

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