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As Adopted May 31, 2004

2004 AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ALVARADO ESTATES™

THIS 2004 AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made on the day and year hereinafter written, by ALVARADO COMMUNITY ASSOCIATION, a California nonprofit corporation (hereinafter called the "**Declarant**" or the "**Association**") subject to provisions of the California Mutual Benefit Corporation Law, with reference to the following Recitals .

RECITALS

A. Declarant is a nonprofit corporation whose members are the Owners of the real property in the City of San Diego, County of San Diego, State of California, particularly described in Exhibit "A" hereto (hereinafter, together with any additional lots that may hereinafter be annexed, called the "**Residential Lots**").

B. Declarant is the owner of the real property interests in the City of San Diego, County of San Diego, State of California, particularly described in Exhibit "B" hereto (hereinafter called the "**Common Area**"), and holds the Common Area for the benefit of the members. The Residential Lots (currently 128 residential lots) and the Common Area (currently four parcels and easements), together with any other residential or common area lots that may hereinafter be annexed, are hereinafter called the "**Community**." The Community is a *planned development*, as defined in section 1351(k) of the California Civil Code.

C. The Community is currently subject to the covenants, conditions, restrictions, rights, reservations and equitable servitudes set forth in the documents recorded in the Official Records of San Diego County as listed on Exhibits "C" hereto, all such documents being hereinafter collectively referred to as the "**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, so that, upon recordation of this Restated Declaration, the Community shall be subject to the covenants, conditions, restrictions, rights, reservations, easements and equitable servitudes contained herein, without disturbing the conditions stated in Declarations of Annexation listed on Exhibit C hereto or the easements and servitudes recorded in the Official Records of San Diego County as listed on Exhibit "D" hereto.

E. The Declaration, in Article VII, provides that it may be amended by the affirmative written consent of 75% of the total voting power of the Association. The undersigned President and Secretary of the Association certify that 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 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 it 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 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.

D E C L A R A T I O N

ARTICLE 1 - DEFINITIONS

1.1 "**Articles**" means the Articles of Incorporation of Alvarado Community Association, filed in the Office of the Secretary of State of the State of California on February 15, 1950, as Corporation No. 242617, and any amendments thereto now existing or hereafter adopted.

1.2 "**Association**" and "**Declarant**" mean Alvarado Community Association, a California nonprofit corporation subject to the California Nonprofit Mutual Benefit Corporation Law, created for the purpose of managing the Community and holding legal title to the Common Area Lots.

1.3 "**Board**" means the Board of Directors of the Association.

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

1.5 “**Common Area**” means those portions of the Community and all improvements thereon that are either owned by the Association or over which the Association has easements for the common use and enjoyment of the Owners, including the Community Lot, open space easements, vacated streets, including pavement, curbs, gutters, sidewalks, street lights, drainage facilities, the controlled-access entries and buildings and structures on the properties identified on Exhibit “B” hereto.

1.6 “**Community**” means the entire common interest development as described in Exhibits “A” and “B” hereto.

1.7 “**Community Lot**” means Lot 41 of Alvarado No. 2, as shown on Map No. 2823 and more particularly described as Parcel U in Exhibit “B” hereto.

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

1.9 “**First Mortgage**” is defined in Section 1.13 herein.

1.10 “**Governing Documents**” means this Restated Declaration and any other documents, such as the Articles, Bylaws and Rules and Regulations that govern the operation of the Association, including the Rules of the Association and the Architectural Standards existing at the date hereof and as may be amended from time to time.

1.11 “**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**”) and their successors. The term “**Beneficiary**” shall be synonymous with the term “Lender”.

1.12 “**Lot**” or “**Residential Lot**” means any of the lots within the Community, including all improvements now or hereafter thereon, with the exception of the Community Lot and other Common Area.

1.13 “**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.

1.14 “**Owner**” means any Person that owns a fee simple interest in any Lot, including the Association, and any contract seller under recorded contracts of sale. “Owner” shall not include any Person that holds an interest in a Lot merely as security

for performance of an obligation. For purposes of exercising membership rights and incurring membership obligations, when an Owner is an entity, any director, officer, managing member, employee or agent designated 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. In the event that the trust is revocable, the settlors of the trust shall be deemed to be the Owner unless they lack legal capacity.

1.15 “**Person**” means a natural individual, a corporation, a partnership, limited partnership, limited liability company, business trust, joint stock company or unincorporated association, or any other entity with the legal right to hold title to real property.

1.16 “**Restated Declaration**” means this Amended and Restated Declaration of Covenants, Conditions and Restrictions and any amendments hereto.

1.17 “**Rules and Regulations**” means any Rules and Regulations for the Association regulating the use of the Lots, the Common Area, the Community and any facilities located therein, as adopted by the Board, including the Rules of the Association and the Architectural Standards existing at the date hereof and as they may be amended from time to time.

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, conditions and restrictions set forth in this Restated Declaration shall be enforceable equitable servitudes and shall inure to the benefit of and bind all Owners. Such 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.

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, unless specifically approved by the Board. 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 Section 3.3 herein. Any transfer that attempts to sever those component interests shall be void. Time-share conveyances are prohibited.

2.5 Drainage and Slope Easements. The Owner of a Lot shall permit free access by the Association and its agents, to slopes or drainageways located on his or her Lot when such access is essential for the maintenance of permanent stabilization of such slopes or for the maintenance of the drainage facilities for the protection and use of property other than the Lot on which the slopes or drainageways are located. The Owner of any Lot shall not, without the written consent of the Association, in any way interfere with the established drainage pattern over his or her Lot from adjacent or adjoining Lots, and such Owner will make adequate provisions for property drainage in the event it is necessary to change the established drainage over his or her Lot. For the purposes herein, "established drainage" is defined as the drainage which occurred at the time the particular area of the Community was completed.

2.6 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 as may be required by the Governing Documents.

2.7 Owner Easements Over Common Area. Each Owner shall have a nonexclusive easement for use and enjoyment of the Common Area 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 the right of the Association pursuant to the Governing Documents to (a) limit or deny use thereof, (b) regulate time and manner of use, (c) charge reasonable admission or use fees or deposits, (d) charge for supplying and replacing keys, key cards, codes or other access devices to the Common Area, including charges calculated to limit distribution and deter loss of keys or other access devices, (e) perform its obligations under this Restated Declaration or (f) 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.

2.8 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 can 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.

2.9 Encroachment Easements. None of the rights and obligations of the Owners created herein or by the Declaration 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 encroachments exist 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 such encroachment occurred due to the willful conduct of such Owner or Owners.

2.10 **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 such facilities, the Owners of any Lots served by such utility facilities shall have the right of reasonable access for themselves or their agents to repair, replace and generally maintain such 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 to be reasonable. In the case of utility facilities that 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.

ARTICLE 3 - ASSOCIATION

3.1 **Organization of the Association.** The Association is incorporated as a California nonprofit corporation and is subject to provisions of the California Nonprofit Mutual Benefit Corporation Law. The Association was created for the purpose of managing the Community and holding title to the Common Area 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 the Bylaws.

3.3 **Membership.** Every Owner, upon becoming an Owner, shall automatically be 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. Membership 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 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. However, a transfer of a Lot by deed of trust to secure an obligation does not transfer the membership rights unless there is a foreclosure on the security interest, at which point the transferee on foreclosure becomes the member.

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. Only one ballot or vote shall be cast for each Lot owned on each issue or Board position, subject to the provisions set forth in the Bylaws.

3.5 **Inspection of Accounting Books and Records.** The rights of Owners and directors to obtain and inspect the accounting books and records of the Association shall be set forth in the Bylaws.

3.6 **General Powers and Authority.** 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:

A. The power to establish, fix, levy, collect and enforce the payment of assessments, charges, fees, fines, late charges and monetary penalties levied in accordance with the Governing Documents against the Owners in accordance with the procedures set forth in Article 4 herein.

B. The power to provide and contract for refuse collection, street maintenance, street lighting and other services for the Lots and any other dwellings that may be located within the controlled-access entries of the Community, even if such other dwellings are not subject to this Restated Declaration.

C. The power to adopt reasonable Rules and Regulations governing the use of the Lots, Dwellings, Common Area, Common Area facilities and Association owned property, and the conduct of Board and membership meetings. The Rules and Regulations may include, but are not limited to:

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

(2) 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, including traffic regulations.

(3) The setting of reasonable fees and deposits for use of any Common Area facilities and improvements.

(4) The setting of fees and deposits for supplying and replacing any access devices to Common Areas, including charges calculated to limit distribution and deter loss of such devices.

(5) The establishment of reasonable hearing procedures and a schedule of monetary penalties and fines that may be imposed for violations of any provisions of the Governing Documents.

D. The power 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:

(1) Enforcement of the Governing Documents.

(2) Damage to the Common Area.

(3) Damage to any Lots that the Association is obligated to maintain or repair.

(4) 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.

(5) Enforcement of payment of assessments, charges, fees, fines, late charges and monetary penalties levied in accordance with Section 4.13 herein and the Governing Documents.

(6) Any other matters in which the Association is a party, including, but not limited to, contract disputes.

E. The power to discipline Owners for violation of any of the provisions of the Governing Documents by (a) suspending the Owner's membership rights, including the Owner's voting rights and the rights and privileges to use the Common Area and facilities appurtenant to the Owner's Lot, (b) imposing monetary fines and (c) recording a notice of noncompliance in the Office of the County Recorder of San Diego County encumbering the Lot of the Owner.

F. The power 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 responsible or to clean up a Lot that has become unsightly or hazardous despite due notice.

G. 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 not substantial 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.

H. 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 or successor thereto.

I. The right and power to maintain the Common Area vacated rights-of-way, which include the streets and the associated infrastructure, including pavement, curbs, gutters, sidewalks and street lights, and the drainage facilities within the rights of way, the Community Lot and its facilities, the limited access gate, gate house and related facilities, the storage room and restroom at the access plaza and the irrigation system and landscape on Yerba Santa Drive leading from Montezuma Avenue to the entry plaza.

J. The power to grant written variances, without limitation, to restrictions upon use contained in Article 5, restrictions on repair and maintenance in Article 6, and architectural restrictions in Article 7, when circumstances such as topography, location, engineering, economy, hardship, aesthetic or environmental considerations warrant. Such variances shall be granted in accordance with such Rules and Regulations as shall be promulgated from time to time and application for such variances, as may all applications to the Board for approvals, may be subject to fees as shall be set in the Rules and Regulations.

3.7 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:

A. The Association, acting through the Board, shall operate, maintain, repair and replace those components described in Section 3.6-I hereof, or contract for the performance of that work, subject to the provisions of the Governing Documents.

B. 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:

(1) Refuse collection for the Lots and any other dwellings within the controlled-access entries of the Community.

(2) Any necessary utility services for the Common Area.

(3) Insurance policies.

(4) The services of any personnel that the Board determines are necessary or proper for the operation of the Common Area and the Association.

(5) Legal and accounting services necessary or proper in the operation of the Common Area and the Association or the enforcement of the Governing Documents.

(6) Attendants to oversee limited access entry during such hours as the Board shall determine to be convenient and appropriate and to perform such other functions as the Board approves, including routine inspections of the Community and observation of its boundaries and open areas.

(7) Any other purpose that the Board deems in good faith to be in the best interests of the Community.

ARTICLE 4 - ASSESSMENTS AND COLLECTION PROCEDURES

4.1 **Covenant to Pay.** Each Owner, by acceptance of the deed to, or otherwise acquiring title to, the Owner's Lot, is deemed to covenant and agrees to pay to the Association the regular, special and individual assessments and all other charges duly levied by the Association pursuant to the provisions of this Restated Declaration and the Declaration. An "**assessment**," for purposes hereof, is a dollar amount determined by the Board to be paid by an Owner and invoiced to such Owner as authored by this Restated Declaration or the Declaration. A regular, special or individual assessment and any late charges, reasonable costs of collection and interest, as assessed in accordance with the provisions of this Article, and under the Declaration, 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 regular, special and individual assessments sufficient to perform its obligations. The assessments levied by the Association shall be used exclusively (a) to promote the recreation and welfare of the Owners, (b) for the operation, replacement, improvement and maintenance of the Community, (c) for administrative costs of managing the Community and providing for its insurance needs and accounting and reporting functions, (d) to discharge any other obligations of the Association under this Restated Declaration or the Declaration and (e) for such other purposes as the Board in good faith deems to be in the best interests of the Community.

4.3 **Regular Assessments.** Concurrently with preparation of the financial documents and budget as required in 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 Residential Lots of classes determined in good faith by the Board, such as those Residential Lots that are unimproved and receive less than full services as a result, those Residential Lots that are inside the controlled-access area and those that are without, those Residential Lots that are remnants left over from eminent domain takings and those Residential Lots that have contractual arrangements related to their contracts of annexation to the Community. 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 such installments and on such dates as the Board shall determine, which may include provision for discounts for annual lump sum 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 Owner's Lot in a class, shall be assessed against different classes by the Board in a good faith estimate of the relationship of the additional expense to the particular class and shall be collected in the same manner as regular assessments.

4.5 Limitation on Assessments. Except in emergency situations, the Board may not, without the approval of Owners 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, or successor provisions, impose a regular assessment per Lot that is more than 20% greater than the regular assessment for the preceding fiscal year, or levy special assessments that in the aggregate exceed 5% of the budgeted gross expenses of the Association for the fiscal year. For purposes of this Section, a "quorum" means the Owners of more than 50% of the Residential Lots. These limitations shall not apply to assessment increases that are necessary for emergency situations. An emergency situation is an extraordinary expense that is:

- A. Required by a court order.
- B. 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.
- C. 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 extraor-

dinary 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 30 days nor more than 60 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 that is the duty of any Owner to accomplish, but that has not been accomplished by such Owner or (b) incurs any costs that 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 such an individual assessment that is not a normal recurring assessment for services provided inside a controlled-access entry in the same amount as the prior year, the Board shall provide the Owner with notice and an opportunity for a hearing in accordance with the Bylaws. The notice and hearing regarding the levy of an individual assessment may be combined with the notice and 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 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 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, collectable 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 non-judicial foreclosure.

4.9 **Lots Not Subject to Assessment.** Assessments that 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 written off upon expiration of the former Owner's unexercised right of redemption.

4.10 **Costs, Late Charges and Interest.** Late charges may be levied by the Association against an Owner for the delinquent payment of regular, special and individual assessments, fines and monetary penalties. An assessment, including any

installment payment, is delinquent 15 days after its due date. If an assessment is delinquent, the Association may recover all of the following from the Owner:

- A. Reasonable costs incurred in collecting the delinquent assessment, including actual attorneys' fees.
- B. A late charge not exceeding 10% of the delinquent assessment or \$10.00, whichever is greater, or the maximum amount allowed by law.
- C. Interest on the delinquent assessment amount and the foregoing sums at an annual percentage rate established by the Board from time to time within limits allowed by law, commencing 30 days after the assessment becomes due.

A late charge may be imposed only 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 herein.

4.11 Priority of Payments. The Board, in its sole discretion, may enact policies, in compliance with applicable law, addressing how payments received from an Owner will be applied to any outstanding balances due the Association from the Owner.

4.12 No Offsets. All assessments by the Association shall be payable in the amounts specified, and no offsets against such amount shall be permitted for any reason, 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 regular, special, individual or monetary-penalty assessment, and any related late charges, reasonable costs of collection (including actual attorneys' fees) and late charges and interest assessed in accordance with Section 4.10 herein, excluding monetary penalties, shall become a lien upon the Lot when a Notice of Assessment Lien is properly prepared, signed, duly recorded and served as provided by law.

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 include the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including items on the statement that indicate the principal owed, and any late charges and the method of calculation, and any attorneys' fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. If the delinquent assessment or installment and related charges are paid or otherwise satisfied in accordance with the demand for payment, the Association shall not record the Notice of Assessment Lien.

If not paid in full within 30 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 non-judicial foreclosure. Any non-judicial 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, (or successor statute) in accordance with the provisions of sections 2924, 2924(b), and 2924(c) of the California Civil Code (or successor statutes).

If all sums specified in the Notice of Assessment Lien are paid before the completion of any judicial or non-judicial foreclosure, the Association (I) shall 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, and such 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 non-judicial 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 non-judicial foreclosure.

4.14 *Priority of Assessment Lien* . As set forth herein below, 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:

A. Only the judicial or non-judicial 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 that became due prior to the date of sale, and excluding those assessment liens recorded prior to the recording of the First Mortgage.

B. 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 that accrued during such Owner's period of

ownership. The personal obligation of any Owner for payment of delinquent assessments and charges is not discharged by parting with possession of the Lot, by foreclosure or by payment of a portion thereof by any third person.

C. No sale or transfer of any Lot shall relieve such Lot or its new Owner from liability for any future assessments that 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, 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:

A. Owners may use the Common Area subject to the provisions of this Restated Declaration and the other Governing Documents.

B. 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 as the Owner of such Lot 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 with respect to such Lot, the Owner and the Owner's family, guests, employees and invitees shall not be entitled with respect to such Lot 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.

C. The Board may:

(1) Adopt and enforce reasonable rules and regulations for the use of the Common Area and the Community.

(2) Charge a fee or deposit for use of any Common Area facilities and improvements, including keys, keycards, codes or other access devices to Common Areas, including charges calculated to limit distribution and deter loss of keys, keycards, codes or other access devices.

(3) Assign or otherwise control the use of any parking spaces or areas within the Common Area with authority to remove any vehicle within the Community parked in violation of the Governing Documents in accordance with the provisions of California Vehicle Code section 22658.2 and any amendments or successor laws thereto.

(4) Suspend or limit the right of any Owner, and the Persons deriving rights from any Owner, to use and enjoy the Common Area 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.

(5) Cause the construction of additional improvements in the Common Area, or cause the alteration or removal of existing improvements on the Common Area.

(6) Dedicate, grant, or join in the grant or conveyance of easements, licenses or rights-of-way in, on and over the Common Area to any public agency, authority or utility 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 his or her Lot without the Consent of that Owner.

(7) Approve any proposed alteration of or modification to the Common Area.

(8) Establish traffic and parking regulations for use of the Common Area streets.

(9) Establish reasonable rules for entry and exit through the controlled access gates.

D. The Board, with the approval of Owners of two-thirds of the Residential Lots, may:

(1) Dedicate, grant or join in the grant or conveyance of easements, licenses or rights-of-way in, on, and over the Common Area, other than those allowed by Section 5.2-C(9), above. Such easements, licenses or

rights-of-way may be granted (a) to third parties for purposes reasonably related to the operation of the Community or (b) to one or more Owners to exclusively use portions of the Common Area subject to the Governing Documents. 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 his or her Lot without the consent of such Owner.

(2) Mortgage or encumber the Common Area or portions thereof.

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:

A. Modify, construct, build or otherwise alter any portion of his or her Lot or Dwelling other than as provided in Article 7, below.

B. Attempt to further subdivide a Lot.

C. 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 private residence, including accommodations for non-paying guests and domestic servants. The Board may establish guidelines in the Rules and Regulations to allow certain home occupations that (a) are consistent and compatible with the typical residential use of the Community, and (b) do not have significant detrimental effect on neighboring Lots or the Community.

D. Lease or rent a Lot in derogation of the following:

(1) All leases and rental agreements must be in writing.

(2) All leases and rental agreements must be for the entire Dwelling, and not merely parts thereof, unless the Owner remains in occupancy.

(3) No lease or rental shall be for a period of less than 30 days.

(4) 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.

(5) Any Owner leasing or renting a Lot shall promptly notify the Association in writing of the names of all tenants and members of a tenant's

family occupying such Lot and shall provide the Association with a complete copy of the lease or rental agreement.

(6) Any Owner leasing or renting a Lot shall promptly notify the Association of the address and telephone number where such Owner can be reached and the contact information for the tenant, both business and residential.

E. 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 or increase of premium of insurance on any other Lot or on any part of the Common Area, or that would violate any law.

F. Raise or keep pets or other animals in a manner that constitutes an unreasonable annoyance or nuisance to Community residents or for commercial purposes or in unreasonable numbers, all as determined by the Board or in Rules and Regulations. 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 or agents.

G. Engage in any illegal, noxious or offensive activity in any part of the Community, or do any act which unreasonably threatens the health, safety or welfare of other residents of the Community.

H. 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.

I. Permit, by easement or license, egress or ingress to streets within the Community (public or private) in favor of property not entirely included within the Community.

5.4 **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 installation or maintenance of any improvement by the Owner or the Owner's family, guests, tenants, contract purchasers or invitees. In the case of multiple 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.

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 a clean, safe and sanitary condition necessary to preserve the attractive appearance of the Lots, Dwellings, and the Community and protect the values thereof. The Board shall have the power to determine the standards of such maintenance.

6.2 **Division of Responsibility**. Each Owner shall be responsible for the maintenance, repair and replacement of his or her Dwelling and Lot, including any portion of the Lot inside the street curbs, and the Association shall be responsible for the maintenance, repair and replacement of the Common Area. Except as otherwise provided in the Governing Documents, the costs of maintenance, repair and replacement shall be borne by the party responsible for the maintenance, repair and replacement.

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 or any resident in the Owner's Dwelling. The Owner is also responsible for any damages to the Common Area caused by such installation, maintenance or repair. Installation of any improvement(s) within the Common Area is subject to the provisions of Article 7 herein.

6.4 **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.

6.5 **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 absence of a safety hazard, 30 days' notice shall be required. In the event the Owner fails to carry out such maintenance within such time period, the Board may, following notice and opportunity for a hearing, 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 set by the Board from time to time (but no greater than the maximum rate authorized by law).

6.6 *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 be responsible for performing the repair of any damage to his or her own property. The Owner of any other property that sustained damage shall perform the repair of any such damage, and may charge the cost thereof to the responsible Owner.

If the responsible Owner disputes or refuses to pay any repair costs incurred by the Association, the Association, after reasonable notice and opportunity-for-hearing procedures as provided for the imposition of monetary fines or suspensions, 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. In the event the Board, in its discretion, determines to submit the loss to the Association's insurance carrier, the responsible Owner shall be charged with any deductible amount not covered by the insurance.

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.

6.7 *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 damage to property or portions of such Owner's Dwelling or Lot, unless such damage is intentionally caused or caused by the negligence of the Association, its Board, officers, agents or employees acting in the scope of their services to the Association.

ARTICLE 7 - ARCHITECTURAL AND DESIGN CONTROL

7.1 *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 submissions, and to provide recommendations to the Board with regard to approval or disapproval of any submission. The foregoing notwithstanding, the Board shall be solely responsible for approving or rejecting any architectural submission, but the Board may delegate to its architectural committee authority to interpret and enforce the architectural rules as the Board deems appropriate.

7.2 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, tennis or game court, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, tree, grass, shrub or other landscaping or any improvement or structure of any kind without the prior written approval of the Board in accordance with this Article or compliance with such Rules and Regulations as the Board shall have adopted from time to time. Additionally, and except as provided in Section 7.4 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, unless Rules and Regulations permit such changes.

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

- A. Installation or removal of any landscaping, either "hard-scape" or "soft-scape," unless specifically permitted by the Rules and Regulations, must have prior approval of the Board. Replacement of such landscaping will require approval only if it differs from the landscaping existing at the time the Lot was annexed to the Community or previously approved by the Board (e.g., replacing stone walkway with concrete, or annual flowers with shrubs).
- B. 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.
- C. Except as provided by the Governing Documents, Owners shall not have the right to modify or alter the Common Area without the prior written consent of the Board.
- D. The principal structure, accessory buildings and garage on any Lot shall be appropriate to the Lot size, as determined by the Board.
- E. No building or structures, or any part of any building or structure, except steps, eaves, gutters and bay or bow windows and other slight or minor projections, shall be built or maintained within 30 feet from the front or street line or lines of any Lot, nor within 20 feet from any other boundary line of any Lot. The Board of Directors may, upon the recommendation of the architectural committee, grant variances from such setbacks in special cases. No enclosures or pens

for pets shall be allowed in the side yard areas within 20 feet of the side property lines without the consent of the Board.

F. No building, any part of that is designed for dwelling purposes, shall be in any manner occupied while in the course of original construction or until it complies with all requirements as to area and with all other conditions and restrictions applicable thereto. The construction of any building or structure shall be prosecuted with reasonable diligence continuously from the commencement until fully completed.

G. No side-yard fence or wall shall have a height greater than six feet above finish grade without Board approval. No front yard wall, fence, hedge or vegetation screen shall have a height greater than 42 inches without Board approval.

7.4 Architectural Changes Not Requiring Prior Approval. Notwithstanding Sections 7.2 and 7.3 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 violate specific provisions of the Revised Declaration.

7.5 Procedure for Obtaining Approval of Architectural Changes. The procedure for obtaining approval of any architectural change shall be as set forth in the Rules and Regulations. In the event the Board fails to provide a written response to the requesting Owner within the time required in the Rules and Regulations, the Owner may notify the Board in writing that a response has not been received. If the Board fails to respond within 60 days of the receipt of the notice, approval will not be required and the related covenants shall be deemed to have been fully satisfied. Once an Owner has obtained approval for an architectural submission, work on such approved submission shall promptly commence and shall be completed within a reasonable time.

7.6 Estoppel Certificate. Within a reasonable time after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee, if any, the Board shall provide the Owner with an estoppel certificate certifying that as of the date thereof, either: (a) all improvements made and other work completed by such Owner complies with the Governing Documents or (b) such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in such Lot through the Owner, shall be entitled to rely on such certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, the Owners and such persons deriving any interest through them.

7.7 Architectural Rules. The Board may, in its sole discretion, adopt, amend and repeal, as it deems necessary, rules and regulations to be known as "Architectural Rules." 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 that are recommended for use in the Community; provided, however, that Architectural Rules shall not be in derogation of the standards required by this Restated Declaration. The Architectural Rules may also address the information and fees that are required to be presented in connection with an architectural submission.

7.8 Standard of Architectural Review. An architectural submission 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.

7.9 General Statement of Aims in Architectural and Landscape Control. In developing and maintaining the Lots, the goal shall be to maintain the present natural character of the landscape to the greatest extent by:

- A. Refraining from any removal of native growth unless necessary for the actual site of the building, road, new planted area, swimming pools, tennis or badminton courts or recreational areas, or as required for protection from canyon fires.

- B. Constructing buildings suitable in view of the general architectural style and character of the other buildings in the Community, sited so as to blend with the existing topography in a natural and flowing manner, so as not to impose a dominating presence on the street or as viewed across canyons or by their immediate neighbors, and so as not to create sight lines into the private yards or windows of adjacent lots that are unnecessarily invasive of the privacy of the neighbors. Buildings shall not exceed one story (as defined by generally accepted architectural standards) above the upper or street side of the Lot. Such buildings may not exceed 21 feet in height from the level of the street in front of the structure, or from natural grade, whichever is higher, unless specifically approved by the Board. Structures may be constructed below street level into canyons with multiple levels if the Board finds the intended structure to be appropriate to the Lot size and setting.

- C. Using colors that maintain the present natural character of the site, softened and natural so as to blend with the natural setting, with brighter colors permitted in smaller areas such as trim, semi-enclosed areas and interiors, etc.

D. Striving at all times and in all details, large and small, for true architectural character suitable to these types of suburban homes and of such excellence in design that the investment will be protected.

7.10 **Architectural Committee.** The architectural committee, if any, shall consist of at least three and not more than five members appointed by the Board. Other than its chairman, who shall be a director, committee members need not be directors, but, with the exception of one or more licensed architects, shall be Owners. At least one of the members of the committee shall be a licensed architect, and architects who are not Owners may be compensated to serve on or advise the committee.

7.11 **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, (c) the development of any property within the Community or (d) the execution and filing of a certificate, pursuant to Section 7.6 above, whether or not the facts therein are correct; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him or her.

7.12 **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.

A. 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.

B. 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.

C. If the Association will not thereby be prejudiced by waiting and the Owner fails to remedy any noticed noncompliance within 30 days from the date of such notification, the Board shall set a date on which a hearing before the Board shall be held regarding the alleged noncompliance. The hearing date shall not be more than 45 days nor less than 15 days after the hearing notice is issued.

D. At the hearing, the Owner, a representative(s) of the architectural committee and, in 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.

E. 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.

F. 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. Whether the Owner has been found to be in noncompliance after such a reasonable opportunity to be heard or resort to legal and equitable remedies has been sought pursuant to Section 7.12-I below, 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. The Board may, in appropriate circumstances, also impose such monetary-penalty assessment as shall be authorized by the Rules and Regulations and as the Board shall deem, in its discretion, appropriate.

G. 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. Differences in location for improvements, differences in topography, the sizes of the structures, proximity to other Dwellings or the Common Area and other factors may be taken into consideration by the Board and the committee in reviewing a particular submission.

H. If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.

I. Notwithstanding any other provisions herein, the Board shall have the authority to obtain a restraining order or injunction at any time after discovery that work is proceeding without proper approval of the Board if the Board deems such action necessary to protect the Association's interests. Such authority of the Board may be delegated. In the event such a restraining order or injunction is sought the other provisions of this Section shall apply.

7.13 Non-Compliance with Laws. Neither the Association, nor the Board or 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 the architectural committee, or any defect in any conditions or requirements they may have imposed with respect thereto.

7.14 **Approval by City.** 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 such laws and regulations. Approval by the Board shall not be considered to satisfy the appropriate 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 such 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 8 - INSURANCE

8.1 **General.** The Board shall obtain and maintain such policies of insurance with such amounts and terms of coverage from such insurance carriers as the Board, in its discretion, determines to be appropriate and/or required by law and available at acceptable cost. Such coverages may include general liability, casualty, officer-director liability, employment practices, workers compensation, flood, earthquake, terrorism, fidelity and other types as shall be deemed from time to time to be appropriate and or required in the Governing Documents.

8.2 **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 particular insurance contemplated 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 Owners fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board shall promptly notify each Owner that the specific insurance will not be obtained or renewed. In making a determination as to whether to acquire any type of insurance, the Board may, but is not required to, base its decision upon, among other things, an advisory vote or survey of the Owners.

8.3 **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.

ARTICLE 9 - DAMAGE OR DESTRUCTION

9.1 **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 that 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.

9.2 *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 (A) the Association is terminated, (B) the Board determines repair or replacement is not practical or necessary for the use and enjoyment of the Lots or (C) repair or replacement would be illegal under a state statute or municipal ordinance.

ARTICLE 10 - EMINENT DOMAIN

10.1 *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.

10.2 *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 any.

ARTICLE 11 - ENFORCEMENT

11.1 *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.

11.2 *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.

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

11.4 **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.

11.5 **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 12 - AMENDMENTS

12.1 **Owner Approval of Amendments.** This Restated Declaration may be amended by the vote or written consent of Owners representing not less than 75% 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.

12.2 **Amendment of Restated Declaration by Board Vote.** The Board of Directors shall have the power to amend this Restated Declaration without any vote of the Owners, but only as this Section permits. By a majority vote of the Board, the Board shall have the power to prepare and, if necessary, to record an amendment for any of the following purposes:

A. To correct any printing or grammatical error or omission in the Restated Declaration or to amend Recital B and Exhibits A, B, C and D to reflect completed annexations, de-annexations, and acquired properties and easements.

B. To make any change in the Restated Declaration required by a change in any applicable law that obligates the Association, the Board or the Owners to conform their conduct with the terms of the law.

C. To make any change in the Restated Declaration needed to comply with any requirements of an Institutional Lender that the Board determines is in the best interests of the Owners to comply with, after considering the impact of a refusal to cooperate. If the Board approves an amendment using the procedure in clauses B or C, 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, a written opinion from legal counsel that the proposed change in the Restated Declaration is either required by law or by an Institutional Lender and a copy of this Section. An amendment shall be considered ratified, unless, within 30 days after the date such notice is sent to the Owners, Owners of 20% of the Residential Lots file written objections with the Board requesting reconsideration of the Board's action. If such a number of objections are filed, the Board shall call a special meeting of the Owners 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.

12.3 Statute of Limitations to Challenge Amendments. No action to challenge the terms or validity of any amendment to this Restated Declaration may be made more than one year after the recording date of the amendment .

ARTICLE 13 - ANNEXATION

13.1 Scope of Article; Nature of Annexation. An "annexation" is defined, for purposes of this Article, as any addition of property to the Community with the intention that it be included within the jurisdiction of the Restated Declaration and the Association. Any owner of property adjacent to or near any border of the Community, including the Association if it owns any such property, may make a written request to the Board in accordance with Section 13.2, below, that an annexation proposal be submitted to the Owners for approval. For purposes of this Article, a parcel or parcels of property shall be considered contiguous to the Community and thus eligible for annexation if the property shares a common boundary (which may be a street) with any portion of the Community or with any other parcel which shares a common border with the Community and is proposed for annexation contemporaneously with the adjoining parcel. Parcels proposed for annexation must be separate legal parcels and any governmental approvals required as a condition for annexation shall be obtained prior to annexation. Once annexation occurs, the newly annexed property and the owners of such property shall have the basic rights, duties and obligations as any other property included within the Community and the Owners of any Lot in the Community.

13.2 **Application for Annexation.** In order to initiate a membership vote on the proposed annexation, a written proposal for annexation shall be presented to the Board that shall include at least the following:

A. A form of a Declaration of Annexation proposed to be recorded with the County Recorder's Office upon approval of the proposed annexation by the Owners (the "**Declaration of Annexation**").

B. A detailed statement of the owner's intentions with respect to the development, subdivision and use of the proposed annexation property, and the architectural design of any improvements proposed to be constructed on such property. The description shall include any special development conditions imposed by the City in connection with the approval of a subdivision map for such property or any proposal to create any local districts that will have jurisdiction over such property or any portion thereof.

C. If any additional Common Areas or facilities are proposed within the property proposed to be, detailed financial budgets and projections disclosing the maintenance, repair, operations and capital reserve obligations that are likely to be incurred by the Association as a result of the annexation.

13.3 **Board Approval.** Upon receipt of a complete application for annexation, the Board shall have a period of 90 days to evaluate and act upon the proposal. The Board may (a) approve the proposal and call for a membership vote thereon by written ballot in accordance with Section 13.4, (b) disapprove the proposal or (c) conditionally approve the proposal subject to the satisfaction of specified conditions. Unless Board approval is obtained, no annexation proposal need be presented to the Owners unless a petition requesting a membership vote on the matter is signed by Owners of at least five percent of the Lots and presented to the Board. Among other requirements, the Board's approval may be conditioned upon the owner of the property proposed to be annexed agreeing to pay the costs of (i) copying and mailing to the Owners all relevant documentation, the ballot and appropriate solicitation materials, (ii) legal, architectural and any other fees incurred to review the application and prepare the necessary ballots and documentation and (iii) any other costs incurred by the Association to review and act upon the annexation request.

13.4 **Membership Approval.** Properties within the Association's controlled-access gate and those located on Yerba Anita Drive have already received approval for annexation by a vote of the Owners. Additional real property meeting the requirements of this Article may be annexed to the Community and brought within the jurisdiction of this Restated Declaration upon the approval by vote or written consent of Owners of 67% of the Residential Lots. The Owner vote shall be conducted by written ballot in accordance with the Bylaws and applicable statutes, and the solicitation materials accompanying the ballot shall include a copy of the proposed Declaration of Annexation

as well as any other information considered by the Board to be necessary or appropriate for an informed decision by the Owners.

13.5 Declaration of Annexation. Any annexations of real property to the Community authorized under Sections 13.3 and 13.4 shall be effected by filing with the Office of the County Recorder a Declaration of Annexation, or other similar instrument, with respect to the property to be annexed. The Declaration of Annexation (a) shall be executed by the owner of such property and the President and Secretary of the Association, (b) shall extend the jurisdiction of this Restated Declaration to such real property and (c) may include such additions to, and modifications of, the covenants, conditions and restrictions contained in this Restated Declaration with respect to such property as may be necessary to reflect the different character, if any, of such property, so long as they are consistent with all applicable laws and governmental regulations. Without limiting the foregoing, it is expressly agreed that any Declaration of Annexation may set forth different property use restrictions and design and building standards that shall apply solely to Lots within the annexed property and any improvements constructed thereon. The Declaration of Annexation shall control if there is any conflict between any Declaration of Annexation and the provisions of this Restated Declaration, although the documents shall be construed to be consistent with one another to the extent possible. The inclusion in any Declaration of Annexation of conditions, covenants, land uses and limitations that are more restrictive or are more inclusive than the restrictions contained in this Restated Declaration shall not be deemed to constitute a conflict with the provisions of this Restated Declaration.

13.6 Effect of Annexation. The filing of a Declaration of Annexation shall constitute and effectuate the annexation of the property described therein, and thereupon such property shall become and constitute a part of the Community, and be subject to this Restated Declaration, subject only to such modifications as may be imposed by the Declaration of Annexation. Each legally described lot on any recorded parcel, subdivision, tract or other map contained within such property shall be included within the definition of "Lot" herein without need for further amendment. Such Lots within the annexed property shall be subject to assessment by the Association and to the functions, powers and jurisdiction of the Association, and the Owners of Lots within the annexed real property shall automatically become members of the Association. Any Common Areas, including private roads, that are included within the annexed property shall be conveyed to the Association free of all liens and encumbrances other than liens, rights-of-way or other encumbrances disclosed on the preliminary title report for the annexed property and approved by the Association. The conveyance of any Common Areas to the Association shall occur immediately following recordation of the Declaration of Annexation unless otherwise agreed in writing by the owner of the annexed property and the Board.

ARTICLE 14 - GENERAL PROVISIONS

14.1 **Term.** The provisions of this Restated Declaration shall continue in effect for a term of 50 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 by a vote meeting the requirements of an amendment to this Restated Declaration.

14.2 **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.

14.3 **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 Original Declaration shall be deemed to have survived and thereafter become effective without any further action.

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

14.5 **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.

14.6 **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.

14.7 **Fair Housing.** Neither the 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.

14.8 **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.

14.9 **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. In the event litigation is commenced to enforce the Governing Documents, the prevailing party shall be entitled to its attorneys' fees and costs. Such costs and attorneys' fees shall constitute a lien on the Lot that is enforceable pursuant to Article 4 hereof. This Section shall also apply to attorneys' fees incurred to collect any post-judgment costs.

14.10 **Governing Document Priorities.** In the event of a conflict among the Governing Documents or any provision thereof, the following documents shall take precedence in the order given: (1) Declarations of Annexation, (2) the Articles, (3) this Restated Declaration, (4) the Bylaws and (5) the Rules and Regulations.

14.11 **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, nor the Board or any member thereof shall have any liability for complying with the federal, state or local statute, law or ordinance and in not complying with the inconsistent provision or provisions of the Governing Documents.

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Declaration of Restrictions this 5th day of June, 2004.

DECLARANT: ALVARADO COMMUNITY ASSOCIATION,
a California nonprofit corporation

By: /s/ Wayne Breise
Wayne Breise, President

By: /s/ Alan L. Williams
Alan L. Williams, Secretary

Certification of Approval of Lot Owners

I, Alan L. Williams, Secretary of Alvarado Community Association, hereby certify that the foregoing Restatement of Covenants, Conditions & Restrictions, were duly submitted to a written balloting of the lot owners of the Association; and that within the time period, as set and duly extended by the Board of Directors, more than 75% of the lot owners submitted signed ballots approving their adoption.

 /s/ Alan L. Williams
Alan L. Williams, Secretary

Residential Lots Description

PARCEL A

Lots 1 through 12 of Alvarado, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 2789, filed in the Office of the County Recorder of San Diego County, June 15, 1951.

PARCEL B

Lots 13 through 26, 30 through 82 of Alvarado No. 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 2823, filed in the Office of the County Recorder of San Diego County, on November 14, 1951.

PARCEL C

Lots 105 through 128 of Alvarado Unit No. 3, in the City of San Diego, County of San Diego, State of California, according to map thereof No. 5185, filed in the Office of the County Recorder of San Diego County, May 22, 1963.

PARCEL D

Lots 27 of ALVARADO UNIT NO. 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 2823, filed in the Office of the Recorder of San Diego on November 14, 1951, excepting therefrom that portion lying Northerly of the following line:

Beginning at a point on the Westerly line of said Alvarado Unit No. 2, distant thereon South 0E42'14" West, 141.03 feet from a 3/4 inch iron pipe with disk stamped "LS 2201" marking the Southwesterly corner of Record of Survey No. 3130 filed in the Office of the County Recorder of San Diego County July 6, 1953; thence along the following numbered courses; (1) North 86E34'16" East, 57.93 feet; (2) South 54E56'13" East, 150.00 feet; (3) North 87E07'36" East, 169.83 feet; (4) North 33E04'40" East, 86.02 feet; (5) North 87E16'09" East, 46.47 feet to a point in the Westerly line of Navajo Road shown on County Road Survey No. 877 on file in the Office of the San Diego County Surveyor distant thereon 14.19 feet Southerly from a 2 inch pipe with disk "RCE 1534", said point being in the arc of a 1040 foot radius of said Navajo Road.

And Lot 28 of ALVARADO UNIT NO. 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 2823, filed in the Office of the Recorder of San Diego on November 14, 1951, excepting therefrom that portion lying Northerly of the following line:

Beginning at a point on the Westerly line of said Alvarado Unit No. 2, distant thereon South 0E42'14" West, 141.03 feet from a 3/4 inch iron pipe with disk stamped "LS 2201" marking the Southwesterly corner of Record of Survey No. 3130 filed in the Office of the County Recorder of San Diego County July 6, 1953; thence along the following numbered courses; (1) North 86E34'16" East, 57.93 feet; (2) South 54E56'13" East, 150.00 feet; (3) North 87E07'36" East, 169.83 feet; (4) North 33E04'40" East, 86.02 feet; (5) North 87E16'09" East, 46.47 feet to a point in the Westerly line of Navajo Road shown on County Road Survey No. 877 on file in the Office of the San Diego County Surveyor distant thereon 14.19 feet Southerly from a 2 inch pipe with disk "RCE 1534", said point being in the arc of a 1040 foot radius of said Navajo Road.

PARCEL E

Lot 29 of Alvarado Unit No. 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 2823 filed in the County Recorder's Office, November 14, 1951.

Excepting therefrom that portion granted to the State of California by deed recorded June 9, 1958 in Book 7111, page 423 of Official Records, said portion being more particularly described as follows:

Beginning at a point on the Westerly line of Lot 29 of said subdivision, distant thereon and along the Westerly line of Lot 28, South 0E42'14" West, 141.03 feet from a 3/4 inch iron pipe with tag marked "L.S. 2201", set for the Southwesterly corner of that parcel of land described in deed to R.E. Hazard and Sons, recorded November 25, 1941 in Book 1264, page 36 of Official Records; thence North 86E34'16" East, 57.93 feet; thence South 54E56'13" East, 150.00 feet; thence North 87E07'36" East, 169.88 feet; thence North 33E04'40" East, 86.02 feet; thence North 84E16'09" East, 46.37 feet to a point on the Easterly line of Lot 27 of said subdivision, distant thereon South 5E34'06" East, 14.19 feet from a 2 inch iron pipe with tag marked "R.E. 1534" set for the end of curve in said Easterly line.

PARCEL F

Lot 84, Alvarado Unit No. 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 2823, filed in the Office of the County Recorder of said San Diego County, November 14, 1951.

EXCEPT that portion beginning at the Southwesterly corner of said Lot 84; thence along the Westerly line of said Lot, North 07E21'11" East 51.61 feet to the Northwesterly corner of said Lot; thence along the Northerly line of said Lot, South 83E57'40" East 105.99 feet to the beginning of a 300.00 foot radius curve concave Northerly and Easterly along said curve 110.35 feet through an angle of 21E04'30" to the end of said curve; thence South 07E21'11" West 76.57 feet to the Southerly line of said Lot 84; thence along said Southerly line, North 82E38'49" West 213.35 feet to the point of Beginning.

PARCEL G

Lot 85 of ALVARADO UNIT NO. 2, in the City of San Diego, County of San Diego, State of California, according to the Map thereof No. 2823, filed in the Office of the County Recorder of San Diego, on November 14, 1951; EXCEPTING therefrom that portion lying within that portion of Lot 67 of the Rancho Mission of San Diego, according to Partition Map thereof on file in the Office of the County Clerk of said County, in Action No. 348, in the Superior Court of said County entitled "Juan M. Luco, et al, vs. The Commercial Bank of San Diego, et al" described as follows:

Beginning at the Northeast corner of Lot 23 of said Rancho Mission of San Diego: thence along the Northerly prolongation of the East line of said Lot 23, North 00E23'55" West (Record North 00E23'50" West) 50.46 feet; thence South 82E38'49" East 29.16 feet; thence South 42E35'10" East 63.22 feet to the Southerly line of said Lot 67; thence along said Southerly line South 89E51'40" West 71.36 feet to the point of beginning.

PARCEL H

Lot 86 of ALVARADO UNIT NO. 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 2823, filed in the Office of the County Recorder of San Diego County, November 14, 1951.

EXCEPTING THEREFROM the Southwesterly 10 feet, being that portion of said Lot 86 which lies Southwesterly of a 1,550.00 foot radius curve, concave Southwesterly, said 1,550.00 foot radius curve being concentric with that 1,540.00 foot radius curve, concave Southwesterly which forms the Southwesterly line of said Lot 86.

Together with an easement and right of way for access over, along and across the Westerly 50 feet of that portion of said Lot 86 excepted in Parcel H hereinabove described.

PARCEL I

Lots 87, 88, 89 and 90 of ALVARADO UNIT NO. 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No.2823, filed in the Office of the County Recorder of San Diego County, November 14, 1951.

EXCEPTING from said Lots 87, 88, 89 and 90 that portion lying Southerly and Southwesterly of a line described as follows:

Beginning at a point in the Southeasterly line of said Lot 87, distant thereon North 24E37'16" East (Record North 24E35'01" East) 16.88 feet from the Southeast corner thereof; thence North 65E51'51" West, 50.0 feet to the TRUE POINT OF BEGINNING; thence continuing North 65E51'51" West, 163.33 feet to a point in the Northwesterly line of said Lot 87, distant thereon North 24E37'16" East (Record North 24E36'01" East) 45.00 feet from the Southwest corner thereof; thence North 66E16'47" West, 257.31 feet to a point in the Northwesterly line of said Lot 88, distant thereon North 23E55'29" East (Record North 23E54'14" East) 85.00 feet from the Southwest corner thereof; thence North 46E45'56" West, 241.06 feet to a point in the Northwesterly line of said Lot 89, distant thereon North 30E55'18" East (Record North 30E54'03" East) 140.00 feet from the Southwest corner thereof; thence North 42E44'39" West, 241.87 feet to a point in the Northwesterly line of said Lot 90, distant thereon North 48E53'41" East (Record North 48E52'26" East) 55.17 feet from the most Westerly corner thereof.

Parcel J

Lots 1, 2, 4 through 11 and 13 of ALVARADO TERRACE, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 3509, filed in the Office of the County Recorder of San Diego County, September 26, 1956.

Parcel K

Lots 25, 30, 32, 33, 34 of Montezuma Park Unit No. 3, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 5375, filed in the Office of the County Recorder of San Diego County on April 20, 1964.

Excepting therefrom that portion of Lot 25, Montezuma Park Unit No. 3, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 5375, filed in the Office of the County Recorder of San Diego County, described as follows:

Beginning at the Northeasterly corner of said Lot 25, thence North 84E25'20" West 240.66 feet along the Northerly line of Lot 25 to a point in the East line of Yerba Anita Drive as shown on said Map No. 5375; thence South 5E34'40" West 35.45 feet; thence North 87E11'45" East 243.26 feet to the Point of Beginning.

Parcel L

Lots 37 and 38 of Montezuma Park Unit No. 4, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 5523, filed in the Office of the County Recorder of San Diego County on January 28, 1965.

Parcel M

Lot 3 of Alvarado Terrace, according to Map thereof No. 3509, filed in the office of the County Recorder of San Diego County, September 26, 1956.

Description of Common Area

Parcel U

[The Community Lot]

Lot 41 of Alvarado No. 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 2823, filed in the Office of the County Recorder of San Diego, on November 14, 1951.

Parcel V

[A piece of street intersection at Norris Road and Yerba Santa Drive]

A portion of Lot 1 of ALVARADO, according to Map thereof No. 2789, filed in the office of the County Recorder of San Diego County, June 15, 1951, more particularly described as follows:

Beginning at the Northwest corner of Lot 1 Alvarado; thence North 89E51'40" East along the North line of said Lot 1; 71.36 feet to the Easterly line of said Lot 1 being also the Southwesterly line of Yerba Santa Drive; thence South 42E35'10" East 61.58 feet along said Easterly line of Lot 1 to a point on the arc of a tangent 47.51 foot radius curve convex to the Northwest; thence Northwesterly along the arc of said curve 114.27 feet through a central angle of 137E48'45" thence radial to said curve South 89E36'05" West 30.00 feet to the West line of Lot 1 Alvarado; thence North 0E23'55" West, 77.86 feet to the point of beginning.

Parcel W

[Gate Easements]

A portion of Lot 1 of ALVARADO, according to Map thereof No. 2789, filed in the office of the County Recorder of San Diego County, June 15, 1951, more particularly described as follows:

Beginning at the Northwest corner of Lot 1 Alvarado; thence North 89E51'40" East along the North line of said Lot 1; 71.36 feet to the Easterly line of said Lot 1 being also the Southwesterly line of Yerba Santa Drive; thence South 42E35'10" East 61.58 feet along said Easterly line of Lot 1 to a point on the arc of a tangent 47.51 foot radius curve

convex to the North-west; thence Northwesterly along the arc of said curve 114.27 feet through a central angle of 137E48'45" thence radial to said curve South 89E36'05" West 30.00 feet to the West line of Lot 1 Alvarado; thence North 0E23'55" West, 77.86 feet to the point of beginning. ALSO excepting that portion dedicated by Resolution No. 132994, recorded May 16, 1956, in Book 6101, Page 526 of Official Records.

The described area contains 1,520.17 square feet more or less.

A portion of Lot 2 of Alvarado, according to Map thereof No. 2789, filed in the office of the County Recorder of San Diego County, June 15, 1951, more particularly described as follows:

Beginning at the south corner common to Lots 1 and 2 of Alvarado; thence along the lot line common to said lots South 89E36'05" West 41.84 feet; thence leaving said lot line South 01E42'54" West 73.07 feet to a tangent 50.00 foot radius curve concave westerly; thence along said curve 7.36 feet through a central angle of 08E26'16" to the southerly line of said lot 2, being a point of cusp of a 126.56 foot radius curve concave southeasterly a radial line to which bears North 79E50'50" West; thence along said curve 82.31 feet through a central angle of 37E15'40" to a 20.00 foot radius reverse curve, thence along said reverse curve 11.97 feet through a central angle of 56E56'15" to the point of beginning.

The described area contains 1,289.22 square feet more or less.

Parcel X

[Street Easements]

A non-exclusive easement and right of way for a private street upon, over, under and across that portion of Grantors' properties that was, prior to the adoption of Resolution Number R-288715 on May 27, 1997, by the City Council of the City of San Diego, located on or within any of the following dedicated rights-of-way vacated by the Resolution:

Yerba Santa Drive (north of Mesquite Road) in Maps 2789 and 2823, Mesquite Road (west of Yerba Santa Drive) in Map 2789, Norris Road in Maps 5185 and 3509, Armin Way in Map 3509, Toyon Road [or Drive] and Toyoff Way in Map 2823, Le Barron Road and Avion Way in Map 5185, Fremontia Lane and Palo Verde Terrace in Map 2823, as more particularly shown on the drawing marked Exhibit "A", which is on file in the office of the City Clerk as Document No. RR-288715-1.

Documents Constituting the Declaration

1. Declarations of Restrictions recorded as Document No. 47034 on April 16, 1952, Book 4437, Page 208 *et seq.* (Parcel 1, Lots 1 to 12 of Map No. 2789, and Parcel 2, Lots 13 to 85 of Map No. 2823);
2. Modification of Restrictions recorded as Document No. 50526 on April 24, 1952, Book 4445, Page 232 (amends document #1 listed above);
3. Declaration of Restrictions recorded May 22, 1963, File/Page No. 89653 (Lots 105 to 128 of Map No. 5185);
4. Declaration of Restrictions recorded November 18, 1963, File/Page No. 206494 (Lot 41 of Alvarado Unit 2 on Map No. 2823, the "**Community Lot**");
5. Amendment to Declaration of Restrictions recorded October 24, 1984, File/Page No. 84-401102 (change of assessment formula and regulation of access to off-Community parcels);
6. Amendment to Declaration of Restrictions recorded October 24, 1984, File/Page No. 84-401103 (change of assessment formula and regulation of access to off-Community parcels);
7. Declaration of Restrictions recorded November 5, 1992, File/Page No. 1992-0709236 (Alvarado Unit No. 2 Lots 86-90 on Map 2823);
8. Declaration of Annexation recorded June 3, 1997, Document No. 1997-0257734 (Alvarado Terrace Lot 7 on Map No. 3509);
9. Declaration of Annexation recorded December 2, 1997, Document No. 1997-0607236 (Alvarado Terrace Lot 4 on Map No. 3509);
10. Declaration of Annexation recorded December 4, 1997, Document No. 1997-0614168 (Alvarado Terrace Lot 5 on Map No. 3509);
11. Declaration of Annexation recorded December 4, 1997, Document No. 1997-0614169 (Alvarado Terrace Lot 11 on Map No. 3509);
12. Declaration of Annexation recorded December 4, 1997, Document No. 1997-0614170 (Alvarado Terrace Lot 6 on Map No. 3509);

13. Declaration of Annexation recorded December 4, 1997, Document No. 1997-0614171 (Alvarado Terrace Lot 1 on Map No. 3509);
14. Declaration of Annexation recorded December 4, 1997, Document No. 1997-0614172 (Alvarado Terrace Lot 13 on Map No. 3509);
15. Declaration of Annexation recorded December 4, 1997, Document No. 1997-0614173 (Alvarado Terrace Lot 9 on Map No. 3509);
16. Declaration of Annexation recorded December 4, 1997, Document No. 1997-0614174 (Alvarado Terrace Lot 2 on Map No. 3509);
17. Declaration of Annexation recorded December 4, 1997, Document No. 1997-0614175 (Alvarado Terrace Lot 10 on Map No. 3509);
18. Declaration of Annexation recorded September 7, 1999, Document No. 1999-0613688 (Alvarado Terrace Lot 8 on Map No. 3509);
19. Declaration of Annexation recorded February 1, 2000, Document No. 2000-0051750 (Montezuma Park 3, Lot 30 on Map No. 5375);
20. Declaration of Annexation recorded February 1, 2000, Document No. 2000-0051751 (Montezuma Park 4, Lot 37 on Map No. 5523);
21. Declaration of Annexation recorded February 1, 2000, Document No. 2000-0051755 (Montezuma Park 4, Lot 38 and portion of Lot 37 on Map No. 5523);
22. Declaration of Annexation recorded February 1, 2000, Document No. 2000-0051756 (Montezuma Park 3, Lot 25 on Map No. 5375);
23. Declaration of Annexation recorded February 10, 2004, Document No. 2004-0105896 (Alvarado Terrace Lot 3 on Map No. 3509);

Cross Easements

1. Grant of Easements and Verified Notice recorded June 30, 1998, Document No. 1998-0401835 (Lot 5 of Alvarado on Map No. 2789, Lots 18, 19, 27, 28, 45, 58 and 70 of Alvarado Unit No. 2 on Map No. 2823, Lots 108, 114 and 124 of Alvarado Unit No. 3 on Map No. 5185; and Lot 9 of Alvarado Terrace on Map No. 3509);
2. Grant of Easements and Verified Notice recorded January 20, 2000, Document No. 2000-0029541 (Lots 3, 6-8 and 12 of Alvarado on Map No. 2789, Lots 13-17, 21, 23, 24, 31, 34-37, 40-44, 46-49, 51, 52, 55-57, 60-68, 71, 72, 75-82, 84 and 86-90 of Alvarado Unit No. 2 on Map No. 2823, Lots 105-107, 109, 111-113, 118, 119, 123, 125, 127 and 128 of Alvarado Unit No. 3 on Map No. 5185 and Lots 1, 2, 5-7 and 11 of Alvarado Terrace on Map No. 3509);
3. Grant of Easements and Verified Notice recorded February 1, 2000, Document No. 2000-0051749 (Lots 20, 22, 26, 29, 30, 33, 59, 69, 85 and 95 of Alvarado Unit 2 on Map No. 2823, Lots 110, 115, 116, 117 and 122 of Alvarado Unit 3 on Map No. 5185 and Lots 4, 8 and 13 of Alvarado Terrace on Map No. 3509);
4. Grant of Easements and Verified Notice recorded February 28, 2000, Document No. 2000-0097824 (Lot 2 of Alvarado on Map No. 2789), as corrected by Grant of Easements and Verified Notice recorded November 12, 2003, Document No. 2003-1364795;
5. Grant of Easements and Verified Notice recorded February 28, 2000, Document No. 2000-0097833 (Lot 1 of Alvarado on Map No. 2789);
6. Grant of Easements and Verified Notice recorded August 28, 2000, Document No. 2000-0459540 (Lot 4 of Alvarado on Map No. 2789; Lots 25, 50, 53, 54 and 74 of Alvarado Unit 2 on Map No. 5823; Lots 120 and 121 of Alvarado Unit 3 on Map No. 5185; and Lot 12 of Alvarado Terrace on Map No. 3509);
7. Grant of Easements and Verified Notice recorded February 10, 2004, Document No. 2004-0105857 (Lot 126 of Alvarado Unit 3 on Map No. 5185);
8. Grant of Easements and Verified Notice recorded February 10, 2004, Document No. 2004-0105877 (Lot 39 of Alvarado Unit 2 on Map No. 5823);

9. Grant of Easements and Verified Notice recorded February 10, 2004, Document No. 2004-0105897, Lot 3 of Alvarado Terrace on Map No. 3509);
10. Grant of Easements and Verified Notice recorded February 13, 2004, Document No. 2004-0166646 (Lot 38 of Alvarado Unit 2 on Map No. 5823); and

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

On June 5, 2004, before me, Marshall A. Lewis, Notary Public, personally appeared Wayne Breise and Alan L. Williams, 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.

/s/ Marshall A. Lewis
Notary Public

[seal]