

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
OSHARA VILLAGE MAINTENANCE ASSOCIATION**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
OSHARA VILLAGE MAINTENANCE ASSOCIATION**

This Declaration of Covenants, Conditions and Restrictions for Oshara Village Maintenance Association is made on this 9th day of June, 2006 by Oshara Village, LLC ("Declarant").

RECITALS

WHEREAS, Declarant is the owner of certain real estate in Santa Fe County, New Mexico, shown as Tract 4 on the Plat, and desires to impose the provisions of this Declaration on and subject to certain portions said property to the covenants, hereinafter stated, including easements, for the purpose of protecting the value and standards of said real estate, the terms of which Declaration shall run with the land and be binding upon and inure to the benefit of all parties having any right, title or interest in or to said property, or any part thereof, and their heirs, successors and assigns.

NOW, THEREFORE, Declarant hereby declares that the real property described in Section 2.2 hereof shall be subject to the following covenants, conditions and restrictions:

**ARTICLE 1.
DEFINITIONS**

Wherever used herein, the following terms shall have the following meanings:

- 1.1. "Annual Assessments" means those Assessments levied in accordance with Section 5.6.
- 1.2. "Articles" means the articles of incorporation of the Association, as amended from time to time.
- 1.3. "Assessments" means the Annual Assessments, the Parcel Assessments and the Special Assessments, as well as any other amounts declared by this Declaration to be a part of the Assessments or declared by this Declaration to be secured by the lien created under Article 5.
- 1.4. "Association" means the Oshara Village Maintenance Association, a New Mexico nonprofit corporation.
- 1.5. "Board of Directors" or "Board" means the board of directors of the Association.
- 1.6. "Bylaws" means the bylaws of the Association, as amended from time to time.
- 1.7. "Commercial Lot" means Commercial Lots 1 through 29, and Lots 76 through 107, within Tract 4 as shown on the Plat. Solely for purposes of this Declaration, Commercial Lots includes those Lots designated for use and construction as Live Work and designated on the Plat as "L/W." The inclusion of Live Work Lots in the definition of Commercial Lots shall not be construed as a modification of any covenants, restrictions or regulations governing the use of said Live Work Lots.
- 1.8. "Common Expenses" means the expenses of operating the Association, and exercising and performing the rights and duties of the Association, together with allocations to

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reserves, all as may be found to be necessary and appropriate by the Board in accordance with this Declaration.

1.9. "Condominium Unit" means a condominium unit constructed upon any Lot.

1.10. "Declarant" means Oshara Village, LLC and its successors and assigns if any such successor or assign agrees, by instrument recorded in the records of Santa Fe County, to act as and assume the duties of Declarant under this Declaration.

1.11. "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Oshara Village Maintenance Association, including any amendments hereto.

1.12. "First Mortgage" means a Mortgage recorded against a Lot or Condominium Unit which has priority over all other Mortgages.

1.13. "Lot" means the smallest parcel of land that may be separately conveyed. Ordinarily, Lots are designated as numbered, separately identifiable Lots on the Plat. Once improved, the Lot includes any buildings or other permanent improvements on or a part of the Lot. Notwithstanding any other provision contained herein, Declarant, with governmental approval, may redefine Lots it owns by dividing or combining Lots or portions of Lots or adjusting the boundary of a Lot. Lots do not include the Maintained Areas, the Common Areas that are subject to the maintenance and other obligations of the Oshara Village Homeowners' Association pursuant to the Declaration of Covenants, Conditions and Restrictions for the Homes at Oshara Village or the Common Areas that are subject to the maintenance and other obligations of the Oshara Village Commercial Association pursuant to the Declaration of Covenants, Conditions and Restrictions for Oshara Community.

1.14. "Maintained Areas" means those access and utility tracts, roadways, roads, rights-of-ways, streets, drainage areas, retention ponds, sidewalks or trails, signage and traffic control devices situated or to be situated with Oshara Village – Phase I and Tract 4 as shown on the Plat and listed on Exhibit A, attached hereto and incorporated herein by this reference. Maintained Areas may be situated within, under or upon, but are separate and apart from, the Common Areas that are subject to the maintenance and other obligations of the Oshara Village Homeowners' Association pursuant to the Declaration of Covenants, Conditions and Restrictions for the Homes at Oshara Village and the Common Areas that are subject to the maintenance and other obligations of the Oshara Village Commercial Association pursuant to the Declaration of Covenants, Conditions and Restrictions for Oshara Community.

1.15. "Member" means any Person entitled to membership in the Association, as provided in this Declaration.

1.16. "Mortgage" means a deed of trust or mortgage recorded against a Lot or Condominium Unit.

1.17. "Mortgagee" means any institutional lender that holds a bona fide First Mortgage encumbering a Lot or Condominium Unit as security for the performance of an obligation; the term "institutional lender" specifically includes a bank, savings and loan association, mortgage lending company, insurance company and the Federal National Mortgage Association or similar agency.

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1.18. "Occupant" means any Person other than an Owner who occupies or is in possession of a Lot or Condominium Unit or any portion thereof or building or Structure thereon, whether as a lessee under a lease or otherwise, other than on a merely transient basis.

1.19. "Oshara Village" means the residential, mixed-use and commercial development of which Oshara Village - Phase I is a part.

1.20. "Oshara Village - Phase I" refers to the first phase of Oshara Village to be constructed on Tract 4, as shown on the Plat.

1.21. "Owner" means any contract purchaser or record owner, whether one or more persons or entities and including Declarant, of a fee simple title to any Lot or Condominium Unit made subject to this Declaration, but excludes those persons or entities having such interest merely as security for the performance of an obligation.

1.22. "Parcel Assessments" means those Assessments levied in accordance with Section 5.13.

1.23. "Person" means a natural individual, trustee, corporation, partnership, limited liability company, combination, association or other legal entity.

1.24. "Plat" means that certain plat of Survey entitled "Land Division of Tracts 1 & 2 for Greer Enterprises Inc. and Subdivision Plat of Tract 4 for Phase One of Oshara Village," filed on June 12, 2006 in Plat Book 626, pages 4-17, in the records of Santa Fe County. The Plat includes the Phase I Development Plan recorded as part of the Plat.

1.25. "Property" means the real property made subject to this Declaration pursuant to Article 2 hereof.

1.26. "Reserved Declarant Rights" means those rights reserved to Declarant under Section 4.7.

1.27. "Residential Lot" means Lots 1 through 75 and 108 through 175 within Tract 4 as shown on the Plat.

1.28. "Special Assessments" means those Assessments levied in accordance with Section 5.12.

1.29. "Special Use Fees" means any fees charged by the Association for use of the Maintained Areas pursuant to this Declaration.

1.30. "Structure" means any Residence, garage, building, outbuilding, fence or wall.

1.31. "Transition Date" means the date on which the Reserved Declarant Rights, as defined herein, expire or are relinquished by Declarant in their entirety pursuant to this Declaration.

**ARTICLE 2.
PROPERTY SUBJECT TO DECLARATION**

2.1. Initial Property and General Declaration. The property subject to this Declaration is (a) Commercial Lots 1 through 29, Commercial Lots 76 through 107, Residential Lots 1 through 77 and Residential Lots 108 through 175, within Tract 4 as shown on the Plat, comprised of all

residential, live work and commercial Lots within Oshara Village – Phase I, and (b) the Maintained Areas. Declarant hereby declares that such property, plus any additional property submitted to this Declaration in accordance with Section 2.2, shall be held, sold and conveyed subject to the covenants, restrictions and easements of this Declaration, which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of said Lots and the Maintained Areas.

2.2. Additional Property. Oshara Village may be developed in phases. It is contemplated that additional real property shall be annexed to and become subject to this Declaration. Declarant intends, but is not obligated, to annex some or all of the real property shown as Tracts 1-A and 2-A on the Plat (the "Annexation Property"). Declarant may, from time to time, in its sole discretion and without necessity of any approval by any Owner, subject the Annexation Property to this Declaration, whereby such Annexation Property shall have all of the rights and obligations of membership in the Association. Declarant may elect to annex all or any portion(s) of the Annexation Property to this Declaration in increments of any size. The annexation of any such property shall become effective when Declarant has recorded in the records of Santa Fe County a Supplemental Declaration to this Declaration that describes the real property to be annexed, declares that such property is held pursuant to this Declaration and states the amended total number of Lot or Condominium Units within Oshara Village - Phase I for assessment and voting purposes, and Declarant files a revised plat showing such Annexed Property. A Supplemental Declaration may contain such complementary additions and modifications of the provisions of this Declaration as may be necessary to reflect the different character, if any, of the property being annexed. Additional Maintained Areas and areas designated as Reserved Open Space on the Plat, or portions thereof, may also be made subject to this Declaration by Supplemental Declaration pursuant to this Section 2.2. Until after the Transition Date, no property may be incorporated into Oshara Village - Phase I without Declarant's consent, which consent may be withheld in Declarant's sole discretion. Thereafter no property may be incorporated into Oshara Village - Phase I unless consented to by a majority vote of the Members.

2.3. Withdrawal of Property. Notwithstanding any other provision of this Declaration, Declarant shall have the right from time to time, at its sole option and without the consent of any other Person (except as provided in this Section 2.3), to delete from the Property and remove from the effect of this Declaration one or more portions of the Property, or any additional property that is made subject to this Declaration by Supplemental Declaration. Additional Maintained Areas and areas designated as Reserved Open Space (if made subject to this Declaration), may also be removed from the effect of this Declaration, pursuant to this Section 2.3. Notwithstanding the foregoing, a portion of the Property may not be so deleted and removed unless at the time of such deletion and removal such portion is owned by Declarant or Declarant executes and records an instrument approving such deletion and removal. Declarant may exercise its rights under this Section 2.3 by executing and recording an instrument that identifies the portion of the Property to be so deleted and removed and that is executed by each owner of such portion (if other than Declarant), and the deletion and removal of such portion of the Property shall be effective upon the later of: (a) the date such instrument is recorded; or (b) the effective date specified in such instrument, if any, whereupon the portion of the Property so deleted and removed shall thereafter for all purposes be deemed not a part of the Property and not subject to this Declaration, and the owner(s) thereof (or of interests therein) shall not be Owners or Members or have any other rights or obligations hereunder except as members of the general public.

2.4. No Obligation to Annex. Nothing herein shall constitute a representation, warranty or covenant that Declarant, any successor or assign of Declarant or any other Person shall

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subject any additional property (whether or not a part of the Annexation Property) to the provisions of this Declaration, nor shall Declarant, any successor or assign of Declarant, or any other Person be obligated so to do; and Declarant may, by recorded instrument executed by Declarant, waive its rights so to do, in whole or in part, at any time or from time to time.

ARTICLE 3. ASSOCIATION

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3.1. Maintenance Obligations. The Association, or its duly delegated representative, shall manage, maintain, repair, improve and replace (a) the Maintained Areas and (b) that portion of Rabbit Road, as shown on the Plat, that passes through Tract 1-A and Tract 2-A as shown on the Plat. The Board shall be the sole judge as to the appropriate maintenance and improvement of all such areas. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative. In the event the Board determines that Owners of certain Lots or Condominium Units shall be responsible for maintenance of certain Maintained Areas pursuant to this Declaration, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Occupants of Oshara Village - Phase I for the Association or an individual Owner(s) to be responsible for such maintenance, considering costs, uniformity of appearance, location and other factors deemed relevant by the Board.

3.2. Water Reclamation Facilities. Oshara Village - Phase I will be served by the Oshara Village Water Reclamation Facilities (WRF). The Association may, in the future, be obligated to maintain such WRF as part of the Maintained Areas pursuant to Section 3.1.

3.3. Maintenance Plan. The Association shall adopt a maintenance plan for the maintenance of the Maintained Areas as required by Section 3.1, such maintenance to be performed in accordance with Exhibit B, attached hereto and incorporated herein by this reference.

3.4. Manager. The Board may appoint or engage a manager to be responsible for the day-to-day operation of the Association and the maintenance of the Maintained Areas, and the Association may hire such additional employees or contractors as may be necessary for it to carry out its obligations under this Declaration. The Board shall determine the compensation to be paid to the manager, and any such additional employees or contractors.

3.5. Availability of Books, Records and Other Documents. The Association shall maintain complete and current copies of this Declaration, any amendments thereto, the Articles, the Bylaws and the books, records and financial statements of the Association; and, upon the prior written request to the Association by any Owner or by any holder, insurer or guarantor of a First Mortgage, shall make the same available for inspection, at reasonable times and under reasonable circumstances, by such Owner or such holder, insurer or guarantor.

3.6. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

3.7. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The initial Board and each Board thereafter until the Transition Date shall consist of five (5) individuals (who need not be Members) appointed by Declarant. Commencing with the first annual meeting of the Members after the Transition Date, the Board

shall consist of, and the Members shall elect up to, seven (7) directors, each of whom must be a Member (or an individual designated by a corporation, partnership or other non-individual Member). The foregoing references to seven (7) directors shall be subject to increase in the number of directors as provided in the Bylaws. Each director appointed by Declarant shall serve until: (a) such director resigns or dies; (b) such director is removed by Declarant; or (c) the Members elect new directors at the first annual meeting after the Transition Date. The first board of directors elected by the Members shall consist of seven (7) individuals, four (4) of whom shall be elected for a 1-year term and three (3) of whom shall be elected for a 2-year term, thus establishing a staggered Board; thereafter, directors shall be elected for 2-year terms. The Board may appoint various committees at its discretion.

3.8. County Requirements. As may be required by Santa Fe County, the Association shall be responsible for the control, maintenance and repair of all Maintained Areas and any and all private easements owned or held by the Association; provided, however, that nothing in this Section 3.8 shall be deemed to prevent the Association from pursuing any and all rights it may have, in law or equity, against any Owner, Occupant, insurer or other person for any damage, costs, liability, expense, injury or claim of any kind suffered or incurred by or imposed upon the Association as a result of any action, conduct or breach of duty of any other Owner, Occupant, insurer or other Person, or otherwise.

ARTICLE 4. MEMBERSHIP AND VOTING

4.1. Membership. Every Owner of a Lot or a Condominium Unit automatically shall be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Owner's membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot or Condominium Unit to which the membership is attributable.

4.2. Joint Ownership. In the event fee title to any Lot or Condominium Unit is jointly held by two or more Persons, whether by joint tenancy, tenancy in common, community property or otherwise, each such Person shall be considered a Member, but the membership as to such Lot or Condominium Unit shall be jointly held, and such Persons shall jointly designate to the Association in writing one of their number who shall have the power to vote said membership, and, in the absence of such designation and until such designation is made, the Board shall either: (a) make such designation, in which event such designation shall be binding for all purposes; or (b) declare that until all Persons who together hold such membership jointly make such written designation, the vote(s) attributable to such membership under this Declaration shall not be cast or counted on any questions before the Members; provided, however, that if any one of such Persons casts a vote or votes representing a certain Lot or Condominium Unit without objection from any other Person sharing ownership of such Lot or Condominium Unit, the Person casting such vote(s) shall thereafter be conclusively presumed to be acting with the authority and consent of all other Persons sharing ownership of such Lot or Condominium Unit unless and until objection thereto is made to the Board in writing.

4.3. Voting Interests. Subject to the joint ownership provisions of Section 4.2, each Owner of a Lot within the Property shall have a voting interest in the Association as follows: (a) each Residential Lot shall have a voting interest in the Association equal to one (1) vote per Lot; and (b) and each Owner of a Commercial Lot shall have a voting interest in the Association equal to the number of votes set forth on Exhibit C, attached hereto and incorporated herein by this reference; provided, however, in the event that a condominium is created on any Lot within the Property, the number of vote(s) for said Lot, as set forth on Exhibit C, shall be allocated

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among the Condominium Units in proportion to the number of votes given to each such Condominium Unit pursuant to the declaration for said condominium.

4.4. Right to Vote. No change in the ownership of a Lot or Condominium Unit shall be effective for voting purposes until the Board has received satisfactory evidence thereof. An Owner may give any Person a proxy to cast the Owner's vote(s), subject to the Articles, the Bylaws and applicable law. Fractional voting is not allowed.

4.5. Members' Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles and the Bylaws.

4.6. Transfer of Membership. Except as otherwise provided in this Declaration, the rights, duties and obligations of a Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Member's Lot or Condominium Unit, and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure or other legal process authorized under New Mexico law and shall operate to transfer the membership appurtenant thereto to the new Owner; any attempt to make any other form of transfer shall be void.

4.7. Reserved Declarant Rights. Notwithstanding anything herein to the contrary, Declarant shall have the right to appoint all members of the Board, and shall be a Member of the Association, for so long as Declarant owns or has a right to purchase, by option agreement, right of first refusal, purchase agreement or similar right or agreement, any portion of the Annexation Property. Prior to the expiration of the foregoing period, Declarant may waive all or any portion of its rights to appoint members of the Board, and may relinquish its membership in the Association. Additionally, for any action that may be authorized by a vote of the Members pursuant to this Declaration, said action shall also require the consent and approval of Declarant prior to the Transition Date, which consent and approval may be withheld in Declarant's sole and absolute discretion.

ARTICLE 5. ASSESSMENTS

5.1. Creation of Assessment Rights. In order to provide funds to enable the Association to meet its financial and other obligations, to create and maintain appropriate reserves and to enforce any of the Association's rights hereunder, there is hereby created rights of assessment exercisable on behalf of the Association by the Board. Annual Assessments, Special Assessments and Parcel Assessments shall be for Common Expenses and shall be allocated among Lots and Condominium Units as provided in this Article 5.

5.2. Covenants with Respect to Assessments. Each Owner, by acceptance of such Owner's deed (or other conveyance instrument) with respect to a Lot or Condominium Unit, is deemed to covenant and agree to pay the Assessments levied pursuant to this Declaration with respect to such Owner's Lot or Condominium Unit, together with interest from the date due at a rate equal to the greater of: (a) twelve percent (12%) per annum; or (b) two percent (2%) per annum plus the annual rate of interest state at the time as the "Prime Rate" by the Wall Street Journal in its money rates section, together with such reasonable late fees as may be established by the Board and such costs and reasonable attorneys' fees as may be incurred by the Association in seeking to collect such Assessments. Each of the Assessments with respect to a Lot or Condominium Unit, together with interest, late fees, costs and reasonable attorneys' fees as provided in this Section 5.2, shall also be the personal obligation of the Person who or which was the Owner of such Lot or Condominium Unit at the time such Assessment arose with

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respect to such Lot or Condominium Unit. No Owner shall be relieved of such Owner's obligation to pay any of the Assessments by abandoning or not using such Owner's Lot or Condominium Unit, or the Maintained Areas, or by leasing or otherwise transferring occupancy rights with respect to such Owner's Lot or Condominium Unit. However, upon transfer by an Owner of fee title to such Owner's Lot or Condominium Unit, as evidenced by a publicly recorded instrument, such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot or Condominium Unit. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or Board to take any action or perform any function required to be taken or performed by the Association or Board under this Declaration, the Articles or the Bylaws; for inconvenience or discomfort arising from the making of repairs or improvements that are the responsibility of the Association; or from any action taken to comply with any law or ordinance or with any order or directive of any municipal, county or other governmental authority.

5.3. Lien for Assessments; Foreclosure. There is hereby created and established a lien against each Lot and Condominium Unit that shall secure payment of all present and future Assessments assessed or levied against such Lot or Condominium Unit or the Owner thereof (together with any present or future charges, fines, penalties or other amounts levied against such Lot or Condominium Unit or the Owner or Occupant thereof pursuant to this Declaration, the Articles or the Bylaws). Such lien is and shall be prior and superior to all other liens affecting the Lot or Condominium Unit except (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien of any First Mortgage made in good faith for value. Such lien may be foreclosed in the manner provided by law for the foreclosure of mortgages.

5.4. Perfection of Liens. The recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further recordation of any claim of a lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien, to fix the priority thereof or otherwise (although the Board shall have the option to record written notices of claims of lien in such circumstances as the Board may deem appropriate).

5.5. Declarant's Exemption from Assessments. As to any portion of the Property on which Declarant itself is constructing improvements, Declarant, at its election and its sole discretion, may pay no more than twenty-five percent (25%) of the Assessments that would otherwise be attributable to all Lots or Condominium Units within such portion of the Property that are owned by Declarant. As to all other portions of the Property owned by Declarant, Declarant shall be obligated to pay only twenty-five percent (25%) of the Assessments, and Declarant shall have the option to contribute to the Association in accordance with Section 5.17.

5.6. Computation of Annual Assessments; Annual Budget. The Board shall prepare and adopt an annual budget for each fiscal year of the Association, which shall serve as the basis for determining the Annual Assessments for the applicable fiscal year. The Board may determine and allocate the Annual Assessments among the Lots and Condominium Units in its sole discretion, and such Annual Assessments need not be allocated equally among the Lots or Condominiums. The annual budget shall take into account the estimated Common Expenses and cash requirements of the Association for the year. The annual budget shall also take into account the estimated net available cash income for the year, if any, from the operation or use of any of the Maintained Areas, whether from Special Use Fees or otherwise. The annual budget shall also provide for a reserve for contingencies and a reserve for replacements, all in such reasonably adequate amounts as shall be determined by the Board, taking into account

the number and nature of replaceable assets, the expected life of such asset and each asset's expected repair or replacement cost.

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5.7. Delivery of Budget to Owners. Not later than sixty (60) days following the meeting of the Board at which the Board adopts the annual budget for the year in question, the Board shall cause to be delivered or mailed to each Owner a copy of the budget and a statement of the amount of the Annual Assessments to be levied against such Owner's Lot or Condominium Unit for the fiscal year in question. The Board may determine the amount of the Annual Assessment to be levied against each Lot or Condominium Unit in the Board's sole discretion. The Board shall not be required to levy such Annual Assessments equally against all Lots and Condominium Units.

5.8. Failure to Adopt Budget. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year, then until and unless such budget is adopted, the budget for the year immediately preceding, and the amount of the Annual Assessments provided for therein, shall remain in effect.

5.9. Amendments to Budget. Except as otherwise provided in this Declaration, neither the annual budget (nor any amended budget adopted pursuant to the following provisions of this Section 5.9) adopted by the Board, nor any Assessment levied pursuant thereto, shall be required to be ratified or approved by the Owners or any other Persons. If at any time during a fiscal year of the Association the Board deems it necessary to amend the budget for such year, the Board may do so and may levy an additional Annual Assessment for each year or may call a meeting of the Members to request that the Members approve a Special Assessment pursuant to Section 5.12. Within sixty (60) days after adoption of an amended budget (if the Board elects to levy an additional Annual Assessment), the Board shall cause to be delivered or mailed to each Owner a copy of the amended budget and a statement of the additional Annual Assessment to be levied against such Owner's Lot or Condominium Unit; if, instead, the Board elects to call a meeting of Members to seek approval of a Special Assessment, the Board shall cause a copy of the amended budget proposed by the Board to be delivered or mailed to each Owner with the notice of such meeting, and, if a Special Assessment is duly approved by the Members at such meeting, shall cause to be promptly mailed or delivered to each Owner a statement of the Special Assessment to be levied against such Owner's Lot or Condominium Unit.

5.10. Fees Upon Sale of Lot or Condominium Unit. The Board is expressly empowered to create and assess a fee payable upon a sale of each Lot or Condominium Unit, to be payable by the party purchasing the Lot or Condominium Unit

5.11. Due Dates. Annual Assessments for each fiscal year shall be due and payable in equal periodic installments, payable not more frequently than monthly nor less frequently than semiannually, as determined for such fiscal year by the Board, with each such installment to be due and payable on or before the first day of each applicable period during that fiscal year. Parcel Assessments and Special Assessments, if any, shall be paid in such manner and on such dates as may be fixed by the Board. In addition to any other powers of collection or enforcement granted hereunder, in the event any Assessment with respect to a Lot or Condominium Unit are delinquent, the Board shall have the right, in its sole discretion, to accelerate the date(s) on which all subsequent installments of Assessments with respect to such Lot or Condominium Unit are due and payable. Assessments shall be deemed "paid" when actually received by the Association or by its manager or agent designated by the Association to collect the same (provided, however, that if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors or refuses

to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due.)

5.12. Special Assessments. In addition to the Annual Assessments and Parcel Assessments authorized by this Article 5, the Association may levy Special Assessments from time to time for uses other than or in addition to Parcel Assessments and Annual Assessments, in the Board's sole discretion; provided, however, that any Special Assessment shall be effective only with the approval of not less than sixty-seven percent (67%) of the Voting Interests of the Members. The Board may determine and allocate the Special Assessments among the Lots and Condominium Units in its sole discretion, and such Special Assessments need not be allocated equally among the Lots or Condominiums.

5.13. Parcel Assessments. Where the Association has the responsibility to maintain, repair, replace, repave, resurface and operate any portions of the Maintained Areas, if in the Board's discretion such portions of the Maintained Areas exclusively or disproportionately benefit the Owners of Lots or Condominium Units within a particular part of Oshara Village - Phase I (and their respective Occupants, guests and invitees) as compared to the Owners of other Lot or Condominium Units within Oshara Village - Phase I (and their respective Occupants, guests and invitees), the Board may assess all (or such appropriate portion as the Board shall reasonably determine) of the costs of such maintenance, repair, replacement, repaving, resurfacing and operation solely against the Lot or Condominium Units within portion of Oshara Village - Phase I (and the respective Owners thereof) as additional Parcel Assessments. The Board may determine and allocate the Parcel Assessments among the Lots and Condominium Units in its sole discretion, and such Parcel Assessments need not be allocated equally among the Lots or Condominiums. Such Parcel Assessments shall be secured by the lien for Assessments created by and described in, and enforceable in accordance with the provisions of, this Declaration. Such Parcel Assessments may also include amounts to establish and fund reserves for such maintenance, repair, replacement, repaving, resurfacing and operation, and to purchase public liability, property damage and/or casualty insurance with respect to such private streets or private roadways (and such appurtenant equipment and facilities) and such open space, recreational and other common facilities, all if and as the Board may deem reasonable and appropriate. The intent of this Section 5.13 (which shall be considered in its interpretation and application) is to establish a mechanism whereby various facilities intended and designed solely or primarily for use by the Owners of Lot or Condominium Units within a particular portion of Oshara Village - Phase I (and their Occupants, guests and invitees) may be owned and maintained by the Association, at the sole or primary expense of such Owners.

5.14. Certificates. The Association shall, upon the written request of any Owner or the holder, insurer or guarantor of any Mortgage, and upon payment of such reasonable charge as may be determined by the Board, furnish to the requesting party a certificate, executed by an officer of the Association, stating the date to which Assessments with respect to such Owner's Lot or Condominium Unit (or the Lot or Condominium Unit or against which such Mortgage is Recorded) have been paid and the amount, if any, of any Assessments that have been levied with respect to said Lot or Condominium Unit but that remain unpaid as of the date of such certificate. Such certificate shall be binding upon the Association as to the matters set forth therein as of the date thereof.

5.15. Surplus Monies. Unless otherwise expressly determined by the Board, any surplus monies of the Association shall be held by the Association and placed in one or more reserve accounts as determined by the Board, and shall not be paid to the Owners or credited against the Owners' respective liabilities for Assessments.

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5.16. Billing and Collection Procedures. The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments and Special Use Fees. The failure of the Association to send a bill to an Owner shall not relieve such Owner of the Owner's liability for an Assessment or Special Use Fee. The Association shall be under no duty to refund any payments received by the Association, even if the ownership of a Lot or Condominium Unit changes during a fiscal year of the Association. Any successor Owner shall be given credit for any unrefunded prepayments made by a prior Owner.

5.17. Deficiencies. Prior to the Transition Date, Declarant may pay and contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association or at such other times as may be requested by the Board, such funds as may be necessary, when added to the Assessments levied by the Association pursuant to this Declaration, to provide for: (a) the operation and maintenance of the Maintained Areas and the improvements situated therein; (b) the maintenance of adequate reserves; and (c) the performance by the Association of all other obligations of the Association under this Declaration or the Articles or the Bylaws. Declarant's obligations under this Section 5.17 may be satisfied in the form of a cash subsidy, by "in kind" contributions of services or materials, or by a combination of a cash subsidy and "in-kind" contributions.

5.18. Common Expenses Resulting from Misconduct. Notwithstanding any other provision of this Article 5, if any Common Expense is caused by the misconduct of any Owner (or of any Occupant, tenant, employee, servant, agent, guest or invitee for whose actions such Owner is responsible under applicable law), the Association may assess that Common Expense exclusively against such Owner and such Owner's Lot or Condominium Unit, which amount (together with any and all costs and expenses, including but not limited to reasonable attorneys' fees, incurred by the Association in recovering the same) shall be secured by the lien created pursuant to Section 5.3.

**ARTICLE 6.
INSURANCE**

6.1. Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot or Condominium Unit to an Owner other than Declarant, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

6.1.1. Worker's compensation insurance to the extent necessary to meet the requirements of applicable law.

6.1.2. Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

6.2. Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Declaration shall be included in the budget of the Association and shall be paid by the Association as Common Expenses.

**ARTICLE 7.
RIGHTS OF MORTGAGEES**

7.1. Consent of Mortgagees. This Declaration contains provisions concerning various rights, priorities, remedies and interests of Mortgagees. Such provisions are to be construed as covenants for the protection of the Mortgagees on which Mortgagees may rely in making loans secured by a mortgage on a Lot or Condominium Unit. Accordingly, no amendment or modification of this Declaration specifically impairing such rights, priorities, remedies or interests

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of a Mortgagee shall be adopted without the prior written consent of Mortgagees as provided below. This Section 7.1 shall not be construed, however, as a limitation upon the rights of Declarant, the Association or the Owners to make amendments pursuant to this Declaration that do not adversely affect the Mortgagees.

7.2. Percentage Required. Wherever consent of the Mortgagees is required, it shall be sufficient to obtain the written consent of Mortgagees holding a lien on two-thirds (2/3) or more of all Lots and Condominium Units encumbered by a mortgage.

7.3. Timely Response. Any such required Mortgagee consent shall be given promptly and shall not be unreasonably withheld. Any consent not given or denied within thirty (30) calendar days of receipt of request for consent shall be deemed given.

**ARTICLE 8.
EASEMENTS AND RESTRICTIONS**

8.1. Easements in Favor of Declarant and Association. The easements provided by this Section 8.1 are intended to permit Declarant to continue and complete construction and development of the Property, and to benefit the Property. Accordingly, Declarant and the Association hereby reserve for themselves, their successors and assigns the following easements upon, across, over, under and through the Property, including the Maintained Areas:

8.1.1. Private Roads and Paths. A nonexclusive easement for use of any roadways, roads, rights-of-ways or streets that are not accepted for dedication to the public and that are intended for vehicular traffic.

8.1.2. Utility Easements. A blanket easement upon, across, over, under and through the Property for ingress, egress, installation, replacement, repair and maintenance of all public and private utility and service systems and related infrastructure, including but not limited to water, sewer, irrigation systems, drainage, telephone, electricity, television, security, cable or communication lines and other equipment. By virtue of this easement, Declarant and the Association, and their successors and assigns, may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits. However, the exercise of this easement must not unreasonably disturb each Owner's right of quiet enjoyment of the Owner's Lot or Condominium Unit.

8.1.3. Drainage; Erosion Controls. A blanket easement upon, across, over, under and through the ground within the Property to capture, inspect, maintain and to correct drainage of surface water and other erosion controls. This easement includes the right to cut any trees, bushes or shrubbery, to grade soil and to take any other action reasonably necessary for health or safety or to comply with governmental requirements. This easement also includes the right to install and maintain water catchment systems within the Property. This easement may be exercised at the option of Declarant or the Association and shall not be construed to obligate Declarant or the Association to take any affirmative action to correct conditions.

8.1.4. Encroachments. An easement for any improvements constructed on the Maintained Areas that encroach on any Lot or Condominium Unit, whether due to any minor deviation from the Plat or the settling or shifting of any land or improvements.

8.1.5. Signage. An easement for any signage erected for the purpose of providing directional signage within or about the Property.

8.1.6. Maintenance of Maintained Areas. To the extent reasonably necessary, an easement over any Lot or Condominium Unit for maintenance of the Maintained Areas.

8.1.7. Other Easements. Any other easements granted to the Association or Declarant, as such easements are shown on the Plat, as may hereafter be amended, or as shown on any future plat for any additional property that is made subject to this Declaration by Supplemental Declaration.

8.2. Traffic Calming Features. No speed bumps, speed humps or similar features shall be constructed or situated in any roadways within the Maintained Areas except for raised crosswalks.

ARTICLE 9.
TERM AND TERMINATION

This Declaration shall be effective upon the date it is recorded in the records of Santa Fe County and, as amended from time to time, shall continue in full force and effect for a period of twenty (20) years, and thereafter shall continue for consecutive periods of twenty (20) years each, unless there is an affirmative vote, not more than three hundred sixty (360) days prior to the date otherwise scheduled for commencement of the next extension of the term of this Declaration, to terminate this Declaration by a vote of a ninety percent (90%) of the Members, with or without a meeting of the Members, pursuant to the provisions and procedures of the Bylaws to terminate this Declaration. If the necessary votes and consents are obtained to terminate this Declaration, the Board shall cause to be recorded a certificate of termination, duly signed by the president or a vice president of the Association and attested by the secretary or an assistant secretary of the Association, with their signatures acknowledged. Thereupon, this Declaration, as of the date of recordation of the certificate of termination (or such later date as may be specified in the certificate of termination), shall have no further force and effect.

ARTICLE 10.
AMENDMENT

10.1. Amendment. Subject to any required consent by Mortgagees under this Declaration, this Declaration may be amended as follows:

10.1.1. By Owners. This Declaration may be amended at any time by an instrument signed by the president or vice president and secretary of the Association, certifying approval in writing by Owners representing sixty-seven percent (67%) of the votes in the Association. For purposes of any vote under this Section 10.1.1 prior to the Transition Date, Declarant shall be entitled to the number of votes equal to three (3) times the number of votes that would otherwise be attributable to Lots or Condominium Units owned by Declarant.

10.1.2. By Declarant. To the extent permitted by law, Declarant specifically reserves the absolute and unconditional right to amend this Declaration without the consent or joinder of any party: (a) to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Association or any other generally recognized institution involved in the guarantee or purchase and sale of home loan mortgages; (b) to conform to the requirements of institutional mortgage lenders or title insurance companies; (c) as may be requested by any other governmental or quasi-governmental agency that governs development of the Property, as a condition to such agency's approval of this Declaration, the developments encompassing the Property or as Declarant may conclude in good faith to be necessary to secure such approval of any such agency; or (d) to clarify the Declaration's provisions or correct errors.

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10.2. Limitations. Whenever any action described in this Declaration requires approval of greater than sixty-seven percent (67%) of the votes in the Association, amendment of that provision shall require the same percentage vote as would be required to accomplish that action directly. Rights reserved to Declarant may not be amended without the specific consent of Declarant.

10.3. Recording. Any amendment shall take effect upon recording in the public records.

ARTICLE 11.
GENERAL PROVISIONS

11.1. Enforcement. The Association and Declarant, so long as Declarant owns any Lot or Condominium Unit, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. No covenant contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches that may occur. In the event that the Association or Declarant prevails in any action to enforce the provisions of this Declaration, the Association or Declarant shall be entitled to any and all costs, including but not limited to reasonable attorneys' fees and court costs incurred in such action, and such costs may be assessed as a Parcel Assessment to the Owner(s), if any, against whom such action was taken.

11.2. Notices. Any notices required or permitted to be delivered hereunder shall be deemed to be delivered when personally delivered to the respective addressee or upon deposit of the same in the United States mails, postage prepaid, certified or registered mail, return receipt requested, as follows:

11.2.1. to the Association at its principal place of business; and

11.2.2. to any Owner at the address such Owner has registered with the Association and listed in its books and records; or, if no address has been registered, then to the Owner's Lot or Condominium Unit address.

11.3. Invalidity. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

11.4. Governing Law. This Declaration and the rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of New Mexico.

11.5. Recitals and Exhibits. The foregoing recitals and all exhibits are incorporated herein by reference.

11.6. Captions. The captions and section headings of this Declaration are not necessarily descriptive, or intended or represented to be descriptive, of all the provisions thereunder, and in no manner shall such captions and section headings be deemed or interpreted to limit the provisions of this Declaration.

11.7. Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural; the plural shall including the singular; the use of any gender shall include all genders; and the use of the words "include" and "including" shall be construed as if the phrases "without limitation" or "but not [be] limited to" were annexed thereafter.

EXHIBIT A

TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
OSHARA MAINTENANCE ASSOCIATION

List of Maintained Areas

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Craftsman Road
Flower Garland Road
New Village Avenue
Oshara Boulevard
Saddle Blank Road
Silver Buckle Road
Water Drum Road
White Feather Road
Willow Back Road

20' Access and Utility Tract A
24' Access and Utility Tract A
24' Access and Utility Tract B-1
24' Access and Utility Tract B-2
24' Access and Utility Tract C-1
24' Access and Utility Tract C-2
20' Access and Utility Tract D
24' Access and Utility Tract D
Variable Width Access and Utility Tract E
Variable Width Access and Utility Tract F
20' Access and Utility Tract G
20' Access and Utility Tract H
24' Access and Utility Tract H
20' Access and Utility Tract I
24' Access and Utility Tract I
20' Access and Utility Tract J
20' Access and Utility Tract K
40' Access and Utility Tract K
Variable Width Access and Utility Tract K
Tract L 20' Road & Utility Easement

Sidewalks
Drainage areas
Retention ponds
Trails

EXHIBIT B

**TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
OSHARA MAINTENANCE ASSOCIATION**

Maintenance Plan

This Maintenance Plan for Oshara Village Maintenance Association is made for the Maintained Areas described in that certain Declaration of Covenants, Conditions and Restrictions for Oshara Village Maintenance Association (the "Declaration"). This Maintenance Plan is made for the safe and efficient operation of the Maintained Areas, as such areas are defined in the Declaration.

1. The Oshara Village Maintenance Association (the "Association") shall maintain and otherwise manage all Maintained Areas in Oshara Village – Phase I as provided in the Declaration.

2. The Board of Directors of the Association (the "Board") shall use a reasonable and customary standard of care in providing for the repair, management and maintenance of the Maintained Areas in Oshara Village – Phase I, such that the Maintained Areas reflect a pride of ownership. In its discretion, the Board shall:

(a) Construct, reconstruct, repair, replace or refinish any improvement or portion thereof upon Maintained Areas in Oshara Village – Phase I;

(b) Replace injured or diseased trees and other vegetation in any Maintained Areas in Oshara Village – Phase I, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(c) Place and maintain upon any Maintained Areas in Oshara Village – Phase I such signs as the Board and the Architectural Review Committee may deem appropriate for the proper identification, use and regulation thereof;

(d) Repair, maintain and remove debris from drainage areas and ponds; and

(e) Do all such other and further acts that the Board deems necessary or appropriate to present and protect the Maintained Areas in Oshara Village – Phase I and the beauty thereof, in accordance the general purposes specified in the Declaration.

3. The Board and the Architectural Review Committee shall be the sole judges as to the appropriate maintenance of all Maintained Areas in Oshara Village – Phase I. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Maintained Areas in Oshara Village – Phase I shall be taken by the Board or its duly delegated representatives.

4. At least once per calendar year, the Board shall assess the need for any and all maintenance and repairs of the Maintained Areas in Oshara Village – Phase I, including, without limitation, landscaping, gardening, paving, painting, construction, snow removal, maintenance of culverts and drainage areas and ponds, and shall schedule such maintenance and repairs in the Board's sole discretion.

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EXHIBIT C

TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
OSHARA VILLAGE MAINTENANCE ASSOCIATION

Voting Interests in the Association

<u>Lot No.</u> <u>(as shown on Plat)</u>	<u>Votes Per</u> <u>Lot</u>
76	1
77	1
78	1
79	1
80	1
81	1
82	1
83	1
84	1
85	1
86	1
87	1
88	1
89	1
90	1
91	1
92	1
93	1
94	1
95	1
96	1
97	1
98	1
99	1
101	1
102	1
103	1
104	1
105	1
106	1
107	1
Commercial 1	8
Commercial 2	11
Commercial 3	11
Commercial 4	2
Commercial 5	15
Commercial 6	4
Commercial 7	1

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Commercial 8	1
Commercial 9	1
Commercial 10	1
Commercial 11	1
Commercial 12	1
Commercial 13	1
Commercial 14	1
Commercial 15	1
Commercial 16	1
Commercial 17	1
Commercial 18	1
Commercial 19	1
Commercial 20	1
Commercial 21	1
Commercial 22	1
Commercial 23	1
Commercial 24	1
Commercial 25	1
Commercial 26	1
Commercial 27	1
Commercial 28	1
Commercial <u>29</u>	1
Total:	105

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