

Father 400825

EXHIBIT "G"

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE HOMES AT OSHARA VILLAGE**



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

DECLARATION COVENANTS
PAGES: 35

I Hereby Certify That This Instrument Was Filed for Record On The 12TH Day Of June, A.D., 2006 at 16:34 And Was Duly Recorded as Instrument # 1437409
In The Records Of Santa Fe County

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Witness My Hand And Seal Of Office
Valerie Espinoza
County Clerk, Santa Fe, NM

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE HOMES AT OSHARA VILLAGE

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE HOMES AT OSHARA VILLAGE

This Declaration of Covenants, Conditions and Restrictions for The Homes at Oshara Village 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 Lot 4 on the Plat, as well as the Common Areas as defined herein, and desires to impose the provisions of this Declaration on and subject certain portions of 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 Homes at Oshara Village 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. "Adult Oriented Business" means any business, commercial enterprise or commercial activity engaged in (a) the offering, sale, rental, furnishing or display of: (i) books, magazines, videos, motion pictures, photographs or other visual representations of any kind that depict or describe sexual activities or sexually explicit anatomical areas of the human body or (ii) instruments, devices or paraphernalia that are designed or intended for use in connection with sexual activities; or (b) the display or use of persons in a state of nudity or engaged in sexual activities but excluding artist models who pose for art classes or education provided to adult students, painters, sculptors or other artists in rendering an artistic rendition of the model.

1.2. "Annual Assessments" means those Assessments levied in accordance with Section 5.6.

1.3. "Architectural Review Committee" means the committee established pursuant to Article 9.

1.4. "Articles" means the articles of incorporation of the Association, as amended from time to time.

1.5. "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.

1.6. "Association" means the Oshara Village Homeowners' Association, a New Mexico nonprofit corporation.

1.7. "Board of Directors" or "Board" means the board of directors of the Association.

1.8. "Bylaws" means the bylaws of the Association, as amended from time to time.

1.9. "Common Areas" means: (a) Park Tract B, Park Tract C and Parking Tract D, within Tract 4, as shown on the Plat, together with all improvements situated thereon; (b) all land within The Homes, together with all improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest, easement or license for as long as the Association is the owner of the fee or holds such leasehold interest, easement or license; (c) all land, and the improvements situated thereon, within The Homes which Declarant indicates on a recorded subdivision plat or other recorded instrument is to be conveyed to the Association for the benefit and use of the Members; and (d) all land, and the improvements situated thereon, which is situated within the boundaries of a Lot or Condominium Unit which is designated on a recorded subdivision plat recorded by Declarant or approved by Declarant or by the Association on land which is to be improved, maintained, repaired and replaced by the Association.

1.10. "Common Expenses" means the expenses of operating the Association, and exercising and performing the rights and duties of the Association, together with allocations to reserves, all as may be found to be necessary and appropriate by the Board in accordance with this Declaration.

1.11. "Condominium Unit" means a condominium unit constructed upon or within The Homes. Each Condominium Unit shall be considered a separate Residence for purposes of this Declaration.

1.12. "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.

1.13. "Declaration" means this Declaration of Covenants, Conditions and Restrictions for The Homes at Oshara Village, including any amendments hereto.

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

1.15. "Lot" means the smallest parcel of land within The Homes 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.

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

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

1.18. "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.

1.19. "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.

1.20. "Oshara Village" means the residential, mixed-use and commercial development of which The Homes is a part.

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 located within The Homes, but excludes those persons or entities having such interest merely as security for the performance of an obligation. Owners shall not include those 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 696, pages 4-16, in the records of Santa Fe County. The Plat includes the Phase I Development Plan recorded as part of the Plat.

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

1.26. "Residence" means any structure designed for residential use and occupancy. A Residence includes a detached single-family home, townhouse or other attached dwelling (such as each half of a duplex unit), an apartment or Condominium Unit, and a residential dwelling within a mixed-use building. Residences include any Residences placed on any additional property that is made subject to this Declaration by Supplemental Declaration.

1.27. "Rules and Regulations" means such rules and regulations that may be adopted by the Board from time to time that govern the operation, use and maintenance of the Lot or Condominium Units and the Common Areas and any facilities or services made available to the Owners.

1.28. "Single Family" means a group of individuals related by blood, marriage or legal adoption, or a group of not more than four unrelated individuals maintaining a common household.

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

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

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

1.32. "The Homes" means the property that is subject to this Declaration pursuant to Article 2 hereof plus any additional property that is made subject to this Declaration by a Supplemental Declaration.

1.33. "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.

1.34. "Water Consuming Business" means any business, commercial enterprise or activity that uses potable water in the manufacturing or provision of any product or service in the ordinary course of business, except as required for bathroom facilities and drinking water for the convenience of employees and customers of the business. Water Consuming Businesses include, but are not limited to, the following types of businesses: restaurants, cafés, grocers, offices for doctors, dentists and other healthcare providers, hair dressers and salons, florists and nurseries, and food manufacturing or processing facilities.

ARTICLE 2. PROPERTY SUBJECT TO DECLARATION

2.1. Initial Property and General Declaration. The property subject to this Declaration shall be known as The Homes at Oshara Village and shall consist initially of the real property shown as Lots 1 through 75 and 108 through 175 within Tract 4 as shown on the Plat, as well as the Common Areas as defined herein. Declarant hereby declares that such property, plus any additional property submitted to this Declaration in accordance with Section 2.2, defined herein as the "The Homes," 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 The Homes.

2.2. Additional Property. The Homes 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, including the right to use the Common Areas. 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 The Homes 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 Common 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 The Homes without Declarant's consent, which consent may be withheld in Declarant's sole

discretion. Thereafter no property may be incorporated into The Homes 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 Homes and remove from the effect of this Declaration one or more portions of The Homes, or any additional property that is made subject to this Declaration by Supplemental Declaration. Additionally, Common 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 Homes 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 Homes 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 Homes 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 Homes so deleted and removed shall thereafter for all purposes be deemed not a part of The Homes 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 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.

2.5. Reserved Open Space. Declarant shall retain ownership of the areas designated on the Plat as "Reserved Open Space." Such Reserved Open Space may be subject to and used for future development and improvements, in Declarant's sole discretion, provided that applicable Santa Fe County open space requirements are met. Portions of such Reserved Open Space may be conveyed to the Association or the Oshara Village Community Association, which shall then be responsible for the maintenance of such Reserved Open Space as Common Areas. Until such conveyance to the Association or the Oshara Village Community Association, any such Reserved Open Space shall not be subject to the Design Guidelines, as defined below.

ARTICLE 3. ASSOCIATION

3.1. Maintenance of Common Areas. Except as set forth in Section 3.3, the Association, or its duly delegated representative, shall manage, maintain, repair, improve and replace the Common Areas, and all improvements upon or a part of the Common Areas that the Association is obligated to maintain pursuant to this Declaration. The Board shall be the sole judge as to the appropriate maintenance and improvement of the Common 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 Common 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 The Homes 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. Maintenance Plan The Association shall adopt a maintenance plan for the maintenance of the Common Areas as required by Section 3.1, such maintenance to be performed in accordance with Exhibit A, attached hereto and incorporated herein by this reference.

3.3. No Obligation to Maintain Certain Areas. The Association shall have no responsibility to maintain any areas, lands or improvements within The Homes that are designated on the Plat as access and utility tracts, roadways, roads, rights-of-ways, streets, drainage areas, retention ponds or trails. Maintenance of all such areas, lands or improvements shall be the sole responsibility of Oshara Village Maintenance Association.

3.4. No Obligation to Maintain Dedicated Areas. Except as expressly provided for in this Article 3, and except as may be otherwise required by law, the Association shall have no responsibility to maintain any areas, lands or improvements within The Homes (including but not limited to roadways, roads, rights-of-ways, or streets) that have been dedicated and accepted by a public entity for maintenance.

3.5. 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 Common Areas pursuant to this Declaration, 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.

3.6. Solid Waste Removal. The Association shall contract with an independent contractor for the removal of solid waste generated by any portion of the Common Areas or by any Lot or Condominium Unit. The Association may impose Assessments related to such removal.

3.7. Property for Common Use. The Association, through action of the Board, may acquire, hold and dispose of tangible and intangible personal property and real property, but no dedication, sale or transfer of all or any part of the Common Areas owned by the Association (other than to effect minor adjustments in the boundaries thereof or to grant appropriate utility easements) shall be made or effective unless approved by Members holding not less than sixty-seven percent (67%) of the votes of the Members. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold or other property interests within, adjacent to or related to any part of The Homes as may be conveyed or assigned to the Association by Declarant.

3.8. Rules and Regulations. The Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Rules and Regulations. The Rules and Regulations may restrict and govern: (a) the operation, use, maintenance and control of the Common Areas; (b) the operation, use and maintenance of Lots and Condominium Units; (c) facilities or services made available to the Owners by the Association; and (d) any other matters contemplated under this Declaration; provided, however, that the Rules and Regulations but shall not discriminate between Owners and Occupants except to reflect their different rights and

obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles or the Bylaws. The Rules and Regulations are intended to enhance the harmony, preservation and development of The Homes and the Common Areas. The matters that the Association may regulate through the Rules and Regulations include, but are not limited to, the following:

- 3.8.1. the placement and maintenance of garbage and trash containers on Lots, Condominium Units and the Common Areas;
- 3.8.2. signage on Lots, Condominium Units and the Common Areas;
- 3.8.3. the number, type and size of pets permitted on Lots and Condominium Units;
- 3.8.4. restrictions relating to whether and where pets may be walked or exercised within the Common Areas;
- 3.8.5. the types of landscaping permitted on Lots, Condominium Units and the Common Areas, and the upkeep thereof;
- 3.8.6. outdoor artwork;
- 3.8.7. parking;
- 3.8.8. noise;
- 3.8.9. odors;
- 3.8.10. the manner in which home occupations may be conducted within Residences, provided that any regulations on such use as adopted by the Association shall be no more restrictive than the restrictions set forth herein;
- 3.8.11. outdoor recreation equipment;
- 3.8.12. the use of pesticides and toxic chemicals;
- 3.8.13. the use of outdoor fireplaces and similar outdoor fire structures; and
- 3.8.14. short-term rentals, provided that any regulations on such use as adopted by the Association shall be no more restrictive than the restrictions set forth herein.

3.9. Enforcement of Rules and Regulations. Upon adoption, the Rules and Regulations shall have the same force and effect as if they were set forth herein. Sanctions for violation of this Declaration, the Rules and Regulations, the Articles or the Bylaws may be imposed by the Board and may include suspension of an Owner's right to vote, to use the Common Areas, or both, and, where the Board deems it appropriate, may also include reasonable monetary fines. No suspension of an Owner's right to vote or to use the Common Areas due to a violation of this Declaration, the Rules and Regulations, the Articles or the Bylaws may be for a period longer than sixty (60) days (except where such Owner fails or refuses to cease or correct an ongoing violation or commits the same or another violation, in which event such suspension may be extended for additional periods not to exceed sixty (60) days each, until such violation ceases or is corrected).

3.10. Enforcement of Water Restrictive Covenants. The Association shall have the power to enforce the provisions of the Declaration of Water Covenants and Restrictions for Residential Lots within Oshara Village – Phase I, filed on June 12, 2006 as Instrument No. 1437402 in the records of Santa Fe County, and as hereinafter amended.

3.11. 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.

3.12. 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.

3.13. 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.

3.14. County Requirements. As may be required by Santa Fe County, the Association shall be responsible for the control, maintenance and repair of, and for any and all ad valorem taxes with respect to, all Common Areas; provided, however, that nothing in this Section 3.14 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 shall have a voting interest in the Association equal to one (1) vote per each Lot owned by such Owner; provided, however, that in the event a condominium is created on any Lot, the number of vote(s) for said Lot owned by such Owner, as set forth herein, shall be allocated among the Condominium Units in proportion to the number of votes assigned to each 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 the Architectural Review Committee, 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 the Architectural Review Committee, 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 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 Common 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, the Bylaws or the Rules and Regulations). 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 Homes 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 Homes that are owned by Declarant. As to all other portions of The Homes 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 Common 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.

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 votes 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 Common Areas that, the Board, if in its discretion such portions of the Common Areas exclusively or disproportionately benefit the Owners of Lots or Condominium Units within a particular part of The Homes (and their respective Occupants, guests and invitees) as compared to the Owners of other Lot or Condominium Units within The Homes (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 The Homes (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 The Homes (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.

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 Common 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. Property insurance on the Common Areas insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Areas, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of the land, excavations, foundations and other items normally excluded from a property policy.

6.1.2. Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Areas and other portions of The Homes that the Association is obligated to maintain under this Declaration.

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

6.1.4. 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.

6.3. **Payment of Insurance Proceeds.** With respect to any loss to the Common Areas covered by property insurance obtained by the Association in accordance with this Article 6, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any Mortgagee. Subject to the provisions of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Areas.

6.4. **Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Common Area that is damaged or destroyed shall be repaired or replaced promptly by the Association. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Common Areas are not repaired or replaced, insurance proceeds attributable to the damaged Common Areas shall be used to restore the damaged area to a condition that is not in violation of any state or local health or safety statute or ordinance, and the remainder of the proceeds shall either: (a) be retained by the Association as an additional capital reserve; or (b) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

6.5. Insurance to be Obtained by Owners.

6.5.1. Public Liability Insurance. It shall be the individual responsibility of each Owner to provide (or cause to be provided), as such Owner sees fit and without any costs or expense to any other Owner or to the Association, such comprehensive public liability insurance as such Owner may desire against loss or liability for damages and any expense of defending against any claim for damages which might result from the ownership, use or occupancy of such Owner's Lot or Condominium Unit.

6.5.2. Hazard and Contents Insurance. It shall be the individual responsibility of each Owner to provide (or cause to be provided), as such Owner sees fit and without any cost or expense to any other Owner or to the Association, such fire, liability, flood, theft and any other insurance covering: (a) any structure on (or constituting) such Owner's Lot or Condominium Unit; and (b) any and all fixtures and personal property upon such Lot or Condominium Unit or in such structure.

**ARTICLE 7.
COMMON AREAS**

7.1. Non-Exclusive Easement. Every Owner shall have a non-exclusive right and easement of enjoyment in, to and over the Common Areas, subject to any restrictions or limitations contained herein or in any instrument conveying such property to the Association or subjecting such property to this Declaration, and subject further to the Rules and Regulations.

7.2. Assignment. Any Owner may assign such Owner's right of enjoyment of the Common Areas to, and share the same with, the members of such Owner's household and tenants and invitees, subject to the provisions of this Declaration and the Rules and Regulations. An Owner who leases such Owner's Lot or Condominium Unit shall be deemed to have delegated such Owner's rights and easements under this Article 7 to the lessee of such Lot or Condominium Unit except to the extent reasonably necessary for such Owner to inspect, repair and otherwise care for such Owner's Lot or Condominium Unit and to assure compliance by the lessee with the terms of the lease.

7.3. Limitations. The foregoing grants and rights, as set forth in this Article 7, are subject, among other things, to the following limitations:

7.3.1. The right of the Association pursuant to this Article 7 to charge Special Use Fees for use of the Common Areas. The Special Use Fees, if any, shall be set by the Board from time to time, in its discretion. Special Use Fees shall be charged only for actual entry upon or utilization of those portions of the Common Areas, if any, selected by the Board to be subject to a Special Use Fee, and shall be imposed only where the Board deems it appropriate to collect revenue from the actual users of such selected portions of the Common Areas so that all of the costs of operating such selected portions of the Common Areas are not borne by all of the Owners through Annual Assessments, but rather are borne, at least in part, by the Owners, Occupants and other Persons utilizing such selected portions of the Common Areas.

7.3.2. The right of the Association to suspend the rights of any Owner or Occupant to use and enjoy recreational facilities on the Common Areas: (a) for any period during which an Assessment remains delinquent; (b) for a period not to exceed sixty (60) days for any infraction

of any of the Rules and Regulations; or (c) for successive sixty (60) -day periods if any such infraction is not corrected during any preceding suspension period.

7.3.3. The right of the Association to limit the number of guests of an Owner or Occupant who may use the Common Areas.

7.3.4. The right of the Association to regulate use of the Common Areas in accordance with this Declaration.

7.3.5. The right of the Association to regulate use of the Common Areas in accordance with the Rules and Regulations.

ARTICLE 8. **USE RESTRICTIONS**

8.1. Residential Structures. Unless otherwise permitted in this Declaration, no Structure shall be placed, built, constructed or maintained upon any Lot except a single family residence, a garage and such other incidental and accessory Structures that are customarily used in connection with Single Family residential use, provided that such other incidental and accessory Structures are not expressly prohibited by this Declaration and are approved by the Architectural Review Committee. Notwithstanding the foregoing, Condominium Units may be constructed upon a Lot if designated for multi-family residential or similar development on the Plat or any subdivision plat that includes additional property that is made subject to this Declaration by a Supplemental Declaration.

8.2. Accessory and Detached Structures. No accessory or detached Structures may be constructed or placed upon any Lot or Condominium Unit except as may be approved and permitted by the Architectural Review Committee in accordance with the Design Guidelines.

8.3. Single Family Residential Use. Except as otherwise permitted in this Declaration, all Lots and Condominium Units shall be used for Single Family residential use by a Single Family and related common uses.

8.4. Businesses. No business or commercial activity frequented by and open to the general public shall be permitted upon any Lot or Condominium Unit except a limited home occupation for which applicable approval has been obtained from Santa Fe County and that complies with applicable zoning law and regulations. Notwithstanding any governmental approval or zoning law or regulation to the contrary, any home occupation upon any Lot or Condominium Unit shall, in any event, comply with the following requirements:

8.4.1. the operation of the home occupation must be restricted to the interior of the Residence;

8.4.2. the operation of the home occupation, except for arrival and departure of clients and two permitted employees, shall not be visible from the exterior of the Residence in which the home occupation is conducted;

8.4.3. a maximum of two employees who do not reside upon the Lot or Condominium Unit shall be allowed;

8.4.4. there shall be no signage upon any Lot or Condominium Unit or within The Homes indicating the name, nature or location of the home occupation or business except as may be approved and permitted by the Architectural Review Committee;

8.4.5. there shall be no traffic resulting from the home occupation in excess of normal residential traffic for the area of The Homes in which the home occupation is located;

8.4.6. there shall be no environmental impacts inconsistent with the peace and harmony of The Homes or of any Lots or Condominium Units in the vicinity of the Lot or Condominium Unit on which the home occupation operates;

8.4.7. the business activity constituting the home occupation shall be limited to those types of business constituting permitted home occupations pursuant to applicable zoning law;

8.4.8. the business activity does not constitute a Water Consuming Business; and

8.4.9. the business activity does not constitute an Adult Oriented Business.

8.5. Office for Declarant. Notwithstanding any provision of this Declaration to the contrary, Declarant shall have the right to have sales and administrative offices and/or model structures, with promotional signs and equipment deemed necessary for conducting the marketing and sales of Lots, Residences and other Structures. This right in Declarant shall exist until the Transition Date. Declarant may assign its rights under this Section 8.5 by written instrument to Persons who purchase Lots from Declarant.

8.6. Swimming Pools. Swimming pools of any kind are prohibited.

8.7. Tennis Courts. Except as may be constructed by the Association on Common Areas, tennis courts are prohibited.

8.8. No Subdivision; Combination. Except for Lots owned by Declarant, no Lot shall be further subdivided, split, divided or separated into smaller lots or parcels.

8.9. Nuisances: Unlawful Use. No nuisance or immoral, improper, offensive or unlawful use shall be permitted to exist or operate on or within any Lot or Condominium Unit. No Lot or Condominium Unit shall be used for the storage or dumping of rubbish or debris of any kind, or for the storage of any property or thing that shall cause such Lot or Condominium Unit to appear in an unclean or untidy condition, or that shall be visually offensive or obnoxious, toxic, dangerous or unhealthy, and no substance, thing or material may be kept upon any Lot or Condominium Unit that shall emit foul or obnoxious odors or that shall cause any noise that shall disturb the peace, quiet, comfort, or serenity of any Owners or Occupants within The Homes.

8.10. Insurance. Nothing shall be done or kept on any Lot or Condominium Unit or the Common Areas that shall increase the rate of, or result in cancellation of, insurance for the Common Areas or any other Lot or Condominium Unit or its contents, without the prior written consent of the Association.

8.11. Time Sharing. No time-share or similar ownership of Residences or portions of Residences are permitted. For this purpose, the term "time-share ownership" means a method of ownership of an interest in a Residence under which the exclusive right of use, possession or occupancy of the Residence is made available to the various Owners or others pursuant to a right of occupancy on a periodically reoccurring basis over a scheduled period of time. Leasing or ownership of a Residence by a corporation, partnership or other entity or by not more than four (4) individuals or married couples shall not be considered time-share ownership.

8.12. Short-Term Rentals. The leasing or renting of a Residence for periods of less than seven (7) days is prohibited.

8.13. Camping. Camping within The Homes is prohibited.

8.14. Temporary Structures. No temporary house, dwelling, garage, outbuilding, trailer or other Structure shall be placed or erected upon any Lot or Condominium Unit; provided, however, the Design Guidelines may allow and regulate the use and location of temporary construction trailers.

8.15. Lodging Establishments. No hotels, motels, bed and breakfasts, hostels or other lodging establishments shall be permitted within The Homes.

8.16. Garage Conversions. Garages shall not be converted from their primary use as a place for parking motor vehicles except as approved and permitted by the Architectural Review Committee in accordance with the Design Guidelines

8.17. Vehicle Parking. Vehicles shall not be parked on a Lot or Condominium Unit other than in the garage or in the driveway. All Lots and Condominium Units shall have parking areas, which include the garage, for at least two (2) vehicles. Driveways and parking areas shall not be expanded, enlarged, diminished, moved or modified without the prior approval of the Architectural Review Committee. When used for the purposes of repairs, construction or storage, no vehicles of any type may be permanently or semi-permanently parked on a Lot or Condominium Unit within The Homes when visible from another Lot.

8.18. Recreational Vehicles and Equipment. Recreational vehicles and equipment, buses, campers, trailers and boats shall not be stored on any road, easement, driveway or Common Area and shall not be stored on any Lot or Condominium Unit if visible from beyond the Lot or Condominium Unit on which they are stored. Screening for such shall be subject to review and approval by the Architectural Review Committee.

8.19. Construction Materials. Except during periods of permitted construction and subject to such conditions as may be imposed by the Architectural Review Committee for any particular construction project, the storage of construction materials, supplies and equipment on any Lot or Condominium Unit is prohibited.

8.20. Clothes Lines and Wood Piles. All clothes lines, clothes drying facilities, mechanical and other equipment and wood piles (except fire logs less than one [1] cord in size) on any Lot or Condominium Unit shall be walled in and/or screened at all times so that they may not be seen except from the Lot or Condominium Unit on which they are located or from an Access and Utility Easement, as shown on the Plat, that is adjacent to the rear of the Lot or Condominium Unit on which they are located.

8.21. Outdoor Fires. Other than barbeques in properly constructed portable grills, no open fires or burning of any materials out of doors is permitted. Permanent outdoor fireplaces and similar fire Structures may be constructed on a Lot or Condominium Unit if approved and permitted by the Architectural Review Committee in accordance with the Design Guidelines.

8.22. No Obstructions to Drainage. No Person shall erect, construct, maintain or permit or allow any fence, wall or other improvement or other obstruction which would interrupt the normal and natural drainage of the land or within any area designated on the Plat as a drainage easement or area, except with the prior applicable governmental approval and the prior approval of the Architectural Review Committee.

8.23. Signage. No sign, advertisement or notice of any type or nature whatsoever (including "For Sale" or "For Rent" signs) shall be erected or displayed on any Lot or Condominium Unit or within the Common Areas, unless specifically permitted by the Architectural Review Committee.

8.24. Rentals. An Owner who leases or otherwise grants any Person the right to occupy such Owner's Residence shall be responsible for assuring compliance by such Persons with all of the provisions of this Declaration and the Rules and Regulations, and shall be jointly and severally liable for any violations thereof.

8.25. Temporary Occupancy and Buildings. No trailer, recreational vehicle, basement of any incomplete building, tent, shack, shed or garage, and no temporary Structures of any kind, shall be used at any time for a Residence, either temporary or permanent.

8.26. Landscaping. Each Owner shall keep all landscaping and plantings located on such Owner's Lot or Condominium Unit neatly trimmed, properly cultivated and free of trash, excessive weeds and other unsightly materials.

8.27. Structure Repair. No Structure on any Lot or Condominium Unit shall be permitted to fall into disrepair, and each such Structure shall at all times be kept by the Owner in good condition and repair and adequately painted or otherwise finished.

8.28. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon any Lot or Condominium Unit except such machinery or equipment: (a) as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a Structure upon the Lot or Condominium Unit; (b) as Declarant considers necessary, in its sole discretion, for the development of Oshara Village; or (c) that is used in connection with a permitted home occupation, as defined herein; provided, however, that any such machinery and equipment, and the use thereof, complies with the restrictions set forth herein and is not visible from beyond the Lot or Condominium Unit on which it is located.

8.29. Pets. No animals, including but not limited to horses and other domestic farm animals, fowl and poisonous reptiles of any kind, may be kept, bred or maintained on any Lot or Condominium Unit, except a reasonable number of commonly accepted household pets in accordance with the Rules and Regulations. No animals shall be kept, bred or raised on any Lot or Condominium Unit for commercial purposes. In no event shall pets cause an unsafe condition or unreasonable disturbance or annoyance.

8.30. Discharge of Explosives No explosive material may be discharged on any Lot or Condominium Unit except for bona fide construction purposes and then only after approval by the Architectural Review Committee.

8.31. Hunting and Firearms Hunting and discharging of firearms are prohibited within The Homes.

8.32. Garbage. No garbage or trash shall be kept, maintained or contained in or upon any Lot or Condominium Unit so as to be visible from a Lot or Condominium Unit or the Common Areas except temporarily for pickup. No incinerators shall be maintained on any Lot or Condominium Unit. No refuse pile, garbage or unsightly objects or abandoned or inoperable vehicles or equipment shall be placed, accumulated or suffered to remain on any Lot or Condominium Unit or upon the Common Areas.

8.33. Mining; Wells. No portions of The Homes shall be used in any manner to explore for or remove any water, oil, natural gas or other hydrocarbons or minerals of any kind or earth substance of any kind, nor shall any well for pumping or removal of water be drilled, placed or used within The Homes.

8.34. Safe Condition. Each Owner shall maintain and keep such Owner's Lot or Condominium Unit at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners and the occupants of other Lot or Condominium Units.

8.35. Water Conservation; Cisterns. Water use within The Homes shall be conserved through voluntary and obligatory practices such as, respectively, appropriate gray water reuse in certain indoor plumbing functions and water harvesting to collect roof drainage in cisterns for landscape irrigation.

ARTICLE 9. ARCHITECTURAL AND LANDSCAPE CONTROL

9.1. Architectural Review Committee. The Association shall have an Architectural Review Committee consisting of no less than three (3) nor more than five (5) individuals, who shall be appointed by the Board. Declarant shall retain the right to appoint, augment or replace all members of the Architectural Review Committee from time to time until the Transition Date. Thereafter, members of the Architectural Review Committee shall be appointed by the Board. Individuals appointed to the Architectural Review Committee, other than those appointed by Declarant, must satisfy such requirements as may be set forth in the Design Guidelines.

9.2. Approval by Architectural Review Committee. Subject to those provisions of this Declaration that exempt Declarant from approval by the Architectural Review Committee, no building, shed, fence, wall, sign or other Structure or improvement of whatever type, whether temporary, permanent, attached, detached or accessory, shall be commenced, constructed, erected or maintained upon any Lot or Condominium Unit, nor shall there be any addition to or change to the exterior of any Structure or improvement upon a Lot or Condominium Unit, landscaping, grading or drainage thereof, including but not limited to the painting (other than painting with the same color and type of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with drawings, plans, specifications and other documents that have been submitted to and approved by the Architectural Review Committee, in accordance with the Design Guidelines.

9.3. Design Guidelines. The Architectural Review Committee shall establish reasonable procedural rules, regulations, restrictions, architectural standards and design guidelines (the "Design Guidelines"), which the Architectural Review Committee may, from time to time in its sole discretion, amend, repeal or augment; provided, however, that the adoption, amendment, repeal or augmentation of the Design Guidelines shall also require approval by the Board. Until the Transition Date, any change in the Design Guidelines shall be effective only if such changes are approved by Declarant in its sole discretion. The Design Guidelines are incorporated herein, shall be deemed to be a part of this Declaration, shall be binding on all Owners, Members and other Persons as if expressly set forth herein and shall be enforced in the same manner as this Declaration. A copy of the current Design Guidelines shall at all times be a part of the Association's records. The Master Guidelines may but need not include, among other things, restrictions, regulations, limitations, standards and procedures for the following:

9.3.1. architectural style(s) and design of Structures, including but not limited to the types, features, mixing, and variations from such styles;

9.3.2. the type of materials used in construction, including but not limited to the color, texture and appearance thereof;

9.3.3. the design, construction, location and materials for driveways, walks, patios and other similar improvements;

9.3.4. awnings, flower boxes, exterior shelves, statues, or other outdoor ornamentation, and exterior window coverings;

9.3.5. permanent or semi-permanent play equipment, whether or not secured, such as tree houses, basketball hoops, skateboard ramps and swing sets;

9.3.6. the construction, location and use of temporary Structures, including construction trailers;

9.3.7. the construction of modular homes, mobile homes, manufactured homes or prefabricated Structures and whether such Structures shall be allowed;

9.3.8. the nature, design, height and location of exterior appurtenances to Structures and similar features, including but not limited to antennas, chimneys, satellite dishes, telecommunications and similar dishes, solar panels, heating, air conditioning equipment, swamp coolers, vents or venting, that may be placed upon a Lot or Condominium Unit or attached to Structures;

9.3.9. the placement and location of Structures or improvements upon a Lot or Condominium Unit, including the designation and alteration of buildable areas within Lot or Condominium Units;

9.3.10. the permitted developable areas of Lot or Condominium Units;

9.3.11. the height of Structures;

9.3.12. the location, design and height of fences, walls and similar improvements;

9.3.13. exterior lighting, including the screening and shielding of exterior lighting;

9.3.14. the location and design of permitted accessory Structures and improvements;

9.3.15. signage, including "For-Sale," "For-Rent" or similar signs;

9.3.16. the location, placement, appearance and screening of gas or propane storage tanks;

9.3.17. the location, placement and appearance of utility lines and cables;

9.3.18. the nature and types of drawings, plans, specifications and other documents, if any, to submitted to the Architectural Review Committee for its review and consideration;

9.3.19. the posting of deposits, security and the amounts thereof to ensure that construction proceeds in accordance with approvals and conditions thereof rendered by the Architectural Review Committee;

9.3.20. the manner in which the Architectural Review Committee shall review, consider and render decisions with respect to requests and applications for its review;

9.3.21. the selection and designation of builders and/or contractors who are considered qualified and permitted to perform construction activity within The Homes, including but not limited to the procedures and criteria for their selection, designation or the withdrawal of their status as qualified and permitted to perform construction activities within The Homes;

9.3.22. notice, if any, that may be given to Owners in connection with a request or application submitted to the Architectural Review Committee;

9.3.23. pre- and post-submittal conferences with the Architectural Review Committee or its members or consultants;

9.3.24. procedures and criteria for the granting of variances and/or deviations from the Design Guidelines;

9.3.25. time limitations, if any, for the completion, within specified periods after approval, of the improvements for which approval is required pursuant to the Design Guidelines;

9.3.26. procedures for assuring conformity of completed improvements to drawings and specifications approved by the Architectural Review Committee; and

9.3.27. such other restrictions, limitations, standards, procedures and matters as the Architectural Review Committee, in its reasonable discretion, shall adopt, including but not limited to the regulation of all landscaping (including but not limited to absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior addition, change or alteration to or maintenance of any Structure, wall or fence, including but not limited to the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such improvement, exterior artwork and works of art visible from any other Lot or Condominium Units or Common Areas or from beyond The Homes including but not limited to sculpture and statues. Design Guidelines for any of the different types of Structures (for example, but without limitation, estate homes, patio homes, and Lots with zero lot-lines, if any) may differ from the Design Guidelines for other products.

9.4. Subjective Factors. Subjective determinations and/or criteria bearing on compatibility with architectural style, design and appearance generally, other structures, the terrain of a Lot within its vicinity and such other matters as the Architectural Review Committee may conclude, in good faith but in the exercise of the Architectural Review Committee's sole discretion, may serve as the legitimate basis for decisions by the Architectural Review Committee.

9.5. Fees. The Architectural Review Committee may assess reasonable fees in connection with its review of drawings, plans, specifications and other documents, including but not limited to fees in such amounts necessary to defray the costs of consultants retained by the Architectural Review Committee. The Architectural Review Committee may also require the payment of such fees as may be required to defray the costs associated with the monitoring of landscaping plans.

9.6. Delegation. The Architectural Review Committee may delegate its responsibilities for reviewing drawings and specifications, except final review and approval, to one or more of its members or architectural consultants retained by the Architectural Review Committee.

9.7. Address of Architectural Review Committee. The address of the Architectural Review Committee shall be the address established for giving notice to the Association, unless otherwise specified in the Design Guidelines or by written notice to Owners. The Architectural Review Committee's address shall be the place for the submittal of drawings, plans, specifications and other documents, if any, to the Architectural Review Committee for its review and consideration.

9.8. Time Limits for Approval or Disapproval. The Architectural Review Committee shall approve or disapprove any drawings, plans and specifications submitted to it in accordance with the Design Guidelines within such period as may be specified in the Design Guidelines.

9.9. Owner's Cooperation. Owners and their agents and contractors shall cooperate in good faith with the design approval process.

9.10. Restrictions on Certain Changes. Notwithstanding anything herein to the contrary, the Architectural Review Committee shall not alter or amend any restrictions, set-backs, boundary lines or other restrictions shown on the Plat and shall not make any approval that is contrary or in violation of application law and regulations, including but not limited to applicable zoning ordinances.

9.11. Non-Liability for Approval of Drawings and Specifications. Drawings, plans, specifications and other documents, if any ("Submittal Documents"), shall be approved by the Architectural Review Committee as to style, exterior design, appearance, location and such additional matters contained within the Design Guidelines. Notwithstanding anything to the contrary in the Design Guidelines, Submittal Documents are not reviewed or approved for engineering design or for compliance with zoning and building ordinances, codes and regulations. With respect to any structure or improvement for which approval or a notice of completion has been given, or other action taken, by the Architectural Review Committee, the members of the Architectural Review Committee, the Association, the Board, Declarant, as well as the members, officers, directors, employees, agents and contractors of the Association and Declarant, shall not be responsible for, and shall have no liability to any Owner or other Person for any damage, loss or injury of any kind arising from (a) the review, approval or disapproval of

any Submittal Documents, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved Submittal Documents, drawings and specifications; (c) any defect in the design or construction of any such Structure or improvement; and (d) the failure of any such Structure or improvement to comply with applicable zoning and building ordinances, codes and regulations. The approval of Submittal Documents or the granting of any application submitted to the Architectural Review Committee shall not be deemed to be, a representation or warranty that the Submittal Documents comply with applicable governmental ordinances, codes or regulations including but not limited to zoning ordinances and building ordinances, codes and regulations.

9.12. Inspection and Recording of Approval. Any member or authorized consultant or agent of the Architectural Review Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot or Condominium Unit, except the interior of any occupied Residence, after reasonable notice to the Owner, in order to inspect improvements constructed or being constructed on such Lot or Condominium Unit, of any changes in the grade thereof, to ascertain that such improvements or changes have been or are being built or changed in compliance with the Design Guidelines and this Declaration.

9.13. Additional Powers of the Architectural Review Committee. The Architectural Review Committee may promulgate, as a part of the Design Guidelines, such additional architectural and landscape standards, rules and regulations as it deems to be appropriate and as are not in conflict with this Declaration. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE ASSOCIATION MAY FIX A FINE OF UP TO \$20,000 AGAINST ANY OWNER AND ANY LOT OR CONDOMINIUM UNIT SUBJECT TO ASSESSMENTS HEREUNDER FOR FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE ARCHITECTURAL REVIEW COMMITTEE OR FAILURE TO COMPLY WITH THE REQUIREMENTS OF SUCH APPROVALS.

9.14. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent or materially impair the erection, operation, maintenance, replacement and repair by Declarant or its authorized agents or contractors, or Structures, improvements, signs necessary or convenient to the development, operation or sale or leasing of property within that may become a part of Oshara Village, whether or not such property is or is intended to be a part of The Homes. Without limiting the foregoing and notwithstanding anything herein to the contrary: (a) Declarant and its agents or contractors are expressly exempted from provisions hereof requiring submittals to or approvals from the Architectural Review Committee; and (b) Declarant and Declarant's authorized agents or contractors shall have the right to erect, operate and maintain one or more administrative or sales offices within The Homes.

ARTICLE 10. PARTY WALLS

10.1. Maintenance and Repair of Party Walls and Similar Structures. Each wall or similar Structure built as a part of the construction on any Lot that serves and/or separates any two adjoining Lots or Condominium Units shall be considered a party wall. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used or benefited from the party wall may restore it. If other Owners thereafter use or benefit from the party wall, such Owners shall contribute to the restoration cost therefore in equal proportions. However, such contribution shall not prejudice the right to call for a larger

contribution from the other such Owners under any rule of law regarding liability for negligent or willful acts or omissions

10.2. Appurtenant to the Land. The right to and the obligation of contribution for party walls between and among Owners, as provided in this Section 10.2, shall be appurtenant to the land and shall pass to such Owners' successors-in-title.

10.3. Claims Reserved. To the extent not inconsistent with the provisions of this Section 10.3, the general rules of law regarding party walls, and liability for property damage due to negligence or willful acts or omissions, shall apply to any party wall.

ARTICLE 11. **RIGHTS OF MORTGAGEES**

11.1. 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 of a Mortgagee shall be adopted without the prior written consent of Mortgagees as provided below. This Section 11.1 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.

11.2. Percentage Required. Wherever consent of the Mortgagees is required, it shall be sufficient to obtain the written consent of Mortgagees holding a lien on sixty-seven percent (67%) or more of all Lots and Condominium Units encumbered by a Mortgage.

11.3. 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 12. **EASEMENTS**

12.1. Easements in Favor of Declarant and Association. The easements provided by this Section 12.1 are intended to permit Declarant to continue and complete construction and development of The Homes, and to benefit The Homes. Accordingly, Declarant and the Association hereby reserve for themselves, their successors and assigns the following easements upon, across, over, under and through The Homes, including the Common Areas:

12.1.1. 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.

12.1.2. Utility Easements. A blanket easement upon, across, over, under and through The Homes 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.

12.1.3. Security. A blanket easement throughout The Homes for private security services and for police powers and services supplied by local, state and federal governments. Declarant makes no representation or warranty of any kind that such services shall be provided.

12.1.4. Drainage; Erosion Controls. A blanket easement upon, across, over, under and through the ground within The Homes 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 Homes. 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.

12.1.5. Encroachments. An easement for any improvements constructed on the Common 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.

12.1.6. Signage. An easement for any signage erected for the purpose of providing directional signage within or about The Homes.

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

12.1.8. 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.

12.2. Easements for Maintenance Association. An easement is hereby granted upon, across, over, under and through The Homes, including the Common Areas, to the Oshara Village Maintenance Association, for the repair, maintenance, improvement and/or replacement of any Maintained Areas, as defined in the Declaration of Covenants, Conditions and Restrictions for Oshara Village Maintenance Association.

ARTICLE 13. 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 14. **AMENDMENT**

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

14.1.1. **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 14.1.1 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.

14.1.2. **By Declarant.** To the extent permitted by law, Declarant specifically reserves the absolute and unconditional right to amend this Declaration without the consent, vote or joinder of any Person, Member or Mortgagee: (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 Homes, as a condition to such agency's approval of this Declaration, the developments encompassing The Homes 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.

14.2. **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.

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

ARTICLE 15. **GENERAL PROVISIONS**

15.1. **Enforcement.** The Association 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. Additionally, so long as Declarant owns any Lot, Condominium Unit, Reserved Open Space or Reserved Development Rights 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, Declarant 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.

15.2. 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:

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

15.2.2. 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.

15.3. 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.

15.4. 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.

15.5. Recitals and Exhibit. The foregoing recitals and the exhibit are incorporated herein by reference.

15.6. 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.

15.7. Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural; the plural shall include 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.

15.8. Binding Effect. This Declaration shall run with the land and be binding upon and inure to the benefit of Declarant, the Owners and their respective heirs, successors and assigns.

15.9. Declarant's Right to Use Similar Name. Declarant hereby reserves the right to use, and the Association shall be deemed to have irrevocably consented to the use, for any other for-profit or nonprofit entity(ies) that may be formed or incorporated by Declarant, a name that is similar to the name of the Association, provided one or more words are added to the name of such other entity to make the name of the Association distinguishable from the name of such other entity. Within five (5) days after being requested to do so by Declarant, the Association shall sign such letters, documents or other instruments as may be required by the New Mexico Public Regulation Commission in order for any other such entity formed or incorporated by Declarant to use such a name.

IN WITNESS WHEREOF, Declarant has signed this Declaration on the day first set forth above.

OSHARA VILLAGE, LLC
a New Mexico limited liability company

By

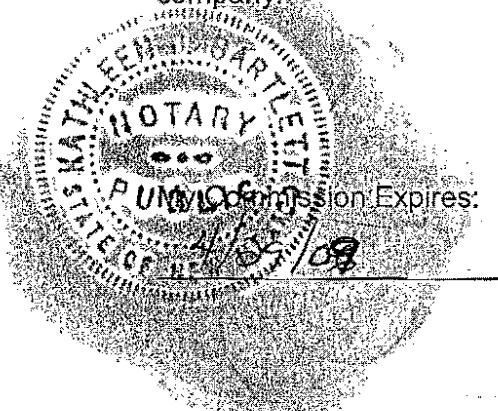
Name Alan Hoffman
Title Manager

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
COUNTY OF SANTA FE)
ss.

This instrument was acknowledged before me this 9th day of June, 2006, by Alan
Hoffman, Manager of Oshara Village, LLC, a New Mexico limited liability
company.


Notary Public



2025 RELEASE UNDER E.O. 14176

EXHIBIT A

**TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE HOMES AT OSHARA VILLAGE**

Maintenance Plan

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

1. The Oshara Village Homeowners' Association (the "Association") shall maintain and otherwise manage all Common Areas in The Homes as provided in the Declaration. The Association shall have no obligation to maintain any areas set forth in Sections 3.3 and 3.4 of 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 Common Areas in The Homes, such that the Property reflects a pride of ownership. In its discretion, the Board shall:

(a) Construct, reconstruct, repair, replace or refinish any improvement or portion thereof upon the Common Areas in The Homes;

(b) Replace injured or diseased trees and other vegetation in any Common Areas in The Homes, 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 the Common Areas in The Homes 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 Common Areas in The Homes 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 the Common Areas in The Homes. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Common Areas in The Homes 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 Common Areas in The Homes, including, without limitation, landscaping, gardening, paving, painting, construction and snow removal, and shall schedules such maintenance and repairs in the Board's sole discretion.

**First Amendment to
Declaration of Covenants, Conditions and Restrictions
For
The Homes at Oshara Village**

This First Amendment to the Declaration of Covenants, Conditions and Restrictions for The Homes at Oshara Village (First Amendment) is made on this 17th day of August, 2011 by Oshara Village, LLC (Declarant).

Recitals

The Homes at Oshara Village (The Homes) is a part of a residential, mixed-use and commercial development located within the County of Santa Fe, New Mexico, and was created by that certain Declaration of Covenants, Conditions and Restrictions for The Homes at Oshara Village executed by Declarant and filed for record in the office of the County Clerk of Santa Fe County, New Mexico, on June 12, 2006, as Instrument No. 1437409 (Declaration).

Pursuant to Section 14.1.2, clause (b) of the Declaration, Declarant hereby amends the Declaration as follows:

Amendments

1. Amendment to Section 2.2 “Additional Property.” Section 2.2 of the Declaration is amended and restated in its entirety to read as follows to remove the right of Declarant to add additional property to The Homes:

2.2 Additional Property. No additional property may be incorporated into The Homes without the consent of Members holding at least sixty-seven percent (67%) of the votes in the Association.

2. Amendment to Section 2.3 “Withdrawal of Property.” Section 2.3 of the Declaration is amended and restated in its entirety to read as follows to remove the right of Declarant to withdraw property from The Homes:

2.3 Withdrawal of Property. No property may be withdrawn or removed from The Homes without the consent of Members holding at least sixty-seven percent (67%) of the votes in the Association.

3. Amendment to Section 2.5 “Reserved Open Space.” Section 2.5 of the Declaration is amended and restated in its entirety to read as follows to remove Declarant’s right to develop the Reserved Open Space:

2.5 Reserved Open Space. The areas designated on the Plat as "Reserved Open Space" may be used for future development and improvements subject to the provisions of this Declaration and applicable laws, codes, ordinances and regulations. All or portions of such Reserved Open Space may be conveyed to the Association, the Oshara Village Community Association or the Oshara Village Maintenance Association. Any Reserved Open Space conveyed to the Association shall not become a part of the Common Areas until such time as the Association has amended this Declaration to add such Reserved Open Space into the Common Areas.

4. Deletion of Section 4.7 "Reserved Declarant Rights." Section 4.7 of the Declaration is deleted in its entirety.

5. Amendment of Section 5.5 "Declarant's Exemption from Assessments." Section 5.5 of the Declaration is deleted in its entirety.

6. Deletion of Section 9.14 "Declarant's Exemption." Section 9.14 of the Declaration is deleted in its entirety.

7. Amendment of Section 12.1 "Easements in Favor of Declarant and Association." Section 12.1 of the Declaration is amended and restated in its entirety to read as follows to remove all references to Declarant contained therein and to terminate all easements reserved by or granted to Declarant therein:

12.1 Easements in Favor of Association. The following easements upon, across, over, under and through The Homes, including, but not limited to, the Common Areas, are hereby reserved for and granted to the Association and its successors and assigns:

12.1.1 Private Roads and Paths. Nonexclusive easements for use of the roadways, roads, rights-of-way and streets within Oshara Village that are not accepted by Santa Fe County, New Mexico for dedication to the public.

12.1.2 Utility Easements. A blanket easement upon, across, over, under and through Oshara Village for ingress and egress for the purpose of installation, replacement, repair and maintenance of all public and private utility and service systems and related infrastructure serving The Homes, including, but not limited to, water, sewer, irrigation, drainage, telephone, electricity, television, security, cable and other communication lines and other services and equipment. The easement granted to the Association in this Section 12.1.2 includes the right of the Association to install and maintain facilities and equipment, excavate for such purposes and to affix and maintain wires, circuits and conduits.

12.1.3 Security. A blanket easement upon, across, over, under and through The Homes for the provision of private security services by or on behalf of the Association and the exercise of police powers and services by local, state and federal governmental authorities.

12.1.4 Drainage; Erosion Control. A blanket easement upon, across, over, under and through The Homes to install, inspect, repair, maintain and correct drainage systems for surface water and other erosion control and water catchment systems serving The Homes. The easement granted to the Association in this Section 12.1.3 includes the right to trim or remove any trees, bushes or shrubbery, to grade soil and to take any other action reasonably necessary for health or safety or to comply with applicable laws, codes, ordinances and regulations.

12.1.5 Encroachments. Easements for any improvements constructed in the Common Areas that encroach on any Lot or Condominium Unit, whether due to deviation from the Plat during construction or the settling or shifting of any land or improvements.

12.1.6 Signage. Easements for any signs erected by the Association for the purpose of providing directions or identifying locations within The Homes or as may be required by applicable laws, codes, ordinances and regulations.

12.1.7 Maintenance of Common Areas. Easements upon, across, over, under and through any Lot or Condominium Unit for maintenance of the Common Areas.

12.1.8 Exercise of Easement Rights. In exercising the easement rights granted in this Section 12.1, the Association shall not unreasonably disturb any Owner's right of quiet enjoyment of such Owner's Lot or Condominium Unit. The grant to the Association of any easement right in this Declaration shall not be construed to obligate the Association to exercise such easement right or provide services or do any act or thing for which such easement right was granted.

8. Amendment of Article 13 “Term and Termination.” Article 13 of the Declaration is amended and restated in its entirety to read as follows to grant Members authority to terminate the Declaration:

Article 13. **Term and Termination**

This Declaration shall be effective upon the date it is recorded in the records of Santa Fe County, New Mexico, and, as amended from time to time, shall continue in full force and effect until such time as the Members terminate this Declaration by a vote of Members holding at least ninety percent (90%) of votes in the Association. Upon a vote of Members to terminate this Declaration as provided in this Article 13, the Board shall cause to be recorded in the records of Santa Fe County, New Mexico, a certificate of termination duly signed and acknowledged by the president or a vice president of the Association and attested by the secretary or an assistant secretary of the Association. This Declaration shall have no further force or effect as of the date of recordation of such certificate of termination or such later date as may be specified in such certificate of termination.

9. Amendment of Section 14.1.1 “By Owners.” The last sentence of Section 14.1.1 of the Declaration is deleted in its entirety to remove Declarant’s entitlement to three (3) votes per Lot or Condominium Unit owned by Declarant in approving amendments to the Declaration.

10. Amendment of Section 14.1.2 “By Declarant.” Section 14.1.2 of the Declaration is amended and restated in its entirety to read as follows to transfer from Declarant to the Board the right to make certain amendments to the Declaration:

14.1.2 By the Board. To the extent permitted by law, the Board may amend this Declaration without the consent, vote or joinder of any Person, Member or Mortgagee: (a) to conform to the requirements of the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veterans Administration, or any similar 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 governmental or quasi-governmental agency having jurisdiction over The Homes as a condition to granting approvals related to development or maintenance of any part of The Homes; and (d) to clarify ambiguities or correct errors.

11. Amendment of Section 15.1 “Enforcement.” Section 15.1 of the Declaration is amended and restated in its entirety to read as follows to remove Declarant’s right to enforce the Declaration:

15.1 Enforcement. The Association 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 any reason of any failure to enforce the same, regardless of the number of violations or breaches that may occur. In the event that the Association prevails in any action to enforce the provisions of this Declaration, the Association 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 against the Lot(s) or Condominium Unit(s) owned by the Owner(s) against whom such action was taken.

12. Deletion of Section 15.9 “Declarant’s Right to Use Similar Name.” Section 15.9 of the Declaration is deleted in its entirety.

13. Transition Date. For all purposes of the Declaration, Declarant hereby declares that the Transition Date, as defined in Section 1.33 of the Declaration, is the date first set forth above and that effective as of such date Declarant has relinquished its Reserved Declarant Rights in their entirety.

14. Release of Easements. Declarant hereby releases all right, title and interest in all easements reserved by or granted to Declarant in the Declaration.

15. Prevailing Document. In the event of any inconsistency between the Declaration and this First Amendment, the provisions of this First Amendment shall prevail.

16. Full Force and Effect. Except as amended hereby the Declaration remains in full force and effect.

In witness whereof, Declarant has signed this First Amendment effective as of the date first set forth above.

OSHARA VILLAGE, LLC, a New Mexico limited liability company

By: _____
Tai Bixby, Manager

Acknowledgment

State of New Mexico)
) ss.
County of Santa Fe)

The foregoing instrument was acknowledged before me on this ____ day of August, 2011, by
Tai Bixby, Manager of Oshara Village, LLC, a New Mexico limited liability company, on behalf
of said limited liability company.

Notary Public

My Commission Expires: _____

**Second Amendment to
Declaration of Covenants, Conditions and Restrictions
for
The Homes at Oshara Village**

This Second Amendment to the Declaration of Covenants, Conditions and Restrictions for The Homes at Oshara Village (“Second Amendment”) shall be effective upon its recordation in the office of the County Clerk of Santa Fe County, New Mexico.

Recitals

- A. The Homes at Oshara Village is part of a residential, mixed-use and commercial development located within the County of Santa Fe, New Mexico, and was created by that certain "Declaration of Covenants, Conditions and Restrictions for The Homes at Oshara Village" ("Residential Declaration"), filed for record in the office of the County Clerk of Santa Fe County, New Mexico, on June 12, 2006, as Instrument No. 1437409;
- B. The Residential Declaration has been amended by the:
 - B-1. "First Amendment to Declaration of Covenants, Conditions and Restrictions for The Homes at Oshara Village", filed for record in the office of the County Clerk of Santa Fe County, New Mexico, on September 16, 2011, as Instrument No. 1645505 ("First Amendment");
- C. The Oshara Village Homeowners' Association is the nonprofit corporation formed to manage: (a) the operation, use, maintenance and control of the common areas; (b) the operation, use and maintenance of Lots; (c) facilities or services made available to the owners by the Association; and (d) any other matters contemplated under the provisions of the Residential Declaration and allowed under New Mexico law ("Residential Association");
- D. Pursuant to Section 2.2 of the Residential Declaration, as amended by Paragraph 1 of the First Amendment, Members of the Residential Association holding at least sixty-seven percent (67%) of the voting interests in the Association wish to add fifty-three (53) Lots, being Patio Home Lots 145A-151A, Patio Home Lots 176A-184A, Patio Home Lots 185A-189A, Townhouse Lots 76-85 and Townhouse Lots 92-107, to the operation of the Residential Declaration, which Lots shall thereafter be used for residential purposes;
- E. The Members wish to amend Section 3.13 of the Residential Declaration to provide a term limit of five (5) consecutive terms on the Board of Directors.
- F. The Members wish to amend Section 3.6 of the Residential Declaration to provide that the Association may, but shall not be obligated to, contract with a licensed independent contractor for the removal of solid waste generated by any portion of the Common Areas. Should the Association elect to contract for solid waste removal, it may impose assessments

related to such waste removal, in accordance with Article 5 of the Residential Declaration, as amended.

G. The Members wish to amend Section 8.18 of the Residential Declaration to provide for temporary, short-term parking of large vehicles within the property subject to the Declaration.

Now, therefore, where required, Members of the Residential Association holding at least sixty-seven percent (67%) of the voting interests in the Association, with the consent of Mortgagees holding a lien on sixty-seven percent (67%) or more of all Residential Lots encumbered by a mortgage, hereby amend the Residential Declaration as follows:

Amendments

1. **Section 1.24**, titled “**Plat**”, of the Residential Declaration is amended and restated in its entirety, as follows:

“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,” (including the Phase I Development Plan recorded as part of the Plat), filed on June 12, 2006, in Plat Book 626, page 4-17, in the real property records of Santa Fe County, New Mexico, as amended by the “Master Plan Amendment of Lots 76-85, 92-107, and 145-154, Commercial Lots 7-15 and 20-27, and Tract C of Oshara Village, Phase I, Santa Fe, New Mexico Township 16 North, Range 9 East, Section 16,” filed on January 21, 2014, Book 769, Page 013, in the real property records of Santa Fe County, New Mexico.

2. **Article 2, Section 2.1**, titled “**Initial Property and General Declaration**”, of the Residential Declaration is hereby amended and restated in its entirety for the purpose of submitting the following fifty-three (53) lots consisting of Patio Home Lots 145A-151A, Patio Home Lots 176A-184A, Patio Home Lots 185A-189A, Townhouse Lots 76-85 and Townhouse Lots 92-107 to the operation of the Residential Declaration:

2.1. Initial Property and General Declaration. The property subject to this Declaration shall be known as The Homes at Oshara Village and shall consist initially of the real property shown as Lots 1-75, Townhouse Lots 76-85, Townhouse Lots 92-107, Lots 108-175, Patio Home Lots 145A-151A, Patio Home Lots 176A-184A, Patio Home Lots 185A-189A, all within Tract 4, as shown on the Plat, as well as the Common Areas as defined herein. Such property, plus any additional property submitted to this Declaration in accordance with Section 2.2, defined herein as the “The Homes,” 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 The Homes.

3. **Article 3, Section 3.6**, titled “Solid Waste Removal”, of the Residential Declaration is hereby replaced in its entirety to provide that the Association may, at its option, contract with a licensed independent contractor for the removal of solid waste generated by any portion of the Common Areas:

The Association may, but shall not be obligated to, contract with a licensed independent contractor for the removal of solid waste generated by any portion of the Common Areas. Should the Association elect to contract for solid waste removal, it may impose assessments related to such waste removal, in accordance with Article 5.

4. **Article 3, Section 3.13**, titled “Board of Directors and Officers” is hereby amended to add the following sentence:

A Member may serve as director for five (5) consecutive 2-year terms, after which a director shall not be eligible for re-election for a period of at least a one (1) year.

5. **Article 8, Section 8.18**, titled “Recreational Vehicles and Equipment”, of the Residential Declaration is amended, restated and replaced in its entirety to provide for temporary, short-term parking of large vehicles within the property subject to the Declaration:

8.18 Recreational Vehicles and Equipment. For the purposes of readying a vehicle or equipment for immediate use and for unpacking and cleaning a vehicle or equipment following use, recreational vehicles, buses, campers, trailers, boats and associated equipment may be stored for no more than forty-eight (48) hours on any road, easement, driveway, Common Area within the property subject to this Declaration. During the aforementioned 48 hour period, all such vehicles must be parked in areas specifically designed and approved for parking. No overnight camping in such vehicles is permitted. Screening from view for any long term storage on any Lot shall be subject to the Architectural Review Committee review and approval process.

Full Force and Effect. Except as amended hereby, the Declaration, as previously amended, remains in full force and effect.

Certification

In Witness Whereof, the undersigned certifies that they are the President and Secretary, respectively, of the Oshara Village Homeowners’ Association, a nonprofit corporation organized

and existing under the laws of the State of New Mexico, that Members of the Residential Association holding at least sixty-seven percent (67%) of the voting interests in the Association have consented to this Second Amendment, and that the consent to this Second Amendment from Mortgagees holding a lien on sixty-seven percent (67%) or more of all Residential Lots and Units encumbered by a mortgage has been obtained.

Oshara Village Homeowners' Association

By: Beth Detwiler
Beth Detwiler, President

By: Alexis Girard
Alexis Girard, Secretary

State of New Mexico)
) ss.
County of Santa Fe)

The foregoing instrument was signed and sworn to before me this 10th day of December, 2015, by Beth Detwiler, President, and Alexis Girard, Secretary, on behalf of said association.

My Commission Expires: 7/28/18

Patricia A. Luke
Notary Public



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

SECOND AMENDMENT
PAGES: 4

I Hereby Certify That This Instrument Was Filed for
Record On The 11TH Day Of December, 2015 at 03:25:29 PM
And Was Duly Recorded as Instrument # 1781663
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy County Clerk, Santa Fe, NM

E. Salazar
M. Montoya