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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
OF  
OTAY RANCH FIVE**

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Otay Ranch Five - CC&Rs  
25310-5 - 1305122.10

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF OTAY RANCH FIVE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF OTAY RANCH FIVE ("Declaration") is made this 29<sup>th</sup> day of November 1999, by OTAY PROJECT L.P., a California limited partnership ("Declarant").

**RECITALS**

A. Declarant is the master developer of the real property situated in the City of Chula Vista, County of San Diego, State of California, which is more particularly described in Exhibit "A" attached hereto and incorporated herein ("Covered Property"), portions of which were conveyed by Declarant to Otay Ranch V, LLC, a Delaware limited liability company and Otay Ranch V-2, LLC, a Delaware limited liability company.

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

C. Declarant intends to develop the Covered Property as a Common Interest Development within the meaning of California Civil Code Section 1351(k) as a "Planned Development" and in accordance with California Civil Code Section 1352. The Covered Property is included within the master planned community situated in the City of Chula Vista and commonly known as Otay Ranch ("Otay Ranch Community"). The Covered Property subject to this Declaration will be included in a portion of the Otay Ranch Community referred to in this Declaration as "Otay Ranch Five", which will be developed as a master planned community to be governed by the Otay Ranch Five Community Association, a California non-profit mutual benefit corporation ("Community Association") and will consist of certain individual Projects (as hereinafter defined) which, if developed as planned, will include a total of approximately 1098 Residences, together with certain areas which will be conveyed in fee title or leased to the Community Association as Community Common Area (as hereinafter defined) and certain areas over which easements will be conveyed to the Community Association, as Common Maintenance Area (as hereinafter defined). Declarant may, but shall not be required to, annex additional property to this Declaration and to make such additional property subject to the jurisdiction of the Community Association. Additionally, Declarant may develop other village(s) for all or portions of the Otay Ranch Community, with each such village having its own characteristic features. If so formed, such village may have a separate homeowners association which will govern such villages. Notwithstanding the foregoing, each Owner who takes title subject to this Declaration acknowledges that there is no assurance that the proposed development of Otay Ranch will be completed or that the additional villages will be developed within the Otay Ranch Community.

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D. Declarant may add all or any of the real property described in Exhibit "B" attached hereto and incorporated herein ("Annexable Property") to the Covered Property already subject to this Declaration by annexing such Annexable Property and such Annexable Property will thereupon be subject to this Declaration, become a part of and be included within the definition of the Covered Property, and be developed as a part of Otay Ranch Five.

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

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

#### ARTICLE 1

#### DECLARATION

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



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## ARTICLE 2

DEFINITIONS

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

2.1 **Annexable Property.** The term "Annexable Property" shall mean any or all of the real property described on Exhibit "B" and delineated on a plat attached hereto as Exhibit "B-1" which may be made subject to this Declaration by Annexation pursuant to the provisions set forth in the Article hereof entitled "Annexation of Real Property".

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

2.3 **Annual Meeting.** The term "Annual Meeting" shall mean the regularly scheduled annual meeting of the Delegates which is held in accordance with the provisions of the Community Bylaws.

2.4 **Apartment Area.** The term "Apartment Area" shall mean and refer to the real property, if any, designated in a Supplementary Declaration upon which apartments shall be constructed. The Apartment Area shall be subject to this Declaration as provided in the Article hereof entitled "Apartment Area Ownership."

2.5 **Apartment Building.** The term "Apartment Building" shall mean and refer to any apartment building constructed by an Apartment Owner within the Apartment Area, subject to the provisions of the Article hereof entitled "Apartment Area Ownership."

2.6 **Apartment Owner.** The term "Apartment Owner" shall mean and refer to the owner of fee title to any portion of the Apartment Area.

2.7 **Apartment Unit.** The term "Apartment Unit" shall mean and refer to a residential apartment in an Apartment Building located within the Apartment Area, subject to the provisions of the Article hereof entitled "Apartment Area Ownership."

2.8 **Architectural Committee.** The term "Architectural Committee" shall mean and refer to the committee provided for in the Article hereof entitled "Architectural Control."

2.9 **Architectural Standards.** The term "Architectural Standards" shall mean and refer to the architectural, design and signage rules and standards promulgated by the Community Board for implementation by the Architectural Committee.

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**2.10 Assignment of Declarant's Rights.** The term "Assignment of Declarant's Rights" shall mean and refer to the assignment agreement executed and recorded by Declarant in order to assign Declarant's rights to a successor Declarant pursuant to the provisions of the Section of this Article entitled "Declarant".

**2.11 Base Budget.** The term "Base Budget" shall mean and refer to the elements of the budget for the Community Association which itemizes the cost components to be shared by all Members of the Community Association, as provided in this Declaration and the Community Bylaws.

**2.12 Brush Management Areas.** The term "Brush Management Areas" shall mean those portions of any Lots and/or Community Common Area which are located within any brush management areas established from time to time by the City or other Governmental Agency.

**2.13 Builder Parcels.** The term "Builder Parcels" shall mean and refer to those parcels of real property which are sold to Merchant Builders (as hereinafter defined) by Declarant for the purpose of constructing Dwellings for sale to the public, or Apartment Buildings for the leasing of Apartment Units to the public or constructing related community facilities.

**2.14 City.** The term "City" shall mean and refer to the City of Chula Vista, California.

**2.15 Common Expenses.** The term "Common Expenses" shall mean and refer to the actual and estimated costs and expenses incurred or to be incurred by the Community Association, the Community Board or the Architectural Committee, including, but not limited to, the following:

**2.15.1** maintenance, management, operation, repair and replacement of the Community Common Area and Common Maintenance Area (including any Cost Centers) and all other areas within the Covered Property which are maintained by the Community Association;

**2.15.2** due but unpaid Community Assessments (as hereinafter defined);

**2.15.3** maintenance by the Community Association of areas within the public rights-of-way in the vicinity of the Covered Property as provided in this Declaration or pursuant to agreements with the City of Chula Vista;

**2.15.4** costs of management and administration of the Community Association, including, but not limited to, compensation paid by the Community Association to managers, accountants, attorneys, architects and employees;

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

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2.15.6 biological mitigation costs, if any, required for the maintenance of any riparian or other areas required to be maintained by the Association by any Governmental Agency;

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

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

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

2.15.10 the costs of bonding of the members of the Community Board, the Architectural Committee, any professional managing agent or any other person handling the funds of the Community Association;

2.15.11 taxes paid by the Community Association;

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

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

2.15.14 the costs of any other item or items designated by, or in accordance with other expenses incurred by the Community Association for any reason whatsoever in connection with the operation and/or maintenance of the Community Common Area, or in furtherance of the purposes or the discharge of any obligations imposed on the Community Association by the Community Management Documents.

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

2.17 Community Articles. The term "Community Articles" shall mean and refer to the Articles of Incorporation of the Community Association, as the same may from time to time be duly amended.

2.18 Community Assessments. The term "Community Assessments" shall mean and refer collectively or individually, as required by the context, to all or any of the assessments levied

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by the Community Association pursuant to the Article hereof entitled "Community Funds and Assessments" and shall include, without limitation, the Community Assessments defined below.

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

**2.18.2 Enforcement Assessment.** The terms "Enforcement Assessment" or "Enforcement Assessments" shall mean and refer to the charges assessed against any Owner and his Lot to reimburse the Community Association for costs incurred in bringing the Owner and such Owner's Lot into compliance with the provisions of this Declaration pursuant to Article 5 of this Declaration.

**2.18.3 Regular Assessment.** The terms "Regular Assessment" or "Regular Assessments" shall mean the amount which is to be paid by each Owner to the Community Association for Common Expenses as described in Article 5 of this Declaration.

**2.18.4 Reconstruction Assessment.** The terms "Reconstruction Assessment" or "Reconstruction Assessments" shall mean a charge against each Owner and his Lot representing a portion of the cost to the Community Association for reconstruction of any portion or portions of the Community Common Area pursuant to the provisions of the Article hereof entitled "Destruction of Improvements."

**2.18.5 Special Assessment.** The terms "Special Assessment" or "Special Assessments" shall mean an assessment levied by the Community Board if the Community Board determines that the Regular Assessments will be inadequate pursuant to the provisions of Article 5 of this Declaration.

**2.18.6 Single Benefit Assessment.** The terms "Single Benefit Assessment" or "Single Benefit Assessments" shall mean a charge against each Owner and each Owner's Lot for any cost or expense which will benefit less than all of the Owners within the Covered Property as described in Article 5 of this Declaration.

**2.19 Community Association.** The term "Community Association" shall mean and refer to the Olay Ranch Five Community Association, a California nonprofit mutual benefit corporation, incorporated under the laws of the State of California, or any successor entity charged with the duties, obligations and powers of said Community Association.

**2.20 Community Association Rules.** The term "Community Association Rules" shall mean and refer to the rules and regulations adopted by the Community Board for the governance of the Covered Property.

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**2.21 Community Board.** The term "Community Board" shall mean and refer to the Board of Directors of the Community Association.

**2.22 Community Bylaws.** The term "Community Bylaws" shall mean and refer to the Bylaws of the Community Association, as the same may from time to time be amended.

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

**2.24 Community Directors.** The term "Community Directors" shall mean the members of the Community Board elected pursuant to the provisions of the Community Bylaws.

**2.25 Community Funds.** The term "Community Funds" shall mean and refer collectively to all of the funds established by the Community Association for the deposit of Community Assessments and shall include, without limitation, the Community Funds defined below. If Cost Centers are established within the Covered Property, separate accounts in each of the following categories or other funds established by the Community Association shall be maintained for each Cost Center.

**2.25.1 Maintenance and Operation Fund.** The term "Maintenance and Operation Fund" shall mean and refer to the fund or funds which shall be established by the Community Association for the deposit of that portion of Regular Assessments and/or Special Assessments not deposited into the Reserve Fund.

**2.25.2 Reserve Fund.** The term "Reserve Fund" shall mean and refer to the fund or funds which may be established from time to time by the Community Association for the deposit of any reserve Community Assessments.

**2.25.3 Capital Improvement Fund.** The term "Capital Improvement Fund" shall mean and refer to the fund or funds which may be established from time to time by the Community Association for the deposit of any Capital Improvement Assessments.

**2.26 Community Management Documents.** The term "Community Management Documents" shall mean and refer to the Community Articles, Community Bylaws, Community Association Rules, the Architectural Standards, this Declaration and the Supplementary Declarations, and any amendments to any of the foregoing.

