

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.