

THE  
AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
THE ORCHARD, A PLANNED RESIDENTIAL COMMUNITY



July 1993

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---

**PREAMBLE**

THIS AMENDED AND RESTATED DECLARATION is made as of July 15, 1993, by Golden Properties, Ltd., a Colorado limited partnership, hereinafter referred to as "Declarant."

WHEREAS, the original Declaration was recorded on March 4, 1993 in the real property records of the County of Jefferson, State of Colorado, under Reception No. 93029132; and

WHEREAS, the original Declaration and this Amended and Restated Declaration pertain to certain real property situate in the County of Jefferson, State of Colorado and more particularly described on Exhibit A; and

WHEREAS, this Amended and Restated Declaration (the "Declaration") replaces and supersedes in its entirety the original Declaration; and

WHEREAS, the Property includes a pre-existing home and yard known as the Swift Residence ("Unit 47"); and approximately 21.6 acres of undeveloped land previously used as a commercial nursery; and

WHEREAS, the Declarant has zoned and subdivided the Property pursuant to The Orchard, the Official Development Plan and The Orchard Filing No. 1 Improvement Plan, Jefferson County, Colorado (the "Plat"); and

WHEREAS, the Declarant intends to sell the Lots (as defined below) created pursuant to the Plat to one or more builders who will construct single family detached houses on the Lots and sell the houses together with the Lots to Purchasers subject to the Declaration, the Plat and any and all other restrictions, requirements and regulations of any governmental entity having jurisdiction over the Property; and

WHEREAS, Declarant as owner of 40 Lots has the right to 40 votes out of a total of 53 votes and thus controls 75 percent of the votes in the Association (as defined below); and

WHEREAS, Advantage Design/Build, Inc., a Colorado corporation ("Advantage"), as the owner of 10 Lots has the right to 10 votes out of a total of 53 votes; and

WHEREAS, Advantage adopts, ratifies and consents to this Amended and Restated Declaration; and

WHEREAS, Adair Group, a Colorado limited liability company ("Adair"), as the owner of 3 Lots has the right to 3 votes out of a total of 53 votes; and

WHEREAS, Adair adopts, ratifies and consents to this Amended and Restated Declaration; and

WHEREAS, Declarant, Advantage and Adair combined have the right to vote 100% of the votes of the Association;

NOW THEREFORE, Declarant declares that the Property shall be held, sold, and conveyed subject to the Declaration which is declared and agreed to be for the protection of the value of the Property and for the benefit of any person having any right, title or interest in the said Property and which shall be deemed to run with the land, and shall be a burden and benefit to any person acquiring any interest in the Property and all grantees, successors, heirs, legal representatives and assigns of such person. Declarant further declares The Orchard shall be a Planned Community (as defined in C.R.S. § 38-33.3-103(22)) consisting of fifty-three single family residential units and created pursuant and subject to the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq. (the "Act"), and that the Act is incorporated herein by this reference except where specific provisions of the Declaration conflict with the Act and such conflict is permissible under the Act; in such event the Declaration shall prevail over the Act. In all other cases the Act shall prevail over the Declaration. All references to the Act and any sections thereof shall refer to the Act as enacted as of July 1992 and as amended thereafter. Unless otherwise defined in the Declaration, all defined terms shall have the meanings prescribed in the Act. The Orchard shall have a homeowners' association which shall be incorporated as a nonprofit corporation and shall be known as The Orchard Homeowners' Association, Inc. and the homeowners' association shall be operated by an executive board subject to its Articles of Incorporation, its By-Laws, the Declaration and such rules and regulations as the Board may lawfully promulgate. Declarant declares that this Amended and Restated Declaration is adopted pursuant to § 38-33.3-217(4). This Amended and Restated Declaration shall be recorded in the records of the Clerk and Recorder of Jefferson County, State of Colorado.

## ARTICLE I DEFINITIONS

As used in the Declaration or in any supplemental declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

Section 1.1 ARTICLES means the Articles of Incorporation of the Association.

Section 1.2 ASSESSMENTS means all monies due the Association from Members as duly assessed as Common Expenses, Annual Assessments, Special Assessments and fines levied hereunder by the Board in accordance with the Declaration and/or the Act, in cases where the Act limits powers granted by the Declaration.

Section 1.3 ASSOCIATION means THE ORCHARD HOMEOWNERS' ASSOCIATION, INC., a Colorado nonprofit corporation, its successors and assigns.

Section 1.4 BOARD means the executive Board of the Association, duly elected pursuant to the Declaration and the By-Laws. The Board is the governing body of the Association.

Section 1.5 BY-LAWS means the By-Laws adopted by the Association as amended from time to time.

Section 1.6 COMMON AREAS or COMMON ELEMENTS means that portion of the Property (including all improvements thereof) owned by the Association for the common use and enjoyment of the Owners and more particularly described as Tracts A, E, F, and G on the Plat and the perimeter fence. All owners shall have a non-exclusive easement creating a right of use and enjoyment in the Common Areas subject to any limitations and/or requirements set forth in the Declaration, the Rules (as defined below) and the By-Laws.

Section 1.7 COMMON EXPENSES means expenditures made or financial liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

Section 1.8 DECLARANT means Golden Properties, Ltd., a Colorado limited partnership, its successors and assigns.

Section 1.9 DECLARATION means the AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE ORCHARD SUBDIVISION, as may be amended from time to time.

Section 1.10 DESIGN GUIDELINES means the initial Architectural Standards, Design Guidelines and Construction Regulations adopted by the Design Review Committee and as further described in Section 6.24.



Section 1.11 DESIGN REVIEW COMMITTEE means the committee formed pursuant to ARTICLE VI to review and approve each Improvement to the Property (as further described in Section 6.2) to insure and maintain the quality and architectural harmony of all of the improvements constructed on any portion of the Property.

Section 1.12 DWELLING UNIT (or "Unit") means the residence constructed on each Lot within the Property and any replacement thereof, including the patio, fence, basement and garage. At the time of the recordation of the Declaration, the only completed Unit is Unit 47; all other Lots are undeveloped or being developed. The term "Unit" shall include the Lot upon which such Unit is constructed. When Units have been constructed on all Lots there shall be 53 Units. Each Unit shall be allocated 1/53rd of the Common Expenses of the Association. The identification numbers of each Unit are shown on the Plat and this shall be referred to as the "Expense Allocation."

Section 1.13 FIRST MORTGAGEE means any person, corporation, partnership, trust, company, association or other legal entity which owns, holds, insures or is a governmental guarantor of a mortgage or deed of trust, which mortgage or deed of trust is a first and prior lien (subject to the lien of the Association pursuant to C.R.S. § 38-33.3-316) encumbering a Lot or Unit within the Property. A First Mortgagee shall also include the holder of every executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is recorded or not.

Section 1.14 GUEST means (a) any person who resides with an Owner within the Property; (b) a guest or invitee of an Owner; (c) an occupant or tenant of a Unit within the property, and any members of his or her household and invitee or cohabitant of any such Person; or (d) a contract purchaser.

Section 1.15 LOT means any unimproved plot of land shown on the Plat.

Section 1.16 MANAGING AGENT means any one or more persons employed by the Association who is engaged to perform any of the duties, powers or functions of the Association.

Section 1.17 MEMBER means all those who are members of the Association as provided in Section 4.4 hereof.

Section 1.18 OWNER means the record Owner of the fee simple title or a seller under a land installment contract of any Lot or Unit which is a part of the Property, excluding, however, those having an interest merely as security for the performance of any obligation.

Section 1.19 PERSON means a natural person, corporation, partnership, association, trustee or any other entity recognized as being capable of owning real property under Colorado law.

Section 1.20 RULES means without limitation the rules and regulations adopted by the Board, the Association and the Design Review Committee and any other rules or regulations adopted in accordance with the Declaration, the By-Laws, or the Act, all as amended from time to time.

Section 1.21 THE PROPERTY means such real property and the improvements located thereof as more fully described on Exhibit A (the Legal Description) and Exhibit B (the Plat).

## ARTICLE II SCOPE OF THE DECLARATION

Section 2.1 Property Subject to the Declaration. Declarant, as the Owner of fee simple title to the Property, by recording the original Declaration subjected the Property to the provisions of the original Declaration and to the Colorado Common Interest Ownership Act at C.R.S. § 38-33.3-101, et seq as it may be amended from time to time.

Section 2.2 Conveyances Subject to the Declaration. All easements, restrictions, conditions, obligations, reservations, rights, benefits and privileges which are granted, created, reserved or declared by the original Declaration or by this Amended and Restated Declaration shall be deemed to be covenants appurtenant to and running with the land, and shall at all times be binding on any Person having at any time any interest or estate in the Property, and his or her respective heirs, successors, representatives or assigns. Any instrument recorded subsequent to the original Declaration and purporting to establish and effect any interest in the Property shall be subject to the provisions of the Declaration despite any failure to make reference thereto.

Section 2.3 Owner's Rights Subject to the Declaration. Each Unit Owner shall own his or her Unit in fee simple and shall have full and complete dominion, subject to the provisions of the Declaration.

Section 2.4 Common Area Dedication. The Declarant, in recording the Plat in the records of the County Clerk and Recorder of Jefferson County, Colorado, has designated certain areas of the Property as Common Areas (Tracts A, E, F, and G and the perimeter fence; all as shown on the Plat). The designated Common Areas are not dedicated for use by the general public, but are dedicated to the common use and enjoyment of the Owners and such Owners' Guests, as more fully provided in the Declaration. The Plat is incorporated herein and made a part of the Declaration.

Section 2.5 Compliance with the Act. C.R.S. § 38-33.3-205 requires that certain matters be included in the Declaration. Pursuant thereto, in addition to other matters stated herein, Declarant states as follows:

(a) The name of the Planned Community shall be "The Orchard" and the Association shall be "The Orchard Homeowners' Association."



- (b) The Orchard is exclusively within Jefferson County.
- (c) The legal description of the Property is set forth in Exhibit A
- (d) The Declarant reserves no right to create additional Units and the total number of Units is 53.
- (e) The Plat sets forth the identifying numbers for each Unit and the boundaries of each Unit.
- (f) The Common Areas are designated as Tracts A, E, F and G on the Plat. The perimeter fence is also a Common Area. Declarant reserves no Development Rights with respect to creating any additional Common Areas.
- (g) There is no real estate that may be allocated subsequently as limited common elements.
- (h) The Declarant does not reserve any "Development Rights" as this term is defined in C.R.S. § 38-33.3-103(14). Declarant reserves for ten years or such longer time up to twenty-five years as the Act may then permit, the following Special Declarant Rights (as this term is defined in C.R.S. § 38-33.3-103(29)). All Special Declarant Rights created and/or reserved under the Declaration may be transferred by Declarant but only by an instrument executed by the Declarant and the Transferee evidencing the transfer recorded in the Office of the Clerk and Recorder of Jefferson County.
  - (i) Declarant reserves the right (pursuant to C.R.S. § 38-33.3-215) to use Unit 47 as a sales office and/or a management office. It shall be the only sales and/or management office, but Declarant reserves the right to relocate the office to a model home or a mobile unit. Declarant reserves the right, in its discretion, to transfer the right to use Unit 47 or a model home or a mobile unit as a sales or manager office to one or more builders. The transfer of the right to use Unit 47 as an office will be evidenced by a lease of Unit 47 recorded with the Clerk and Recorder of Jefferson County. Declarant's right to use Unit 47, a model home or a mobile unit as an office shall terminate on the sooner of: (1) the initial sale of all fifty-three Units; or ten years after the recordation of the Declaration or such longer time up to twenty-five years as the Act may then permit.
  - (ii) Declarant reserves the right to maintain three model homes within The Orchard in locations at the Declarant's discretion and this right may be assigned to one or more builders. The model homes may be on any three Lots, and any of the model homes may be used as a sales office, but there shall be only one sales office. This right shall terminate on the sooner of:



(1) the initial sale of all fifty-three units or ten years after the recordation of the Declaration, or such longer time up to twenty-five years as the Act may then permit.

- (iii) Declarant reserves the right to sell undeveloped Lots to one or more builders for the purpose of constructing single family residences in accordance with the Design Review Guidelines.
- (iv) Declarant reserves the right to complete Common Area improvements which shall consist only of completing a drainage basin on Tract A in accordance with Jefferson County's minimum standards, landscaping (including signage and vegetation) on Tracts E and F as Declarant in its sole discretion deems appropriate and creating an emergency access easement on Tract G in accordance with the requirements of the Fairmont Fire District, complying with Notes 9 and 16 of the Plat and maintaining the perimeter fence all of which shall constitute Common Areas. Declarant reserves such easements as are necessary to complete these improvements to the Common Areas as set forth below in Section 8.3.
- (v) Declarant specifically does not reserve any Development Rights to add real estate to the Property, to create additional Units, Common Areas or limited common elements or to subdivide Units or convert Units into Common Areas or to withdraw real estate from the Property.
- (vi) Declarant reserves the right to post signs throughout the Property and in other way advertise the sale of Lots and/or Units, which right Declarant may also assign to builders, developers and/or brokers.
- (vii) Declarant reserves the right to use easements throughout the Property, and over and through the Common Areas for the purpose of making improvements within the Property, which right may also be assigned to builders and developers.
- (viii) Declarant reserves the right to appoint officers and members of the Board as set forth in Section 4.5.
- (ix) Declarant reserves the right to amend the Declaration in connection with the exercise of the rights reserved to the Declarant pursuant to this Subsection (h).

(i) Each Unit shall have a total allocated interest of 1/53rd for the purpose of determining voting rights, membership and percentage shares of all expenses and assessments except Special Assessments.

(j) The restrictions on use and occupancy referred to in C.R.S. § 38-33.3-205(1)(1) are disclosed in Section 7.22 of the Declaration.

(k) The recording data for recorded easements appurtenant to the Property is set forth in Exhibit B.

(l) Notice of matters affecting the Property shall be given to the Owners by the Association acting through the Secretary who in turn may act through the managing agent. Such notice shall, to the extent possible, be rendered thirty (30) days in advance of any action affecting the Property. Such notice may be by regular mail to the address of record with the Association. All Owners shall keep the Association advised of their current address. Owners may request the Association to notify other Owners of matters which the requesting Owner desires to be made known to other Owners. If such notice is not required of the Association, the requesting Owner shall prepay all mailing costs, copying expenses, and any other employee costs incurred in giving the requested notice. When acting on behalf of a requesting Owner, the Association shall have no liability for the notice and the requesting Owner shall indemnify and hold the Association harmless for any claim arising by reason of the notice. The notice requirements of Section 4.5 shall be "in addition to" and not in lieu of this subsection and vice versa.

### ARTICLE III THE COMMON AREAS

Section 3.1 Title to the Common Elements. Simultaneously with the recordation of the Plat and the original Declaration, the Declarant conveyed to the Association fee simple title to the Common Areas.

Section 3.2 Duty to Own and Maintain. The Association agrees to own and maintain any property, including all improvements and personal property transferred to it by the Declarant as Common Areas. Property interests transferred to the Association by Declarant may include fee simple title, easements, and contractual rights to use the Property. Any property or interest in property transferred to the Association by Declarant shall be transferred to the Association subject to the matters reflected in Exhibit C and the lien of real estate taxes not then due and payable.

Section 3.3 Duty to Manage and Care for the Common Elements. The Association shall manage, operate, care for, insure, maintain, repair and reconstruct all of the Common Areas and the improvements located thereon and keep the same in a safe, attractive and desirable condition for the use and enjoyment of all of the Owners subject to the Owner's rights to approve budgets for such purposes as set forth in Section 5.3(b).

Section 3.4 Owner's Easements. Every Owner and such Owner's Guests shall have an easement and the right of use and enjoyment in and to the Common Areas, which easement and



right of use and enjoyment shall be appurtenant to and shall pass with the title to the Unit of such Owner subject to the following rights:

(a) The right of the Board to make such use of the Common Areas as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under the Declaration or the Act. The Board, in its sole discretion, may from time to time grant easements and rights-of-way on, across, under and over the Common Areas.

(b) The right of the Board to make reasonable Rules regarding the use of the Common Areas.

(c) The rights reserved in the Declaration to the Declarant, the Owners and the Association.

(d) The right of the Board to suspend the voting rights of a Member for any period during which any Assessment against such Member's Unit remains unpaid; and for a period not to exceed sixty days for any infraction of its published Rules.

(e) Any other right which the Association may lawfully exercise pursuant to C.R.S. § 38-33.3-302 as it may be amended from time to time.

#### **ARTICLE IV THE ASSOCIATION**

Section 4.1 General Purposes and Powers. The Association is responsible for maintenance, repair and replacement of Common Areas. Through its Board, the Association shall perform functions and manage the Property as provided in the Declaration so as to further the interests of the Owners. Any purchaser of a Lot and any purchaser of a Unit shall be deemed to have assented to the responsibilities of the Association and the management of the Common Areas by the Association in accordance with its responsibilities. The Association shall have all the powers and authority permitted pursuant to the Act necessary and proper to effectuate such purposes. The Association may assign its future income, including its right to receive Common Expense Assessments only with the affirmative vote of the Owners entitled to cast fifty-one percent (51%) of the votes of the Association at a meeting called for that purpose. The Association may make such assignments for the purpose of carrying out its responsibilities under the Declaration.

Section 4.2 Executive Board. The affairs of the Association shall be managed by the Board which may delegate authority to a manager for the Association, provided no such delegation shall relieve the Board of final responsibility. The Board shall have at least three members. Only during the Period of Declaration Control (as defined below) the members of the Board need not be Members or Owners.

Section 4.3 Articles and By-Laws. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in the Declaration may be amplified by provisions in the Articles of Incorporation and By-Laws of the Association. In the event either the Articles or By-Laws conflict with the Declaration, the Declaration shall control.

Section 4.4 Membership. Every Person who is a record Owner of a fee interest in any Lot or Unit which is subject to the Declaration shall be a Member of the Association, including contract sellers and builders who acquire Lots to be developed. Membership shall be appurtenant to and may not be separated from fee ownership of any Lot or Unit. Fee ownership shall be the sole qualification for membership. Where more than one person holds a fee interest in any Lot or Unit, all such persons shall be Members subject to the voting limitations set forth below.

Section 4.5 Voting Rights and Notice. The Association shall have one class of voting membership. All Members shall be entitled to one vote for each Lot or Unit owned. The vote for a Lot or Unit, the ownership of which is held by more than one Owner, may be exercised by any one Owner, unless an objection or protest by any other holder of a fee interest in the Lot or Unit is made prior to the completion of the vote, in which case the vote for such Lot or Unit shall be exercised as the persons holding such interest determine between themselves. Should the joint owners of a Lot or Unit be unable, within a reasonable time, to agree upon how they will vote any issue, they shall be passed over and their right to vote on such issue shall be lost. In no event shall more than one vote be cast with respect to any Lot or Unit. No less than ten nor more than sixty days in advance of any meeting, the secretary of the Association shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner or Owners of a Lot or Unit. The notice of any meeting must state the time for the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or the By-Laws, any budget changes and any proposal to remove an officer or member of the Board. Further, the secretary promptly shall give written notice to all Owners of other matters substantially affecting the Association, and/or the Members by reason of their status as Owners. Should any one or more Owners be required to give notice to other Owners pursuant to the Declaration, the Act, the By-Laws, the Articles of Incorporation or any Rule, or desire to give any notice, the secretary shall do so on behalf of the Owner or Owners in accordance with Section 2.5(l).

Declarant Control. Notwithstanding anything herein to the contrary, Declarant or persons designated by the Declarant may appoint and remove the officers of the Association and members of the Board. This right to appoint and remove officers and members of the Board shall terminate no later than the earlier of sixty days after conveyance of seventy-five percent of the Units to Owners other than the Declarant or two years after the last conveyance of a Unit by the Declarant in the ordinary course of business (the "Period of Declarant Control"). The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the Period of Declarant Control. In that event the Declarant may require for the Period of Declarant Control that specified actions of the Association or the



Board as described in a recorded instrument executed by the Declarant be approved by the Declarant before they become effective. Notwithstanding anything herein to the contrary not later than sixty days after conveyance of twenty-five percent of the Units to Owners other than the Declarant, at least one member but not less than twenty-five percent of the members of the Board must be elected by Owners other than the Declarant. Further, not later than sixty days after conveyance of fifty percent of the Units to Owners other than Declarant, not less than thirty-three and one-third percent of the members of the Board must be elected by Owners other than the Declarant. Further, not later than the termination of the Period of Declarant Control, the Owners shall elect a Board with at least three members at least a majority of whom shall be Owners other than the Declarant or designated representatives of Owners other than the Declarant. After the Period of Declarant Control, all members of the Board shall be owners. The Board shall elect the officers. The members of the Board and the officers elected by the Board shall take office upon election. The Owners, by a vote of sixty-seven percent all persons present and entitled to vote at any meeting of the Owners at which a quorum is present may remove any member or the Board with or without cause, other than a member appointed by the Declarant.

Section 4.6 Indemnification. The Association shall indemnify every present and former director, officer, agent or employee, member of the Design Review Committee and any former director, officer, agent or employee against loss, costs and expenses, including attorneys' fees reasonably incurred in connection with any action, suit, or proceeding in which such person may be made a party by reason of being, or having been such director, officer, agent or employee of the Association, except as to matters concerning which such person shall be finally adjudged to be liable for breach of fiduciary duty, gross negligence or fraud. Any such indemnification shall be limited to and may only be paid out of the insurance proceeds protecting and insuring the Association, its officers, directors, and agents; it being the intent and purpose of this section to limit all payments or settlements in indemnification to the actual proceeds of insurance policies received by the Association, provided however, any deductible shall be paid by the Association.

No officer, director, agent or employee of the Declarant, its successors or assigns, shall be protected by these indemnification provisions nor by any related insurance policies obtained by the Association in relation thereto unless such Person is an officer, director or employee of the Association. If appointed by the Declarant, the members of the Board and officers shall be required to exercise the care required of fiduciaries of the Owners. If not appointed by the Declarant, no member of the Board and no officer shall be liable for actions taken or made in performance of his or her duties on behalf of the Association except for wanton and willful acts or omissions.

Section 4.7 Association Agreements. Any agreement for professional management of the Property or any contract providing for services by the Declarant may not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty days' written notice.

Section 4.8 Certain Rights and Obligations of the Association. The Board, on behalf of the Association, shall have the rights and powers set forth in C.R.S. § 38-33.3-302 except to the extent this Declaration limits such rights and powers. Without limitation of the foregoing, the Board shall have and may exercise any right or privilege given to it expressly by the Declaration, or reasonably to be implied from the provisions of the Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges except as limited by the Act.

## ARTICLE V ASSESSMENTS

Section 5.1 Creation of the Lien and Personal Obligation for the Assessment. The Declarant for each Lot or Unit owned, within the Property, hereby covenants, and each Owner, other than the Declarant, of any Lot or Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association certain Assessments to be fixed, levied and collected from time to time as herein provided. All Assessments created and defined in the Declaration, together with late fees, costs, fines, interest, costs of collection and attorneys' fees, shall be:

(a) a charge on the Lot or Unit and shall be a continuing lien upon the Lot or Unit against which each such Assessment was levied, which lien shall attach as of the date the Assessment was levied and shall continue until such Assessment, together with any late fees, fines, interest, costs of collection and attorneys' fees are paid; and

(b) a personal obligation of the Person who was the Owner of such Lot or Unit or of the Persons jointly and severally, who were the Owners of such Lot or Unit at the time when the Assessment or other charges (including fines, interest, costs of collection and reasonable attorneys' fees) were levied. The personal obligation for delinquent Assessments shall not pass to successors in title unless expressly assumed by them.

Section 5.2 Purpose of the Assessments. The Assessments levied by the Association shall be for the purpose of carrying out the responsibilities and obligations of the Association under the Declaration and shall include without limitation maintenance of the Common Areas and the improvements thereon including without limitation maintenance of the drainage system and the landscaping on the drainage easement, maintenance of both sides of the perimeter fencing located on the borders of the Property, maintenance of the entrance signs and the associated landscaped entry, payments for any insurance obtained by the Association, payment of any taxes assessed to the Association, maintenance of reserves as deemed appropriate by the Board and to provide for any other purpose reasonably, necessary or incidental to such general purposes. Assessments shall not include and shall be in addition to Public Service of Colorado tariff and county real property taxes. All Lots shall be subject to and bound by Public Service Company of Colorado tariffs which are now and may in the future be filed with the Public Utilities Commission of the State of Colorado, relating to street lighting on said Property, together with rates, rules and regulations therein provided and subject to all future amendments and



changes thereto. The Owner or Owners of a Lot shall pay as billed 1/53 of the cost of public street lighting on the Property according to Public Service Company of Colorado rates, rules and regulations, including future amendments and changes on file with the Public Utilities Commission of the State of Colorado. Further, pursuant to C.R.S. § 38-33.3-105(2), each Unit together with its interest in Common Areas constitutes for all purposes a separate parcel of real estate and shall be separately assessed and taxed by the County. The valuation of the Common Areas shall be assessed proportionally to the Units in accordance with the Unit's Common Expense liability.

### Section 5.3 Basis of Assessments.

(a) Annual Assessment for Common Expenses. The Board shall assess against each Owner of a Lot or Unit within the Property, an annual assessment to pay for the Common Expenses of the Association (the "Annual Assessment"). Such Assessment shall be paid by the Owners in the proportion which the number of Lots owned by the Owners bears to the total number of Lots or Units within the Property. The total number of Lots and Units shall be 53. If an Owner owns one Lot the Owner's assessment allocation shall be 1/53rd of the total Assessments and this shall be the Owner's Expense Allocation.

(b) Levy of Assessments. At least sixty days prior to the close of the Association's fiscal year, the Board shall adopt a proposed budget for the Association. Within thirty days after adoption of the proposed budget, the Board shall mail, by ordinary first class mail or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing or other delivery of the summary. Unless at such meeting a majority of Owners rejects the budget, the budget shall be ratified whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board. The omission or failure of the Board to levy an Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay such Assessment. Special Assessments (as defined below) may be levied at any time and are exempt from the voting requirements by the membership required for other Assessments called for under the Declaration.

(c) Non-exemption. No Owner may waive or otherwise escape liability for any Assessments provided for by the non-use of the Common Area or the abandonment of his or her Lot or Unit.

Section 5.4 Special Assessment. Except for "Special Assessments" as defined in this section, all Common Expenses shall be assessed against all the Units in accordance with the Owners' Expense Allocation. Any past due Annual Assessment shall bear interest at the rate established by the Board not to exceed twenty-one percent per annum and the interest which accrues on the past due Annual Assessment shall constitute a Special Assessment. Further, fines and individual assessments levied pursuant to this section shall constitute Special Assessments. The Association

shall have the right to levy a Special Assessment to cover attorneys' fees and other legal costs for collection of any Assessment. Any Common Expenses or portion thereof benefiting fewer than all of the Lots and Units shall be assessed exclusively against the Lots and Units benefitted and shall be referred to as a "Special Assessment." Additionally, the Board may assess as a Special Assessment the cost of insurance to be allocated in proportion to risk. If a Common Expense is caused by the actions of any Owner in violation of the Declaration, the By-Laws or the Rules, the Board may levy a Special Assessment against the individual Owner; however, the affected Owner shall have the right to notice and hearing on the amount of the fine pursuant to the appeal process set forth in Section 5.9. An Individual Assessment may be levied for any expense caused by an Owner and such levy (in the amount of the expense) may be assessed exclusively against such Owner. Such assessment may also be appealed to the member pursuant to Section 5.9.

**Section 5.5 Date of Commencement of Assessments; Prorations.** The Annual Assessment for Common Expenses, shall commence as to all Lots and Unit 47 on the first day of the month following the conveyance of a Lot to an Owner other than the Declarant and shall be prorated according to the number of months remaining in the Association's fiscal year.

**Section 5.6 Due Date, Non-Payment of Assessments, Remedies of the Association.**

(a) The Annual Assessment for Common Expenses shall be levied on an annual basis against all Units and shall be based on the Association's projected budget of the cash requirements needed to provide for the administration and performance of the Associations dates during such assessment year and shall be due and payable on an installment basis as determined by the Board. Special Assessments shall be due and payable as established by the Board but may be payable on an installment basis as determined by the Board.

(b) Written notice of all Assessments shall be sent to each Owner subject thereto specifying the type of Assessment, the amount and the date such Assessment is due.

(c) All Assessments shall become delinquent unless paid by their due date which shall be at least thirty days after notice is mailed. If such Assessments are not paid by their due date, the Owner obligated to pay such Assessment may be required to pay a reasonable late fee and interest, as determined by the Board from time to time in its discretion and uniformly applied. Failure to make payment of any Assessment within sixty days of the due date thereof shall cause the total amount of such Owner's Annual Assessment and any Special Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. In the event it shall become necessary for the Board to collect any delinquent Assessments, whether by foreclosure of a lien herein created or otherwise, the delinquent Owner shall pay, in addition to the Assessment, interest and late fees as herein provided, all costs of collection including reasonable attorneys' fees and costs incurred by the Association in enforcing payment. In the event a "Notice of Lien" is filed to enforce collection, the cost of preparation, filing and release shall be considered a cost of collection.



(d) The Association is hereby granted a priority lien against all Lots and Units for any payment of an Assessment (including all Annual Assessments and Special Assessments) which the Owner fails to make as required by the Declaration. The lien of the Assessment including Special Assessments, if any, together with interest, late fees, costs of collection including reasonable attorneys' fees, shall be prior to all other liens and encumbrances to the full extent permitted by C.R.S. § 38-33.3-316. The Association's statutory lien accrues from the time the Assessment or fine becomes due. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due and continues until such Assessment, together with interest, late fees and all costs of collection including reasonable attorneys' fees are paid. The lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Lot or Unit. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Unit, the Board may take possession and rent said Unit or apply for the appointment of a receiver for the Unit without prior notice to the Owner. In addition to the lien herein granted, the Board shall have the right to bring an action at law against any Owner who fails to pay any amounts assessed against his or her Lot or Unit, and obtain judgment for the amount of the Assessment due together with late fees and interest, plus all costs of collection, including reasonable attorneys' fees in collecting the judgment.

(e) The lien accruing hereunder shall be foreclosed upon as provided by the laws of the State of Colorado for foreclosure of mortgages on real property and/or pursuant to the Act. The Board shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage, and encumber or convey the same.

(f) The lien of all Assessments created and defined by the Declaration (including Special Assessments) shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to the Declaration shall constitute a waiver of the homestead exemption as against such Assessment lien.

(g) Sale or transfer of an interest in any Lot or Unit shall not affect the liens for unpaid Assessments.

(h) The Association shall upon demand, and for a reasonable charge, shall furnish to an Owner or his or her First Mortgagee, within fourteen days after demand, a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot or Unit have been paid. A properly executed certificate of the secretary of the Association as to the status of the Assessments against a Lot or Unit is binding upon the Association as of the date of its issuance.

**Section 5.7 Declarant Obligations.** Until the Association makes a Common Expense Assessment the Declarant shall pay all Common Expenses.

Section 5.8 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board is not properly exercising its duties and powers under the Declaration.

Section 5.9 Notice and Hearing. In the case of the levy of any Special Assessment, or whenever an Owner is otherwise entitled to an opportunity for notice and hearing pursuant to the Declaration, notice and hearing shall mean that the affected Owner and the other Owners shall have thirty days' prior written notice of any action to be taken or any determination to be made by the Board. No action shall be taken or determination made without the matter being considered by the Board at the time and place stated in the notice. All Owners shall have the right to attend the "hearing" conducted by the Board on the matter. The affected Owner or Owners shall be given a reasonable opportunity to be heard at such hearing. All other Owners shall have the right to comment only at the discretion of the Board. The action or determination of the Board shall be final and shall be made in writing within thirty days after the hearing date. The Owners shall receive written notice of the Board's action or determination pursuant to Section 2.5 and Section 4.5.

Section 5.10 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any provision for reserves shall be paid to the Owners prorated in proportion to their voting rights.

## **ARTICLE VI ARCHITECTURAL APPROVAL/DESIGN REVIEW**

Section 6.1 Approval of Improvements Required. The approval by the Design Review Committee hereinafter referred to as the Committee shall be required prior to the commencement of the construction of any Improvements to Property (as defined below) on any portion of the Property. Jurisdiction for approval over initial construction, modifications, expansions, additions, or alterations to an Improvement to Property is delegated to the Design Review Committee. The purchase of any Lot or Unit within the Property does not grant any implied guarantee of approval of the proposed improvement by the Committee. The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Design Review Committee.

Section 6.2 Improvement to Property Defined. "Improvement to Property" shall mean and include, without limitation: (a) the construction, installation, erection or expansion of any building, structure or improvement (including utility facilities) on any Lot; (b) the demolition or destruction by voluntary action of any building, structure or other improvement on any Lot; (c) the grading, excavation, filling or similar disturbance of the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern on any Lot; (d) landscaping, planting, clearing or removing of trees, shrubs, grass or perennial plants on any Lot; and (e) any change, alteration, modification, expansion, or addition to any



previously approved Improvement to Property, including any change of exterior appearance, finish material, color or texture.

Section 6.3 Membership of the Committee. The Committee shall consist of five members, all of whom shall be appointed by the Board. The Committee, by majority vote, shall adopt such operating and decision-making rules as it deems necessary and appropriate subject to the approval of the Board. Members of the Committee may, but shall not necessarily be Members of the Association. Members of the Committee appointed by the Board may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board.

Section 6.4 Address of the Committee. The address of the Committee shall be that of the Association.

Section 6.5 Submission of Plans. Prior to commencement of work to accomplish any proposed Improvement to Property, the Person proposing to make such Improvement to Property (the "Applicant") shall submit to the Committee, at its offices, such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the Committee shall reasonably request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property. The Committee may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Improvement to Property. Until receipt by the Committee of all required materials in connection with the proposed Improvement to Property, the Committee may postpone review of any materials submitted for approval by a particular Applicant. No Improvement to Property of any kind shall be erected, altered, placed, or maintained within the Property unless and until the final plans, elevations, and specifications therefore have received written approval by the Committee as herein provided. The Committee may waive any provision of this ARTICLE VI in the event the majority of the members of the Committee determine that implementation of any provision of this ARTICLE VI shall cause, in a specific situation, practical difficulty or unnecessary hardship.

Section 6.6 Delegation/Waiver. The Committee may at its discretion delegate to the Board any of its powers granted to it by this Article by written notice to the Board indicating what powers and authority are granted to the Board. Such delegation shall be effective from the date such notice is recorded.

Section 6.7 Criteria for Approval. The Committee shall have the right to disapprove any proposed Improvement to Property which is not in compliance with the Design Guidelines as interpreted and implemented in the reasonable discretion of the Committee. In reviewing a proposed Improvement to Property, the Committee shall have the right to take into consideration the suitability of the proposed Improvement to Property and of the materials of which it is to be built, the color scheme, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, the topography of the land and the effect of the Improvement to Property as planned on the outlook from the adjacent or neighboring property, and if it is in

accordance with all of the provisions of the Declaration and the regulations, requirements, ordinances and conditions imposed by Jefferson County and any other governmental body having jurisdiction over the Property. Without limitation of the foregoing, the Committee may disapprove the proposed Improvement to Property if the plans and specifications submitted are incomplete, or in the event the Committee deems the materials submitted will be contrary to the spirit or intent of the Declaration. The Committee may condition its approval of any proposed Improvement to Property upon the making of such changes thereon as the Committee may deem appropriate.

Section 6.8 Design Review Fee. The Committee may, in its guidelines or rules, provide for the payment of a reasonable fee to accompany each request for approval of any proposed Improvement to Property. The Committee may provide that the amount of such fee shall be uniform for similar types of any proposed Improvement to Property or that the fee shall be determined in any other reasonable manner, such as the estimated cost of the proposed Improvement to Property.

Section 6.9 Decision of the Committee. The decision of the Committee shall be made within thirty days after receipt by the Committee of all materials required by the Committee unless such time period is extended by agreement of the Applicant. The decision shall be in writing and, if the decision is not to approve a proposed Improvement to Property, the reasons therefor shall be stated. The decision of the Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Committee. Each Committee Member shall be entitled to one vote. A majority vote of the Committee shall constitute the action of the Committee.

Section 6.10 Appeal to the Board. If the Committee disapproves or imposes conditions on the approval of a proposed Improvement to Property, the Applicant may appeal to the Board and shall have the right to have the Board determine the matter pursuant to the notice and hearing provisions of Section 5.9. The applicant shall give written notice of such appeal to the Board and the Committee within ten days after notice of such disapproval or conditional approval is given to the Applicant. The Board's decision shall be final. If the Board disapproves or modifies the Committee's decision, the Board shall nevertheless make all decisions necessary to resolve the matter so that there is no uncertainty about any right to proceed or not to proceed with any Improvement to the Property. The Board's determinations shall be made in writing. If the Committee approves a proposed Improvement to Property, any Owner may appeal the approval to the Board in the same manner as an Applicant. The decision of the Committee if there is no appeal and the decision of the Board if there is an appeal shall be binding on all subsequent Boards.

Section 6.11 Failure of Committee to Act on Plans. Any request for approval of a proposed Improvement to Property shall be deemed approved, unless disapproval or a request for additional information or materials is transmitted to the Applicant by the Committee within thirty days after the date of receipt by the Committee of all necessary materials as determined by the Committee.



Section 6.12 Prosecution of Work After Approval. After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed Improvement to Property, any information submitted to the Committee in connection with the proposed Improvement to Property and any conditions imposed by the Committee. Failure to complete any proposed Improvement to Property within six months after the date work is commenced or to complete the Improvement to Property in accordance with the description and materials furnished to, and the conditions imposed by the Committee shall constitute noncompliance with the requirements of this Article and the Committee may serve on the Applicant a Notice of Noncompliance.

Section 6.13 Notice of Completion. Upon completion of the Improvement to Property, the Applicant shall give written notice of completion to the Committee. Until the date of receipt of a notice of completion, the Committee shall not be deemed to have notice of completion of any Improvement to Property.

Section 6.14 Inspection of Work. The Committee or its duly authorized representative shall have the right to inspect any Improvement to Property prior to or after completion; provided that the right of inspection shall terminate sixty days after the Committee receives a notice of completion from the Applicant.

Section 6.15 Notice of Noncompliance. If, as a result of inspections or otherwise, the Committee finds that any Improvement to Property has been done without obtaining the approval of the Committee, or was not done in substantial compliance with the description and information furnished to, and any conditions imposed by the Committee or was not completed within six months after the date of the issuance of the Building Permit for such improvement, the Committee shall notify the Applicant in writing of the noncompliance; which notice shall be given, in any event within sixty days after the Committee has inspected the improvement, but in no event no later than sixty days after the Committee's receipt of such Applicant's notice of completion. The notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

Section 6.16 Failure of Committee to Act After Completion. If, for any reason, the Committee fails to notify the Applicant of any noncompliance within sixty days after receipt by the Committee of written notice of completion from the Applicant, the Improvement to Property shall be deemed to be in compliance if the Improvement to Property was completed as of the date of notice of completion.

Section 6.17 Appeal to the Board of Findings of Noncompliance. If the Committee gives any notice of noncompliance, the Applicant may appeal to the Board by giving notice of such appeal to the Board and the Committee within ten days after receipt by the Applicant of the notice of noncompliance. If, after a notice of noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Committee shall request a finding of noncompliance by the Board by giving written notice of such request to the Board and the Applicant within thirty

days after delivery to the Applicant of a notice of noncompliance. In either event, the Board after notice and hearing shall determine, within thirty days of the hearing date, whether or not there is noncompliance and, if so, the nature thereof.

Section 6.18 Correction of Noncompliance. If the Board determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than thirty days from the date of receipt by the Applicant of the determination of the Board. If the Applicant does not comply with the Board's ruling within such period, the Board may, at its option, record a "Notice of Noncompliance" against the Lot or Unit on which the noncompliance exists, or may remove the noncomplying Improvement to Property or may otherwise remedy the noncompliance. The Board may levy a Special Assessment against the Owner of such Lot or Unit for such costs and expenses incurred. In the event the Board levies a Special Assessment pursuant to this Section, such Assessment, if not paid pursuant to Section 5.6, shall automatically become a lien on the Unit or Lot, as the case may be, in the same manner as all other Assessments pursuant to ARTICLE V. The right of the Board to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Board may have at law, in equity, or under the Declaration.

Section 6.19 No Implied Waiver or Estoppel. Specifically, the approval by the Committee of any noncompliance shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar noncompliance or similar proposals, plans, specifications or other materials submitted with respect to any other noncompliance.

Section 6.20 Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties.

Section 6.21 Record of Actions. The Committee shall report in writing to the Board all final actions of the Committee and the Board shall keep a permanent record of such actions.

Section 6.22 Estoppel Certificates. The Board shall, upon the reasonable request of any interested party and after confirming any necessary facts with the Committee, furnish a certificate with respect to the approval or disapproval of any Improvement to Property or with respect to whether any Improvement to Property was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on the certificate with respect to all matters.

Section 6.23 No Liability for Committee Action. Except as provided in the Act, there shall be no liability imposed on the Committee, any member of the Committee, any authorized Committee representative, the Association, any member of the Board or Declarant for any loss, damage or injury arising out of or in connection with the performance of the duties of the Committee, if such party acted in good faith and without malice. In reviewing any matter, the Committee shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of an Improvement to Property be deemed approval of such matters.



Section 6.24 Architectural Standards/Design Guidelines. The Committee shall adopt guidelines which will clarify the types of designs and materials that will be considered in design approval. These guidelines shall be known as "Architectural Standards/Design Guidelines and Construction Regulations of The Orchard Subdivision."

Section 6.25 Modifications. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her Unit, or to paint the interior of his or her Unit any color desired.

## ARTICLE VII LAND USE AND OTHER RESTRICTIONS

Section 7.1 Limitations and Restrictions. All Lots and Units shall also be held, used and enjoyed subject to the following limitations and restrictions and the Committee shall also have jurisdiction over the matters set forth in this Article. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Committee if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in accordance with written guidelines or rules promulgated by the Committee.

Section 7.2 Land Use and Building Type. No Unit shall be used for any purpose other than residential purposes as generally defined or for a home occupation so long as such occupation is allowed by the official Development Plan of The Orchard and any other development documents and rules and regulations of Jefferson County pertaining to the Property.

Section 7.3 Building Locations and Height Restrictions. The Committee shall approve the location and height of any structure placed on any Lot. Such approval must be obtained before commencement of any construction or alteration in accordance with ARTICLE VI.

Section 7.4 Temporary Structures. No temporary house trailer, tent, garage or outbuilding shall be placed or erected upon part of a Lot or on any portion of the Common Area except with the prior written approval of the Committee obtained in each instance. No Unit located upon the Property shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans nor shall any Unit when completed be in any manner occupied until there is compliance with all requirements, conditions, covenants, and restrictions under the Declaration and in accordance with all ordinances and regulations of any governmental entity or special district having jurisdiction over the Property.

Section 7.5 Restrictions on Garbage and Trash. Each Owner shall keep all of his or her trash, garbage, or other refuse in a container screened from view and out of the front yard or in his or her garage. Garbage, trash or waste shall be disposed of in such manner as may be

established by the Association, and the burning of garbage, trash or waste in outside incinerators, barbecue pits or the like is prohibited.

Each Owner shall keep his or her Lot or Unit, at all times in a neat and clean condition and grass and weeds shall be kept mowed and each Owner shall likewise so maintain the portion of any barrow ditch which borders his or her Lot or Unit, keeping the ditch mowed and free of weeds and trash. No trash, litter, garbage, grass, shrub or tree trimmings, plant waste, lumber, compost, metal, bulk materials, scrap refuse or debris of any kind shall be permitted to remain exposed upon any Lot or Unit or any portion of a barrow ditch bordering any Lot or Unit except that containers containing such materials may be placed outside at proper times for garbage or trash pickup.

The Board, upon written request from the Committee, shall have the right and duty, through its agent and employees, after a written fifteen day prior notice to enter upon any Lot and remove such unsightly objects and materials. The cost of such removal shall be chargeable to such Owner by Special Assessment. In the event of a levy of a Special Assessment pursuant to any provision of the Article VII, the affected Owner shall have the right to notice and hearing pursuant to Section 5.9.

Section 7.6 Nuisances. No noxious or offensive activity shall be carried on upon the Property nor shall anything be done or maintained which may be or become an annoyance or nuisance to the neighborhood or which is or may cause an unreasonable embarrassment, disturbance or annoyance to others, or detract from its value as an attractive residential community. Habitually barking, howling or yelping dogs shall be deemed a nuisance.

Section 7.7 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Property which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Property which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spotlights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Property except with the prior written approval of the Committee.

Section 7.8 No Hazardous Activities. No activity shall be conducted on any portion of the Property which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Property and no open fires shall be lighted or permitted on any portion of the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a fireplace designed to prevent the dispersal of burning embers.

Section 7.9 No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure, including all tractors, snow removal equipment and garden or maintenance equipment, except when actually in use.



Also all service areas for hanging, drying or airing of clothing shall be screened and kept within approved setbacks.

Section 7.10 Utilities and Taxes. All electric, television, radio and telephone line installations and connections from the Lot line to the Unit shall be placed underground. All types of refrigerating, cooling or heating apparatus must be concealed except solar collector panels. All solar collector installations must be approved by the Committee. **Further, pursuant to C.R.S. § 38-33.3-105(2), each Unit together with its interest in Common Areas constitutes for all purposes a separate parcel of real estate and shall be separately assessed and taxed.**

Section 7.11 Restrictions on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Property except such signs as may be approved in writing by the Committee which may include without limitation signs indicating protection by Security Systems and Neighborhood Watch Programs. Notwithstanding the foregoing, a sign advertising a Lot or Unit for sale or for lease may be placed on such Lot or Unit; provided, however, that standards relating to dimensions, color, style and location of such sign shall be determined from time to time by the Committee and shall comply with the local sign codes and with all other applicable statutes, ordinances and regulations.

Section 7.12 Fences and Mailboxes. Mailboxes, porch and area lighting and property identification must be approved by the Committee. The design, type of construction and location of fences must be approved by the Committee.

Section 7.13 Compliance with Insurance Requirements. Except as may be approved in writing by the Board, nothing shall be done or kept on the Property which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

Section 7.14 Compliance with Laws. Nothing shall be done or kept on the Property in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction over the Property including without limitation any environmental law, ordinance or regulation.

Section 7.15 Environmental Liability. Owners covenant and agree not to generate, release, discharge, store, dispose of any hazardous waste, toxic substance or related material ("Hazardous Materials") within the boundaries of the Property or to transport any Hazardous Materials to or from the Property. The term "Hazardous Materials" shall mean any hazardous substance, material or waste which is or becomes regulated by any governmental authority. In addition to the foregoing all Owners covenant not to violate any statute, regulation, ordinance, rule of law, contract or other agreement which might materially negatively affect the Property.

Section 7.16 Restoration in the Event of Damage or Destruction. In the event of damage to or destruction of any Unit, the Owner shall, subject to the approval of the Committee, either: (a)

cause the damaged or destroyed Unit to be restored or replaced to its original condition or such other condition as may be approved in writing by the Committee; or (b) cause the damaged or destroyed Unit to be demolished and the Lot to be suitably landscaped, so as to present a pleasing and attractive appearance.

Section 7.17 Household Pets. No animal, livestock, birds, poultry, reptiles or insects of any kind, shall be raised, bred, kept or boarded in or on any portion of the Property; provided, however, that Owners may keep a reasonable number of dogs, cats, or other domestic animals which are bona fide household pets, so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance or inconvenience to any resident of the Property.

The Board shall have the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this section. The Board shall take such action or actions as it deems reasonably necessary to correct the violation to include after notice and hearing, directing permanent removal of the pet or pets from the Property.

**Pets shall not be allowed to run at large within the Property, but shall at all times be in fenced yards or on a leash and such pets shall not be allowed to litter any portion of the Property.**

Reimbursement for damages caused by such pets and costs incurred by the Association, to include attorneys' fees and costs, in the removal of a pet or pets from the Property or incurred by the Association in cleanup after such pets may be levied against such pet's Owner as a Special Assessment. No dog runs, animal pens or fences of any kind shall be permitted on any Lot or Unit except with the prior written approval of the Committee.

Section 7.18 Vehicular Parking, Storage and Maintenance. No house trailer, camping trailer, horse trailer, camper, camper shells, boat trailer, hauling trailer, boat or boat accessories, truck larger than 3/4 ton, recreational vehicle or equipment, mobile home, or commercial vehicle may be parked or stored anywhere within the Property so they are visible from neighboring Lots or Units or from the street except in emergencies or as a temporary expedience. No emergency or temporary parking or storage shall continue for more than seventy-two hours. Parking is not allowed on landscaped or lawn areas.

No abandoned, unlicensed, wrecked or inoperable vehicle of any kind shall be stored or parked within the Property except in garages or except in emergencies. An "abandoned or inoperable vehicle" shall be a vehicle which has not been driven under its own propulsion for a period of two weeks or longer; provided, however, that any vehicle belonging to any Owner which is otherwise permitted will not be deemed to be abandoned while the Owner is ill or out of town. After notice and hearing, the Board shall have the right to remove and store a vehicle in violation of this section. The expenses of removal shall be levied against the Owner of the



vehicle as a Special Assessment. Vehicle maintenance is allowed only within the garage or driveway of the vehicle Owner's Unit and such maintenance must be completed within 24 hours.

Section 7.19 Landscaping. At the time of or as soon as reasonably possible following construction of a Unit within the Property, but in no event later than six months following the issuance of a Certificate of Occupancy therefore, the Lot shall be suitably landscaped. Thereafter, an attractive, healthy, live and growing condition shall be maintained and all dead or diseased grass areas, shrubs and trees shall be promptly removed and replaced with suitable replacement landscaping. Each Owner shall maintain the landscaping upon his or her Lot in good condition. An Owner shall remove weeds promptly and water and trim lawns and shrubs as often as the same shall become necessary in order to insure that the Lot appears to be well maintained. Each Owner's responsibilities under this section shall include maintaining the barrow ditch free from debris, and weeds and mowing the banks of the barrow ditch. The Owner's responsibilities with respect to the barrow ditch extend only to the portions of the barrow ditch which border on Owner's Lot or Unit.

Landscaping plans' including fence plans, shall be prepared in accordance with the "Architectural Standards, Design Guidelines and Construction Regulations of The Orchard" adopted by the Committee and shall be submitted in advance to the Committee for review and approval. A notice of completion from the landscape architect, contractor, or other person installing the landscaping shall be filed with the Committee upon completion of the landscaping.

If any Owner fails to comply with this Section and with the guidelines of the Committee, the Board, after notice and hearing shall have the right and power to enter upon the Lot or Unit and bring it into compliance, the cost of which shall be chargeable to such Owner as a Special Assessment. Each Lot and Unit is subject to an easement in favor of the Board (including its agents, employees and contractors) for providing the installation and/or maintenance in accordance with the above.

Section 7.20 Owner Caused Damages. If, due to the act or neglect of an Owner or such Owner's Guest, loss or damage shall be caused to any person or property within the Common Areas, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with costs of collection and reasonable attorneys' fees, if necessary, may be collected by the Board, after notice and hearing as a Special Assessment against the Owner causing the damage. Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this section shall be made by the Board and shall be final.

Section 7.21 Antennas. No exterior television or radio antennae or any other antennae of any type shall be erected or maintained upon the Property. Satellite dishes may be installed within the Property so long as such installation is approved by the Committee.

Section 7.22 Lease of a Unit. Any Owner shall have the right to lease his or her Unit upon such terms and conditions as the Owner may deem advisable, subject to the following:

(a) No Owner may lease less than his or her entire Unit or for transient or hotel purposes or for a term of less than thirty days;

(b) Any such lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of the Declaration and the Rules of the Association;

(c) Such lease or rental agreement shall state that the failure of the lessee or renter to comply with the terms of the Declaration and the Rules of the Association shall constitute a default and the default remedies shall be enforceable by either the Board or the lessor, or by both of them;

(d) Any Owner who leases his or her Unit shall, within three days after the execution of such lease, forward a copy of same to the Board.

Section 7.23 Restrictions on Mortgaging a Lot and/or Unit. There are no restrictions on the right of an Owner to mortgage or otherwise encumber his or her Lot and Unit. There is no requirement for the use of a specific lending institution or particular type of lender.

Section 7.24 Temporary Use by the Declarant. Notwithstanding any provision herein contained to the contrary, during the period of construction and sale, it shall be expressly permissible for the Declarant, builders who purchase Lots from the Declarant and/or their agents to maintain upon the Property, without charge, such facilities as may be reasonably required, convenient or incidental for construction of the Units and construction of the Common Areas.

It shall also be permissible during the actual construction or alteration of a Unit for reasonable and necessary temporary structures for storage of materials to be erected and maintained by the Declarant, its, assignees and Owners. Such temporary storage structures shall be removed upon completion of the construction, alteration or remodeling.

No maintenance of such facilities or use or activity shall unreasonably interfere with the access, enjoyment or use of the Common Areas; nor shall any activity be conducted which might be unsafe, unhealthy or hazardous to any person.

## **ARTICLE VIII EASEMENTS**

Section 8.1 Easements for Encroachments. If any part of the Common Areas encroach or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon another Unit or Lot, the Owner of that Unit shall and does have an easement for such encroachment and for the maintenance of same. Such easements shall extend for whatever period of time the encroachment shall exist. Such encroachment shall not be considered to be an encumbrance either upon the Common Areas or



upon a Unit. Such encroachment includes, but is not limited to, encroachments made by error in original construction of the Unit, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of Units within the Property.

Section 8.2 Association Easements. Easements for utilities over and across the Common Areas shall be those shown upon the recorded Plat of the Property, and such other easements as may be established pursuant to the provisions of the Declaration or as may be hereinafter granted over and across the Common Area by the Board.

Section 8.3 Declarant's Easements. Anything to the contrary herein notwithstanding, the Declarant hereby reserves as a "Special Declarant Right" (as this term is defined in C.R.S. § 38-33.3-103(29)) for itself, its agents, employees, business invitees, successors or assigns and builders and developers who acquire Lots from Declarant for the purpose of building and selling homes reasonable easements and rights-of-ways over the Common Areas and all Lots not conveyed to home purchasers for the sole purpose of constructing improvements to the Property and/or making repairs pursuant to contracts of sale made with purchasers, but only if access thereto is otherwise not reasonably available. Such easements and rights-of-way, however, shall not inhibit the use of Lots and Common Areas by an Owner and his or her Guests. The Declarant shall be fully responsible for any damage to Lots and Common Areas within the Property caused by its use of such easements and rights-of-way. Such reservations and easements shall terminate upon the termination of the Period of Declarant Control. Notwithstanding anything herein to the contrary, Declarant shall have a right to an easement through the Common Areas to the full extent permissible under C.R.S. § 38-33.3-216. The Special Declarant Rights reserved in this Section shall be assignable to builders and developers who purchase Lots as building sites from Declarant.

Section 8.4 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Property, to enter upon any part of the Property in the performance of their duties.

Section 8.5 Easements Deemed Appurtenant. The easements and rights herein created for an Owner shall be deemed appurtenant to the Lots owned by such Owner. All conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights-of-way as provided herein, as though set forth in said document in full, even though there may be no specific reference to such easements or rights-of-way.

## ARTICLE IX CONDEMNATION

Section 9.1 Condemnation of Common Area. In the event of a proceeding in condemnation or partial condemnation of the Common Areas by any governmental authority authorized to do so, then the proceeds from such condemnation attributable to the Common Areas shall be



distributed to the Board for repair of the Common Areas after condemnation and the balance remaining shall be distributed to all Owners in the same proportion as the Annual Assessments for Common Expenses are assessed subject to the Association's right to offset condemnation proceedings against any amounts owed to the Association by an Owner pursuant to ARTICLE V.

Section 9.2 Condemnation of Units. If a Unit is condemned, then the proceeds of any such condemnation shall be distributed as agreed to by each Owner of such Unit or Units and the entity performing the condemnation, subject, however, to the provisions of Section 9.3 below.

Section 9.3 Lien Holders. When condemnation occurs, either to the Common Areas or to a Unit within the Property and such Unit is subject to an encumbrance, the proceeds payable hereunder shall be distributed by checks made jointly payable to the Owners and their respective First Mortgagees after cure of any default in Assessments and satisfaction of any liens in favor of the Association. No Owner or other parties shall be entitled to priority over First Mortgagees with respect to any such distribution.

## ARTICLE X INSURANCE

Section 10.1 Authority to Purchase/General Requirements. Commencing not later than the time of the first conveyance of a Unit, to a person other than the Declarant to the extent reasonably available, the Association shall maintain property and commercial general liability insurance in accordance with and as required by C.R.S. § 38-33.3-313 as it may be amended from time to time. Each such policy shall provide that the insurer to the extent possible waives any right to claim by way of subrogation against the Declarant, the Association, the Board, and the Owners and their families. The name of the insured under the policies shall be the Association for the use and benefit of the individual Owners. Any loss covered by the policies carried under this Article shall be adjusted exclusively by the Board and the insurance proceeds for that loss shall be payable to the Association as trustee for each Owner. All insurance policies shall contain the standard mortgagee clause or equivalent endorsement (without contribution).

Section 10.2 Hazard Insurance. The Board may obtain and maintain an "all-risk" form policy of hazard insurance with extended coverage, vandalism, malicious mischief, windstorm, sprinkler leakage, debris removal, cost of demolition and water damage endorsements and such other insurance as the Board may deem necessary or prudent from time to time.

Section 10.3 Rebuilding of Damaged Common Area. In the event of any distribution of insurance proceeds resulting from any loss covered by insurance maintained by the Association, the proceeds must be disbursed first for the repair and restoration of the damaged property and the Association and the Owners are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damage has been completely repaired and the affected property restored or:

(a) The Association has been terminated; or

(b) Eighty percent of the Owners shall have voted not to restore or repair the damaged property.

In the event of any repair and/or reconstruction of any portion of the Common Areas, the Board shall promptly repair or reconstruct the same in a workmanlike manner substantially in accordance with the Declaration and in accordance with the original plans and specifications for such Common Areas unless other action is approved by Owners entitled to cast at least seventy-five percent of the votes in the Association. If insurance proceeds are insufficient to properly repair and/or reconstruct the damaged Common Areas, such excess cost shall be assessed in the same proportion as the Annual Assessment for Common Expenses and in the manner prescribed in ARTICLE V. Further Assessments may be made in a like manner if the amounts collected prove insufficient to complete the repair and/or reconstruction. In the event amounts collected are in excess of the amounts required for such repair and/or reconstruction, the excess shall be returned to the Owners by the Association in the same proportion as the Assessment was levied.

#### Section 10.4 Additional Insurance.

(a) If the area where the Common Area is located has been identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, flood insurance for the Common Area shall be maintained providing coverage equivalent to that provided under the National Flood Insurance Program in an amount of one hundred percent of the current replacement cost of all the insurable improvements located upon the Common Areas. Deductibles may not exceed the lower of Five Thousand Dollars or one percent of the face amount of the coverage. Funds for such deductibles must be included in the Association's reserve and be so designated.

If the Common Areas at the time of the recording of the Declaration are not identified as a Special Flood Hazard Areas but become reclassified at a later date as such, the Board shall obtain flood insurance for the Common Area in accordance with the above.

### **ARTICLE XI MAINTENANCE**

Section 11.1 Maintenance of the Common Areas. The Association shall provide for the repair, maintenance and/or reconstruction of the Common Areas. Without limiting the generality of the foregoing and by way of illustration, the Association shall keep the Common Areas safe, attractive, clean, functional and in good repair and may make necessary or desirable alterations or improvements thereon. The Association shall own and shall be responsible for the reconstruction and the repair and maintenance of both sides of the perimeter fence located along the border of the Property.



In the event such repair, maintenance and/or reconstruction is resulting from the willful neglect or destruction by an Owner or such Owner's Guest, the Board shall have the right to charge the costs of such repair, maintenance and/or reconstruction, to such Owner by Special Assessment after notice and hearing as provided in Section 5.9.

Section 11.2 Maintenance of Lots and Units. Each Owner shall be responsible for the maintenance, repair and reconstruction of the exterior of such Owner's Unit and the maintenance and repair of his or her Lot.

In the event any Owner shall fail to maintain his or her Lot or the exterior of his or her Unit in a manner satisfactory to the Board, the Board shall have the right and duty, after notice and hearing, as provided in Section 5.9 to enter upon said Lot and repair, maintain, and/or reconstruct the Lot or Unit. The cost of such maintenance, repair and/or reconstruction shall be chargeable to such Owner by Special Assessment.

Section 11.3 Maintenance of Drainage Pattern. There shall be no interference with the established drainage pattern initially established by the Declarant over any of the Lots and Common Areas within the Property, except as approved in writing by the Committee. Approval shall not be granted unless provision is made for adequate alternate drainage. The "established drainage pattern" shall mean the drainage pattern shown and depicted on the Phase III Drainage Report by Nolte & Associates and approved by Jefferson County. The established drainage pattern may include the drainage pattern from the Common Areas over any Lots within the Property and from any Lot within the Property over the Common Areas, or from any Lot over another Lot.

## ARTICLE XII FIRST MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers, or guarantors of holders of first mortgages recorded against Lots within the Property. To the extent applicable, necessary, or proper, the provisions of this ARTICLE XII apply to the Declaration, the Articles and By-Laws of the Association.

Section 12.1 Amendment to Documents/Special Approvals. To the extent permissible under the Act the consent of Owners who are entitled to cast at least seventy-five percent of the votes in the Association and the approval of at least seventy-five percent of the First Mortgagees shall be required to commence any action to terminate the legal status of the Property for reasons other than substantial destruction or condemnation of the Property.

Section 12.2 Books and Records. Owners and their mortgagees shall have the right to examine the books and records of the Association at any reasonable time at the office of the Association and upon reasonable notice. Copies are available at reasonable cost.



### **ARTICLE XIII DURATION AND AMENDMENTS**

Section 13.1 Duration. The covenants, restrictions and obligations of the Declaration shall run with and bind the land for a term of twenty years from the date the Declaration is recorded after which time they shall be automatically extended for successive periods of ten years.

Section 13.2 Amendments by Owners. Except to the extent set forth in C.R.S. § 38-33.3-217(4) requiring unanimous consent of the Owners for certain matters and except for amendments made to effectuate the exercise of Special Declarant Rights reserved pursuant to Section 2.5(h) or as otherwise required or permitted in the Declaration or the Act, any provision, covenant, condition or restriction contained in the Declaration may be amended at any time and from time to time upon written approval of the amendment by Owners of at least sixty-seven percent of the Lots or Units.

Any such amendment shall be effective upon the recording of the amendment or an amended and restated declaration together with a duly authenticated Certificate of the Secretary of the Association certifying that the requisite number of Owners and First Mortgagees, if required, have given their written consent to the amendment.

### **ARTICLE XIV GENERAL PROVISIONS**

Section 14.1 Right of Action. The Association and any aggrieved Owner shall have a right of action against an Owner for such Owner's failure to comply with the Declaration, the Design Guidelines, the Rules of the Association or with decisions of the Board. Neither the Association nor any Owner, except the Declarant, is liable for any cause of action based upon the Declarant's acts or omissions in connection with any part of the Property which the Declarant has the responsibility to maintain. The Declarant's obligations and responsibilities shall be specifically limited to matters expressly stated in the Declaration and/or the Act as obligations, responsibilities and liabilities of the Declarant. Declarant shall have no implied responsibility or responsibilities. Further, any action alleging an act or omission by the Association must be brought against the Association and not against an Owner. If any act or omission is asserted to have occurred during the Period of Declarant Control and the Association gives the Declarant reasonable notice of and an opportunity to cure such act or omission and to defend against the action, the Declarant who then controlled the Association is liable to the Association or to any Owner for all tort losses not covered by insurance and all costs that the Association would not have incurred but for such act or omission. Whenever the Declarant is liable to the Association under this section, the Declarant is also liable for all expenses of litigation, including reasonable attorneys' fees incurred by the Association.

Section 14.2 Successors and Assigns. The Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association and each Owner and the heirs, personal representatives, successors and assigns of each of them.

Section 14.3 Severability. Any portion of the Declaration invalidated in any manner whatsoever shall not be deemed to affect in any manner the validity, enforceability or effect of the remainder of the Declaration, and in such event, all of the other provisions of the Declaration shall continue in full force and effect as if such invalid provision had never been included.

Section 14.4 No Waiver. No provision contained in the 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 which may occur.

Section 14.5 Registration by Owner of Mailing Address. Each Owner shall register his or her mailing address with the Association. Except for Assessment notices and other routine notices, which may be sent by regular mail, all notices or demands intended to be served upon an Owner shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board or the Association shall be sent by certified mail, postage prepaid to Golden Properties, Ltd. (c/o Golden Equities, Inc. to the attention of Mr. Alec Garbini), 1819 Denver West Drive, Suite 400, Golden, Colorado 80401, Registered Agent for the Association until the Registered Agent is changed by a notice duly filed with the Office of the Secretary of State of Colorado.

Section 14.6 Attorneys' Fees and Costs. If any action is brought in a court of law or put into arbitration as to the enforcement, interpretation, or construction of any of the within covenants, conditions and restrictions of the Declaration, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action.

Section 14.7 Captions. The captions and headings in the Declaration are for convenience only, and shall not be considered in construing any provisions of the Declaration.

Section 14.8 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, the Declarant Advantage and Adair together owning all of the Lots and having the right to vote all of the votes of the Association have executed this Amended and Restated Declaration this 15<sup>th</sup> day of July, 1993.

Declarant  
**GOLDEN PROPERTIES, LTD.,**





STATE OF COLORADO )  
 ) ss.  
COUNTY OF Jefferson )

I, Shirley Strach, a Notary Public, hereby certify that on the 14<sup>th</sup> day of July, 1993, personally appeared before me Kenneth M. Slyziuk, President of Advantage Design/Build, Inc., who being by me first duly sworn, declared that he was the person who signed the foregoing documents and that the statements therein contained are true.

My commission expires: October 25, 1993  
Shirley Strach  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Jefferson )

I, Pamela K. Peterson, a Notary Public, hereby certify that on the 14<sup>th</sup> day of July, 1993, personally appeared before me Adair Brown, Manager of the Adair Group, who being by me first duly sworn, declared that he was the person who signed the foregoing document and that the statements therein contained are true.

My commission expires: April 22, 1995.

WITNESS my hand and official seal.  
Pamela K. Peterson  
Notary Public

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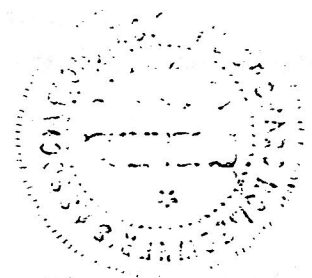
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In accordance with Article XIII Section 13.2 of THE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE ORCHARD, A PLANNED RESIDENCE dated July 1993, we, the undersigned comprising over sixty-seven percent of the owners (36) in the subdivision named THE ORCHARD to which the aforementioned document applies, agree to amend Article VI to provide another level of appeal to the decisions of the Design Review Committee and the Board of Directors by the addition of the following section to Article VI:

Section 6.10.1 If the Board upholds a decision of the Committee to disapprove or impose conditions on the approval of a proposed Improvement to Property, the applicant may appeal these decisions by petition to the owners of property in the development. Upon presentation of the petition with fifty-one percent (27 owners) approval of the property owners to the Board, the Board will comply with the conditions in Section 6.10 as though the Board had approved the appeal.

I, Thomas C. Tiffany, Secretary/Treasurer of the Orchard Homeowners Association, confirm by my signature below that I have personally identified and witnessed the owner's signatures on pages 2 and 3 of this document and have imprinted the corporate seal as further evidence of the intent of the Orchard Homeowners Association to amend the subject document in paragraph 1 as stated above.

Thomas C. Tiffany 7/22/94  
Thomas C. Tiffany Date



Signed and sworn to before me on July 22<sup>nd</sup>, 1994.

Kelli Anliede

ex date September 19, 1997