

FATEO 400825

DECLARATION OF WATER COVENANTS AND RESTRICTIONS  
FOR  
COMMERCIAL LOTS WITHIN OSHARA VILLAGE - PHASE I

SPC CLERK RECORDED 06/12/2006

This Declaration of Water Covenants and Restrictions for Commercial Lots within Oshara Village - Phase I (the "Declaration") is made in Santa Fe, New Mexico, this 12<sup>th</sup> day of June, 2006, by Oshara Village, LLC, a New Mexico limited liability company (the "Declarant").

RECITALS

- A. Declarant is the Owner of real property in Santa Fe County, New Mexico described in Section 2.1 below.
- B. Oshara Village - Phase I includes 29 commercial lots, as shown on the Plat. Such Phase I Commercial Lots may contain one or more commercial units and/or businesses.
- C. Declarant desires and intends that Declarant, any other Owners, tenants, mortgagees, occupants and all other persons hereinafter acquiring any interest in any Phase I Commercial Lot, shall at all times enjoy the benefits of, and shall hold their interest subject to, the rights and restrictions set forth in this Declaration, all of which are declared to be in furtherance of a plan for the proper and beneficial use of the Phase I Commercial Lots.

NOW THEREFORE, Declarant declares, covenants, and agrees as follows:

**ARTICLE 1.**  
**DEFINITIONS**

1.1. Definitions. When used in this Declaration, the following terms shall have the meanings set forth below:

- (A) "County Land Use Administrator" means the Santa Fe County Land Use Administrator.
- (B) "Interior Floor Space" means a Phase I Commercial Unit's heated interior commercial floor space, excluding interior and exterior walls.
- (C) "Irrigation" means all outside watering of landscaping and other exterior vegetation, including, without limitation, lawns, shrubs and trees.
- (D) "Occupancy Date" means the date on which a certificate of occupancy is issued for a commercial structure constructed on a Phase I Commercial Lot; provided, however, that the Occupancy Date shall be no later than the date the commercial structure constructed on a Phase I Commercial Lot is first occupied.
- (E) "Owner" means the person(s) or entity(ies) who, individually or collectively as joint tenants, tenants in common or any other co-ownership relationship recognized under the laws of the State of New Mexico, as the last transferee of parcel of real property, as evidenced by the recording of a transfer with the County Clerk of Santa Fe County, New Mexico.

SANTA FE COUNTY RECORDS 06/12/2006

(F) "Phase I Commercial Lots" means Lots 1 through 29 located in Oshara Village – Phase I, designated on the Plat with a "C."

(G) "Plat" means Plat of Survey entitled "Subdivision Plat for Phase I of Oshara Village" recorded June 12, 2006 as Document No. 1437406, Plat Book 626, Page 4-17, in the records of Santa Fe County, New Mexico.

(H) "Reclaimed Water" means water used in Oshara Village – Phase I and then treated at the Water Reclamation Facilities.

(I) "Water Reclamation Facilities" means the water treatment facility located within Oshara Village - Phase I, or any other water treatment facility providing Reclaimed Water to Oshara Village – Phase I, for nonpotable use, including Irrigation.

**ARTICLE 2.**  
**PROPERTY SUBJECT TO THIS DECLARATION**

2.1. The Property. The real property that is and shall be held, transferred, sold, conveyed, used and occupied subject to this Declaration is the Phase I Commercial Lots shown on the Plat. This Declaration does not govern or apply to those lots designated for Live Work Units within Oshara Village – Phase I, being lots 76 through 107 and 145 through 154 and designated as "L/W" on the Plat.

**ARTICLE 3.**  
**WATER RESTRICTIVE COVENANTS**

3.1 Non-Water Consuming Businesses. "Non-Water Consuming Business" means a business that does not use potable water in the manufacturing or provision of any products or services in the normal course of business, except as required for bathroom facilities and drinking water for the convenience of employees and customers of the business. Non-Water Consuming Businesses include, without limitation, the following types of businesses:

- (A) Dry good retail establishments;
- (B) Business offices;
- (C) Call centers;
- (D) Research and development businesses;
- (E) Educational facilities;
- (F) Fabrication facilities;
- (G) Craft manufacturing; and
- (H) Warehouse and storage facilities.

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3.2. Water Consuming Businesses. "Water Consuming Business" means any type of business that is not a Non-Water Consuming Business, including, without limitation, the following:

- (A) Restaurants and cafés;
- (B) Grocers;
- (C) Offices for doctors, dentists and other healthcare professionals;
- (D) Hair dressers, salons and spas;
- (E) Florists and nurseries; and
- (F) Food manufacturing or processing facilities.

3.3. Water Restrictive Covenants for Phase I Commercial Lots. The following water restrictive covenants shall apply to all Phase I Commercial Lots, including all Non-Water Consuming Businesses and Water Consuming Businesses located on such lots:

(A) Water use shall be conserved through voluntary and obligatory practices such as, respectively, reclaimed water reuse in certain indoor plumbing functions and water harvesting to collect roof drainage in cisterns for landscape irrigation.

(B) Waste water from all toilets and sinks on Phase I Commercial Lots, as well as showers and bathtubs, if such facilities are allowed on Phase I Commercial Lots by the provisions of this Declaration, shall be treated at the Water Reclamation Facilities, where it will be converted to Reclaimed Water. Each structure on a Phase I Commercial Lot shall be constructed in such a way, and shall include the proper connecting mechanisms, to allow delivery of waste water from the structure to the Water Reclamation Facilities. Reclaimed Water shall be used in all toilets on the Property.

(C) Toilets shall be either "dual-flush" models (i.e., have different water-use settings for liquid and solid waste) or be designed pursuant to manufacturer's specifications for use of no more than 1.6 gallons per flush.

(D) All lavatory faucets shall be motion activated.

(E) All wet bar faucets shall be low flow.

(F) Evaporative coolers are prohibited; however, compressor air conditioners are allowed.

(G) All water heaters in structures on Phase I Commercial Lots shall have devices that recirculate water through the water heater in order to reduce the amount of time for water to be heated. All such devices shall have timers that can be set by users.

(H) Hot water pipes shall be insulated.

SFC CLERK RECORDED 06/12/2006

(I) Low water use landscaping techniques applying the principles of xeriscaping shall be utilized.

(J) Non-native grasses are prohibited.

(K) The water used for Irrigation shall be only Reclaimed Water or rainwater, including rainwater collected on Phase I Commercial Lots.

(L) All Phase I Commercial Lots shall be subject to rainwater harvesting.

(M) Potable water hose bibs or potable water taps of any kind shall not be installed except on the interior of any structure on a Phase I Commercial Lot for inside use

(N) Water wells are prohibited.

(O) Reverse osmosis systems, and other water filter/backwashing technology, are prohibited

(P) Photovoltaic solar hot water conduits may be used.

3.4. Water Restrictive Covenants for Non-Water Consuming Businesses. In addition to the water restrictive covenants set forth in Section 3.3, the following water restrictive covenants shall apply to all Non-Water Consuming Businesses operating on any Phase I Commercial Lots:

(A) Annual potable metered water consumption for each Non-Water Consuming Businesses on a Phase I Commercial Lot shall not exceed one (1) acre foot per year per forty-thousand (40,000) square feet of Interior Floor Space used and occupied by the Non-Water Consuming Business.

(B) Showers and bathtubs are prohibited.

(C) Automatic dishwashers are prohibited.

(D) Individual swimming pools, spas (either of a permanent or temporary nature) and temporary wading pools are prohibited.

3.5. Water Restrictive Covenants for Water Consuming Businesses. Water Consuming Businesses shall be subject to the water restrictive covenants set forth in Section 3.3 hereof. Additionally, no Water Consuming Business shall be allowed to operate or commence operations on any Phase I Commercial Lot without the prior written approval of Declarant, which approval may include a determination that the proposed business will not consume water in excess of the amount set forth in Section 3.4(A) and may also require that additional water or water rights be secured by the operator or owner of the proposed Water Consuming Business and transferred to the Santa Fe County water system, at the owner or operator's sole cost, in an amount equal to the anticipated water to be consumed by the proposed Water Consuming Business. The cost of obtaining the foregoing approval from Declarant shall be borne by the owner or operator of the proposed Water Consuming Business seeking such approval.

**ARTICLE 4.**  
**GENERAL PROVISIONS**

4.1. Duration: Covenants Running with the Land. The covenants of this Declaration shall run with and bind the Phase I Commercial Lots, and shall inure to the benefit of the Owners of Phase I Commercial Lots, their respective legal representatives, heirs, successors and assigns.

4.2. Amendment.

(A) This Declaration may be amended by the recording of a written instrument or instruments specifying the amendment, executed by more than fifty percent (50%) of the voting interests of the Owners of all Phase I Commercial Lots. For purposes of this Section 4.2(A), each Phase I Commercial Lot shall have a voting interest in the Association equal to the number of votes set forth on Exhibit A, attached hereto; provided, however, in the event that a condominium is created on any Phase I Commercial Lot, the number of votes for said Phase I Commercial Lot, as set forth on Exhibit A attached hereto, shall be allocated among the Condominium Units in proportion to the number of votes given to each such Condominium Unit pursuant to the declaration for said condominium; and further provided that for any such amendment to become effective, such amendment shall include the written approval by the County Land Use Administrator, which approval shall not be unreasonably withheld.

4.3. Enforcement. Enforcement of these covenants and restrictions shall be by any Owner or the Oshara Village Commercial Association (the "Association"), in any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction or in any proceeding to restrain any such violation. Any failure by any Owner or the Association to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter. If an Owner or the Association prevails in any action against any person or persons to enforce any provision of this Declaration, they shall be entitled to recover from such person or persons his costs and reasonable attorneys' fees.

4.4. Surcharge for Excess Use. The Santa Fe County Utilities Department, or the entity providing potable water to the Phase I Commercial Lots, shall have the right to assess a surcharge against its customers for excess water consumption in an amount to be determined in its sole discretion, including, without limitation, consumption in excess of the amounts set forth in Sections 3.4(A) and 3.5(A).

4.5. Inconsistencies with Other Oshara Village - Phase I Documents. The terms and provisions of this Declaration shall govern over any inconsistent terms set forth in the "Declaration of Covenants, Conditions and Restrictions for the Homes at Oshara Village" or the "Declaration of Covenants, Conditions and Restrictions for Commercial Lots within Oshara Village" and any other documents governing the development and use of Oshara Village - Phase I.

4.6. Severability. The invalidity or unenforceability of any covenant, restriction, term or other provision of this Declaration as determined by a court of competent jurisdiction shall not impair or adversely affect the validity or enforceability of any other covenant, restriction, term or

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