

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.