



The Orchard Homeowner's Association, Inc.  
14212 W. 45<sup>th</sup> Place  
Golden, CO 80403

April 18, 2008

Re: Perimeter Fence

Dear Orchard Homeowner's Association:

You have asked us to provide an opinion regarding the rights and responsibilities of The Orchard Homeowner's Association (the "Association") and ownership related to the perimeter fence of the The Orchard common interest community (the "Community").

Upon review of: (1) "The Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Orchard, A Planned Residential Community" filed with Jefferson County, Colorado, July 16, 1993, and the related documents thereto ("Covenants"); and (2) Colorado Common Interest Ownership Act, Colorado Revised Statutes, Title 38, Section 33.3, et., al., it is our opinion that the Association must provide for the maintenance, upkeep, repair and replacement of the perimeter fence and is empowered to make assessments on all homeowners in the Community for those purposes. As a Common Element, it is owned by the Association with a non-exclusive easement in favor of all homeowner's in the Community.

Our opinion is based on the following Covenants regarding the perimeter fencing and the Association's related rights and responsibilities:

Article I, Definitions, Section 1.6, defining Common Areas or Common Elements as: "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."

Article II, Scope of the Declaration, Section 2.4, regarding Common Area Declaration: "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)."

Article III, The Common Areas, Section 3.3, regarding the 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 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."

Article V, Assessments, Section 5.2, addressing the purpose of assessments: "shall include without limitation maintenance of the Common Areas and the improvements thereon including maintenance of ... both sides of the perimeter fencing located on the borders of the Property..."

Article V, Basis of Assessments, Section 5.3(c), regarding any exemption of Assessments: "No Owner may waive or otherwise escape liability for any Assessments provided for by the non-use of the Common Area..."

Article XI, Maintenance of the Common Areas, Section 11.1, states: "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."

Property is defined to include all of the area included on The Orchard's Plat. Owners are defined to include all owners of the Property. The Plat, which was filed with Jefferson County 10/22/1992, before the Community was built, does not show the perimeter fencing.

Section 38-33.3-307 of the Colorado Revised Statutes requires homeowners' associations to provide for the "maintenance, repair and replacement of the common elements" of the community unless the covenants exclude the element. Section 38-33.3-315 states that Assessments for common expenses shall be made as required under the covenants unless that element benefits fewer than all of the units.

It is our opinion that the intent of the Covenants is to include the perimeter fence as a Common Element. The perimeter fencing benefits the entire Community therefore also qualifies as a common element under Colorado law. Therefore under the Covenants and Colorado law, the Association owns the perimeter fence and has the responsibility to maintain, repair and replace, as well as to insure, the fencing and is empowered to make Assessments related thereto subject to budgetary approval.

We do not provide any opinion regarding the legality of the Association, its operations, or the Covenants but rather are providing our opinion related only to the rights and responsibilities of the Association related to the perimeter fence under Colorado law and the Covenants.

Sincerely,

A handwritten signature in black ink that reads "Rebecca Walker Beattie".

Wallace Beattie Law Firm LLC