

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