Owner.

2.11 **Encroachment Easements.** None of the rights and obligations of the Owners created herein, or by the deed creating the Community, shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments over the Common Area or Lots upon which the encroachment exists so long as the encroachments shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners. In the event a structure on a Lot is partially or totally destroyed and then rebuilt or repaired, the Owners of any adjoining Lots agree that minor encroachments over the adjoining Lots shall be permitted and there shall be easements for maintenance of such encroachment so long as they shall exist.

2.12 **Utility Easements.** In the case where utility facilities are located on a Lot or Lots owned by other than the Owner of a Lot served by the utility facilities, the Owners of any Lots served by the utility facilities shall have the right of reasonable access for themselves or their agents to repair, replace and generally maintain the utility facilities as and when the same may be necessary. A Lot Owner shall be entitled to reasonable access to the Common Area for the purpose of maintaining utility facilities servicing such Owner's Lot. The access shall be subject to the consent of the Association, whose approval shall not be unreasonably withheld, and which may include such conditions as the Board determines reasonable.

In the case of utility facilities which serve more than one Lot, the Owner of each Lot served by the utility facilities shall be entitled to the full use and enjoyment of such portions of the utility facilities as service his or her Lot.

2.13 **Easements for Public Service Use.** There shall continue to exist easements over the Common Area for the benefit of all Owners within the Community, for public services including, but not limited to, the right of the police to enter upon any part of the Common Area, for the purpose of enforcing the law (including the provisions of the California Vehicle Code).

2.14 **Sidewalks.** Each Owner owns that portion of the sidewalks which are within such Owner's Lot. Each Owner of any Lot within the Community, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, has and shall be deemed to have granted to each other Owner of a Lot within the Community, a non-exclusive easement over the sidewalks within the Community and each portion thereof within each Lot, for access, ingress and egress of such Owner, their family, guests, invitees and licensees with respect to the use and enjoyment of the sidewalks. The Association shall be responsible for repairs of the sidewalks along the street due to normal wear and tear. The Owner shall be responsible for repairs of the damages to the sidewalks along the street that are caused by tree roots or other conditions on the Lot. If the Owner fails to repair these damages, the Association may make the repairs, with or without notice to the Owner, to abate any potentially hazardous condition. The Association's costs of repair may be levied against the Owner as an individual assessment. Each Lot Owner shall be responsible for maintenance and any applicable insurance coverage of the other sidewalks within each Owner's Lot.

ARTICLE 3 - ASSOCIATION

3.1 **Organization of the Association.** The Association is incorporated as a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law. The Association is created for the purpose of managing the Community and is charged with the duties and invested with the powers prescribed by law and set forth in the Governing Documents.

3.2 **Board of Directors.** The affairs of the Association shall be managed and its duties and obligations performed by an elected Board of Directors, as provided in Article 3 of the Bylaws.

3.3 **Membership.** Every Owner, upon becoming an Owner, shall automatically become a Member of the Association. Ownership of a Lot is the sole qualification for membership. Each Member shall have the rights, duties, privileges, and obligations as set forth in the Governing Documents. Membership shall automatically cease when the Owner no longer holds an ownership interest in a Lot. All memberships shall be appurtenant to the Lot conveyed, and cannot be transferred, assigned, conveyed, hypothecated, pledged, or alienated except as part of a transfer of the Owner's entire ownership interest, and then only to the transferee. Any transfer of the Owner's title to his or her Lot shall automatically transfer the appurtenant membership to the transferee.

3.4 **Membership Class; Voting Rights.** 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. On matters presented to the membership for a vote, each Lot shall be assigned one vote, subject to the provisions of the Bylaws.

3.5 **General Powers and Authority.** The Association shall have all the powers of a nonprofit corporation organized under the California Nonprofit Mutual Benefit Corporation Law, subject to any limitations set forth in the Governing Documents. It may perform all acts that may be necessary for or incidental to the performance of the obligations and duties imposed upon it. Its powers shall include, but are not limited to:

3.5.1 The power to establish, fix, levy, collect, and enforce the payment of assessments against the Owners in accordance with the procedures set forth in Article 4 herein.

3.5.2 The power to adopt reasonable Rules and Regulations governing the use of the Lots, Dwellings, Common Area, any common facilities and Association owned property, and the conduct at Board and Members' meetings, in accordance with the following:

(a) The Rules and Regulations may include, but are not limited to:

(i) Reasonable restrictions on use of the Common Area, Lots and Dwellings by the Owners and their families, guests, employees, tenants and invitees.

(ii) Reasonable restrictions on the conduct of Owners and their families, guests, employees, tenants and invitees as to activities on the Common Area, Lots and Dwellings.

(iii) In accordance with Section 3.14 of the Bylaws, the establishment of reasonable hearing procedures and a schedule of monetary penalties and fines which may be imposed for violations of any provisions of the Governing Documents.

(b) The Board must comply with Civil Code section 1357.130 when adopting any Rules and Regulations.

(c) A copy of the current Rules and Regulations, if any, and all modifications, revisions and updates shall be given to each Owner within thirty days of adoption by the Board.

- (d) If any provision of the Rules and Regulations conflicts with any provision of this Restated Declaration, the Articles, or the Bylaws, the Restated Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.

3.5.3 The right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the Owners, in matters pertaining to:

- (a) Enforcement of the Governing Documents.
- (b) Damage to the Common Area.
- (c) Damage to any Lots that the Association is obligated to maintain or repair.
- (d) Damage to the Lots that arises out of, or is integrally related to, damage to the Common Area or Lots that the Association is obligated to maintain or repair.
- (e) Enforcement of payment of assessments in accordance with the provisions of Section 4.13 herein.
- (f) Any other matter in which the Association is a party, including, but not limited to, contract disputes.

3.5.4 Subject to the limitations set forth in Section 3.14 of the Bylaws, the right to discipline a Member for violation of any of the provisions of the Governing Documents by (a) suspending the Member's membership rights, including the Member's voting rights, right to run as a candidate for election to the Board of Directors, and the rights and privileges to use the Common Area recreational facilities, (b) imposing monetary fines, and (c) recording a notice of noncompliance in the Office of the County Recorder of San Bernardino County encumbering the Lot of the Owner.

3.5.5 The power to establish in cooperation with a local governmental authority, a special tax assessment district for the performance of all or a portion of the maintenance or other functions now within the responsibility of the Association.

3.5.6 The right for its agents and employees to enter any Lot when necessary in connection with any maintenance, landscaping, or

construction work for which the Association is or may be responsible or to reduce the likelihood of or prevent damage to the Common Areas or another Lot. This entry shall be made only upon reasonable notice to the Owner (except in the case of an emergency) and with as little inconvenience to the Owner as is practicable. Any entry by the Association to investigate a reported or suspected water intrusion shall be deemed an emergency.

3.5.7 Notwithstanding any nonexclusive easement rights to the Common Area granted herein or by any deed or other conveyance, the right to allow one or more Owners to exclusively use portions of the Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Lot, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Community unless that Owner consents to the use.

3.5.8 The power to remove any vehicle within the Community parked in violation of this Restated Declaration or the Rules and Regulations in accordance with the provisions of California Vehicle Code section 22658.2 and any amendments thereto.

3.6 ***Duties of the Association.*** In addition to the duties of the Association, its agents and employees set forth elsewhere in the Governing Documents, the Association shall be responsible for the following:

3.6.1 The Association, acting through the Board, shall operate, maintain, repair, and replace those components assigned to the Association by Section 6.4 or contract for the performance of that work, subject to the provisions of the Governing Documents.

3.6.2 The Association shall use the general operating fund described in Article 4 herein to, among other things, acquire and pay for goods and services for the Community, including, but not limited to:

(a) Water, sewer, refuse, electrical, telephone, gas, and other necessary utility service for the Common Area and, to the extent not separately metered and charged, for the Lots.

(b) The insurance policies described herein.

- (c) The services of any personnel that the Board determines are necessary or proper for the operation of the Common Area and the Association.
- (d) Legal and accounting services necessary or proper in the operation of the Common Area and the Association or the enforcement of the Governing Documents.

ARTICLE 4 - ASSESSMENTS AND COLLECTION PROCEDURES

4.1 **Covenant to Pay.** Each Owner by acceptance of the deed to the Owner's Lot is deemed to covenant and agrees to pay to the Association all assessments described in this Article and all other charges duly levied by the Association pursuant to the provisions of this Restated Declaration. An assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with the provisions of this Article, shall also be a personal debt of each Owner of the Lot at the time the assessment or other sums are levied. Co-Owners of a Lot shall be jointly and severally liable for all charges levied by the Association on that Lot. No Owner may waive or otherwise escape liability for these assessments by non-use of the Common Area or abandonment of the Owner's Lot.

4.2 **Purpose of Assessments.** Except as provided herein, the Association shall levy assessments sufficient to perform its obligations. The assessments levied by the Association shall be used exclusively to promote the recreation and welfare of the Owners; for the operation, replacement, improvement, and maintenance of the Community, and to discharge any other obligations of the Association under this Restated Declaration. All assessment payments shall be put into general operating and reserve funds to be used for the foregoing purposes.

4.3 **Regular Assessments.** Concurrently with preparation of the financial documents and budget as required in Section 3.13 of the Bylaws, the Board shall estimate the net charges to be paid during that next fiscal year, including a reasonable provision for contingencies, replacements and reserves, with adjustments made for any expected income and surplus from the prior year's fund. The resulting amount shall constitute the regular assessments for the budgeted year. Regular assessments shall be divided equally among all Lots. Failure of the Board to estimate the net charges within the time period stated herein shall not void any assessment imposed by the Board. Regular assessments for fractions of any month shall be prorated. Each Owner is obligated to pay assessments to the Association in equal monthly installments on or before the first day of each month unless the Board adopts an alternative method for payment.

4.4 **Special Assessments.** 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 upon the Common Area, or any other reason, it shall make a special

assessment for the additional amount needed, subject to any limitations imposed by law or the Governing Documents. Special assessments shall be levied equally against each Lot and collected in the same manner as regular assessments. The Board may levy a special assessment in one lump sum or in installments over a period of time the Board determines appropriate.

4.5 **Limitations on Regular and Special Assessments.** Except in emergency situations, the Board may not, without the approval of Members constituting a quorum of the Owners and casting a majority of the votes at a meeting or election of the Association conducted in accordance with Corporations Code sections 7510-7527 and 7613, impose a regular assessment per Lot that is more than twenty percent greater than the regular assessment for the preceding fiscal year, or levy special assessments that in the aggregate exceed five percent of the budgeted gross expenses of the Association for that fiscal year. For purposes of this Section, a "quorum" means more than fifty percent of the Owners of the Association. These limitations shall not apply to assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense that is:

- 4.5.1 Required by a court order.
- 4.5.2 Necessary to repair or maintain the Community or any part of it for which the Association is responsible when a threat to personal safety in the Community is discovered.
- 4.5.3 Necessary to repair or maintain the Community or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget. Before the Board may impose or collect an assessment in this emergency situation, it shall pass a resolution containing written findings as to the necessity of the extraordinary expense and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Owners with the notice of assessment.

4.6 **Owner Notice of Regular and Special Assessments.** The Association shall provide notice by first-class mail to the Owners of any increase in the regular assessments or the imposition of a special assessment not less than thirty nor more than sixty days prior to the increase in the regular assessment or special assessment becoming due.

4.7 **Individual Assessments.** Subject to the limitations of the Governing Documents and in addition to regular and special assessments, the Board may levy individual assessments against Owners and Lots whenever the Association (a) performs any service or accomplishes any item of repair or maintenance which is the duty of any

Owner to accomplish, but which has not been accomplished by such Owner, or (b) incurs any costs which by law or as required by the Governing Documents must be reimbursed by an Owner. Such individual assessment shall include the cost thereof, together with any financing costs and administrative costs incurred by the Association. Prior to levying an individual assessment, the Board shall provide the Owner with notice and an opportunity for a hearing in accordance with the Bylaws. The notice and opportunity for a hearing regarding the levy of an individual assessment may be combined with the notice and opportunity for a hearing regarding any underlying violation. Duly levied individual assessments shall be subject to the provisions in the Governing Documents regarding costs, late charges and interest for delinquent payment, and may become a lien on the Lot, in the same manner as regular and special assessments.

4.8 Monetary Penalty Assessments. The Board of Directors may levy, subject to the limitations of the Governing Documents, monetary penalties or fines against an Owner and his or her Lot. In the event the Board of Directors imposes a monetary penalty or fine, that fine shall be subject to costs, late charges and interest as described in Section 4.10 for delinquent payment, and may become a lien on the Lot, collectible by the Association through judicial foreclosure as allowed by Section 4.13 herein. In no event may the Association collect a monetary penalty or fine through nonjudicial foreclosure.

4.9 Lots Not Subject To Assessment. Assessments which would normally become due on Lots, but which Lots are owned by the Association by virtue of the Association having acquired such Lots through foreclosure, shall be deemed to be common expenses collectible from all of the remaining Lots in the same proportion that each Lot bears to the others less the number of Lots owned by the Association.

4.10 Costs, Late Charges and Interest. Late charges may be levied by the Association against an Owner for the delinquent payment of assessments, including monetary penalty assessments. An assessment, including any installment payment, is delinquent fifteen days after its due date. If an assessment is delinquent, the Association may recover all of the following from the Owner:

- 4.10.1 Reasonable costs incurred in collecting the delinquent assessment, including actual attorneys' fees.
- 4.10.2 A late charge not exceeding ten percent of the delinquent assessment or ten dollars, whichever is greater, or the maximum amount allowed by law.
- 4.10.3 Interest on the foregoing sums, at an annual percentage rate of twelve percent commencing thirty days after the assessment becomes due.

No late charge may be imposed more than once for the delinquency of the same payment. However, the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments. The amounts

delinquent, including the entire unpaid balance and any related costs described herein, may be collected by the Association as provided in Section 4.13 hereinbelow.

4.11 **Priority of Payments.** The Board, in its sole discretion, may enact policies, in compliance with applicable law, including Civil Code sections 1367 and 1367.1, regarding how payments received from Owners will be applied to any outstanding balances due the Association from that Owner.

4.12 **No Offsets.** All assessments shall be payable in the amounts specified by the Association, and no offsets against such amount shall be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

4.13 **Enforcement of Assessments and Late Charges.** A delinquent assessment, and any related late charges, reasonable costs of collection (including actual attorneys' fees), and interest assessed in accordance with Section 4.10 herein, shall become a lien upon the Lot when a Notice of Assessment Lien is duly recorded as provided in section 1367 or section 1367.1 of the California Civil Code or applicable statute. Unless otherwise provided by statute, the Notice of Assessment Lien shall describe the amount of the delinquent assessment or installment, the related charges authorized by this Restated Declaration, the legal description of the Lot, the name of the purported Owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice may be signed by any Officer or Director of the Association, or any employee or agent of the Association authorized to do so by the Board. The Notice shall be mailed in the manner set forth in Civil Code section 2924b, to all record owners of the Lot no later than ten calendar days after recordation.

Unless otherwise allowed by statute, the Notice of Assessment Lien may not be recorded until after the Association has mailed, via certified mail, a written demand for payment to the delinquent Owner. The written demand shall comply with the requirements of Civil Code sections 1367, 1367.1 or any other applicable statute.

If not paid in full within thirty days after recordation of the Notice of Assessment Lien, any lien described herein may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the Notice or by a trustee substituted pursuant to section 2924(a) of the California Civil Code, in accordance with the provisions of sections 2924, 2924(b), and 2924(c) of the California Civil Code.

If all sums specified in the Notice of Assessment Lien are paid before the completion of any judicial or nonjudicial foreclosure, the Association shall (i) record a notice of satisfaction and release of lien, and (ii) upon receipt of a written request by the Owner, shall also record a notice of rescission of any recorded notice of default and demand for sale.

The Notice of Assessment Lien is not required to be amended by the Association or Trustee to reflect any partial payments made on the account of the delinquent Owner after its recordation, and any such partial payments received shall not be construed to invalidate the Notice of Assessment Lien. The Notice of Assessment Lien may be foreclosed upon as set forth herein even though the delinquent Owner has made one or more partial payments.

Notwithstanding any other provision herein, a monetary penalty or fine may not become a lien on a Lot enforceable by the sale of the Lot through nonjudicial foreclosure. Any Notice of Assessment Lien recorded to enforce a monetary penalty or fine must specifically state that such lien may not be enforceable by sale of the Lot through nonjudicial foreclosure.

4.14 Priority of Assessment Lien. As set forth hereinbelow, the assessment lien referred to in Section 4.13 shall be superior to all other liens, except (i) all taxes, bonds and governmental assessments which, by law, would be superior thereto, and (ii) the lien or charge of any First Mortgage of record. Notwithstanding any other provision to the contrary, the following provisions shall govern the priority and obligation for payment of the assessment lien:

- 4.14.1 Only the judicial or nonjudicial foreclosure of the First Mortgage shall operate to transfer title free of the assessment lien or obligation for any assessment lien, and then only as to payments which became due prior to the date of sale, and excluding those assessment liens recorded prior to the recording of the First Mortgage.
- 4.14.2 Neither the transfer of a Lot pursuant to a foreclosure of any Mortgage, nor an election by the Association to proceed against any new Owner for payment, shall serve to cancel the personal obligation of the prior Owner for payment of the delinquent assessments and charges which accrued during such Owner's period of ownership.
- 4.14.3 No sale or transfer of any Lot shall relieve such Lot or its new Owner from liability for any future assessments which accrue during such Owner's period of ownership.

4.15 **Statement of Delinquent Assessment.** The Association shall provide any Owner, upon written request, with a statement specifying the amounts of any delinquent assessments and related late charges, interest, and costs levied against the Owner's Lot.

ARTICLE 5 - USE RESTRICTIONS AND COVENANTS

5.1 **General.** The use and enjoyment of the Community by Owners and their tenants, guests, invitees or any other person deriving rights from such Owner, shall be subject to the covenants and restrictions contained in this Restated Declaration. Each such person shall comply with the provisions hereof and be subject to any enforcement actions in the event of violations. Unless otherwise stated in the Governing Documents, the Association, through the Board of Directors, shall be responsible for the enforcement of these provisions.

5.2 **Common Area.** The following provisions govern the use and enjoyment of the Common Area:

- 5.2.1 Owners may use the Common Area subject to the provisions of this Restated Declaration.
- 5.2.2 An Owner who has sold his or her Lot to a contract purchaser or who has leased or rented the Lot shall be deemed to have delegated his or her rights to use and enjoy the Common Area to such contract purchaser or tenant, subject to reasonable regulation by the Board. If the Owner is deemed to have delegated such rights, the Owner and the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy the Common Area for so long as the delegation remains effective. The rights of a contract purchaser or tenant shall be subject to the same restrictions and regulations in the Governing Documents as are applicable to Owners.
- 5.2.3 The Board may:
 - (a) Adopt and enforce reasonable Rules and Regulations for the use of the Common Area and the Community.
 - (b) Reasonably limit the number of guests and tenants using the Common Area recreational facilities.
 - (c) Charge a fee or deposit for use of any Common Area recreational facilities and improvements.

- (d) Set fees and deposits for supplying and replacing keys, key codes, or other access devices to Common Areas, including charges calculated to limit distribution and deter loss of keys, codes or access devices.
- (e) Establish speed limits and other traffic regulations within the Community.
- (f) Establish fire lanes within the Common Area.
- (g) Assign or otherwise control the use of any unassigned parking spaces within the Common Area.
- (h) Require the use of parking passes or decals.
- (i) Remove any vehicle within the Community parked in violation of this Restated Declaration or the Rules and Regulations of the Board in accordance with the provisions of California Vehicle Code section 22658.2 and any amendments thereto.
- (j) Suspend the right of any Owner, and the Persons deriving rights from any Owner, to use and enjoy the Common Area recreational facilities for any period during which the Owner is delinquent in the payment of any assessment, is in violation of the Governing Documents, or as otherwise provided in the Governing Documents.
- (k) Cause the construction of additional improvements in the Common Area, or cause the alteration or removal of existing improvements on the Common Area.
- (l) Dedicate, grant, or join in the grant or conveyance of easements, licenses or rights-of-way in, on and over the Common Area as may be determined by the Board to be in the best interests of the Association; provided that no such easement, license or right-of-way may be granted if it would unreasonably interfere with any exclusive easement, or with any Owner's use, occupancy, or enjoyment of the Owner's Lot without the approval of the affected Owner.
- (m) Approve any proposed alteration of or modification to the Common Area.

5.3 **General Restrictions on Use.** In exercising the right to occupy or use a Lot or the Common Area and its improvements, the Owner and the Owner's family, guests, employees, tenants, and invitees shall not:

- 5.3.1 Modify, construct, build or otherwise alter any portion of his or her Lot or Dwelling other than as provided in Article 8, below.
- 5.3.2 Attempt to further subdivide a Lot.
- 5.3.3 Occupy or use a Lot, or permit all or any part of a Lot to be occupied or used, without Board approval, for any purpose other than as a single, private residence. The Board may establish guidelines in the Rules and Regulations to allow certain home occupations which (a) are consistent and compatible with the typical residential use of the Community, and (b) do not have any detrimental effect on neighboring Lots or the Community.
- 5.3.4 Lease or rent a Lot in derogation of the following:
 - (a) All leases and rental agreements must be in writing.
 - (b) All leases and rental agreements must be for the entire Dwelling, and not merely parts thereof, unless the Owner remains in occupancy. A garage may not be leased or rented separate and apart from the Dwelling to which it is appurtenant.
 - (c) No lease or rental shall be for a period of less than thirty days or for hotel, transient or time-share purposes.
 - (d) All leases and rental agreements shall be subject in all respects to the Governing Documents, and shall provide that failure to comply with the requirements of the Governing Documents shall constitute a default under the lease which may be cured by eviction of the tenant either by the Owner or the Association. If the Association must evict the tenant, the Association may recover all the costs and expenses, including attorneys' fees, from the Owner whether or not the matter actually proceeds to court.
 - (e) Any Owners leasing or renting their Lot shall promptly notify the Association in writing of the names of all tenants and members of a tenant's family occupying such Lot, provide the make, model and license number of all residents' vehicles, a telephone number for the tenant, keep all

information current, and provide the Association with a complete copy of the lease or rental agreement and any other information reasonably needed and requested by the Association.

- (f) Any Owners leasing or renting their Lot shall promptly notify the Association of the address and telephone number where such Owner can be reached.

- 5.3.5 Permit anything to obstruct the Common Area or store anything on the Common Area without the prior written consent of the Board, except as otherwise provided in the Governing Documents.
- 5.3.6 Perform any act or keep anything on or in any Lot or in the Common Area that will increase the rate of insurance on the Common Area without the Board's prior written consent. Further, no Owner shall permit anything to be done or kept on his or her Lot or in the Common Area that would result in the cancellation of insurance on any Lot or on any part of the Common Area or that would violate any law.
- 5.3.7 Store gasoline, kerosene, cleaning solvents, or other flammable liquids or substances, or any toxic or hazardous materials on the Common Area or in any Lot; provided, however, that amounts of these liquids, substances or materials which are reasonable for household use may be placed in appropriate containers and properly stored.
- 5.3.8 Discharge anything other than water and residue allowed by applicable water quality ordinances into the streets, gutters and patio drains of the Association or into the Common Area.
- 5.3.9 Discharge or cause the emission of any dust, sweepings, dirt, cinders, odors, gases, mold spores, or other substances into the atmosphere other than those caused by normal residential use.
- 5.3.10 Erect or display any sign on or from any Lot except as allowed by sections 712, 713, and 1353.6 of the California Civil Code and the Rules and Regulations. No signs may be erected or displayed on the Common Area without the prior written approval of the Board.
- 5.3.11 Erect or display any radio or television antenna, satellite dish or other equipment or apparatus for transmitting or receiving transmissions except a video or television antenna, including a

satellite dish, as allowed by any applicable statute or law, and as approved by the Board. The Board may impose reasonable restrictions on its approval.

- 5.3.12 Erect or install any wind turbines.
- 5.3.13 Raise or keep pets or other animals in violation of the following:
 - (a) Owners or residents of the Community may keep and raise no more than two usual and ordinary household pets on the Lot subject to the provisions of the Rules and Regulations; provided, however, that no Owner or other occupant of a Lot may raise or keep pets which interfere with, or have a reasonable likelihood of interfering with, the rights of any Owner or other occupant of a Lot to the peaceful and quiet enjoyment of the Lot. In the event the Board determines that any pet or other animal creates an unreasonable annoyance or nuisance to any Owner or other occupant of a Lot, the raising or keeping thereof shall be discontinued within a reasonable time after such determination.
 - (b) No pets or other animals shall be permitted in the Common Area except as specifically permitted by the Rules and Regulations, and then only when on a leash held by a person capable of controlling the animal.
 - (c) No Owners may raise or keep animals for commercial purposes.
 - (d) The Association, its Board, Officers, employees and agents shall have no liability to any Owner, their family members, guests, invitees, tenants and contract purchasers, or any other person on the Community, for any damage or injury to persons or property caused by any pet, absent any willful or wanton negligence on the part of the Association, or its Board, Officers, employees and agents.
- 5.3.14 Allow rubbish, trash, and garbage to accumulate within the Lot or Common Area. All trash, rubbish and garbage shall be kept in sanitary containers concealed from view of other Lots or the Common Area.
- 5.3.15 Engage in any illegal, noxious or offensive activity in any part of the Community, or do any act which unreasonably threatens the health, safety and welfare of other residents of the Community.

- 5.3.16 Allow brush, weeds, or undergrowth to accumulate upon any Lot so as to render the Lot or any portion of it a fire hazard, unsightly, or detrimental to other Lots or the Common Area.
- 5.3.17 Engage in any type of harassment, illegal, noxious or offensive activity toward any Owners, residents, Association representatives, management representatives, Board members and/or vendors working in the Community.
- 5.3.18 Alter, attach, construct, or remove anything on or from the Common Area, except upon the written consent of the Board.
- 5.3.19 Convert or use any garage for purposes other than parking of vehicles and storage of reasonable amounts of household goods that do not create a fire or safety hazard.
- 5.3.20 Garage doors must be kept closed except for reasonable periods while the garage is in use.
- 5.3.21 No junk or derelict vehicle or unregistered vehicle shall be kept upon any portion of the Community, including the Lot. The Board, in its discretion, may adopt reasonable Rules and Regulations governing the operation, maintenance, storage and parking of any vehicle, including trucks, campers, trailers, boats or commercial vehicles on the Common Area and on the Lots, including within the garages or driveways.
- 5.3.22 Perform any vehicle overhaul, major repair, or painting within the Community.
- 5.3.23 Alter or modify the cable television system except upon the written consent of the Board.

5.4 ***Mechanic's Lien.*** No labor performed or services or materials furnished with the consent of, or at the request of, an Owner, the Owner's agents or contractors shall be the basis for the filing of a lien against any other Lot or Common Area or any other Owner in the Community unless that other Owner has expressly consented to or requested the performance of the labor or furnishings of the materials or services. However, express consent shall be deemed to have been given by the Owner of any Lot in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Common Areas, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner of any Lot may remove

his or her Lot from a lien against two or more Lot or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by the lien which is attributable to the Owner's Lot.

5.5 **Damage Liability.** Each Owner shall be liable to the Association for any damage to the Common Area or to Association owned property, including any access control systems, if the damage is sustained because of the negligence, willful misconduct, or unauthorized or improper installment, repair, or maintenance of any improvement by the Owner or the Owner's family, guests, tenants, contract purchasers, or invitees. In the case of joint ownership of a Lot, the liability of the co-owners shall be joint and several, unless the co-owners and the Association have agreed in writing to an alternative allocation of liability.

5.6 **Owner Responsibility.** Owners shall be responsible for their family members, guests, tenants, contract purchasers, and invitees while in the Community and may be held responsible for any violations of the Governing Documents committed by such persons.

ARTICLE 6 - REPAIR AND MAINTENANCE

6.1 **General; Standards of Maintenance.** The Association and all Owners are required to fulfill the maintenance requirements imposed by the Governing Documents. For purposes of this Article "maintenance" shall include, without limitation, painting, weatherproofing and cleaning to keep in a clean, safe, properly ventilated, watertight, dry and sanitary condition necessary to preserve the attractive appearance of the Lots, Dwellings, and the Community, and protect the values thereof.

6.2 **Owner Maintenance and Repair.** Owners shall be responsible for maintaining, repairing, replacing and restoring all portions of their Lots, including the Dwelling, landscaping, yard, driveway and all other improvements, except the sidewalk along the street. The Dwellings and improvements on the Lots shall be kept in good condition and repair and landscaping shall be neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. The Board shall have the power to determine the standards of such maintenance.

6.3 **Owner Improvements.** Each Owner shall be responsible for the maintenance, repair, and replacement of any improvements installed or planted anywhere within the Community by the Owner, any resident in the Owner's Dwelling, or the Owner's predecessor in interest. The Owner is also responsible for any damages to the Common Area caused by such installation, maintenance, use, or repair. Installation of any improvement within the Community is subject to the provisions of Article 8 herein.

6.4 **Association Maintenance and Repair.** The Association shall be responsible for the maintenance, repair and replacement of the Common Area and the sidewalks on the Lot which are along the street.

6.5 **Access over Common Area.** The Owner of the Lot shall be entitled to reasonable access over and through the Common Area, subject to the consent of the Association and to any other conditions reasonably imposed by the Association, for the purposes of performing any maintenance, repairs or replacement as required by the Governing Documents. The Association's consent shall not be unreasonably withheld.

6.6 **Failure to Maintain.** In the event an Owner fails to maintain, repair or replace the areas described herein pursuant to the standards set by the Board, the Board may notify the Owner of the work required and request that the same be done within a reasonable time from the giving of such notice. In the event the Owner fails to carry out such maintenance within said time period, the Board may, following notice and an opportunity for hearing, as provided in Section 3.14 of the Bylaws, cause such work to be done and the cost thereof shall immediately be paid by such Owner to the Association and until paid shall bear interest at the rate of twelve percent per annum (but no greater than the maximum rate authorized by law). The Association shall have an easement over the Lots pursuant to Section 2.8 herein for the purpose of performing the work described herein.

6.7 **Termite Control.** The responsibility for control of wood destroying pests or organisms shall be as follows:

6.7.1 Each Owner shall be responsible for the maintenance and repair of their personal property, their Dwelling and any other Lot improvements as required to control the presence of or damage caused by wood-destroying pests or organisms.

6.7.2 The Association shall be responsible for the maintenance and repair of the Common Area, as required to control the presence of or damage caused by wood destroying pests or organisms in accordance with the provisions of Civil Code section 1364. The Board shall determine the method and timing of any treatment in its sole discretion.

6.7.3 Neither the Association, the Board, Officers, agents nor employees shall have any liability, absent willful or wanton negligence, to any Owner, family member, guest, invitee or tenant for any damage caused by the treatment.

6.8 **Damage Caused by Owner or Item Under Control of Owner.** Should any damage to the Common Area, any Lot or Dwelling result from the willful or negligent act or neglect of any Owner, or such Owner's tenants, guests, invitees, pets or other person

or entity deriving any interest through such Owner, or from any item the maintenance, repair or replacement of which an Owner is responsible, the cost of all repairs shall be borne solely by the responsible Owner.

The Association shall be responsible for performing the repair of any damage to the Common Area or items over which the Association has control at the responsible Owner's expense. The responsible Owner shall perform the repair of any damage to his or her own property. The Owner of any other property which sustained damage shall perform the repair of any such damage, and may charge the cost of repairs and any relocation costs to the responsible Owner.

If the responsible Owner disputes or refuses to pay any repair costs incurred by the Association or the Owner of any other property which sustained damage, the Association, after reasonable notice and an opportunity for a hearing, may charge the cost of those repairs to such Owner as an individual assessment, with the full authority to lien on such amount in the event of non-payment. If the damage is such as may be covered by any insurance carried by the Association, the Board may, in its sole discretion, elect to submit the claim for the cost of repairs to its insurance carrier. Provided the submitted claim is covered by the Association's insurance, the responsible Owner shall pay the cost of any deductible applicable to the covered claim. If the submitted claim is not covered by the Association's insurance, or the Board elects not to submit the claim, the responsible Owner shall be responsible for the total cost of repair.

All repairs performed to correct any damage shall be sufficient to return the damaged property only to its condition prior to the damage, with upgrades as may be required to conform with any applicable building codes in effect at the time the damage is repaired.

6.9 ***Limitation of Liability.*** The Association shall not be liable to any Owner or his or her tenants, guests or others, for damage to or loss of any property, or the cost of repair or replacement of any damaged property or portions of such Owner's Lot unless such damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

6.10 ***Damages to Lot; Water Intrusion Damage.*** Each Owner shall be solely responsible for the repair or replacement of any damage to any and all interior items of his or her Dwelling and Lot, and the cost thereof, including, but not limited to, any personal property, decorations, interior surfaces, floor and wall coverings, appliances, fixtures or other items therein, or any exterior items such as landscaping, caused by any Common Area component or improvement or any other component or improvement maintained by the Association, including water intrusion from any Common Area source. An Owner may obtain and maintain such insurance, at his or her sole expense, to protect against any damage or loss of property, or the cost of repair or replacement of damaged items for which such Owner is responsible. The Association shall not be liable for damage to property in the Lot or Dwelling resulting from water which may leak or flow from outside of

any Lot, or from any pipes, drains, conduits, appliances or equipment or from any other place or cause, unless caused by the gross negligence of the Association, its Board, Officers, agents or employees.

Owners shall cause notice to be given to the Association of any water within, or water intrusion into, their Lot immediately upon discovery of such leak or water intrusion. Within twenty-four hours or sooner of the discovery of a leak or water intrusion, Owner shall cause all water to be extracted, and the Dwelling and Lot cleaned. If Owner has not had water extraction and cleaning performed within forty-eight hours of discovery of the leak or water intrusion, Association may cause such work to be done and assess the cost of the work to the Owner as an individual assessment. If repairs are required to a Dwelling or Lot following a leak or water intrusion, all work shall be performed by a licensed contractor experienced in water extraction and mold remediation. Containment procedures designed to prevent contamination of the affected Lots, other Lots and the Common Areas shall be utilized. Owner and his or her tenants, guests, invitees, agents and employees shall hold the Association harmless for any claim for property damage or personal injury alleged to arise from the presence of mold or fungi in his or her Lot unless the damages or injuries were caused by the gross negligence of the Association, its Board, Officers, agents or employees.

6.11 **Owner Notification to Association.** If, at any time, an Owner discovers or otherwise becomes aware of any condition within the Common Area that may constitute a risk to the health, safety or welfare of the Owners, their family members, tenants, and any other persons entering the Community, the Owner shall notify Association representatives of the condition as soon as possible.

ARTICLE 7-ZERO LOT LINE WALLS AND EASEMENTS

7.1 **Introduction.** Jasmine Street aka Bear Valley Homes is a residential planned development project of a “zero lot line” design, where each Dwelling is situated upon its respective Lot in such a manner as to create a front yard, back yard and a side yard. As described in this Article, this design utilizes two types of boundary walls and fences: Zero Lot Line Walls and Decorative Walls, which are described and defined hereinbelow. The rights and responsibilities of all Owners with respect to Zero Lot Line Walls and Decorative Walls shall be as set forth in this Article.

7.2 **Zero Lot Line Walls.** The particular structural wall of a Dwelling which is located upon the “effective” Lot line shall be referred to as a “Zero Lot Line Wall.” Zero Lot Line Walls serve as the effective boundary between certain contiguous and adjacent Lots in the Community. Each Dwelling shall be constructed with its Zero Lot Line Wall located parallel to and within approximately three feet of the actual property line between said Lots. The zero lot line system of ownership is created by the establishment of permanent easements appurtenant to the Lots as more particularly described hereinbelow.

7.3 **Establishment of Zero Lot Line Easements.** In order to create and establish a zero lot line system of ownership within the Community, the Community developer created, established and reserved permanent and perpetual easements appurtenant to certain Lots (hereinafter referred to as the "Dominant Tenements") on, over and across those certain portions of their respective adjacent Lots (hereinafter referred to as the "Servient Tenements"), which are more particularly shown and set forth on Exhibit "B." Said easements shall be used for landscaping purposes only and shall be subject to each and all of the covenants set forth in this Restated Declaration.

7.4 **Ownership of Zero Lot Line Walls.** Ownership of each Zero Lot Line Wall shall be vested in the Owner of the Servient Tenement upon which the Zero Lot Line Wall is located. Notwithstanding said vesting of ownership, the rights and obligations of the Owners with respect to the use, enjoyment, maintenance and repair of the Zero Lot Line Walls shall be as set forth herein.

7.5 **Maintenance of Zero Lot Line Walls.** The Owner of the Servient Tenement shall paint, maintain, and repair the Zero Lot Line Wall, including that portion which faces the Dominant Tenement Owner's Lot, in a neat, clean, safe, sanitary and attractive condition at all times, and shall bear all costs thereof. Notwithstanding the foregoing, in the event any painting, maintenance or repair is required due to the fault of the Owner of the Dominant Tenement, the Owner of the Dominant Tenement shall promptly cause said work to be performed and shall bear all costs thereof.

7.6 **Use and Maintenance of Easement Areas.** Each Dominant Tenement Owner shall have the right and responsibility to landscape and otherwise maintain the Easement Area appurtenant to his Lot in a neat, clean, safe, sanitary and attractive condition at all times, and shall bear all costs thereof. Said Owner shall not, however, plant any tree shrub or other landscaping upon the Easement Area which would (a) impair or otherwise threaten the structural integrity of any adjacent Dwelling; or (b) interfere with the Servient Tenement Owner's right of access as more particularly set forth hereinbelow. Neither the Dominant Tenement Owner nor the Servient Tenement Owner shall construct, install or erect any improvement upon any Easement Area, except as expressly permitted by the Board. The Owner of the Dominant Tenement shall not drive any nail, screw or other object into the Zero Lot Line Wall or otherwise damage the appearance or structural integrity thereof.

7.7 **Servient Tenement Owner's Access Rights.** The Owner of the Servient Tenement shall have an easement for ingress, egress and access on, over and across the Easement Area and the Dominant Tenement Owner's Lot as may be reasonably necessary to allow the Owner of the Servient Tenement to paint, maintain and repair the Zero Lot Line Wall and his Dwelling. Except in the case of a bona fide emergency, the Owner of the Servient Tenement shall give the Owner of the Dominant Tenement at least 24 hours prior written notice of his intention to enter upon the Dominant Tenement Owner's Lot and the Easement Area, and shall perform all necessary work during reasonable daylight hours. In the event of an emergency, such entry may be made at any time and without notice.

Under all circumstances, the Owner of the Servient Tenement shall use his best efforts to minimize the duration of the work and the inconvenience to the Owner of the Dominant Tenement.

7.8 **Indemnification by Dominant Tenement Owner.** Each Owner of a Dominant Tenement shall indemnify and save the Owner of the respective Servient Tenement harmless from and against any and all liability arising out of or otherwise resulting from any negligent act or omission of the Owner of the Dominant Tenement relating to the exercise of its rights or the performance of its obligations hereunder.

7.9 **Indemnification by Servient Tenement Owner.** Each Owner of a Servient Tenement shall indemnify and save the Owner of the respective Dominant Tenement harmless from and against any and all liability arising out of or otherwise resulting from any negligent act or omission of the Owner of the Servient Tenement relating to the exercise of its rights or the performance of its obligations hereunder.

7.10 **Decorative Walls.** Any wall or fence which (a) generally parallels the street in front of any Zero Lot Line Dwelling or connects any such front wall and the Dwelling, or (b) borders the side yard of any Zero Lot Line Lot on a corner Lot is referred to in this Restated Declaration as a "Decorative Wall."

7.11 **Ownership of Decorative Walls.** Ownership of each Decorative Wall or portion thereof shall be vested in the Owner of the Lot upon which said Wall or portion thereof is located. Notwithstanding said vesting of ownership, the rights and obligations of the Owners with respect to the use, enjoyment, maintenance and repair of the Decorative Walls shall be as set forth herein.

7.12 **Maintenance of Decorative Walls.** The rights and responsibilities of the Owners of Zero Lot Line Lots with respect to the maintenance and repair of Decorative Walls shall be as follows:

7.12.1 **Corner Lot Side Walls.** The Owner of each Zero Lot Line Lot on a corner Lot shall maintain any Decorative Wall located along his side yard in a neat, clean, safe, sanitary and attractive condition at all times, shall perform all structural repairs and shall bear all costs thereof.

7.12.2 **Front Walls.** As a result of the Zero Lot Line system of ownership, that portion of any Decorative Wall which bounds the Easement Area portion of any Servient Tenement Lot is of primary benefit to the Owner of the Dominant Tenement to which such Easement Area is appurtenant. Accordingly, each Owner shall maintain and perform all structural repairs of any Decorative Wall, or portion thereof, which bounds any Easement Area appurtenant to such Owner's Lot. Each Owner shall keep his

respective Decorative Walls in a neat, clean, safe, sanitary and attractive condition at all times, and shall bear all costs thereof. Each Owner shall remain secondarily liable for the maintenance of any Decorative Wall, or portion thereof, located upon such Owner's Lot for which the Owner of an adjacent Lot is primarily responsible pursuant to this paragraph. In the event it becomes necessary for such Owner to perform any maintenance for which he is only secondarily liable, said Owner shall have a right of indemnification for all costs incurred in the performance of such maintenance from the Owner who is primarily liable.

Notwithstanding the foregoing, in the event any maintenance of repair is required due to the fault of any other Owner, such Owner shall bear all the costs of such maintenance. Each Owner shall maintain any and all Decorative Walls for which he is primarily responsible in a uniform color scheme and may construct, erect, raise, remove or otherwise alter any such Wall, including any portion thereof which is owned by an adjacent Lot Owner, only in accordance with the provisions of Article 8 herein.

7.13 **Boundary Fences.** Any wall or fence which borders the rear boundary of any Lot or which extends between the rear boundary and a Dwelling is referred to in this Restated Declaration as a "Boundary Fence." Ownership of each Boundary Fence or portion thereof shall be vested in the Owner of the Lot upon which said Boundary Fence, or portion thereof, is located. Notwithstanding said vesting of ownership, the rights and obligations of the Owners with respect to the use, enjoyment, maintenance and repair of the Boundary Fences shall be as set forth herein.

7.14 **Maintenance of the Boundary Fences.** The Owner of each Zero Lot Line Lot shall maintain any Boundary Fence located upon his Lot in a neat, clean, safe, sanitary and attractive condition at all times, and shall bear all costs thereof. In the event any such Boundary Fence serves as the effective boundary between two or more Lots in the Community, the Owners of such Lots shall share equally in the cost and responsibility of such maintenance. Notwithstanding the foregoing, in the event any maintenance or repair is required due to the fault of any other Owner, such Owner shall maintain any Boundary Fence for which he is responsible in a uniform color scheme and may construct, erect, raise, remove or otherwise alter any such Boundary Fence only in accordance with the provisions of Article 8 herein.

7.15 **Right of Contribution.** The right of any Owner to contribution from any other Owner for work performed pursuant to this Article shall be appurtenant to and shall run with the land and shall be binding upon the Owners and their successors, assigns and grantees.

ARTICLE 8 - ARCHITECTURAL AND DESIGN CONTROL

8.1 **General.** Any change or improvement to the exterior of a Dwelling or a Lot shall be governed by this Article. Changes or improvements to the Common Area by the Association do not need to comply with the requirements of this Article. The powers and duties set forth in this Article shall be vested in, and exercised by, the Board. The Board may establish an architectural committee as provided herein to assist the Board in reviewing architectural submittals, and to provide recommendations to the Board with regard to approval or disapproval of any submittal. The foregoing notwithstanding, the Board shall be solely responsible for approving or rejecting any architectural submittal.

8.2 **General Modifications Requiring Prior Approval.** Nothing may be erected, placed or planted on the exterior of any Dwelling or Lot, or on the Common Area by any Owner, including any building, fence, wall, pool, spa, obstruction, wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, garage, trellis, tree, grass, shrub or other landscaping, any improvement or structure of any kind, nor may any excavation or demolition commence without the prior written approval of the Board in accordance with this Article. Additionally, and except as provided in Section 8.4 below, prior written Board approval shall be required for any alteration, modification, painting or other change, addition or deletion to any existing improvement or landscaping.

8.3 **Specific Modifications.** The following provisions govern the specific changes and modifications outlined below:

- 8.3.1 Modifications or alterations of the exterior of any Dwelling or other portion of the Lot or Common Area to facilitate handicapped access as provided by section 1360 of the California Civil Code must have the prior written consent of the Board. Any approval of such handicapped access modification to the Common Area may be conditioned on such modification's removal by the Owner at his or her sole expense once the handicapped access is no longer necessary for the Lot.
- 8.3.2 Installation of any landscaping, either "hard-scape" or "soft-scape," in areas of the Lot visible from a street must have prior approval of the Board. Replacement of such landscaping will require approval only if it differs from the landscaping being replaced (e.g., replacing stone walkway with concrete, or annual flowers with shrubs). Landscaping changes in yard areas which are not visible from a street do not require Board approval.
- 8.3.3 Maintenance of the landscaping, Lot and Dwelling (e.g., pruning trees, trimming shrubs, replacing annual flowers, etc.) shall not be considered a modification for purposes of this Article.

- 8.3.4 Interior shutters, blinds, curtains, drapes or other appurtenances in or on any window or door do not need prior approval but must be in conformance with any standards established by the Board. Owners shall be responsible for correcting any nonconforming appurtenances.
- 8.3.5 No individual water supply, sewage disposal system or water softener system shall be permitted on any Lot unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any applicable water district, the County Health Department, all other applicable governmental authorities and the Association.
- 8.3.6 Installation of any solar energy system is subject to Board approval. Solar panels may not reflect sunlight into a neighboring Dwelling.
- 8.3.7 Except as provided by the Governing Documents, Owners shall not have the right to paint, decorate, remodel or alter the Common Area without the prior written consent of the Board.

8.4 **Architectural Changes Not Requiring Prior Approval.** Notwithstanding Sections 8.2 and 8.3 above, no permission or approval shall be required to repaint in accordance with the original color scheme or as previously approved by the Board, or to rebuild or replace in accordance with plans and specifications previously approved by the Board. Nothing contained herein shall be construed to limit the right of an Owner to paint the interior of his or her Dwelling any color desired, or to improve or alter any improvements within the interior of the Dwelling; provided such improvement or alteration does not impair or alter the Common Area, any utilities, or other systems servicing the Common Area or other Lots.

8.5 **Procedure for Obtaining Approval of Architectural Changes.** The procedure for obtaining approval of any architectural change shall be as follows:

- 8.5.1 Complete plans and specifications showing the nature, kind, shape, color, size, height, materials to be used and location of any proposed improvements, alterations or landscaping, as well as the proposed contractor and any other information as required by the Board, shall be prepared by the requesting Owner and submitted to the architectural committee along with any fee or deposit established in the Architectural Rules. A duplicate request shall be submitted to the Board at the same time as the submittal to the architectural committee. The Board may establish a construction deposit and require that it be paid with the plans and specifications.

- 8.5.2 The architectural committee shall review the submission and provide a written recommendation as to approval or disapproval of any such submission, including the reasons for any decision, to the Board and the requesting Owner within thirty days of receipt of such submission.
- 8.5.3 The Board shall review such recommendation within thirty days of receipt of the architectural committee's written recommendation, or within sixty days of receipt of the submission, whichever is earlier, and provide a written response to the requesting Owner, including reasons for such response.
- 8.5.4 In the event the Board fails to provide a written response to the requesting Owner within sixty days of receipt of the request from the Owner, the Owner may notify the Board in writing that a response has not been received. If the Board fails to respond within 30 days of the receipt of the notice, approval will not be required and the related covenants shall be deemed to have been fully satisfied.
- 8.5.5 Once an Owner has obtained approval for an architectural submittal, work on such approved submittal shall promptly commence and shall be completed within a reasonable time.

8.6 **Architectural Rules.** The Board may, in its sole discretion, adopt, amend and repeal, as it deems necessary, Architectural Rules. The Architectural Rules shall interpret and implement the provisions of this Article by setting forth the standards for review by the Board and architectural committee and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Community; provided, however, that said Architectural Rules shall not be in derogation of the standards required by this Restated Declaration. The Architectural Rules may also address the information which is required to be presented in connection with an architectural submittal.

8.7 **Standard of Architectural Review.** An architectural submittal made by an Owner shall be reviewed for conformity with the Architectural Rules. Additional factors to be considered include, but are not limited to, the quality of proposed workmanship, the design and harmony of the improvement with existing structures, the location of the improvement in relation to surrounding structures, topography, and finish grade elevation, Owner and contractor insurance coverage, compliance with governmental permit requirements and contractor license status.

8.8 **Architectural Committee.** The architectural committee shall consist of at least three members, formed as follows:

- 8.8.1 The Board shall have the right to appoint all of the members of the committee.
- 8.8.2 Members appointed to the committee by the Board must be Members of the Association.
- 8.8.3 Members shall be appointed for terms as prescribed by the Board. All members of the committee may be removed by the Board at any time with or without cause.
- 8.8.4 The committee shall meet as often as it deems necessary to properly carry out the obligations imposed upon it, unless otherwise directed by the Board.
- 8.8.5 The vote or written consent of the majority of the committee shall be required for any recommendation.

8.9 ***Fee for Review.*** The Board shall have the right to establish a fee for the review and approval of plans and specifications which must be submitted to it pursuant to the provisions of this Article, which shall be reasonably related to the duties performed. Owners shall be responsible for the Association's costs incurred for review of their plans.

8.10 ***Compensation.*** The members of the Board and architectural committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder.

Notwithstanding the above, the Board may hire an architect or other design professional to consult with the committee and Board and the Association may compensate the architect or design professional for services rendered to the Association.

8.11 ***Liability.*** Neither the Board, the architectural committee nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or (c) the development of any property within the neighborhood; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him or her.

8.12 ***Enforcement.*** In addition to other enforcement remedies set forth in this Restated Declaration, the Board shall have enforcement rights with respect to any matters required to be submitted to and approved by it, and may enforce such architectural control by any proceeding at law or in equity in accordance with this Section.

- 8.12.1 No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation or commencement of a suit to enjoin such work.
- 8.12.2 The Board shall have the authority to order an abatement of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Board or if it does not conform to the plans and specifications submitted to the Board.
- 8.12.3 The Board or committee may periodically enter any Lot to ensure that construction is proceeding according to any approved plans.
- 8.12.4 If the Owner fails to remedy any noticed noncompliance within the time specified by the Board, the Board shall set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The notice and an opportunity for a hearing shall comply with the requirements of Section 3.14 of the Bylaws.
- 8.12.5 At the hearing, the Owner, a representative(s) of the architectural committee and, at the Board's discretion, any other interested person may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board shall determine whether there is a noncompliance.
- 8.12.6 If a noncompliance is determined to exist, the Board shall require the Owner to remedy or remove the same within such period or within any extension of such period as the Board, at its discretion, may grant.
- 8.12.7 If the Owner fails to take corrective action after having a reasonable opportunity to do so, the Board at its option, may pursue all legal and equitable remedies available to remedy or remove the noncomplying improvement and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not properly repaid by the Owner to the Association, the Board shall recover such expenses through the levy of an individual assessment against such Owner.
- 8.12.8 The approval by the Board of any plans, drawings or specifications for any work of improvement done or proposed, or for any other matter requiring the approval of the Board under this Restated Declaration, or any waiver thereof, shall not be deemed

to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval by the same or some other Owner. Different location for improvements, the size of the structure, proximity to other Dwellings or the Common Area and other factors may be taken into consideration by the Board and committee in reviewing a particular submittal.

8.12.9 Notwithstanding any other provisions herein, the Board of Directors shall have the authority to obtain a restraining order or injunction at any time after discovery that work is proceeding without approval of the Board or in a manner that is different than that approved by the Board, if the Board deems such action necessary to protect the Association's interests.

8.13 **Non-Compliance with Laws.** Neither the Association, the Board, nor the architectural committee shall be responsible for any non-compliance with any governmental law, rule or regulation of any building or other structure erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications approved by the Board or any defect in any conditions or requirements they may have imposed with respect thereto.

8.14 **Governmental Approval.** Prior to commencing any alteration or improvements approved by the Board, the Owner shall comply with all appropriate governmental laws and regulations. The Association shall not be obligated to enforce the provisions of this Section. Approval by the Board shall not be considered to satisfy the approvals that may be required by any governmental entity with appropriate jurisdiction, nor shall the approval of any governmental entity be considered to satisfy the requirement of Board approval. An Owner's failure to obtain any required governmental approval may subject such Owner to certain penalties imposed by the governmental entity, notwithstanding the approval of the Board, which penalties shall be the responsibility of such Owner.

ARTICLE 9 - INSURANCE

9.1 **Fire and Casualty Insurance.** The Association shall obtain and maintain a policy or policies of fire and casualty insurance with an extended coverage endorsement for the full insurable replacement value of the improvements in the Common Area. The Association shall have no obligation to insure the Dwelling or any improvements or fixtures such as cabinets, built-in appliances or floor or wall coverings, fences, walls or landscaping within the Lot. The amount of any deductible shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their Lenders, as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in this Restated Declaration. If required by any First

Lender who notifies the Association of its requirement, and if economically feasible and available, such policies shall contain an agreed amount endorsement, an inflation guard endorsement, and a construction code endorsement.

9.2 **General Liability Insurance.** The Association shall obtain and maintain a comprehensive public liability and property damage liability policy or policies insuring the Association, its officers, directors, agents and employees and the Owners against any liability for bodily injury, death, and property damage arising from ownership and use of the Common Area. Limits of liability under the insurance shall not be less than Three Million Dollars covering all claims for death, personal injury, and property damage arising out of a single occurrence.

9.3 **Directors and Officers Liability Insurance.** The Association shall obtain and maintain one or more policies of insurance which include coverage for individual liability of Officers and Directors of the Association for negligent acts or omissions of those persons acting in their capacity as Officers and Directors. Limits of liability under this insurance shall be determined by the Board at its sole discretion.

9.4 **Fidelity Coverage.** The Association shall purchase and maintain fidelity coverage for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. If an agent handles Association funds, such agent shall be covered by the Association's coverage, unless such agent provides similar coverage. The Association's coverage may be in the form of a separate bond, a separate policy (e.g., crime policy), or may be added by endorsement to the general policies carried by the Association. The Board shall have the discretion to determine the amount of coverage. The bond or policy must contain a provision that it may not be cancelled or substantially modified without at least ten days' prior written notice to the Association.

9.5 **Other Association Insurance.** The Association shall purchase and maintain worker's compensation insurance to the extent necessary to comply with any applicable laws. The Association may purchase such other insurance that the Board considers necessary or advisable, including earthquake insurance coverage.

9.6 **Review of Insurance; Notice of Cancellation or Modification.** The limits and coverage of insurance carried by the Association shall be reviewed at least annually by the Board and increased or decreased at its discretion. Such policies shall include a provision for at least ten days' prior written notice to the Association, and, if available, to each First Lender which is listed as a scheduled holder of a First Mortgage in the insurance policy, of any cancellation or substantial modification by any party.

9.7 **Qualifications of Insurance Carriers.** The Association shall use generally acceptable insurance carriers from which to purchase and maintain the coverage required herein.

9.8 **Failure to Acquire Insurance.** The Association, and its Directors and Officers, shall have no liability to any Owner or Lender if, after a good faith effort, it is unable to obtain any insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Association Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any Lender entitled to notice that the specific insurance will not be obtained or renewed.

The Association, and its Directors and Officers, shall also have no liability to any Owner or Lender if it does not obtain any of the insurance referenced hereunder which is not required but may be obtained at the discretion of the Association. The Board may, in good faith in its sole discretion, determine that obtaining any of the discretionary insurance is unreasonable or unnecessary under the circumstances. In making a determination as to whether to acquire any such discretionary insurance, the Board may, but is not required to, base its decision upon, among other things, a vote of the Owners.

9.9 **Trustee for Policies.** The Association, acting through its Board, is appointed and shall be deemed trustee of the interests of all named insureds under all insurance policies purchased and maintained by the Association. All insurance proceeds under any of those policies shall be paid to the Board as trustee. The Board shall use the proceeds for the repair or replacement of the property for which the insurance was carried or for the purposes described in Article 10 herein. The Board also is authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and to execute loss claim forms and release forms in connection with such settlements.

9.10 **Insurance Premiums.** Insurance premiums for any insurance coverage obtained by the Association shall be included in the regular or special assessments. That portion of the assessments necessary for the required insurance premiums shall be used solely for the payment of the premiums when due.

9.11 **Insurance Policy Deductibles.** The Board of Directors shall have the power, in its sole discretion, to determine the amount of any deductible applicable to any insurance policy carried by the Association. In the event of a loss for which Association insurance coverage is used, the responsibility for payment of any deductible shall be as follows:

- 9.11.1 Owners shall be responsible for the cost of any deductible if the damage or loss occurs to the Owners' real or personal property, or other property for which the Owner is responsible ("Owner Property").
- 9.11.2 The Association shall be responsible for the cost of any deductible if the damage or loss occurs to any real or personal

property owned by the Association, or for which the Association is responsible ("Association Property").

- 9.11.3 If the damage or loss occurs to any Owner Property and any Association Property or to more than one Owner's Property, the responsibility for the payment of any deductible shall be apportioned among the affected parties on the basis of the ratio of each party's cost of repair to the total costs of repair.
- 9.11.4 The foregoing notwithstanding, if the damage or loss is caused by the negligence or misconduct of any Owner, or resident, guest, tenant or invitee of an Owner or is the Owner's responsibility pursuant to Section 6.8 herein, such Owner shall be liable for the full amount of the deductible.

9.12 **Owner Notification of Insurance.** The Association shall disclose such information regarding insurance coverage as and when required by any applicable statute or law. Failure to disclose such information shall not impose any liability upon the Association or Board other than that provided for in such statute or law.

9.13 **Individual Property Insurance.** An Owner is responsible for obtaining and maintaining such insurance, at his or her sole expense, to protect against any damage to, or loss of the Owner's real or personal property, and the cost of repair or replacement of damaged items, including, but not limited to, any improvements made by an Owner, any personal property, decorations, floor and wall coverings, appliances, cabinets, fixtures or other items therein, or any exterior items for which such Owner is responsible such as landscaping, which is caused by any Common Area component or any component maintained by the Association or by any failure thereof. The Owner's policy shall be the primary policy for any claims for damages to or loss of Owner's property. The Association shall not be liable to any Owner or his or her tenants, guests or others, for damage to or loss of any such property, or the cost of repair or replacement of any damaged property or portions of such Owner's Lot, unless such damage is caused by the gross negligence of the Association, its Board, Officers, agents or employees.

9.14 **Individual Liability Insurance.** An Owner may carry whatever personal liability and property damage liability insurance with respect to his or her Lot that he or she desires.

ARTICLE 10 - DAMAGE OR DESTRUCTION

10.1 **Duty to Restore Lot.** If all or any portion of any Lot or Dwelling is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Lot to rebuild, repair or reconstruct the Dwelling and the Lot in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty or as

otherwise approved by the Board. The Owner of any damaged Lot or Dwelling and the Board shall be obligated to proceed with all due diligence hereunder, and such Owner shall mitigate any danger presented by such damage or destruction and thereafter cause reconstruction to commence within three months after the damage occurs and be completed within one year after damage occurs, unless prevented by causes beyond his or her reasonable control.

10.2 **Duty to Restore Common Area.** If all or any portion of the Common Area is damaged or destroyed, it must be repaired or replaced promptly by the Association unless:

- 10.2.1 The Community is terminated;
- 10.2.2 Repair or replacement would be illegal under a state statute or municipal ordinance; or
- 10.2.3 The damaged or destroyed portion of the Community is partitioned in accordance with Section 2.3, above.

10.3 **Cost of Repair.** Any cost of repair or replacement of the Common Area in excess of insurance proceeds and reserves shall be a common expense, levied against Lots as a special assessment.

10.4 **Repair Plans.** The Common Area must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved in writing by the Board and a majority of Owners. Updates to conform to currently applicable building codes shall be deemed to be repairs and restoration in accordance with the original plans.

10.5 **Insurance Proceeds.** An insurance trustee appointed by the Board or insurance company, or if there is no trustee, then the Board, acting by the President, shall hold any insurance proceeds in trust for the Association, Owners and Lenders. Subject to the provisions of this Restated Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged property. The Association, Owners and Lenders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after the Common Areas have been completely repaired or restored, or unless the Community is terminated.

10.6 **Disbursements to Owners and Lenders.** Any insurance proceeds distributed to Owners and Lenders shall be distributed proportionately according to the fair market values of the Lots at the time of the destruction as determined by an independent appraisal. That appraisal shall be performed by an independent appraiser who shall be selected by the Board and who shall be a member of, and apply the standards of, a nationally recognized appraiser organization.

10.7 **Certificates By Board.** The trustee, if any, may rely on the following certifications in writing made by the Board:

- 10.7.1 Whether or not damaged or destroyed property is to be repaired or restored; and
- 10.7.2 The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

10.8 **Certificates by Attorneys or Title Insurance Companies.** If payments are to be made to Owners or Lenders, then the Board and the trustee, if any, shall obtain and may rely on a title insurance company's or attorney's title certificate or a title insurance policy based on a search of the Official Records of the County Recorder, stating the names of the Owners and the Lenders.

ARTICLE 11 - EMINENT DOMAIN

11.1 **Association as Trustee for Owners.** If all or part of the Common Area is threatened to be, or shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for or on account of the taking of the Common Area, exclusive of compensation for consequential damages to certain affected Lots, shall be payable to the Association as trustee for all Owners and Lenders according to the loss or damages to their respective interest in the Common Area. The Association, acting through the Board, shall have the right to act on behalf of the Owners with respect to the negotiation, settlement and litigation of the issues with respect to the taking and compensation affecting the Common Area. Each Owner hereby designates and appoints the Association as his or her attorney-in-fact for such purposes.

11.2 **Condemnation of a Lot.** If all or any part of a Lot is taken by eminent domain, the award shall be disbursed to the Owner of the Lot subject to the rights of the Owner's Lenders. If the taking renders the Lot uninhabitable, the Owner shall be divested of any further interest in the Community, including membership in the Association, and the interest of the remaining Owners shall be adjusted accordingly.

ARTICLE 12 - RIGHTS OF LENDERS

12.1 **General.** No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Lender on any Lot made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

12.2 **No Right of First Refusal.** This Restated Declaration neither contains nor shall be amended to contain any provision creating a "right of first refusal" to the Association before a Lot can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any First Lender to: (a) foreclose or take title to a Lot pursuant to the remedies provided in the mortgage, (b) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a Borrower, or (c) sell or lease a Lot acquired by the Lender.

12.3 **Unpaid Dues or Charges.** Where the Lender of a First Mortgage of record or other purchaser of a Lot obtains title to the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his or her successors and assigns, shall not be liable for the share of the common expenses or assessments made by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Lots, including such acquirer, his or her successors and assigns.

12.4 **Action Requiring Lender Approval.** Except as provided by statute in case of condemnation or substantial loss to the Lots and Common Area, unless at least two-thirds of the First Lenders (based upon one vote for each Mortgage owned), or two-thirds of the total voting power of the Association have given their prior written approval, the Association and/or the Owners shall not be entitled to:

- 12.4.1 By act or omission seek to abandon or terminate the Community (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain).
- 12.4.2 Change the pro rata interest or obligations of any individual Lot for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Lot in the Common Area, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner.
- 12.4.3 Partition or subdivide any Lot.
- 12.4.4 By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area, or any property owned, directly or indirectly, by the Association (the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association is not a transfer in the meaning of this clause).

- 12.4.5 Use hazard insurance proceeds for losses to any of the Community (whether to Lots or to Common Area) for other than the repair, replacement or reconstruction of such property.

12.5 **Payment of Taxes and Insurance.** First Lenders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area property. First Lenders making such payments shall be owed immediate reimbursement from the Association.

12.6 **Priority of Proceed or Award Distribution.** Any other provision herein contained to the contrary notwithstanding, no provision of the Governing Documents shall give an Owner, or any other party, priority over any rights of the First Lender pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.7 **Notification of Lender.** Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any Eligible Lender will be entitled to timely written notice of:

- 12.7.1 Any condemnation loss or any casualty loss which affects a material portion of the Community or the Lot insured or guaranteed by such Eligible Lender;
- 12.7.2 Any default in the performance by an Owner of any obligation under the Governing Documents not cured within sixty days;
- 12.7.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- 12.7.4 Any proposed action which would require the consent of a specified percentage of Eligible Lenders as required by the Governing Documents.

12.8 **Termination of Professional Management.** Provided professional management has previously been required by any Eligible Lender, any decision to establish self-management by the Association shall require the consent of at least sixty-seven percent of the total voting power of the Association and at least fifty-one percent of Eligible Lenders; provided that so long as any Mortgage which is a lien on a Lot is insured or guaranteed by the Federal Housing Administration, any termination and failure to replace professional management shall require the prior written approval of the Federal Housing Administration.

12.9 **Inspection of Documents, Books and Records.** The Association shall make available to Eligible Lenders, current copies of the Governing Documents and the accounting books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

12.10 **Non-Curable Breach.** Any Lender who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Restated Declaration that is non-curable or of a type that is not practical or feasible to cure.

12.11 **Loan to Facilitate.** Any First Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by an assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article.

12.12 **Lenders Furnishing Information.** Any Lender shall be entitled and authorized to furnish information to the Board concerning the status of any Mortgage.

12.13 **Financial Statement.** Any First Lender shall be entitled, on written request therefor, to have the Association provide an audited financial statement for the immediately preceding fiscal year, which statement shall be furnished within a reasonable time following such request.

12.14 **Termination without Substantial Destruction.** Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Community, the consent of at least sixty-seven percent of the total voting power of the Association and the approval of fifty-one percent of Eligible Lenders shall be required to terminate the Community; provided that if termination is for reasons other than substantial destruction or condemnation, the agreement of sixty-seven percent of Eligible Lenders is required.

ARTICLE 13 - ENFORCEMENT

13.1 **Right to Enforce; Remedies.** The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the Governing Documents. Each Owner of a Lot shall have a right of action against the Association or any Owner for failure to comply with the provisions of the Governing Documents. The remedies provided for herein are to be considered cumulative and the use of one remedy shall not preclude the use of any other.

13.2 **Nuisance.** The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in the Governing Documents is violated in whole or in part, is declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Owner and/or the Association. Each remedy provided herein shall be cumulative and not exclusive.

13.3 **Failure to Enforce.** Failure by the Association or any Owner to enforce any provisions of the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

13.4 **Violation of Law.** Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any Lot within the Community is declared to be a violation of this Restated Declaration and subject to any or all of the enforcement procedures herein set forth.

13.5 **Compliance with Statute.** All activities to enforce the provisions of the governing documents shall be conducted in accordance with all applicable laws, statutes and ordinances. This Section shall apply to both the Association and to all Owners.

ARTICLE 14 - AMENDMENTS

14.1 **Owner Approval of Amendments.** This Restated Declaration may be amended by the vote or written consent of Owners representing a majority of the voting power of the Association. Notwithstanding any contrary provision in this Section, the percentage of the voting power necessary to amend a specific clause or provision of this Restated Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

An amendment becomes effective after (a) the approval of the required percentage of Owners has been given, (b) that fact has been certified in the form of a written document executed and acknowledged by an Officer designated by the Association for that purpose or, if no such designation is made, by the President of the Association and (c) the document has been recorded in San Diego County.

14.2 **Eligible Lender Approval of Amendments.** Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Community, the consent of a majority of the voting power of the Association and the approval of fifty-one percent of Eligible Lenders shall be required to add or amend (i) any provision which is for the express benefit of holders or insurers of First Mortgages, or (ii) any material provisions of this Restated Declaration which establish, provide for, govern or regulate any of the following:

- 14.2.1 Voting rights;
- 14.2.2 Increases in assessments greater than twenty-five percent, assessment liens or the priority of such liens;
- 14.2.3 Reductions in reserves for maintenance, repair and replacement of the Common Area;
- 14.2.4 Insurance or fidelity bonds;
- 14.2.5 Rights to use the Common Area;
- 14.2.6 Responsibility for maintenance and repair of the several portions of the Community;
- 14.2.7 Expansion or contraction of the Community, or the addition, annexation or withdrawal of property to or from the Community;
- 14.2.8 Restoration or repair of the Community after damage or partial condemnation, in a manner other than that specified in the Governing Documents;
- 14.2.9 Convertibility of Lots into Common Area, or Common Area into Lots;
- 14.2.10 Restrictions on leasing of Lots;
- 14.2.11 Imposition of any restriction on the right of an Owner to sell, transfer or otherwise convey his or her Lot; or
- 14.2.12 Any provisions that expressly benefit mortgage holders, insurers or guarantors.

14.3 ***Eligible Lender Approval Response.*** An Eligible Lender who receives a written request to approve additions or amendments by certified or registered mail, return receipt requested, addressed to the address provided by such Eligible Lender, who does not deliver or post to the requesting party a negative response within thirty days after the notice of the proposed addition or amendment, shall be deemed to have approved such request. No Lender may charge a fee in connection with reviewing a request for a response. Any response from a Lender which only requests a fee for review shall not be deemed a "negative response" for the purposes of determining Lender consent within the meaning of this Section.

14.4 ***Amendment of Restated Declaration or Bylaws by Board Vote.*** The Board of Directors shall have the power to amend this Restated Declaration or the Bylaws, as the case may be, but only as this Section permits. By a majority vote of the full Board,

the Board shall have the power to prepare and, in the case of the Restated Declaration, to record an amendment for the following purposes:

- 14.4.1 To correct any printing or grammatical error or omission in this Restated Declaration or Bylaws.
- 14.4.2 To make any change in the Restated Declaration or Bylaws required by a change in any applicable law, including court decisions, which obligate the Association, the Board or the Owners to conform their conduct with the terms of the law.
- 14.4.3 To make any change in the Restated Declaration or Bylaws needed to comply with any requirements of an Institutional Lender.

If the Board approves an amendment using the procedure in this subsection 14.4.2 or 14.4.3, the amendment shall not be recorded or filed until the following procedure is implemented. The Board shall first send notice of such action to the Owners, which notice shall include the text of the proposed amendment and an opinion from legal counsel that the proposed change in the Governing Documents is either required by law or by an Institutional Lender. An amendment shall be considered ratified, unless within thirty days after the date such notice is sent to the Owners, the Owners entitled to cast twenty percent of the votes in the Association, sign a written petition to reconsider the Board's action and file it with the Board. If such a petition is filed, the Board shall call a special meeting of the Members to reconsider the Board's action. At the meeting, unless a majority of the total voting power of the Association rejects the proposed amendment, the amendment shall be considered ratified, whether or not a quorum is present at the special meeting.

This section shall not restrict the powers of the Owners to amend this Restated Declaration or the Bylaws by any other method, but is intended to authorize a simple process for amendment where the property rights of Owners are not materially or adversely affected.

14.5 ***Statute of Limitations to Challenge Amendments.*** No action to challenge the terms or validity of any amendment to this Restated Declaration or to the Bylaws may be made more than one year after the recording date in the case of an amendment to the Restated Declaration, or more than one year after the official tally of the vote in the case of an amendment to the Bylaws.

ARTICLE 15 - GENERAL PROVISIONS

15.1 ***Term.*** The provisions of this Restated Declaration shall continue in effect for a term of fifty years from the date of execution. Thereafter, it shall be automatically extended for successive periods of ten years, until the membership of the Association decides to terminate it.

15.2 **Nonwaiver of Remedies.** Each remedy provided for in this Restated Declaration is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver of the remedy.

15.3 **Severability.** The provisions of this Restated Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision. If for any reason this Restated Declaration is declared completely invalid in its entirety, the Declaration shall be deemed to have survived and thereafter become effective without any further action.

15.4 **Binding.** This Restated Declaration, as well as any amendment thereto and any valid action or directive made pursuant to it, shall be binding on the Owners and their heirs, grantees, tenants, successors, and assigns.

15.5 **Interpretation.** The provisions of this Restated Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a common interest development. Failure to enforce any provision of this Restated Declaration shall not constitute a waiver of the right to enforce that provision or any other provision of this Restated Declaration.

15.6 **Limitation of Liability.** The liability of any Owner for performance of any of the provisions of this Restated Declaration shall terminate upon sale, transfer, assignment, or other divestment of the Owner's entire interest in his or her Lot but only with respect to obligations arising from and after the date of the divestment.

15.7 **Fair Housing.** Neither Association nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Lot to any person on the basis of race, color, sex, sexual orientation, religion, ancestry, national origin, age, marital status, physical handicap or any other classification prohibited by law.

15.8 **Number and Headings.** As used in this Restated Declaration, the singular shall include the plural, unless the context requires the contrary. The headings are not a part of this Restated Declaration, and shall not affect the interpretation of any provision.

15.9 **Attorneys' Fees.** In the event an attorney is engaged by the Board to enforce the Governing Documents, the Association shall be entitled to recover from the adverse party to the controversy its attorneys' fees and costs so incurred, whether or not such controversy proceeds to litigation. In the event litigation is commenced to enforce the Governing Documents, the prevailing party shall be entitled to its attorneys' fees and costs. Said costs and attorneys' fees shall constitute a lien on the Lot which is enforceable pursuant to Article 4 herein. This Section shall also apply to attorneys' fees incurred to collect any post-judgment costs.

15.10 **Variations.** The Board may authorize variations from compliance with any of the architectural or use provisions of this Restated Declaration as follows:

- 15.10.1 Variations may be granted, without limitation, to restrictions upon use contained in Article 5, restrictions on repair and maintenance in Article 6, and architectural restrictions in Article 8, when circumstances such as topography, location, engineering, economy, hardship, aesthetic or environmental considerations warrant.
- 15.10.2 Variations shall be in writing and shall become effective upon final approval by the Board.
- 15.10.3 When a variance is granted, no violation of the Restated Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any of the terms and provisions of this Restated Declaration for any purpose except as to the particular property and particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the premises, including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by the County of San Bernardino or any other governmental authority.
- 15.10.4 The Association may charge a reasonable fee to cover any costs associated with the variance approval process, or for issuance of a variance.
- 15.10.5 The Board may enact additional rules and regulations regarding the variance approval process, the circumstances under which a variance may be granted, and may require the execution of indemnity or other agreements by the Owner as a condition to issuance of a variance.

15.11 **Governing Document Priorities.** In the event of a conflict between the Governing Documents, or any provision thereof, the following documents shall take precedence in the order given: (1) the Articles, (2) this Restated Declaration, (3) the Bylaws, and (4) the Rules and Regulations.

15.12 **Conflict with Statutes.** Provided any federal, state or local statute, law or ordinance is inconsistent with any provision or provisions of the Governing Documents, and compliance with that statute, law or ordinance is mandatory, neither the Association, the Board nor any member thereof shall have any liability for complying with the federal, state or local statute, law or ordinance and not with the inconsistent provision or provisions of the Governing Documents.

15.13 **References to Code Sections.** In the event any of the statutes or laws referenced herein are amended, modified, or otherwise changed, the references herein shall be deemed to refer to the statutes or laws as amended, modified or otherwise changed. If a statute or law is deleted, any reference herein shall be deemed to refer to any successor statute or law.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Declaration of Restrictions this _____ day of _____, 20__.

DECLARANT:

JASMINE STREET HOMEOWNERS ASSOCIATION
a California nonprofit corporation

By: _____
President

By: _____
Secretary

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

On _____, before me, _____, Notary Public, personally appeared _____
_ and _____,

personally known to me

- OR -

proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

EXHIBIT "A" - COMMUNITY LEGAL DESCRIPTION

Lots 1 through 121, inclusive, and Common Area Lots X, Y and Z of Tract 11796-1 as per map recorded in Book 169, Pages 47-49

Lots 122 through 204, inclusive, and Common Area Lots A, B and C of Tract 11796-2 as per map recorded in Book 221, Pages 68-71

Lots 205 through 293, inclusive, and Common Area Lots D, E, F, G, H and I of Tract 11796-3 as per map recorded in Book 231, Pages 58-64

Lots 295 through 310, inclusive and Common Area Lots K and V of Tract 11796-4 as per map recorded in Book 239, Pages 75-76.

All of miscellaneous maps, records of San Bernardino County, California

EXHIBIT "B" - DOMINANT AND SERVIENT TENEMENT LOTS

Dominant Tenement Lots

Servient Tenement Lots

2	1
2	3
3	4
4	5
5	6
6	7
7	8
8	9
9	10
10	11
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