



**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

304 B

**SUBMITTAL DATE**

**FROM:** TLMA – Transportation Department

**SUBJECT:** Approval of the Final Map for **Tract 29597-1** A Schedule "A" Subdivision in the Highgrove Area, 2<sup>nd</sup> District/ 2<sup>nd</sup> District [\$0]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Improvement Agreements and Securities as approved by County Counsel; and
2. Approve the Final Map; and
3. Authorize the Chairman of the Board to sign the Improvement Agreements, and Final Map for Tract Map 29597-1.

**BACKGROUND:**

**Summary**

Tentative Tract Map 29597 was approved by the Board of Supervisors on September 9<sup>th</sup>, 2003, as Agenda Item 16.4. This phase 1 of Tract 29597 is a 38.178 acre subdivision that is creating 109 new residential lots in the Highgrove area. This Final Map complies in all respects with the provisions of Division 3 of Title 15 of the Government Code and applicable local ordinances. All necessary conditions of approval have been satisfied and departmental clearances have been obtained to allow for the recordation of the final map.

  
Patricia Romo  
Assistant Director of Transportation

Juan C. Perez, Director of Transportation and Land Management

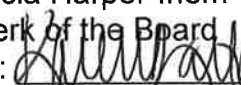
HS:lf

Submittals: Final Map  
Road/Drainage Improvement Agreements  
Water System Improvement Agreements  
Sewer System Improvement Agreements  
Monumentation Agreements

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Tavaglione, seconded by Supervisor Benoit and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Stone, Benoit and Ashley  
Nays: None  
Absent: None  
Date: September 9, 2014  
xc: Transp., COB

Kecia Harper-Ihem  
Clerk of the Board  
By:   
Deputy

2-30

REVIEWED BY EXECUTIVE OFFICE

DATE 9/25/14 my  
Tina Grande

FORM APPROVED COUNTY COUNSEL  
BY:   
ANNA W. WANG  
Departmental Concurrence

Dep't Recomm.:  Consent  
Per Exec Ofc.:  Consent  
 Policy  
 Policy

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**FORM 11:** Tract 29597-1 - Schedule "A" Subdivision in the Highgrove Area, 2<sup>nd</sup> District/ 2<sup>nd</sup> District [\$0]

**DATE:**

**PAGE:** 2 of 2

**BACKGROUND:**

**Summary (continued)**

SMR Phase 1 Joint Venture LLC desires to enter into Improvement Agreements to guarantee the construction of the required improvements and has submitted Improvement Agreements and Securities which have been approved by County Counsel. All costs for improvements will be the responsibility of the developer. The securities posted by Westchester Fire Insurance Company are as follows:

\$2,011,500 for the completion of street improvements

\$262,500 for the completion of the water system

\$319,000 for the completion of the sewer system

\$135,360 for the completion of the monumentation

**AGREEMENT  
FOR THE CONSTRUCTION OF ROAD/DRAINAGE IMPROVEMENTS**

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and Sub Phase I Joint Venture LLC, a Delaware Limited Liability Co., hereinafter called Contractor.

**WITNESSETH:**

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as **Tract 29597-1**, hereby agrees, at Contractor's own cost and expense, to furnish all labor, equipment and materials necessary to perform and complete, within **24** months from the date this agreement is executed, in a good and workmanlike manner, all road and drainage improvements in accordance with those Road Plans for said land division which have been approved by the County Director of Transportation, and are on file in the office of the Riverside County Transportation Department, and do all work incidental thereto in accordance with the standards set forth in Riverside County Ordinance No. 461, as amended, which are hereby expressly made a part of this agreement. All the above required work shall be done under the inspection of and to the satisfaction of the County Director of Transportation, and shall not be deemed complete until approved and accepted as complete by the County. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. Contractor further agrees that all underground improvements shall be completed prior to the paving of any roadway. The estimated cost of said work and improvements is the sum of **Two million eleven thousand five hundred and no/100 Dollars (\$2,011,500.00)**.

SECOND: Contractor agrees to pay to County the actual cost of such inspections of the work and improvements as may be required by the Director of Transportation. Contractor further agrees that, if suit is brought upon this agreement or any bond guaranteeing the completion of the road and drainage improvements, all costs and reasonable expenses and fees incurred by County in successfully enforcing such obligations shall be paid by Contractor, including reasonable attorney's fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

THIRD: County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the works specified in this agreement prior to the completion and acceptance thereof, nor shall County or any officer or employee thereof, be liable for any persons or property injured by reason of the nature of the work, or by reason of the acts or omissions of Contractor, its agents or employees, in the performance of the work, and all or said liabilities are assumed by Contractor. Contractor agrees to protect, defend, and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Contractor, its agents and employees, in the performance of this agreement or arising out of the use of any patent or patented article in the performance of this agreement.

FOURTH: The Contractor hereby grants to County, or any agent or employee of County, the irrevocable permission to enter upon the lands of the subject land division for the purpose of completing the improvements. This permission shall terminate in the event that Contractor has completed work within the time specified or any extension thereof granted by the County.

FIFTH: The Contractor shall provide adequate notice and warning to the traveling public of each and every

hazardous or dangerous condition caused or created by the construction of the works of improvement at all times up to the completion and formal acceptance of the works of improvement. The Contractor shall protect all persons from such hazardous or dangerous conditions by use of traffic regulatory control methods, including, but not limited to, stop signs, regulatory signs or signals, barriers, or detours.

SIXTH: Contractor, its agents and employees, shall give notice to the Director of Transportation at least 48 hours before beginning any work and shall furnish said Director of Transportation all reasonable facilities for obtaining full information with respect to the progress and manner of work.

SEVENTH: If Contractor, its agents or employees, neglects, refuses, or fails to prosecute the work with such diligence as to insure its completion within the specified time, or within such extensions of time which have been granted by County, or if Contractor violates, neglects, refuses, or fails to perform satisfactorily any of the provisions of the plans and specifications, Contractor shall be in default of this agreement and notice of such default shall be served upon Contractor. County shall have the power, on recommendation of the Director of Transportation, to terminate all rights of Contractor because of such default. The determination by the Director of Transportation of the question as to whether any of the terms of the agreement or specifications have been violated, or have not been performed satisfactorily, shall be conclusive upon the Contractor, and any and all parties who may have any interest in the agreement or any portion thereof. The foregoing provisions of this section shall be in addition to all other rights and remedies available to County under law. The failure of the Contractor to commence construction shall not relieve the Contractor or surety from completion of the improvements required by this agreement.

EIGHTH: Contractor agrees to file with County, prior to the date this agreement is executed, a good and sufficient improvement security in an amount not less than the estimated cost of the work and improvements for the faithful performance of the terms and conditions of this agreement, and good and sufficient security for payment of labor and materials in the amount prescribed by Article XVII of Riverside County Ordinance 460 to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California. Contractor agrees to renew each and every said bond or bonds with good and sufficient sureties or increase the amount of said bonds, or both, within ten (10) days after being notified by the Director of Transportation that the sureties or amounts are insufficient. Notwithstanding any other provisions herein, if Contractor fails to take such action as is necessary to comply with said notice, Contractor shall be in default of this agreement unless all required improvements are completed within ninety (90) days of the date on which the Director of Transportation notified Contractor of the insufficiency of the security or the amount of the bonds or both.

NINTH: It is further agreed by and between the parties hereto, including the surety or sureties on the bonds securing this agreement, that, in the event it is deemed necessary to extend the time of completion of the work contemplated to be done under this agreement, extensions of time may be granted, from time to time, by County, either at its own option, or upon request of Contractor, and such extensions shall in no way affect the validity of this agreement or release the surety or sureties on such bonds. Contractor further agrees to maintain the aforesaid bond or bonds in full force and effect during the terms of this agreement, including any extensions of time as may be granted therein.

TENTH: It is understood and agreed by the parties hereto that if any part, term or provision of this agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain that particular part, term or provision held to be invalid.

ELEVENTH: Any notice or notices required or permitted to be given pursuant to this agreement shall be

served on the other party by mail, postage prepaid, at the following addresses:

County  
Construction Engineer  
Riverside County Transportation Dept.  
2950 Washington Street  
Riverside, CA 92504

Contractor  
SMR Phase 1 Joint Venture LLC  
A Delaware Limited Liability Co.  
36310 Inland Valley Dr.  
Wildomar, CA 92595

IN WITNESS WHEREOF, Contractor has affixed his name, address and seal.

SMR Phase 1 Joint Venture, LLC  
By: KB Home Spring Mountain, LLC, it's Operating  
Member  
By: \_\_\_\_\_, Authorized Agent  
Michael H. Freeman Jr.

COUNTY OF RIVERSIDE

By Jeff Stone  
JEFF STONE  
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

KECIA HARPER-IHEM,  
Clerk of the Board

By [Signature]  
Deputy

APPROVED AS TO FORM

County Counsel  
By \_\_\_\_\_

SIGNATURES OF CONTRACTOR MUST BE ACKNOWLEDGED BY NOTARY  
AND EXECUTED IN TRIPPLICATE

Revised 09/29/09

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**CIVIL CODE § 1189**

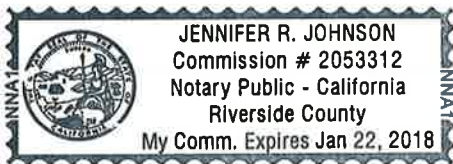
State of California

County of Riverside }

On July 3, 2014 before me, Jennifer R. Johnson, Notary Public  
*Date Here Insert Name and Title of the Officer*

personally appeared

Michael H. Freeman Jr.  
*Name(s) of Signer(s)*



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature: \_\_\_\_\_

*Signature of Notary Public*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_

- |  |  |
|--|--|
| <input type="checkbox"/> Corporate Officer — Title(s): _____   | <input type="checkbox"/> Corporate Officer — Title(s): _____   |
| <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General | <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General |
| <input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact                        | <input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact                        |
| <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator                    | <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator                    |
| <input type="checkbox"/> Other: _____  | <input type="checkbox"/> Other: _____  |

Signer Is Representing: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**AGREEMENT  
FOR THE CONSTRUCTION OF WATER SYSTEM IMPROVEMENTS**

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and SMR Phase I Joint Venture LLC, a Delaware limited liability Co., hereinafter called Contractor.

**WITNESSETH:**

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as **Tract 29597-1**, hereby agrees, at Contractor's own cost and expense, to construct or cause to have constructed, within 24 months from the date this agreement is executed, in a good and workmanlike manner, a water distribution system, complete with all necessary pipes, valves, fire hydrants, connections and appurtenances necessary to the satisfactory operation of said distribution system, and, further, to extend main or mains from the existing supply system maintained and operated by **Riverside Highland Water Company** to connect with the distribution system described above with all pipe laid at such a depth as to provide a full thirty-six inch (36") minimum cover from the top of the pipe to street grade, unless otherwise specified by the Director of Transportation, all in accordance with those plans and specifications which have been approved by both the County Health Director and Director of Transportation, and are on file in the office of the Riverside County Transportation Department. Said approved plans and specifications are hereby made a part of this agreement as fully as though set forth herein. All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Director of Transportation and the County Health Officer, and shall not be deemed complete until approved and accepted as complete by the County. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. Contractor further agrees that all underground improvements shall be completed prior to the paving of any roadway. The estimated cost of said work and improvements is the sum of **Two hundred sixty-two thousand five hundred and no/100 Dollars (\$262,500.00)**.

SECOND: Contractor agrees to pay to County the actual cost of such inspections of the work and improvements as may be required by the Director of Transportation. Contractor further agrees that, if suit is brought upon this agreement or any bond guaranteeing the completion of the water system improvements, all costs and reasonable expenses and fees incurred by County in successfully enforcing such obligations shall be paid by Contractor, including reasonable attorney's fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

THIRD: County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the works specified in this agreement prior to the completion and acceptance thereof, nor shall County or any officer or employee thereof, be liable for any persons or property injured by reason of the nature of the work, or by reason of the acts or omissions of Contractor, its agents or employees, in the performance of the work, and all or said liabilities are assumed by Contractor. Contractor agrees to protect, defend, and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Contractor, its agents and employees, in the performance of this agreement or arising out of the use of any patent or patented article in the performance of this agreement.

FOURTH: The Contractor hereby grants to County, or any agent or employee of County, the irrevocable permission to enter upon the lands of the subject land division for the purpose of completing the improvements. This permission shall terminate in the event that Contractor has completed work within the time specified or any extension thereof granted by the County.

FIFTH: The Landowner shall provide adequate notice and warning to the traveling public of each and every hazardous or dangerous condition caused or created by the construction of the works of improvement at all times up to the completion and formal acceptance of the works of improvement. The Landowner shall protect all persons from such hazardous or dangerous conditions by use of traffic regulatory control methods, including, but not limited to, stop signs, regulatory signs or signals, barriers, or detours.

SIXTH: Contractor, its agents and employees, shall give notice to the Director of Transportation at least 48 hours before beginning any work and shall furnish said Director of Transportation all reasonable facilities for obtaining full information with respect to the progress and manner of work.

SEVENTH: If Contractor, its agents or employees, neglects, refuses, or fails to prosecute the work with such diligence as to insure its completion within the specified time, or within such extensions of time which have been granted by County, or if Contractor violates, neglects, refuses, or fails to perform satisfactorily any of the provisions of the plans and specifications, Contractor shall be in default of this agreement and notice of such default shall be served upon Contractor. County shall have the power, on recommendation of the Director of Transportation, to terminate all rights of Contractor because of such default. The determination by the Director of Transportation of the question as to whether any of the terms of the agreement or specifications have been violated, or have not been performed satisfactorily, shall be conclusive upon the Contractor, and any and all parties who may have any interest in the agreement or any portion thereof. The foregoing provisions of this section shall be in addition to all other rights and remedies available to County under law. The failure of the Contractor to commence construction shall not relieve the Contractor or surety from completion of the improvements required by this agreement.

EIGHTH: Contractor agrees to file with County, prior to the date this agreement is executed, a good and sufficient improvement security in an amount not less than the estimated cost of the work and improvements for the faithful performance of the terms and conditions of this agreement, and good and sufficient security for payment of labor and materials in the amount prescribed by Article XVII of Riverside County Ordinance 460 to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California. Contractor agrees to renew each and every said bond or bonds with good and sufficient sureties or increase the amount of said bonds, or both, within ten (10) days after being notified by the Director of Transportation that the sureties or amounts are insufficient. Notwithstanding any other provisions herein, if Contractor fails to take such action as is necessary to comply with said notice, Contractor shall be in default of this agreement unless all required improvements are completed within ninety (90) days of the date on which the Director of Transportation notified Contractor of the insufficiency of the security or the amount of the bonds or both.

NINTH: It is further agreed by and between the parties hereto, including the surety or sureties on the bonds securing this agreement, that, in the event it is deemed necessary to extend the time of completion of the work contemplated to be done under this agreement, extensions of time may be granted, from time to time, by County, either at its own option, or upon request of Contractor, and such extensions shall in no way affect the validity of this agreement or release the surety or sureties on such bonds. Contractor further agrees to maintain the aforesaid bond or bonds in full force and effect during the terms of this agreement, including any extensions of time as may be granted therein.



TENTH: It is understood and agreed by the parties hereto that if any part, term or provision of this agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain that particular part, term or provision held to be invalid.

ELEVENTH: Any notice or notices required or permitted to be given pursuant to this agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

<u>County</u>	<u>Contractor</u>
Construction Engineer Riverside County Transportation Dept. 2950 Washington Street Riverside, CA 92504	SMR Phase 1 Joint Venture LLC A Delaware Limited Liability Co. 36310 Inland Valley Dr. Wildomar, CA 92595

IN WITNESS WHEREOF, Contractor has affixed his name, address and seal.

SMR Phase 1 Joint Venture LLC  
 By: KB Home Spring Mountain, LLC, it's Operating Member  
 By: Michael H. Freeman Jr., Authorized Agent

COUNTY OF RIVERSIDE

By Jeff Stone  
**JEFF STONE**  
**CHAIRMAN, BOARD OF SUPERVISORS**

ATTEST:

KECIA HARPER-IHEM,  
Clerk of the Board

By Kecia Harper-Ihem  
 Deputy

APPROVED AS TO FORM

County Counsel

By [Signature]

**SIGNATURES OF CONTRACTOR MUST BE ACKNOWLEDGED BY NOTARY  
AND EXECUTED IN TRIPLICATE**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**CIVIL CODE § 1189**

State of California

County of Riverside }

On July 3, 2014 before me, Jennifer R. Johnson, Notary Public  
*Date Here Insert Name and Title of the Officer*

personally appeared Michael H. Freeman Jr.

*Name(s) of Signer(s)*



*Place Notary Seal Above*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

*Signature of Notary Public*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**AGREEMENT  
FOR THE CONSTRUCTION OF SEWER SYSTEM IMPROVEMENTS**

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and SMR Phase I Joint Venture LLC, a Delaware limited liability Co., hereinafter called Contractor.

**WITNESSETH:**

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as Tract 29597-1, hereby agrees, at Contractor's own cost and expense, to construct or cause to have constructed, within 24 months from the date this agreement is executed, in a good and workmanlike manner, a sanitary sewer system, complete with all necessary pipes, valves, fire hydrants, connections and appurtenances necessary to the satisfactory operation of said sanitary sewer system. Contractor further agrees to extend the main or mains from the existing sewer system maintained and operated by City of Riverside to connect with the sanitary sewer system required to be constructed by this agreement. All the above required work shall be in accordance with those plans and specifications which have been approved by the Director of Transportation, and are on file in the office of the Riverside County Transportation Department. Said approved plans and specifications are hereby made a part of this agreement as fully as though set forth herein. All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Director of Transportation and the County Health Officer, and shall not be deemed complete until approved and accepted as complete by the County and accepted by the above-named agency into its sewer system. Contractor further agrees to maintain the above required improvements for a period of one year following acceptance by the County, and during this one year period to repair or replace, to the satisfaction of the Director of Transportation, any defective work or labor done or defective materials furnished. The estimated cost of said work and improvements is the sum of Three hundred nineteen thousand and no/100 Dollars (\$319,000.00).

SECOND: Contractor agrees to pay to County the actual cost of such inspections of the work and improvements as may be required by the Director of Transportation. Contractor further agrees that, if suit is brought upon this agreement or any bond guaranteeing the completion of the water system improvements, all costs and reasonable expenses and fees incurred by County in successfully enforcing such obligations shall be paid by Contractor, including reasonable attorney's fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

THIRD: County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the works specified in this agreement prior to the completion and acceptance thereof, nor shall County or any officer or employee thereof, be liable for any persons or property injured by reason of the nature of the work, or by reason of the acts or omissions of Contractor, its agents or employees, in the performance of the work, and all or said liabilities are assumed by Contractor. Contractor agrees to protect, defend, and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Contractor, its agents and employees, in the performance of this agreement or arising out of the use of any patent or patented article in the performance of this agreement.

FOURTH: The Contractor hereby grants to County, or any agent or employee of County, the irrevocable permission to enter upon the lands of the subject land division for the purpose of completing the improvements. This permission shall terminate in the event that Contractor has completed work within the time specified or any extension thereof granted by the County.

FIFTH: The Contractor shall provide adequate notice and warning to the traveling public of each and every hazardous or dangerous condition caused or created by the construction of the works of improvement at all times up to the completion and formal acceptance of the works of improvement. The Contractor shall protect all persons from such hazardous or dangerous conditions by use of traffic regulatory control methods, including, but not limited to, stop signs, regulatory signs or signals, barriers, or detours.

SIXTH: Contractor, its agents and employees, shall give notice to the Director of Transportation at least 48 hours before beginning any work and shall furnish said Director of Transportation all reasonable facilities for obtaining full information with respect to the progress and manner of work.

SEVENTH: If Contractor, its agents or employees, neglects, refuses, or fails to prosecute the work with such diligence as to insure its completion within the specified time, or within such extensions of time which have been granted by County, or if Contractor violates, neglects, refuses, or fails to perform satisfactorily any of the provisions of the plans and specifications, Contractor shall be in default of this agreement and notice of such default shall be served upon Contractor. County shall have the power, on recommendation of the Director of Transportation, to terminate all rights of Contractor because of such default. The determination by the Director of Transportation of the question as to whether any of the terms of the agreement or specifications have been violated, or have not been performed satisfactorily, shall be conclusive upon the Contractor, and any and all parties who may have any interest in the agreement or any portion thereof. The foregoing provisions of this section shall be in addition to all other rights and remedies available to County under law. The failure of the Contractor to commence construction shall not relieve the Contractor or surety from completion of the improvements required by this agreement.

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<u>County</u>	<u>Contractor</u>
Construction Engineer Riverside County Transportation Dept. 2950 Washington Street Riverside, CA 92504	SMR Phase 1 Joint Venture LLC A Delaware Limited Liability Co. 36310 Inland Valley Dr. Wildomar, CA 92595

IN WITNESS WHEREOF, Contractor has affixed his name, address and seal.

SMR Phase 1 Joint Venture, LLC  
By: KB Home Spring Mountain, LLC, it's Operating Member  
By: \_\_\_\_\_, Authorized Agent  
Michael H. Freeman Jr.

COUNTY OF RIVERSIDE

By Jeff Stone  
**JEFF STONE**  
**CHAIRMAN, BOARD OF SUPERVISORS**

ATTEST:

KECIA HARPER-IHEM,  
Clerk of the Board

By Kecia Harper-Ihem  
Deputy

APPROVED AS TO FORM

County Counsel

By \_\_\_\_\_

**SIGNATURES OF CONTRACTOR MUST BE ACKNOWLEDGED BY NOTARY  
AND EXECUTED IN TRIPLICATE**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**CIVIL CODE § 1189**

State of California

County of Riverside }

On July 3, 2014 before me, Jennifer R. Johnson, Notary Public  
*Date Here Insert Name and Title of the Officer*

personally appeared Michael H. Freeman Jr.  
*Name(s) of Signer(s)*



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature: [Signature]  
*Signature of Notary Public*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**AGREEMENT  
FOR THE PLACEMENT OF SURVEY MONUMENTS**

This agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and SME Phase 1 Joint Venture LLC, a Delaware limited liability Co., hereinafter called Contractor.

**WITNESSETH:**

FIRST: Contractor, for and in consideration of the approval by County of the final map of that certain land division known as Tract 29597-1, hereby agrees, at Contractor's own cost and expense, to furnish all labor, equipment and materials necessary to set, within 24 months from the date this agreement is executed, in a good and workmanlike manner, all survey monuments and tie points and to furnish to the County Surveyor tie notes for said tract in accordance with the standards set forth in Riverside County Ordinance No. 461 and Section 8771 et seq. of the Business and Professions Code of the State of California. Contractor further agrees to pay, within 30 days of presentation to contractor of the final billing of any surveyor or engineer for work performed by him as provides for in Article 9 of Chapter 4, Division 2 of Title 7 of the Government Code of the State of California (commencing with Section 66495). Contractor further agrees that if payment to the surveyor or engineer is not made within 30 days, the surveyor or engineer notifies County that he has not been paid for setting the final monuments, and the Board of Supervisors, pursuant to Section 66497 of the Government Code, after providing Contractor with an opportunity to present evidence as to whether or not the surveyor or engineer has been paid, orders that payment be made by County to the engineer or surveyor, Contractor will, upon demand, and without proof of loss by County, reimburse County for any funds so expended. Notwithstanding any other provisions herein, the determination of County as to whether the surveyor or engineer has been paid shall be conclusive on Contractor, its surety, and all parties who may have an interest in the agreement or any portion thereof.

All of the above required work shall be done under the inspection of, and to the satisfaction of, the County Surveyor, and shall not be deemed complete until approved and accepted as complete by the County. The estimated cost of said work and improvements is the sum of One hundred thirty-five thousand three hundred sixty and no/100 Dollars (\$135,360.00).

SECOND: Contractor agrees to pay to County the actual cost of such inspections of the work and improvements as may be required by the County Surveyor. Contractor further agrees that, if suit is brought upon this agreement or any bond guaranteeing the completion of the monuments, all costs and reasonable expenses and fees incurred by County in successfully enforcing such obligations shall be paid by Contractor, including reasonable attorney's fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

THIRD: County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the works specified in this agreement prior to the completion and acceptance thereof, nor shall County or any officer or employee thereof, be liable for any persons or property injured by reason of the nature of the work, or by reason of the acts or omissions of Contractor, its agents or employees, in the performance of the work, and all or said liabilities are assumed by Contractor. Contractor agrees to protect, defend, and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Contractor, its agents and employees, in the performance of this agreement or arising out of the use of any patent or patented article in the performance of this agreement.

FOURTH: The Contractor hereby grants to County, the Surety upon any bond, and to the agents, employees

and contractors of either or them, the irrevocable permission to enter upon the lands of the subject land division for the purpose of completing the monumentation. This permission shall terminate in the event that Contractor or the Surety has completed work within the time specified or any extension thereof granted by the County. It is further agreed that Contractor shall have control of the ground reserved for the installation of said work, and the streets in which they are to be placed, as is necessary to allow Contractor to carry out this agreement.

FIFTH: Contractor agrees to file with County prior to the date this contract is executed, an acceptable and sufficient improvement security in an amount not less than the estimated cost of the work, as above specified, for the faithful performance of the terms and conditions of this agreement, and for the payment of the amount of the improvement security to the County for the benefit of any surveyor or engineer who has not been paid by the Contractor, as provided for by Section 66495 et seq. of the Government Code of the State of California. Contractor agrees to renew each and every said bond or bonds with good and sufficient sureties or increase the amount of said bonds, or both, within ten (10) days after being notified by the Director of Transportation that the sureties or amounts are insufficient. Notwithstanding any other provisions herein, if Contractor fails to take such action as is necessary to comply with said notice, Contractor shall be in default of this agreement unless all required improvements are completed within ninety (90) days of the date on which the Director of Transportation notified Contractor of the insufficiency of the security or the amount of the bonds or both.

SIXTH: If contractor neglects, refuses, or fails to prosecute the work as to insure its completion within the time specifies, or within such extensions of time which have been granted by County, or if Contractor violates, neglects, refuses, or fails to perform satisfactorily any of the provisions of the plans and specifications, Contractor shall be in default of this agreement. County shall have the power, on recommendation of the Director of Transportation, to terminate all rights of Contractor in such agreement, but said termination shall not affect or terminate any of the rights of County as against Contractor or its Surety then existing or which thereafter accrue because of such default. The determination of the County Surveyor of the question as to whether any of the terms of the agreement or specifications have been violated, or have not been performed satisfactorily, shall be conclusive upon the Contractor, its Surety, and any and all parties who may have any interest in the agreement or any portion thereof. The foregoing provisions of this section shall be in addition to all other rights and remedies available to County under law. The failure of the Contractor to commence construction shall not relieve the Contractor or surety from completion of the improvements required by this agreement.

SEVENTH: It is further agreed by and between the parties hereto, including the surety or sureties on the bonds securing this agreement, that, in the event it is deemed necessary to extend the time of completion of the work contemplated to be done under this agreement, extensions of time may be granted, from time to time, by County, either at its own option, or upon request of Contractor, and such extensions shall in no way affect the validity of this agreement or release the surety or sureties on such bonds. Contractor further agrees to maintain the aforesaid bond or bonds in full force and effect during the terms of this agreement, including any extensions of time as may be granted therein.

EIGHTH: It is understood and agreed by the parties hereto that if any part, term or provision of this agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain that particular part, term or provision held to be invalid.

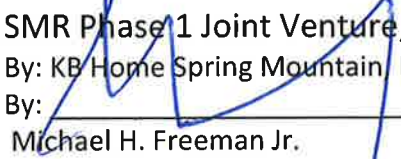


NINTH: Any notice or notices required or permitted to be given pursuant to this agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

County  
Construction Engineer  
Riverside County Transportation Dept.  
2950 Washington Street  
Riverside, CA 92504

Contractor  
SMR Phase 1 Joint Venture LLC  
A Delaware Limited Liability Co.  
36310 Inland Valley Dr.  
Wildomar, CA 92595

IN WITNESS WHEREOF, Contractor has affixed his name, address and seal.

SMR Phase 1 Joint Venture, LLC  
By:  KB Home Spring Mountain, LLC, it's Operating Member  
By: \_\_\_\_\_, Authorized Agent  
Michael H. Freeman Jr.

COUNTY OF RIVERSIDE

By  \_\_\_\_\_  
**JEFF STONE**  
**CHAIRMAN, BOARD OF SUPERVISORS**

ATTEST:

KECIA HARPER-IHEM,  
Clerk of the Board

By  \_\_\_\_\_  
Deputy

APPROVED AS TO FORM

County Counsel

By  \_\_\_\_\_

**SIGNATURES OF CONTRACTOR MUST BE ACKNOWLEDGED BY NOTARY  
AND EXECUTED IN TRIPLICATE**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**  
**CIVIL CODE § 1189**

State of California

County of Riverside }

On July 3, 2014 before me, Jennifer R. Johnson, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Michael H. Freeman Jr.  
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature: [Signature]  
Signature of Notary Public

**OPTIONAL**

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Corporate Officer — Title(s): \_\_\_\_\_  Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General  Partner —  Limited  General

Individual  Attorney in Fact  Individual  Attorney in Fact

Trustee  Guardian or Conservator  Trustee  Guardian or Conservator

Other: \_\_\_\_\_  Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_



# MEMORANDUM

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RIVERSIDE COUNTY COUNSEL

**CONFIDENTIAL**  
**ATTORNEY-CLIENT PRIVILEGE**

DATE: July 10, 2014

TO: Wendell Bugtai  
Urban Regional Planner III

FROM: Aaron Gettis *MD, m ACB*  
Deputy County Counsel

RE: Tract No. 29597  
Spring Mountain Ranch

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We have reviewed the Declaration of Covenants, Conditions and Restrictions for Spring Mountain Ranch for Tract No. 29597 submitted by Debbie Melvin. As forwarded herewith, the documents are **APPROVED** as to form.

Accordingly, the requirement for a Declaration of CC&R's for Tract No. 29597 is **SATISFIED**.

Enclosures

cc: Debbie Melvin

---

APPROVED

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Sheppard, Mullin, Richter & Hampton LLP  
501 West Broadway, 19th Floor  
San Diego, CA 92101-3598  
Attn: Nancy T. Scull, Esq.

---

THIS SPACE ABOVE FOR RECORDER'S USE

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
OF  
SPRING MOUNTAIN RANCH**

**THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT IN SECTION 17.4 HEREOF. YOU MUST READ THE ARBITRATION PROVISION CAREFULLY AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DECLARATION .....	2
ARTICLE 2 DEFINITIONS .....	2
2.1 <u>Annexable Property</u> .....	3
2.2 <u>Annexation</u> .....	3
2.3 <u>Annual Meeting</u> .....	3
2.4 <u>Architectural Committee</u> .....	3
2.5 <u>Architectural Standards</u> .....	3
2.6 <u>Assignment of Declarant’s Rights</u> .....	3
2.7 <u>BRE</u> .....	3
2.8 <u>Builder Parcels</u> .....	3
2.9 <u>Common Expenses</u> .....	3
2.10 <u>Common Maintenance Area</u> .....	4
2.11 <u>Community Articles</u> .....	5
2.12 <u>Community Assessments</u> .....	5
2.13 <u>Community Association</u> .....	5
2.14 <u>Community Association Maintenance Manual</u> .....	5
2.15 <u>Community Association Rules</u> .....	6
2.16 <u>Community Board</u> .....	6
2.17 <u>Community Bylaws</u> .....	6
2.18 <u>Community Common Area</u> .....	6
2.19 <u>Community Directors</u> .....	6
2.20 <u>Community Funds</u> .....	6
2.21 <u>Community Management Documents</u> .....	7
2.22 <u>County</u> .....	7
2.23 <u>Covered Property</u> .....	7
2.24 <u>Declarant</u> .....	7
2.25 <u>Declaration</u> .....	7
2.26 <u>Delegate</u> .....	7
2.27 <u>Delegate District</u> .....	7
2.28 <u>Dwelling</u> .....	7
2.29 <u>Election Committee</u> .....	7
2.30 <u>Fire Protection Plan</u> .....	8
2.31 <u>First Mortgage</u> .....	8
2.32 <u>First Mortgagee</u> .....	8
2.33 <u>FHA</u> .....	8
2.34 <u>Fuel Modification Areas</u> .....	8
2.35 <u>Governmental Agency</u> .....	8
2.36 <u>Improvements</u> .....	8
2.37 <u>Institutional Mortgagee</u> .....	8
2.38 <u>Invitee</u> .....	8
2.39 <u>Lot</u> .....	9
2.40 <u>Maintenance Obligations</u> .....	9

2.41	<u>Maintenance Manual</u> .....	9
2.42	<u>Member</u> .....	9
2.43	<u>Merchant Builder or Merchant Builders</u> .....	9
2.44	<u>Mortgage</u> .....	9
2.45	<u>Mortgagee</u> .....	9
2.46	<u>Notice and Hearing</u> .....	9
2.47	<u>Open Space Requirements</u> .....	9
2.48	<u>Operating Rules</u> .....	10
2.49	<u>Owner</u> .....	10
2.50	<u>Owner Maintenance Manual</u> .....	10
2.51	<u>Perimeter Walls and Fences</u> .....	10
2.52	<u>Phase</u> .....	10
2.53	<u>Public Report</u> .....	10
2.54	<u>Public Trail</u> .....	10
2.55	<u>Residence</u> .....	10
2.56	<u>Restricted Yard Maintenance Areas</u> .....	10
2.57	<u>Spring Mountain Ranch Community</u> .....	11
2.58	<u>Spring Mountain Ranch Entitlement Documents</u> .....	11
2.59	<u>Spring Mountain Ranch</u> .....	11
2.60	<u>Subdivision Map</u> .....	11
2.61	<u>Supplementary Declaration</u> .....	11
2.62	<u>VA</u> .....	11
2.63	<u>Voting Power</u> .....	11
ARTICLE 3 DUTIES AND POWERS OF THE COMMUNITY ASSOCIATION .....		11
3.1	<u>Purpose and Organization</u> .....	11
3.2	<u>Scope of Powers and Duties of Community Association</u> .....	12
3.3	<u>General Powers of the Community Association</u> .....	12
3.4	<u>Duties of Community Association</u> .....	17
3.5	<u>Prohibited Activities</u> .....	19
3.6	<u>Additional Provisions</u> .....	22
3.7	<u>Standard of Care, Nonliability</u> .....	22
3.8	<u>Operating Rules</u> .....	23
ARTICLE 4 MEMBERSHIP IN THE COMMUNITY ASSOCIATION .....		23
4.1	<u>Membership</u> .....	23
4.2	<u>Delegate Districts</u> .....	24
4.3	<u>Classes of Voting Membership/Delegate Vote Entitlement</u> .....	24
4.4	<u>Continuing Approval of Declarant</u> .....	26
4.5	<u>Election Committee</u> .....	26
4.6	<u>Commencement of Voting Rights</u> .....	27
ARTICLE 5 COMMUNITY FUNDS AND ASSESSMENTS .....		27
5.1	<u>Creation of the Lien and Personal Obligation of Community Assessments</u> .....	27
5.2	<u>Community Association Funds</u> .....	27
5.3	<u>Purpose of Community Assessments</u> .....	27

5.4	<b><u>Nature of Community Assessments</u></b> .....	28
5.5	<b><u>Limitation on Community Assessments</u></b> .....	29
5.6	<b><u>Changes to Budget</u></b> .....	31
5.7	<b><u>Maintenance and Subsidy Agreements</u></b> .....	31
5.8	<b><u>Allocation of Community Assessments to Lots</u></b> .....	31
5.9	<b><u>Levy of Community Assessments</u></b> .....	31
5.10	<b><u>No Offsets</u></b> .....	32
5.11	<b><u>Community Assessment Rolls</u></b> .....	32
5.12	<b><u>Transfer of Covered Property</u></b> .....	32
5.13	<b><u>Collection of Community Assessments; Liens</u></b> .....	33
5.14	<b><u>Additional Charges</u></b> .....	35
5.15	<b><u>Subordination of the Lien to First Mortgages</u></b> .....	35
<b>ARTICLE 6 ARCHITECTURAL CONTROL</b> .....		36
6.1	<b><u>Scope</u></b> .....	36
6.2	<b><u>Exemptions</u></b> .....	36
6.3	<b><u>Appointment of Architectural Committee</u></b> .....	36
6.4	<b><u>Duties</u></b> .....	36
6.5	<b><u>Address</u></b> .....	37
6.6	<b><u>Fees</u></b> .....	37
6.7	<b><u>Effect of Architectural Committee</u></b> .....	37
6.8	<b><u>Meetings</u></b> .....	37
6.9	<b><u>Approval and Conformity of Plans</u></b> .....	37
6.10	<b><u>Time Period for Review of Plans and Specifications</u></b> .....	39
6.11	<b><u>Appeal</u></b> .....	39
6.12	<b><u>Waiver</u></b> .....	39
6.13	<b><u>Estoppel Certificate</u></b> .....	39
6.14	<b><u>Liability</u></b> .....	40
6.15	<b><u>Governmental Requirements</u></b> .....	40
6.16	<b><u>Interpretation</u></b> .....	40
6.17	<b><u>Amendments</u></b> .....	40
<b>ARTICLE 7 PROPERTY RIGHTS: COMMUNITY COMMON AREA AND COMMON MAINTENANCE AREA AND EASEMENTS</b> .....		41
7.1	<b><u>Ownership of Community Common Area and Common Maintenance Area</u></b> .....	41
7.2	<b><u>Permitted Uses of Community Common Area</u></b> .....	41
7.3	<b><u>Owners' Right of Enjoyment in Community Common Area</u></b> .....	41
7.4	<b><u>Alteration of Improvements on Community Common Area and Common Maintenance Area</u></b> .....	44
7.5	<b><u>Delegation of Use</u></b> .....	44
7.6	<b><u>Commencement of Maintenance and Easement Rights</u></b> .....	44
7.7	<b><u>Waiver of Use</u></b> .....	45
7.8	<b><u>Non-Severability</u></b> .....	45
7.9	<b><u>Owners' Easements and Encroachments</u></b> .....	45
7.10	<b><u>Easements Reserved to Declarant, the Merchant Builders and/or Community Association</u></b> .....	46

7.11	<b><u>Transfer of Easements</u></b> .....	49
7.12	<b><u>Amendment to Eliminate Easements</u></b> .....	49
ARTICLE 8 USE RESTRICTIONS .....		49
8.1	<b><u>Residential Use</u></b> .....	49
8.2	<b><u>Rental of Dwelling</u></b> .....	49
8.3	<b><u>Signs</u></b> .....	50
8.4	<b><u>Parking, Vehicular Restrictions and Garages</u></b> .....	50
8.5	<b><u>Nuisance; Hazards and Waste</u></b> .....	51
8.6	<b><u>Temporary Structures</u></b> .....	52
8.7	<b><u>Vehicles</u></b> .....	52
8.8	<b><u>Animals</u></b> .....	52
8.9	<b><u>Oil and Mineral Rights</u></b> .....	52
8.10	<b><u>Unsightly Items</u></b> .....	52
8.11	<b><u>Antenna Restrictions</u></b> .....	53
8.12	<b><u>Installations</u></b> .....	54
8.13	<b><u>Rights of Disabled</u></b> .....	55
8.14	<b><u>View Impairment</u></b> .....	55
8.15	<b><u>Drainage</u></b> .....	55
8.16	<b><u>No Obstructions</u></b> .....	55
8.17	<b><u>Trash</u></b> .....	56
8.18	<b><u>Pollutant Control</u></b> .....	56
8.19	<b><u>Fuel Modification Areas</u></b> .....	57
8.20	<b><u>Fires</u></b> .....	58
8.21	<b><u>Restricted Yard Maintenance Areas</u></b> .....	58
8.22	<b><u>No Subdivision of Lots</u></b> .....	58
8.23	<b><u>No Alteration of Common Maintenance Area</u></b> .....	58
8.24	<b><u>Dig Alert</u></b> .....	58
ARTICLE 9 INSTALLATION, REPAIR AND MAINTENANCE .....		58
9.1	<b><u>Repair and Maintenance by Community Association</u></b> .....	58
9.2	<b><u>Repair and Maintenance by Owner</u></b> .....	60
9.3	<b><u>Standards for Maintenance and Repair</u></b> .....	61
9.4	<b><u>Landscape and Irrigation Inspections</u></b> .....	61
ARTICLE 10 INSURANCE .....		62
10.1	<b><u>Insurance</u></b> .....	62
10.2	<b><u>Copies of Policies</u></b> .....	64
10.3	<b><u>Review of Insurance</u></b> .....	64
10.4	<b><u>Individual Insurance</u></b> .....	65
ARTICLE 11 EMINENT DOMAIN .....		65
11.1	<b><u>Condemnation</u></b> .....	65
11.2	<b><u>Total Taking</u></b> .....	65
11.3	<b><u>Minor Taking</u></b> .....	66
11.4	<b><u>Major Taking</u></b> .....	66



ARTICLE 12 DESTRUCTION OF IMPROVEMENTS .....	66
12.1 <u>Restoration of Improvements</u> .....	66
ARTICLE 13 DEVELOPMENT RIGHTS.....	67
13.1 <u>Limitations of Restrictions</u> .....	67
13.2 <u>Rights of Access and Completion of Construction</u> .....	68
13.3 <u>Size and Appearance of the Covered Property</u> .....	70
13.4 <u>Marketing Rights</u> .....	70
13.5 <u>Title Rights</u> .....	70
13.6 <u>Amendment</u> .....	70
13.7 <u>Declarant Representative</u> .....	70
ARTICLE 14 ANNEXATION OF REAL PROPERTY .....	71
14.1 <u>Annexation</u> .....	71
14.2 <u>Annexation Without Approval</u> .....	71
14.3 <u>Annexation Pursuant to Approval</u> .....	71
14.4 <u>Covenants Running With the Land</u> .....	71
14.5 <u>Supplementary Declarations</u> .....	71
14.6 <u>Community Common Area</u> .....	72
14.7 <u>Rights and Obligations of Owners</u> .....	72
14.8 <u>Mergers or Consolidations</u> .....	72
14.9 <u>De-Annexation</u> .....	73
ARTICLE 15 MORTGAGEE RIGHTS .....	73
15.1 <u>Special Mortgage Provisions</u> .....	73
15.2 <u>Conflict</u> .....	73
15.3 <u>Liability for Unpaid Community Assessments</u> .....	73
15.4 <u>Payment of Taxes and Insurance</u> .....	73
15.5 <u>Reserve Fund</u> .....	74
15.6 <u>Termination of Contract and Agreements</u> .....	74
15.7 <u>Notice to Mortgage Holders</u> .....	74
15.8 <u>Inspection of Books and Records</u> .....	75
15.9 <u>Financial Statements</u> .....	75
15.10 <u>Action Requiring Mortgagee Votes</u> .....	75
15.11 <u>Votes for Termination of Covered Property</u> .....	76
15.12 <u>Condemnation or Destruction</u> .....	76
15.13 <u>Mortgagee Protection</u> .....	76
15.14 <u>Distribution of Insurance and Condemnation Proceeds</u> .....	76
15.15 <u>Mortgage Not Obligated to Cure Breach</u> .....	77
15.16 <u>Loan to Facilitate</u> .....	77
15.17 <u>Appearance at Meetings</u> .....	77
15.18 <u>Right to Furnish Information</u> .....	77
15.19 <u>Inapplicability of Right of First Refusal to Mortgagee</u> .....	77
ARTICLE 16 AMENDMENT AND TERM OF DECLARATION .....	77
16.1 <u>Amendments</u> .....	77
16.2 <u>Conflict with Article 16 or Other Provisions of this Declaration</u> .....	79

16.3	<b><u>Business and Professions Code Section 11018.7</u></b> .....	79
16.4	<b><u>Reliance on Amendments</u></b> .....	79
ARTICLE 17 TERM AND ENFORCEMENT .....		79
17.1	<b><u>Term</u></b> .....	79
17.2	<b><u>Enforcement and Nonwaiver</u></b> .....	80
17.3	<b><u>Notice to Members Prior to Filing Civil Action</u></b> .....	80
17.4	<b><u>Dispute Resolution</u></b> .....	80
17.5	<b><u>Construction Defect Disputes</u></b> .....	81
17.6	<b><u>Other Disputes</u></b> .....	83
17.7	<b><u>Alternate Dispute Resolution Procedures</u></b> .....	83
17.8	<b><u>Disputes Relating To Enforcement Of Governing Documents</u></b> .....	86
17.9	<b><u>Civil Code Sections 6150, 6000 and 6100</u></b> .....	86
17.10	<b><u>Use of Damage Award Amounts</u></b> .....	86
17.11	<b><u>Miscellaneous</u></b> .....	86
ARTICLE 18 GENERAL PROVISIONS .....		86
18.1	<b><u>Equitable Servitudes</u></b> .....	86
18.2	<b><u>Severability</u></b> .....	86
18.3	<b><u>Construction</u></b> .....	87
18.4	<b><u>Singular Includes Plural</u></b> .....	87
18.5	<b><u>Nuisance</u></b> .....	87
18.6	<b><u>No Waiver</u></b> .....	87
18.7	<b><u>Cumulative Remedies</u></b> .....	87
18.8	<b><u>Attorneys' Fees</u></b> .....	87
18.9	<b><u>Exhibits and Schedules</u></b> .....	87
18.10	<b><u>Statutory References</u></b> .....	87
18.11	<b>Notices</b> 87	
18.12	<b><u>Exemption of Declarant</u></b> .....	88
18.13	<b><u>Conflicts Between Community Management Documents</u></b> .....	88
18.14	<b><u>Effect of Declaration</u></b> .....	89
18.15	<b><u>Transfers Subject to Declaration</u></b> .....	89
18.16	<b><u>FHA/VA Approval</u></b> .....	89
18.17	<b><u>Personal Liability</u></b> .....	89
18.18	<b><u>Violation of Law</u></b> .....	90
18.19	<b><u>County Requirements</u></b> .....	90
18.20	<b><u>Governing Law</u></b> .....	90



**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF SPRING MOUNTAIN RANCH**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SPRING MOUNTAIN RANCH ("**Declaration**") is made this \_\_\_\_ day of \_\_\_\_\_ by SMR PHASE 1 JOINT VENTURE LLC, a Delaware limited liability company ("**Declarant**").

RECITALS

A. Declarant is the master developer of the real property situated in the County of Riverside, State of California, which is more particularly described in **Exhibit "A"** attached hereto and incorporated herein ("**Covered Property**").

B. Declarant desires to establish covenants, conditions and restrictions upon the Covered Property and each and every portion thereof, which will constitute a general scheme for the management of the Covered Property and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Covered Property and enhancing the quality of life therein.

C. Declarant intends to develop the Covered Property as a Common Interest Development within the meaning of California Civil Code Section 4175 as a "Planned Development" and in accordance with California Civil Code Section 4200. The Covered Property is included within the master planned community situated in the County of Riverside and commonly known as the Spring Mountain Ranch Community ("**Spring Mountain Ranch Community**"). The Covered Property subject to this Declaration will be included in a portion of the Spring Mountain Ranch Community referred to in this Declaration as "Spring Mountain Ranch", which will be developed as a master planned community to be governed by the Spring Mountain Ranch Community Association, a California non-profit mutual benefit corporation ("**Community Association**") and will consist of certain individual Covered Property (as hereinafter defined) which, if developed as planned, will include a total of approximately 1,461 Residences together with certain areas which will be conveyed in fee title or leased to the Community Association as Community Common Area (as hereinafter defined) and certain areas over which easements will be conveyed to the Community Association, as Common Maintenance Area (as hereinafter defined). Declarant may, but shall not be required to, annex additional property to this Declaration and to make such additional property subject to the jurisdiction of the Community Association. Additionally, Declarant may develop other village(s) for all or portions of the Spring Mountain Ranch Community, with each such village having its own characteristic features. If so formed, such village may have a separate homeowners association which will govern such villages. Notwithstanding the foregoing, each Owner who takes title subject to this Declaration acknowledges that there is no assurance that the proposed development of Spring Mountain Ranch will be completed or that the additional villages will be developed within the Spring Mountain Ranch Community.

D. Declarant may add all or any of the real property described in **Exhibit "B"** attached hereto and incorporated herein ("**Annexable Property**") to the Covered Property already subject to this Declaration by annexing such Annexable Property and such Annexable

Property will thereupon be subject to this Declaration, become a part of and be included within the definition of the Covered Property, and be developed as a part of Spring Mountain Ranch.

E. The Community Association has been incorporated under the laws of the State of California for the purpose of owning and maintaining Community Common Area and maintaining the Common Maintenance Areas and for exercising the powers and functions set forth herein.

F. All of the Covered Property will hereafter be held and conveyed subject to certain protective covenants, conditions and restrictions hereinafter set forth. Declarant desires to establish covenants, conditions and restrictions upon the Covered Property and each and every portion thereof, which will constitute a general scheme for the management of the Covered Property and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Covered Property and enhancing the quality of life therein.

## **ARTICLE 1**

### **DECLARATION**

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the Covered Property is, and shall be, held, conveyed, encumbered, hypothecated, leased, rented, used, occupied and improved subject to the following limitations, covenants, conditions, restrictions, easements, liens and charges which are hereby declared and agreed to be in furtherance of a general plan for the subdivision, improvement, protection, maintenance and sale of all of the Covered Property and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Covered Property and every part thereof. All of the limitations, covenants, conditions, restrictions, easements, liens and charges are equitable servitudes and shall run with the land and shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest, in the Covered Property or any part thereof, and shall be binding on and inure to the benefit of each successor-in-interest of such parties. Declarant hereby declares that all of the Covered Property described in Exhibit "A" shall be subject to this Declaration and shall constitute the initial increment of land subject to this Declaration. Declarant declares that pursuant to the Article hereof entitled "Annexation of Real Property" all or any portion of the real property described on Exhibit "B" may be annexed and become subject to this Declaration and, upon annexation, the Annexable Property shall be subject to the limitations, restrictions, easements, covenants, conditions, liens and charges of this Declaration.

## **ARTICLE 2**

### **DEFINITIONS**

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as set forth below.

2.1 **Annexable Property.** The term “Annexable Property” means any or all of the real property described on **Exhibit “B”** which may be made subject to this Declaration by Annexation pursuant to the provisions set forth in the Article hereof entitled “Annexation of Real Property”.

2.2 **Annexation.** The term “Annexation” means the process by which the additional real property described in Exhibit “B” attached hereto may be made subject to this Declaration as set forth in the Article hereof entitled “Annexation of Real Property.”

2.3 **Annual Meeting.** The term “Annual Meeting” means the regularly scheduled annual meeting of the Delegates which is held in accordance with the provisions of the Community Bylaws.

2.4 **Architectural Committee.** The term “Architectural Committee” means the committee provided for in the Article hereof entitled “Architectural Control.”

2.5 **Architectural Standards.** The term “Architectural Standards” refers to the architectural, design and signage rules and standards promulgated by the Community Board for implementation by the Architectural Committee.

2.6 **Assignment of Declarant’s Rights.** The term “Assignment of Declarant’s Rights” refers to the assignment agreement executed and recorded by Declarant in order to assign Declarant’s rights to a successor Declarant pursuant to the provisions of the Section of this Article entitled “Declarant.”

2.7 **BRE.** The term “BRE” means the California Bureau 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.

2.8 **Builder Parcels.** The term “Builder Parcels” means those parcels of real property which are sold to Merchant Builders by Declarant for the purpose of constructing Dwellings for sale to the public or constructing related community facilities.

2.9 **Common Expenses.** The term “Common Expenses” means the actual and estimated costs and expenses incurred or to be incurred by the Community Association, the Community Board or the Architectural Committee, including, without limitation, the following:

2.9.1 maintenance, management, operation, repair and replacement of the Community Common Area and Common Maintenance Area and all other areas within the Covered Property which are maintained by the Community Association;

2.9.2 due but unpaid Community Assessments (as hereinafter defined);

2.9.3 maintenance by the Community Association of areas within the public rights-of-way in the vicinity of the Covered Property as provided in this Declaration or pursuant to agreements with the County of Riverside;

2.9.4 costs of management and administration of the Community Association, including, without limitation, compensation paid by the Community Association to managers, accountants, attorneys, architects and employees;

2.9.5 the costs of any utilities, trash pickup and disposal, gardening, guard or patrol services and other services benefiting the Owners and their Lots to the extent such services are paid for by the Community Association;

2.9.6 the costs of compliance with the Open Space Requirements required to be maintained by the Association under this Declaration and/or by any Governmental Agency;

2.9.7 the costs of fire, casualty, liability, worker's compensation and other insurance covering the Community Common Area and activities of the Community Association;

2.9.8 the costs of any other insurance obtained by the Community Association pursuant to the provisions of this Declaration;

2.9.9 reasonable reserves as deemed appropriate by the Community Board or otherwise required pursuant to the Community Management Documents;

2.9.10 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;

2.9.11 taxes paid by the Community Association;

2.9.12 amounts paid by the Community Association for, the discharge of any lien or encumbrance levied against the Community Common Area or portions thereof;

2.9.13 costs incurred by the Architectural Committee or other committees of the Community Association; and

2.9.14 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 and/or maintenance of the Community Common Area, or in furtherance of the purposes or the discharge of any obligations imposed on the Community Association by the Community Management Documents.

2.10 **Common Maintenance Area**. The term "Common Maintenance Area" means those areas within the Covered Property or adjacent to the Covered Property (including any adjacent public property, parkways, public right-of-way and offsite trails and any Improvements located thereon) which are not owned, in fee title or leased, by the Community Association but which the Community Association is obligated to maintain as provided in this Declaration or any Supplementary Declaration or separate maintenance or easement agreement entered into by the Community Association as provided in **Section 3.3.19** hereof.

2.11 **Community Articles.** The term “Community Articles” means the Article of Incorporation of the Community Association, as the same may from time to time be duly amended.

2.12 **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 pursuant to the Article hereof entitled “Community Funds and Assessments” and shall include, without limitation, the Community Assessments defined below.

2.12.1 **Capital Improvement Assessment.** The term “Capital Improvement Assessments” means a charge against each Owner and such Owner’s Lot, representing a portion of the cost to the Community Association for installation or construction of any capital Improvements for the Community Common Area or Common Maintenance Area which the Community Association may from time to time authorize pursuant to the provisions of **Article 5** of this Declaration.

2.12.2 **Enforcement Assessment.** The term “Enforcement Assessment” means the charges assessed against any Owner and such Owner’s Lot to reimburse the Community Association for costs incurred in bringing the Owner and such Owner’s Lot into compliance with the provisions of this Declaration pursuant to **Article 5** of this Declaration.

2.12.3 **Regular Assessment.** The term “Regular Assessment” means the amount which is to be paid by each Owner to the Community Association for Common Expenses as described in **Article 5** of this Declaration.

2.12.4 **Reconstruction Assessment.** The term “Reconstruction Assessment” means a charge against each Owner and his Lot representing a portion of the cost to the Community Association for reconstruction of any portion or portions of the Community Common Area pursuant to the provisions of the **Article 13** hereof entitled “Destruction of Improvements.”

2.12.5 **Special Assessment.** The term “Special Assessment” means an assessment levied by the Community Board if the Community Board determines that the Regular Assessments will be inadequate pursuant to the provisions of Article 5 of this Declaration,

2.12.6 **Single Benefit Assessment.** The term “Single Benefit Assessment” means a charge against each Owner and each Owner’s Lot for any cost or expense which will benefit less than all of the Owners within the Covered Property as described in **Article 5** of this Declaration.

2.13 **Community Association.** The term “Community Association” means the Spring Mountain Ranch Community Association, a California nonprofit mutual benefit corporation, incorporated under the laws of the State of California, or any successor entity charged with the duties, obligations and powers of said Community Association.

2.14 **Community Association Maintenance Manual.** The term “Community Association Maintenance Manual” means the Maintenance Manual which may be provided by Declarant to the Community Association setting forth the obligations and schedules for the



maintenance, repair, replacement and preservation of the Improvements situated within the Community Common Area and the Common Maintenance Area, which may be updated and amended from time to time pursuant to **Section 3.4.12** herein. Among other things, the Community Association Maintenance Manual will specify requirements regarding maintenance levels, intervals for regularly scheduled maintenance items, and the scope of required maintenance practices and procedures.

2.15 **Community Association Rules.** The term “Community Association Rules” refers to the rules and regulations adopted by the Community Board for the governance of the Covered Property.

2.16 **Community Board.** The term “Community Board” means the Board of Directors of the Community Association.

2.17 **Community Bylaws.** The term “Community Bylaws” means the Bylaws of the Community Association, as the same may from time to time be amended.

2.18 **Community Common Area.** The term “Community Common Area” means all real property and the Improvements situated thereon, including, without limitation, any private utilities, private parks, open space, trails and slopes, entry monuments, recreational facilities owned in fee or leased from time to time by the Community Association for the common use and enjoyment of the Owners. The Community Common Area included in the Covered Property as of the date of this Declaration, if any, is described in **Exhibit “A”** and the Community Common Area to be annexed or included in the Covered Property after the date of this Declaration, will be described in a Supplementary Declaration. Community Common Area may be annexed in separately or concurrently with the Annexable Property.

2.19 **Community Directors.** The term “Community Directors” means the members of the Community Board elected pursuant to the provisions of the Community Bylaws.

2.20 **Community Funds.** The term “Community Funds” refers collectively to all of the funds established by the Community Association for the deposit of Community Assessments and shall include, without limitation, the Community Funds defined below.

2.20.1 **Maintenance and Operation Fund.** The term “Maintenance and Operation Fund” means the fund or funds which shall be established by the Community Association for the deposit of that portion of Regular Assessments and/or Special Assessments not deposited into the Reserve Fund.

2.20.2 **Reserve Fund.** The term “Reserve Fund” means the fund or funds which may be established from time to time by the Community Association for the deposit of any reserve Community Assessments.

2.20.3 **Capital Improvement Fund.** The term “Capital Improvement Fund” means the fund or funds which may be established from time to time by the Community Association for the deposit of any Capital Improvement Assessments.

2.21 **Community Management Documents.** The term “Community Management Documents” means the Community Articles, Community Bylaws, Community Association Rules, the Architectural Standards, this Declaration and the Supplementary Declarations, and any amendments to any of the foregoing.

2.22 **County.** The term “County” means the County of Riverside, California.

2.23 **Covered Property.** The term “Covered Property” means all the real property described on **Exhibit “A”** attached hereto and all Improvements thereon, and, subsequent to the Annexation thereof pursuant to this Declaration, any real property which shall become subject to this Declaration. In the event of the de-annexation of any Covered Property previously subject to this Declaration, the term “Covered Property” shall not be deemed to include any such de-annexed property.

2.24 **Declarant.** The term “Declarant” means SMR PHASE 1 JOINT VENTURE, LLC, a Delaware limited liability company, and shall include those successors and assigns who acquire or hold title to any part or all of the Covered Property for purposes of development and are expressly named as successor Declarant in an Assignment of Declarant’s Rights executed by the Declarant, or a successor Declarant, and recorded with the County Recorder for Riverside County assigning the rights and duties of Declarant to such successor Declarant, with such successor Declarant accepting and assuming the assignment of such rights and duties. 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.

2.25 **Declaration.** The term “Declaration” means this Declaration of Covenants, Conditions and Restrictions of Spring Mountain Ranch, and any amendments thereto.

2.26 **Delegate.** The term “Delegate”, means a person elected in the manner provided in the Community Management Documents to represent the collective voting power of all of the Members within the portion of the Covered Property comprising the Delegate District of such Delegate.

2.27 **Delegate District.** The term “Delegate District” means a particular portion of the Covered Property created in the manner described in the Section of the Community Bylaws entitled “Delegate Districts”.

2.28 **Dwelling.** The term “Dwelling” means the residential dwelling unit together with garages and other structures on the same Lot, conveyed to an Owner, as “unit” is defined on the subdivision map recorded for pursuant to the California Civil Code.

2.29 **Election Committee.** The term “Election Committee” means the committee appointed by the Community Board to nominate candidates to the Community Board and to perform other functions relating to election procedures as described in the Article hereof entitled “Membership in the Community Association.”

2.30 **Fire Protection Plan.** The term “Fire Protection Plan” means that certain Fire Protection Plan approved by the County for the Spring Mountain Ranch Community, attached hereto as **Exhibit “C”** and incorporated herein.

2.31 **First Mortgage.** The term “First Mortgage” means a first mortgage or deed of trust which encumbers any one (1) or more Lots and has priority over any other mortgage or deed of trust encumbering such Lot, and shall include any first mortgage or deed of trust securing an obligation of Declarant, Merchant Builder, or an Owner.

2.32 **First Mortgagee.** The term “First Mortgagee” means the Mortgagee of a First Mortgage.

2.33 **FHA.** The term “FHA” means the Federal Housing Administration.

2.34 **Fuel Modification Areas.** The “Fuel Modification Areas” means those areas so designated in the Fire Protection Plan as the same may be modified or supplemented in a Supplementary Declaration.

2.35 **Governmental Agency.** The term “Governmental Agency” means the County 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.

2.36 **Improvements.** The term “Improvement” or “Improvements” means all structures and appurtenances thereto of every type and kind in the Covered Property constructed by an Owner, Declarant or a Merchant Builder, including without limitation, Dwellings and other buildings, outbuildings, walkways, pedestrian, bicycle trails, utility installations, swimming pools and other recreational facilities, garages, carports, roads, sidewalks, walkways, driveways, parking areas, fences, screening walls, block walls, retaining walls, awnings, patio and balcony covers, stairs, decks, landscaping, hedges, slopes, windbreaks, the exterior surfaces of any visible structure, paintings, planted trees and shrubs, irrigation systems, antennae, poles, signs, solar or wind powered energy systems or equipment, and water softener, heater or air conditioning and heating fixtures or equipment; the demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind; the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed; landscaping, planting, clearing or removing of trees, shrubs, grass or plants; and any change, or alteration of any previously approved Improvement including any change of exterior appearance, color or texture.

2.37 **Institutional Mortgagee.** The term “Institutional Mortgagee” means: (i) a First Mortgagee that is 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) a First Mortgagee that is a Federal or State Agency; or (iv) any other institution specified by the Community Board in a recorded instrument that is the Mortgagee of a Mortgage or the beneficiary of a deed of trust encumbering a Lot.

2.38 **Invitee.** The term “Invitee” means any person whose presence within the Covered Property is approved by or is at the request of a particular Owner, including, without

limitation, lessees, tenants, and the family, guests, employees, licensees or invitees of Owners, tenants, or lessees.

2.39 **Lot.** The term “Lot” or “Lots” means any or all of the following: any improved or unimproved lot or parcel shown on any recorded final subdivision map or any recorded parcel map to the extent such lots or parcels are part of the Covered Property. Notwithstanding anything to the contrary contained herein, the term “Lot” shall not include any Community Common Area.

2.40 **Maintenance Obligations.** The term “Maintenance Obligations” means each Owner’s and the Community Association’s obligations to perform (i) all reasonable maintenance consistent with the respective terms of their Maintenance Manual, any maintenance obligations and schedules in any warranty offered by Declarant or any manufacturer, and any maintenance obligations and schedules otherwise provided by Declarant or any manufacturer; and (ii) all commonly accepted maintenance practices to prolong the life of the materials and construction in the item or structure to be maintained, as updated and amended from time to time.

2.41 **Maintenance Manual.** The term “Maintenance Manual” refers to the Community Association Maintenance Manual and/or Owner Maintenance Manual, as the context requires.

2.42 **Member.** The term “Member” means every person or entity who qualifies for membership pursuant to the Article of this Declaration entitled “Membership in the Community Association,” including Declarant, as long as Declarant qualifies for membership pursuant to said Article.

2.43 **Merchant Builder or Merchant Builders.** The term “Merchant Builders” means any person or entity which has or will acquire from Declarant a portion of the Covered Property for the purpose of improving such property with Dwellings in accordance with a Development Declaration recorded against such property by Declarant in connection with the conveyance to the Merchant Builder. A Merchant Builder shall also be deemed to include (a) the beneficiary under any Mortgage securing an obligation of a Merchant Builder encumbering any 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, and (b) any buyer of any such property from such beneficiary.

2.44 **Mortgage.** The term “Mortgage” means a deed of trust as well as a mortgage encumbering a Lot or other parcels of real property in the Covered Property.

2.45 **Mortgagee.** The term “Mortgagee” means the mortgagee or beneficiary under any Mortgage.

2.46 **Notice and Hearing.** The term “Notice and Hearing” means the procedure which gives an Owner notice of an alleged violation of the Community Management Documents and the opportunity for a hearing before the Community Board.

2.47 **Open Space Requirements.** The term “Open Space Requirements” refers collectively to all preservation and operating and maintenance requirements and easements

applicable to any open space, riparian or habitat areas within the Covered Property including but not limited to all obligations of the Community Association set forth in the following documents: (i) Conservation Easement recorded in the Office of the County Recorder of Riverside County on March 2, 2005 as Document No. 2005-0168136, (ii) Conservation Easement recorded in the Office of the County Recorder of Riverside County on March 2, 2005 as Document No. 2005-0168137, and (iii) all other easements, agreements or other documents or requirements relating thereto.

2.48 **Operating Rules.** The term “Operating Rules” means regulations adopted by the Community Board that apply generally to the management and operation of the Covered Property or the conduct of the business and affairs of the Association. Changes to the Operating Rules may not be made except pursuant to Civil Code Section 4340, et seq.

2.49 **Owner.** The term “Owner” means one or more persons or entities who are alone or collectively the record owner of a fee simple title to a Lot, including Declarant and Merchant Builders unless the context provides otherwise. A contract purchaser under a recorded installment land sales contract shall be included as an Owner but those merely having an interest as security for the performance of an obligation shall not be Owners.

2.50 **Owner Maintenance Manual.** The term “Owner Maintenance Manual” refers to the manuals which may be prepared by the Merchant Builders or their agents for each applicable Owner specifying obligations for maintenance of the Community Common Area by the Community Association or the Lots by such Owners.

2.51 **Perimeter Walls and Fences.** The term “Perimeter Walls and Fences” refers to the walls and fences bordering portions of the Spring Mountain Ranch Community which may be designated in any Supplementary Declaration. Maintenance obligations may also be allocated with respect to the Owners and the Community Association in a Supplementary Declaration.

2.52 **Phase.** The term “Phase” means that portion of the Covered Property which is the subject of a separate Public Report issued by the California Bureau of Real Estate and which has been made subject hereto either by being included in **Exhibit “A”** or by annexation to this Declaration, unless otherwise designated in a Supplementary Declaration.

2.53 **Public Report.** The term “Public Report” means the Final Subdivision Public Report issued by the BRE for any Phase in the Covered Property, including any amendments to such Public Report.

2.54 **Public Trail.** The term “Public Trail” means that certain trail system located adjacent and within certain portions of the Community over which the public will have access over for use and enjoyment.

2.55 **Residence.** The term “Residence” means all Lots proposed to be developed within Spring Mountain Ranch.

2.56 **Restricted Yard Maintenance Areas.** The term “Restricted Yard Maintenance Areas” means those certain landscaped areas located outside of the fence line of certain Lots to

be maintained by the Owner of such Lot as provided in this Declaration, and as designated in a Supplementary Declaration.

2.57 **Spring Mountain Ranch Community.** The term “Spring Mountain Ranch Community” means all of the real property which is, from time to time, included within the community in the County commonly known as “Spring Mountain Ranch”.

2.58 **Spring Mountain Ranch Entitlement Documents.** The term “Spring Mountain Ranch Entitlement Documents” refers to all documents such as the Specific Plan for Spring Mountain Ranch as adopted and amended from time to time by the County providing overall approval for the development of the Covered Property.

2.59 **Spring Mountain Ranch.** The term “Spring Mountain Ranch” means the Covered Property and the Annexable Property.

2.60 **Subdivision Map.** The term “Subdivision Map” means any final subdivision or parcel map creating Lots within the Covered Property.

2.61 **Supplementary Declaration.** The term “Supplementary Declaration” means those certain declarations of covenants, conditions and restrictions, or similar instruments, (a) annexing any portion of the Annexable Property and extending the plan of this Declaration to such Annexable Property as provided in the Article hereof entitled “Annexation of Real Property”, (b) describing certain areas within the Covered Property that are to be maintained by the Community Association, (c) making such other complementary additions and modifications, and/or (d) making minor or technical corrections to this Declaration or any previously recorded Supplementary Declaration.

2.62 **VA.** The term “VA” shall mean the United States Department of Veterans Affairs.

2.63 **Voting Power.** The term “Voting Power” means the total number of votes allocated to Lots as set forth in the Section of Article 4 entitled “Classes of Voting Membership/Delegate Vote Entitlement.”

### ARTICLE 3

#### DUTIES AND POWERS OF THE COMMUNITY ASSOCIATION

3.1 **Purpose and Organization.** The Community Association is a non-profit mutual benefit corporation formed under the laws of the State of California to operate and maintain the Covered Property for the benefit of the Owners. The Community Association is charged with the duties and is given the powers set forth in this Article and its affairs shall be governed by the Community Management Documents. In the event that the Community Association as a corporate entity is dissolved, a non-profit unincorporated association shall forthwith and without further action or notice be formed to succeed to all of the rights and duties of said Community Association hereunder. The affairs of such unincorporated association shall be governed by the Community Bylaws and this Declaration as if they were created for the purpose of governing the

affairs of an unincorporated association. Except for those acts which are expressly reserved to the vote of the membership of Owners in this Declaration, any duty, obligation or authority vested or required to be performed and any power or privilege which may be exercised by the Community Association pursuant to this Declaration shall be performed or exercised only by the Community Board or its authorized delegates, agents and servants, and any power, duty, obligation or authority vested or conferred on the Community Board by this Declaration shall be deemed a power, duty, obligation or authority of the Community Association. The Community Board shall conduct its affairs as provided for in the Community Bylaws. The Community Board may delegate its powers and duties to such committees, officers, or professional managers as may be permitted under this Declaration and as the Community Board deems appropriate. All acts of the Members of the Community Association shall be made by the vote of the Delegates as provided in the Community Bylaws.

3.2 **Scope of Powers and Duties of Community Association.** The Community Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California operating for the benefit of the Owners subject only to the limitations expressly set forth in the Community Management Documents. The Community Association shall have the power to do any and all acts which are authorized, required or permitted under the Community Management Documents. The Community Association is formed exclusively for those purposes and activities which are specifically and directly related to (i) equipping, maintaining, operating and utilizing the Community Common Area and the Common Maintenance Area, including the social, recreational and other Improvements thereon, (ii) collecting assessments to finance the maintenance and utilization of the Community Common Area and the Common Maintenance Area, (iii) performing the obligations of the Community Association under the Community Management Documents, and (iv) administering and enforcing this Declaration and the other Community Management Documents (collectively, the "Permitted Functions"). Notwithstanding the foregoing, Permitted Functions do not include those activities prohibited pursuant to **Section 3.5** below. The funds and resources of the Community Association shall be utilized solely and exclusively for the direct cost of Permitted Functions. Nothing in this Section shall be deemed to preclude the use of the Community Common Area or Common Maintenance Area by Declarant or the Merchant Builders for promotional special events and other purposes as authorized by this Declaration.

3.3 **General Powers of the Community Association.** In addition to the duties and powers enumerated elsewhere in the Community Management Documents and without limiting the generality thereof, the Community Association shall have the powers and authority set forth below, which, unless expressly provided otherwise, may be undertaken by the Community Board, or such committees, entities, persons or companies expressly designated by the Community Board to exercise such powers or authority.

3.3.1 **Performance of Duties.** The Community Association shall have the power to undertake all of the express duties required under the Section below entitled "Duties of Community Association" to be done by the Community Association.

3.3.2 **Enforcement.** The Community Association shall have the power to enforce the provisions of the Community Management Documents by appropriate means and carry out the obligations of the Community Association hereunder, including, without limitation,

the expenditure of funds of the Community Association, the employment of legal counsel, the commencement of legal and/or equitable actions, the promulgation and enforcement of the Community Association Rules and the establishment of fines or penalties as provided for in this Declaration.

3.3.3 **Easements and Rights of Way.** The Community Association shall have the power to grant and convey easements, licenses for use, and rights of way, to any third party where necessary or appropriate in, on, over and through the Community Common Area for the benefit of the Owners, the Community Association or the Covered Property. The affirmative vote of Members owning at least fifty-one percent (51%) of the Lots shall be required before the Community Board may grant exclusive use of any portion of the Association Property to any Member unless the grant of exclusive use is one of the exceptions to the Member approval requirement listed in California Civil Code Section 4600. A vote on a proposed grant of exclusive use shall be by secret ballot in accordance with the procedures set forth in California Civil Code Section 5100(a) and the rules adopted by the Community Board pursuant thereto.

3.3.4 **Mergers.** The Community Association shall have the power, to the extent permitted by law, and provided the prior consent of Declarant has been obtained to participate in mergers and consolidations with other non-profit corporations organized for the same purposes as the Community Association.

3.3.5 **Dedication.** The Community Association shall have the power to dedicate or grant easements over any of its real property to any public authority, public assessment district or private or public utility company, or other service companies for public use or in connection with providing services to the Covered Property.

3.3.6 **Delegation of Powers.** The Community Association shall have the power to delegate its powers under the Community Management Documents to committees, officers, or employees as expressly authorized by the Community Management Documents.

3.3.7 **Management.** Subject to the provisions of the Section of **Article 15** entitled "Professional Management Contracts", the Community Association shall have the power to employ a manager or other persons and contract with independent contractors or managing agents who have professional experience in the management of planned unit developments or master associations to perform any services required for the maintenance, protection, operation and preservation of the Covered Property or negotiate and enter into contracts which grant concessions over the Community Common Area.

3.3.8 **Legal and Accounting.** The Community Association shall have the power to obtain legal and accounting services as may be required by the Community Board for operation of the Community Association or enforcement of the Community Management Documents.

3.3.9 **Right of Entry.** The Community Association shall have the power and right (but not the obligation) in accordance with the provisions of this Declaration to enter upon any Lot without liability to any Owner, upon at least twenty-four (24) hours prior notice, for the purpose of enforcing any of the provisions of the Community Management Documents, or for



the purpose of maintaining any Community Common Area, Common Maintenance Area pursuant to this Declaration; provided, however, that such entry shall occur at a reasonable hour; provided, however, that in the event of an emergency no notice shall be required and such entry shall occur at such time as may be reasonably necessary or appropriate to address such emergency. In the event that there is an emergency, the agents and representatives of the Community Board may enter such Lot immediately and without notice for the sole purpose of taking such action as is necessary under the circumstances. Any damage caused by an entry by the Community Association pursuant to the provisions of this Section 3.3.9 shall be repaired by the Community Association,

3.3.10 **Acquire Real Property.** The Community Association shall have the power to acquire and hold real property by lease or purchase for offices or other Community Common Area that may be necessary or convenient for the management of the Community Common Area, the administration of the affairs of the Community Association or for the benefit of the Members and Owners.

3.3.11 **Other Property.** The Community Association shall have the power to acquire and hold, as trustee for the benefit of its Members, tangible and intangible personal property and to dispose of the same by sale or otherwise. No such personal property of an aggregate value greater than five percent (5%) of the budgeted gross expenses for a fiscal year of the Community Association shall be acquired by or disposed of by the Community Association during that fiscal year without written approval of the votes of the Delegates representing at least a majority of the Voting Power.

3.3.12 **Use Fees.** The Community Association shall have the power to charge fees to owners and others for any recreational facility situated upon the Community Common Area, but in no event shall any such fees be charged for the use of the streets or sidewalks of the Covered Property.

3.3.13 **Capital Accounts.** The Community Association shall have the power to establish and maintain a working capital and contingency fund in an amount to be determined by the Community Board.

3.3.14 **Borrow Money.** The Community Association shall have the right in accordance with the Community Management Documents, to borrow money for the purpose of improving, replacing, restoring or expanding the Community Common Area or adding new Community Common Area or Common Maintenance Area and in aid thereof, to mortgage said property, provided that the prior affirmative vote or written approval of at least sixty-seven percent (67%) of the Voting Power has been obtained to mortgage said property except that the vote or written approval of the Members shall not be required for any municipal or similar financing offered by a Governmental Agency or for any borrowing during a fiscal year of the Community Association that does not exceed five percent (5%) of the budgeted gross expenses of the Community Association for that fiscal year, and provided further that the rights of such Mortgagees shall be subordinated to the rights of the Members. In the event of a default upon any such Mortgage of the Community Common Area, the lender's rights thereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment of the Members and, if necessary, to open the enjoyment

of the Community Common Area to a wider public until the Mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Community Association and all rights of the Members hereunder shall be fully restored.

### 3.3.15 **Enforcement of Restrictions and Rules.**

(a) **Enforcement Actions.** The Community Association in its own name and on its own behalf, or on behalf of any Owner who consents, shall have the power but not the duty to commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Community Management Documents or any resolutions of the Community Board, and to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Community Association can temporarily suspend the membership rights and privileges and/or can assess monetary penalties against any Owner or other person entitled to exercise such rights or privileges for any violation of the Community Management Documents or Community Board resolutions.

(b) **Notice Requirements.** Before a decision to impose such a suspension and/or monetary penalties is reached by the Community Board, at least fifteen (15) days written notice of suspension or imposition of monetary penalties and the reasons therefor must be given to the Owner of such suspension or imposition of a penalty or any such longer period as may be required under California Corporations Code Section 7341. Additionally, before the Community Board decides to impose a suspension of privileges and/or impose a monetary penalty, the aggrieved Owner shall be provided with an opportunity to be heard by the Community Board.

3.3.16 **Grant Concessions.** The Community Association shall have the power to grant concessions for commercial activities relating to the use and enjoyment of the Community Common Area.

3.3.17 **Enter Into Maintenance or Subsidy Agreements.** The Community Association shall have the power to enter into maintenance agreements or subsidy agreements with Declarant (or any Merchant Builder with the written consent of Declarant) for the repair and maintenance of the Community Common Area, Common Maintenance Areas and for the undertaking by Declarant (or any Merchant Builder with the written consent of Declarant) of any other maintenance responsibilities of the Community Association pursuant to the provisions of this Declaration, which maintenance or subsidy agreements may, by their terms, require repayment by the Community Association of assessments advanced to the Community Association by the Declarant.

3.3.18 **Enter Into Maintenance, Cost Sharing and Easement Agreements.** The Declarant and the Community Association shall each have the power to enter into maintenance, cost sharing and/or easement agreements with owners of property adjacent to the Covered Property (including the County or other any Governmental Agency) or owners associations formed with respect to the maintenance and management of such properties, to provide for the operation and maintenance of any Common Maintenance Areas located within such adjacent properties. Unless otherwise specified in the agreement, any agreements entered into by Declarant with the County or any other Governmental Agency relating to the Community

Association Property or Common Maintenance Areas shall be binding on the Community Association.

3.3.19 **Enter Into Maintenance Agreements with Other Governmental Entities.** The Community Association shall have the power to enter into maintenance agreements with any governmental entities for the repair and maintenance of the Community Common Area or Common Maintenance Area.

3.3.20 **Public Rights of Use.** The Community Association shall have the power to grant to the public rights of use to the Community Common Area, as may be required by the County or any Governmental Agency.

3.3.21 **Contract for Goods and Services.** The Community Association shall have the power to contract for goods and services for the benefit of the Community Common Area and Common Maintenance Area necessary for the Community Association to perform its duties and obligations hereunder including, without limitation, enforcing the Community Management Documents, and performing any of the other Community Association duties or rights, subject to the limitations set forth in **Section 3.5** below. Such contracts may include joint agreements with other homeowners associations for the sharing of services or equipment provided to both the Covered Property and the project governed by such other homeowners association.

3.3.22 **Architectural Committee.** Subject to the provisions of Article 6, the Community Association shall have the right to appoint and remove Members of each Architectural Committee.

3.3.23 **Litigation.** Subject to the provisions of this Declaration, the Community Association shall have the power, but not the duty, to initiate, defend, release, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Community Association in matters pertaining to (a) the application or enforcement of this Declaration and (b) damage to the Community Common Area and Common Maintenance Area; provided, however that as further provided in **Section 17.6** below, no representative of Declarant on the Community Board shall vote on the initiation of any claim under California Civil Code Section 895 et seq., such that from and after the first annual meeting of the Community Association, Declarant shall have no control over the Community Association's ability to decide whether to initiate a claim under such statutory provisions and in the event of such a vote, the affirmative vote of the two non-Declarant representatives on the Community Board shall be binding so long as a quorum of the Community Board is present at any meeting where such vote is taken. The Community Association and not the individual Members shall have the power to pursue any claims or other actions for construction defects in the Community Common Area and Common Maintenance Area pursuant to Civil Code Section 895 et seq., according to the procedures set forth in **Sections 17.5 or 17.6** of this Declaration.

3.3.24 **Capital Improvements.** The Community Board may, on its own motion or acting on a petition signed by a majority of the Owners, approve the construction, installation or acquisition of a particular capital improvement to the Community Common Area and

Common Maintenance Area, subject to the limitations set forth in **Section 3.5** of this Declaration.

3.4 **Duties of Community Association.** The Community Association shall have the duty and obligation to perform the acts and functions stated in this provision subject to and in accordance with the Community Management Documents.

3.4.1 **Community Standards.** The Community Association shall establish and maintain overall quality standards for the Covered Property compatible with the development of the Spring Mountain Ranch Community, including, without limitation, design, signage, graphics, maintenance and landscape standards. The inherent powers and duties emanating therefrom may be delegated by the Community Board to the Architectural Committee. Without limiting the generality of the foregoing, the Community Board shall also ensure that signage within the Covered Property is consistent with signage within the Spring Mountain Ranch Community.

3.4.2 **Community Common Area and Common Maintenance Area.** The Community Association shall accept any Community Common Area and Improvements situated thereon and any easements over the Common Maintenance Area conveyed by the Declarant or any Merchant Builders and/or created under this Declaration and shall maintain, operate, and otherwise manage all of the facilities situated on the Community Common Area and the facilities required to be maintained by the Community Association within the Common Maintenance Area, and all personal property acquired by the Community Association in accordance with the terms and provisions of this Declaration. The Community Board shall periodically review the nature and scope of the operations of the Community Association to assure such operations are in satisfactory compliance with the requirements of the Community Management Documents. Declarant shall convey the Community Common Area to the Community Association free of all liens and encumbrances except (a) current real property taxes (which taxes shall be prorated as of the date of conveyance), assessments, bonds and special taxes including without limitation, assessments and bonds imposed as a result of the formation of a Mello-Roos Community Facilities Act of 1982 assessment district formed pursuant to Government Code Section 53311, et seq., special assessment districts, community facilities financing districts, facilities benefit assessment districts and other assessment districts for purposes of maintenance or funding of any on-site or off-site facilities or Improvements, including, without limitation, public facilities and project amenities and (b) any non-monetary title exceptions of record, any easements or matters set forth in any final subdivision map covering any portion of the Covered Property and (c) the covenants, conditions, reservations and restrictions contained in this Declaration.

3.4.3 **Taxes.** The Community Association shall have the duty to pay all real and personal property taxes and assessments and all other taxes levied against the Community Common Area, personal property owned by the Community Association or against the Community Association. Such taxes and assessments may be contested by the Community Association; provided, that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes. Notwithstanding the foregoing, in no event shall the Community Association have any obligation to pay any such taxes with respect to the Common Maintenance Area, which shall be the obligation of the Owner of fee title thereof.

3.4.4 **Community Assessments**. The Community Association shall establish, determine, levy, collect and enforce all Community Assessments and cause to be prepared all budgets and financial statements.

3.4.5 **Utility Services**. The Community Association shall obtain utility services necessary or desirable, for the benefit of the Community Common Area, including, without limitation, water, gas, electricity, telephone, refuse collection, sewage disposal and other services necessary to perform its other obligations under this Declaration.

3.4.6 **Architectural Control**. The Community Association shall have the duty to maintain architectural control over the Covered Property, promulgate Architectural Standards and appoint the Architectural Committee in connection therewith in accordance with the provisions of **Article 6** of this Declaration.

3.4.7 **Community Association Rules**. Subject to **Section 3.5** below, the Community Association shall adopt, amend, and repeal such rules and regulations as it deems reasonable. The Community Association Rules shall govern such matters in furtherance of the purposes of the Community Association, including, without limitation, the use of the Community Common Area and Common Maintenance Area; provided, however, that the Community Association Rules may not discriminate among Owners and shall not be inconsistent with the Community Management Documents, the Community Articles or Community Bylaws. A copy of the Community Association Rules, as they may from time to time be adopted, amended or repealed, shall be delivered to each Owner in the same manner established in this Declaration for the delivering of notices. Upon such delivery, the Community Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. The Community Association Rules as adopted, amended or repealed, shall be available at the principal office of the Community Association to each Owner and Institutional Mortgagee upon request or at such other place as may be designated by the Community Board. In the event of any conflict between any such Community Association Rules and any other provisions of the other Community Management Documents, the provisions of the Community Association Rules shall be deemed to be superseded by the provisions of the other Community Management Documents to the extent of any such inconsistency.

3.4.8 **Common Area Maintenance**. Except for any obligations assumed by any special assessment districts which may be established pursuant to the provisions of the Section of **Article 7** entitled "Establish Special Assessment District", the Community Association shall maintain, repair, inspect, replace, paint and landscape the Community Common Area and the Common Maintenance Area and any other property and interests owned by the Community Association in accordance with the provisions of the Community Association Maintenance Manual and the Community Management Documents, and acquire, maintain and replace such furnishings and equipment as the Community Board shall determine proper. All of such obligations shall be discharged when and in such manner as the Community Board determines in its judgment to be appropriate, provided that the Community Association shall conform with the requirements of any agreements entered into between the Declarant, or by a Merchant Builder with the written consent of Declarant, with a Governmental Agency pertaining to the Community Common Area or the Common Maintenance Area.

3.4.9 **Insurance.** The Community Association shall contract for and maintain insurance in accordance with the requirements set forth in the **Article 10** hereof entitled "Insurance."

3.4.10 **Liens and Charges.** The Community Association shall pay any amount necessary to discharge any lien or encumbrance upon the Community Common Area, or any other property or interest of the Community Association. Where one or more Owners are jointly responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Community Association by reason of said lien or liens shall be specially assessed to said Owner(s).

3.4.11 **Reserves.** The Community Association shall establish and maintain a working capital and contingency fund pursuant to the Section of **Article 5** of this Declaration entitled "Community Association Funds".

3.4.12 **Maintenance Manuals.** The Community Association shall prepare or cause to be prepared and implemented, on an annual basis, a comprehensive maintenance program for maintenance of the Community Common Area and the Common Maintenance Area, which maintenance program shall be subject to review and approval by the Community Board. The Community Association shall comply with the provisions of any Community Association Maintenance Manuals provided by Declarant to the Community Association. The Community Board may, from time to time, make appropriate revisions to the Community Association Maintenance Manual based on the Community Board's review thereof, to update such manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained.

3.4.13 **Members' Approval of Construction Defect Actions.** In the event that any claim or other actions brought by the Community Association against the Declarant including, without limitation, claims under California Civil Code Section 895 et seq., involving allegations of construction defects relating to the Community Common Area or Common Maintenance Area is not resolved pursuant to the provisions of **Sections 17.5** or **17.6**, the Community Association shall not initiate a further action or procedure against Declarant under **Section 17.7** or otherwise without first obtaining the consent of the Owners other than Declarant (cast through the Delegates), represents a quorum of more than a majority of the Owners of the Community Association casting a majority of the votes of the Owners at a meeting or election of the Community Association conducted in accordance with the provisions of California Corporations Code Sections 7510 et. seq. and 7613. Any such vote by the Delegates shall be an Owner Participation Issue as defined in the Community Bylaws.

3.5 **Prohibited Activities.** Notwithstanding any other provisions of this Declaration or the other Community Management Documents and except as provided below, the Community Association is expressly prohibited from undertaking or performing any of the following activities, or expending or otherwise utilizing Community Association funds or resources therefor, and the following activities shall not constitute Permitted Functions of the Community Association.

3.5.1 **Property Manager.** The Community Association shall not (a) hire, as a professional manager, any full time employees for the Covered Property; or (b) rent, lease or otherwise furnish offices, personnel or other facilities, whether located within the Covered Property or off-site or utilize any Community Common Area and Common Maintenance Area as office space or other facilities for an “on-site” manager (“Manager”) or for performing other Community Common Area and Common Maintenance Area day-to-day administrative activities. The Manager for the Community Association shall at all times be a professional manager employed as an independent contractor officer at its own place of business.

3.5.2 **Offsite Nuisances.** The Community Association shall not use any assessments or expend Community Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of Phases in which Community Assessments have commenced,

3.5.3 **Political Activities or Contributions.** The Community Association shall not engage in any federal, state or local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Covered Property (e.g., endorsement or support of (a) legislative or administrative actions by a Governmental Agency which affect persons or property outside the Covered Property, (b) candidates for elected or appointed office, and (c) initiatives, recall elections or other ballot proposals). The Community Association is prohibited from conducting, sponsoring, participating in or expending funds or resources on any activity, campaign or event, including without limitation any social or political campaign, event or activity, which does not directly and exclusively pertain to a Permitted Function.

3.5.4 **Subassociation or Cost Center.** For so long as Declarant has the rights under **Sections 4.3.3** and **4.4** of this Declaration, neither the Community Association nor any Owner nor any Merchant Builder, without the prior written consent of Declarant, shall form an association (as defined in Section 4080 of the California Civil Code) to manage any portion of the Covered Property area or other such device to apportion any Common Expenses of the Community Association against fewer than all of the Owners and their Lots.

3.5.5 **Mortgagee Consents.** For so long as Declarant has the voting rights under **Sections 4.3.3** and **4.4** of this Declaration, the Community Association may not, without the prior written consent of Declarant, take any action listed in **Section 15.10** of the Declaration for which the consent of Owners or First Mortgagees is required.

3.5.6 **Reserved Rights of Declarant and Merchant Builders.** For so long as Declarant or any Merchant Builder is entitled to exercise any right, or avail itself of any exemption, in **Article 13** or elsewhere in this Declaration, neither the Community Association, nor the Community Board, nor any Owner shall take any action which is inconsistent with, or which would abrogate, any such right or exemption.

3.5.7 **Limitations on Authority of Community Board.** The Community Board shall not take any of the actions listed below except with the vote or written consent of (a) a majority of the Members of each of Class of the Voting Power during the time the three-class voting structure set forth in **Section 4.3** of this Declaration is in effect; or (b) except with the

vote at a meeting of the Community Association or by written ballot without a meeting pursuant to Corporations Code Section 7513 of at least a majority of the Members of the Community Association including at least a majority of Community Association Members other than Declarant after conversion to a single Class A voting membership.

(a) **Limit on Capital Improvements.** The Community Board shall not, without obtaining the consent of the Members as set forth above, incur aggregate expenditures for capital improvements to the Community Common Area and Common Maintenance Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Community Association for that fiscal year.

(b) **Limit on Sales of Community Common Area and Common Maintenance Area.** The Community Board shall not, without obtaining the consent of the Members as set forth above, sell during any fiscal year property of the Community Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Community Association for that fiscal year.

(c) **Limit on Third Person Contracts.** The Community Board shall not, without obtaining the consent of the Members as set forth above, enter into a contract with a third person (other than a Governmental Agency) wherein the third person will furnish goods or services for the Community Common Area and Common Maintenance Area or the Community Association for a term longer than one year with the following exceptions:

(i) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(ii) A prepaid casualty and/or liability insurance policy not to exceed three (3) years duration; provided that the policy permits short-rate cancellation by the insured;

(iii) A contract for a term not to exceed three (3) years that is terminable by the Community Association after no longer than one year without cause, penalty or other obligations upon ninety (90) days written notice of termination to the other party; and

(iv) Any contract approved by the BRE.

3.5.8 **Compensation.** The Community Association shall not pay compensation to Community Directors or officers of the Community Association for services performed in the conduct of the Community Association's business; provided, however, that the Community Board may cause a Community Director or officer or a member of the Architectural Committee to be reimbursed for expenses approved by the Community Board and incurred in carrying on the business of the Community Association. Nothing contained herein shall limit the Association from paying compensation to any members of any committees appointed by the Community Board, including the Architectural Committee.



3.6 **Additional Provisions.** Notwithstanding the provisions of this Declaration, by accepting a deed for a portion of the Covered Property, the Community Association and the Owners acknowledge and agree that there may be certain laws and regulations that may be applicable to the operation of the Community Association and the Covered Property by the Community Association, including, without limitation, the Davis-Stirling Common Interest Development Act of Section 4000 et seq. of the California Civil Code.

3.7 **Standard of Care, Nonliability.**

3.7.1 **Scope of Powers and Standard of Care.**

(a) **General Scope of Powers.** Unless a duty to act is imposed on the Community Board, the Architectural Committee or other committees or representatives of the Community Association by this Declaration or law, the Community Board, the Architectural Committee and the committees have the right to decide to act or not act. Any decision to not act is not a waiver of the right to act in the future.

(b) **Business Affairs.** This Section applies to Community Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances, and Architectural Committee member actions. Each Community Board member shall perform his or her duties in good faith, in a manner the Community Board member believes to be in the best interests of the Community Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing his or her duties, a Community Board member is entitled to rely on information, opinions, reports or statements, including financial data prepared or presented by:

(i) One or more officers or employees of the Community Association whom the Community Board member believes to be reliable and competent in the matters presented;

(ii) Counsel, independent accountants or other Persons as to matters which the Community Board member believes to be within such Person's professional or expert competence; or

(iii) A committee of the Community Board upon which the Community Board member does not serve, as to matters under its designated authority, which committee the Community Board member believes to merit confidence, so long as the Community Board member acts in good faith, after reasonable inquiry when the need is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

This **Section 3.7.1** is intended to be a restatement of the business judgment rule established in applicable law. All modifications and interpretations of the business judgment rule applicable to the Community Association, shall be interpreted to modify and interpret this **Section 3.7.1**.

(c) **Community Association Governance.** This Section applies to Community Board actions and Architectural Committee decisions in connection with

interpretation and enforcement of the Declaration, architectural and landscaping control, regulation of uses within the Property, rule making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

3.7.2 **Nonliability.**

(a) **General Rule.** No Person is liable to any other Person (other than the Community Association or a party claiming in the name of the Community Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Community Association (or to any party claiming in the name of the Community Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct. The Community Association is not liable for damage to property in the Community Property unless caused by the negligence of the Community Association, the Community Board, the Community Association's officers, or the manager or the manager's staff of the Community Association.

(b) **Nonliability of Volunteer Board Members and Officers.** A volunteer Community Board member or volunteer Community Association officer shall not be personally liable to any Person who suffers injury, including bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Community Board member if all applicable conditions specified in Section 5800 of the California Civil Code are met.

3.8 **Operating Rules.** Notwithstanding any provision of this Declaration to the contrary, Operating Rules may not be adopted, changed or amended except by and pursuant to the procedures set forth in Civil Code Section 4340 et seq.

**ARTICLE 4**

**MEMBERSHIP IN THE COMMUNITY ASSOCIATION**

4.1 **Membership.**

4.1.1 **Qualifications.** Members of the Community Association shall be (i) Declarant (irrespective of whether Declarant is the owner of a 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 Lots in the Covered Property. Membership in the Community Association shall be subject to the Community Management Documents. Ownership of a Lot shall be the sole qualification for an Owner's membership in the Community Association; provided, however, that Declarant shall be a Class C Member irrespective of such ownership.

4.1.2 **Transfer of Membership.** All memberships in the Community Association held by Owners other than Declarant shall be appurtenant to the 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 Lot. Declarant's Class C membership may not be transferred except to a successor to Declarant's rights to all or a portion of Spring Mountain Ranch. Transfer of Declarant's Class C membership shall be evidenced by the recordation in the Office of the County Recorder of Riverside County of an Assignment of Declarant's Rights which specifically assigns such Declarant's Class C membership rights. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Community Association.

4.1.3 **Assignment of Right of Use.** A Member shall have the right to assign, in accordance with the Community Bylaws, such Owner's rights of use and enjoyment in the Community Association to a lessee or tenant of his Lot; provided, however, that such Member shall not also be entitled to the use and enjoyment of the recreational facilities, if any, located on the Community Common Area during the term of such assignment. The assigning member shall remain liable for all charges and assessments attributable to such Owner's Lot. A Member who has sold his Lot to a contract purchaser under an agreement to purchase shall be entitled to assign to such contract purchaser his membership rights in the Community Association. Such assignment shall be in writing and shall be delivered to the Community Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his or her Lot until fee title to the Lot is transferred.

4.1.4 **Transfer of Membership Upon Sale.** If the Owner of any Lot fails or refuses to transfer the membership registered in such Owner's name to the purchaser of such Lot upon transfer of fee title thereto, the Community Board shall have the right to record the transfer upon the books of the Community Association. The Community Association may levy a transfer fee against new Owners in the amount of the actual costs incurred by the Community Association to change its records in order to reimburse the Community Association for the costs of transferring the memberships to the new Owners on the records of the Community Association.

4.2 **Delegate Districts.** Delegate Districts shall be established and Delegates shall be appointed to cast all votes and exercise all authority of the Members in the Community Association on behalf of the Owners in accordance with the provisions of the Community Bylaws. The Covered Property shall be divided into Delegate Districts as described in the Community Bylaws.

4.3 **Classes of Voting Membership/Delegate Vote Entitlement.** The Community Association shall have three (3) classes of voting membership which are described below. The voting rights described in **Sections 4.3.1** and **4.3.2** below shall constitute the Voting Power of the Community Association.

4.3.1 **Class A Membership.** Class A Members shall originally be all Owners of Lots with the exception of Declarant and the Merchant Builders, for so long as there exists a Class B membership. Each Delegate will be entitled to cast, with respect to single family Lots subject to assessment and owned by Class A Members, one (1) vote for each such Lot subject to this Declaration and located in the Delegate District represented by such Delegate.

4.3.2 **Class B Membership.** The Class B Member shall be the Declarant who shall be entitled to three (3) votes for each Lot owned by Declarant and Merchant Builders in a Phase for which assessments have commenced. Declarant shall appoint its own Delegate to cast all votes on behalf of Declarant and any Merchant Builders who have assigned their rights to Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earliest:

(a) When 1,095 Residences, representing seventy-five percent (75%) of the Residences proposed to be developed for Spring Mountain Ranch have been conveyed to Class A Members;

(b) On the fifth anniversary following the most recent conveyance to a Class A Member of the first Lot in any Phase under the authority of a Public Report; or

(c) On the twenty-fifth anniversary of the first conveyance of a Lot to a Class A member in the Covered Property under authority of a Public Report.

4.3.3 **Class C Membership.** The Class C Member shall be Declarant (whether or not Declarant is an Owner). The Class C membership shall not be considered a part of the voting power of the Community Association and Declarant shall not be entitled to exercise any Class C votes except for the purpose of electing a majority of the members of the Community Board pursuant to the provisions set forth below. The Class C Member shall be entitled to solely elect a majority of the members of the Community Board until the date which is the earlier to occur of:

(a) When 1,095 Residences, representing seventy-five percent (75%) of the Residences proposed to be developed for Spring Mountain Ranch have been conveyed to Class A Members;

(b) On the fifth anniversary following the most recent conveyance to a Class A Member of the first Lot in any Phase under the authority of a Public Report; or

(c) On the twenty-fifth anniversary of the first conveyance of a Lot to a Class A Member in the Covered Property under authority of a Public Report.

4.3.4 Election of Community Board Members by Declarant. In addition to the foregoing, twenty percent (20%) of the Members of the Community Board may be elected by Declarant until the first to occur of the following:

(a) When 1,314 Residences, representing ninety percent (90%) of the Residences proposed to be developed for Spring Mountain Ranch have been conveyed to Class A Members;

(b) On the fifth anniversary following the most recent conveyance to a Class A Member of the first Lot in any Phase under the authority of a Public Report; or

(c) On the twenty-fifth anniversary of the first conveyance of a Lot to a Class A Member in the Covered Property under the authority of a Public Report.

4.4 **Continuing Approval of Declarant.** Notwithstanding the foregoing, and without limiting Declarant's unilateral rights provided elsewhere in this Declaration or the Community Bylaws, even after the termination of Class B membership, and until such time as Declarant is no longer the fee owner of, or the holder of a mortgage or deed of trust against any portion of Spring Mountain Ranch, the approval of Declarant shall be required before the Community Association may take any permitted action with respect to the following:

4.4.1 Reduction in the level of, or change in allocation of responsibility for (a) maintenance of and repairs to all or part of any Community Common Area and Common Maintenance Area subject to this Declaration, (b) any other maintenance obligations of the Community Association set forth in this Declaration, and (c) any responsibilities for maintaining circulation within the Covered Property set forth in this Declaration;

4.4.2 Conveyance by the Community Association of all or any part of the Community Common Area and/or conveyance of easements on, over, through and across the Common Maintenance Area;

4.4.3 Annexation to the Community Association of any of the real property described in **Exhibit "B"**;

4.4.4 Alteration in the method of fixing and collecting Community Assessments or any increase in Community Assessments beyond the amounts permitted under **Section 5.5** of this Declaration;

4.4.5 Modification, enforcement and review procedures of the Architectural Committee or any change in the architectural and landscaping design;

4.4.6 Modifications to Improvements on the Community Common Area and Common Maintenance Area or to the level or frequency of maintenance of the Community Common Area and Common Maintenance Area;

4.4.7 The obligation to provide Declarant with inspection reports;

4.4.8 Reduction or modification of any easement or other rights reserved to Declarant pursuant to the provisions of **Article 13** of this Declaration;

4.4.9 Alteration in the method of enforcing the provisions of this Declaration;  
and

4.4.10 Amendments to this Declaration or the Community Bylaws which would diminish or otherwise affect Declarant's or any Merchant Builder's right of approval regarding the actions enumerated above.

4.5 **Election Committee.** If deemed necessary by the Community Board, an Election Committee shall be appointed annually by the Community Board to nominate candidates for the Community Board, regulate nominations, evaluate voting requirements, regulate voting procedures and campaigns and adopt rules to insure an orderly and fair election of directors in accordance with the terms of the Community Bylaws. The Community Board may, from time to

time, vest the Election Committee with certain rule-making powers for the limited purpose of effectuating the fair and orderly election of directors.

4.6 **Commencement of Voting Rights.** An Owner's right to vote, including Declarant (except for Declarant's voting rights under **Sections 4.3.3** and **4.3.4** above), shall not vest until Community Assessments have been levied upon such Owner's Lot as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided for herein and in the Community Bylaws,

## ARTICLE 5

### COMMUNITY FUNDS AND ASSESSMENTS

5.1 **Creation of the Lien and Personal Obligation of Community Assessments.** The Declarant, for each Lot owned by it, hereby covenants and agrees to pay, and each Owner, by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay Community Assessments to the Community Association in accordance with the requirements of the Community Management Documents, including, without limitation, the following: Regular Assessments, Special Assessments, Capital Improvement Assessments, Reconstruction Assessments and Enforcement Assessments. Such Community Assessments shall be fixed, established and collected from time to time as hereinafter provided. Such Community Assessments together with such interest, late charges and costs and reasonable attorneys' fees, shall be the debt of and personal obligation of the Owner of such Lot at the time when the Community Assessment fell due. The personal obligation for such Community Assessments shall not pass to the successors in title of an Owner unless expressly assumed by such successors. Each such Community Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall, also upon recordation of a Notice of Delinquent Assessment (as defined herein) in accordance with the provisions of the Section of this Article entitled "Foreclosure of Lien" shall be a lien upon the Lot against which each such Community Assessment is made.

5.2 **Community Association Funds.** The Community Association shall establish and maintain a Maintenance and Operation Fund into which the Community Board shall deposit Regular Assessments. Such funds shall be held at a federally insured financial institution. The Community Association shall also establish and maintain such other funds (including a Reserve Fund and Capital Improvement Fund) as the Community Board deems appropriate for deposit and disbursement of other Community Assessments as the Community Board may from time to time establish. All of said funds are generally referred to herein as the Community Funds. The Community Board shall establish and collect all Community Assessments and, where necessary, enforce the liens therefor as provided for in this Article.

5.3 **Purpose of Community Assessments.** The Community Assessments levied by the Community Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Covered Property, for the improvement and maintenance of the Community Common Area and Common Maintenance Area, to reimburse the Community

Association for the costs incurred in bringing an Owner into compliance with the Community Management Documents and to discharge any other obligations under the Community Management Documents. Regular Assessments shall be used to satisfy Common Expenses as provided herein and in the Community Bylaws. If the Community Association decides to use or transfer Reserve Funds (as defined below) to pay for litigation, the Community Association must notify its Members of the decision at the next available mailing. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the Reserve Funds will be replaced, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation as provided in Section 5520 of the California Civil Code, which will be available at the Community Association's office. The accounting shall be updated monthly.

5.4 **Nature of Community Assessments.** The Community Board shall establish the following Community Assessments, each of which shall be used only for the purposes specified in this Article.

5.4.1 **Regular Assessments.** Regular Assessments shall be an annual assessment for Common Expenses fixed and levied by the Community Board based upon the estimated costs of operation of the Community Association in accordance with the budgets, prepared pursuant to the provisions of the Community Bylaws, and the accomplishment of its purposes, performance of its duties and the exercise of its powers that benefit the entire Covered Property. The amount and time of payment of Regular Assessments shall be determined as provided for below. Until January 1st of the year immediately following the conveyance of the first Lot to an Owner, the annual maximum Regular Assessment shall not exceed the maximum amount permitted for the Community Association under any Public Report issued for such period by the Bureau of Real Estate for any Lot then subject to this Declaration. Increases in Regular Assessments shall be subject to the limitations set forth in the Section of this Article entitled "Limitation on Assessments".

5.4.2 **Special Assessments.** Special Assessments may be levied at any time during any fiscal year if the Regular Assessments prove inadequate for any reason, including nonpayment of any Owner's share thereof. Special Assessments shall be allocated in the same manner as Regular Assessments. Increases in Special Assessments shall be subject to the limitations set forth in **Section 5.5** below.

5.4.3 **Capital Improvement Assessments.** In addition to the Regular Assessments, the Community Association may levy, in any fiscal year, a Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of a described Capital Improvement upon the Community Common Area to the extent the same is not covered by the provisions affecting Reconstruction Assessments in the Article hereof entitled "Destruction of Improvements," including the necessary fixtures and personal property related thereto. Capital Improvement Assessments shall be assessed and shall be allocated to Owners in the same manner as Regular Assessments. All amounts collected as Capital Improvement Assessments may only be used for Capital Improvements and shall be deposited by the Community Board in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Community Association and shall be deemed a contribution to the

capital account of the Community Association by the Members. Increases in Capital Improvements Assessments shall be subject to the limitations set forth in **Section 5.5** below.

5.4.4 **Enforcement Assessments.** The Community Association may levy an Enforcement Assessment against any Owner who causes damage to the Community Common Area or for bringing an Owner or such Owner's Lot into compliance with the provisions of the Community Management Documents or any other charge designated an Enforcement Assessment in the Community Management Documents, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. In the event the Community Association undertakes to provide materials or services which benefit individual Owners, then such Owners in accepting such materials or services agree that the costs thereof shall be an Enforcement Assessment. The Community Board shall have the authority to adopt a reasonable schedule of Enforcement Assessments for any violation of the Community Management Documents. If, after notice and a hearing as required by the Section of **Article 3** entitled "Enforcement of Restrictions and Rules", the Owner fails to cure or continues such violation, the Community Association may impose an additional fine each time the violation is repeated and not corrected as provided for herein, and may assess such Owner and enforce the Enforcement Assessment as herein provided for nonpayment of a Community Assessment. A hearing committee may be established by the Community Board to administer the foregoing.

5.4.5 **Single Benefit Assessment.** The Community Board may establish a Single Benefit Assessment for reconstruction, Capital Improvements, extraordinary maintenance, or any other cost or expense not otherwise provided for in this Community Declaration which will benefit less than all of the Owners. A Single Benefit Assessment may be imposed only by a vote of a majority of the Owners of the Lots benefited by the Single Benefit Assessment. Each Single Benefit Assessment shall be segregated in the Community Funds solely to the Lots which derive the benefit therefrom. In the event that the Community Association obtains income directly related to an item which has been assessed as a Single Benefit Assessment, such income shall be allocated so as to reduce or offset such Single Benefit Assessment. Whenever the Community Association performs any service or accomplishes any item of repair or maintenance which is the duty of an Owner to accomplish, but which has not been accomplished by the Owner, or whenever the Community Association determines to preempt the performance of a specific Owner of a given act of maintenance or repair, the Community Association shall specifically charge the cost thereof, together with any financing costs and administrative costs incurred by the Community Association, to the Owner for whom such work was done, as the case may be, and shall include such additional cost as a Single Benefit Assessment for such Owners.

5.4.6 **Reconstruction Assessments.** Reconstruction Assessments may be levied by the Community Board under the conditions and in the manner specified in the Article hereof entitled "Destruction of Improvements."

5.5 **Limitation on Community Assessments.** The Community Board shall levy Regular Assessments and Special Assessments sufficient to perform the obligations of the Community Association as provided in the Declaration and Community Bylaws; provided, however, except for assessment increases necessary for emergency situations, and except for Special Assessments imposed to restore funds to the Community Association pursuant to the



California Civil Code Section and except as provided in this Section: (a) the Community Board may not increase the Regular Assessments for any fiscal year unless the Community Board has complied with the provisions of California Civil Code Section 5300 et seq (preparation and distribution of the budget), and (b) the Community Board may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Community Association's preceding fiscal year nor Special Assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Community Association for the fiscal year, without the approval of Members constituting a quorum and casting a majority of the votes of the Members affected thereby at an election of the Community Association conducted in accordance with the provisions of (i) California Civil Code Section 5100 et seq and the rules adopted by the Community Board pursuant thereto and (ii) California Corporations Code Sections 7510 et seq. and Section 7613. Notwithstanding the foregoing, if any such Regular Assessments or Special Assessments and the amount of such increases of Regular Assessments or levy of Special Assessments would not otherwise require the approval of Owners subject only to the General Assessment Component.

5.5.1 **Quorum.** For purposes of this Section, "quorum" means more than a majority of the Owners.

5.5.2 **Emergency Situation.** For purposes of this Section, an emergency situation is any one of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to repair or maintain the Covered Property or any part of it for which the Community Association is responsible where a threat to personal safety in the Covered Property is discovered; or
- (c) An extraordinary expense necessary to repair or maintain the Covered Property or any part of it for which the Community Association is responsible that could not have been reasonably foreseen by the Community Board in preparing and distributing the Budget required under the Declaration and Community Bylaws. However, prior to the imposition or collection of an assessment subsection, the Community Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of assessment. Any increases authorized by this Section shall not be imposed unless the Community Board has complied with the budgetary requirements set forth in the Community Bylaws with respect to the fiscal year for which an assessment is being levied.

The term "Regular Assessment for the Community Association's preceding fiscal year" as used in this Section is deemed to be the Regular Assessment which would have existed in the absence of any subsidy of assessments agreed to be paid by Declarant. Anything in this Section to the contrary notwithstanding, the limitation on Regular Assessments and Special Assessments shall comply with the laws of the State of California at the time the Regular Assessment or Special Assessment is levied by the Community Association.

5.5.3 **Notice to Owners.** The Community Association shall provide notice by first class mail to the Owners of any increase in the Regular Assessments or Special Assessments of the Community Association, not less than thirty (30) days and not more than sixty (60) days prior to the increased assessment becoming due and payable.

5.6 **Changes to Budget.** Declarant has submitted to the BRE a budget for Spring Mountain Ranch, which may be modified from time to time and approved by the BRE ("BRE Approved Budget"). Subject to Section 5605 and 5610 of the California Civil Code, in the event that the amount of the Regular Assessments is greater than the amounts permitted to be increased by this Declaration without a vote of the Voting Power pursuant to the requirements set forth in **Section 5.5** above, then the Community Board, on behalf of the Community Association and without the requirement of prior notice to the Members or a vote of the Members, shall be entitled to increase the maximum Regular Assessment at that time to an amount which has been reviewed by the BRE pursuant to the BRE Approved Budget.

5.7 **Maintenance and Subsidy Agreements.** Notwithstanding any other provisions of this Declaration or the Community Bylaws regarding the term and termination of contracts with Declarant or Merchant Builders for providing services to the Community Association, Declarant (and any Merchant Builder with the written consent of Declarant) may enter into one or more written maintenance or subsidy agreements with the Community Association under which Declarant (or such Merchant Builder, as the case may be) shall pay all or any portion of the Common Expenses and/or perform all or any portion of the Community Association's maintenance responsibilities in exchange for a temporary suspension of all or a portion of the Regular Assessments. Each such maintenance or subsidy agreement shall be for a term and shall be on such conditions as are approved by the BRE, and may require Owners to reimburse Declarant or any of such Merchant Builders, through the Community Association, for a portion of the costs expended by Declarant in satisfaction of Common Expenses.

5.8 **Allocation of Community Assessments to Lots.** The Community Assessments shall be allocated to each assessable Lot as set forth below.

5.8.1 **Other Community Assessments.** Special Assessments, Reconstruction Assessments and Capital Improvement Assessments shall be allocated in the same manner as Regular Assessments. Enforcement Assessments and Single Benefit Assessments shall be levied directly to the individual Lots, in a manner consistent with the provisions of **Sections 5.4.4** and **5.4.5** of this Declaration, respectively.

5.9 **Levy of Community Assessments.** Community Assessments shall be levied and commence according to the procedures set forth below.

5.9.1 **Commencement of Regular Assessments.** The annual Regular Assessments shall commence as to all Lots located within a Phase of the Covered Property on the first day of the first month following the closing of the first sale of any such Lot located within a Phase of said Covered Property to an Owner, other than Declarant or a Merchant Builder. As to any land which is thereafter annexed into the Covered Property, Regular Assessments shall commence as to all of the Lots in a Phase which is annexed upon the first day

of the first month following the closing of the sale of the first Lot in such Phase of the annexed property to an Owner, other than Declarant or a Merchant Builder.

5.9.2 **Annual Levy of Regular Assessments.** Any Regular Assessments in excess of the amount permitted under the BRE Approved Budget shall be fixed by the Community Board against each Lot at least sixty (60) days in advance of each annual Community Assessment period. Written notice of such Regular Assessment shall be sent to every Owner subject thereto at least forty-five (45) days prior to its effective date. Unless expressly provided otherwise by the Community Board, each Regular Assessment shall be payable in advance, in equal monthly installments or such installments as may be established by the Community Board, the first of which installments shall be due and payable on the first day of the first month of each fiscal year.

5.9.3 **Levy of Other Community Assessments.** All other Community Assessments shall be fixed at such times and in such amounts as the Community Board deems appropriate, and the Owners shall be given reasonable notice thereof. The due dates for such other Community Assessments shall be established by the Community Board.

5.9.4 **Initial Capital Contribution.** To insure adequate funds to meet the initial expenses of the Community Association, upon the initial sale of each Lot to an Owner, other than Declarant or Merchant Builder, such Owner shall pay to the Community Association an amount equal to One Hundred Twenty Dollars (\$120.00). Each Merchant Builder shall require that this amount be deposited by each Owner into the purchase and sale escrow established by the Merchant Builder and Owner. The amounts set forth herein are not to be considered in lieu of annual Regular Assessments or any other Community Assessments levied by the Community Association.

5.9.5 **Certificate of Payment.** The Community Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Community Association setting forth whether the Community Assessments on a specified Lot have been paid. Such certificate shall be conclusive evidence of payment of any Community Assessment therein stated to have been paid.

5.10 **No Offsets.** All Community Assessments shall be payable in the amount specified by the particular Community Assessment, and no offset against such amount shall be permitted for any reason, including, without limitation, a claim that the Declarant or the Community Association is not properly exercising its duties or powers as provided for in this Declaration.

5.11 **Community Assessment Rolls.** The Community Association may maintain and revise annually, an assessment roll for every subdivision within the Covered Property reflecting the name and address of each Owner, and other data necessary to levy the Community Assessments. The Community Association is not required to make such assessment roll available for distribution to Members.

5.12 **Transfer of Covered Property.** After transfer or sale of a Lot in the Covered Property, the transferring or selling Owner or Owners shall not be liable for any Community

Assessment levied on the Lot after the date of such transfer of ownership. The selling Owner shall remain personally responsible for all Community Assessments and charges levied on the Lot prior to any such transfer unless the personal obligation is expressly assumed by the transferee.

5.13 **Collection of Community Assessments; Liens.**

5.13.1 **Right to Enforce.** The right to collect and enforce Community Assessments, as the case may be is vested in the Community Board acting for and on behalf of the Community Association. The Community Board or its authorized representative, can enforce the obligations of the Owners to pay Community Assessments, as the case may be, provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Community Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to **Section 5.13.3** enforce the lien rights created. Suit to recover a money judgment for unpaid Community Assessments, as the case may be, together with all other Additional Charges described in **Section 5.14** shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein, except for monetary penalties imposed by the Community Association to reimburse the Community Association for costs incurred by the Community Association in the repair of damage to the Community Common Area and Common Maintenance Area for which the Member or the Member's guests or tenants were responsible which may become a lien on the Owner's Lot, a monetary penalty imposed by the Community Association as a disciplinary measure for failure of a Member to comply with the Community Management Documents or in bringing the Member and his or her Lot into compliance with the Community Management Documents may not be characterized nor treated as an Community Assessment, as the case may be, which may become a lien against the Member's Lot enforceable by a sale of the interest hereunder. The limitation in the preceding sentence, however, does not apply to any Additional Charges.

5.13.2 **Notice of Assessments and Foreclosures.** This Community Association shall distribute a written notice regarding assessments and foreclosures as set forth in California Civil Code Section 5730(a) during the sixty (60) day period immediately preceding the beginning of the Community Association's fiscal year.

5.13.3 **Delinquent Assessments.** In collecting delinquent assessments, the Association shall comply with the requirements of California law, including without limitation, California Civil Code Section 1367.1. As of the date of this Declaration, such laws require that, among other things, before the Association records a lien against the Owner's Lot, the Association: (i) notify the delinquent Owner of certain matters, and (ii) offer and, if requested by the Owner, participate in, dispute resolution procedures pursuant to the Association's "meet and confer" program required in California Civil Code Sections 5900 through 5920.

5.13.4 **Creation of Lien.** If there is a delinquency in the payment of any Community Assessment, as the case may be, or installment on a Lot, any amounts that are delinquent, together with the late charge described in that Section, interest at the rate permitted in California Civil Code Section 5675, and all costs that are incurred by the Community Board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against such Lot upon the recordation in the Office of the County Recorder

of a notice of delinquent assessment (“Notice of Delinquent Assessment”) as provided in California Civil Code Section 5675. After its recordation, the Notice of Delinquent Assessment shall be mailed to all Owners of record of the applicable Lot as provided in California Civil Code Section 5675.

5.13.5 **Assignment.** The Community Association may not voluntarily assign or pledge the Community Association’s right to collect payments or assessments, or to enforce or foreclose a lien to a third party except where provided under California Civil Code Section 5735.

5.13.6 **Notice of Default; Foreclosure.** The Community Board can record a notice of default and, subject to the requirements and limitations of California Civil Code Section 5700 et seq, can cause the Lot with respect to which a notice of default has been recorded to be sold either in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c or through judicial foreclosure as provided in California Civil Code Section 5700 et seq. However, as a condition precedent to the holding of any such sale under Section 2924c, appropriate publication shall be made. In connection with any such sale, the Community Board is authorized to appoint a trustee for purposes of conducting the sale. If a delinquency is cured before sale of the Lot or before completing a judicial foreclosure, or if it is determined that a lien previously recorded against a Lot was recorded in error, the Community Board shall apply payments and follow the procedures set forth in California Civil Code Section 5685. On becoming delinquent in the payment of any assessments or installments, each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of his or her Lot to the Community Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Community Association, be enforced by the Association through specific performance). The Community Association, acting on behalf of the Owners, shall have the power to bid upon the Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the Lot and vote as an Owner of the Lot.

5.13.7 **Payment of Assessments.** Any payments of sums due under this Article shall first be applied to assessments owed, and only after assessments owed have been paid in full shall the payments be applied to the fees and costs of collections, attorney’s fees, late charges or interest. If an Owner requests a receipt after payment of a delinquent assessment, the Community Association shall provide a receipt which sets forth the date of payment and the individual who received such payment.

5.13.8 **Cure of Default.** Upon the timely curing of any default for which a Notice of Delinquent Assessment was recorded by the Community Association, officers of the Community Association or a managing agent appointed by the Community Board are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a reasonable fee, to be determined by the Community Association to cover the cost of preparing and filing or recording such release together with a payment of such other costs, interest or fees as shall have been incurred.

5.13.9 **Non-Exclusive Remedy.** The Community Assessment liens and the foreclosure and sale thereunder shall be in addition to and not in substitution of all other rights and remedies which the Community Association and its assigns may have hereunder and by law,

including a suit to recover a money judgment for unpaid Community Assessments as above provided.

5.13.10 **Delegation of Authority.** Each Owner, with the exception of the Secretary, U.S. Department of Veteran Affairs Administrator of Veteran Affairs, an officer of the United States, hereby vests in and irrevocably delegates to the Community Board or its duly authorized representatives the right and power to bring all actions at law or equity, and lien foreclosures, whether judicially or by power of sale, or otherwise, against any Member for the collection of delinquent Community Assessments in accordance herewith, and hereby expressly waives any objection to the enforcement in accordance with this Declaration of the obligation to pay Community Assessments as set forth in this Declaration.

5.14 **Additional Charges.** In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any Community Assessments, as the case may be, each Owner agrees to pay Additional Charges incurred or levied by the Community Board including such additional costs, fees, charges and expenditures as the Community Association may incur or levy in the process of collecting from that Owner monies due and delinquent subject to California Civil Code Section 5650 et seq. Additional Charges shall include, but not be limited to, the following:

5.14.1 **Attorneys' Fees.** Reasonable attorneys' fees and costs incurred in the event an attorney(s) is employed to collect any Community Assessment, as the case may be, or sum due, whether by suit or otherwise;

5.14.2 **Late Charges.** A late charge in an amount to be fixed by the Community Board in accordance with Civil Code Section 5650, to compensate the Community Association for additional collection costs incurred in the event any Community Assessment, as the case may be, or other sum is not paid when due or within any "grace" period established by law;

5.14.3 **Costs of Suit.** Costs of suit and court costs incurred as are allowed by the court;

5.14.4 **Interest.** Interest to the extent permitted by law; and

5.14.5 **Other.** Any such other additional costs that the Community Association may incur in the process of collecting delinquent Community Assessments or sums.

5.15 **Subordination of the Lien to First Mortgages.** When a Notice of Delinquent Assessment has been recorded, such assessment shall constitute a lien on such delinquent Owner's Lot prior and superior to all other liens, except, (a) all taxes, (b) bonds, assessments and other levies which, by law, would be superior thereto, and (c) any First Mortgage now or hereafter placed upon any Lot subject to assessment. The sale or transfer of any Lot shall not affect any Community Assessment lien. However, the sale or transfer of any such Lot which is subject to any recorded First Mortgage pursuant to a decree of foreclosure, or a sale under power of sale under such First Mortgage shall extinguish the lien of such Community Assessments as to payments thereof which become due prior to such sale or transfer. Pursuant to the provisions hereof, liens shall be created on the interest of the purchaser at such foreclosure sale, to secure all Community Assessments assessed hereunder to such purchaser, as an Owner after the date of

such foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided herein. Nothing in this Section shall be construed to release any Owner from his personal obligation to pay for any Community Assessment levied pursuant to this Declaration, if applicable. The Community Board may agree to subordinate the lien of Community Assessments to the interests of the VA under any Cal-Vet financing contracts to the same extent as said liens are made subordinate to liens of First Mortgages under this provision.

## ARTICLE 6

### ARCHITECTURAL CONTROL

6.1 **Scope.** Except as otherwise provided in this Declaration, there shall be no excavation, construction, building, landscaping, development or other Improvements in the Covered Property, including any change or alteration or exterior addition to any Improvements situated within the Covered Property without compliance with this Article.

6.2 **Exemptions.** The provisions of this Article shall not apply to Declarant or the Merchant Builders or any Improvements erected or installed by Declarant or the Merchant Builders on the Covered Property.

6.3 **Appointment of Architectural Committee.** There shall be one (1) Architectural Committee for the Covered Property. The Architectural Committee shall consist of not less than three (3) persons who shall initially be appointed by the Declarant for a period of one (1) year after the original issuance of the Public Report for the first Phase; provided, however, that the number of members of the Architectural Committee may be increased by the Community Board to a greater odd number of members. Members of the Architectural Committee appointed by the Declarant need not be Members of the Community Association. After the expiration of such initial one year period, a majority of the members of the Architectural Committee may be appointed and replaced by Declarant until the earlier to occur of (a) the date that 2,070 Residences, representing ninety percent (90%) of the Residences proposed to be developed for Spring Mountain Ranch have been conveyed to Class A Members; or (b) on the fifth (5th) anniversary following the most recent conveyance to a Class A Member of the first Lot in any Phase under authority of a Public Report. Thereafter, all members of the Committee shall be appointed or replaced by the Community Board.

6.3.1 **Resignations.** Any member or alternate member of the Architectural Committee may at any time resign from the Architectural Committee upon written notice delivered to the Community Board and/or Declarant, to the extent that Declarant, then has the right to appoint a majority of the Architectural Committee members.

6.3.2 **Vacancies.** Vacancies on an Architectural Committee, however caused, shall be filled by the Declarant or the Community Board, based on which such party appointed the Architectural Committee member whose position was vacated.

6.4 **Duties.** It shall be the duty of the Architectural Committee to consider and act upon such proposals or plans submitted to it pursuant to the terms hereof, to administer any Architectural Standards promulgated by the Community Board, to perform other duties delegated

to it by the Community Association, to ensure that any Improvements constructed within the Covered Property conform to plans approved by the Architectural Committee, and to carry out all other duties imposed upon it by the Community Management Documents. The Architectural Committee may establish reasonable rules and may assess a fee for the submission of plans in connection with review of Plans and Specifications (as defined below) including, without limitation, the number of sets of plans to be submitted. The Architectural Committee, in its own name or on behalf of the Community Association, may exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction of Improvements within the Covered Property or any portion thereof. Notwithstanding the foregoing, the Architectural Committee may delegate its plan review responsibilities to one or more members of the Architectural Committee. Upon such delegation, the approval or disapproval of Plans and Specifications by such persons shall be equivalent to approval or disapproval by the entire Architectural Committee. Unless any such rules regarding submission of plans are complied with, such Plans and Specifications shall be deemed not submitted.

6.5 **Address.** The address of the Architectural Committee shall be the principal office of the Community Association or any other place as may be designated by the Community Board pursuant to the Community Bylaws. Such address shall be the place for the submittal of plans and specifications and the place where the current Architectural Standards, if any, shall be kept.

6.6 **Fees.** The Community Board may establish fees for the review and approval of any plans initially submitted and/or resubmitted by an Owner. A schedule of such fees shall be included in the Architectural Standards.

6.7 **Effect of Architectural Committee.** The establishment of the Architectural Committee and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain, repair, alter, modify or otherwise have control over the Owners' respective Lot(s) and the Dwelling(s) and other Improvements situated thereon, as may otherwise be specified in the Community Management Documents.

6.8 **Meetings.** The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. Unless otherwise provided for herein, the vote or written consent of a majority of the members of the Architectural Committee shall constitute an act by the Architectural Committee unless the unanimous decision of its members is otherwise required by the Community Management Documents. The members of the Architectural Committee shall be entitled to reimbursement for reasonable expenses incurred by them in the performance of any Architectural Committee function, but shall otherwise receive no compensation for services rendered.

6.9 **Approval and Conformity of Plans.** The Community Board shall, from time to time, adopt and promulgate Architectural Standards to be administered through the Architectural Committee. The failure of the Community Board to include any particular standards or guidelines in the Architectural Standards shall not limit the right of the Architectural Committee to enforce standards to protect the overall theme and development of the Covered Property including, without limitation, the standards set forth in the Spring Mountain Ranch Entitlement



Documents. The Architectural Standards shall include, among other things, those restrictions and limitations upon the Owners set forth below.

6.9.1 **Limitation on Improvements.** If the Architectural Standards so provide, no Improvements shall be commenced, erected or maintained upon the Covered Property, nor shall there be any addition to or change in the exterior of any Dwelling, structure or other Improvement, unless plans and specifications therefor, showing the nature, design, kind, shape, height, width, color, material and location and any other information prescribed by the Architectural Standards (collectively, "Plans and Specifications") have been submitted to and approved by the Architectural Committee in accordance with the procedures set forth in the Architectural Standards, and evidence satisfactory to the Community Board that the proposed Improvements comply with all applicable laws and building code requirements.

6.9.2 **Time Limitations.** The Architectural Standards may set forth time limitations for the completion of any Improvements for which approval is required pursuant to the Architectural Standards.

6.9.3 **Conformity of Plans and Specifications.** The Architectural Standards may require the conformity of completed Improvements to plans and specifications approved by the Architectural Committee and to the Architectural Standards. The Architectural Committee may, but shall not be required to, record a notice of noncompletion or noncompliance of any completed Improvements with the Architectural Standards, identifying the violating Lot and its Owner and specifying the reason for the notice executed by the Architectural Committee, in the Office of the County Recorder of Riverside County, California, and provide such notice to such Owner after the expiration of the time limitations established pursuant to **Section 6.9.2** above or institute legal proceedings to enforce compliance or completion of the Improvements approved by the Architectural Committee.

6.9.4 **Procedures.** The Architectural Standards may impose procedures for the review and approval of plans and specifications, including requiring submittal of preliminary plans and final plans and impose time periods for the submittal of such plans.

6.9.5 **Other Limitations.** The Architectural Standards may include such other limitations and restrictions as the Community Board in its reasonable discretion shall adopt including, without limitation, regulations of the following: construction, reconstruction, exterior addition, change or alteration to or the maintenance of any building, structure, wall or fence, including, without limitation, the nature, kind, shape, height, materials, exterior color and surface and location of any Dwelling, or other Improvements of any kind.

6.9.6 **Approval of Solar Energy Systems.** Any Owner proposing to install or use a solar energy system, as defined in Civil Code Section 801.5, shall be subject to the same review and approval process as any owner proposing to construct any Improvements or other actions requiring the approval of the Architectural Committee pursuant to this Declaration. However, only reasonable restrictions on the installation and use of a solar energy system shall be permitted. Reasonable restrictions on a solar energy system are those restrictions which do not significantly increase the cost of the system or its sufficiency or specified performance, or

which allow for an alternative system of comparable costs, efficiency, and energy conservation benefits.

6.9.7 **Compliance With Civil Code Section 4765.** In approving Plans and Specifications submitted to it pursuant to this **Article 6**, the Community Board shall comply with the requirements of California Civil Code Section 4765.

6.10 **Time Period for Review of Plans and Specifications.** In the event the Architectural Committee fails to approve or disapprove such plans and specifications within forty-five (45) days after the same have been duly submitted in accordance with any rules regarding such submission adopted by the Architectural Committee, the Owner requesting said approval may submit a written notice to the Architectural Committee advising the Architectural Committee of its failure to act. If the Architectural Committee fails to approve or disapprove any such plans and specifications within fifteen (15) days after the receipt of said notice from such Owner, said plans shall be deemed approved.

6.11 **Appeal.** In the event plans and specifications submitted to the Architectural Committee are disapproved thereby, the Owner making such submission may appeal in writing to the Community Board. The written request must be received by the Community Board not more than thirty (30) days following the final decision of the Architectural Committee. The Community Board shall submit such request to the Architectural Committee for review, whose written recommendations will be submitted to the Community Board. Within forty-five (45) days following receipt of the request for appeal, the Community Board shall render its written decision. If the Community Board fails to render a decision within said forty-five (45) day period, the appealing Owner shall provide a written notice with respect thereto to the Community Board. If the Community Board fails to approve or disapprove any such plans and specifications within fifteen (15) days after the receipt of that notice from such Owner, said plans shall be deemed approved.

6.12 **Waiver.** The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

6.13 **Estoppel Certificate.** Within forty-five (45) days after written demand is delivered to the Architectural Committee by any Owner, and upon payment to the Community Association of a reasonable fee (as fixed from time to time by the Community Association), the Architectural Committee shall record an estoppel certificate, executed by any two (2) of its members, certifying (with respect to any Lot of said Owner) that as of the date thereof either: (a) all Improvements made and other work done upon or within said Lot comply with the provisions of this **Article 6**, or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Lot through him, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Community Association, Declarant and all Owners and such persons deriving any interest through them.

6.14 **Liability.** Neither the Architectural Committee nor any member thereof shall be liable to the Community Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval or any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications, (c) the development of any property within the Covered Property, or (d) the execution and filing of an estoppel certificate pursuant to the Section above entitled "Estoppel Certificate", whether or not the facts therein are correct, provided that such member has acted in good faith on the basis of such information as may be possessed by him. Any plans and specifications submitted to the Architectural Committee are not approved by the Architectural Committee for engineering design, and by approving such plans and specifications neither the Architectural Committee, the members thereof, the Community Association, the Community Board, the Declarant nor any Merchant Builder assumes liability therefor or for any defect in any structure constructed from such plans and specifications. Without in any way limiting the generality of the foregoing, the Architectural Committee, or any member thereof, may, but is not required to, consult with or hear the views of any member of the Community Association with respect to any plans, drawings, specifications or any other proposal submitted to such Architectural Committee.

6.15 **Governmental Requirements.** The application to and the review and approval by an Architectural Committee of any proposals, plans or other submittals shall in no way be deemed to be in satisfaction of or in compliance with any building permit process or any other governmental requirements, the responsibility for which shall be solely with the respective Owner. In the event there is any conflict between the requirements or actions of the Architectural Committee and the mandatory regulations or ordinances of any Governmental Agency relating to the Covered Property, the government regulation or ordinance, to the extent that such regulations and ordinances are more restrictive, shall control and the Architectural Committee shall modify its requirements or actions to conform to the government regulation or ordinance; provided, however, that if the governmental rules or regulations are less restrictive, the provisions of the Community Management Documents shall nonetheless apply,

6.16 **Interpretation.** All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Architectural Committee, or if upon appeal, by the Community Board and its decision shall be final, binding and conclusive on all of the parties affected unless such decision is appealed, in which case the decision of the Community Board shall be final, binding and conclusive on all of the parties affected.

6.17 **Amendments.** Notwithstanding the Article hereof entitled "Amendments," no amendment, verification or rescission of this Article may be had, nor shall Declarant, or any Merchant Builder if approved in writing by Declarant, be prohibited from completing the construction of the Covered Property for so long as Declarant or a Merchant Builder owns, or is the holder of a mortgage or deed of trust against, any portion of Spring Mountain Ranch, without the (i) written consent of Declarant, and the (ii) recording of such consent in the Office of the County Recorder.

## ARTICLE 7

### PROPERTY RIGHTS: COMMUNITY COMMON AREA AND COMMON MAINTENANCE AREA AND EASEMENTS

#### 7.1 Ownership of Community Common Area and Common Maintenance Area.

Fee title to the Community Common Area and 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 on or before the first conveyance of fee title to a Lot in such Phase of the Covered Property in accordance with a phasing plan to be approved by the BRE as such phasing plan may be modified from time to time, free and clear of all liens, except real property taxes, which may be due but are not delinquent, and shall be subject to any easements, covenants, conditions and reservations then of record, including those set forth on any subdivision map of which the Community Common Area or Common Maintenance Area are a part and in this Declaration. The Community Association must accept the conveyance of fee title to or a leasehold interest in any Community Common Area or easement right in any Common Maintenance Area when conveyed or established, and the Community Association shall execute each such deed or lease 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. Notwithstanding the foregoing, Declarant and a Merchant Builder (with Declarant's written consent) and their respective agents and employees shall have the right to enter the Community Common Area to complete the construction of any landscaping or other Improvements to be installed on the Community Common Area and Common Maintenance Area. Such construction shall not 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. The interest of each Owner in the use and benefit of the Community Common Area and Common Maintenance Area shall be appurtenant to the Owner's Lot subject to the Community Association's right to exercise exclusive jurisdiction and control over the Community Common Area and Common Maintenance Area and the other rights and easements described in this Declaration. The nature, design, quantity, quality and all other attributes of the Community Common Area and Common Maintenance Area, and the facilities and amenities thereon, shall be determined in Declarant's sole and absolute discretion or by a Merchant Builder (with Declarant's written consent).

7.2 Permitted Uses of Community Common Area. The Community Common Area shall be used by the Owners and their Invitees for the common interest and benefit of the Covered Property; provided, however, that any portions of the Community Common Area shall also be for the use of members of the public if required by the requirements imposed by the County or other Governmental Agencies having jurisdiction over the Covered Property and shall be subject to the Open Space Requirements.

7.3 Owners' Right of Enjoyment in Community Common Area. Every Owner shall have a non-exclusive easement for use and enjoyment in and to the Community Common Area and such right shall be appurtenant to and shall pass with the title to every Lot, subject to the provisions set forth below.

7.3.1 **Limits on Users of Community Common Area.** Except for public access the Public Trails within the Covered Property as required by the County, the Community Association shall have the right to (a) limit the use of portions of the Community Common Area to those Owners who own Lots, (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 Common Area. The Community Association may limit the number of guests, invitees, tenants, permittees or agents of Owners using the Community Common Area.

7.3.2 **Restrict Use of Community Common Area.** The Community Association shall have the right to limit and restrict the use of the Community Common Area and portions thereof, during specific times or on specific dates or as otherwise deemed necessary by the Community Board for health, safety, welfare, privacy or security purposes.

7.3.3 **Suspend Right to Use Community Common Area.** The Community Association shall have the right after Notice of Hearing, to temporarily suspend the right to use the facilities located on the Community Common Area by an Owner pursuant to the terms of the Community Management Documents.

7.3.4 **Dedication.** The Community Association shall have the right to dedicate or transfer all or any part of the Community Common Area or any interest therein to any public agency, authority or utility or other entity, which dedication or transfer shall be subject to the provisions of this Declaration and such other conditions as the Community Association deems proper.

7.3.5 **Easements.** The Community Association shall have the right of Owners, as provided in **Section 7.9.3** of this Declaration, to easements appurtenant to the Community Common Area and Common Maintenance Area for encroachments onto Lots located adjacent thereto for Improvements originally constructed by Declarant and/or Merchant Builders.

7.3.6 **Establish Special Assessment Districts.** The Community Association shall have the right to establish, in cooperation with the County, one or more special assessment districts 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 Common Area to said district.

7.3.7 **Open Space Easements.** The Community Association shall have the right to establish such open space easements as are deemed necessary by the Community Association over portions of the Community Common Area and shall comply with all Open Space Requirements.

7.3.8 **Use by Public and Access by County.** The Community Association shall have the right to allow use of the Community Common Area which may include portions the Public Trail system by members of the public, pursuant to any requirements imposed by the County and shall not restrict such use if required by the County pursuant to the Spring Mountain Ranch Entitlement Documents or other development approvals by the County pertaining to the Covered Property. In addition, the Community Common Area is subject to certain access rights

and easements in favor of the County and other Governmental Agencies for utilities, ingress and egress and law enforcement purposes.

7.3.9 **Access to Community Association.** The Community Association shall have the right of access, ingress and egress over the Community Common Area and Common Maintenance Area and the right of installation and use of utilities, telecommunication lines and facilities, fiber optics lines, lines for data conveyance, electromagnetic transmissions, radio and infrared transmissions and technological evolutions of the foregoing on the Community Common Area and Common Maintenance Area for the benefit of all Lots.

7.3.10 **Grant Access and Utility Easements.** The Community Association shall have the right to grant maintenance, access and utility easements over the Community Common Area and Common Maintenance Area to others and to convey interests in the Community Common Area and Common Maintenance Area to others.

7.3.11 **Easement To Declarant For Annexable Property.** Declarant shall have and hereby expressly reserves for the benefit of Declarant and each of the Merchant Builders a non-exclusive easement over and across the Community Common Area and Common Maintenance Area and pathways, to the Annexable Property until all of said Annexable Property is annexed to the Covered Property and the Dwellings and Improvements are constructed thereon.

7.3.12 **Community Association Easement.** The Community Association shall have an easement over the Common Maintenance Area 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 Area.

7.3.13 **Declaration Subject to Easements.** Notwithstanding anything herein expressly or impliedly to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Declarant for the installation and maintenance of utilities and drainage facilities for the Covered Property.

7.3.14 **Declarant's Non-Exclusive Easements.** Declarant, the Merchant Builders and each of their agents, employees and independent contractors shall have the easements described in **Article 14** hereof entitled "Development Rights."

7.3.15 **Easement for Declarant and Merchant Builders Over Community Common Area and Common Maintenance Area.** Declarant hereby expressly reserves for the benefit of Declarant and all Merchant Builders for the benefit of their respective agents, subcontractors, Invitees, employees and contractors, and for the benefit of their respective successors and assigns, a nonexclusive easement appurtenant to the Community Common Area and Common Maintenance Area, in, to, and over the Community Common Area and Common Maintenance Area for access, ingress, egress, use and enjoyment, in order to show Spring Mountain Ranch 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 Spring Mountain Ranch. Such easement shall continue until

the last close of escrow for the sale to a member of the homebuying public of a Lot in Spring Mountain Ranch has occurred.

7.4 **Alteration of Improvements on Community Common Area and Common Maintenance Area.** Other than work performed by Declarant in connection with development of the Community Common Area and Common Maintenance Area, no work which in any way alters any portion of the Community Common Area and Common Maintenance Area from its natural or existing state after the date such Community Common Area and Common Maintenance Area was conveyed by Declarant or Merchant Builders to the Community Association shall be made or done except by the Community Association or its agent. The Community Association shall reconstruct, replace or refinish any Improvement or portion thereof situated within the Community Common Area and Common Maintenance Area. Such work shall be in accordance with the original design, finish or standard of construction of such Improvement when such Community Common Area and Common Maintenance Area was conveyed by Declarant or Merchant Builder to the Community Association and which was approved by a majority of the Community Board and the County, or, in a different manner, if approved by the County or other Governmental Agency having jurisdiction thereof. Additionally, the Community Association shall maintain and landscape the Community Common Area and Common Maintenance Area, except for any assessment districts created pursuant to the provisions of the Section above entitled "Establish Special Assessment Districts", in accordance with the provisions of the **Article 9** entitled "Repair and Maintenance" and as the Community Association deems necessary or appropriate in furtherance of the purposes of the Community Association.

7.5 **Delegation of Use.** Any Owner may delegate such Owner's right of enjoyment of the Community Common Area to the members of the Owner's family or tenants who reside on the Owner's Lot, or to the Owner's guests, subject to the Community Associations Rules adopted by the Community Board and the Community Management Documents.

7.6 **Commencement of Maintenance and Easement Rights.** Notwithstanding any conveyance of or transfer of an interest in the Community Common Area and Common Maintenance Area to the Community Association, the Community Association's responsibility to maintain the Community Common Area and Common Maintenance Area located in any Phase shall not begin until (i) the Community Common Area and Common Maintenance Area is completed in accordance with the plans approved by the County and (ii) annual Community Assessments in such Phase have commenced; except that, if any Phase consists of only Community Common Area and Common Maintenance Area, the Community Association's maintenance responsibility therefor shall commence on the later to occur of (a) completion of the Community Common Area and Common Maintenance Area in accordance with the plans therefor approved by the County, or (b) the first day of the month immediately following the month in which (i) the deed or other document is recorded conveying such property in fee or easement to the Community Association or (ii) upon commencement of any lease term if such property is leased to the Community Association. In the event that a maintenance agreement has been entered into by and between the Declarant or a Merchant Builder and the Community Association with respect to the maintenance of all or any portion of the Common Maintenance Area or Community Common Area, the maintenance obligations of the Community Association shall commence upon the expiration of the maintenance agreement or as otherwise provided in

such maintenance agreement. If the contractors or subcontractors of Declarant or a Merchant Builder are contractually obligated to maintain the landscaping or other Improvements on the Community Common Area and Common Maintenance Area pursuant to a maintenance agreement or otherwise, the Community Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Unless a maintenance agreement has been entered into by and between the Declarant and a Merchant Builder and the Community Association which provides for a postponement or reduction in Regular Assessments, such maintenance performed by the contractors or subcontractors of Declarant or a Merchant Builder shall not postpone the commencement of Regular Assessments pursuant to this Declaration nor entitle an Owner to claim any offset or reduction in the amount of such Community Assessments. If the Community Common Area and Common Maintenance Area or any other portion of the Community Common Area and Common Maintenance Area is dedicated to and accepted for maintenance by a Governmental Agency, then the Community Association may, but need not, maintain the area if the Governmental Agency either fails to maintain the area or elects to cease maintaining the area. In addition to the foregoing, neither the Owners (except for Declarant and the Merchant Builders) nor the Community Association shall have any of the easement rights described in this Declaration until such time as the Community Association's maintenance obligations have become effective as provided in this **Section 7.6**. No Owner shall have any rights of ingress and egress over any portion of the Common Maintenance Area not located upon such Owner's Lot, except as may be expressly granted in a Supplementary Declaration or separate easement document.

7.7 **Waiver of Use.** No Owner may exempt himself or herself from liability for Community Assessments duly levied by the Community Association, nor release the Lot owned by such Owner from the liens and charges hereof, by waiver of the use and enjoyment of the Community Common Area, or the abandonment of such Owner's Lot.

7.8 **Non-Severability.** In no event shall an Owner sell or otherwise sever or separate the interest such Owner may have in the Community Common Area or Common Maintenance Area from his ownership interest in a Lot.

7.9 **Owners' Easements and Encroachments.** An Owner's right to enjoyment of such Owner's Lot, and the Community Common Area shall be subject to the easements and encroachments described below.

7.9.1 **Utility Easements.** Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Covered Property, the Owners of any Lot served by said connections, lines or facilities shall have the right, and there is hereby reserved to Declarant, together with the right to grant and transfer the same to Owners, an easement to the full extent necessary therefor, to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof are located to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.



7.9.2 **Utility Connections.** Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone or cable television lines or drainage facilities are installed within the Covered Property, which connections serve more than one (1) Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections which service the Owner's Lot.

7.9.3 **Encroachments.** Each Owner of a Lot adjacent to the Community Common Area or another Lot shall hereby have an easement over said Community Common Area or contiguous Lot for use and maintenance or encroachments thereon due to settlement or shifting of buildings or other Improvements, original construction errors or any other similar causes, so long as said encroachments exist. However, no such easement for encroachments shall exist if an encroachment occurred due to the willful conduct of the Owner of the Lot. The rights and obligations of Owners in the Covered Property shall not be otherwise altered or affected by any such encroachment. In the event any Lot adjoining the Community Common Area is situated on the interior of the enclosure of an original boundary fence to the Community Common Area, such property shall be maintained as such Community Common Area, until and unless such fence is relocated. There are hereby reserved and granted for the benefit of each Lot, as dominant tenement, over, under and across each other Lot and Community Common Area and Common Maintenance Area, as servient tenements, and for the benefit of the Community Common Area and Common Maintenance Area, as dominant tenement, over, under and across each Lot, as servient tenement, non-exclusive easements for encroachment, support, occupancy and use of such portions of Lots and Community Common Area and Common Maintenance Area 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 Covered Property 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.

7.10 **Easements Reserved to Declarant, the Merchant Builders and/or Community Association.** There are hereby reserved to Declarant the easements set forth below.

7.10.1 **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 County or any other political subdivision.

7.10.2 **Cable Television.** There is hereby reserved to Declarant and the Merchant Builders, together with the right to grant and transfer the same, an exclusive easement

for the right to place on, under or across the Covered Property, transmission lines and other facilities for a community antenna system and satellite master antenna system for television or the conveyance of data, radio, electromagnetic or infrared transmissions or technological evolutions of the foregoing and thereafter to own and convey such lines and facilities and the right to enter upon the Covered Property to service, maintain, repair, reconstruct and replace said lines or facilities.

7.10.3 **Oil and Mineral Rights.** There is hereby reserved to Declarant, together with the right to grant and transfer the same, all oil, oil rights, minerals, mineral rights, natural gas rights, and other hydrocarbons by whatsoever name known, geothermal steam, and all products derived from any of the foregoing, that may be within or under the Covered Property together with the perpetual right of drilling, mining, exploring and operating therefor and storing in and removing the same from said land or any other land, including the right to whipstock or directionally drill and mine lands other than the Covered Property oil or gas wells, tunnels and shafts into, through or across the subsurface of the Covered Property and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines without, however, the right to drill, mine, store, explore and operate through the surface of the upper five hundred (500) feet of the subsurface of the Covered Property.

7.10.4 **Construction and Sales.** There is hereby reserved to Declarant, including, without limitation, its sales agents and representatives together with the right of Declarant to grant and transfer the same, over the Community Common Area as the same may from time to time exist, for Declarant's development of the Covered Property, easements for construction, display and exhibit purposes which are reasonably necessary for the erection and sale or lease of Lots within the Covered Property as provided in the Article hereof entitled "Development Rights."

7.10.5 **Parks, Pedestrian and Equestrian Trails.** There is hereby reserved to Declarant and the Community Association, together with the right to grant and transfer the same, an easement for ingress and egress over all parks and equestrian and pedestrian trails within the Covered Property.

7.10.6 **Repair and Maintenance.** There is hereby reserved to Declarant and the Community Association, together with the right to grant and transfer the same, an easement over the Lots for the purpose of performing their repair and maintenance obligations as set forth in this Declaration,

7.10.7 **School Districts.** There is hereby reserved to Declarant, together with the right to grant and transfer the same, to any school district covering the Covered Property, such easements for park, school or other related purposes over portions of the Community Common Area, all as more particularly described in any existing or future grants of easement by Declarant to such school districts.

7.10.8 **Community Facilities Easement.** There is hereby reserved to Declarant, together with the right to grant and transfer the same, a nonexclusive easement for recreational purposes over the Community Common Area. Such easement when granted shall be subject to

the rights of the Community Association with regard to the Community Common Area and Common Maintenance Area as set forth in this Declaration.

7.10.9 **Open Space Easement.** There is hereby reserved to Declarant, together with the right to grant and transfer the same, a non-exclusive open space easement over portions of the Community Common Area as required in connection with Declarant's development of the Covered Property.

7.10.10 **Community Association Easements.** There is hereby reserved to Declarant, the Community Association and their duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Community Association as are set forth in the Community Management Documents.

7.10.11 **Easements to Declarant for Adjoining Property.** Declarant shall have, and hereby expressly reserves, an easement over, upon, through and across the Community Common Area, as servient tenement for the purpose of reasonable ingress to and egress from, over and across the Spring Mountain Ranch Community to the Annexable Property until all of such property is annexed to the Covered Property pursuant to the recording of a Supplementary Declaration in accordance with the provisions of **Article 14** of this Declaration.

7.10.12 **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, a blanket non-exclusive 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.

7.10.13 **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.

7.10.14 **Nature of Easements.** Any easements reserved to Declarant herein, when transferred to an Owner in the same instrument conveying a Lot to such Owner, as the case may be, shall be appurtenant to such Owner's interest in said Lot interest in the.

7.11 **Transfer of Easements.** As to the easements reserved to Declarant, together with the right to grant and transfer the same to the Merchant Builders and the Owners, Declarant shall convey said easements to the Owners in the same instrument conveying the interest required by an Owner by specific description or by reference in said instrument. If such description is not contained in said instrument through inadvertence, mistake or any other cause, such easements shall nevertheless be conveyed to each Owner by such instrument.

7.12 **Amendment to Eliminate Easements.** This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant 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 likewise require the prior written approval of Declarant.

## ARTICLE 8

### USE RESTRICTIONS

8.1 **Residential Use.** All Lots shall be known and described as Lots and shall be used for no purpose other than residential purposes. No Lot shall be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other non-residential purposes; except Lots may be used for model home sites, construction offices, a design center, and display and sales office purposes during the construction and sales period by Declarant or the Merchant Builders. The provisions of this Section shall not preclude professional or administrative occupations without external evidence thereof, for so long as such occupations (i) are conducted in conformance with all applicable governmental ordinances, (ii) are merely incidental to the use of the Lot as a residence, and (iii) the patrons or clientele of such professional or administrative occupation do not regularly visit or conduct business on the Lot. In addition to the foregoing, home child care centers shall be permitted only to the extent that they are of a type regulated by the County and are operated in accordance with the County Municipal Code and all other applicable legal and zoning requirements and licensing regulations, subject to any provisions under applicable law with respect to restrictions on the operation of home child care centers, including, without limitation, "family day care homes" under California Health and Safety Code Sections 1597.40 and 1596.78.

8.2 **Rental of Dwelling.** An Owner shall be entitled to rent the Dwelling situated on the Owner's Lot, subject to the restrictions contained in this Declaration, including, without

limitation, the Section above entitled "Residential Use". Any rental or leasing agreement shall be in writing, shall provide that the lease or rental is subject to the Community Management Documents and shall provide that any failure to comply with any provisions of the Community Management Documents shall be a default under the terms of the rental or lease agreement. No Owner may lease such Owner's Lot or Improvements thereon for hotel, motel or transient purposes. Any lease which is either for a period of fewer than thirty (30) days or pursuant to which the lessor provides any services normally associated with a hotel, shall be deemed to be for transient or hotel purposes. Any Owner who shall lease his or her Dwelling shall be responsible for assuring compliance by such Owner's lessee the Community Management Documents; provided, however, the obligation of the foregoing sentence shall not apply to Declarant in the event Declarant leases a Lot for a term of twenty (20) years or more and such lease is recorded.

8.3 **Signs.** No sign, advertising device or other display of any kind shall be displayed in the Covered Property, except for the following:

8.3.1 entry monuments, community identification signs, and traffic or parking control signs maintained by the Community Association;

8.3.2 for each Lot, one (1) nameplate or similar Owner name or address identification which complies with the Architectural Guidelines;

8.3.3 for each Lot, one (1) sign advertising the Lot for sale or lease that complies with the following requirements, subject to Civil Code Sections 712 and 713:

(a) a sign that is a reasonable size; and

(b) the sign is in compliance with the Architectural Guidelines or is otherwise authorized pursuant to **Article 6**;

8.3.4 noncommercial signs permitted by Civil Code Section 4710; and

8.3.5 such other signs or displays authorized pursuant to **Article 6**.

8.3.6 In addition to the foregoing, all signs must comply with all applicable laws. Notwithstanding the foregoing, Declarant shall have the right to display signs as set forth in **Article 14**.

8.3.7 **Traffic Signage.** The Community Association shall not remove any signage restricting speeds, and the parking of recreational and commercial vehicles installed by Declarant or any Merchant Builder. If such signage is damaged, the Community Association shall replace the signs with similar signage.

#### 8.4 **Parking, Vehicular Restrictions and Garages.**

8.4.1 **Authorized Vehicles.** The following vehicles are "Authorized Vehicles": standard passenger vehicles including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles, and pick-up trucks having a manufacturer's rating or payload

capacity of one (1) ton or less. Authorized Vehicles may be parked in any portion of the Property intended for parking of motorized vehicles; however, no Owner may park a vehicle in a manner which the Community Association determines either restricts the passage of pedestrians or vehicles over driveways, streets or sidewalks in the Covered Property or extends beyond the limits of the space where the vehicle is parked. The Community Association has the power to identify additional vehicles as Authorized Vehicles in the Community Association Rules and to adapt this restriction to other types of vehicles.

8.4.2 **Prohibited Vehicles**. The following vehicles are “Prohibited Vehicles”:  
(a) recreational vehicles, motor homes, travel trailers, camper vans, boats and the like, (b) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, semi-truck tractor, concrete trucks and limousines), (c) buses or vans designed to accommodate more than ten (10) people, (d) vehicles having more than two (2) axles, (e) semi-truck tractors, (f) trailers, (g) inoperable vehicles or parts of vehicles, (h) aircraft, (i) any vehicle or vehicular equipment deemed a nuisance by the Community Board, and (j) any other vehicle not classified as an Authorized Vehicle. Prohibited Vehicles may not be parked, stored or kept on any public or private street in, adjacent to or visible from the Covered Property or any other Community Association Property parking area except for brief periods for loading, unloading, making deliveries or emergency repairs.

8.4.3 **Garages**. Garages shall be used only for parking Authorized Vehicles, and shall not be used for storage, living or business purposes, or any other purpose which prevents the storage of the number of vehicles for which the garage was assigned. Garage doors shall be kept closed at all times, except as reasonably required for ingress to and egress from the interiors of the garages and the Residence and other temporary purposes. The Community Board may adopt rules for the regulation of the opening of garage doors, including the assessment of charges to Owners who violate such rules. No pad or space adjacent to the Garage, or any other portion of a Lot, other than a driveway, shall be used for the parking of any vehicles whatsoever.

8.4.4 **Repair of Vehicles**. No automobile, recreational vehicle or equipment, commercial vehicle or any other motorized vehicle may be dismantled, rebuilt, repaired, serviced or repainted on the Covered Property unless performed within a completely enclosed garage or other structure located in a Dwelling which completely screens the sight and sound of such activity from streets, Community Common Area and neighboring Dwellings.

8.5 **Nuisance; Hazards and Waste**. No noxious or unreasonably offensive trades or activities shall be carried on upon any Lot, Community Common Area or any part of the Covered Property and nothing shall be done thereon which may be, or may become an annoyance, nuisance, disturbance or unreasonable embarrassment to the Covered Property, or which shall, in any way, interfere with the quiet enjoyment of each of the Owners of such Owner’s respective Dwelling, or which shall, in any way, increase the rate of insurance, or which constitutes a violation of any law, ordinance or regulation, now or hereafter in effect, imposed by any Governmental Agency having jurisdiction over the Covered Property. Within ten (10) days of receipt of written notice from the Community Association specifying any item which creates such an insurance hazard or constitutes such waste, the Owner shall cause such item to be removed at such Owner’s sole cost and expense. In the event such item is not timely removed, the Community Association may enter upon such Lot, remove or cause to be removed such item

and assess the Owner the amount of all costs and expenses therefore as an Enforcement Assessment.

8.6 **Temporary Structures.** No trailer, mobile home, tent, shack or other outbuildings shall be kept upon any Lot, the Community Common Area or in any street within the Covered Property, except in connection with work or construction diligently pursued.

8.7 **Vehicles.** No trailer, camper, boat, recreational vehicle, commercial vehicle or similar equipment shall hereafter be permitted to remain upon the Covered Property, unless placed or maintained within an enclosed garage, nor permitted to be parked other than temporarily for purposes of loading, unloading or cleaning, on any street, whether public or private, alley, or Community Common Area within the Covered Property. Temporary parking shall mean parking of vehicles belonging to guests or Owners, delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of services to the Community Association or the Owners and parking of vehicles belonging to or being used by Owners for loading and unloading purposes. The Community Board may adopt guidelines defining what vehicles constitute recreational vehicles and rules for the regulation of the admission and parking of vehicles within the Covered Property or any public within the Covered Property, including the assessment of charges to Owners who violate or whose Invitees violate such rules.

8.8 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept on the Lots, provided they are not kept, bred, or maintained for any commercial purpose, or in numbers deemed unreasonable by the Community Board. Notwithstanding the foregoing, no animals or fowl may be kept on the Lots which, in the good faith judgment of the Community Board, or a committee selected by the Community Board for this purpose, result in an unreasonable annoyance or are obnoxious to residents in the Covered Property. No pet or other animal shall be permitted on the Community Common Area except as allowed by the Community Association Rules. The Owner of any pet or animal shall be responsible for the immediate removal and clean-up of such animals' waste in the Community Common Area. The Owner of any pet or animal shall at no times allow such animal to run unrestrained on Community Common Area or the streets, sidewalks or pathway areas of the Covered Property and the Owner of such pets shall at all times have full and complete control over such animal. The Community Board shall have the right, after notice and hearing, to remove animals from the Community Common Area which it finds constitute a continuing unreasonable nuisance to Owners.

8.9 **Oil and Mineral Rights.** No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted by any Owner upon or in any Lot nor, subsequent to the recording of this Declaration, shall oil wells, tanks, tunnels, or mineral excavations or shafts be installed upon the surface of any Lot or within five hundred (500) feet below the surface of such properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted by any Owner upon any Lot. No Owner shall use a Lot to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance or other mineral of any kind.

8.10 **Unightly Items.** All weeds, rubbish, debris, or unsightly materials or objects of any kind shall be regularly removed from the Lots and shall not be allowed to accumulate

thereon. All clotheslines, refuse containers, woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot unless obscured from view of adjoining streets, Lots, alleys or Community Common Area nearest such portion of the Lot from a height of six (6) feet or less and shall comply with any restrictions or standards promulgated by the Community Board or an Architectural Committee.

8.11 **Antenna Restrictions.** No Owner shall install any antenna, satellite dish, or other over-the-air receiving device (“Antenna”) (i) on any real property which such Owner is not entitled to exclusively use or control, as provided in Title 47 U.S.C. §§ I et seq., 47 CFR § 1.4000 and any other applicable laws, rules and decisions promulgated thereunder (collectively “Antenna Laws”), (ii) in a particular location if, in the Community Board’s opinion, the installation, location or maintenance of such Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Community Board, or (iii) that is of a size larger than is permitted under the Antenna Laws. If an Owner is entitled to install an Antenna under the foregoing requirements, such Owner shall provide the Community Board with written notice that such Owner has installed or is about to install the Antenna. If an Owner desires to install an Antenna, other than as described in (i) through (ii) above, such Owner may do so only upon the prior approval pursuant to Article 6; provided, however, that in no event shall amateur (“HAM”) radio towers be permitted in the Covered Property. The Community Board shall not impose or enforce any restrictions upon Antennae that are inconsistent with the Antenna Laws.

8.11.1 **Restrictions on Installation.** The Architectural Committee may adopt reasonable restrictions on installation and use of an Authorized Antenna as part of its Architectural Standards in order to minimize visibility of the Authorized Antenna from other Lots. Such restrictions may designate one or more preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer’s recommendations) or screening vegetation or other Improvements. However, no restriction imposed by the Architectural Committee may (i) unreasonably delay or prevent the installation, maintenance or use of an Authorized Antenna, (ii) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (iii) preclude acceptable quality reception.

8.11.2 **Prohibitions on Installation.** The Architectural Committee may prohibit the installation of an Authorized Antenna in a particular location if, in the Design Architectural Committee’s opinion, the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Architectural Committee. The Architectural Committee may also prohibit an Owner from installing an Authorized Antenna on any real property which such Owner does not own or is not entitled to exclusively use or control under the Declaration. The Architectural Committee also has the power to prohibit or restrict the installation of any antenna or other over-the-air receiving device that does not meet the definition of an Authorized Antenna above.

8.11.3 **Review after Installation.** The Architectural Committee may review the location and installation of an Authorized Antenna after it is installed. After its review, the Architectural Committee may require that the Authorized Antenna be moved to a preferred



location (if one has been designated) for safety reasons or to comply with reasonable restrictions subject to this Section and applicable law.

8.11.4 **Restatement of Applicable Law.** This Section is intended to be a restatement of the authority granted to the Architectural Committee under the law. All amendments, modifications, restatements and interpretations of the law applicable to the installation, use or maintenance of an antenna or other over-the-air receiving device shall be interpreted to amend, modify, restate or interpret this Section.

## 8.12 **Installations.**

8.12.1 **Mechanics Liens.** No Owner may cause or permit any mechanic's lien to be filed against the Covered Property for labor or materials alleged to have been furnished or delivered to the Covered Property or any Lot for such Owner and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Community Board. If any Owner fails to remove any mechanic's lien against any portion of the Property other than just that Owner's Lot, the Community Board may discharge the lien and charge the Owner an Enforcement Assessment for such cost of discharge.

8.12.2 **Outside Installations.** Unless installed in the original construction of a Residence or approved by the Architectural Committee, the following outside installations are prohibited: (a) clotheslines, balcony, patio or deck covers, wiring, air conditioning equipment, water softeners, other machines and other similar Improvements, (b) Improvements protruding through the walls or roofs of buildings, and (c) other exterior additions or alterations to any Lot. Outdoor patio or lounge furniture, plants and barbecue equipment may be kept in accordance with the Architectural Standards. No outdoor fires are permitted, except in barbecue grills, fire pits, fireplaces and similar structures designed and used in such a manner that they do not create a fire hazard. No clothing, fabrics or unsightly articles may be hung, dried or aired on or over any Lot.

8.12.3 **Window Coverings.** Temporary window coverings ("Temporary Window Coverings") in a design and color that does not conflict with the surrounding Improvements (but excluding aluminum foil, newspaper, plywood or any other contrasting material) are permitted for a maximum period of sixty (60) days after the Lot is conveyed by Declarant or a Merchant Builder to an Owner. Except as specifically provided in the proceeding sentence, no Temporary Window Coverings shall be used to cover any door or window of any Residence. All window coverings (including Temporary Window Coverings) shall be of a neutral color harmonious with and not in conflict with the color scheme of the exterior wall surface of the Residence. The Community Board has the right to specify in the Architectural Standards the types and colors of window coverings that may be exposed in the Covered Property.

8.12.4 **Water and Sewer Systems.** No individual water supply system, water softener system or sewage disposal system shall be permitted on Lot unless the system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any applicable water district and any applicable Governmental Agencies.

8.12.5 **Exterior Painting.** All exterior painting of a Residence shall be subject to the approval of the Architectural Committee, unless the painting is of the same color as the then current color of the exterior of the Residence, in which case the approval of the Architectural Committee shall be required.

8.12.6 **Solar Energy Systems.** Each Owner may install a solar energy system on his or her Lot which serves his or her Residence so long as (a) the design and location of the solar energy system meet the requirements of all applicable governmental ordinances, and (b) the design and location receive the prior written approval of the Architectural Committee.

8.12.7 **Basketball Hoops and Other Fixed Sports Apparatus.** No basketball standards or fixed sports or play apparatus shall be installed or attached to the front of any Dwelling or garage or be erected in any yard without the prior approval of the Architectural Committee.

8.13 **Rights of Disabled.** Subject to Article 6, each Owner may modify such Owner's Residence and the route over the Lot leading to the front door of his or her Residence, at such Owner's sole expense to facilitate access to his Residence by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such persons, in accordance with California Civil Code Section 4760 or any other applicable law.

8.14 **View Impairment.** There is no representation that any view exists from any Lot. Each Owner, by accepting a deed to a Lot, acknowledges that grading of, construction on or installation of improvements, including landscaping, on other Lots within the Covered Property and on surrounding real property may impair whatever view may exist from the Owner's Lot and each Owner consents to such impairment and waives any claim for view impairment. Each Owner and the Community Association, by accepting a deed to a Lot or any Community Common Area and Common Maintenance Area, acknowledges that any construction or installation by Declarant or a Merchant Builder or by other Owners following Architectural Committee approval as provided in **Article 6** hereof may impair the view of such Owner, and each Owner and the Community Association on behalf of the Members hereby consent to such impairment.

8.15 **Drainage.** All drainage of water from any Lot and the Improvements thereon shall drain or flow as set forth below.

8.15.1 Any such water may drain or flow into adjacent streets or alleys and shall not be allowed to drain or flow upon, across, or under adjoining Lots, or Community Common Area unless an easement for such purpose is granted.

8.15.2 All slopes or terraces on any Lot shall be maintained so as to prevent any erosion thereof upon adjacent streets or adjoining property.

8.16 **No Obstructions.** There shall be no obstruction of any Community Common Area, Common Maintenance Area except as permitted herein or as provided by the Community Management Documents. Nothing shall be placed or stored in the Community Common Area, except as allowed by the express permission of the Community Board.