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DECLARATION OF

**RE-RECORDED**

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

LA COSTA OAKS

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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
LA COSTA OAKS**

**SECTION 15.4 OF THIS DECLARATION CONTAINS BINDING ARBITRATION PROVISIONS IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY.**

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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF LA COSTA OAKS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF LA COSTA OAKS ("Declaration") is made as of June 26, 2003, by REAL ESTATE COLLATERAL MANAGEMENT COMPANY, a Delaware corporation ("Declarant"), with reference to the facts set forth below.

RECITALS

A. Declarant is the Owner of the real property situated in the City of Carlsbad, County of San Diego, State of California, more particularly described on **Exhibit "A."** attached to this Declaration ("Covered Property").

B. Declarant may add all or any of the real property described in **Exhibit "B"** attached hereto and incorporated herein and delineated on the plat attached hereto as **Exhibit "B-I"** and incorporated herein ("Additional Property") to the Covered Property already subject to this Declaration by annexing such Additional Property and said Additional Property so annexed will thereupon be subject to this Declaration.

C. Declarant intends to develop the Covered Property as a Master Planned Development (as defined in Section 2792 of Title 10 of the California Code of Regulations), which is also a "common interest development" pursuant to the Davis-Stirling Common Interest Development Act. If developed as planned, the La Costa Oaks Community will consist of approximately 844 Residences, together with certain areas which will be conveyed to the Community Association (as hereinafter defined) as Community Association Property. (Herein the Covered Property subject to this Declaration and the Improvements situated thereon are sometimes referred to as the "La Costa Oaks Community"). However, there is no assurance that the La Costa Oaks Community will be completed as planned.

D. Declarant has formed the La Costa Oaks Community Association, a California nonprofit, mutual benefit corporation, for the purpose of exercising the powers and duties set forth herein for the benefit of all of the Covered Property and each Owner of any portion of the Covered Property.

E. The Owners of Residential Lots within the La Costa Oaks Community will be members of the La Costa Oaks Community Association, a California nonprofit mutual benefit corporation ("Community Association").

F. Before any Residential Lots are conveyed to Owners under a Public Report, Declarant desires to establish covenants, conditions and restrictions upon the Covered Property and each and every portion thereof, which will constitute a general scheme for the management of the Covered Property and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Covered Property and enhancing the quality of life therein,

**INTRODUCTION TO THE PURPOSE OF THE DECLARATION  
AND THE COMMUNITY GOVERNING DOCUMENTS**

*Declarant has established this Declaration to create a community for all of the Owners within the Covered Property and to provide a governance structure for the La Costa Oaks Community. This Declaration reflects and sets forth those goals and provides the powers and procedures necessary to govern and maintain the La Costa Oaks Community.*

*The **responsibilities** and powers of the Community Association are not solely focused on, or limited to control of the Owners and other people within La Costa Oaks Community, the Community Association has other powers and duties, including responsibility for the management and maintenance of real property. While the Community Association has the power to provide for the maintenance, management, and preservation of portions of the Covered Property, the Community Association also has other powers and functions which are described in this Declaration.*

*This Declaration also establishes an **Architectural Committee** which **has jurisdiction** over **design** review for the La Costa Oaks Community. The **Architectural Committee** administers, interprets, and enforces the La Costa Oaks Community Design Standards, which are architectural standards and procedures **designed to enhance the quality of all planning and architecture** within the La Costa Oaks Community.*

*The La Costa Oaks Community may also include areas where the Community Association provides special services for the benefit of the Owners in those areas, These areas are referred to as "Special Benefit Areas". In such cases, the Owners within the Special Benefit Areas may have the obligation to pay additional assessments for the special benefit which they receive. The special benefit might include the maintenance by the Community Association of areas such as private streets or slopes or similar areas which serve or benefit the Special Benefit Areas. The Community Association may also appoint committees with representatives from the Special Benefit Areas to participate in the administration and governance of the Special Benefit Areas.*

*Throughout this Declaration, there are summaries (like this summary) which are indicated in italics to aid the reader's comprehension and use of the Community Governing Documents. In the event of a conflict between any summary or diagram and the text of any of the Community Governing Documents, the text shall control.*

**DECLARATION**

NOW, THEREFORE, Declarant hereby declares and does hereby establish the following general plan for the protection and benefit of all of the Covered Property and does hereby fix the following protective covenants, conditions and restrictions upon each and every ownership interest in the Covered Property and any other property annexed to this Declaration under which covenants, conditions and restrictions shall be established and each ownership interest shall be held, used, occupied, leased, sold, encumbered, conveyed and/or transferred. Each and all of the covenants, conditions and restrictions are for the purpose of protecting the value and desirability of and shall inure to the benefit of all of the Covered Property and, upon annexation, each

subsequent Phase (as hereinafter defined), shall run with and be binding upon and pass with the real property and each and every ownership interest therein and shall inure to the benefit of, apply to and bind the respective successors in title or interest of Declarant, Declarant hereby declares that all of the Covered Property described in **Exhibit "A"** shall be subject to this Declaration and shall constitute the initial land subject to this Declaration. All or any portion of the Additional Property may be annexed to and become subject to this Declaration and, upon such Annexation, such Additional Property shall also be subject to the limitations, restrictions, easements, covenants, conditions, liens and charges of this Declaration and shall be included within the definition of the Covered Property.

## ARTICLE 1

### DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article shall, for all purposes of this Declaration, have the meanings herein specified.

1.1 Additional Charges. The term "Additional Charges" means costs, fees, charges and expenditures, including without limitation, attorneys' fees, late charges, interest and recording and filing fees actually incurred by the Community Association in collecting and/or enforcing payment of assessments, fines and/or penalties.

1.2 Additional Property. The term "Additional Property" means all of the real property described on **Exhibit "B"** attached hereto and incorporated herein.

1.3 Annexation. The term "Annexation" means the process by which the Additional Property may be made subject to this Declaration as set forth in the Article of this Declaration entitled "Annexation."

1.4 Architectural Committee. The term "Architectural Committee" means the committee created under the Article of this Declaration entitled "Architectural Committee."

1.5 Best Management Practices. The term "Best Management Practices" means the Best Management Practices imposed from time to time by Governmental Agencies, including those which are set forth in this Declaration and the Community Design Standards.

1.6 Budget. The term "Budget" means a written, itemized estimate of the Community Association's income and Common Expenses prepared pursuant to the Community Bylaws.

1.7 City. The term "City" means the City of Carlsbad, State of California, a municipal corporation.

1.8 City Requirements. The term "City Requirements" refers to the conditions and requirements imposed by the City in connection with the approval of Tentative Map No. 99-04, any Final Maps covering all or any portion of the Covered Property and any other approvals identified in this Declaration or any Supplementary Declaration.

1.9 Close of Escrow. The term "Close of Escrow" means the date on which a deed is recorded conveying a Residential Lot under authority of a Public Report. The term "Close of Escrow" shall not include the recordation of a deed (i) between Declarant and (a) any successor to any rights of Declarant hereunder or (b) any Merchant Builder or (ii) between Merchant Builders.

1.10 Common Expenses. The term "Common Expenses" means the actual and estimated costs and expenses incurred or to be incurred by the Community Association, including, but not limited to, the following:

1.10.1 maintenance, management, operation, repair and replacement of the Community Association Property and Common Maintenance Area (including any Special Benefit Areas) and all other areas within the Covered Property which are maintained by the Community Association;

1.10.2 the cost of any services provided from time to time by the Community Association including, any recreational, technology or other consultants which the Community Association elects to maintain to provide services to the Community Association;

1.10.3 the costs incurred in administering any committees formed by the Community Association, subject to the provisions of the Community Governing Documents;

**1.10.4 due but unpaid Community Assessments;**

1.10.5 maintenance by the Community Association of medians and other areas within the public rights-of-way to the extent required by the City, including without limitation, the medians within Rancho Santa Fe Road and any bus shelters and similar structures or areas within the public rights-of-way which the Community Association elects to or is required to maintain;

1.10.6 costs of management and administration of the Community Association, including, but not limited to, compensation paid by the Community Association to managers, accountants, attorneys, architects and employees;

1.10.7 the costs of any utilities, trash pickup and disposal, gardening, patrols and other services benefitting the Owners and their Residential Lots to the extent such services are paid for by the Community Association;

1.10.8 the costs of fire, casualty, liability, worker's compensation and any other insurance maintained by **the Community Association;**

**1.10.9 reasonable reserves as deemed appropriate** by the Community Board or otherwise required to be maintained under the Community Governing Documents;

1.10.10 the costs of bonding of the members of the Community Board, the Architectural Committee, any professional managing agent or any other person handling the funds of the Community Association;

1.10.11 taxes paid by the Community Association;

1.1.0,12 amounts paid by the Community Association for the discharge of any lien or encumbrance levied against all or any portion of the Community Association Property or the Common Maintenance Areas;

1.10.13 the costs of any other services provided by or for the Community Association; and

1.10.14 the costs of any other item or items designated by, or in accordance with other expenses incurred by the Community Association for any reason whatsoever in connection with the operation, or governance of the La Costa Oaks Community or in furtherance of the purposes or the discharge of any obligations imposed on the Community Association by the Community Governing Documents.

1.11 Common Maintenance Area. The term "Common Maintenance Area" or "Common Maintenance Areas" means (a) any portion of the Covered Property which is not owned by the Community Association but which is required to be maintained by the Community Association and (b) any property located outside of the boundaries of the Covered Property including public property, public rights of way and median areas (including without limitation, the median landscaping on Rancho Santa Fe Road), the maintenance of which the Community Association is responsible for as provided in this Declaration or any Supplementary Declaration. The Common Maintenance Area may include, without limitation, easements over the Residential Lots of the Owners for maintenance purposes. The Common Maintenance Areas also include any private lighting covered by any Encroachment Removal Agreements entered into by the City and the Declarant, unless otherwise designated in a Supplementary Declaration. The Common Maintenance Areas shall be described in the Supplementary Declarations.

1.12 Community Articles. The term "Community Articles" means the Articles of Incorporation of the Community Association.

1.13 Community :Assessments. The term "Community Assessments" refers collectively or individually, as required by the context, to all or any of the assessments levied by the Community Association in accordance with Article 5 of this Declaration and shall include the Community Assessments defined below.

1.13.1 RearAssessment. The terms "Regular Assessment" or "Regular Assessments" means the assessment to be paid by each Owner to the Community Association for Common Expenses as described in Subsection 5.4.1 of this Declaration.

1.13.2 Special Assessment. The terms "Special Assessment" or "Special Assessments" means an assessment levied by the Community Association if the Community Association determines that the Regular Assessments will be inadequate pursuant to the provisions of Subsection 5.4.2 of this Declaration.

1.13.3 Capital Improvement Assessment. The terms "Capital Improvement Assessment" or "Capital Improvement Assessments" means an assessment against each Owner



and such Owner's Residential Lot, representing a portion of the cost to the Community Association for installation or construction of any capital improvements for the Community Association Property which the Community Association may from time to time authorize under the provisions of Subsection 5.4.3 of this Declaration.

.. 1.13.4 Enforcement Assessment. The terms "Enforcement Assessment " or "Enforcement Assessments" refers to the charges assessed against any Owner and such Owner's Residential Lot to reimburse the Community Association as a result of an Owner's failure to comply with the provisions of this Declaration as described in Subsection 5A.4 of this Declaration.

1.13.5 Reconstruction Assessment. The terms "Reconstruction Assessment" or "Reconstruction Assessments" means a charge against each Owner and such Owner's Lot representing a portion of the cost to the Community Association for reconstruction of any portion or portions of the Community Association Property or Common Maintenance Area which is imposed under the provisions of Article 10 of this Declaration.

1.13.6 Special Services Assessment. The term "Special Services Assessment" means an assessment which is levied on some but not all of the Owners for special services provided by the Community Association to such Owners as described in Subsection 54.6 of this Declaration.

1.13.7 Community Association. The term "Community Association " means the La Costa Oaks Community Association, a California nonprofit mutual benefit corporation.

1.14 Community Association's Maintenance Manual. The term "Community Association's Maintenance Manual" refers to the manual which may be prepared by Declarant or its agents and provided to the Association, specifying obligations for maintenance of the Association Property, the Community Association Property and the Common Maintenance Areas by the Community Association, as updated and amended from time to time.

1.15 Community Association Property. The term "Community Association Property" means all the real property owned in fee simple by the Community Association. The Community Association Property shall be described in the Supplementary Declarations (as hereinafter defined).

1.16 Community Board. The term "Community Board " means the Board of Directors of the Community Association.

1.17 Community Bylaws. The term "Community Bylaws" means the Community Bylaws of the Community Association, as they may from time to time be amended, which are or shall be adopted by the Board.

1.18 Community Design Standards. The term "Community Design Standards" means the design criteria, guidelines and policies and procedures adopted by the Community Board for the Architectural Committee.

1.19 Community Governing Documents. The term "Community Governing Documents" means the Community Articles, Community Bylaws, Community Handbook (which includes the Community Design Standards), this Declaration and the Supplementary Declarations, and any amendments to any of the foregoing.

1.20 Community Handbook. The term "Community Handbook" means the handbook adopted by the Community Board which sets forth the rules, procedures and other guidelines for the governance of the Covered Property. The Community Handbook includes the Community Design Standards.

1.21 Condominium and Condominium Owner. The terms "Condominium" and "Condominium Owner" means, respectively, the estate and the Owner thereof of any condominium within the La Costa Oaks Community established pursuant to Sections 1351(f) of the Civil Code of the State of California or any similar statute hereinafter enacted.

1.22 Condominium Project. The term "Condominium Project" means all Lots, improved or unimproved, and Condominium Project Common Area, if any, of a separate subdivision or development within the Covered Property as established by a Final Map or condominium plan, record of survey or other such land division for which a separate Condominium Project Association other than the Community Association, is formed to govern and control the operation and maintenance of the Condominium Project and which is encumbered by a Condominium Project Declaration.

1.23 Condominium Project Assessments. The term "Condominium Project Assessments" means assessments determined pursuant to any Condominium Project Declaration which are levied exclusively on Residential Lots contained in a particular Condominium Project and which are created pursuant to a Condominium Project Declaration and the articles of incorporation and bylaws therefor.

1.24 Condominium Project Association, The term "Condominium Project Association" means the homeowners association formed to operate and govern a Condominium Project.

1.25 Condominium Project Board. The term "Condominium Project Board" means the governing body of a Condominium Project Association as established pursuant to the Condominium Project Declaration and the articles of incorporation and bylaws for the Condominium Project Association.

1.26 Condominium Project Common Area. The term "Condominium Project Common Area" means the area within the boundaries of a Condominium Project owned by the Condominium Project Association or collectively by all or some of the Owners of Residential Lots within the Condominium Project in common and restricted to use primarily by such Owners and such Owner's lessees and invitees.

1.27 Condominium Project Declaration. The term "Condominium Project Declaration" means the covenants, conditions and restrictions recorded for a Condominium Project.

1.28 County. The term "County" means the County of San Diego.

1.29 Covered Property. The term "Covered Property" includes all of the real property described in **Exhibit "A"** of this Declaration, and such Additional Property as may hereafter be brought within the jurisdiction of this Declaration pursuant to a Supplementary Declaration.

1.30 Declarant. The term "Declarant" means Real Estate Collateral Management Company, a Delaware corporation, and its successors and assigns, if such successors and assigns acquire any or all of Declarant's interest in the Covered Property for the purpose of purchase or sale, and Declarant has expressly transferred or assigned to such successors or assigns its rights and duties as Declarant to a portion or all of the La Costa Oaks Community. For any successor or assignee of "Declarant" to be deemed a Declarant under the terms hereof, Declarant shall record in the County a certificate so designating said successor or assignee as Declarant. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Covered Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale.

1.31 Declaration. The term "Declaration" means this Declaration of Covenants, Conditions and Restrictions of La Costa Oaks, and any further amendments thereto.

1.32 Delegate. The term "Delegate" refers to a person elected in the manner provided in the Community Bylaws to represent the collective voting power on certain issues of all of the Members within the Delegate District of such Delegate.

1.33 Delegate Districts. The term "Delegate District" refers to a particular portion of the Covered Property which is represented by a Delegate and is created in the manner described in the Section of the Community Bylaws entitled "Delegate Districts."

1.34 DRE. The term "DRE" means and refers to the California Department of Real Estate or any successor agency that is responsible for administering the sale of subdivided lands pursuant to Sections 11000, et seq., of the California Business and Professions Code, or any similar statute hereinafter enacted.

1.35 Election Committee. The term "Election Committee" means and refer to the committee appointed by the Community Board (or, if the Board so elects, the Community Board acting as the Election Committee), to nominate candidates to the Community Board and to perform other functions relating to election procedures as described in the Community Governing Documents.

1.36 Eligible Holder. The term "Eligible Holder" means any First Mortgagee who has given written notice to the Community Association specifying its name, address and the Residential Lot number or address of the Residential Lot and requesting written notice of any or all of the events specified in this Declaration.

1.37 Federal Agencies. The term "Federal Agencies" refers collectively to one or more of the following agencies and the following letter designation for such agencies shall mean and refer to, respectively, the agency specified within the parentheses following such letter designation: FHA (Federal Housing Administration), FHLMC (Federal Home Loan Mortgage Corporation), FNMA (Federal National Mortgage Association), GNMA (Government National Mortgage Association), and VA (United States Department of Veterans Affairs).

1.38 Final Maps. The term "Final Maps" refers to the final subdivision maps covering all or any portion of the La Costa Oaks Community,

1.39 Fire Suppression Zones. The term "Fire Suppression Zones" means the areas designated by the City as fire suppression zones. The Fire Suppression Zones will be designated in a Supplementary Declaration.

1.40 First Mortgage. The term "First Mortgage" means a first mortgage or deed of trust which encumbers any one (1) or more Residential Lots and has priority over any other mortgage or deed of trust encumbering such Residential Lot, and shall include any first mortgage or deed of trust securing an obligation of Declarant, a Merchant Builder, or an Owner.

1.41 First Mortgagee. The term "First Mortgagee" means the Mortgagee of a First Mortgage.

1.42 Fiscal Year. The term "Fiscal Year" means the fiscal accounting and reporting period of the Community Association selected by the Community Board.

1.43 Governmental Agency. The term "Governmental Agency" means the City, the County of San Diego and any other federal, state, local or municipal governmental entity or quasi-governmental entity or agency including, without limitation, any special assessment district, maintenance district or community facilities district having jurisdiction over the Covered Property.

1.44 Habitat Preserve Areas. The term "Habitat Preserve Areas" means the areas which have been designated by certain Governmental Agencies as habitat preserve areas designated on **Exhibit "C"** attached hereto.

1.45 Habitat Preserve Adjacent Areas. The term "Habitat Preserve Adjacent Areas" means the portions of the Covered Property, which may include Residential Lots and Community Association Property which are contiguous to or adjacent to the Habitat Preserve Areas and which are subject to the Habitat Preserve Restrictions. The Habitat Preserve Adjacent Areas will be designated in Supplementary Declarations.

1.46 Habitat Preserve Restrictions. The term "Habitat Preserve Restrictions" refers to the restrictions imposed on the Habitat Preserve Areas specified in **Exhibit "D"**, and any additional restrictions imposed in a Supplementary Declaration.

1.47 Improvements. The term "Improvements" refers to buildings, structures or improvements of any type or kind constructed within the La Costa Oaks Community, including, but not limited to, buildings, walkways, trails, utility installations, swimming pools and other recreational facilities, garages and garage conversions, carports, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, awnings, patio and balcony covers, stairs, decks, landscaping, irrigation systems, antennae, the exterior surfaces of any visible structure painting, hedges, windbreaks, railings, plantings, planted trees and shrubs, poles, signs, storage areas, exterior and solar or wind-powered energy systems or equipment and water-softening, heater or air conditioning and heating fixtures or equipment; the grading, excavation, filling or similar disturbance to the surface of the land and any change or alteration of any previously approved Improvement including any change of exterior appearance, color or texture.

1.48 Institutional Mortgagee. The term "Institutional Mortgagee" means a First Mortgagee which is (i) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under federal and/or state law; (ii) an insurer or governmental guarantor of a First Mortgage; (iii) any federal or state agency; (iv) the State of California as the vendor under an installment land sales contract covering a Residential Lot; or (v) any other institution specified by the Community Board in a recorded instrument, who is the Mortgagee of a Mortgage or the beneficiary of a Deed of Trust encumbering a Residential Lot.

1.49 Invitee. The term "Invitee" means any person whose presence within the La Costa Oaks Community is approved by or is at the request of a particular Owner, including, but not limited to, lessees, tenants and the family, guests, employees, licensees or invitees of Owners, tenants or lessees.

1.50 La Costa Oaks Community. The term "La Costa Oaks Community" refers to the Covered Property and all Improvements from time to time situated thereon.

1.51 Lot. The term "Lot" means any plot of land shown as a separate lot or parcel upon any recorded Final Map or parcel map of any portion of the Covered Property.

1.52 Maintenance Obligations. The term "Maintenance Obligations" refers to the Community Association's obligations to perform (i) all reasonable maintenance consistent with the terms of the Community Association's Maintenance Manual, any maintenance obligations and schedules in any warranty offered by Declarant or any manufacturer, and any maintenance obligations and schedules otherwise provided to the Community Association or the Owners by Declarant or any manufacturer, as applicable; and (ii) any commonly accepted maintenance practices to prolong the life of the materials and construction of the Community Association Property and Common Maintenance Areas, as applicable, as updated and amended from time to time.

1.53 Member. The term "Member" means every person or entity who qualifies for membership under this Declaration including Declarant, as long as Declarant qualifies for membership under Article 3 of this Declaration.

1.54 Merchant Builder or Merchant Builders. The term "Merchant Builder" or "Merchant Builders" means any person or entity which acquired or has entered into a purchase agreement to acquire from Declarant a portion of the La Costa Oaks Community for the purpose of improving such property with Residences and conveying such Residences to purchasers under authority of a Public Report in accordance with a Declaration of Development Covenants, Conditions and Restrictions recorded against the Covered Property by Declarant in connection with the conveyance to a Merchant Builder.

1.55 Mortgage. The term "Mortgage" means a deed of trust as well as a mortgage encumbering a Residential Lot.

1.56 Mortgagee. The term "Mortgagee" means the beneficiary of a deed of trust as well as the mortgagee of a Mortgage.

1.57 Notice ~~ad~~ Hearing. The term "Notice and Hearing" means the procedure which gives an Owner notice of an alleged violation of the Community Governing Documents and the opportunity for a hearing before the Community Board.

1.58 Owner. The term "Owner" means the record owners, including Declarant and Merchant Builders, of fee simple title to any Lot, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

1.59 Perimeter Walls and Fences. The term "Perimeter Walls and Fences" refers to the walls and fences bordering portions of the La Costa Oaks Community designated in any Supplementary Declaration which shall be maintained by the Community Association pursuant to the provisions of this Declaration.

1.60 Person. The term "Person" means a natural individual or individuals or any other entity with the legal right to hold title to real property. When the word "person" is not capitalized, the word refers only to natural persons.

1.61 Phase. The term "Phase" means a group of Lots which are or have been made subject to this Declaration and are designated by Declarant as a separate Phase by a document (which may be a Supplementary Declaration or another notice of annexation) executed by Declarant and recorded with the County Recorder of the County of San Diego. Should Declarant not have made a contrary designation, each group of Residential Lots and any other Lots which have been made subject to this Declaration and are covered by a separate Public Report (as defined below) issued by the DRE or otherwise recognized by the California Real Estate Commissioner as a separate Phase shall constitute a separate Phase.

1.62 Public Report. The term "Public Report" means the final subdivision public report issued by the DRE for a Phase, including any amendments to such Public Report.

1.63 Public Use Areas. The term "Public Use Areas" means any portion of the Community Association Property designated for public or **quasi-public use as a condition of**

approval of any tentative map or Final Map for any part of the La Costa Oaks Community or as required under the City Requirements or as otherwise required by any other Governmental Agencies. Public Use Areas may include, without limitation, parcels designated for parks, open space and trails. The Public Use Areas shall be designated by Declarant in a Supplementary Declaration.

1.64 Recreational Vehicle Storage Area. The term "Recreational Vehicle Storage Area" refers to Lot 210 of Final Map No. 99-04-03 which shall be conveyed to the Community Association for recreational vehicle lot purposes as described in Section 7.16 of this Declaration.

L65 Residence. The term "Residence" refers to each residential dwelling or condominium situated within a Lot,

1.66 Residential Lot. The term "Residential Lot" refers to each Lot upon which a Residence has been or is planned to be constructed and in the case of a Condominium, all elements of a "unit", "residential unit" or "living unit" as such terms or similar terms may be used in a condominium plan or subdivision map recorded for said condominium pursuant to the California Civil Code.

1.67 Special Benefit Areas. The term "Special Benefit Areas" refers to the portions of the Covered Property which directly receive a special benefit (which benefit may be in the form of amenities provided or maintenance or other services offered) and for which additional Assessments will be imposed on the Owners within the Special Benefit Areas who receive such special benefits pursuant to the provisions of this Declaration. The Special Benefit Areas shall be described in a Supplementary Declaration.

1.68 Special Benefit Area Budget. The term "Special Benefit Area Budget" refers to the elements of the budget for the Community Association which itemizes the cost components to be assessed against portions of the Covered Property within a Special Benefit Area, as provided in this Declaration and the Community Bylaws.

1.69 Special Benefit Maintenance Areas. The term "Special Benefit Maintenance Areas" refers to those areas within a Special Benefit Area which will be maintained by the Community Association, The Special Benefit Maintenance Areas shall be designated in a Supplementary Declaration.

1.70 Supplementary Declaration. The term "Supplementary Declaration" means those certain declarations of covenants, conditions and restrictions, or similar instruments which, (a) annex any portion of the Additional Property and extend the plan of this Declaration to such Additional Property and/or (b) identify any Special Benefit Areas and/or describe certain areas within the Covered Property that are to be maintained by the Community Association and/or (c) contain such other complementary additions and modifications as are provided in Article 12 the other provisions of this Declaration and/or (d) make technical or minor corrections to this Declaration- or any other previously recorded Supplementary Declaration. A Supplementary Declaration may also be recorded by a Merchant Builder to set forth alternative dispute resolution procedures governing disputes or claims between an Owner and a Merchant Builder, which do not and will not include the Declarant or the Community Association.

1.71 Telecommunication Facilities. The term "Telecommunication Facilities" means equipment, cables, conduits, inner ducts, vaults, connecting hardware, wires, poles, transmitters, antennae and other facilities and structures necessary for or used in the process of Telecommunication Services.

1.72 Telecommunication Services. The term "Telecommunication Services" means Telecommunication Facilities, Improvements and services for cable television, communication, telecommunications, antennae, high-speed data, and all related vertical services, intranet, internet, information transfer, transmission, video, and other similar services or technological evolutions of the foregoing and any other Telecommunication Services identified in a Supplementary Declaration.

1.73 Trail System. The term "Trail System" or "Trail Systems" refers to any trail system within the Community Association Property or Common Maintenance Areas established under the City Requirements which is required to be maintained either by the City or the Community Association. The Trail Systems will be designated in a Supplementary Declaration.

1.74 Voting Power. The term "Voting Power" means the total number of votes allocated to Residential Lots as set forth in the Section of Article 3 entitled "Classes of Voting Membership".

## ARTICLE 2

### PROPERTY RIGHTS IN RESIDENTIAL LOTS AND COMMUNITY ASSOCIATION PROPERTY

*In addition to the Residential Lots, there are many different types of areas within the La Costa Oaks Community. Some of the areas consist of Community Association Property which are areas actually owned by the Community Association. There are also areas known as Common Maintenance Areas, which are areas over which the Community Association has easements for maintenance. Many of these areas will be identified in Supplementary Declarations to this Declaration. Each Owner's rights of enjoyment within the La Costa Oaks Community, including in certain cases, the Residential Lots, are limited by some of the property rights which are described in this Article.*

2.1 Ownership of Community Association Property and Common Maintenance Area. Fee title to the Community Association Property and the easement rights in the Common Maintenance Area for each Phase of the Covered Property shall be conveyed to, accepted and thereafter owned by the Community Association in accordance with a phasing plan to be approved by the DRE as such phasing plan may be modified *from* time to time. The Community Association must accept the conveyance of fee title to any Community Association Property or easement rights in any Common Maintenance Area, and the Community Association shall execute each such deed and any accompanying escrow instructions if requested to do so by Declarant or a Merchant Builder, No Owner shall interfere with the exercise by the Community Association, Declarant or a Merchant Builder of its rights or the fulfillment of its obligations hereunder. Any such conveyances shall be made free and clear of all liens, except real property taxes and assessments, which may be due after such conveyance, and shall be subject to any



easements, covenants, conditions and reservations then of record, including, without limitation, those set forth on any Final Map and this Declaration. Additionally, Declarant and a Merchant Builder (with Declarant's written consent) shall have an easement and right of entry to enter the Community Association Property to complete the construction of any landscaping or other Improvements to be installed on the Community Association Property and Common Maintenance Area or to perform any work under any warranties. Neither such construction nor such maintenance shall in any way postpone the commencement of Community Assessments pursuant to this Article or entitle a Member to claim any offset or reduction in the amount of such Community Assessments.

2.2 Rights of Use of the Communes Association Property and Common Maintenance Areas. The interest of each Owner in the use and benefit of the Community Association Property and Common Maintenance Area shall be appurtenant to the Owner's Residential Lot subject to the Community Association's right to exercise exclusive jurisdiction and control over the Community Association Property and Common Maintenance Area and the other rights, restrictions and easements described in this Declaration, the City Requirements, any Final Map and any other matters of record. The nature, design, quantity, quality and all other attributes of the Community Association Property and Common Maintenance Area, and the facilities and amenities thereon, shall be determined by Declarant in Declarant's sole and absolute discretion or by a Merchant Builder (with Declarant's written consent).

2.3 Owners' Easements of Enjoyment. Every Owner shall have a non-exclusive easement for use and enjoyment in and to the Community Association Property and such right shall be appurtenant to and shall pass, with the title to every Residential Lot, subject to the provisions set forth below and any rights and restrictions set forth elsewhere in this Declaration and the other Community Governing Documents and the Final Map and City Requirements. The ownership interests in the Community Association Property and Residential Lots described in this Article are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall be covenants running with the land for the use and benefit of the Owners, the Community Association and the Declarant. Individual grant deeds to Residential Lots may, but shall not be required to, set forth the easements specified in this Declaration.

2.3.1 Limits on Users of Community Association Property. The Community Association shall have the right to (a) limit the use of portions of the Community Association Property except any portions designated as Public Use Areas solely to those Owners who own Residential Lots or solely to those Owners who own Residential Lots within any applicable Special Benefit Area, (b) limit or permit usage thereof by non-Members as the Community Association deems appropriate and/or (c) permit members of the public to use portions of the Community Association Property in addition to the areas designated as Public Use Areas. The Community Association may limit the number of guests, invitees, tenants, permittees or agents of Owners using the Community Association Property.

2.3.2 Suspend Rights of Members. The Community Association shall have the right, after Notice and Hearing, to temporarily suspend the voting rights and right to use of the

Community Association Property by an Owner pursuant to the terms of this Declaration and the Community Handbook.

2.3.3 Dedicate or Grant Easements. The Community Association shall have the right to dedicate or transfer or grant easements over all or any portion of the Community Association Property to any Governmental Agency or other Persons for such purposes and subject to such conditions as may be agreed to by the Community Association.

2.3.4 Borrow Funds. The Community Association shall have the right, in accordance with the Community Governing Documents, to borrow money for the purpose of improving, repairing or adding to the Community Association Property and for the administration of the Community Association and its function and to pledge personal property assets of the Community Association for such loan. The Community Association may not encumber the Community Association Property with monetary liens unless the vote or written consent of two-thirds (2/3rds) of the Voting Power of the Community Association is obtained except that the vote or written consent of the Members shall not be required for any municipal or other similar financing offered by a Governmental Agency or for any borrowing that does not exceed five percent (5%) of the gross budget (in the aggregate) for a Fiscal Year.

2.3.5 Entry by Community Association. The Community Association and the Community Association's agents and employees shall have the right (but not the obligation) to enter upon the Residential Lots (other than the interior of the Residence situated thereon) to enforce the provisions of this Declaration or to perform its maintenance obligations under this Declaration.

2.3.6 Restrictions on Use Imposed on Community Association Property. The Community Association Property shall be subject to the restrictions set forth in the City Requirements, including without limitation, open space easements or easements for access of the property dedicated to the City upon the filing of record of the Final Maps covering all or any portion of the Covered Property.

2.3.7 Hiking Trail System. A hiking trail system may be constructed within certain portions of the Community Association Property and/or Common Maintenance Areas in a location and based upon a design approved by the City ("Trail System") in connection with the overall development of the La Costa Oaks Community. Declarant has dedicated to the City a public access easement over portions of the Trail System included within the Public Use Areas and the public shall have the right to use any portion of the Trail System which has been so dedicated. The rights and obligations of Declarant and the City with regard to the Trail System and the conditions of use, improvement and maintenance of the portions of the Trail System included within the Public Use Areas are set forth in the recorded Final Maps covering the La Costa Oaks Community and the other City Requirements.

2.3.8 Bicycle and Pedestrian Paths. The Community Association Property or Common Maintenance Areas shall be subject to the right of the public to use any bicycle and pedestrian paths included with the Public Use Areas which are dedicated to the City for public use.

2.3.9 Community Association Easement. The Community Association shall have an easement over the Common Maintenance Areas in each Phase for performing its duties and exercising its powers described in this Declaration, including, without limitation, maintenance and refurbishment and replacement of the Common Maintenance Areas.

2.4 Establish Special Assessment District. The Community Association shall have the right to establish, in cooperation with the City, a special assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Community Association, together with the right of the Community Association to convey, lease or otherwise transfer, subject to the provisions of this Declaration, all or any portion of the Community Association Property to said district. In the event Declarant or any Merchant Builder owns any portion of the Covered Property or the Additional Property, the prior consent of the Declarant shall be obtained prior to the formation of any special assessment district.

2.5 Encroachment. There are hereby reserved and granted for the benefit of each Residential Lot, as dominant tenement, over, under and across each other Residential Lot and Community Association Property, as servient tenements, and for the benefit of the Community Association Property, as dominant tenement, over, under and across each Residential Lot, as servient tenement, non-exclusive easements for encroachment, support, occupancy and use of such portions of Residential Lots and Community Association Property as are encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building, structure, or other improvements or any portion thereof, or any other cause. In the event any portion of the La Costa Oaks Community is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching improvement shall exist for as long as the encroachments exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Community Association or any Owner. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.

2.6 Easements Reserved to Declarant, the Merchant Builders and/or Community Association. There are hereby reserved the easements set forth below.

2.6.1 Master Telecommunications Easement. There is hereby reserved to Declarant with the right to grant and transfer the same, for the benefit of Declarant (and, with the written consent of Declarant, the Merchant Builders) and each of their respective agents, subcontractors, invitees, employees and contractors, and for the benefit of their respective successors and assigns, blanket easement (collectively, "Telecommunications Easements") over the Covered Property for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading and enhancing Telecommunications Facilities (collectively, "Telecommunications Purposes") for the benefit of Declarant and its subsidiaries, transferees, successors and assigns. Such easements are freely transferable. No one, except for Declarant, and Declarant's transferees may use the Covered Property for Telecommunications Purposes. All Telecommunications Facilities shall be owned, leased or licensed by Declarant, as

determined by Declarant, in its sole discretion and business judgment. Transfer of the Covered Property does not imply transfer of any Telecommunications Easements or Telecommunications Facilities. The holders of the Telecommunications Easements may not exercise the rights reserved in this Section in any manner which will unreasonably interfere with the reasonable use and enjoyment of the Covered Property by any Owner. If the exercise of any Telecommunications Easement results in damage to the Covered Property, then the easement holder who caused the damage shall, within a reasonable period of time, repair such damage.

2.6.2 Master Cable Television Service Easement. There is hereby reserved to Declarant with the right to grant and transfer the same, for the benefit of Declarant (and, with the written consent of Declarant, the Merchant Builders) and each of their respective agents, subcontractors, invitees, employees and contractors, and for the benefit of their respective successors and assigns, nonexclusive easements for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading and enhancing cable television system lines, facilities, and equipment. The community cable television lines, facilities and equipment may be owned, leased or licensed by Declarant, as determined by Declarant, in its sole discretion and business judgment. Transfer of all or any portion of the Covered Property does not imply the transfer of any such cable television lines, facilities or equipment located thereon. The holders of the easements reserved in this Section may not exercise their rights hereunder in any manner which will unreasonably interfere with the reasonable use and enjoyment of the Covered Property by any Owner.

2.6.3 Easement for Declarant and Merchant Builders Over Community Association Property. Declarant hereby expressly reserves for the benefit of Declarant and all Merchant Builders with the right to grant and transfer the same and each of their respective agents, subcontractors, invitees, employees and contractors, and for the benefit of their respective successors and assigns, a nonexclusive easement, in, to, and over the Community Association Property for access, ingress, egress, use and enjoyment, in order to show the Covered Property or Additional Property to Merchant Builders and other prospective purchasers, including, without limitation, prospective purchasers of the Merchant Builders and to develop, construct, market, sell, lease or otherwise dispose of the Covered Property or the Additional Property all as provided in the Article hereof entitled "Development Rights." Such easement shall continue until the last Close of Escrow under a Public Report in the Covered Property and the Additional Property has occurred; provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein.

2.6.4 Irrigation Easements. Declarant hereby reserves for the benefit of Declarant and the Community Association with the right to grant and transfer the same, and for the benefit of their respective successors and assigns, a nonexclusive easement in, to and over the Community Association Property and Common Maintenance Areas and any other areas designated in a Supplementary Declaration for the installation, maintenance, repair and replacement of irrigation and water lines for the benefit of the Community Association.

2.6.5 Easement Over the Common Maintenance Area on Lots. Declarant (and with the written consent of Declarant, the Merchant Builders) reserve, for the benefit of the Community Association, an easement over the portion of the Common Maintenance Area, if any,

on the Lots for maintenance and over the remainder of the Lots for access, ingress and egress necessary to perform such maintenance. No Owner may interfere with the exercise of the rights under the easement reserved in this Section.

2.6.6 Drainage Easements. Declarant reserves for the benefit of the Covered Property, the Owners, the Merchant Builders, and the Community Association, reciprocal nonexclusive easements for drainage of water over, across and on the Covered Property.

2.6.7 Easements for Public Service Use. In addition to the foregoing easements, Declarant reserves easements over the Covered Property for public services of the Governmental Agencies, including but not limited to, the right of law enforcement and fire protection personnel to enter upon any part of the Covered Property for the purpose of carrying out their official duties.

2.6.8 Perimeter Wall Easements. Declarant and each Merchant Builder reserves for the benefit of the Community Association the following easements:

(a) An easement over all Lots abutting the Community Association Property owned by the Community Association, consisting of a three (3) foot wide strip of land (or wider if and to the extent required by the size of the Perimeter Wall and Fence footing) along the entire length of the property line separating such Lot from the Community Association Property owned by the Community Association, for the purpose of accommodating the footings and other structural components of any Perimeter Wall and Fence located on or immediately adjacent to such property line, including any encroachments thereof onto the Lot; and

(b) An easement for access over such Lots reasonably necessary for maintaining the Perimeter Walls and Fences and related Improvements.

2.6.9 Utilities. There is hereby reserved to Declarant and the Merchant Builders, together with the right to grant and transfer the same, easements on, over, under, through and across the Covered Property for the purpose of constructing, erecting, operating and maintaining facilities and Improvements, including without limitation, easements for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines, and drainage facilities, roads, park areas, parkways and walkways as may be shown on any recorded subdivision or parcel maps of the Covered Property or as are required by the City or County of San Diego or any other Governmental Agencies.

2.6.10 Community Association Easements. There is hereby reserved to Declarant, the Community Association and their duly authorized agents and representatives, such easements over the Covered Property as are necessary to perform the duties and obligations of the Community Association as are set forth in the Community Governing Documents.

2.6.11 Storm Water Compliance Easements. There is hereby reserved to the Community Association, the Declarant and the Merchant Builders, the easements necessary to exercise their rights to enforce an Owner's compliance with any storm water requirements imposed by any Governmental Agencies as provided in Section 7.24 of this Declaration.

2.7 Amendment to Eliminate Easements. This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant and the Merchant Builder herein without prior written approval of Declarant and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Article shall, for so long as Declarant or any Merchant Builder owns any portion of the Covered Property or Additional Property, also require the prior written approval of Declarant.

### ARTICLE 3

#### MEMBERSHIP AND VOTING RIGHTS IN COMMUNITY ASSOCIATION

*Each Owner of a Residential Lot is a Member of the Community Association. The success of the La Costa Oaks Community is dependent, in part, upon each Owner's participation in the activities of the Community Association. Initially, there are different classes of membership within the La Costa Oaks Community. The qualifications for membership for all Owners, including the Declarant, are described in this Article.*

3.1 Ownership of Residential Lots. Ownership of each Residential Lot within the La Costa Oaks Community shall include (a) a membership in the Community Association and (b) subject to the provisions of this Declaration and any Final Maps and other City Requirements exclusive or non-exclusive easement or easements appurtenant to such Residential Lot over the Community Association Property as described in this Declaration and the deed to the Residential Lot.

#### 3.2 Membership.

3.2.1 Qualifications. Members of the Community Association shall be (i) Declarant (irrespective of whether Declarant is the Owner of a Residential Lot), for so long as Declarant is entitled to either cast a Class C vote pursuant to the Section of this Article entitled "Class C Membership" or cast votes on behalf of any Merchant Builders, and (ii) each Owner (including Declarant and any Merchant Builder) of one (1) or more Residential Lots in the La Costa Oaks Community. Ownership of a Residential Lot shall be the sole qualification for an Owner's membership in the Community Association.

3.2.2 Transfer of Membership. All memberships in the Community Association held by Owners, other than Declarant, shall be appurtenant to the Residential Lot owned by each Owner and shall not be transferred, pledged or alienated, in any way, except upon the transfer of title to the Owner's Residential Lot. Declarant's Class C membership may not be transferred except to a successor to Declarant's rights to all or a portion of the Additional Property. Transfer of Declarant's Class C membership shall be evidenced by the recordation in the Office of the County Recorder of San Diego County of an Assignment of Declarant's Rights. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Community Association.

3.2.3 Assignment of Right of Use. A Member shall have the right to assign, in accordance with the Community Bylaws, an Owner's rights of use and enjoyment to the Community Association Property to a lessee or tenant of an Owner's Residential Lot; provided,

however, that such Member shall not also be entitled to the use and enjoyment of the recreational facilities, if any, located on the Community Association Property during the term of the assignment. The assigning Member shall remain liable for all charges and assessments attributable to the Owner's Residential Lot. A Member who has sold his or her Residential Lot to a contract purchaser under an agreement to purchase shall be entitled to assign to the contract purchaser his or her membership rights in the Community Association. Such assignment shall be in writing and shall be delivered to the Community Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his or her Residential Lot until fee title to the Residential Lot is transferred.

3.2.4 Transfer of Membership Upon Sale. If the Owner of any Residential Lot fails or refuses to transfer the membership registered in his or her name to the purchaser of such Residential Lot upon transfer of fee title thereto, the Community Board shall have the right to record the transfer upon the books of the Community Association. The Community Association will levy a transfer fee against new Owners in the amount of the actual costs incurred by the Community Association to change its records and their Residential Lots in order to reimburse the Community Association for the costs of transferring the memberships to the new Owners on the records of the Community Association,

3.3 Classes of Voting Membership. The Community Association shall have three (3) classes of voting membership which are described below.

3.3.1 Class A Membership. Class A Members shall originally be all Owners of Residential Lots with the exception of Declarant and the Merchant Builders, for so long as there exists a Class B membership. Upon termination of the Class B membership, Declarant and Merchant Builders shall be Class A Members for so long as they own Residential Lots subject to this Declaration. Each Owner will be entitled to cast one (1) vote for each Residential Lot.

3.3.2 Class B Membership. The Class B Member shall be the Declarant who shall be entitled to three (3) votes for each Residential Lot owned by Declarant and Merchant Builders in a Phase for which assessments have commenced. Declarant shall cast all votes on behalf of Declarant and any Merchant Builders who have assigned their rights to Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earliest:

(a) When six hundred thirty-three (633) Residential Lots representing seventy-five percent (75%) of the Residences permitted to be developed by the City for the La Costa Oaks Community have been conveyed to Class A Members;

(b) On the fifth anniversary following the first close of escrow within a Phase covered by the most recently issued Public Report;

(c) On the twentieth anniversary of the first conveyance of a Residential Lot to a Class A Member in the La Costa Oaks Community under authority of a Public Report.

3.3.3 Class C Membership. The Class C Member shall be Declarant (whether or not Declarant is an Owner). The Class C membership shall not be considered a part of the Voting Power of the Community Association and Declarant shall not be entitled to exercise any Class C votes except for the purpose of electing a majority of the members of the Community Board pursuant to the provisions set forth below. The Class C Member shall be entitled to solely elect a majority of the members of the Community Board until the date which is the earlier to occur of:

(a) When six hundred thirty-three (633) Residential Lots which represents seventy-five percent (75%) of the Residences permitted to be developed by the City for the La Costa Oaks Community have been conveyed to Class A Members;

(b) On the fifth anniversary following the first close of escrow within a Phase covered by the most recently issued Public Report; or

(c) On the twentieth (20th) anniversary of the first conveyance of a Residential Lot to a Class A Member in the La Costa Oaks Community.

3.4 Declarant's Right to Select Director. In any election of Directors after the Class C membership has been terminated, so long as Declarant owns any of the Annexable Property or a Merchant Builder owns any of the Covered Property, the Community Board shall adopt special procedures to ensure that at least one (1) Community Director is selected by Declarant. A representative to the Community Board selected by the Declarant pursuant to the provisions of this Section may be removed prior to the expiration of his or her term of office only with the consent of Declarant.

3.5 Continuance & Approval of Declarant. Notwithstanding the foregoing, and without limiting Declarant's unilateral rights provided elsewhere in this Declaration or the Community Bylaws, even after the termination of Class "B" membership, and until such time as Owners, other than Declarant and Merchant Builders own at least seventy-five percent (75%) of the Residential Lots within the La Costa Oaks Community, or until the twentieth (20th) anniversary of the first Close of Escrow of a Residential Lot, whichever occurs first, the approval of Declarant shall be required before the Community Association may take any permitted action with respect to the following:

3.5.1 Reduction in the level of, or change in allocation of responsibility for (a) maintenance of and repairs to all or part of any Community Association Property subject to this Declaration, (b) any other maintenance obligations of the Community Association set forth in this Declaration, and (c) any responsibilities for maintaining circulation within the La Costa Oaks Community set forth in this Declaration;

3.5.2 Conveyance by the Community Association of all or any portion of the Community Association Property;

3.5.3 Annexation to the Community Association of any of the Additional Property.



3.5.4 Alteration in the method of fixing and collecting Assessments or any increase in Assessments beyond the amounts permitted under Section 5.5 of this Declaration.;

3.5.5 Modification, enforcement and review procedures of the Architectural Committee or any change in the architectural and landscaping design;

3.5.6 The creation of a Special Benefits Area as provided in this Declaration;

3.5.7 Modifications to Improvements on the Community Association Property or to the level or frequency of maintenance of the Community Association Property;

3.5.8 The obligation to provide Declarant with inspection reports;

3.5.9 Reduction or modification of any easement or other rights reserved to Declarant or any Merchant Builders under this Declaration;

3.5.10 Alteration in the method of enforcing the provisions of this Declaration;  
and

3.5.11 Amendments to this Declaration or the Community Governing Documents which would diminish or otherwise affect Declarant's or any Merchant Builder's right of approval regarding the actions enumerated above.

3.6 Special Benefit Area Approvals. Notwithstanding any other provisions of the Community Governing Documents, any action expressly for the benefit of or imposing an obligation only upon a Special Benefit Area or the Owners of Lots within the Special Benefit Area which requires a vote of the Members, shall require the approval of the prescribed percentage of the class or classes of Members or the approval of Members of only those Owners within the Special Benefit Area, except as otherwise provided in Section 5.4.5 of this Declaration.

3.7 Commencement of Voting Rights. An Owner's right to vote, including Declarant or a Merchant Builder, shall not vest until Assessments have been levied upon such Owner's Residential Lot as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided for herein and in the Community Governing Documents. Notwithstanding the foregoing, Declarant shall have the right to cast any votes assigned to Declarant by a Merchant Builder.

#### ARTICLE 4

#### POWERS AND DUTIES OF THE COMMUNITY ASSOCIATION

*The Community Association will govern the La Costa Oaks Community and as the governing body will have certain powers **and duties which** are described below.*

4.1 Powers of Community Association. The Community Association shall have all the powers of a nonprofit corporation organized under the Nonprofit Mutual Benefit Corporation

Law of California subject only to such limitations on the exercise of such powers as are set forth in the Community Articles, the Community Bylaws and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Community Association under this Declaration, the Community Articles and the Community Bylaws, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Community Association, including, without limitation, the powers set forth below. If the Community Association as a corporate entity is dissolved, a non-profit unincorporated association shall forthwith and without further action or notice be formed to succeed to all of the rights and duties of said Community Association hereunder. The affairs of such unincorporated association shall be governed by the Community Bylaws and this Declaration as if they were created for the purpose of governing the affairs of an unincorporated association.

4.1.1 Delegation of Powers; Professional Management. The Community Association acting by and through the Community Board can delegate its powers, duties, and responsibilities to committees or employees, including a professional managing agent ("Manager"), subject to the requirements of the Section of Article 13 entitled "Professional Management."

4.1.2 Right of Entry and Enforcement. Except in the case of emergencies in which case no prior notice need be given, the Community Board or any authorized representative thereof shall have the right, upon forty-eight (48) hours prior notice and during reasonable hours, to enter upon any Residential Lot (other than the interior of a Residence) for the purpose of construction, maintenance or emergency repair. Such persons shall not be deemed guilty of trespass by reason of such entry. If the cost of such maintenance or repair relate to Improvements otherwise required to be maintained by the Owner, the costs of such repair shall be assessed against said Owner as an Enforcement Assessment in accordance with the provisions of Article 5 hereof.

4.1.3 Easements and Rights of Way. The Community Association, acting by and through the Community Board, may grant and convey to any third party easements and licenses for use and rights of way in, on, over or under any Community Association Property conveyed or otherwise transferred to said Community Association or under its jurisdiction in accordance with the provisions of this Declaration.

4.1.4 Dedication. The Community Association, acting by and through the Community Board, may dedicate any of its property to an appropriate public authority for public use as provided for in this Declaration.

4.1.5 Capital Improvements. The Community Board may, on its own motion or acting on a petition signed by a majority of the Owners, approve the construction, installation or acquisition of a particular capital improvement to the Community Association Property or Common Maintenance Areas, subject to the limitations set forth in Section 4.3.7 of this Declaration.

4.1.6 Enter Into Maintenance, Subsidy, Agreements andlor Use Agreements. Notwithstanding any other provisions of this Declaration or the Community Bylaws regarding

the term and termination of contracts with Declarant or Merchant Builders for providing services to the Community Association, Declarant (and any Merchant Builder with the written consent of Declarant) may enter into one or more written maintenance agreements with the Community Association under which Declarant (or such Merchant Builder, as the case may be) shall pay all or any portion of the Common Expenses and perform all or any portion of the Community Association's maintenance responsibilities in exchange for a temporary suspension of all or a portion of the Regular Assessments, Each such maintenance agreement shall be for a term and shall be on such conditions as are approved by the DRE, and may require Owners to reimburse Declarant or any of such Merchant Builders, through the Community Association, for a portion of the costs expended in satisfaction of Common Expenses. The Community Association shall also have the power to enter into agreements for the use of the Community Association Property.

#### 4.1.7 Right of Enforcement and Notice and Hearing.

(a) Enforcement Actions. The Community Association, in its own name and on its own behalf, or on behalf of any Owner who consents, shall have the power but not the duty to commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Community Governing Documents or any resolutions of the Community Board, and to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Community Association can temporarily suspend the membership rights and privileges and/or can assess monetary penalties against any Owner or other person entitled to exercise such rights or privileges for any violation of the Community Governing Documents or Community Board resolutions.

(b) Notice Requirements. Before a decision to impose such a suspension and/or monetary penalties is reached by the Community Board, at least fifteen (15) days written notice of suspension or imposition of monetary penalties and the reasons therefor must be given to the Owner of such suspension or imposition of a penalty or any such longer period as may be required under California Corporations Code Section 7341, or any successor statute or law. Additionally, before the Community Board decides to impose a suspension of privileges and/or impose a monetary penalty, the aggrieved, Owner shall be provided with an opportunity to be heard by the Community Board.

(c) Delegation. The Community Board shall have the right to appoint a committee to hear any actions brought against an Owner for a violation of the Community Governing Documents, and to take actions on behalf of the Community Board in connection with an enforcement action.

4.1.8 Contract for Goods and Services. The Community Association shall have the power to contract for goods and services for the benefit of the Community Association Property, Common Maintenance Areas, Special Benefit Areas and other portion of the La Costa Oaks Community necessary for the Community Association to perform its duties and obligations hereunder including, without limitation, legal and accounting services necessary or proper in operating the Community Association Property, Common Maintenance Areas and Special Benefit Areas or in enforcing the Community Governing Documents, and performing any of the other Community Association duties or rights, subject to the limitations set forth below.

4.1.9 Litigation. The Community Association shall have the power, but not the duty, to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Community Association in matters pertaining to (a) the application or enforcement of the Community Governing Documents and (b) damage to the Community Association Property, Common Maintenance Areas and Special Benefit Areas. Any recovery by the Community Association with respect to any damage to or defect in the Community Association Property and Common Maintenance Areas shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such Community Association Property and Common Maintenance Areas damage or defect and such proceeds shall be applied (a) first, for the purpose of repairing such defects, (b) second, for replacing Reserve Funds previously utilized by the Community Association to cause such repairs and (c) then to the costs of such litigation. The Community Association and not the individual Members shall have the power to pursue any claims or other actions using the non-adversarial proceedings for construction defects to *the Community Association Property* or the Common Maintenance Area pursuant to Civil Code Section 895 et seq. and any successor statute or laws.

4.1.10 DRE. The Community Association shall have the power to enter into contracts **approved** by the DRE.

4.1.11 Telecommunications Contract. Notwithstanding anything in this Declaration to the contrary, the Community Association shall have the power to enter into, accept an assignment of, or otherwise cause the Community Association to comply with the terms and provisions of an exclusive telecommunications services contract ("Telecommunications Contract") with a telecommunications service provider ("Service Provider"), pursuant to which the Service Provider shall serve as the exclusive provider of Telecommunications Services to each Residential Lot in the Covered Property. The Community Board shall only enter into, accept an assignment of, or otherwise cause the Community Association to comply with the terms and provisions of the Telecommunications Contract if the Community Board determines, in its prudent business judgment, that such action is in the best interests of the Community Association. Although not exhaustive, a contract that satisfies the following requirements shall be deemed to be within the best interests of the Community Association.

(a) Initial Term and Extensions. The initial term of the Telecommunications Contract ~~do~~ not exceed two (2) years, and, if the Telecommunications Contract provides for automatic extensions, the length of each such extension does not exceed five (5) years;

(b) Termination. The Telecommunications Contract provides that: (i) at least six (6) months prior to the expiration of either the initial or any extended term of the Telecommunications Contract, the entire membership of the Community Association may, without cause, by a sixty percent (60%) vote, prevent any automatic extension that the Telecommunications Contract may provide for, and thereby allow the Telecommunications Contract to expire, and (ii) at any time, the Community Board may terminate the Telecommunications Contract if, in the sole discretion of the Community Board, the Service

Provider fails to provide quality, state-of-the-art Telecommunications Service or the Telecommunications Contract becomes economically obsolete;

(c) Fees. The monthly fee charged to the Community Association by the Service Provider for the provision of the Telecommunications Services to all of the Residential Lots represents a discount from the comparable retail fees charged by the Service Provider in the general geographic area in which the Covered Property is located, and, if so, the amount of such discount;

(d) Installation of Telecommunications Facilities. The Service Provider is solely responsible for the installation, and the cost thereof, of all of the Telecommunications Facilities necessary to provide Telecommunications Services to each Residential Lot; and

(e) Removal of Telecommunications Facilities. The Service Provider has the right to remove the Telecommunications Facilities upon expiration or termination of the Telecommunications Contract.

4.1.12 Claims and Actions. Subject to the provisions of this Declaration, the Community Association shall have the power, but not the duty, to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Community Association in matters pertaining to (a) the application or enforcement of this Declaration and (b) damage to the Community Association Property or the Common Maintenance Area; provided, however, that from and after the date which is five (5) years after the date of the first conveyance of a Residential Lot to an Owner under a Public Report within the Additional Property ("Relinquishment Date"), no representative of Declarant on the Board shall vote on the initiation of any claim under California Civil Code Section 895 et seq. Notwithstanding the foregoing, Declarant may relinquish such control at an earlier date, in the sole discretion of Declarant. Declarant shall have no control over the Community Association's ability to decide whether to initiate a claim under such statutory provisions and in the event of such a vote, the affirmative vote of the two non-Declarant representatives on the Community Board shall be binding so long as a quorum of the Community Board is present at any meeting where such vote is taken. The Community Association and not the individual members shall have the power to pursue any claims or other actions using the non-adversarial procedures for construction defects in the Community Association Property or the Common Maintenance Area pursuant to Civil Code Section 895 et seq., or any successor statutes or laws.

4.2 Duties of the Community Association. In addition to the powers delegated to it by its Community Articles or the Community Bylaws, and without limiting their generality, the Community Association, acting by and through the Community Board, has the obligation to conduct all business affairs of common interest to all Owners, including without limitation, each of the duties set forth below.

4.2.1 Taxes and Assessments. The Community Association shall have the duty to pay all real and personal property taxes and assessments and all other taxes levied against the Community Association Property, personal property owned by the Community Association or against the Community Association. Such taxes and assessments may be contested by the

Community Association; provided, that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

4.2.2 Maintenance of La Costa Oaks Community. The Community Association shall have the duty to accept fee simple and easement title to and to maintain and repair the Community Association Property, Common Maintenance Area and any other portions of the La Costa Oaks Community required to be maintained by the Community Association pursuant to the provisions of this Declaration or any Supplementary Declaration in a good order and repair, and subject to the provisions of this Declaration and the City Requirements. All of such obligations shall be discharged when and in such manner as the Community Board determines in its judgment to be appropriate, provided that the Community Association shall conform with the requirements of any agreements entered into between Declarant or any Merchant Builder and a Governmental Agency pertaining to the Community Association Property and Common Maintenance Area, including without limitation, any agreements providing for maintenance of Public Use Areas by the Community Association.

4.2.3 Insurance. The Community Association shall have the duty to obtain, from reputable insurance companies and maintain the insurance described in the Article hereof entitled "Insurance and Condemnation."

4.2.4 Audit. The Community Association shall have the power and duty to permit any Owner, who may be accompanied by an accountant or other consultant, at said Owner's sole expense to audit or inspect the Community Association's books and records; provided that such audit or inspections are made during normal business hours and without unnecessary interference with the operations of the manager or the Community Association.

4.2.5 Community Assessments. The Community Association shall establish, determine, levy, collect and enforce all Assessments and cause to be prepared all budgets and financial statements and establish and maintain a working capital and contingency fund as required by the Community Governing Documents.

4.2.6 Utility Services. The Community Association shall obtain utility services necessary or desirable, for the benefit of the Community Association Property and Common Maintenance Areas including, but not limited to, water, gas, electricity, telephone, refuse collection, sewage disposal and other services necessary to perform its other obligations under this Declaration.

4.2.7 Architectural Control. The Community Association shall have the duty to promulgate architectural standards and procedures as set forth in the Community Design Standards and appoint the Architectural Committee in connection therewith in accordance with the provisions of Article 6 of this Declaration.

4.2.8 Community Handbook. The Community Association shall adopt, amend, and repeal such rules and regulations as it deems reasonable. The Community Handbook shall govern such matters in **furtherance of the purposes** of the Community Association, including, without limitation, the use of the Community Association Property and Common Maintenance Area; provided, however, that the Community Handbook may not discriminate (except to the

extent the Community Handbook addresses special restrictions or procedures which are imposed on Owners within a Special Benefit Area). In the event of any conflict between the Community Handbook and any other provisions of the other Community Governing Documents, the provisions of the Community Handbook shall be superseded by the provisions of the other Community Governing Documents to the extent of any such inconsistency.

4.2.9 Special Benefit Areas Administration. The Community Association shall administer and perform any obligations associated with any Special Benefit Areas created pursuant to this Declaration.

4.2.10 Maintenance Manual. The Community Association shall maintain at the offices of the Community Association a copy of the Maintenance Manual provided by the Declarant to the Community Association and shall have the duty to comply with all requirements and follow all maintenance schedules set forth in the Association's Maintenance Manual.

4.2.11 Members' Approval of Certain Actions. In **the event that** any claim or other actions brought by the Association or other applicable law under California Civil Code Section 895 et seq., and any successor statutes or laws, or other applicable laws, involving allegations of construction defects relating to the Community Association Property or the Common Maintenance Area is not resolved pursuant to the non-adversarial procedures set forth in California Civil Code Sections 910 through 938, and any successor statutes or laws, the Community Association shall not initiate a further action or procedure against Declarant under Section 15.4 or otherwise without first obtaining the consent of the Owners other than Declarant, constituting a quorum of more than fifty percent (50%) of the Owners of the Community Association casting a majority of the votes at a meeting or election of the Community Association conducted in accordance with the provisions of California Corporations Code Sections 7510 et seq. and 7613 and any successor statutes or laws.

4.2.12 Use of Proceeds to Repair. If the Community Association receives, on its own behalf or for the benefit of the Owners, any proceeds as a result of any construction defect or other claims brought by the Community Association relating to repair or maintenance of the Community Association Property or the Common Maintenance Areas, then the Community Association shall apply such proceeds first for the purpose of making the repairs or replacing reserve funds previously utilized by the Community Association to cause such repairs and then to the costs of such litigation. Any excess proceeds shall be applied as determined by the Community Board, subject to any requirements established by the non-profit mutual benefit laws of the State of California and any other applicable laws.

4.3 Prohibited Activities. Notwithstanding any other provisions of this Declaration or the other Community Governing Documents, the Community Association is expressly **prohibited** from undertaking or performing any of the following activities, or expending or otherwise utilizing Community Association funds or resources therefor, and the Community Association shall be prohibited from undertaking the following activities.

4.3.1 Property Manager. For so long as Declarant's Class C votes are in effect, the Community Association shall not discontinue the management of the Community Association by a professional, certified or accredited management company. After Declarant's

Class C votes are no longer in effect the Community Association shall not discontinue the management of the Community Association by a professional, and certified or accredited management company without the vote of (a) Declarant, so long as Declarant or any Merchant Builder owns any Lot within the Covered Property, or Additional Property and (b) a vote of sixty-six and two thirds (66 2/3rds) of the Voting Power of the Community Association. If the Community Association votes to discontinue the management of the Community Association by a certified or accredited professional manager in accordance with the procedures set forth above, then any replacement manager shall have at least five (5) years experience in the management of planned communities and shall have earned accreditation or certification from a professional association management organization such as the Professional Community Association of Managers designation from the Community Association Institute. Nothing contained herein shall limit the Community Association from hiring other employees for the Covered Property.

4.3.2 Offsite Nuisances. The Community Association shall not use any assessments or expend Community Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of Phases in which Assessments have commenced.

4.3.3 Political Activities or Contributions. The Community Association shall not engage in any federal, state or local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Covered Property (e.g., endorsement or support of (a) legislative or administrative actions by a Governmental Agency which affect persons or property outside the Covered Property, (b) candidates for elected or appointed office, and (c) initiatives, recall elections or other ballot proposals). The Community Association is prohibited *from* conducting, sponsoring, participating in or expending funds or resources on any activity, campaign or event, including without limitation any social or political campaign, event or activity, which does not directly and exclusively pertain to any of the powers and duties of the Community Association.

4.3.4 Subassociation or Cost Center. For so long as Declarant has the rights under Sections 3.3.3. and 3.4 of this Declaration, neither the Community Association nor any Owner nor any Merchant Builder, without the prior written consent of Declarant, shall (a) form an association (as defined in Section 1351(a) of the California Civil Code) to manage any portion of the Covered Property or (b) create a cost Special Benefits Area or other such device to apportion any Common Expenses of the Community Association against fewer than all of the Owners and their Lots.

4.3.5 Mortgagee Consents. For so long as Declarant has the voting rights under Sections 3.3.3 and 3.4 of this Declaration, the Community Association may not, without the prior written consent of Declarant, take any action listed in Section 13.4 of the Declaration for which the consent of Owners or First Mortgagees is required.

4.3.6 Reserved Rights of Declarant and Merchant Builders. For so long as Declarant or any Merchant Builder is entitled to exercise any right, or avail itself of any exemption, in Article 11 or elsewhere in this Declaration or the Community Governing Documents, neither the Community Association, nor the Community Board, nor any Owner shall



take any action which is inconsistent with, or which would abrogate, any such right or exemption.

4.3.7 Limitations on Authority of Community Board. The Community Board shall not take any of the actions listed below except with the vote or written consent of: (a) a majority of the Members of each of Class A and Class B during the time the two-class voting structure set forth in Article 3 of this Declaration is in effect; or (b) except with the vote at a meeting of the Community Association or by written ballot without a meeting pursuant to Corporations Code Section 7513 of at least a majority of the Members of the Community Association including at least a majority of Community Association Members other than Declarant after conversion to a single Class A voting membership.

(a) Limit on Capital Improvements. The Community Board shall not, without obtaining the consent of the Members as set forth above, incur aggregate expenditures for capital improvements to the Community Association Property or Common Maintenance Areas in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Community Association for that Fiscal Year.

(b) Limit on Sales of Community Association Property. The Community Board shall not, without obtaining the consent of the Members as set forth above, sell during any fiscal year property of the Community Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Community Association for that Fiscal Year.

(c) Limit on Third Person Contracts. The Community Board shall not, without obtaining the consent of the Members as set forth above, enter into a contract with a third person (other than a Governmental Agency) wherein the third person will furnish goods or services for the Community Association Property or the Common Maintenance Areas to the Community Association for a term longer than one year with the following exceptions:

(i) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(ii) A prepaid casualty and/or liability insurance policy not to exceed three (3) years duration; provided that the policy permits short-rate cancellation by the insured;

(iii) Except as otherwise provided in this Declaration, a contract for a term not to exceed three (3) years that is terminable by the Community Association after no longer than one year without cause, penalty or other obligations upon ninety (90) days written notice of termination to the other party;

(iv) A Telecommunications Contract under Section 4.1.11 of this Declaration; and

(v) Any contract approved by the DRE.

#### 4.3.8 Nonliability.

(a) General Rule. No Person is liable to any other Person (other than the Community Association or a party claiming in the name of the Community Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Community Association (or to any party claiming in the name of the Community Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct. The Community Association is not liable for damage to property in the Community Property unless caused by the negligence of the Community Association, the Community Board, the Community Association's officers, or the manager or the manager's staff of the Community Association.

(b) Nonliability of Volunteer Community Board Members and Officers. A volunteer Community Board member or volunteer Community Association officer shall not be personally liable to any Person who suffers injury, including bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Community Board member if all applicable conditions specified in Section 1365.7 of the California Civil Code are met.

#### 4.3.9 Scope of Powers and Standard of Care.

(a) General Scope of Powers. Unless a duty to act is imposed on the Community Board, the Architectural Committee or other committees or representatives of the Community Association by this Declaration or law, the Community Board, the Architectural Review Committee and the committees have the right to decide to act or not act. Any decision to not act is not a waiver of the right to act in the future.

(b) Business Affairs. This Section applies to Community Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances, and Architectural Review Committee member actions. Each Community Board member shall perform his or her duties in good faith, in a manner the Community Board member believes to be in the best interests of the Community Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing his or her duties, a Community Board member is entitled to rely on information, opinions, reports or statements, including financial data prepared or presented by:

(i) One or more officers or employees of the Community Association whom the Community Board member believes to be reliable and competent in the matters presented;

(ii) Counsel, independent accountants or other Persons as to matters which the Community Board member believes to be within such Person 's professional or expert competence; or

(iii) A committee of the Community Board upon which the Community Board member does not serve, as to matters under its designated authority, which committee the Community Board member believes to merit confidence, so long as the Community Board member acts in good faith, after reasonable inquiry when the need is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

This Section 4.3.9 is intended to be a restatement of the business judgment rule established in applicable law. All modifications and interpretations of the business judgment rule applicable to the Community Association, shall be interpreted to modify and interpret this Section 4.3.9.

(c) Community Association Governance. This Section applies to Community Board actions and Architectural Review Committee decisions in connection with interpretation and enforcement of the Declaration, architectural and landscaping control, regulation of uses within the Covered Property, rule making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

## ARTICLE 5

### ASSESSMENTS

*To fund the activities of the Community Association, the Community Association will be collecting various types of assessments. These assessments fund the services which are being provided by the Community Association. By paying assessments which fund the programs and services of the Community Association, all of the Owners within the La Costa Oaks Community are benefitted. In addition to the overall assessments which are levied against all Owners, some Owners whose Lots are situated in Special Benefit Areas will pay an additional payment for the services provided to the Special Benefit Areas by the Community Association.*

5.1 Creation of Lien and Personal Obligation for Assessments. Declarant and each Merchant Builder, for each Residential Lot owned, covenants, and each Owner of a Residential Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant to pay to the Community Association all assessments levied pursuant to the provisions of this Declaration. All assessments levied herein, together with any Additional Charges, shall (except as otherwise provided in Section 5.4,4 below) be a charge on the land and shall be a continuing lien upon the Residential Lot against which each such assessment is made. The lien shall be effective upon recordation of a notice of delinquent assessment. Each assessment, together with interest, late charges, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Residential Lot at the time the assessment is due and shall bind his or her heirs, devisees, personal representatives and assigns. The personal obligation for delinquent assessments shall not pass to successors in title of a

Residential Lot unless expressly assumed by them; however, the delinquent assessment shall remain a lien on the Residential Lot. No such assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent assessments. If more than one person or entity was the Owner of a Residential Lot, the personal obligation to pay such assessment or installment respecting such Residential Lot shall be both joint and several.

5.2 Maintenance Funds of Community Association. The Community Board shall establish no fewer than two (2) separate association maintenance funds accounts ("Community Association Maintenance Funds") into which shall be deposited all monies paid to the Community Association and from which disbursements shall be made, as provided herein, in the Community Association's performance of functions under this Declaration. The Community Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an operating fund for current expenses ("Operating Fund"), (b) an adequate Reserve Fund ("Reserve Fund") for the deposit of Reserves attributable to Improvements within the Community Association Property or Common Maintenance Areas (which would not reasonably be expected to recur on an annual or more frequent basis), and for payment of deductible amounts for insurance policies which the Community Association obtains as provided in the Article entitled "Insurance and Condemnation", and (c) any other funds which the Community Board may establish to the extent necessary under the Declaration's provisions. Nothing contained herein precludes the establishment of additional Community Association Maintenance Funds by the Community Association, so long as the amounts assessed, deposited into, and disbursed from any such Fund are designated for purposes authorized by this Declaration.

5.3 Purpose of Community Assessments. The Community Assessments levied by the Community Association shall be used exclusively for the purposes and function of the Community Association set forth in this Declaration and Community Governing Documents. Regular Assessments shall be used to satisfy Common Expenses as provided herein and in the Community Bylaws. If the Community Association decides to use or transfer Reserve Funds (as defined below) to pay for litigation, the Community Association must notify its Members of the decision at the next available mailing. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the Reserve Funds will be replaced, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation as provided in Section 1365.5 of the California Civil Code or any successor statute or law, which will be available at the Community Association's office. The accounting shall be updated monthly.

5.4 Nature of Assessments. The Community Board shall establish the following Assessments, each of which shall be used only for the purposes specified in this Article.

5.4.1 Regular Assessments. Regular Assessments shall be an annual assessment for Common Expenses fixed and levied by the Community Board based upon the estimated costs of operation of the Community Association in accordance with the budgets prepared pursuant to the provisions of the Community Bylaws, and the accomplishment of its purposes, performance of its duties and the exercise of its powers that benefit the entire Covered Property. The amount

and time of payment of Regular Assessments shall be determined as provided for below. Until January 1st of the year immediately following the conveyance of the first Lot to an Owner, the annual maximum Regular Assessment shall not exceed the maximum amount permitted for the Community Association under any Public Report issued for such period by the Department of Real Estate for any Lot then subject to this Declaration. Increases in Regular Assessments shall be subject to the limitations set forth in the Section of this Article entitled "Limitation on Assessments".

5.4.2 Special Assessments. Special Assessments may be levied at any time during any fiscal year if the Regular Assessments prove inadequate for any reason, including nonpayment of any Owner's share thereof. Special Assessments shall be allocated in the same manner as Regular Assessments. Increases in Special Assessments shall be subject to the limitations set forth in the Section of this Article entitled "Limitation on Assessments."

5.4.3 Capital Improvement Assessments. In addition to the Regular Assessments, the Community Association may levy, in any fiscal year, a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of a described Capital Improvement upon the Community Association Property to the extent the same is not covered by the provisions affecting Reconstruction Assessments in the Article hereof entitled "Destruction of Improvements," including the necessary fixtures and personal property related thereto. Capital Improvement Assessments shall be assessed and shall be allocated to Owners in the same manner as Regular Assessments. All amounts collected as Capital Improvement Assessments may only be used for Capital Improvements and shall be deposited by the Community Board in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Community Association and shall be deemed a contribution to the capital account of the Community Association by the Members. Increases in Capital Improvements Assessments shall be subject to the limitations set forth in Section 5.5 below.

5.4.4 Enforcement Assessments. The Community Association may levy an Enforcement Assessment against any Owner who causes damage to the Community Association Property and/or Common Maintenance Areas or for bringing an Owner or such Owner's Lot into compliance with the provisions of the Community Governing Documents or any other charge designated an Enforcement Assessment in the Community Governing Documents, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. If the Community Association undertakes to provide materials or services which benefit individual Owners, then such Owners in accepting such materials or services agree that the costs thereof shall be an Enforcement Assessment. The Community Board shall have the authority to adopt a reasonable schedule of Enforcement Assessments for any violation of the Community Governing Documents. If, after Notice and Hearing as required by the Community Governing Documents, the Owner fails to cure or continues such violation, the Community Association may impose an additional fine each time the violation is repeated, or not corrected as provided for herein and may assess such Owner and enforce the Enforcement Assessment as herein provided for nonpayment of a Community Assessment. As specified above, a hearing committee may be established by the Community Board to administer the foregoing. Whenever the Community Association performs any service or accomplishes any item of repair or maintenance which is the

duty of a Condominium Project Association or an Owner to accomplish, but which has not been accomplished by the Condominium Project Association or Owner, or whenever the Community Association determines to preempt the performance of a Condominium Project Association or a specific Owner of a given act of maintenance or repair, the Community Association shall specifically charge the cost thereof, together with any financing costs and administrative costs incurred by the Community Association, to the Owner for whom such work was done, or the Condominium Project for which such work was done, as the case may be, and shall include such additional cost as an Enforcement Assessment for such Owners or Condominium Project Association.

**5.4.5 Formation of Special Benefit Areas.** The Declarant, prior to the conveyance of a Lot by a Merchant Builder to an Owner under a Public Report, may establish a Special Benefit Area or expand an existing Special Benefit Area by designating the Lots to be included within such Special Benefit Area in a Supplementary Declaration. Subject to the provisions of Sections 3.6 of this Declaration, the Community Association may also establish or expand additional Special Benefit Areas with respect to portions of the Covered Property which directly receive a special benefit from the Community Association for special services provided to such Owners. If any Special Benefit Area is formed or expanded after the Lots to be included within such Special Benefit Area have been conveyed to an Owner under authority of a Public Report, then the approval of a majority of the Owners of the Lots proposed to be included in the Special Benefit Area shall be required. Upon its approval, the Special Benefit Area and Special Benefit Maintenance Area shall be described in a Supplementary Declaration recorded by the Declarant or Community Association, as applicable, as provided in Section 12.4 of this Declaration. From and after the formation of such a Special Benefit Area, it shall be administered by the Community Association in the same manner as all other Special Benefit Areas provided for in this Declaration.

**5.4.6 Special Services Assessment.** The Community Board may establish a Special Services Assessment to reimburse the Community Association for Special Services rendered by the Community Association to an Owner. In the event that the Community Association obtains income directly related to an item which has been assessed as a Special Services Assessment, such income shall be allocated so as to reduce or offset such Special Services Assessment.

**5.4.7 Reconstruction Assessments.** Reconstruction Assessments may be levied by the Community Board under the conditions and in the manner specified in the Article hereof entitled "Destruction of Improvements."

**5.5 Limitation on Assessments.** The Community Board shall levy Regular Assessments and Special Assessments sufficient to perform the obligations of the Community Association as provided in the Declaration and Community Bylaws; provided, however, except for assessment increases necessary for emergency situations, and except for Special Assessments imposed to restore funds to the Community Association pursuant to California Civil Code § 1365.5(c) and except as provided in this Section: (a) the Community Board may not increase the Regular Assessments for any fiscal year unless the Community Board has complied with the provisions of California Civil Code § 1365.5 (preparation and distribution of the budget), and

(b) the Community Board may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Community Association's preceding fiscal year (whether such percentage is calculated against the General Assessment Component or Special Benefit Area Assessment Components as described in Section 5.7 below or the aggregate of both such amounts) but specifically excluding the Technology Assessment, if any, nor may the Community Board impose Special Assessments which, in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Community Association for the fiscal year (whether such percentage is calculated against the Common Expenses of the Community Association or, if the Special Assessment is to be levied only against a Special Benefit Area, to the Common Expenses of a Special Benefit Area), without the approval of Owners casting a majority of the votes of the Members affected thereby at a meeting or election of the Community Association conducted in accordance with Chapter 5 (commencing with § 7510) of Part 3 of Division 2 of Title I of the California Corporations Code and § 7613 of the California Corporations Code at which a quorum was present or participated. Notwithstanding the foregoing, if any such Regular Assessments or Special Assessments include a Special Benefit Area Assessment Component as described in Section 5.7 below, and the amount of such increases of Regular Assessments or levy of Special Assessments would not otherwise require the approval of Owners subject only to the General Assessment Component, only the approval of Owners within the applicable Special Benefit Area shall be required for increases to the Regular Assessments or the levy of Special Assessments which only result in the increases described above to the total Regular Assessments or the levy of Special Assessments applicable to the Special Benefit Area except to the extent as may otherwise be required under Section 1366 of the California Civil Code.

5.5.1 Quorum. For purposes of this Section 5.5, "quorum" means more than fifty percent (50%) of the Owners.

5.5.2 Emergency Situation. For purposes of this Section 5.5, an emergency situation is any one of the following:

(a) An extraordinary expense required by an order of a court;

(b) An extraordinary expense necessary to repair or maintain the La Costa Oaks Community or any part of it for which the Community Association is responsible where a threat to personal safety in the Community Association is discovered;

(c) An extraordinary expense necessary to repair or maintain the La Costa Oaks Community or any part of it for which the Community Association is responsible that could not have been reasonably foreseen by the Community Board in preparing and distributing the Budget required under the Declaration and Community Bylaws. However, prior to the imposition or collection of an assessment under this Subsection, the Community Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of assessment. Any increases authorized under this Section shall not be imposed unless the Community Board has complied with the budgetary requirements set forth in the Community Bylaws with respect to the Fiscal Year for which an assessment is being levied;

(d) An extraordinary expense in making the first payment of the earthquake insurance surcharge pursuant to § 5003 of the California Insurance Code.

The term "Regular Assessment for the Community Association's preceding fiscal Year" as used in this Section is deemed to be the Regular Assessment which would have existed in the absence of any subsidy of assessments agreed to be paid by Declarant or any Merchant Builder. Anything in this Section to the contrary notwithstanding, the limitation on Regular Assessments and Special Assessments shall comply with the laws of the State of California at the time the Regular Assessment or Special Assessment is levied by the Community Association.

5.5.3 Notice to Owners. The Community Association shall provide notice by first class mail to the Owners of any increase in the Regular Assessments or Special Assessments of the Community Association, not less than thirty (30) days and not more than sixty (60) days prior to the increased assessment becoming due and payable.

5.6 Increases in Assessments Based Upon Range of Assessments. Declarant has submitted to the DRE a budget which provides for a range in the amount of the Regular Assessments over the course of the development of the La Costa Oaks Community ("DRE Approved Budget"). Therefore, notwithstanding any limitations contained in this Declaration to the contrary, in the event that the amount of the Regular Assessments is greater than the amounts permitted to be increased by this Declaration without a vote of the Voting Power pursuant to the requirements set forth in Section 5.5 above, then the Community Board, on behalf of the Community Association and without the requirement of prior notice to the Members or a vote of the Members, shall be entitled to increase the maximum Regular Assessment at that time to an amount which is within the range of assessments as approved by the DRE.

5.7 Allocation of Community Assessments to Lots. The Community Assessments shall be allocated to each Residential Lot as to which Community Assessments have commenced as set forth below.

5.7.1 General Assessment Component. The Regular Assessments exclusive of the Common Expenses included within the Special Benefit Area Budget ("General Assessment Component") shall be allocated among the Owners and their respective Residential Lots at a uniform rate among all of the Residential Lots subject to such assessment. Special Assessments, Reconstruction Assessments and Capital Improvement Assessments shall be allocated in the same manner as Regular Assessments. Enforcement Assessments and Special Services Assessments shall be levied directly to the individual Owners in a manner consistent with the provisions of Article 5 of this Declaration, respectively.

5.7.2 Special Benefit Area Assessment Component. The portion of the Regular Assessments budgeted exclusively to any particular Special Benefit Area, if any, in the Special Benefit Area Budget ("Special Benefit Area Assessment Component") shall be assessed solely to the Owners of Residential Lots within the applicable Special Benefit Area, at a uniform rate among all the Residential Lots within the Special Benefit Area subject to such assessment, unless a different allocation is set forth in the Special Benefit Area Budget.



5.7.3 Other Community Assessments. Special Assessments, Reconstruction Assessments and Capital Improvement Assessments shall be allocated in the same manner as Regular Assessments. Enforcement Assessments and Special Services Assessments shall be levied directly to the individual Owners in a manner consistent with the provisions of Article 5 of this Declaration, respectively.

5.8 Date of Commencement of Regular Assessments; Due Dates. The Regular Assessments provided for herein shall commence as to all Residential Lots in a Phase subject to this Declaration on the first day of the month following the conveyance of the first Residential Lot within such Phase to an Owner under authority of a Public Report. As to any Additional Property which is thereafter annexed into the Covered Property pursuant to a Supplementary Declaration, the Regular Assessments shall commence as to all Additional Property within *such* Phase upon the first day of the first month following the closing of the sale of the first Residential Lot in such Phase to an Owner under a Public Report or such earlier date as may be selected by Declarant for the commencement of assessments in such Phase. The first Regular Assessment shall be adjusted according to the number of months remaining in the calendar year. In no event shall any sale or leaseback by Declarant of any Residential Lot in the Project being used as a model home, sales office, design center, construction office or similar purpose (collectively, a "Model Home") and which are not occupied by a homeowner cause the commencement of assessments in a Phase for which assessments have not otherwise commenced.

5.9 Annual Levy of Regular Assessments. Any Regular Assessments in excess of the amount permitted under the DRE Approved Budget shall be fixed by the Community Board against each Lot at least sixty (60) days in advance of each annual Community Assessment period. Written notice of such Regular Assessment shall be sent to every Owner subject thereto at least forty-five (45) days prior to its effective date. Unless expressly provided otherwise by the Community Board, each Regular Assessment shall be payable in advance, in equal monthly installments or such installments as may be established by the Community Board, the first of which installments shall be due and payable on the first day of the first month of each fiscal year.

5.10 Notice and Assessment Installment Due Dates. A single ten (10) day prior written notice of each Special Assessment, Capital Improvement Assessment or any other Assessment (other than Regular Assessments and Special Services Assessments) shall be given to each Owner. The Community Association shall give an initial notice for any Special Services Assessment and thereafter the Special Services Assessment shall be payable concurrently with the Regular Assessment. The due dates for the payment of installments normally shall be the first day of each month unless some other due date is established by the Community Board. Each installment of Regular Assessments, Special Assessments and Capital Improvement Assessments and any other Assessments levied hereunder shall become delinquent if not paid within fifteen (15) days after its due date. There shall accrue with each delinquent installment a late charge, interest charge to be set by the Community Board and reasonable costs of collection, including attorneys' fees, but which shall not, in any event, exceed the maximum rates permitted under California Civil Code Section 1366, or any successor statute or law.

5.11 Estoppel Certificate. The Community Board on not less than ten (10) days prior written request shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not, to the knowledge of the Community Association, a particular Owner is in default as to such Owner's Residential Lot under the provisions of this Declaration and further stating the dates to which installments of assessments, regular or special, have been paid as to such Residential Lot. Any such statement may be relied on by any prospective purchaser or Mortgagee of the Residential Lot, but reliance on such statement may not extend to any default not involving the payment of assessments of which the signer had no actual knowledge.

5.12 Excess Funds. The Community Board may determine that funds remaining in the Operating Fund at the end of a Fiscal Year be retained and used to reduce the following Fiscal Year's Regular Assessments. Upon dissolution of the Community Association incident to the abandonment or termination of the Covered Property as a planned development, any amounts remaining in any of the Community Association Maintenance Funds shall be distributed to or for the benefit of the Members in the same proportions as such monies were collected from them.

5.13 Collection of Assessments; Liens.

5.13.1 Right to Enforce. The right to collect and enforce Assessments is vested in the Community Board acting for and on behalf of the Community Association. The Community Board or its authorized representative, can enforce the obligations of the Owners to pay Assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Community Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to Section 5.13.6 enforce the lien rights created. Suit to recover a money judgment for unpaid Assessments together with all other Additional Charges described in Section 5.14 shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein, except for monetary penalties imposed by the Community Association to reimburse the Community Association for costs incurred by the Community Association in the repair of damage to the Community Association Property or Common Maintenance Areas for which the Member or the Member's guests or Invitees were responsible which may become a lien on the Owner's Residential Lot, a monetary penalty imposed by the Community Association as a disciplinary measure for failure of a Member to comply with the Community Governing Documents or in bringing the Member and his or her Residential Lot into compliance with the Community Governing Documents may not be characterized nor treated as an Assessment which may become a lien against the Member's Residential Lot enforceable by a sale of the interest hereunder. The limitation in the preceding sentence however, does not apply to any Additional Charges.

5.13.2 Notice of Assessment and Foreclosure. The Community Association shall distribute a written notice regarding assessments and foreclosure as set forth in California Civil Code Section 1365.1 during the sixty (60) day period immediately preceding the beginning of each fiscal year.

5.13.3 Delinquent Assessments. The Community Association shall comply with the requirements of California Civil Code Section 1367.1 and any successor statutes or laws

when collecting delinquent assessments. The Community Board or its authorized representative must send to the delinquent Owner or Owners, at least thirty (30) days prior to the recordation of a lien against the delinquent Owner's Residential Lot (as set forth in Section 5.13.4), a written notice by certified mail, which notice shall contain all of the information specified in California Civil Code Section 1367.1 and any successor statutes or laws ("Initial Notice"). The delinquent Owner may dispute the debt noticed pursuant to the Initial Notice by submitting to the Community Board a written explanation of the reasons for the delinquent Owner's dispute ("Owner Explanation"). The Community Board shall respond to the Owner Explanation in writing to the delinquent Owner within the time frame set forth in California Civil Code Section 1367A and any successor laws or statutes. The delinquent Owner may submit a written request to the Community Board to meet with the Community Board to discuss a payment plan for the debt noticed in the Initial Notice. The Community Board shall meet with the delinquent Owner in executive session within the time frame set forth in California Civil Code Section 1367.1 and any successor laws or statutes. The Community Association shall provide the Owners the standards for payment plans if any exists.

5.13.4 Creation of Lien. If there is a delinquency in the payment of any assessment, or installment on a Residential Lot any amounts that are delinquent, together with the late charge described in California Civil Code Section 1366 and any successor statutes or laws, interest at the rate permitted in such Section, and all costs that are incurred by the Community Board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against such Residential Lot upon the recordation in the Office of the County Recorder of a notice of delinquent assessment ("Notice of Delinquent Assessment") as provided in California Civil Code Section 1367 and any successor statutes or laws. After its recordation, the Notice of Delinquent Assessment shall be mailed to all Owners of record as provided in California Civil Code Section 1367.1 and any successor statutes or laws.

5.13.5 Assignment. The Community Association may not voluntarily assign or pledge the Community Association's right to collect payments or assessments, or to enforce or foreclose a lien to a third party except where provided under California Civil Code Section 1367.1(g) and any successor statutes or laws.

5.13.6 Notice of Default; Foreclosure. The Community Board or its authorized representative can record a notice of default and can cause the Residential Lot with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c and any successor statutes or laws, or through judicial foreclosure, and as provided in California Civil Code Section 1367.1 and any successor statutes or laws. However, as a condition precedent to the holding of any such sale under Section 2924c, appropriate publication shall be made. In connection with any sale under Section 2924c, the Community Board is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in California as trustee for purposes of conducting the sale. The fee of the trustee shall not exceed the amounts prescribed in California Civil Code Sections 2924c and 2924d. If (a) a delinquency is cured before sale, or before completing a judicial foreclosure, or (b) if it is determined that a lien previously recorded against a Residential Lot was recorded in error, the Community Board or its authorized representative, within the time frame set forth in California Civil Code Section 1367.1 and any

successor statutes or laws, shall cause to be recorded in the office of the County Recorder a certificate setting forth the satisfaction or rescission of such claim and release of such lien upon payment of actual expenses incurred, including reasonable attorneys' fees by any delinquent Owner. If the lien was satisfied, the Community Association shall provide the delinquent Owner a copy of the lien release or notice that the delinquent assessment has been satisfied and if the Community Association filed a rescission of the lien, then the Community Association shall provide such Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission. Any payments made on delinquent assessments shall be applied in accordance with California Civil Code Section 1367.1 and any successor statutes or laws. On becoming delinquent in the payment of any assessments, or installments each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of his or her Residential Lot to the Community Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Community Association, be enforced by the Community Association through specific performance). The Community Association, acting on behalf of the Owners, shall have the power to bid upon the Residential Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the Residential Lot and vote as an Owner of the Residential Lot.

5.13.7 Payments Under Protest. Notwithstanding any other provisions set forth in this Section 5.13, the Owners shall have the right to make certain payments under protest and be entitled to alternative dispute resolution as provided in California Civil Code Sections 1354 and 1366.3, and 1367.1 or any successor statutes or laws, as provided in this Declaration.

5.13.8 Payment of Assessments. Any payments of sums due under this Article shall first be applied to assessments owed, and only after assessments owed have been paid in full shall the payments be applied to the fees and costs of collections, attorney's fees, late charges or interest. If an Owner requests a receipt after payment of a delinquent assessment, the Community Association shall provide a receipt which sets forth the date of payment and the individual who received such payment.

5.14 Additional Charges. In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any Assessments, each Owner agrees to pay Additional Charges incurred or levied by the Community Board including such additional costs, fees, charges and expenditures as the Community Association may incur or levy in the process of collecting from that Owner monies due and delinquent subject to California Civil Code Section 1362.1(j). Additional Charges shall include, but not be limited to, the following:

5.14.1 Attorneys' Fees. Reasonable attorneys' fees and costs incurred in the event an attorney(s) is employed to collect any Assessment or sum due, whether by suit or otherwise;

5.14.2 Late Charges. A late charge in an amount to be fixed by the Community Board in accordance with Civil Code Section 1366, or any successor statute or law, to compensate the Community Association for additional collection costs incurred in the event any Assessment or other sum is not paid when due or within any "grace" period established by law;

5.14.3 Costs of Suit. Costs of suit and court costs incurred as are allowed by the court;

5.14.4 Interest. Interest to the extent permitted by law; and

5.14.5 Other. Any such other additional costs that the Community Association may incur in the process **of collecting delinquent** Assessments or sums.

5.15 Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any Assessment, or installment becomes delinquent or any lien is imposed.

5.16 Subordination of Lien to First Mortgages. When a Notice of Delinquent Assessment has been recorded, such assessment shall constitute a lien on such delinquent Owner's Residential Lot prior and superior to all other liens, except, (a) all taxes, (b) bonds, assessments and other levies which, by law, would be superior thereto, and (c) any First Mortgage now or hereafter placed upon any Residential Lot subject to assessment. The sale or transfer shall relieve such Residential Lot from lien rights for any Assessments thereafter becoming due nor from the lien of any subsequent Assessment. Where the First Mortgagee or other purchaser of a Residential Lot obtains title to the same as a result of foreclosure (excluding a transfer by a deed in lieu of foreclosure), such acquiror of title, his or her successors and assigns, shall not be liable for the share of the Common Expenses or Assessments by the Community Association chargeable to such Residential Lot which became due prior to the acquisition of title to such Residential Lot by such acquisition, except for a share of such charges or Assessments resulting from a reallocation of such charges or Assessments which are made against all Residential Lots.

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

5.18 Transfer of Covered Property. After transfer or sale of property within the La Costa Oaks Community, the selling Owner or Owners shall not be liable for any Assessment levied on such Owner or Owner's Residential Lot after the date of such transfer of ownership and written notice of such transfer is delivered to the Community Association. The selling Owner shall still be responsible for all Assessments and charges levied on his or her Residential Lot prior to any such transfer.

5.19 Failure to Fix Assessments. The omission by the Community Board to fix the Assessments hereunder before the expiration of any year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the Assessments or any installment thereof for that or any subsequent year, but the Assessment fixed for the preceding year shall continue until a new Assessment is fixed.

5.20 Personal Liability of Owner. No Member may exempt himself or herself from personal liability for Assessments levied by the Community Association nor release the Lot owned by such Owner from the liens and charges for Assessments by waiver of the use and enjoyment of the Community Association Property or Common Maintenance Areas or by abandonment of such Owner's Residential Lot.

5.21 Exempt Covered Property. Community Association Property and all Covered Property dedicated to and accepted by a local public authority, and all Covered Property owned by a charitable nonprofit organization exempt from taxation by the laws of the State of California, shall be exempt from assessments by the Community Association. However, no land or improvements devoted to dwelling use shall be exempt from assessments by the Community Association.

5.22 Capitalization of Community Association. Upon the Close of Escrow of a Residential Lot, each Owner shall contribute to the capital of the Community Association an amount equal to Seventy-Five Dollars (\$75.00). Notwithstanding the foregoing, the Community Association, with the prior written consent of the Declarant, may elect to terminate the collection of the capital contributions, and in such case, any Owner who has previously paid a capital contribution shall NOT be entitled to any offsets to the Owner's assessments which have been previously paid. The capital contribution shall be deposited by the Owner into the purchase and sale escrow and disbursed from the escrow to the Community Association. Amounts paid pursuant to this Section shall not be considered as advance payments of Assessments and are in addition to and not in lieu of Regular Assessments and Special Assessments of the Community Association. The provisions set forth above shall not apply to the conveyance of a Residential Lot to a Merchant Builder by Declarant.

## ARTICLE 6

### ARCHITECTURAL CONTROL

*To maintain the architectural harmony of the La Costa Oaks Community, the Community Board will appoint an Architectural Committee which will be charged with the responsibility for ensuring the overall architectural integrity of the La Costa Oaks Community. One of the functions of the Architectural Committee will be to implement design standards for the La Costa Oaks and to implement procedures for review of architectural plans. These standards and procedures will be set forth in the La Costa Oaks Community Design Standards. Additionally, the Architectural Committee will review the plans of each Owner for the installation of Improvements within the Covered Property and may take such actions as it deems necessary to ensure compliance with the standards of the Community Design Standards.*

6.1 Architectural Committee. The Architectural Committee shall be a committee of not less than three (3) nor more than five (5) persons. All members of the Architectural Committee may be appointed and replaced by Declarant until the earlier to occur of (a) the date that ninety percent (90%) of the Residential Lots proposed for the overall La Costa Oaks Community have been conveyed to Class A Members; or (b) on the seventh (7th) anniversary following the most recent conveyance to a Class A Member of a Residential Lot in any

Phase under authority of a Public Report. Thereafter, all members of the Architectural Committee shall be appointed or replaced by the Community Board. Architectural Committee members appointed by Declarant need not be Members of the Community Association.

6.1.1 Resignations. Any member or alternate member of the Architectural Committee may at any time resign from the Architectural Committee upon written notice delivered to Declarant or to the Community Board, whichever then has the right to appoint Architectural Committee members.

6.1.2 Vacancies. Vacancies on the Architectural Committee, however caused, shall be filled by the Declarant or the Community Board, whichever then has the power to appoint Architectural Committee members.

6.2 Scope. No Improvements shall be commenced, erected or maintained upon the Covered Property, nor shall there be any addition to or change in the exterior of any Residence, structure or other Improvement, unless plans and specifications, therefor, showing the nature, design, kind, shape, height, width, color, material and location and any other information prescribed by the Community Design Standards (collectively, "Plans and Specifications") have been submitted to and approved by the Architectural Committee in accordance with the procedures set forth in the Community Design Standards. The provisions of this Article shall preempt and supersede any inconsistent provision of any rules or restrictions of any Condominium Project Association to the extent that any Condominium Project Declaration or any other governing documents for a Condominium Project are in conflict with the provisions of this Declaration.

6.3 Exemptions. The exemptions described below are hereby granted and the provisions of this Article shall not apply to the parties described below.

6.3.1 Declarant Exemption. The provisions of this Article 6 shall not apply to Declarant or to any Improvements erected or installed by the Declarant within the La Costa Oaks Community.

6.3.2 Merchant Builder Exemption. The provisions of this Article 6 shall not apply to Merchant Builder or to any Improvements erected or installed by the Merchant Builder within the La Costa Oaks Community.

6.4 Duties. It shall be the duty of the Architectural Committee to consider and act upon such proposals or plans submitted to it pursuant to the Community Design Standards, to foster the maintenance of and ensure compliance with the architectural standards for the La Costa Oaks Community, to administer the Community Design Handbook, to perform other duties delegated to it by the Community Association, to ensure that any Improvements constructed within the Covered Property conform to plans approved by the Architectural Committee, and to carry out all other duties imposed upon it by the Community Governing Documents. The Architectural Committee, in its own name or on behalf of the Community Association, may exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction of Improvements within the Covered Property or any portion thereof. Notwithstanding the foregoing, the Architectural Committee may delegate its

plan review responsibilities to one or more members of the Architectural Committee or to any other individuals or consultants deemed acceptable to the Architectural Committee. Upon such delegation, the approval or disapproval of plans and specifications by such persons shall be equivalent to approval or disapproval by the entire Architectural Committee. Unless any such procedures regarding submission of plans are complied with, such Plans and Specifications shall be deemed not submitted.

6.5 Community Design Standards. The Community Board shall adopt and promulgate the Community Design Standards to be administered through the Architectural Committee. The Community Design Standards shall establish a plan for the architectural standards of the La Costa Oaks Community and shall establish guidelines and procedures to be followed by each Owner, including the procedures for submission of plans and specifications. The failure of the Community Board to include any particular standards or guidelines in the Community Design Standards shall not limit the right of the Architectural Committee to enforce standards to protect the overall theme and development of the Covered Property. The Community Design Standards shall set forth time limitations for the completion of any Improvements for which approval is required. The Community Design Standards may include such other limitations and restrictions as the Community Board in its reasonable discretion shall adopt including, without limitation, regulations of the following: construction, reconstruction, exterior addition, change or alteration to or the maintenance of any building, structure, wall or fence and conversions of garages, including, without limitation, the nature, kind, shape, height, materials, exterior color and surface and location of any Residence, or other Improvements of any kind.

6.6 Address. The address of the Architectural Committee shall be the principal office of the Community Association or any other place as may be designated by the Community Board pursuant to the Community Bylaws. Such address shall be the place for the submittal of plans and specifications and the place where the current Community Design Standards, if any, shall be kept.

6.7 Fees. The Community Board may establish fees for the review and approval of any plans initially submitted and/or resubmitted by an Owner. A schedule of such fees shall be included in the Community Design Standards.

6.8 Meetings. The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. Unless otherwise provided for herein, the vote or written consent of a majority of the members of the Architectural Committee shall constitute an act by the Architectural Committee unless the unanimous decision of its members is otherwise required by the Community Governing Documents. The members of the Architectural Committee shall be entitled to reimbursement for reasonable expenses incurred by them in the performance of any Architectural Committee function.

6.9 Approval of Solar Energy Systems. Any Owner proposing to install or use a solar energy system, as defined in Civil Code Section 801.5, shall be subject to the same review and approval process as any owner proposing to construct any Improvements or other actions requiring the approval of the Architectural Committee pursuant to this Declaration. However,



only reasonable restrictions on the installation and use of a solar energy system shall be permitted. Reasonable restrictions on a solar energy system are those restrictions which do not significantly increase the cost of the system or its sufficiency or specified performance, or which allow for an alternative system of comparable costs, efficiency, and energy conservation benefits.

6.10 Waiver. The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, shall not constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

6.11 Government Regulations. In the event there is any conflict between the requirements or actions of the Architectural Committee and the mandatory regulations or ordinances of any governmental entity relating to the Covered Property, the government regulation or ordinance, to the extent that such regulations and ordinances are more restrictive, shall control and the Architectural Committee shall modify its requirements or actions to conform to the government regulation or ordinance; provided, however, that if the governmental rules or regulations are less restrictive, the provisions of this Declaration shall nonetheless apply. The application by an Owner for review and approval by the Architectural Committee of any plans and specifications or other submittals by such Owner shall in no way be deemed to be satisfaction or compliance with any applicable statute or law, or governmental rule or regulation or public utility requirement (hereinafter collectively referred to as "Additional Requirements"); provided, however, if the additional requirements are less restrictive than the provisions of this Declaration, the provisions of this Declaration shall nonetheless apply. Although the Community Association has the right to require evidence of City approval of the Improvements as a condition to review of the final Plans and Specifications, nothing contained herein shall impose on the Community Association the duty to obtain evidence of approval by the City of any Improvements as a condition to issuance of final approval or any liability on the Community Association as a result of the failure of the Community Association to request evidence of City approval.

6.12 Waiver. The approval of the Architectural Committee to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, Plans and Specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent. Although the Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color, schemes, exterior finishes and materials, and similar features, it shall not be responsible for reviewing, nor shall its approval of any plans or design be deemed approval of any plan or design from the standpoint of adequacy of drainage, structural safety or conformance with building or other codes or the requirements of the City.

6.13 Variances. The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Article 6, including, without

limitation, restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be in writing, and must be signed and acknowledged by at least a majority of the members of the Architectural Committee. The granting of such a variance shall not operate to waive any of the terms and provisions of this Article 6 for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in anyway the Owner's obligation to comply with all laws and regulations of any Governmental Agency affecting the use of such Owner's Residential Lot, including, but not limited to, zoning and building requirements of any Governmental Agency having jurisdiction over the Residential Lot. No variance shall be authorized from the Community Design Standards adopted by the Architectural Committee, except with the majority vote of all members of the Architectural Committee.

6.14 Liability. Neither the Community Board nor the Architectural Committee nor any member thereof shall be liable to the Community Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or (c) the execution and filing of an estoppel certificate pursuant to this Article 6, whether or not the facts therein are correct; provided, however, that such Community Board and Architectural Committee member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing, the Architectural Committee or any member thereof, may, but is not required to, consult with or hear the views of the Community Association or any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Architectural Committee.

6.15 Estoppel Certificate. Within thirty (30) days after written request is delivered to the Community Board by any Owner, and upon payment to the Community Association of a reasonable fee (as fixed from time to time by the Community Association), the Community Board shall deliver an estoppel certificate to the requesting Owner, executed by any two (2) of its members, certifying (with respect to any Residential Lot of said Owner) that as of the date thereof, either: (a) all Improvements made and other work completed by said Owner comply with this Declaration, 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 from such Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Community Association, Declarant and all Owners and such persons deriving any interest through them.

6.16 Interpretation. All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Architectural Committee, or if upon appeal, by the Community Board and its decision shall be final, binding and conclusive on all of the parties affected unless such decision is appealed, in which case the decision of the Community Board shall be final, binding and conclusive on all of the parties affected.

6.17 Amendments. Notwithstanding the Article hereof entitled "Amendments," no amendment, verification or rescission of this Article may be had, nor shall Declarant, or any successor thereof, be prohibited from completing the construction of the La Costa Oaks Community prior to the conveyance by Declarant, or its successor, of the last Residential Lot without the (i) written consent of Declarant, and the (ii) recording of such consent in the Office of the County Recorder. Such written consent shall not be required after the conveyance by Declarant and Guest Builders of all the Residential Lots within the Covered Property and Additional Property.

## ARTICLE 7

### USE RESTRICTIONS

*Living in a master planned community has the benefit of providing a sense of community and governance for the benefit of all the Owners within the La Costa Oaks Community. To ensure the continued value and enjoyment of the La Costa Oaks Community, there are also use restrictions which govern each Owner within the Community. While the use restrictions may limit the rights to perform certain activities within the La Costa Oaks Community, the use restrictions also help to protect the overall La Costa Oaks Community and thereby may provide a benefit to the Owners and their occupants.*

7.1 Residential Use. All Residential Lots within the Covered Property shall be improved and used solely for single-family residential use, unless the ordinances of the City permit use by more than a single family; provided, however, that this provision shall not preclude any Owner from renting or leasing his or her Residential Lot by means of a written lease or rental agreement, No lease shall be for a term of less than thirty (30) days. No Residential Lot shall be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other non-residential purposes; except Residential Lots may be used for model home sites, construction offices, a design center, and display and sales office purposes during the construction and sales period by Declarant or the Merchant Builders. The provisions of this Section shall not preclude professional or administrative occupations without external evidence thereof, for so long as such occupations (i) are conducted in conformance with all applicable governmental ordinances, (ii) are merely incidental to the use of the Residential Lot as a residence, (iii) the patrons or clientele of such professional or administrative occupation do not regularly visit or conduct business on the Residential Lot and (iv) the conduct of the business does not result in the regular parking of business vehicles in the streets adjacent to the Covered Property. In addition, home childcare facilities shall be permitted only to the extent they are operated in accordance with applicable law, including but not limited to zoning requirements and licensing regulations.

7.2 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere within a Lot. No odor shall be permitted to arise from a Lot which renders the Lot or any portion of a Lot unsanitary, unsightly or offensive to any street or to any portion of the Covered Property, or vicinity thereof, or to its occupants, No noise or other nuisance shall be permitted to exist or operate upon any portion of a Lot so as to be unreasonably offensive or

detrimental to any other part of the Covered Property or to any Owner or their occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, unlicensed off-road motor vehicles or other items which unreasonably disturb other Owners or their tenants shall be located, used or placed on any Lot. No vehicles may be operated upon any portion of the Covered Property not improved as a street, driveway or parking area. Outdoor lighting on a Residential Lot shall be hooded and shaded and adjusted so the light falls only on the Residential Lot on which the lighting is located and does not fall or reflect on other Residential Lots or public rights of way.

7.3 Air Conditioning Fixtures. No wiring or air conditioning fixture, water softeners or other devices (other than solar heating devices approved by the Architectural Committee) shall be installed on the exterior of a Residence or be allowed to protrude through the walls or roof of the Residence with the exception of those items installed during the original construction of the Residence).

7.4 Utilities. All utility, storage areas or structures and pool and spa equipment installed or constructed after the conveyance of a Residential Lot to an Owner by Declarant or a Merchant Builder must be (i) completely concealed from the view of any other Residential Lot or street, or (ii) constructed of such design, materials, configuration and in such location as to be compatible with the Residence and other Improvements on the Residential Lot.

7.4.1 Accessory Structures. Patios and accessory structures may be allowed if they are in conformance with the City's Zoning Ordinances Section 21.10.050(l)(d)(i),(ii), (iii) and (iv) and Section 21.10.050(2) and approved by the Architectural Committee.

7.5 Roofs. All structures shall be improved with fire retardant roofs, and no roof shall be repaired or replaced with material different than originally installed by Declarant or the Merchant Builder,

7.6 Antennae and Satellite Dishes. No television or radio poles, antennae, satellite dishes, or technological evolutions of the foregoing, other than those originally installed by Declarant or any Merchant Builder approved by the Community Board or the Architectural Committee appointed by the Community Board shall be constructed, erected or maintained on or within the La Costa Oaks Community; provided, however, that the foregoing restriction shall not be construed to limit the installation or use of video or television antennas within the La Costa Oaks Community, including a satellite dish (collectively, "Antenna"), except as otherwise prohibited or restricted by law, that is of a size and type consistent with the provisions of Section 1376 of the California Civil Code or any successor statute or law, so long as the following requirements are satisfied: (a) the Owner has submitted an application and notice to the Community Board prior to the installation of the Antenna as provided in this Declaration; and (b) the Owner has obtained the approval of the Community Board for the installation of the Antenna. The application for approval of an Antenna shall be processed by the Community Board in the same manner as any other architectural modification within the La Costa Oaks Community. Notwithstanding the foregoing, the Community Board shall not impose or enforce

any restrictions on antennas that are inconsistent with the provisions of 47 U.S.C. Section 207 or the requirements promulgated thereunder on any successor statutes or laws.

7.7 Exterior Maintenance and Repair; Owner's Obligations. No Improvement within a Residential Lot shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair by the Owner of the Residential Lot.

7.8 Drainage. There shall be no interference with the established drainage pattern over any Residential Lot so as to affect any other portion of the Covered Property, unless an adequate alternative provision is made for proper drainage and it is in accordance with all applicable governmental codes and ordinances and approved by the Architectural Committee. "Established drainage" is defined as the drainage which exists at the time the overall grading and landscaping of the Covered Property is completed pursuant to grading plans approved by the City. All drainage facilities located on a Residential Lot shall be maintained by the Owner of the Lot. The finished pad elevation of a Residential Lot shall be at least six (6) inches below the finished floor slab of the Residence on such Residential Lot. Unless otherwise specified in a Supplementary Declaration or under the Final Maps, all concrete terrace drains located on a Lot (other than within the Common Maintenance Area) shall be maintained in good working condition by the Owners of the Lot. No drainage shall be allowed from one Lot to another unless that drainage pattern is part of the established drainage pattern.

7.9 Water and Sewer Systems. No individual water supply system, water softener system or sewage disposal system shall be permitted on Residential Lot unless the system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any applicable water district and any applicable Governmental Agencies.

7.10 No Hazardous Activities. No activities shall be conducted nor shall any Improvements be constructed on a Lot which are or might be unsafe or hazardous to any person or property. No toxic chemicals or hydrocarbon materials (including gasoline, motor oil, antifreeze, solvents, paint, paint thinners, wood preservatives or other similar fluids) shall be discharged onto any public or private street or into storm drain or storm water conveyance systems serving the Covered Property. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other chemicals shall be consistent with laws, ordinances, and regulations of all federal, state, County, City and other Governmental Agencies and such use and disposal shall also be in accordance with recommendations prescribed by the manufacturer of the product on the product container. The Community Association may coordinate the use of the City's established program to assist Owners with the removal and proper disposal of toxic and hazardous waste products from the Covered Property. Best Management Practices shall be used to eliminate or reduce surface pollutants when making changes to the landscaping and surface improvements of the Covered Property.

7.11 Unightly Articles. No unsightly articles, including clotheslines, shall be permitted to remain on any portion of a Lot which are visible from any street or from any other Lot. Without limiting the generality of the foregoing, refuse, garbage and trash shall be kept at all times in covered, sanitary containers commercially designed for such purpose (i.e., oil drums or similar substitutes for commercially designed refuse receptacles are prohibited) and located

within an enclosed area or areas appropriately screened from the view of any other Residential Lot. The containers shall be exposed to the view of neighboring Residential Lots only when set out for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours). There shall be no exterior fires, except barbecue fires and outdoor fireplaces contained within receptacles designed therefor which do not create a fire hazard.

7.12 Temporary and prefabricated Structures. No shed, shack, trailer or any temporary building, improvement or structure shall be placed upon any portion of a Residential Lot without the prior approval of the Architectural Committee, The foregoing excludes construction trailers and other temporary or prefabricated structures or improvements utilized during construction and sales activities by the Declarant or a Merchant Builder,

7.13 Mining and Drilling. The surface of a Lot shall not be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, geothermal heat, minerals, rocks, stones, gravel or earth, nor shall oil wells, tanks, tunnels, mineral or geothermal excavations or shafts be permitted upon the surface of any portion of a Lot.

7.14 View Impairment. There is no representation that any view exists from any Lot. Each Owner, by accepting a deed to a Residential Lot, acknowledges that grading of, construction on or installation of improvements, including landscaping and the growth of landscaping, on other Lots within the Covered Property and on surrounding real property may impair whatever view may exist from the Owner's Residential Lot and each Owner consents to such impairment and waives any claim for view impairment. Each Owner and the Community Association, by accepting a deed to a Lot or any Community Association Property, respectively, acknowledges that any construction or installation by Declarant or a Merchant Builder or by other Owners following Architectural Committee approval as provided in Article 6 hereof may impair the view of such Owner, and each Owner and the Community Association on behalf of the Members hereby consent to such impairment.

7.15 Landscaping. Within six (6) months after the close of escrow for the sale of a Residential Lot under a Public Report by a Merchant Builder to a retail purchaser, the Owner shall submit plans for approval of landscaping to the Architectural Committee. Within one (1) year after the close of escrow, for sale of a Residential Lot under a Public Report by a Merchant Buyer the Owners shall install and shall thereafter maintain plants, shrubs, trees and any other appropriate landscaping improvements, pursuant to plans and specifications approved by the Architectural Committee, on the Residential Lot. No plants or seeds infected with insects or plant diseases, shall be brought upon, grown or maintained upon any Residential Lot, If any Owner fails to install or maintain landscaping in conformance with the Community Design Standards or allows his or her landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive **condition**, the Community Board, upon **thirty** (30) days' **prior** written notice to **the** Owner, shall have the right either to seek any remedies at law or in equity which it may have or to correct such condition and to enter upon the Owner's property for the purpose of doing so, and the Owner shall promptly reimburse the Community Board for the cost thereof. Each Owner whose Residential Lot is located within a Habitat Preserve Adjacent Area shall also comply with

the requirements of Section 7.30 regarding the plant species that may be planted in a Habitat Preserve Adjacent Area.

7.16 Parking and Vehicular Restrictions. None of the following (collectively "Prohibited Vehicles") shall be parked, stored or kept on any street within the Covered Property: any large commercial type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck); any recreational vehicle (including, but not limited to, any camper unit, house/car or motor home); any bus, trailer, trailer coach, camp trailer, boat, aircraft or mobile home; any inoperable vehicle or any other similar vehicle; or any vehicle or vehicular equipment, mobile or otherwise, constituting a nuisance, except that the foregoing shall not restrict any recreational vehicles permitted to be parked in the Recreational Vehicle Storage Area. No Prohibited Vehicle shall be parked, stored or kept on any Residential Lot except wholly within an enclosed garage, and then only if the garage door is capable of being fully closed. Prohibited Vehicles shall not be allowed in any driveway or other exposed parking areas, or any street (public or private), except for the purposes of loading, unloading, making deliveries or emergency repairs ("Transitory Use"), provided that no Transitory Use shall extend over more than twenty-four hours during any seven (7) consecutive days. Vehicles owned, operated or within the control of an Owner, or of a resident of the Owner's Residential Lot, shall be parked in the garage. Garages shall be used only for parking authorized vehicles, and shall not be used for storage, living or business purposes, or any other purpose which prevents the storage of the number of vehicles for which the garage was assigned; provided, however, if the Lot contains *a* three (3) or more car garage, one parking space within the garage may be used for storage or may be converted for living purposes if approved by the City and the Architectural Committee. Garage doors shall be kept closed at all times, except as reasonably required for ingress to and egress from the interiors of the garages. No repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle or equipment shall be conducted upon any street, Lot or elsewhere within the Covered Property, except wholly within an enclosed garage; provided, however, that such activity is not undertaken as a business, and provided further that such *activity is prohibited* entirely if it constitutes a nuisance. Any repair which continues for a period exceeding sixty (60) days in any one (1) year period shall be deemed a storage. These restrictions shall not be interpreted in such *a* manner so as to permit any *activity* which would be contrary to any ordinance of the City or other Governmental Agency having jurisdiction over the Covered Property.

7.17 Further Subdivision. No Residential Lot may be further subdivided (including division into time-share estates or time-share uses) without the prior written approval of the Community Board; provided, however, that nothing in this Section shall be deemed to prevent an Owner, including Declarant and the Merchant Builders, from selling a Residential Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property, or leasing or renting by any Owner of all of his or her Residential Lot by means of a written lease or rental agreement, or adjusting the boundary of a Residential Lot by boundary adjustment or parcel map.

7.18 Animals. No animals, fowl, poultry, fish, reptiles or insects of any kind ("animals") shall be raised, bred or kept on any Residential Lot, except that a reasonable number of birds, fish, dogs, cats or other household pets may be kept, provided that they are not kept,

bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any applicable law or ordinance. No animal shall be maintained in any Residential Lot which constitutes a nuisance to other Owners of Residential Lots. Animals belonging to Owners, occupants or their licensees, tenants or invitees must be either kept within the enclosure, an enclosed yard, or on a leash or bridle being held by a person capable of controlling the animal. Furthermore, to the extent permitted by law, any Owner shall be liable to each and all Owners, their Invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Covered Property by an Owner or by such Owner's Invitees and it shall be the duty and responsibility of each Owner to clean up after such animals which have used any portion of the Covered Property. Notwithstanding the foregoing, the Community Handbook may further limit or restrict the keeping of such pets. The Community Board shall specifically have the power to prohibit the keeping or maintenance of any animal, which, in the opinion of the Community Board, after Notice and Hearing, is deemed by the Community Board to constitute a nuisance to any other Owner in the sole and exclusive opinion of the Community Board.

7.19 Signs. No sign, poster, billboard, balloon or other display or advertising device of any kind shall be displayed on, over or from any portion of the Covered Property, except (i) such signs, flags, poles and banners (regardless of size or configuration) as may be used by Declarant or the Merchant Builders in connection with the development of the Covered Property and the sale, lease or other disposition of Residential Lots, (ii) entry monuments and similar community identification signs, and (iii) one sign on each Residential Lot advertising the Residential Lot for sale or lease in conformance with the Community Design Standards and any ordinances of the City. All signs shall conform to the sign ordinances of the City, and shall when required by City Ordinance be reviewed and approved by the Planning Director of the City prior to installation.

7.20 Trees. All trees, hedges and other plant materials shall be trimmed by the Owner of the Residential Lot upon which they are located so they do not create a nuisance, which determination shall be within the sole judgment of the Community Board. Before planting any trees, the proposed location of the trees shall be approved in writing by the Architectural Committee, except that this restriction shall not apply to any trees planted by Declarant or a Merchant Builder on a Residential Lot. Any replacement of trees and hedges planted by Declarant or a Merchant Builder may only be replaced with the same tree or hedge, unless the Owner demonstrates to the Architectural Committee that the original tree or hedge is not suitable for such location due to its size or due to its susceptibility to disease. Each Owner whose Residential Lot is located within a Habitat Preserve Adjacent Area shall also comply with the requirements of Section 7.30 regarding the plant species that may be planted in a Habitat Preserve Adjacent Area.

7.21 Slope Control, Use and Maintenance. Each Owner will keep, maintain, water, plant and replant all slope banks located on the Owner's Residential Lot (other than slopes within the Common Maintenance Area or any other areas designated for maintenance by others in a Supplementary Declaration) to prevent erosion, control brush in accordance with the requirements of the City and to create an attractive appearance. It shall be the duty of all Owners to conduct all construction and installation of improvements on such slopes in accordance with any guidelines or rules adopted by the Community Board for maintenance of such slopes. Thereafter each Owner shall keep, maintain, water, and replant all slopes in such a manner as to



protect the integrity of such Owner's Residential Lot and all adjoining Residential Lots and the structural improvements thereon. No Owner of a Residential Lot upon which any Common Maintenance Area is located shall alter or modify the landscaping, irrigation or other Improvements located within such Common Maintenance Area, and such Owners shall not install Improvements of any kind within such Common Maintenance Area and is only permitted to enter such Common Maintenance Area only as is reasonably necessary to maintain, construct or repair Improvements on the portion of such Owner's Residential Lot located adjacent to such Common Maintenance Area if prior approval of the Community Board is obtained. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken on any slope banks which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels.

7.22 Habitat Preserve Areas. Any Owner of a Lot within a Habitat Preserve Adjacent Area shall comply at all times, with the Habitat Preserve Restrictions. The Community Association shall also, at all times comply with the Habitat Preserve Restrictions to the extent they effect the Community Association Property or Common Maintenance Areas. For each Owner's information, educational materials prepared by the Habitat Preserve Manager are attached hereto as **Exhibit "C"**.

7.23 Erosion Control. Prior to installing any landscaping on an Owner's Residential Lot, the Owner shall be responsible for ensuring that there is no runoff from the Owner's Residential Lot and the Owner shall be required to take such action as may be reasonably necessary to prevent any runoff, including, if required by the City or any Governmental Agency, installing landscaping in advance of the time periods set forth in Section 7.15. During landscaping of an Owner's Residential Lot, landscaping and construction materials must be stored only upon the Owner's Residential Lot. Such materials must be properly contained to prevent spillover into the streets or Community Association Property or Common Maintenance Areas or any other areas within the La Costa Oaks Community. Should spillover occur, spilled material must be swept and containerized. Spilled materials shall not be washed into the storm water curb drain inlets. Temporary erosion or sediment control devices (which may include sandbags) may have been installed by Declarant or Merchant Builders during construction of the La Costa Oaks Community. Owners shall not remove any temporary erosion or sediment control devices installed by Declarant until the Owner's Lot is landscaped and the plantings are established. Each Owner is responsible for preventing sediment leaving Owner's Residential Lot. Each Owner shall be liable to the Declarant and any Merchant Builder for any damage resulting from failure to prevent sediment from leaving the Owner's Residential Lot.

7.24 La Costa Oaks Storm Drains and Storm Water. Each Owner and the Community Association acknowledge that water that enters a storm drain flows directly to natural sources of water, including waterways, creeks, drains, rivers, lakes and that erosion has an impact on the environment. Unlike the water in the sewer system in the Residence which is being purchased by an Owner, which flows to wastewater treatment plants, water that enters a storm drain flows directly, without any treatment, to waterways, creeks, streams, rivers, lakes and/or oceans. The National Pollution Discharge Elimination System, the Federal Clean Water Act, and the policies and ordinances of the City in effect as of the date of this Declaration, prohibit discharging

anything other than natural rain water into storm drainage systems, including gutters and streets which drain into storm drains. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, **paint thinners**, **wood preservatives**, fertilizers, lawn clippings, yard waste, detergents, pet waste, paints and other such materials and pollutants shall not be discharged into any street, public or private, gutters, or into storm drains or storm water conveyance systems. Owner and the Community Association further acknowledge that the disposal of such pollutants and materials into a storm drain system may result in significant penalties and fines and that such Owner may be responsible for any activities by Owner's contractors (e.g., painters, landscapers, etc.) who dispose of such pollutants from an Owner's Lot into a storm drain system. All Owners are required to comply with such restrictions. Owners are encouraged to consult with the City and other Governmental Agencies concerning the proper disposal of any toxic or hazardous materials. Dumping any such materials into sewers, gutters or storm drains is prohibited by this Declaration and against the law.

7.24.1 Storm Water Pollution Prevention Best Management Practices. To comply with the requirements of the City and other governing jurisdiction in connection with the storm water pollution prevention best management practices, each Owner and the Community Association agrees that it will, at all times, maintain all Improvements and erosion control devices located within a Lot owned by such Owner or the Community Association, in a clean and safe condition, free and clear of any and all debris. All landscaping shall be maintained by an Owner (including the Community Association as to Lots or easements maintained by the Community Association) in a manner that will prevent soil erosion and minimize sediment transport. To the extent that the Declarant or any Merchant Builder has installed any erosion protection devices (e.g., sandbags) an Owner (including the Community Association) shall not remove such devices unless and until all landscaping has been installed on any Lot, and has been sufficiently grown so as to prevent soil erosion and transport of any sediment. All trash receptacles shall be covered and closed at all times. The Community Association and the Owners shall comply with all applicable Best Management Practices ("BMP") and perform all maintenance that may be imposed by any water quality management plan that may affect the Property. The costs of the Community Association's portion of such maintenance, if any, shall be treated as Common Expenses.

7.24.2 Liability to Declarant. So long as Declarant or any Merchant Builder owns any Lot within the Project, if an Owner or the Community Association is not in compliance with the provisions of this Section and as a result, Declarant or a Merchant Builder incur any liability, Declarant or the Merchant Builder shall have the right but not the obligation to enter upon the Lot to correct such violation. Any Owner who violates the requirements of this Section shall indemnify, protect, defend and hold Declarant and the applicable Merchant Builder and the Declarant's and Merchant Builder's officers, directors, successors and assigns entirely free and harmless from and against any liabilities, penalties, costs, expenses and actions, including, without limitation, attorneys' fees and costs arising from or attributed to a violation of the provisions of this Section and shall, within fifteen (15) days after request from Declarant and/or the Merchant Builder, reimburse Declarant and/or the Merchant Builder for any costs and expenses incurred by Declarant and/or the Merchant Builder in correcting any violation by any Owner or the Community Association of this Section.

7.25 Fire Suppression Zones. Certain Residential Lots in the La Costa Oaks Community are included within the Fire Suppression Zones, for which there are certain guidelines and regulations with respect to the use and maintenance thereof by the Owners, imposed by the City and other Governmental Agencies. Each Owner whose Residential Lot is within a Fire Suppression Zones shall be required to comply with the requirements imposed by the City, including without limitation, Section 4.7.9 of the Master Plan for the Villages of La Costa and any other applicable guidelines or regulations as may be adopted by the City, the County, or other Governmental Agency from time to time. By accepting a deed to a Residential Lot in the La Costa Oaks Community, each Owner acknowledges that there may be restrictions on **flammable structures**, trees or shrubs in **the Fire Suppression Zone**. **Each** Owner shall comply with the restrictions on the Fire Suppression Zones set forth on **Exhibit "11"** attached hereto and incorporated herein and any additional restrictions which may be set forth in a Supplementary Declaration. All Fire Suppression Zones within the Covered Property shall be designated in a Supplementary Declaration.

7.26 Window Coverings. Temporary window coverings ("Temporary Window Coverings") in a design and color that does not conflict with the surrounding Improvements (but excluding aluminum foil, newspapers, or any other contrasting material) shall be permitted for a maximum period of sixty (60) days from the date that a Residential Lot is conveyed to an Owner by Declarant or a Merchant Builder. Except as specifically provided above, no Temporary Window Coverings shall be used to cover any door or window of any Residence. All window coverings (including Temporary Window Coverings) shall be of a neutral color harmonious with and not conflict with the color scheme of the exterior wall surface of the Residence on the Residential Lot.

7.27 Exterior Painting. All exterior painting of a Residence shall be subject to the approval of the Architectural Committee, unless the painting is of the same color as the then current color of the exterior of the Residence.

7.28 Restrictions. All backyard lighting installed in Residential Lots within the Habitat Preserve Adjacent Areas shall be shielded to prevent any light spill over onto the Habitat Preserve Areas. Shielding can consist of the installation of fixtures that physically direct light away from the Habitat Preserve Adjacent Areas or landscaping berms or other barriers at the edge of the Residential Lots that prevent light over spill into the Habitat Preserve Areas.

7.29 Sight Distance Corridors. No structure, fence, wall, tree shrub sign or other object over thirty (30) inches above the street level may be placed or permitted to encroach within the areas identified as a sight distance corridor on the Final Maps as specified in the City Standard Public Street Design Criteria (Section 8.B.3.). Each Owner shall comply with this restriction.

7.30 Plant Species. Neither the Community Association nor any Owner shall plant or use in its landscaping any Invasive Plant Species in any Habitat Preserve Adjacent Areas. The Invasive Plant Species are set forth in **Exhibit "G"** attached hereto and incorporated herein.

7.31 Perimeter Wall and Fence. In no event can any Owner make any alterations to any Perimeter Wall and Fence or remove or replace any Perimeter Wall and Fence, or modify

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any Perimeter Wall and Fence in connection with any construction on an Owner's Lot. All alterations, repairs and replacements of the Perimeter Walls and Fences can only be made by the Community Association.

7.32 Owner Liability. Each Owner shall be liable to the remaining Owners for any damage to the Community Association Property and Common Maintenance Areas that may be sustained by reason of the negligence of that Owner, or the Owner's Invitees.

ARTICLE 8

ASSOCIATION PROPERTY, COMMON MAINTENANCE AREA AND MAINTENANCE RESPONSIBILITIES

8.1 Maintenance and Use of Community Association Property. The Community Association shall maintain the Community Association Property and Common Maintenance Areas in a good condition of maintenance and repair reasonably consistent with the level of maintenance reflected in the most current Budget and in accordance with the obligations and schedules for maintenance set forth in the Maintenance Manual.

8.2 Trail System. The Community Association shall maintain the Trail Systems unless the City accepts the dedication of any portion of the Trail Systems, in which case the City shall be responsible for the maintenance of the portions of the Trail System where the dedication was accepted. There is no guarantee that the City will accept and be responsible for the maintenance of all or any portion of the Trail System.

8.3 Compliance with Best Management Practices. Each Owner and the Community Association shall comply with all Best Management Practices. The Community Association shall also comply with all Best Management Practices.

8.4 Common Maintenance Area. The Common Maintenance Area shall include portions of Lots and adjacent public property, (including portions of the Rancho Santa Fe Road median) or public rights of way or any other lots or easements, the obligation of maintenance for which is placed upon the Community Association by this Declaration, any easements for the Common Maintenance Areas or other appropriate document. An easement or right over an area which otherwise would be Common Maintenance Area may be conveyed to a public assessment district, in which event the area conveyed shall be maintained by the public assessment district. The obligation of the Community Association to maintain the Common Maintenance Area shall commence in phases as the maintenance obligations for portions of the Common Maintenance Area are assigned to the Community Association by Declarant or are the subject of Common Maintenance Area easements or licenses entered into by Declarant and the Community Association.

8.4.1 Obligation to Maintain Certain Public Areas. Some of the areas which may **become subject** to **Community** Association maintenance may **include** entry monuments, trails, parkways or other improvements in public general utility easement areas or other rights of way, and a Declarant shall have the right to transfer such maintenance and related obligations to the Community Association. For example, a Declarant may enter into "Encroachment Removal

Agreements" with the City which provide for maintenance, indemnity, insurance and related obligations. All such obligations shall be automatically transferred to the Community Association at such time as the Community Association becomes obligated to maintain the area. The Community Association will be obligated to maintain a particular public area from and after the date specified by a Declarant in this Community Declaration, a Notice of Declaration of Annexation or other instrument by which such maintenance obligation is transferred to the Community Association. However, maintenance by the Community Association is subject to the City allowing such maintenance.

8.5 Community Association Maintenance. The Community Association shall maintain and provide for the maintenance of all the Community Association Property and Common Maintenance Area and all Improvements thereon, including any trails, in good repair and appearance as set forth in this Declaration and in accordance with the requirements of the City and the Maintenance Manual. The Community Association is obligated to comply with all the maintenance obligations and schedules set forth in the Maintenance Manual provided by Declarant for the Community Association Property and Common Maintenance Areas. The Community Association shall provide landscaping and gardening properly to maintain and periodically replace when necessary the trees, plants, grass and other vegetation placed in the Community Association Property and Common Maintenance Area pursuant to landscape plans approved by the City. The Community Association shall maintain all concrete terrace drains located within the Community Association Property and Common Maintenance Area in good working condition. Unless otherwise specified in a Supplementary Declaration, the Community Association will maintain the cluster mailboxes in the La Costa Oaks Community. All brush on the Community Association Property and Common Maintenance Areas shall be maintained in accordance with the specifications of the City Landscape Guidelines Manual. The Community Association shall have the right to enter onto any Lot (but not within the Residence of any Residential Lot) as may be necessary for the construction, maintenance or emergency repair of the Community Association Property or Common Maintenance Area or, if necessary, for the benefit of the Owners in common, including the maintenance and repair of surface and subsurface drainage pipes and facilities. The drainage facilities shall be maintained by the Community Association until such time as these facilities may be accepted for maintenance by the City. The maintenance shall include removal of trash and debris, and ensuring that all drainage facilities remain in good working order. Any damage caused to a Lot by entry of the Community Association shall be repaired by the Community Association at its expense. The Community Association shall, retain the services of consultants to periodically review and inspect the Community Association Property and Common Maintenance Area to ensure adequacy of the Community Association's maintenance program.

8.6 Commencement of Maintenance. Notwithstanding any conveyance of Community Association Property to the Community Association, the Community Association's responsibility to maintain the Community Association Property located in any Phase shall not begin until (i) the Community Association Property is completed in accordance with the plans approved by the City and (ii) annual Assessments in such Phase have commenced; except that, if such Phase consists of only Community Association Property, the Community Association's maintenance responsibility therefor shall commence on the later to occur of (a) completion of the Community Association Property in accordance with the plans therefor approved by the City, or

to the Community Association and no Community Assessments have commenced; provided, however, that the consent of any Merchant Builder which owns any portion of the real property affected by such deletion and the consent of the City shall be required. Such deletion shall be effective upon the recordation of a "Notice of Deletion of Territory," or other instrument signed by Declarant and consented to by any applicable Merchant Builder. Prior to annexation, Declarant may also, upon recordation of a Supplementary Declaration, delete any portion of the Additional Property by so designating such portion of land to be excluded from the Additional Property in a Supplementary Declaration.

## ARTICLE 13

### RIGHTS OF LENDERS

*The various lenders at the La Costa Oaks Community may also require special rights. This Article contains provisions for the benefit of many of the lenders.*

13.1 Payments of Taxes or Premiums by First Mortgagees. First Mortgagees may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Community Association Property, unless the taxes or charges are separately assessed against the Owners, in which case, the rights of First Mortgagees shall be governed by the provisions of their Mortgages. First Mortgagees may, jointly or severally, also pay overdue premiums on casualty insurance policies, or secure a new casualty insurance coverage on the lapse of a policy for the Community Association Property from the Owner; First Mortgagees making such payments shall be owed immediate reimbursement from the Community Association. Entitlement to reimbursement shall be reflected in an agreement in favor of any First Mortgagee who requests the same to be executed by the Community Association.

13.2 Priorit roof Lien of Mortgagee. No breach of the covenants, conditions or restrictions in the Declaration shall affect, impair, defeat or render invalid the lien or charge of any First Mortgage made in good faith and for value encumbering any Lot, but all of the covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title to a Lot is derived through foreclosure or trustee's sale, or otherwise.

13.3 Curing Defaults. A First Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is non-curable or of a type which is not practical or feasible to cure. The determination of the Community Board made in good faith as to whether a breach is non-curable or not feasible to cure shall be final and binding on Mortgagees.

13.4 Approval of First Mortgagees. Except as provided by statute in case of condemnation or substantial loss to the Lots or Community Association Property, unless the Mortgagees of First Mortgages encumbering sixty-seven percent (67%) or more of the Lots which are subject to a Mortgage or Owners representing sixty-seven percent (67%) of the Voting Power of the Community Association (excluding the vote of Declarant) have given their prior written approval, the Community Association shall not:

(b) the first day of the month immediately following the month in which the deed is recorded conveying such property to the Community Association. Notwithstanding the foregoing, if the contractors or subcontractors of Declarant or a Merchant Builder are contractually obligated to maintain the landscaping or other Improvements on the Community Association Property, the Community Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Such maintenance performed by the contractors or subcontractors of Declarant or a Merchant Builder shall not postpone the commencement of Regular Assessments pursuant to this Declaration nor entitle an Owner to claim any offset or reduction in the amount of such Assessments. If the Community Association Property or any other portion of the Community Association Property is dedicated to and accepted for maintenance by a Governmental Agency, then the Community Association may, but need not, maintain the area if the Governmental Agency either fails to maintain the area or elects to cease maintaining the area.

8.7 Drainage Facilities. The Community Association shall maintain in good repair and condition all drainage facilities located in the Community Association Property and Common Maintenance Area and Public Use Areas (to the extent required by the City), including, but not limited to, vegetated swales, riprap swales, concrete terrace drains, inlets, cleanouts, subsurface drainage pipes, and outlets. In addition, the Community Association shall maintain the riparian areas located on portions of Community Association Property and Common Maintenance Areas.

8.8 Repair and Maintenance by Owners. Each Owner shall keep and maintain in good repair and appearance all portions of his or her Residential Lot and Improvements thereon (other than that portion the maintenance of which is the responsibility of the Community Association or a public maintenance assessment district), including, but not limited to, any fence or wall, concrete terrace drain or drainage swales which is located on the Owner's Lot. The Owner of each Residential Lot shall water, weed, maintain and care for the landscaping located on his or her Residential Lot (other than that portion the maintenance of which is the responsibility of the Community Association or a public maintenance assessment district) so that the same presents a neat and attractive appearance, free from weeds, trash and debris. No Owner shall interfere with or damage the Common Maintenance Area nor interfere with or impede Declarant, the Community Association or a public maintenance assessment district in connection with the maintenance of the Community Association Property or Common Maintenance Area. Without limiting the generality of the foregoing, except for the obligations of the Community Association to repair and maintain any Common Maintenance Area, situated on a Residential Lot every Owner shall perform the maintenance obligations set forth below.

8.8.1 Exterior of Residence. Each Owner shall maintain the exterior of the Owner's Residence and/or other Improvements on such Owner's Residential Lot, including, without limitation, the interior of any walls and fences (and the exterior of any walls and fences, if the exterior is not maintained by another Owner) in good condition and repair and in accordance with the Community Design Standards and all requirements of the City.

Landscaping shall be installed and maintained in accordance with the La Costa Oaks maintenance plan or as otherwise approved by the Planning Director for the City.

8.8.2 Landscaping. The Owner of each Residential Lot shall water, weed, maintain and care for the landscaping located on his or her Residential Lot (other than that portion the maintenance of which is the responsibility of the Community Association or a public maintenance assessment district) so that the same presents a neat and attractive appearance, free from weeds, trash and debris and in accordance with any other standards for maintenance set forth in this Declaration and in accordance with all requirements of the City.

8.8.3 Interior Fencing Between Two Residential Lots. For any fencing which separates two (2) Residential Lots, each Owner shall have the obligation to maintain the interior of the fence and the Owners shall share, on an equitable basis, the cost of replacing such fencing. The Owner of each affected portion of the Covered Property upon which a party wall or fence is located shall have a reciprocal, non-exclusive easement to the Covered Property immediately adjacent to the interior fence for the limited purpose of maintaining the party wall or fence.

8.8.4 Fencing Separating Residential Lots and Community Associations  
Proty. Any Owner whose fencing borders Community Association Property shall maintain the interior of the fencing facing the Owner's Residential Lot and the maintenance of the exterior and repair and replacement of the fencing shall be the responsibility of the Community Association.

8.9 Community Association's Right to Repair Neglected Lots. If an Owner of a Residential Lot should fail to maintain such Owner's Residential Lot and Improvements on the Residential Lot in a manner satisfactory to the Community Board, the Community Association, after approval by two-thirds (2/3) vote of the Community Board, shall have the right (but not the obligation) through its agents and employees, to enter onto the Residential Lot solely for the purpose of correcting the violation on the Residential Lot. However, such entry shall be subject to Section 4.1.2 of this Declaration. Entry onto a Residential Lot by the Community Association shall be made with as little inconvenience to the Owner as possible and any damage caused by the Community Association shall be repaired by the Community Association. The cost of exterior maintenance shall be added to and become a part of the assessment to which the Lot is subject. There is hereby granted an easement in favor of the Community Association to enter onto each Residential Lot to correct such violations as set forth in this Section.

8.10 Landscape and Irrigation Maintenance. All landscaping by the Community Association must be maintained in accordance with the La Costa Oaks maintenance plan or as otherwise approved by the Planning Director of the City. The Community Association shall employ the services of a professional landscape architect, maintenance contractor or other such professional person to assist the Community Association in performing its duties hereunder. The inspectors shall provide written reports of their inspections to the Declarant and the Community Association promptly following completion thereof. The written reports shall identify any items of maintenance or repair which either require current action by the Community Association or will need further review and analysis. Such written reports shall specifically include a review of all irrigation and drainage systems within the La Costa Oaks Community. The Community



Board shall report the contents of such written reports to Declarant (if not already provided by the inspector directly) and to the Members of the Community Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Community Association. The Community Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors. Should such inspection require the inspection of any Residential Lot, there is hereby created a nonexclusive easement in favor of the Community Association, and its officers, agents, employees and independent contractors, to conduct such inspections and to correct any violations of this Declaration of the other Governing Documents by an Owner which entry shall be subject to the provisions of this Declaration. Any damage to any structure, landscaping or other improvements caused by the Community Association, or any of its officers, agents, employees or independent contractors, while performing such maintenance, repair or replacement work shall be repaired by the Community Association at its sole cost and expense.

## ARTICLE 9

### INSURANCE AND CONDEMNATION

*It is important that the Community Association maintain insurance. This Article discusses the insurance which the Community Association will be required to maintain and also discuss the obligations of the Owners for insurance.*

9.1 Insurance. The Community Association, to the extent available, shall obtain and continue in effect, in its own name, the types of insurance set forth below.

9.1.1 Fire and Extended Coverage Insurance. The Community Association shall keep (i) any Improvements on the Community Association Property and Common Maintenance Area insured against loss by fire and the risks covered by a standard all risk of loss perils insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value' thereof, and (ii) all personal property owned by the Community Association insured with coverage in the maximum insurable fair market value of personal property as determined annually by an insurance carrier selected by the Community Association. Insurance proceeds for improvements in the Community Association Property and Common Maintenance Area and personal property owned by the Community Association shall be payable to the Community Association. Insurance proceeds for Improvements in the Community Association Property and/or personal property owned by the Community Association shall be payable to the Community Association. In the event of any loss, damage or destruction to the Community Association Property (excluding Residential Lots), the Community Association shall cause the same to be replaced, repaired or rebuilt in accordance with the provisions of this Declaration. Premiums for all insurance carried by the Community Association are a Common Expense.

(a) Description of Policy Coverages. The policy shall cover the following real and personal property:

(i) Community Association Property. All Improvements, if any, within the Community Association Property and Common Maintenance Areas; but excluding land, foundations, excavations, and other items typically excluded from property insurance coverage; and

(ii) Landscaping. Lawn, frees, shrubs and plants located in the Community Association Property and Common Maintenance Areas.

(b) Covered Cause of Loss. The policy shall provide coverage against losses caused by fire and all other hazards normally covered by a "special form" policy or its equivalent.

(c) Primary. The policy shall be primary and noncontributing with any other insurance policy covering the same loss.

(d) Endorsements. The policy shall contain such endorsements as the Community Board in its discretion shall elect.

(e) Waiver of Subrogation. Except as provided in Section 7.32, the Community Association waives all rights of subrogation against the Owners and their Invitees. All insurance policies obtained by the Community Association shall include a waiver of all subrogation rights against any Owner and their Invitees; provided, however, that a failure or inability of the Community Association to obtain such a waiver shall not defeat or impair the waiver of subrogation rights between the Community Association and the Owners and their Invitees set forth herein.

9.1.2 Liability Insurance. The Community Association shall procure and keep in force public liability insurance in the name of the Community Association and the Owners against any liability for personal injury or property damage resulting from any occurrence in or about the Community Association Property or Common Maintenance Area with such minimum limits are set forth in Section 1365.9 of the California Civil Code, insuring against liability for bodily injury, death and property damage arising from the Community Association's activities or with respect to property the Community Association maintains or is required to maintain including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured.

9.1.3 Fidelity Bond. The Community Association shall maintain a fidelity bond in an amount equal to the amount of funds held by the Community Association during the term of the bond but not less than one-fourth (1/4) of the annual Regular Assessments plus reserves, naming the Community Association as obligee and insuring against loss by reason of the acts of the Community Board, officers and employees of the Community Association, and any management agent and its employees, whether or not such persons are compensated for their services.

9.1.4 Worker's Compensation Insurance. The Community Association shall maintain worker's compensation insurance to the extent necessary to comply with all applicable

laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the La Costa Oaks Community.

9.1.5 Directors and Officers. The Community Association shall obtain directors and officers insurance to cover the officers and directors of the Community Association against liability for their negligent acts or omissions while acting in their capacity as officers and directors. The limits of such insurance shall not be less than One Million Dollars for all claims arising out of a single occurrence or such other minimum amount which meets the requirements of California Civil Code Section 1365.7.

9.1.6 Other Insurance. The Community Association shall maintain other types of insurance as the Community Board determines to be necessary to fully protect the interests of the Owners. Anything contained herein to the contrary notwithstanding, the Community Association shall maintain such insurance coverage as may be required by the Federal National Mortgage Community Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC") so long as FNMA or FHLMC, respectively, holds a mortgage on or owns any Lot.

9.2 Copies of Policies. Copies of all insurance policies (or certificates) showing the premiums to have been paid shall be retained by the Community Association and open for inspection by Owners at any reasonable time(s). All insurance policies shall (i) provide that they shall not be cancelable by the insurer without first giving at least ten (10) days' prior notice in writing to the Community Association, and (ii) if obtainable, contain a waiver of subrogation by the insurer(s) against the Community Association, Community Board and Owners.

9.2.1 Insurance to Satisfy Civil Code. Section 1365.7 of the California Civil Code provides for a partial limitation on the liability of volunteer officers and directors of the Community Association, provided that certain requirements, as set forth in the Code Section are satisfied. The requirements include that general liability insurance and officers' and directors' liability insurance be carried by the Community Association in specified amounts. The Community Association shall maintain general liability insurance and officers' and directors' liability insurance in amounts which satisfy the requirements of the California Civil Code Section 1365.7 or any successor statute or law to limit the liability of volunteer officers and directors of the Community Association.

9.2.2 Reimbursement of Community Association. In the event any insurance policy deductible amount relating to an Owner's property loss is charged to the Community Association, the Owner shall reimburse the Community Association upon written demand for the amount charged to the Community Association.

9.3 Review of Insurance. The Community Board shall review the adequacy of all insurance at least once every year. The review shall include a replacement cost appraisal of all insurable Improvements within the Community Association Property without respect to depreciation. The Community Board shall adjust and modify the policies to provide coverage and protection that is customarily carried by and reasonably available to prudent owners of similar property in the area in which the La Costa Oaks Community is situated.

9.4 Individual Insurance. Each Owner shall maintain property insurance against losses to real and personal property located within the Residential Lot, including the Residence and to any upgrades or Improvements to any fixtures or Improvements located within the Residential Lot and liability insurance against any liability resulting from any injury or damage occurring within the Residential Lot. The Community Association's insurance policies will not provide coverage against any of the foregoing. All Owners hereby waive all rights of subrogation against the Community Association, and any insurance maintained by an Owner must contain a waiver of subrogation rights by the insurer as to the Community Association; provided, however, that a failure or inability of an Owner to obtain such a waiver shall not defeat or impair the waiver of subrogation rights between the Owners and the Community Association set forth herein. If any Owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Community Association, the Owner will be liable to the Community Association to the extent of the diminution. The Community Association may levy a Special Services Assessment against the Owner's Residential Lot to collect the amount of the diminution,

9.5 Condemnation. If the Community Association Property or any portion thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the award or consideration for such taking or transfer shall be paid to and belong to the Community Association.

## ARTICLE 10

### DESTRUCTION OF IMPROVEMENTS

*The Community Association will have certain obligations if there is damage or destruction to Community Association Property or Common Maintenance Areas. As an Owner, you will also have certain obligations if your Residence or other Improvements are destroyed. This Article describes those obligations and responsibilities.*

10.1 Restoration of Improvements. In the event of partial or total destruction of Improvements upon the Community Association Property, it shall be the duty of the Community Association to restore and repair the same to its former condition (or a condition substantially similar to the former condition or as may be required to comply with the current Governmental Regulations) as promptly as practical, as hereinafter set forth.

10.1.1 Insurance Proceeds Adequate. If the cost of repairing or rebuilding the Community Association Property does not exceed the amount of insurance proceeds initially offered or paid by the insurance carrier by more than ten percent (10%) of the cost of **reconstruction, then the following shall apply:**

(a) All insurance proceeds shall be paid to a commercial bank or trust company designated by the Community Board to be held for the benefit of the Community Association and the Owners and their Mortgagees, as their interests shall appear.

(b) **The Community Board shall** levy a Reconstruction Assessment against the Owners in the same manner as provided in Article 5 equal to the difference between the cost of repairing or rebuilding and the amount of available insurance proceeds, which sums shall be payable into the fund held by the insurance trustee. The Community Board may advance the amount of the Reconstruction Assessment to the insurance trustee from the Community Association's Maintenance Funds or Reserves.

(c) When the amount held by the insurance trustee is sufficient to pay the costs of repair and reconstruction, the Community Board shall thereupon contract for the repair or reconstruction of the Improvements, paying the cost of such work from the amount held by the insurance trustee, said repair or reconstruction to be for the purpose of returning the Improvements substantially to their appearance and condition immediately prior to the casualty.

(d) The Community Association may rebuild such damaged or destroyed common facilities in a different manner, or in a different location on the Community Association Property, provided that such Community Board action shall require consent of at least eighty percent (80%) of the Community Board. If the Community Board cannot reach such an eighty percent (80%) decision, any such change shall require the vote or written assent of the Members representing at least a majority of the Voting Power of the Community Association, and the written consent of a majority of the Mortgagees. In any event, if such changed plans require additional capital so as to constitute a Capital Improvement Assessment, the written assent of the Members, cast through Delegates, representing at least a majority of the Voting Power of the Community Association must be obtained if so required by the requirements of Article 4 of this Declaration.

10.1.2 Insurance Proceeds Inadequate. If the cost of such repairing or rebuilding exceeds the amount of available insurance by more than ten percent (10%) of the cost of reconstruction, then all insurance proceeds shall be deposited as provided in the Section above entitled "Insurance Proceeds Adequate" and the Community Board shall require a determination by written assent or vote of the Members representing at least a Majority of the Voting Power as to whether a Reconstruction Assessment equal to the difference between available insurance proceeds and the cost of such repairing or rebuilding shall be levied. Such majority vote must include at least a two-thirds (2/3rds) majority of the Class A Members. If the Members determine not to levy such assessment, then the Community Board shall use the insurance proceeds available to make such restoration or repair as soon as reasonably possible or to clear the site of the damaged improvements and landscape the site for park and the costs thereof shall be paid for with the insurance proceeds and in such case, any deficiency to remove the damaged Improvements and install landscaping may be raised by **borrowing such proceeds and** levying the finance and other costs thereof as part of a Reconstruction Assessment or by paying such costs directly and levying a Reconstruction Assessment in an amount determined by the Community Board. In the event any excess insurance proceeds remain, the Community Board, in its sole discretion, may retain such sums in the general funds of the Community Association or distribute pro-rata all or a portion thereof to the Members, subject to the prior rights of Mortgagees whose interest may be protected by insurance policies carried by the Community Association. The rights of the Owner and the Mortgagee of his or her Lot as to such pro-rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

10.1.3 Residential Lots. In the event of partial or total damage or destruction of any Residential Lot within the La Costa Oaks Community, the Owner shall either:

(a) diligently commence to rebuild the same, if the insurance proceeds and other funds available to the Owner are sufficient to pay the costs of such rebuilding; or

(b) if there are not sufficient funds to rebuild, clear and level the Residential Lot, remove all wreckage, foundations, slabs, debris and remains of the building or buildings therefrom and leave the same in a level, clean and landscaped condition.

Upon reconstruction, the Residence shall be rebuilt substantially in accordance with the original plans and specifications therefor; provided, however, that the exterior appearance thereof shall substantially resemble the appearance in form and color prior to such damage and destruction. Notwithstanding the foregoing, however, the Owner of such damaged Improvements may reconstruct or repair the same in accordance with new or changed plans or specifications with the prior written approval of the Architectural Committee.

## ARTICLE 11

### DEVELOPMENT RIGHTS

*Declarant and the Merchant Builders will, during the course of the La Costa Oaks Community, be developing and marketing for sale or rental, the residential lots within the La Costa Oaks Community. In order to assure the Declarant and the Merchant Builder that these rights will not be limited, the Declarant and the Merchant Builders are reserving certain rights for development. This Article sets forth those rights which are intended to facilitate the overall development of the La Costa Oaks Community.*

11.1 Limitations of Restrictions. Declarant and the Merchant Builders are undertaking the work of developing Residential Lots and other improvements within the La Costa Oaks Community. The completion of the development work and the marketing and sale, rental and other disposition of the Residential Lots is essential to the establishment and welfare of the Covered Property and the Additional Property as a first-class residential community. In order that the work may be completed and the La Costa Oaks Community be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant or, to the extent provided below, the Merchant Builders the rights set forth in this Article.

11.2 Rights of Access and Completion of Construction. Declarant, and to the extent approved in writing by the Declarant, the Merchant Builders and their contractors and subcontractors shall have the rights set forth below.

11.2.1 Access. Declarant, the Merchant Builders and their contractors and subcontractors shall have the right to obtain reasonable access over and across the Community Association Property and Common Maintenance Areas within any Residential Lot owned by it whatever is reasonably necessary or advisable in connection with the completion of the La Costa Oaks Community and the maintenance thereof.

11.2.2 Construct Improvements. Declarant, and to the extent approved in writing by the Declarant, the Merchant Builders and their contractors and subcontractors shall have the right to erect, construct and maintain on the Community Association Property of the La Costa Oaks Community or within any Residential Lot owned by it such structures or Improvements, including, but not limited to, sales offices, flags, balloons, banners and signs, as may be reasonably necessary for the conduct of its business to complete the work, establish the La Costa Oaks Community as a residential community and dispose of the La Costa Oaks Community in parcels by sale, lease or otherwise, as determined by Declarant in its sole discretion and to perform or complete any work to improvements required for Declarant and the Merchant Builders to obtain a release of any bonds posted by Declarant or the Merchant Builders with the City.

11.2.3 Grant Easements. Declarant, and the Community Association, shall have the right to establish and/or grant over and across said Community Association Property such easements and rights of way on, over, under or across all or any part thereof to or for the benefit of the State of California, the City or County or any other political subdivision or public organization, or any public utility entity or cable television provider, for the purpose of constructing, erecting, operating and maintaining facilities and Improvements thereon, therein or thereunder at that time or at any time in the future, including: (i) poles, wires and conduits for transmission of electricity, providing telephone service and cable television service to the La Costa Oaks Community and for the necessary attachments in connection therewith; and (ii) public and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith. The Community Association Property shall be subject to any dedication stated in the Subdivision Map for the La Costa Oaks Community of an easement for public use for installation, maintenance and operation of facilities for public utilities over all of the Community Association Property. Said public utilities easement shall inure and run to all franchised utility companies and to the City or County and shall include the right of ingress and egress over the Community Association Property by vehicles of the City or County and such utility companies to properly install, maintain, repair, replace and otherwise service such utility facilities. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such utility company or the City or County for maintenance or operation of any of the Community Association Property or the facilities located thereon or the repair, replacement or reconstruction thereof except as occasioned by such utility companies or City or County of the utility facilities for which they are responsible. The Community Association Property shall also be subject to any easements granted by the Declarant to any public or private entity for cellular, cable or other similar transmission lines. The City and County furthermore is granted an easement across the Community Association Property and any private streets situated within any portion of the La Costa Oaks Community for ingress and egress for use by emergency vehicles of the City or County.

11.2.4 Exemptions. Nothing in the Community Governing Documents limits and no Owner or the Community Association will interfere with the right of Declarant to subdivide and **resubdivide** any portion of the Covered Property or with the right of Declarant and Merchant Builders, either directly or through their respective agents and representatives, to sell, resell, rent or rerent any portion of the Covered Property, or the right of Declarant or a Merchant Builder to

complete excavation, grading, construction of Improvements or other development activities to and on any portion of the Covered Property owned by Declarant or a Merchant Builder, as applicable, or to alter the foregoing and the construction plans and designs, or to construct such additional Improvements as Declarant or a Merchant Builder deems advisable in the course of developing the Covered Property so long as any Lot in the Covered Property or any portion of the Community Association Property is owned by Declarant or a Merchant Builder. These rights include, but are not limited to, carrying on by Declarant, the Merchant Builders, and their respective agents and representatives of such grading work as may be approved by the Governmental Agency having jurisdiction, and erecting, constructing and maintaining on the Covered Property such structures, signs and displays reasonably necessary for the conduct of the business of completing the work and disposing of the Covered Property and the Community Association Property by sale, lease or otherwise. Each Owner, by accepting a deed to a Residential Lot, acknowledges that any construction or installation by Declarant or a Merchant Builder may impair the view of such Owner, and each Owner consents to such impairment.

11.2.5 Additional Easements. This Declaration does not limit the right of Declarant or, if approved in writing by Declarant a Merchant Builder, at any time prior to acquisition of title to a Residential Lot by an Owner from Declarant or a Merchant Builder, to establish on that Residential Lot, additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as reasonably necessary to the proper development, marketing and sale of the Covered Property and Community Association Property. Declarant and, if approved in writing by Declarant, the Merchant Builders may use any and all portions of the Community Association Property for access to the sales and leasing facilities of Declarant and Merchant Builders. Declarant and, if approved in writing by Declarant, Merchant Builders may use any structures or vehicles owned, respectively, by Declarant or Merchant Builders in the Covered Property as model home complexes, or real estate sales or leasing offices; provided that such uses within the Covered Property shall terminate on the last Close of Escrow for the sale of a Residential Lot in the Covered Property pursuant to a transaction requiring the issuance of a Public Report, at which time Declarant or Merchant Builders, as the case may be, shall restore their respective structures to their previous appearance. All or any portion of the rights of Declarant or a Merchant Builder, as applicable, hereunder and elsewhere in this Declaration may be assigned by Declarant or such Merchant Builder (with Declarant's prior written consent), as applicable, to any successor in interest to any portion of Declarant's or Merchant Builder's interest in any portion of the Covered Property or the Community Association Property (including without limitation, to any Merchant Builder) by an express written assignment which specifies the rights of Declarant or such Merchant Builder so assigned. Notwithstanding any other provision of this Declaration, for so long as Declarant or a Merchant Builder owns any portion of the Covered Property or the Community Association Property, Declarant or such Merchant Builder's prior written approval is required before any amendment to this Article 11 or any other provision effecting the rights or exemptions of Declarant hereunder, is effective.

11.3 Size and Appearance of La Costa Oaks Community. Declarant shall not be prevented from increasing or decreasing the number of Residential Lots that may be annexed to the La Costa Oaks Community or from changing the exterior appearance of Community Association Property structures, the landscaping or any other matter directly or indirectly



connected with the La Costa Oaks Community in any manner deemed desirable by Declarant, if Declarant obtains governmental consents required by law.

11.4 Marketing Rights. Subject to the limitations of this Declaration, Declarant and the Merchant Builders shall have the right to: (i) maintain model homes, sales offices, storage areas and related facilities in any unsold Residential Lots or Community Association Property within the La Costa Oaks Community as are necessary or reasonable, in the opinion of Declarant, for the sale or disposition of the Residential Lots; (ii) make reasonable use of the Community Association Property, Common Maintenance Areas and facilities situated thereon for the sale of Residential Lots; (iii) post signs, flags and banners in connection with its marketing; and (iv) conduct their business of disposing of Residential Lots by sale, lease or otherwise.

11.5 Title Rights. This Declaration shall not be construed to constitute a limitation on Declarant's title rights to the Additional Property prior to its Annexation, nor shall it impose any obligation on Declarant or any other person or entity to improve, develop or annex any portion of the Additional Property. The rights of Declarant under this Declaration may be assigned to any successor(s) by an express assignment in a recorded instrument, including without limitation, a deed, option or lease. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations and rights-of-way to itself, to utility companies or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

11.6 Amendment. The provisions of this Article may not be amended without the consent of Declarant until either (i) all of the Additional Property has been annexed to the La Costa Oaks Community and all of the Residential Lots in the La Costa Oaks Community owned by Declarant or a Merchant Builder have been sold or (ii) five (5) years after the original issuance of the most recent Public Report for a Phase in the La Costa Oaks Community whichever occurs first.

11.7 Declarant Representative. Until the later to occur of the date on which Declarant (i) no longer owns a Lot in the Covered Property or (ii) no longer has an assignment of a Merchant Builder's voting rights or (iii) cannot unilaterally annex property to the Covered Property, the Community Association shall provide Declarant with written notice of all meetings of the Community Board as if Declarant were an Owner and Declarant shall be entitled, without obligation, to have a representative present at all such Community Board meetings ("Declarant's Representative"). The Declarant's Representative shall be in addition to any representative which the Declarant may have on the Community Board and, if Declarant elects to have an additional representative, the Declarant's Representative may be present in an advisory capacity only and shall not be a Community Board member or have any right to vote on matters coming before the Community Board.

## ARTICLE 12

ANNEXATION

*If developed as planned, the La Costa Oaks Community will continue to grow and expand to include new property. This Article describes how this annexation process occurs. In certain situations, the Declarant may also de-annex some of the property already covered by this Declaration. That process is also covered in this Article.*

12.1 Annexation. Any of the Additional Property may be annexed to and become subject to this Declaration by any of the methods set forth hereinafter in this Article. Declarant intends to sequentially develop the Additional Property on a phased basis. However, Declarant may elect not to develop all or any part of such real property, to annex such real property to this Declaration in increments of any size whatsoever, or to develop more than one such increment at any given time and in any given order. Moreover, Declarant reserves the right to subject this Declaration to one or more separate declarations of covenants, conditions and restrictions and to subject such property to the jurisdiction and power of a non-profit mutual benefit corporation or other entity with powers and obligations similar to the Community Association and which is not subject to the provisions of this Declaration. Although Declarant shall have the ability to annex the Additional Property as provided in this Article, Declarant shall not be obligated to annex all or any portion of such property, and such property shall not become subject to this Declaration unless and until a Supplementary Declaration covering it has been recorded.

12.2 Annexation Without Approval. All or any part of the Additional Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Community Association without the approval, assent or vote of the Community Association or its Members.

12.3 Covenants Running with the Land. Declarant may transfer all or any portion of the Covered Property or the Additional Property to a builder under a grant deed wherein Declarant reserves the right to annex such property and subject it to this Declaration. The restriction on the Additional Property wherein it may be made subject to this Declaration upon the recordation of a Supplementary Declaration is hereby declared to be an equitable servitude upon the Additional Property in favor of the Covered Property and shall run with the land and be binding on and inure to the benefit of all parties having or acquiring any right, title or interest, in such Additional Property.

12.4 Supplementary Declarations. If not already annexed, the recordation of a Supplementary Declaration shall constitute and effectuate the Annexation of said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Community Association, and thereafter said annexed real property shall be part of the Covered Property and subject to all of the terms and provisions of this Declaration. Supplementary Declarations may also be recorded by Declarant with respect to a Phase, which may further delineate any Community Association Property, Common Maintenance Area or Special Benefit Area or Special Benefit Maintenance Areas within such Phase or contain complementary additions and modifications as provided in this Section 12.4 or

make minor or technical corrections to this Declaration. In the event that the vote or written assent of a certain percentage of Members is required to annex or to make technical modifications or corrections to this Declaration, any property as provided for above, then the recordation of a Supplementary Declaration certified to by the President or Vice President and Secretary or Assistant Secretary shall constitute and effectuate the Annexation of said real property and for the purpose of recording any such instrument, and each owner with the exception of the Secretary, U.S. Department of Veteran Affairs, an Officer of the United States of America, hereby grants to the President or the Vice-President and Secretary or Assistant Secretary of the Community Association an irrevocable power of attorney for and on behalf of each and every owner in certifying, executing and recording said instrument. The Community Association shall be entitled to record a Supplementary Declaration to establish a Special Benefit Area. Such Supplementary Declarations contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. The express desired intention of Declarant is to establish a cohesive plan of such covenants and servitudes to be uniformly applicable to the Covered Property, including those portions added thereto by annexation. If the signature or consent of any Merchant Builder which owns any portion of the Covered Property subject to a Supplementary Declaration is required, such Merchant Builder shall execute and consent to any such Supplementary Declaration.

12.5 Rights and Obligations of Owners. After the required annexation procedures are fulfilled, all Owners in the Covered Property shall be entitled to the use of any Community Association Property in such annexed property, subject to the provisions of this Declaration and the Community Governing Documents, and Owners of such annexed property shall thereupon be subject to this Declaration. After each Annexation, the Community Assessments shall be assessed in accordance with *the* provisions set forth in Article 5 with the annexed property being assessed for a proportionate share of the total Common Expenses on the same basis as the other property in the Covered Property. Community Assessments for the year that such property is annexed shall be prorated on the basis of a three hundred and sixty (360) day year.

12.6 Mergers or Consolidations. Upon a merger or consolidation of the Community Association with another association, the Community Association's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or, alternatively, the properties, right and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Community Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration within the La Costa Oaks Community, together with the covenants and restrictions established upon any other property as one plan.

12.7 De-Annexation. Declarant may delete all or any portion of the Covered Property from the coverage of this Declaration or any Supplementary Declaration, provided Declarant and/or a Merchant Builder are the sole Owner(s) of all of the real property to be deleted and, with respect to the Phase in which such Covered Property is located, no Lot has been conveyed to a member of the homebuying public, no Community Association Property has been conveyed

13.4.1 Partition. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Community Association Property. The granting of easements or leases or use agreements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this Subsection;

13.4.2 Allocation of Charges. Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

13.4.3 Maintenance. By act or omission, change, waive or abandon any set of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of residences, the exterior maintenance of Residences, the maintenance of Community Association Property and Common Maintenance Areas, walls or common fences and driveways, or the upkeep of lawns and plantings in the La Costa Oaks Community;

13.4.4 Insurance. Fail to maintain fire and extended coverage insurance on any Community Association Property upon which Buildings have been constructed on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value, based on current replacement cost; or

13.4.5 Hazard Insurance. Use hazard insurance proceeds for losses to any portion of the Community Association Property for other than the repair, replacement or reconstruction of the Community Association Property,

13.5 Restoration of Community Association Property. Any restoration or repair of the Community Association Property after partial condemnation or damage due to an insurable event, shall be performed substantially in accordance with the Declaration and original plans and specifications unless other action is approved by holders of First Mortgages on Residential Lots which have at least a majority of the Voting Power of the Community Association.

13.6 Professional Management. When professional management has been previously required by a First Mortgage holder, a decision to establish self-management by the Community Association shall require the consent of at least sixty-seven percent (67%) of the Voting Power of Members of the Community Association and the approval of holders of First Mortgages on Residential Lots, the Owners of which have at least fifty-one percent (51%) of the votes of Residential Lots encumbered by Mortgages.

13.7 Notice to Mortgagees. Upon written request to the Community Association identifying the name and address of the holder and the Residential Lot number or address, any First Mortgage holder will be entitled to timely written notice of:

13.7.1 Any condemnation loss or any casualty loss which affects a material portion of the project or any Residential Lot on which there is a First Mortgage held by the Mortgage holder.

13.7.2 Any delinquency in the payment of assessments or charges owed by an Owner subject to a First Mortgage held by the Mortgage holder which remains uncured for a period of sixty (60) days;

13.7.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Community Association; and

13.7.4 Any proposed action which would require the consent of a specified percentage of Mortgage holders.

13.§ Documents to be Available. The Community Association shall make available to Owners and Mortgagees, and holders, insurers or guarantors of any First Mortgage, current copies of the Declaration, the Community Bylaws, other rules concerning the project and the books, records and financial statements of the Community Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. The holders of First Mortgages encumbering fifty-one percent (51%) or more of the Lots subject to a Mortgage shall, upon written request, be entitled to have an audited statement for the immediately preceding fiscal year prepared at their expense if one is not otherwise available. Any financial statement so requested shall be furnished within a reasonable time following the request.

13.9 Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of the Declaration, the provisions of this Article shall control,

## ARTICLE 14

### AMENDMENTS

*This Declaration establishes the covenants, conditions and restrictions for the La Costa Oaks Community. It may be possible, in the future, that the Community Declaration will need to be amended. This Article sets forth the procedures that must be followed, and the consents that must be obtained in order to amend this Declaration.*

14.1 Amendment. Except as may otherwise be stated in the Declaration, during the period of time prior to conversion of the Class B membership in the Community Association to Class A membership, this Declaration may be amended at any time and from time to time by the vote or written consent of sixty-seven percent (67%) of the voting power of each class of Members of the Community Association. Any amendment shall become effective upon recording with the Office of the County Recorder of the County. After conversion of the Class B membership in the Community Association to Class A membership, the Declaration may be amended at any time and from time to time by the vote or written consent of (a) sixty-seven percent (67%) of the total Voting Power of the Community Association, and (b) at least sixty-seven percent (67%) of the Voting Power of Members of the Community Association other than Declarant. Anything herein stated to the contrary notwithstanding, no material amendment may be made to this Declaration without the prior written consent of Eligible Holders encumbering fifty-one percent (51%) or more of the Lots within the Covered Property which are subject to a Mortgage. "Material amendment" shall mean, for purposes of this Section, any amendments to provisions of this Declaration governing any of the following subjects:

- (a) The fundamental purpose for which the La Costa Oaks Community was created (such as a change from residential use to **a different use**);
- (b) Assessments, assessment liens or the priority of assessment liens;
- (c) Reserves for maintenance, repair and replacement of the Community Association Property or Common Maintenance Area;
- (d) Responsibilities for maintenance and repairs;
- (e) Insurance or fidelity bonds;
- (f) Restoration or repair of the after a hazard damage or partial condemnation;
- (g) Rights to use the Community Association Property or Common Maintenance Area;
- (h) Expansion or contraction of the Covered Property or the addition, annexation or withdrawal of property to or from the Covered Property;
- (i) Voting rights;
- (j) Convertibility of Residential Lots into Community Association Property or of Community Association Property into Residential Lots;
- (k) Redefinition of boundaries of any Community Association Property;
- (l) The interests in the Community Association Property or Common Maintenance Area;
- (m) Leasing of Residential Lots;
- (n) Imposition of any restrictions on the right of an Owner to sell or transfer his or her Lot;
- (o) Any action to terminate the legal status of the Community Association after substantial destruction or condemnation;
- (p) The requirement of retention of professional management of the Community Association;
- (q) Any provision which is expressly for the benefit of Eligible Holders or insurers or guarantors of Eligible Holders.

An addition or amendment to this Declaration shall not be considered material if it is for the purposes of correcting technical errors or for clarification only. Any Eligible Holder of a

First Mortgage who received a written request to approve additions or amendments by certified or registered mail, return receipt requested, who does not respond within thirty (30) days, shall be deemed to have approved such addition or amendment. Notwithstanding the foregoing, the percentage of a quorum or the voting power of the Community Association or of Members other than the Declarant necessary to amend a special clause or provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under this clause or provision. An amendment or modification shall be effective when executed by the President or Vice President and Secretary or Assistant Secretary of the Community Association who shall certify that the amendment or modification has been approved as hereinabove provided, and shall record the amendment in the Official Records of San Diego County, California. For the purpose of recording such instrument, each Owner, with the exception of the Secretary, X.I.S. Department of Veteran Affairs, an officer of the United States of America, hereby grants to the President or Vice President and Secretary or Assistant Secretary of the Community Association an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying, executing and recording said instrument. Notwithstanding anything to the contrary contained herein, in no event may any of Declarant's rights or privileges under the Community Governing Documents be terminated, altered or amended without Declarant's prior written consent.

14.2 Other Approvals Required for Amendments. Notwithstanding anything to the contrary contained in this Declaration, Sections 1.15, 1.53, 3.2.4, 3.3.3, 4.1.9, 4.2.10, 4.2.11, 8.5, 9.2, 15.4, 16.3, and 16.4 of this Declaration shall not be amended without the vote or approval by written ballot of at least (a) ninety percent (90%) of the Voting Power of the Members of the Community Association other than Declarant, and (b) at least ninety percent (90%) of the Eligible Holders. Such vote shall be an Owner Participation Issue under the Community Bylaws.

14.3 Conflict with Article 13 or Other Provisions of this Declaration. To the extent any provisions of this Article conflict with the provisions of Article 14 or any other provision of this Declaration, except those contained in Section 14.2, the provisions of Article 14 or the other provisions shall control.

14.4 j—val by City. Notwithstanding anything to the contrary set forth in this Declaration, including without limitation, the amendment provisions set forth in this Article 14, the consent of the City shall be required for any amendment to Sections 1.10, 2.3.6, 2.3.7, 2.3.8, 2.6.7, 7.8, 7.22, 7.24, 7.24.1, 7.25, 7.28, 7.29, 7.30, 8.2, 8.3, 8.4, 8.8.2, 8.10, 14.4, 15.5, 15.5.1, 15.5.2, 15.5.3, 15.6, 15.6.1, 15.6.2, 15.6.3, 15.6.4, 15.7, of this Declaration or any other provision of this Declaration which gives to the City any approval rights or enforcement rights under this Declaration. Any approval by the City hereunder shall be submitted to the Planning Director and/or City Engineer whose decision shall be binding on the City. The City shall approve or disapprove any proposed amendment within thirty (30) days of submittal of the amendment to the City Manager. Any amendment shall be delivered to the City in the same manner as provided in Section 13.7 of this Declaration for Mortgagees, to the City's then current office.

14.5 Business and Professions Code Section 11018.7. All amendments or revocations of this Declaration shall comply with the provisions of California Business and Professions Code, Section 11018.7 or any successor statutes or laws, to the extent said Section is applicable.

14.6 Reliance on Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

## ARTICLE 15

### TERM AND ENFORCEMENT

*This Article describes the procedures that apply in enforcing this Declaration and specifies the types of **dispute** resolution procedures that will be **followed** to resolve such **disputes**.*

15.1 Duration. The provisions of this Declaration, including the covenants, conditions and restrictions contained herein shall run with and bind the Covered Property and shall continue to be effective for a period of ninety-nine (99) years from the date of recordation. Thereafter, the Declaration shall be automatically extended for successive periods of ten (10) years unless the Owners of two-thirds (2/3) of the Residential Lots subject to the Declaration have executed and recorded at any time within six (6) months *prior* to the end of the ten (10) year period, in the manner required for a conveyance of real property, a written instrument in which it is agreed that the restrictions shall terminate at the end of the ten (10) year period.

#### 15.2 Enforcement and Nonwaiver.

15.2.1 Rights of Enforcement of Community Governing Documents. The Community Association or any Owner shall have a right of action against any Owner, and any Owner shall have a right of action against the Community Association, to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of the Community Governing Documents or any amendment thereto, including the right to prevent the violation of such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning liens for Community Assessments or Project Assessments, as the case may be. The Community Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Community Handbook, unless the Community Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Community Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter. The City shall have the same right to enforce the provisions of this Declaration as an Owner in the Covered Property.

15.2.2 Procedure for Enforcement. Notwithstanding anything to the contrary set forth in Section 15.2.1, in enforcing any action under the Community Governing Documents, unless the applicable time limitation for commencing an action would run within one hundred twenty (120) days prior to the filing of a civil action by either the Community Association or an Member solely for declaratory relief or injunction relief in connection with a claim for monetary



damages, other than assessments of the Community Association, not in excess of Five Thousand Dollars (\$5,000.00), related to the enforcement of the Community Governing Documents, the parties shall endeavor as provided in California Civil Code Section 1354 or any successor statute or law, to submit their dispute to a form of alternative dispute resolution such as mediation or arbitration. The Community Board shall annually provide to the Members a summary of the provisions of California Civil Code Section 1354 or any successor statute or law, which shall include the language required and shall be delivered in the manner provided in Civil Code Section 1365. The exception for disputes related to Community Association assessments referred above shall not apply to disputes between a Member and the Community Association regarding assessments imposed by the Community Association, if the Member chooses to pay in full the Community Association all of the assessments specified in California Civil Code Section 1366.3 or any successor statute or law, states by written notice that the amount is paid under protest, and delivers such written notice in accordance with the provisions of California Civil Code Section 1366.3 or any successor statute or law. Upon the delivery of such notice, the Community Association shall inform the Member that such Member may resolve the dispute through alternative dispute resolution as set forth in California Civil Code Section 1354 and any other procedures to resolve the dispute that may be available through the Community Association. As provided in Civil Code Section 1366.3, the right of any Owner to utilize alternative dispute resolution under such Section may not be exercised more than two (2) times in any single calendar year and not more than three (3) times within any five (5) calendar years.

15.3 NOTICE OF ACTIONS AGAINST DECLARANT. To the extent applicable, the Community Association shall comply with the provisions of Civil Code Section 1368.4, Civil Code Sections 910 through 938, and any successor statutes or laws, subject to the provisions of Section 15.4.

15.4 ALTERNATIVE DISPUTE RESOLUTION. The purpose of this Section 15.4 is to provide an expedited means of resolving any claims, disputes and disagreements which may arise between (a) an Owner and/or the Community Association and (b) Declarant concerning the Covered Property that are not resolved pursuant to any applicable statutory dispute resolution procedures (individually referenced to herein as "Dispute" and collectively as "Disputes"). A Supplementary Declaration may be recorded by a Merchant Builder setting forth any alternative dispute resolution procedures relating to disputes or claims between an Owner and a Merchant Builder, which do not involve the Community Association and/or the Declarant.

15.4.1 Mediation.

(a) Disputes Subject to Mediation. Except for construction defect claims which are to be resolved through the non-adversarial statutory provisions set forth in Sections 910 through 938 of the California Civil Code, any Disputes arising out of or relating to the Covered Property may not be commenced until the matter has been submitted to Judicial Arbitration and Mediation Services ("JAMS"), or its successor, for mediation.

15.4.2 Arbitration.

(a) Agreement to Arbitrate. If a dispute is not resolved through mediation or the statutory non-adversarial procedure, the Declarant or any director, officer,

partner, member, employee or agent of Declarant and either the Community Association or any Owner shall resolve any and all Disputes exclusively through binding arbitration in the County. This arbitration provision shall apply to Disputes of any kind or nature regardless of when the Dispute first arose or the nature of the relief sought. Alternatively, either the Community Association, any *Owner* or Declarant may elect to resolve such Disputes through a small claims court proceeding, in which case the party filing the small claims action will have waived the right to any relief in excess of the jurisdiction of the small claims court.

(b) Waiver of Trial by Judge or Jury. By agreeing to resolve all Disputes through binding arbitration, the Community Association, each Owner and the Community Association and Declarant each give up the right to have their respective claims and defenses decided by a judge or a jury.

(c) Rules Applicable to All Cases. The arbitration will be conducted by JAMS in accordance with the JAMS rules ("JAMS Rules") then applicable to the claims presented, as supplemented by this Declaration. The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the JAMS Rules.

(d) Qualifications of Arbitrators. The arbitrator shall be neutral and impartial and either a retired judge or a member or former member of the California State Bar with at least fifteen (15) years experience as a practicing lawyer and at least ten (10) years experience with construction related disputes.

(e) Appointment of Arbitrator. The arbitrator to preside over the Dispute shall be selected in accordance with the JAMS Rules, but no later than sixty (60) days after a notice of claim is filed.

(f) Expenses. All fees charged by JAMS and the arbitrator shall be advanced by Declarant. If Declarant is the prevailing party in the arbitration, the arbitrator may, to the extent permitted by law and the JAMS Rules, direct the Owner or the Community Association, as applicable to reimburse the Declarant for up to fifty percent (50%) of the JAMS fee and arbitrator's fee advanced by Declarant within sixty (60) days after the final arbitration award.

(g) Preliminary Procedures. If state or federal law requires the Declarant, the Community Association or Owner to take steps or procedures before commencing an action in court, then the Declarant, the Community Association or Owner must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claims or Disputes pursuant to California Civil Code Section 895 et. seq. as hereafter amended shall be subject to the non-adversarial procedures set forth in California Civil Code Section 910 through 938, prior to the initiation of any arbitration or small claims court proceeding against Declarant. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05 or 1375.1.

(h) Participation by Other Parties. Declarant, the Community Association or Owner to the extent either such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration.

(i) Rules of Law. The arbitrator must follow California substantive law (including statutes of limitations) but may receive hearsay evidence. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.

(j) Attorneys Fees and Costs. Each party shall bear its own attorneys fees and costs (including expert witness costs) in the arbitration.

15.4.3 Additional Rules Applicable To Certain Cases. In any arbitration in which a claim of Declarant, the Community Association or Owner exceeds \$250,000 in value, the following additional rules will supplement the JAMS Rules and govern in the event of a conflict between the following rules and the rules set forth above, the JAMS Rules, or both.

(a) Qualifications of Arbitrator. In addition to the requirements of Section 15.42(d) above, the arbitrator shall be a retired judge of the California Superior Court, a California Court of Appeal, or the California Supreme Court.

(b) Transcripts. All hearings in which evidence is received must be recorded by a customary method so that a transcript of all testimony can be prepared. The cost of the recording shall be paid by Declarant as further provided in Section 15.4.4(e) below and the cost of the transcription shall be paid by the appealing party.

(c) Rules of Law. The arbitrator must follow the California Evidence Code.

(d) Written Decision. Within thirty (30) days after the hearing is closed, the arbitrator must issue a written decision. If either Declarant, the Community Association or Owner requests it, the arbitrator must issue a reasoned award.

(e) Petition to Confirm Award. Neither Declarant, the Community Association or Owner may petition a court to enter judgment on the arbitration award until the other party's time to serve a notice of appeal, as set forth below, has expired.

15.4.4 Procedure for Appeal of Certain Cases. In any arbitration in which a claim of Declarant, the Community Association or Owner exceeds \$250,000 in value, each party shall have a limited right to appeal the arbitration award as set forth below.

(a) Right of Appeal. There shall be no right to appeal unless the oral evidence received by the arbitrator was preserved in a manner that it can be converted to an accurate and reliable written transcript.

(b) Appellate Arbitration. An appeal shall be decided by one (1) neutral appeal arbitrator appointed by JAMS under the rules that govern appointment of arbitrators. The appeal arbitrator must be a retired judge.

(c) Issues on Appeal. The only issues that may be considered on appeal are: (1) the award of money was excessive; (2) the award of money was insufficient; (3) the arbitrator awarded non-monetary relief that was inappropriate; (4) a party who received non-monetary relief should have received other or additional relief. The appeal arbitrator may affirm the arbitration award or make any alternative award he or she finds to be just, but must not reject the arbitrator's decisions (a) that a particular party is entitled to relief of some nature or amount or (b) that a particular party is responsible to provide relief of some nature or amount.

(d) Notice of Appeal. To appeal an arbitration award, a party must serve written notice of the appeal on JAMS and all parties to the arbitration within thirty (30) days after mailing of the arbitrator's award to the parties. The written notice of appeal must include a general description of the grounds for appeal and the relief requested. A party who has received a timely notice of appeal may thereafter file and serve its own notice of appeal within sixty (60) days after mailing of the arbitration award to the parties.

(e) Expenses and Costs on Appeal. The appealing party must advance all fees for the appeal and provide JAMS with a written transcript of the oral testimony, copies of all documentary evidence and all other tangible evidence received by the arbitrator. If more than one party appeals, the appealing parties must share equally the JAMS fees and the cost of preparing and copying the transcript and all other evidence received by the arbitrator. The appeal arbitrator may award costs of the nature provided in the Federal Rules of Appellate Procedure provided that the maximum, which may be awarded to Declarant as the prevailing party, is fifty percent (50%) of the total costs of the arbitration appeal.

(f) Appellate Briefs. The appeal arbitrator may receive written briefs from the parties and hear oral argument, but must not receive new evidence. The appeal arbitrator must make his *or her* decision based only on the evidence that was presented to the arbitrator, except that the appeal arbitrator may visit any site involved in the Dispute.

(g) Decision on Appeal. The decision of the appeal arbitrators shall be the final award in the case and shall be treated as the arbitration award for all purposes.

(h) Federal Arbitration Act. Declarant, the Community Association and each Owner acknowledge that because many of the materials and products incorporated into the home are manufactured in other states, the conveyance of the Covered Property evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C, §1, et. seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration **provisions of this Declaration.**

#### 15.4.5 AGREEMENT TO ARBITRATE AND WAIVER OF JURY TRIAL.

(a) ARBITRATION OF DISPUTES. DECLARANT, EACH OWNER BY ACCEPTANCE OF A DEED, AND THE COMMUNITY ASSOCIATION AGREE TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND EACH OWNER,

DECLARANT AND THE COMMUNITY ASSOCIATION ARE GIVING UP ANY RIGHTS DECLARANT, EACH OWNER AND THE COMMUNITY ASSOCIATION MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. DECLARANT, EACH OWNER, AND THE COMMUNITY ASSOCIATION ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 16.4. IF DECLARANT, ANY OWNER OR COMMUNITY ASSOCIATION REFUSED TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT.

(b) WAIVER OF JURY TRIAL. IN THE EVENT THE FOREGOING ARBITRATION PROVISION IS HELD NOT TO APPLY OR IS HELD INVALID, VOID OR UNENFORCEABLE IN ITS ENTIRETY FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. THE JUDGE IN SUCH COURT OF COMPETENT JURISDICTION SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES AND AWARD COMPENSATORY DAMAGES. DECLARANT, BY EXECUTING THIS DECLARATION AND EACH OWNER, AND THE COMMUNITY ASSOCIATION BY ACCEPTING A DEED TO ANY PORTION OF THE COVERED PROPERTY, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, ANY OWNER AND THE COMMUNITY ASSOCIATION OR THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

15.4.6 Final and Binding Award. The decision of the arbitrator or, if an appeal is heard, the decision of the appeal arbitrators, shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in the county in which the Covered Property is located, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

15.4.7 Severability. In addition to and without limiting the effect of any general severability provisions of this Declaration, if the arbitrator or any court determines that any provision of this Section 15.4 is unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this Declaration shall be conducted under the remaining enforceable terms of this Section 15.4.

15.4.8 Application of Award. Any proceeds awarded to the Community Association arising from any Dispute by settlement, award or otherwise shall be applied in accordance with the provisions of Section 4.1.9 of this Declaration.

15.4.9 General Enforcement by the City.

15.4.10 Right of City to Enforce Declaration. The City shall have the right, but not the obligation, to enforce the restrictions set forth in this Declaration in favor of, or in which the City has an interest.

15.4.11 Failure of Community Association to Maintain Community Association Property and Common Maintenance Areas. If the Community Association fails to maintain the Community Association Property or Common Maintenance Areas as provided in Article B, the City shall have the right, but not the duty, to perform the necessary maintenance, If the City elects to perform such maintenance, the City shall give written notice to the Community Association, with a copy thereof to the Owners in the La Costa Oaks Community, setting forth with particularity the maintenance which the City finds to be required and requesting the same be carried out by the Community Association within a period of thirty (30) days from the giving of such notice. In the event that the Community Association fails to carry out such maintenance of the Community Association Property or Common Maintenance Areas within the period specified by the City's notice, the City shall be entitled to cause such work to be completed and shall be entitled to reimbursement with respect thereto from the Owners as provided herein.

15.4.12 Special Assessments Levied by the City. In the event the City has performed the necessary maintenance to either Community Association Property or Common Maintenance Areas, the City shall submit a written invoice to the Community Association for all costs incurred by the City to perform such maintenance of the Community Association Lots and/or Community Association's easements. The City shall provide a copy of such invoice to each Owner in the La Costa Oaks Community, together with a statement that if the Community Association fails to pay such invoice in full within the time specified, the City will pursue collection against the Owners in the La Costa Oaks Community pursuant to the provisions of this Section. Said invoice shall be due and payable by the Community Association within twenty (20) days of receipt by the Community Association. If the Community Association shall fail to pay such invoice in full within the period specified, payment shall be deemed delinquent and shall be subject to a late charge in an amount equal to six percent (6%) of the amount of the invoice. Thereafter the City may pursue collection from the Community Association by means of any remedies available at law or in equity. Without limiting the generality of the foregoing, in addition to all other rights and remedies available to the City, the City may levy a Special Assessment against the Owners of each Residential Lot in the La Costa Oaks Community for an equal pro rata share of the invoice, plus the late charge. Such Special Assessment shall constitute a charge on the land and shall be a continuing lien upon each Residential Lot against which the Special Assessment is levied. Each Owner in the La Costa Oaks Community hereby vests the City with the right and power to levy such Special Assessment, to impose a lien upon their respective Residential Lot and to bring all legal actions and/or to pursue lien foreclosure procedures against any Owner and his or her respective Lot for purposes of collecting such Special Assessment in accordance with the procedures set forth in Article 5 of this Declaration.

15.5 City Required Disclosures. The following information is set forth in this Declaration as required by the City as a condition to City approval of the Tentative Map. Each

Owner acknowledges that this is not a comprehensive and exhaustive list of all material information about the La Costa Oaks Community and that this information is subject to change.

15.5.1 Use of Reclaimed Water. As required by the City, the Community Association shall use reclaimed water for the irrigation of Community Association Property and Common Maintenance Area landscaping if reclaimed water becomes reasonably available for that purpose. If reclaimed water does become reasonably available for irrigation of the Community Association Property or Common Maintenance Area, the Community Association shall not discontinue use of reclaimed water for that purpose without the approval of the applicable water district.

15.5.2 Dam Inundation Areas and Other Natural Hazards. Portions of the La Costa Oaks Community are located in areas where there may be natural hazards, including areas designated as potential dam inundation areas from the Stanley A. Mahr dam and as a result are subject to potential flooding due to dam failure which could result in loss of life or property. Each Owner who acquires a Residential Lot subject to a Public Report should review carefully the Natural Hazards Disclosure Report provided to such Owner by the Merchant Builder, and each subsequent Owner should review carefully any disclosures about natural hazards provided by the Seller of the Residential Lot. The City has required Declarant to attach an exhibit showing areas which could potentially be impacted by further dam inundation. To comply with this requirement, Declarant has attached **Exhibit "H"** which describes the areas identified by Declarant's engineer, Hunsaker and Associates as possible dam inundation areas. Declarant makes no representation regarding the accuracy of such exhibit or whether the exhibit includes all of the areas of possible dam inundation.

15.5.3 Commercial and/or Retail Site. Each Owner acknowledges a commercial/retail center may be developed at the intersection of La Costa and Rancho Santa Fe Road. Declarant makes no representation or warranty when or if a commercial and/or retail center will be constructed.

15.5.4 Restricted Facilities Parking. The recreational facilities that are to be included as part of the Community Association Property are not currently being designed with on-site parking. Members who use the recreational facilities will be required to park on the streets in the area of the recreational facilities. Residences in the vicinity of the recreational facilities may be impacted by this parking arrangement.

15.6 Copy of Recorded Declaration to Upon recordation of this Declaration with the Office of the County Recorder of San Diego County, California, Declarant shall forward a copy of the recorded Declaration to Planning Director, City of Carlsbad, 1635 Faraday Avenue, Carlsbad, California 92008-7314.

## ARTICLE 16

### GENERAL PROVISIONS

16.1 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

16.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions of it shall not invalidate any other provisions.

16.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver,

16.4 Violations as Nuisance. Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies herein set forth, may be abated *or* enjoined by any Owner, any Member of the Community Board, the manager, **or the Community Association.**

16.5 No Racial Restriction. No Owner shall execute or cause to be recorded any instrument which imposes a restriction upon the sale, leasing or occupancy of his or her Residential Lot on the basis of race, sex, color or creed.

16.6 Access to Books. Declarant may, at any reasonable time and upon reasonable notice to the Community Board or manager, at his or her own expense, cause an audit or inspection to be made of the books and financial records of the Community Association.

16.7 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision thereafter.

16.8 Notification of Sale of Residential Lot. Concurrently with the consummation of the sale of any Residential Lot under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Community Board in writing of such sale. Such notification shall set forth the name of the transferee and his or her mortgagee and transferor, the common address of the Residential Lot purchased by the transferee, the transferee's and the mortgagee's mailing address, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Community Association, the Community Board or the manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor.

16.9 Notices. Mailing addresses may be changed at any time upon written notification to the Community Board. Unless otherwise permitted hereunder, notices shall be in writing and shall be given by certified mail, return receipt requested, overnight courier or personal delivery. Notices shall be deemed received in three (3) days if mailed by certified mail, return receipt requested, one (1) business day after deposit with an overnight courier or upon receipt if delivered in person. All notices to the Community Association shall be delivered to the current addresses of the Community Association. All notices to an Owner shall be delivered to a Residential Lot unless an Owner notifies the Community Association in writing of a change of address.



16.10 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

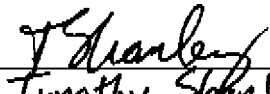
16.11 Exhibits. All exhibits referred to are attached to this Declaration and incorporated by reference.

[Remiander of Page Intentionally Left Blank]

16.12 Binding Effect. This Declaration shall inure to the benefit of and be binding on the successors and assigns of the Declarant, and the heirs, personal representatives, grantees, tenants, successors and assigns of the Owners.

IN WITNESS WHEREOF, the undersigned, as Declarant, has executed this Declaration as of the date first set forth above.

REAL ESTATE COLLATERAL MANAGEMENT  
COMPANY, a Delaware corporation

By:   
Name: Timothy Stanley  
Title: VP

**DON HUBBARD  
CONTRACTING CO**  
LICENSE No. 172638A

# Fax

To: Kevin Sullivan **From: JASON HUBBARD**  
 Morrow Development

---

Fax: 929-2705 **Pallas: 2**

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**Phone:** 929-2701 **Date:** 5/12/2004

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**Re: POINSETTIA LANE** **CC:**

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\*or Review  **Please Comment**  As Requested  **For Your Use**

**Comments:**

Kevin -

Change Order #10 includes several tasks completed over the last couple of weeks, Call me if you have questions.

---

**1015-A LINDA VISTA DRIVE  
 SAN MARCOS, CA 92069  
 OFFICE (760) 736-3241 FAX (760) 736-3248**



Client: MORROW DEVELOPMENT (Kevin Sullivan)

Date: 5112104

Project Name: Villages of La Costa - Poinsettia Lane

Contract No: 587

Change Order Request #10

Response Needed by: 5113104

Improvement Plan Reference No: 6, 11, 12

A series of tasks were **completed** not covered in the contract, (1) In the installation of the 8" recycled water line across El Camino **Real** an unmarked concrete encased utility was discovered in conflict which delayed work crews and resulted in its removal. (2) Connection of the 8" recycled water branch line in Alicante North. (3) Sower pipe in the southern Alicante intersection was damaged by Schilling and repaired by our crews at no cost; However, Schilling later poured concrete on top of the repair coupling in the installation of their conduits. This installation method caused a deflection in the sewer pipe requiring it to be repaired again to pass City inspection. (4) Relocation of a 2" irrigation service at 51+38, just east of the pump station.

Additions and deductions are as follows:

Concrete Encased Utility Removal	<b>\$2,539.36/LS</b>	<b>+52,639.36</b>
Water Tie-In at Alicante North (Recycled)	<b>\$1,638.83/LS</b>	<b>41,638.83</b>
Sewer <b>Repair</b> at Alicante	\$1,676.78/LS	<b>+\$1,676.78</b>
Relocate 2" Irrigation Service	\$753.20/LS	<b>+\$753.20</b>
	<b>TOTAL</b>	<b>+\$6,608.17</b>

Originator: Jason Hubbard

Reviewed By: Don Hubbard Jr.

Reply:

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Prepared By:.....

Approved By:..... Date:

STATE OF \_\_\_\_\_ )

ss.

COUNTY OF Oak )

On \_\_\_\_\_ personally appeared \_\_\_\_\_  
\_\_\_\_\_ personally known to me (or proved to me  
on the basis of satisfactory evidence) to be the person whose name(s) are/is subscribed to the  
within instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity, 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.

Signature Diana C. Moreno  
DIANA C. MORENO

OFFICIAL SEAL:  
DIANA C MORENO  
NOTARY PUBLIC # \_\_\_\_\_ P#ATU OF ILLINOIS  
MY COMMISSION EXPIRES: \_\_\_\_\_

## CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF ILLINOIS )  
COUNTY OF COOK )

On September 29, 2003 before me, Diana C. Moreno , a notary public in and for said County and State, personally appeared Timothy P. Shanley 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.

Rev. 9129199




**OFFICIAL SEAL..**  
**DIANA C MORENO .**  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY **C rat** Nib: 40004

SUBORDINATION AGREEMENT

The undersigned, as assignee and holder of the beneficial interest in that certain Deed of Trust dated November 5, 1998 and recorded in the Office of the County Recorder of San Diego County on November 17, 1998 as Instrument No. 88-592631, as amended hereby declares that the lien and charge of the Deed of Trust are and shall be subordinate to the Declaration of Covenants, Conditions and Restrictions for La Costa Oaks recorded in the Office of the County Recorder of San Diego County to which this Subordination Agreement is attached.

Dated: 7/03

HFC COMMERCIAL REALTY, INC.,  
a Delaware corporation

By:   
Name: Timothy Shanley  
Title: VP

STATE OF Illinois )  
COUNTY OF \*L. ) ss.

On . . . . b are j . e . , 4 J 2(rial"t), personally appeared personally known to me (or proved to me on the basis of sans actory evidence) to . the person whose name(s) are/is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, 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 hand and official seal.

Signature \_\_\_\_\_ @, YI/tit (SEAL)

**OFFICIAL SEAS**  
**DIANA C MOREIO**  
NOTARY MIOUC, STATE OF ILLINOIS  
MY COMMISSION 1010410



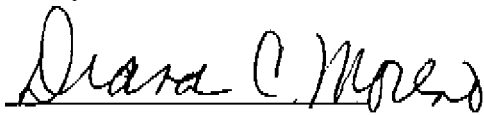
CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF ILLINOIS )  
COUNTY OF COOK )

On September 29, 2003 before me, Diana C. Moreno , a notary public in and for said County and State, personally appeared Timothy P. Shanley 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,

Rcv. 9119/99



**OFFICIAL SEAL**  
**DIANA C MORENO**  
NOTARY PUBLIC STATE OF ILLINOIS  
COMM. NO. 10104, OS

LIST OF EXHIBITS

Exhibit A..... Legal Description of Covered Property Initially Subject to this Declaration  
Exhibit **B**.....Additional Property  
Exhibit B-1.....Plat of Additional Property  
Exhibit C.....Habitat Preserve Areas  
Exhibit D..... Habitat Preserve Restrictions  
Exhibit E..... Educational Materials  
Exhibit F.....Fire Suppression Zones  
Exhibit **G**.....Invasive Species  
Exhibit H.....Dam Inundation Areas

**EXHIBIT "A"****cOVERED PROPERTY INITALLY SUBJECT TO THIS DECLARATION**

Lots 1 through 172 inclusive, Lot 179, Lot 180, Lot 182 through 188 inclusive, Lots 190 through 193 inclusive, Lot 197 and Lot 198 of Carlsbad Tract 99-04-01. La Costa Oaks South, in the City of Carlsbad, County of San Diego, State of California, according to the map thereof No. 14379 filed in the Office of the County Recorder of San Diego County, April 29, 2002.

Lots 1 through 97 inclusive, of Carlsbad Tract 02-03. La Costa Oaks South, in the City of Carlsbad, County of San Diego, State of California, according to the map thereof No. 14604 filed in the Office of the County Recorder of San Diego County, June 3, 2003,

Lots 1 through 68 inclusive, of Carlsbad Tract 02-04. La Costa Oaks South, in the City of Carlsbad, County of San Diego, State of California, according to the map thereof No. 14617 filed in the Office of the County Recorder of San Diego County, June 23, 2003.

Lots 1 through 103 inclusive, of Carlsbad Tract 02-05. La Costa Oaks South, in the City of Carlsbad, County of San Diego, State of California, according to the map thereof No. 14618 filed in the Office of the County Recorder of San Diego County, June 23, 2003.

## EXHIBIT "B"

Additional Property

THAT PORTION OF THE SOUTHEAST QUARTER AND THE NORTHEAST QUARTER OF SECTION 30, AND THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29, AND THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 29, AND THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 32, ALL IN TOWNSHIP 12 SOUTH, RANGE 3 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 29, AS SHOWN AND ACCEPTED ON THAT RECORD OF SURVEY NO. 17206, FILED IN THE OFFICE OF SAID COUNTY RECORDER NOVEMBER 29, 2001; THENCE ALONG THE EASTERLY BOUNDARY OF SAID RECORD OF SURVEY NO. 17206, NORTH 00°08'32" EAST, 14.93 FEET; THENCE LEAVING SAID EASTERLY BOUNDARY NORTH 89°53'55" WEST, 260.11 FEET TO A POINT ON A NON-TANGENT 360.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY, A RADIAL TO SAID POINT BEARS NORTH 72°19'28" EAST; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 37°39'04" A DISTANCE OF 236.57 FEET; THENCE TANGENT NORTH 55°19'36" WEST, 175.71 FEET TO A TANGENT 60.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 24°29'41" A DISTANCE OF 25.65 FEET TO A POINT ON A REVERSING 40.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 24°29'41" A DISTANCE OF 17.10 FEET; THENCE TANGENT NORTH 55°19'36" WEST, 49.07 FEET TO A TANGENT 25.00 FOOT RADIUS CURVE, CONCAVE EASTERLY; THENCE NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 89°37'48" A DISTANCE OF 39.11 FEET TO A POINT ON A COMPOUND 65.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 15°41'48" A DISTANCE OF 17.81 FEET; THENCE TANGENT NORTH 50°00'00" EAST, 21.00 FEET TO A TANGENT 85.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 15°19'36" A DISTANCE OF 22.74 FEET; THENCE TANGENT NORTH 34°40'24" EAST, 59.69 FEET TO A TANGENT 85.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 15°20'24" A DISTANCE OF 22.76 FEET; THENCE TANGENT NORTH 19°20'00" EAST, 21.38 FEET TO A TANGENT 65.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 15°20'24" A DISTANCE OF 17.40 FEET; THENCE TANGENT NORTH

EXHIBIT "B"

34°40'24" EAST, 10.25 FEET TO A TANGENT 1863.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 28°51'00" A DISTANCE OF 938.07 FEET TO A POINT ON A REVERSING 165.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 15°53'35" A DISTANCE OF 45.77 FEET TO A POINT ON A REVERSING 165.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 18°55'02" A DISTANCE OF 54.48 FEET TO A POINT ON A COMPOUND 1878.00 FOOT RADIUS CURVE, CONCAVE WESTERLY; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 05°50'45" A DISTANCE OF 191.61 FEET TO A POINT ON A REVERSING 25.00 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY AND EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 87°30'05" A DISTANCE OF 38.18 FEET; THENCE TANGENT NORTH 84°27'17" EAST, 149.52 FEET TO A POINT ON THE EASTERLY BOUNDARY OF SAID RECORD OF SURVEY NO. 17206; THENCE ALONG THE EASTERLY AND NORTHEASTERLY BOUNDARY OF SAID RECORD OF SURVEY NO. 17206, NORTH 00°08'32" EAST, 66.61 FEET; THENCE NORTH 89°25'03" WEST, 585.47 FEET; THENCE NORTH 35°25'54" WEST, 286.43 FEET TO A POINT ON A NON-TANGENT 1000.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY, A RADIAL TO SAID POINT BEARS SOUTH 31°03'20" WEST; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11°04'23" A DISTANCE OF 193.26 FEET; THENCE TANGENT NORTH 47°52'17" WEST, 400.09 FEET TO A TANGENT 400.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 12°57'53" A DISTANCE OF 90.51 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF LOT 233 OF MAP NO. 14379, IN THE CITY OF CARLSBAD, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON APRIL 29, 2002; THENCE LEAVING SAID NORTHEASTERLY BOUNDARY OF SAID RECORD OF SURVEY NO. 17206, ALONG THE EASTERLY BOUNDARY LINE OF SAID MAP NO. 14379 AND NON-TANGENT TO SAID CURVE. SOUTH 00°14'35" WEST, 170.13 FEET; THENCE SOUTH 70°30'00" WEST, 85.00 FEET; THENCE SOUTH 59°41'32" WEST, 167.00 FEET; THENCE SOUTH 43°42'32" WEST, 260.00 FEET; THENCE SOUTH 13°05'33" EAST, 215.17 FEET; THENCE SOUTH 37°17'02" WEST, 147.00 FEET; THENCE SOUTH 02°00'00" WEST, 187.00 FEET; THENCE SOUTH 61°03'20" EAST, 153.00 FEET; THENCE SOUTH 01°06'10" EAST, 236.00 FEET; THENCE SOUTH 73°14'00" WEST, 140.00 FEET; THENCE SOUTH 41°22'40" WEST, 283.50 FEET; THENCE SOUTH 11°25'00" WEST, 125.00 FEET; THENCE SOUTH 27°00'00" EAST, 213.00 FEET; THENCE SOUTH 57°00'00" EAST, 91.89 FEET; THENCE SOUTH 07°00'00" EAST, 99.87 FEET; THENCE SOUTH 54°00'00" WEST, 242.13 FEET; THENCE SOUTH 25°00'00" WEST, 139.00 FEET; THENCE SOUTH 47°45'00" WEST, 132.50 FEET; THENCE SOUTH 04°45'00" WEST, 46.00 FEET; THENCE SOUTH 26°00'00" EAST, 83.00 FEET; THENCE SOUTH 74°10'00" EAST, 46.00 FEET; THENCE NORTH 72°00'00" EAST, 65.00 FEET; THENCE SOUTH 35°47'00" EAST, 135.00 FEET; THENCE SOUTH 32°00'00" WEST, 154.00 FEET; THENCE SOUTH 63°13'00" WEST, 69.00 FEET;

THENCE SOUTH 49°33'00" WEST, 195.50 FEET; THENCE SOUTH 80°00'00" WEST, 107.50 FEET; THENCE NORTH 85°32'00" WEST, 247.00 FEET; THENCE NORTH 88°43'00" WEST, 110.00 FEET; THENCE NORTH 76°33'30" WEST, 165.00 FEET; THENCE SOUTH 71'16'00" WEST, 70.50 FEET; THENCE NORTH 85°28'30" WEST, 222.00 FEET; THENCE SOUTH 69°20'00" WEST, 98.00 FEET; THENCE SOUTH 66°30'00" WEST, 135.00 FEET; THENCE SOUTH 54°30'00" WEST, 181.00 FEET; THENCE SOUTH 30°55'00" WEST, 263.00 FEET; THENCE SOUTH 07°20'00" WEST, 74.00 FEET; THENCE SOUTH 02'10'24" WEST, 79.23 FEET; THENCE NORTH 89'42'16" EAST, 2210.25 FEET; THENCE SOUTH 89°53'58" EAST, 593.52 FEET; THENCE SOUTH 15°00'00" WEST, 156.80 FEET; THENCE SOUTH 26°00'00" WEST, 65.00 FEET TO A POINT ON THE NORTHERLY LINE OF THAT DEED RECORDED AUGUST 20, 1981 AS FILE NO. 81-266030 OF OFFICIAL RECORDS; THENCE LEAVING SAID EASTERLY BOUNDARY LINE OF SAID MAP NO. 14379 AND FOLLOWING THE NORTHERLY AND NORTHEASTERLY LINES OF SAID DEED, SOUTH 89°53'58" EAST, 209.12 FEET, TO A TANGENT 470.00 FOOT RADIUS CURVE, CONCAVE SOUTHERLY; THENCE EASTERLY AND SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 36°03'42" 42" A DISTANCE OF 295.82 FEET; THENCE SOUTH 53°50'16" EAST, 386.84 FEET; THENCE SOUTH 35°23'44" WEST, 30.75 FEET; THENCE SOUTH 63°42' 16" EAST, 424.16 FEET; THENCE SOUTH 76°40' 16" EAST, 288.30 FEET, TO A POINT ON THE BOUNDARY LINE OF SAID MAP NO. 14379; THENCE ALONG SAID BOUNDARY LINE, NORTH 48°26'40" EAST, 390.95 FEET; THENCE NORTH 00°19'30" WEST, 541.37 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID SECTION 29 AS SHOWN ON SAID RECORD OF SURVEY NO. 17206; THENCE ALONG SAID SOUTHERLY LINE SOUTH 89°27'22" WEST, 892.65 FEET TO THE

**POINT OF BEGINNING.**

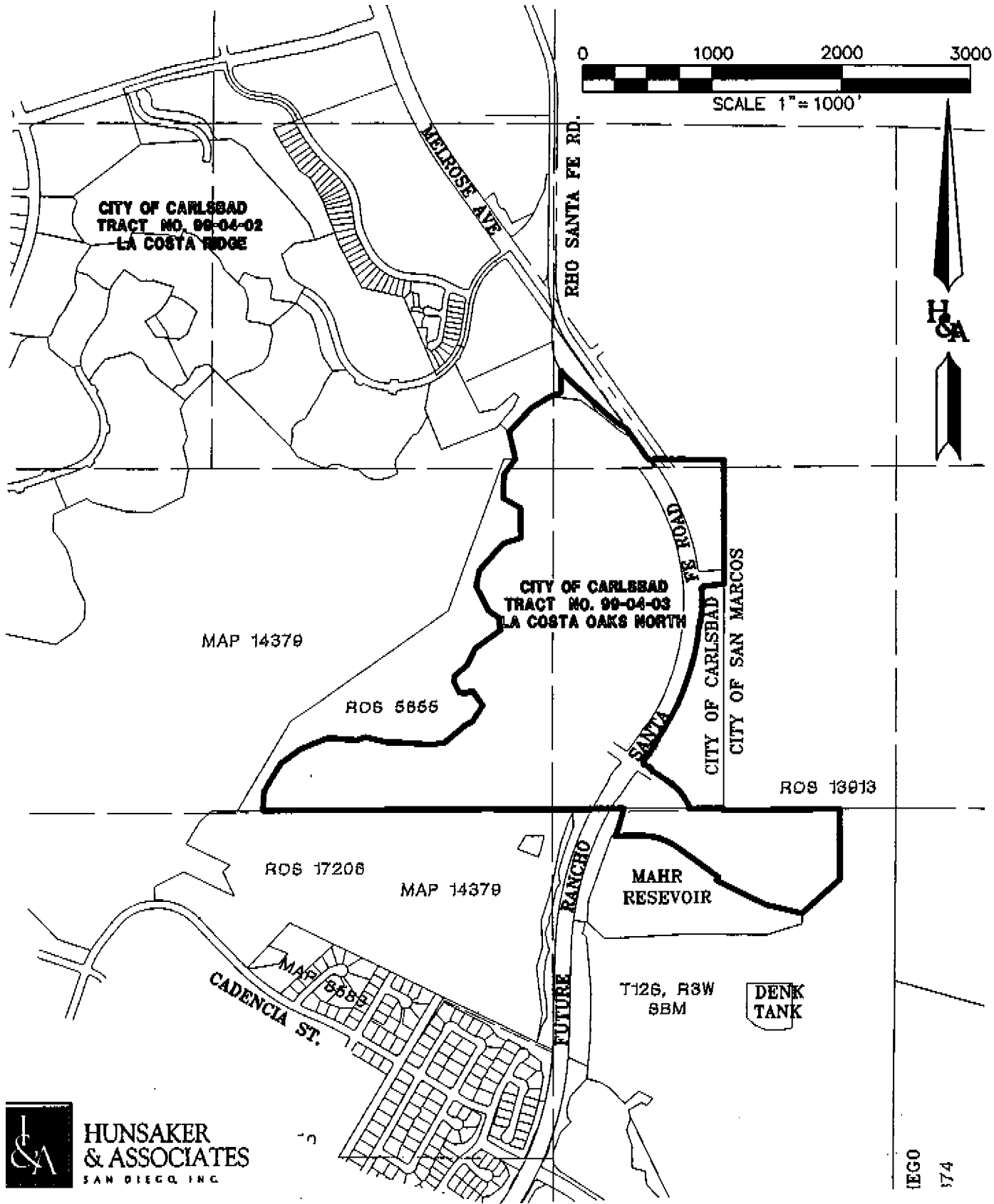
CONTAINING 149.55 ACRES, MORE OR LESS.

**EXHIBIT "B-1"**

**Plat of Additional Property**

**[Attached Hereto]**

**EXHIBIT "B-1"**  
**PLAT OF ADDITIONAL PROPERTY 19 6 55**



**HUNSAKER & ASSOCIATES**  
 SAN DIEGO, INC.

1009 Huimikini said

tNr.awmc sin olbia ti 97th

ax , >> soo. emu, .

174



## EXHIBIT "C"

Habitat Preserve Areas

LOTS 177, 178, 189, 196, 198, 199, 200, 233, 234, 239 And 240 OF CARLSBAD TRACT MAP NO. 99-04-01, VILLAGES OF LA COSTA - LA COSTA OAKS SOUTH, IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 14379, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON APRIL 29, 2002.

EXHIBIT "D"

Habitat Preserve Restrictions

1. All dogs must be leashed.
2. Mountain bikes, off-road vehicles, camping, shooting and hunting are not allowed.
3. Cliff jumping and swimming are strictly prohibited in Box Canyon.

## EXHIBIT "F"

Educational MaterialsBackground

Within your new community is the La Costa Preserve, 1,000 acres of dedicated natural open space which includes the 200-foot deep Box Canyon and its 40-foot waterfall.

The eastern portion of the Preserve forms a core habitat area including a large contiguous stretch of coastal sage scrub, chaparral and natural open space. Two hundred additional acres of off site habitat links this core area with open space to the south, providing an important component to the regional conservation effort to ensure the long-term vitality of key animal species.

The Preserve is expected to protect 18 pairs of threatened California Gnatcatchers and ensure the long-term survival of more than 60 other species including the Del Mar manzanita, thread-leaved brodiaea, summer holly, California adolphia, wart-stemmed ceanothus and sticky-leaved live-forever. The wildlife identified on the Preserve includes coyote, mule deer, bobcat, red-tailed hawks, horned lizards, rufous-crowned sparrow, and orange-throated whiptail.

Management Plan

The Center for Natural Lands Management, a Fallbrook-based non-profit foundation, owns and manages La Costa Preserve, The Center has been responsible for managing natural open space for more than ten years, currently overseeing more than 50,000 acres within 36 preserves throughout California. The Center has teamed with the Batiquitos Lagoon Foundation to utilize the Foundation's vast experience managing the lagoon as part of their collective efforts to protect the Preserve.

Under the Preserve's management plan, the Center's responsibilities will include the inventory and monitoring of important habitat and wildlife populations such as birds, mammals, reptiles, amphibians, invertebrate and sensitive plant species as well as ongoing maintenance of the property including erosion control, fence and gate maintenance, and sign construction and replacement. In addition, the Center will conduct programs including habitat restoration and enhancement, invasive pestlexotic plant species control, plant and animal management, fire management and public education. Morrow Development has established an endowment in excess of \$1.4 million to provide for maintenance of the Preserve in perpetuity.

Designated Uses

To insure the protection of the La Costa Preserve for the enjoyment of all the residents, the following rules have been established:

The Preserve is open for walking, hiking, wildlife viewing and horseback riding on designated trails only. Dogs must be leashed.

- Mountain bikes, off-road vehicles, camping, shooting and hunting are not allowed.
- Cliff jumping and swimming are strictly prohibited in Box Canyon.

Management Contact

Center for Natural Lands Management  
425 East Alvarado Street, Suite H  
Fallbrook, CA 92028-2960  
(760) 731-7790

## EXHIBIT "F"

Fire Suppression Zones

Fire suppression zones are managed strips of land consisting of irrigated zones and dry or thinning zones of varying width, depending on local conditions. Therefore, fire suppression zones, if applicable, will vary from lot to lot. Additionally, within the fire suppression zones sub-zones exist, again depending on specific site conditions. The site conditions are broken into two distinct categories, Manufactured Slopes - Condition A, or Native Slopes - Condition B. The sub-zones are shown on page 4 of this Exhibit F, and described as follows:

1. Condition A --- Manufactured Slope Fire Protection
  - a. Section A-1 - measured horizontally 20 feet outward from the outlying edge of structure(s),
    - Planted with groundcover or low growing shrub species (less than three (3) feet in height) known to have fire retardant qualities.
    - No trees or shrubs allowed.
    - No structures allowed including patio trellises, arbors, fire pits, gazebos, enclosed porches and balconies.
    - Irrigated.
  - b. Section A-2 - measured horizontally 20 feet outward from the outlying edge of Section A-1.
    - Planted with low water use naturalizing plant species known to have low fuel characteristics.
    - No trees allowed.
    - Irrigated.
  - c. Section A-3 --- measured outward from the outlying edge of A-2 to include the remainder of the area between Section A-2 and high-risk fire areas. Horizontal distance from the structure(s) to untreated high-risk areas shall not be less than 60 feet.
    - Planted with low water use naturalizing plant species known to have low fuel characteristics.
    - Trees are allowed, but shall not be planted closer than 20 feet apart.
    - Irrigated.

## 2. Condition B - Native Slopes - Wild Land Fire Suppression

Pertains to areas where removal of environmentally sensitive native vegetation is restricted within the fire sections.

a. Section B-1 - measured 20 feet horizontally from the outlying edge of the structure(s) toward the environmentally restricted area as defined by the City.

- + Removal of "high fuel and moderate hazard species."
- Planting with groundcover or low growing shrub species (less than three feet in height) known to have fire retardant qualities or as otherwise required by the City.
- No trees or shrubs allowed.
- + No structures allowed including patio trellises, arbors, fire pits, gazebos, enclosed porches and balconies.
- Irrigated.

b. Section B-2 - measured horizontally 20 feet outward from the outlying edge of Section B-1.

- Removal of "high fuel species."
- Removal of selective pruning of up to 60 percent of the volume of the "moderate fuel species."
- Replanting with naturalizing low fuel species.
- Trees and large tree form shrubs (e.g., Oaks, Sumac, Toyon) *which* are being retained shall be pruned to provide clearance equal to three times the height of the surrounding understory plant material or six feet, whichever is higher. Dead and excessively twiggy growth shall also be removed.
- + Temporarily irrigated.

c. Section B-3 - measured horizontally 20 feet outward from the outlying edge of Section B-2. The outer edge of B-3 shall extend horizontally to a point at least 60 feet from structures.

Removal of "high fuel species."

Removal by selective pruning of up to 40 percent of the volume of the "moderate fuel species."

Trees and large tree form shrubs (e.g., Oaks, Sumac, Toyon) which are being retained shall be pruned to provide clearance equal to three times the height of the

EXHIBIT "F"

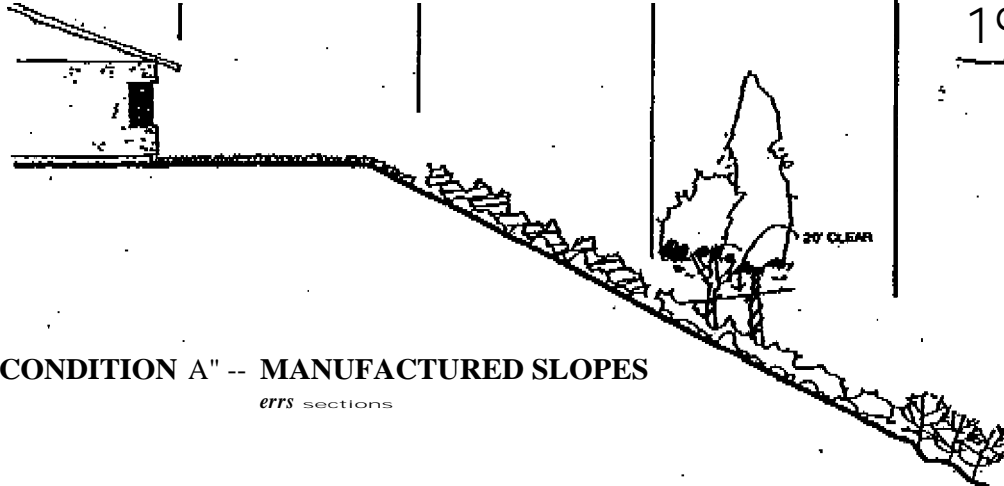
surrounding understory plant material or six feet, whichever is higher. Dead and excessively twiggy growth shall also be removed.

- Not irrigated.

3. All homeowner or Community Association fencing situated on land which is included within Condition A (Manufactured Slope - Fire Protection) or Condition B (Native Slopes - Wild Land Fire Suppression) shall be constructed of non-combustible material. Specifically, no wood fencing is permitted in such areas.

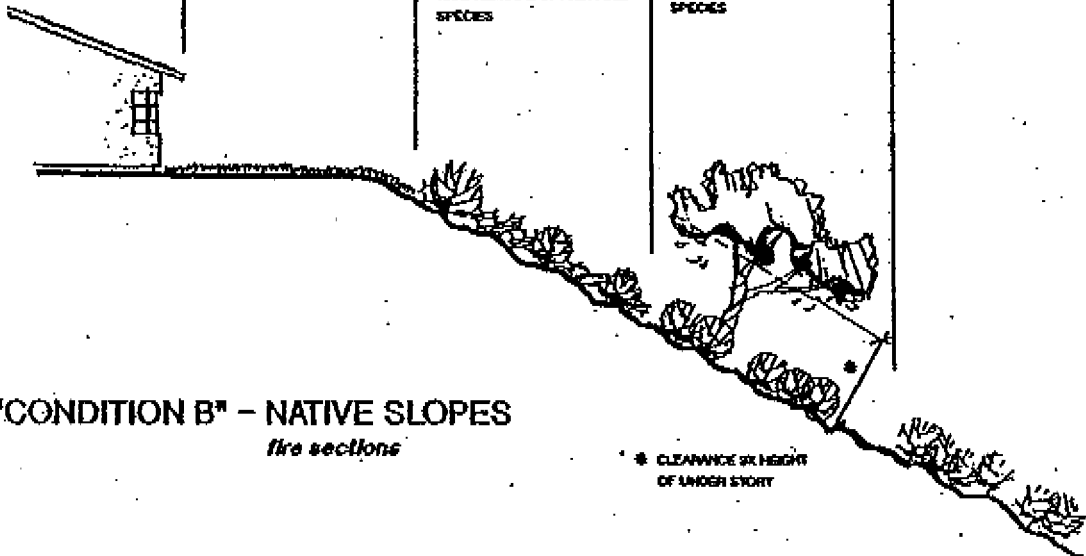
SECTION	A-1	A-2	A-3	NATIVE
ir a, tion		s	2w r's	arpIUIREVEOI
Plantin <sup>ec</sup>	• FFIE *E'rfit4o f NG TREES OR SHFIT S	lbw FUEL • Hd4R*lkf1G • NJITTES	Ludt Furj rFURNIZINrt • IMES 110 QOSH 1R II	NIA

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"CONDITION A" -- MANUFACTURED SLOPES  
eris sections

SECTION	B-1	B-2	B-3	NATIVE
irrigation	YES	YES, TEMPORARY	NO	• FRESHWATER
planting	• FIRE RETARDANT • NO TREES OR SHRUBS • REMOVAL OF HIGH FUEL SPECIES	• LOW FUEL SPECIES • SELECTIVE PRUNING OF 80% OF THE MODERATE FUEL SPECIES VOLUME • 100% REMOVAL OF HIGH FUEL SPECIES	• NONE • SELECTIVE PRUNING OF 40% OF THE MODERATE FUEL SPECIES VOLUME • 100% REMOVAL OF HIGH FUEL SPECIES	• N/A



"CONDITION B" -- NATIVE SLOPES  
fire sections

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# 19664

## EXHIBIT "C"

### Invasive Species

Acacia app.	Wattle, acacia
Agrostis avonacea	Pacific bent grass
Agrostis stolonifera	Pacific bent grass
Anagallis arvensis	Scarlet pimpernel
Aptenia cordifolia	Red apple ice plant
Atriplex semibaccata	Australian salt brush
Arundo donax	Giant reed
Brassica nigra	Black mustard
Carpobrotus edulis	Ice plant
Cirsium vulgare	Bull thistle
Cortaderia jubata	Andean pampas grass
Cortaderia selloana	Pampas grass
Cynodon dactylon	Bermuda grass
Cyperus involucratus	African umbrella plant
Eucalyptus globules & other species	Tasmanian blue gumleucalyptus
Foeniculum vulgare	Fennel
Lepidium latifolium	Perennial pepper weed
Nictiana glauca	Tree tobacco
Pennisetum clandestinum	Kikuyo grass
Pennisetum setaceum	Fountain grass
Polypogon monspeliensis	Annual beard grass/rabbit s foot
Ricinus communis	Castor-bean
Schinus molle	Peruvian peppertree
Schinus terebinthifolius	Brazilian pepper
Tamarix spp.	Tamarish, salt cedar
Washingtonia filifera	Fan palm
Xanthium strumarium	Cocklebur

EXHIBIT "H"

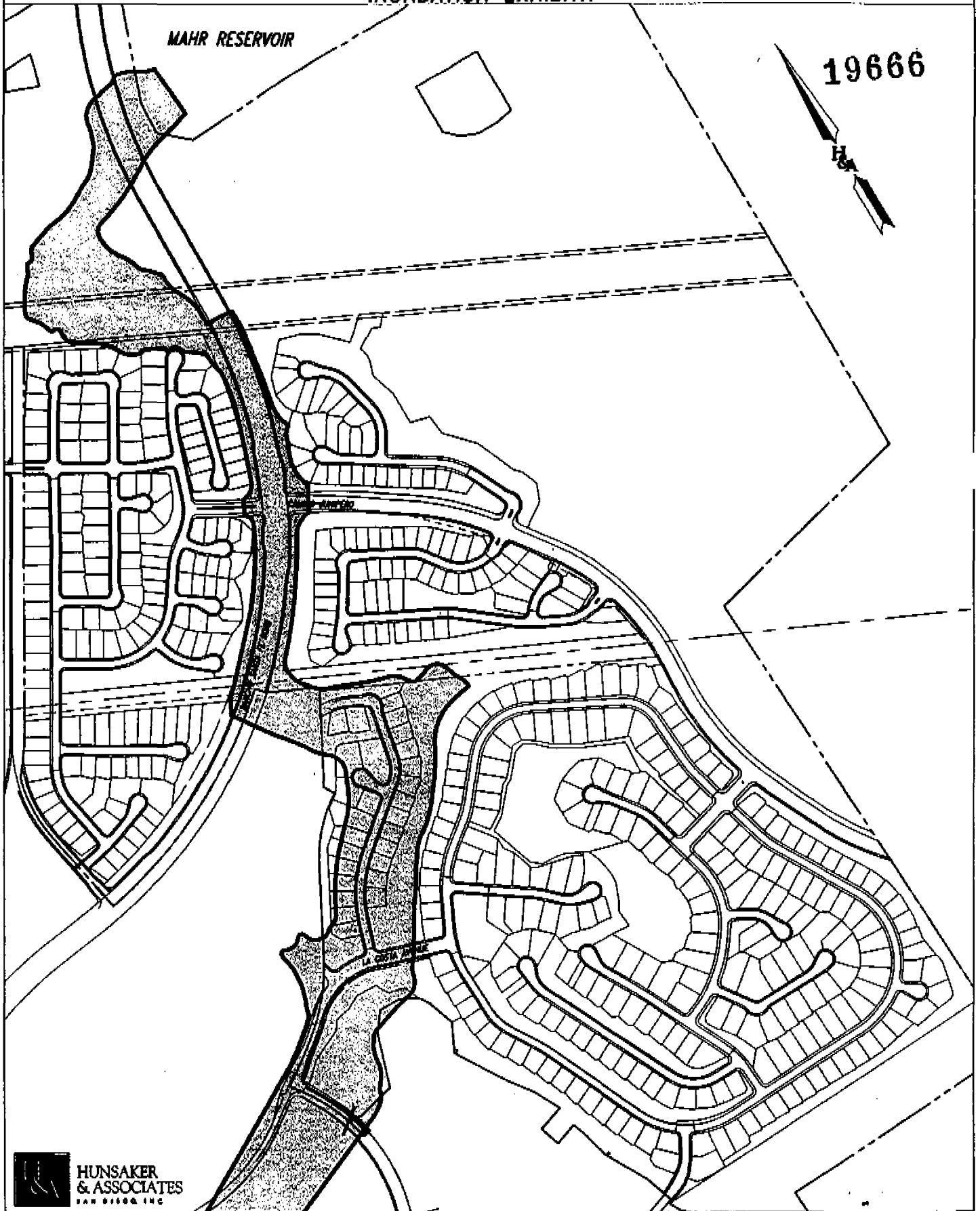
Dam Inundation Areas

[Attached Hereto]

VILLAGES OF LA COSTA - THE OAKS SOUTH  
INUNDATION EXHIBIT

MAHR RESERVOIR

19666



 HUNSAKER  
& ASSOCIATES  
SAN DIEGO, INC

PLANNING 1000 Massachusetts Street

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W.D. NO. 2352-5