

9.4 Individual Insurance. Each Owner shall maintain property insurance against losses to real and personal property located within the Residential Lot, including the Residence and to any upgrades or Improvements to any fixtures or Improvements located within the Residential Lot and liability insurance against any liability resulting from any injury or damage occurring within the Residential Lot. The Community Association's insurance policies will not provide coverage against any of the foregoing. All Owners hereby waive all rights of subrogation against the Community Association, and any insurance maintained by an Owner must contain a waiver of subrogation rights by the insurer as to the Community Association; provided, however, that a failure or inability of an Owner to obtain such a waiver shall not defeat or impair the waiver of subrogation rights between the Owners and the Community Association set forth herein. If any Owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Community Association, the Owner will be liable to the Community Association to the extent of the diminution. The Community Association may levy a Special Services Assessment against the Owner's Residential Lot to collect the amount of the diminution,

9.5 Condemnation. If the Community Association Property or any portion thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the award or consideration for such taking or transfer shall be paid to and belong to the Community Association.

ARTICLE 10

DESTRUCTION OF IMPROVEMENTS

The Community Association will have certain obligations if there is damage or destruction to Community Association Property or Common Maintenance Areas. As an Owner, you will also have certain obligations if your Residence or other Improvements are destroyed. This Article describes those obligations and responsibilities.

10.1 Restoration of Improvements. In the event of partial or total destruction of Improvements upon the Community Association Property, it shall be the duty of the Community Association to restore and repair the same to its former condition (or a condition substantially similar to the former condition or as may be required to comply with the current Governmental Regulations) as promptly as practical, as hereinafter set forth.

10.1.1 Insurance Proceeds Adequate. If the cost of repairing or rebuilding the Community Association Property does not exceed the amount of insurance proceeds initially offered or paid by the insurance carrier by more than ten percent (10%) of the cost of **reconstruction, then the following shall apply:**

(a) All insurance proceeds shall be paid to a commercial bank or trust company designated by the Community Board to be held for the benefit of the Community Association and the Owners and their Mortgagees, as their interests shall appear.

(b) **The Community Board shall** levy a Reconstruction Assessment against the Owners in the same manner as provided in Article 5 equal to the difference between the cost of repairing or rebuilding and the amount of available insurance proceeds, which sums shall be payable into the fund held by the insurance trustee. The Community Board may advance the amount of the Reconstruction Assessment to the insurance trustee from the Community Association's Maintenance Funds or Reserves.

(c) When the amount held by the insurance trustee is sufficient to pay the costs of repair and reconstruction, the Community Board shall thereupon contract for the repair or reconstruction of the Improvements, paying the cost of such work from the amount held by the insurance trustee, said repair or reconstruction to be for the purpose of returning the Improvements substantially to their appearance and condition immediately prior to the casualty.

(d) The Community Association may rebuild such damaged or destroyed common facilities in a different manner, or in a different location on the Community Association Property, provided that such Community Board action shall require consent of at least eighty percent (80%) of the Community Board. If the Community Board cannot reach such an eighty percent (80%) decision, any such change shall require the vote or written assent of the Members representing at least a majority of the Voting Power of the Community Association, and the written consent of a majority of the Mortgagees. In any event, if such changed plans require additional capital so as to constitute a Capital Improvement Assessment, the written assent of the Members, cast through Delegates, representing at least a majority of the Voting Power of the Community Association must be obtained if so required by the requirements of Article 4 of this Declaration.

10.1.2 Insurance Proceeds Inadequate. If the cost of such repairing or rebuilding exceeds the amount of available insurance by more than ten percent (10%) of the cost of reconstruction, then all insurance proceeds shall be deposited as provided in the Section above entitled "Insurance Proceeds Adequate" and the Community Board shall require a determination by written assent or vote of the Members representing at least a Majority of the Voting Power as to whether a Reconstruction Assessment equal to the difference between available insurance proceeds and the cost of such repairing or rebuilding shall be levied. Such majority vote must include at least a two-thirds (2/3rds) majority of the Class A Members. If the Members determine not to levy such assessment, then the Community Board shall use the insurance proceeds available to make such restoration or repair as soon as reasonably possible or to clear the site of the damaged improvements and landscape the site for park and the costs thereof shall be paid for with the insurance proceeds and in such case, any deficiency to remove the damaged Improvements and install landscaping may be raised by **borrowing such proceeds and** levying the finance and other costs thereof as part of a Reconstruction Assessment or by paying such costs directly and levying a Reconstruction Assessment in an amount determined by the Community Board. In the event any excess insurance proceeds remain, the Community Board, in its sole discretion, may retain such sums in the general funds of the Community Association or distribute pro-rata all or a portion thereof to the Members, subject to the prior rights of Mortgagees whose interest may be protected by insurance policies carried by the Community Association. The rights of the Owner and the Mortgagee of his or her Lot as to such pro-rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

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.