

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,