

AFTER RECORDING RETURN TO:
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**SECOND
AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE ORCHARD,
A PLANNED RESIDENTIAL COMMUNITY**

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

THIS SECOND AMENDED AND RESTATED DECLARATION is effective upon recording.

RECITALS:

A. On July 16, 1993, the Golden Properties, Ltd., a Colorado limited partnership, submitted the real property described in that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Orchard, a Planned Residential Community recorded in the real property records of Jefferson County, Colorado at Reception No. 93104905, as amended and supplemented ("Original Declaration") to its covenants, conditions and restrictions;

B. The Owners within The Orchard Community desire to amend and restate the Original Declaration by virtue of this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Orchard, a Planned Residential Community ("Declaration"), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments, and supplements thereto shall be superseded and replaced by this Declaration;

C. The Original Declaration provides for and allows for this Declaration in Section 13.2, which provides as follows:

...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;

D. All Owners are aware of the provisions of the Original Declaration allowing for amendment, by virtue of the record notice of the Original Declaration, by acts and disclosures, newsletters or notices of the Association, and by other means;

E. The amendments within this Declaration have been prepared and determined by the Association and by the Owners that have approved this Declaration to be reasonable and not burdensome;

F. The purposes of the amendments in this Declaration are to remove unreasonable restrictions on the community, remove developer "boilerplate" language

that is no longer applicable to the Community, remove provisions that do not allow the Board to efficiently operate the community or deal with community concerns, remove provisions that do not comply with current state law, add provisions that provide the proper tools for the Association to effectively solve problems, add provisions to provide the Association with sufficient power to create and successfully enforce Rules and Regulations, and add provisions that reflect beneficial state law provisions;

G. The purpose of the Association as provided in the Declaration is to preserve the value and desirability of the Community and the Lots and to further the interests of the residents of the Community and Members of the Association; and

H. Pursuant to the requirements set forth in Section 13.2 of the Original Declaration, Owners of at least 67% of the Lots or Units subject to the Original Declaration have approved this Declaration. Alternatively, a court order entered by the District Court for Jefferson County, Colorado pursuant to C.R.S. §38-33.3-217(7), has been entered approving this Declaration.

NOW THEREFORE, the Original Declaration is replaced and superseded by the covenants, servitudes, easements, and restrictions set forth below:

ARTICLE 1 DEFINED TERMS

Section 1.1 Defined Terms

Each capitalized term in this Declaration shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration or the context requires otherwise:

(a) Act shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 *et. seq.*, as it may be amended.

(b) Assessment shall include all Common Expense Assessments and any other expense levied to Lots pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.

(c) Association shall mean The Orchard Homeowners' Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

(d) Board or Board of Directors shall mean the body, regardless of name, designated in the Governing Documents to act on behalf of the Association.

(e) Common Area shall mean all real property owned by the Association for the common use and enjoyment of the Owners, if any.

(f) Common Expenses shall mean and refer to all expenditures made and liabilities incurred by or on behalf of the Association, together with any allocation by the Association to reserves.

(g) Community or The Orchard Community or Planned Community shall mean the planned community known as "The Orchard," and the real property subject to this Declaration and as further defined by the recorded Plats and the legal descriptions contained in this Declaration, and the Members of the Association.

(h) Declaration shall mean and refer to this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Orchard, a Planned Residential Community, as amended, recorded in the office of the Clerk and Recorder of Jefferson County, Colorado.

(i) Design Review Committee or Committee means the committee appointed by the Board of Directors for the purpose of implementing the architectural review provisions of this Declaration and design guidelines for the Community to ensure proper use, appropriate improvement, and harmonious additions, alterations and improvements within the Community.

(j) Governing Documents shall mean this Declaration, the Plat, the Articles of Incorporation, the Bylaws, any Plats and any Rules and Regulations of the Association, as all of the foregoing may be amended from time to time.

(k) Lot shall mean and refer to any plot of land shown upon any recorded Plat of the Property with the exception of Common Areas, if any.

(l) Member shall mean any Owner. The terms "Member" and "Owner" may be used interchangeably.

(m) Owner shall mean the owner of record title, whether one or more persons or entities, to any Lot or Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(n) Plat or Map shall mean and refer to the plat(s) and/or map(s) of the Property and improvements that are subject to this Declaration and which are designated in the Plat or Map recorded in the records of the Office of the Clerk

and Recorder of Jefferson County. More than one plat, map or supplement thereto may be recorded, and, if so, then the term "Plat" or "Map" shall collectively mean and refer to all of such plats, maps and supplements thereto.

(o) Property shall mean the property described in or which is subject to the Declaration together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon.

(p) Residence shall mean the single family dwelling unit located on a Lot for residential occupancy.

(q) Rules and Regulations shall mean any written instruments, however identified, which are adopted by the Association for the regulation and management of the Community and/or clarification of the Governing Documents, including any amendment to those instruments.

[Note: This Article is similar to Article I of your current Declaration.]

ARTICLE 2 NAMES & DESCRIPTION OF PROPERTY/EASEMENTS

Section 2.1 Name and Type.

The type of Common Interest Community is a Planned Community. The name of the Planned Community is "The Orchard." The name of the Association is "The Orchard Homeowners' Association, Inc."

[Note: This provision is similar to Section 2.5 of your current Declaration.]

Section 2.2 Property.

The Planned Community is located in Jefferson County, State of Colorado. The Property of the Planned Community is described in **Exhibit A** of this Declaration, in the Original Declaration, in the Plat, and/or is consistent with the common scheme and plan for the creation and operation of the Community.

The number of Lots currently included in the Community is 53.

Easements for utilities and other purposes over and across the Lots and any Common Area may be as shown upon a recorded Plat and on any recorded Map of the Planned Community, and as may be established pursuant to the provisions of this

Declaration, or granted by authority reserved in any recorded document.

[Note: This provision simplifies and combines Sections 2.1 through 2.5 of your current Declaration. References to the Declarant rights in these provisions have been removed.]

Section 2.3 Owners' Easements of Enjoyment.

Every Owner shall have a right and easement of enjoyment in and to any Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to promulgate and publish Rules and Regulations with which each Owner and their tenants, invitees, licensees and guests shall strictly comply;
- (b) the right of the Association, to suspend the voting rights and the right to use of any Common Area for a period not to exceed 60 days or during any period of violation of any other provision of the Governing Documents, whichever is greater; provided that suspension of voting and use rights shall be automatic during any period that an Owner is in default in payment of any Common Expense Assessment;
- (c) the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication or similar interest through, over or in the Common Area;
- (d) the right of the Association to transfer or convey ownership of any Common Area, provided that any transfer or conveyance of any Common Area shall be subject to the prior approval of 67% of the total votes in the Association;
- (e) the right of the Association to close or limit the use of any Common Area while maintaining, repairing and making replacements in any Common Area, subject to the Act; and

[Note: We added the reference of “any requirements under the Act” (i.e., [CCIOA](#)) as CCIOA, which was revised by [HB22-1040](#), now requires you to notify the Owners of any Common Area closures exceeds 72 hours, with an ETA of re-opening and other additional information.]

(f) the right of the Association to change use of, add or remove improvements to the Common Area.

[Note: This provision is similar to Section 3.4 of your current Declaration.]

Section 2.4 Disclaimer of Liability.

It shall be the affirmative duty and responsibility of each Owner, and each user of the Common Area, to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof, and to notify the Association of the same; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

The Association shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect to the use and operation of, the Common Area or any of its improvements, fixtures, and facilities.

[Note: This provision has been added per recommendation of the attorney.]

Section 2.5 Easements for the Association.

Each Lot shall be subject to an easement in favor of the Association, acting through the Board of Directors (including its agents, employees and contractors) to allow for their performance of obligations in this Declaration, provided that the easement granted and the use thereof shall not unreasonably interfere with or impair the use of any improvements constructed on a Lot and shall be exercised only after reasonable notice to the Owner of the Lot.

[Note: This provision is similar to 8.2 of your current Declaration.]

Section 2.6 Utility, Plat, and Plat Easements.

Easements for utilities and other purposes over and across the Lots and Common Areas may be as shown upon the Plat or Map of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

[Note: This provision has been added and is recommended by the attorney, simply to ensure that Owners are aware that there may be easements recorded on the Plat.]

Section 2.7 Easement for Encroachments.

If any part of the Common Areas encroach or shall hereafter encroach upon a Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot encroaches or shall hereafter encroach upon the Common Areas, or upon another Lot, the Owner of that Lot 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 Lot. Such encroachment includes, but is not limited to, encroachments made by error in original construction of the Lot, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of Lots within the Property.

[Note: This provision carries over Section 8.1 of your current Declaration.]

ARTICLE 3 THE ASSOCIATION

Section 3.1 Membership.

Every person who is a record Owner of a fee interest in any Lot which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Each Lot shall be allocated voting rights pursuant to the allocated interests section of this Declaration. Fractional and cumulative voting shall be prohibited.

[Note: This provision simplifies and combines Sections 4.4 and 4.5 of your current Declaration.]

Section 3.2 General Purposes and Powers of the Association/ Association Maintenance.

The Association, through its Board of Directors, shall perform functions and manage the Community as provided in this Declaration so as to protect the value and desirability of the Community and the Lots.

The Association shall be responsible for the maintenance, repair, replacement and improvement of the Common Area. The Association shall own and be responsible for the reconstruction, repair, replacement, and improvement of both sides of the perimeter fence located along the border of the Community; provided, however, that if a fence is damaged due to the negligence of an Owner or occupant of a Lot, or the damage originates from something located on a Lot (e.g., tree falls on the fence, dog

damages fence, etc.), then the Owner of the Lot shall be responsible for repairing or replacing the damaged fence. The Owner shall repair the damage within 90 days of the fence being damaged, and the repair/replacement shall be to the satisfaction of the Board of Directors.

[Note: The reference to the perimeter fence is in Section 11.1 of your current Declaration. We clarified that if a fence is damaged due to an Owner/occupant or something located on the Lot (e.g., tree falling, etc.) then it is the Owner's responsibility to fix/replace the fence. This was added per Board request.]

Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

[Note: This provision is similar to Sections 3.2, 3.3, 4.1, 4.2 and 11.1 of your current Declaration.]

Section 3.3 Authority of the Association.

The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, this Declaration, the Plat or Map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Board of Directors. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Members in the Governing Documents, shall be exercised by or under the authority of the Board of Directors, and the business and affairs of the Association shall be managed under the direction of the Board of Directors.

The Board of Directors may, by written resolution, delegate authority to a managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility. The Association may exercise any right or privilege and shall perform all duties and obligations expressly granted or reasonably necessary or implied in the Governing Documents to effect such right or privilege or to satisfy such duty or obligation.

[Note: This provision is similar to Sections 4.1, 4.2, and 4.8 of your current Declaration.]

Section 3.4 Allocated Interests.

The Common Expense liability and votes in the Association allocated to each Lot are set as follows:

- (a) the percentage of liability for Common Expenses, equally (1/53).
- (b) the number of votes in the Association, equally, with one vote per Lot.

[Note: This provision is similar to Sections 1.12, 2.5(i), 4.5, 5.2, and 5.3 of your current Declaration.]

Section 3.5 Managing Agent.

The Association may employ or contract for the services of a managing agent to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The agreement shall be by written contract having a term of no more than three years and shall be subject to cancellation by the Association on at least 30 days' notice, with or without cause, and without a cancellation fee. The Board shall not be liable for any omission or improper exercise by a managing agent of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

[Note: This provision replaces Section 4.7 of your current Declaration with respect to management agreements. Section 4.7 deals with management agreements when the Declarant was still in control. This addresses management agreements now that the Owners are in control, and with terms standard to today. Also, it makes it clear that the Assn may hire a managing agent to perform many of the functions that would otherwise be performed by the Board (but not the decision-making authority and responsibility, which rests with the Board).]

Section 3.6 Right to Notice.

Notice of matters affecting the Community, via any means of communication, may be provided to Owners and any occupants as determined by the Board of Directors in its sole discretion.

[Note: This provision simplifies Section 2.5.(l) and 5.9 of your current Declaration.]

Section 3.7 Indemnification.

To the full extent permitted by law, each officer, director, committee member or volunteer of the Association shall be indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director, committee

member or volunteer of the Association, or any settlements thereof, whether or not they are an officer, director, committee member or volunteer at the time such expenses are incurred; except in such cases wherein such officer, director, committee member or volunteer is adjudged guilty of breaching their duty of care (as set forth in the Act) in the performance of their duties.

[Note: This provision is similar to Section 4.6 of your current Declaration.]

Section 3.8 Security Disclaimer.

The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner and their tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community.

Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by residents. It shall be the responsibility of each Owner to protect their person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of measures taken.

[Note: This provision has been added and allows the Association the ability to provide security measures.]

Section 3.9 Education and Training.

As a Common Expense, the Association shall, in accordance with the Act, provide education and training opportunities for Owners, residents and occupants, including providing funding and permitting use of facilities for such purposes. The Association shall provide education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and education or topics benefitting or contributing to operation or governance of the Community and the rights and responsibilities of Owners and the Association. The Association may also fund and support education and training for officers and directors.

[Note: This provision is new and added to comply with CCIOA, which requires associations to provide annual HOA education to the Owners. The method of

providing education is up to the Board. For example, you can circulate an HOA article to all the Owners, or you can have the HOA attorney attend the annual meeting and speak on an HOA legal topic.]

ARTICLE 4 ASSESSMENTS

Section 4.1 Creation of Association Lien and Personal Obligation to Pay Assessments.

Each Owner, by acceptance of a deed for a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Assessments for Common Expenses, insurance Assessments, and such other Assessments as imposed by the Association.

The Association annual Common Expense Assessments and such other Assessments as imposed by the Association, including fees, charges, late fees, attorney fees, fines and interest charged by the Association, and additional fees charged by the managing agent, including but not limited to, administration and witness fees, and/or any other charges that may be assessed and/or levied or may be agreed to in the process of collecting past due Assessments, including but not limited to, credit card convenience fees from whatever source, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such Assessment or charge is made.

If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of the Assessments for Common Expenses by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot against which the Assessments for Common Expenses are made.

All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof, except as provided in this Declaration, shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration. Except as provided in this Declaration, all Assessments for Common Expenses shall be assessed against all Lots equally.

[Note: This provision is similar to Section 5.1, 5.2, 5.3, and 5.8 of your current Declaration.

We did not include the underlined portion in your current Section 5.2 relating to Lots being subject to Public Service Company of Colorado tariffs and public street

lighting expenses, as those are based on statutory requirements, as applicable, regardless of whether stated in the Declaration.]

Section 4.2 Basis of Assessments.

Common Expense Assessments may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year.

[Note: This provision is similar to Sections 5.3 and 5.5 of your current Declaration.]

Section 4.3 Annual Assessment.

The budget for annual Assessments shall be submitted to the Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The budget may be vetoed by a majority of the total Association vote. Assessments for Common Expenses shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

[Note: This provision is similar to Section 5.3(b) of your current Declaration and complies with CCIOA regarding the budget veto process. Please note the timeframes and procedural requirements have been moved to the Bylaws, and have been updated to comply with changes in CCIOA. We have retained the majority veto requirement.]

Section 4.4 Special Assessments.

In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund. The proposed Special Assessment shall be submitted to the Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The proposed Special Assessment may be vetoed by a majority of the total Association vote.

Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to

require that Special Assessments be paid in advance of the provision of the subject services or materials.

[Note: This provision revises Section 5.4 of your current Declaration to require special assessments to be submitted to the Owners for an opportunity to veto, similar to the budget (as they are similar to budget amendments), to be consistent with CCIOA and your questionnaire response. We removed the language re special assessments being levied only against Lots that are benefitted because expenses that benefit less than all Lots should be treated under the next Section 4.5 as Supplemental Assessments.]

Section 4.5 Supplemental Assessments.

The Association shall have the right to add to any Owner's Assessment as provided in this Article the following:

- (a) Those amounts expended by the Association for the benefit of any individual Lot or any occupant thereof, including but not limited to: improvement, repair, replacement or maintenance specific to a Lot;
- (b) Improvement, repair, replacement or maintenance caused by the negligent or willful acts of any Owner, their guest, employee, licensee, lessee or invitee as set forth in this Declaration;
- (c) All fines and costs assessed against an Owner pursuant to the Governing Documents; and
- (d) Any other expenditures or charges which the Board, in its sole discretion, chooses to allocate to a Lot and are reasonably determined to be allocable to a particular Lot.

[Note: This provision expands Section 7.20 of your current Declaration to allow the Association to assess individual Owners for maintenance or repair to a Lot that benefits only their Lots and does not benefit the entire community or that results from their negligence or willful acts. This is consistent with CCIOA.]

Section 4.6 Application of Payments.

All payments received on an account of any Owner or the Owner's Lot shall be applied first to the payment of any delinquent Assessments, then to all legal fees and costs (including attorney fees), expenses of enforcement and collection, late fees,

returned check fees, lien fees and other costs owing or incurred with respect to such Owner pursuant to the Governing Documents.

[Note: This provision has been added to comply with CCIOA, as revised by [HB22-1137](#).]

Section 4.7 Effect of Non-Payment of Assessments.

(a) Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 45 days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors which may not exceed 8% per annum or such higher amount allowed by law, to accrue monthly from the due date. The Association may also assess a reasonable late fee thereon as determined by the Board of Directors.

[Note: The 45-day grace period is per your questionnaire response. We also changed the interest rate to not to exceed 8% per annum, to comply with HB22-1137]

(b) Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving the Association's lien therefor.

(c) Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant their Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage

(including any assignment of rents), to the extent permitted under the Act.

[Note: This provision combines and updates Sections 5.4 and 5.6 of your current Declaration pursuant to changes to CCIOA per HB22-1137.]

Section 4.8 Lien Priority.

The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Lot shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

[Note: This provision updates 5.6 of your current Declaration pursuant to Colorado law.]

Section 4.9 Borrowing.

The Association shall have the power to obtain a loan and assign its right to future income as collateral for the loan, including the right to assign its right to receive Assessments for Common Expenses; provided, however, the proposed loan must have approval of a majority of Owners present and voting, in person or by proxy, at a regular or special meeting of the Members at which a quorum is present.

[Note: This provision has been added and allows the Association to borrow money with Owner approval. The law does not require Owner approval, but the Board requested Owner approval in order ensure checks and balances against Board spending.]

ARTICLE 5 RESTRICTIONS

Section 5.1 Flexible Application of the Subsequent Covenants and Restrictions.

All Lots within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. 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 Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

[Note: This provision is similar to Section 7.1 of your current Declaration.]

Section 5.2 Authority.

All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Owners and their successors and assigns, by acceptance of a deed to their Lot, acknowledge that they have been given notice, and that:

- (a) The ability of Owners to use their Lots may be limited by the provisions in the Governing Documents.
- (b) The Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents.
- (c) The Board may establish penalties for the infraction of all regulations and Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions. The fines shall be levied according to the enforcement and fine policy adopted by the Board.
- (d) All fines imposed are collectable as Assessments.

[Note: This provision has been added to expressly state the Board's authority to adopt Rules and Regulations and to impose penalties for violations. This provision is consistent with the powers given to the Board under Section 38-33.3-302 of CCIOA.]

Section 5.3 Use/Occupancy.

All Lots within the Community shall be used only for those uses and/or purposes as allowed by this Declaration, subject to any Rules and Regulations adopted

by the Association. Lots shall not be used for any purpose other than a residential dwelling except as set forth in this Section.

Home-based businesses shall be allowed pursuant to the Act and subject to the requirements thereof. The Board of Directors may adopt additional reasonable rules and regulations governing architectural control, parking, landscaping, noise, nuisance or other matters concerning the operation of a home-based business.

Uses which have one or more of the following characteristics are not permitted: (a) commercial manufacturing or fabrication of any kind; (b) storage of hazardous materials; (c) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use; (d) permanent or long term parking of heavy equipment, including semi-trailers; (e) the use or rental of any structure on a Unit for any transient, hotel, motel, bed and breakfast, restaurant, bar or other commercial purposes. To the extent that any of the foregoing regulations conflict with the Act, the Act shall control.

[Note: This provision revises Section 7.2 of your current Declaration. It has been updated to comply with [SB24-134](#), which revised CCIOA to require assns. to allow home-based businesses subject to the Board's regulation authority based on certain criteria.]

Section 5.4 Leasing and Occupancy.

Any Owner shall have the right to lease or allow occupancy of a Lot upon such terms and conditions as the Owner may deem advisable, subject to restrictions of this Declaration, subject to restrictions of record and subject to the following:

- (a) "Leasing" or "Renting" for the purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person other than the Owner.
- (b) Short term occupancies and rentals of Lots for less than 30 days shall be prohibited, without prior written permission from the Association.
- (c) All leases or rental agreements shall be in writing and shall provide that the leases or rental agreements are subject to all terms of the Governing Documents. Owners are required to provide tenants with copies of the current Declaration, Articles of Incorporation, Bylaws and any Rules and Regulations of the Association.
- (d) Each Owner who leases their Lot shall provide the Association, upon request, a copy of the current lease and tenant information.

(e) All occupancies, leases and rental agreements of Lots shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of the Governing Documents shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them.

(f) Leases shall be for or of the entire Lot.

(g) All Owners who reside at a place other than the Lot shall provide to the Association an address and phone number(s) where the Owner can be reached in the case of emergency or other Association business. It is the sole responsibility of the Owner to keep this information current.

(h) The Association shall have the authority to adopt Rules and Regulations regarding leasing, including the implementation of this restriction, and for implementation of other restrictions in the Declaration and as allowed by law.

[Note: This is similar to Section 7.22 of your current Declaration.]

Section 5.5 Maintenance of Lots and Improvements.

Owners are responsible for the maintenance, repair, and replacement of the property and improvements located within their Lot boundaries. The Association, and its agents, shall have the authority, after giving the Owner 15 days written notice, to enter, replace, maintain, repair and clean up Lots which do not conform to the provisions of this Section, and to charge and collect from the Owner thereof all reasonable costs related thereto as an Assessment hereunder.

[Note: This provision is similar to Sections 7.5 and 11.2 of your current Declaration.]

Section 5.6 Maintenance of Drainage Pattern.

There shall be no interference with the established drainage pattern initially established at the time of original construction over any of the Lots and Common Areas within the Property, except as approved in writing by the Design Review 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.

[Note: This provision carries over Section 11.3 of your current Declaration.]

Section 5.7 Landscaping Requirements and Restrictions.

The landscaping of each Lot, including any barrow ditch which borders an Owner's Lot, shall be maintained by the Owner in a good, neat, attractive and well-kept condition, whether xeriscaped or with turf, which shall include lawns mowed, hedges, shrubs, and trees pruned and trimmed, and removal of weeds and debris.

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 their 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 an Owner's Lot.

[Note: This provision simplifies and combines Sections 7.5 and 7.19 of your current Declaration. We did not include the paragraphs re compliance with the architectural guidelines because all architectural provisions are already contained in Article 6, and would apply to all forms of Lot improvements, including landscaping, fencing and other such proposed modifications to the exterior of the Lot.]

Section 5.8 Restrictions on Pets.

"Pets" shall mean and include cats, dogs, birds, reptiles or other household animals, as may be further defined in or supplemented by the Rules and Regulations. Pets may be kept on a Lot, if the Pet is not a nuisance to other residents. No resident shall maintain or keep any Pet which, in the sole discretion of the Board, is considered to be a danger to the Owners, management staff or occupants in the Community, as may be further defined in the Rules and Regulations. If a Pet is deemed a nuisance by the Association, the resident having control of the Pet shall be given a written notice to correct the problem and if not corrected, that resident will be required to remove the Pet from the Community pursuant to, and in accordance with, any dispute resolution procedures as may be set forth in this Declaration or the Rules and Regulations, if any.

Pets may not be kept for any commercial purposes. When on Common Area, Pets must be on a leash and under control. Feces left by Pets upon the Common Area

must be removed promptly by the owner of the Pet or the person responsible for the Pet. Owners shall hold the Association harmless from any claim resulting from any action of their Pets or the Pets of their tenants, guests or other invitees.

[Note: This provision is similar to Section 7.17 of your current Declaration.]

Section 5.9 Antennae.

“Permitted Antennas” are defined as:

- (a) an antenna which is less than one meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite;
- (b) an antenna which is one meter or less in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used to receive or transmit fixed wireless signals other than via satellite;
- (c) an antenna which is designed to receive or broadcast television signals; or
- (d) other antennas which are expressly permitted under applicable federal statutes or regulations.

In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section.

Permitted Antennas shall be installed in the least conspicuous location available on a Lot which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulation, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station, or similar device of any type shall be erected, installed, or maintained on a Lot, without prior written approval pursuant to Article 6.

[Note: This provision updates Section 7.21 of your current Declaration to comply with FCC regulations regarding satellite dishes.]

Section 5.10 Nuisances.

No nuisance shall be permitted within the Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Lot or any Common Area, or any portion of the Community by residents. The term “nuisance” may be further defined in the Rules and Regulations.

[Note: This provision is similar to Section 7.6 of your current Declaration.]

Section 5.11 Vehicular Parking, Storage, and Repairs.

(a) Parking in the Community shall be regulated by the Association.

(b) No more than five vehicles may be parked on a Lot. The Board of Directors may adopt a parking policy that provides for a registration system, and use of parking permits or other methods in order to monitor and enforce this provision.

[Note: We added the 5-vehicles per Lot cap per your questionnaire response.]

(c) The following may not be parked or stored anywhere within the Community, including on a driveway or private street, unless such parking or storage is within a garage on a Lot, is authorized in writing by the Association, or is otherwise exempted by Colorado law: oversized vehicles, commercial vehicles, vehicles with commercial writing on their exteriors, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation. The foregoing may be parked as a temporary expedience for loading, delivery of goods or services, or emergency; provided, however, overnight parking of the same is prohibited. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of any Common Area, Lots, or any improvement located thereon.

(d) No abandoned, unlicensed, or inoperable automobiles or vehicles of any kind shall be stored or parked on a Lot or within the Community unless parked or stored within a garage. An “abandoned or inoperable vehicle” shall be defined by Colorado statutes governing inoperable or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Association.

(e) No parked vehicle may impede the safe and efficient use of the streets by residents, obstruct emergency access to/from the Community, or interfere with the reasonable needs of other residents to use their driveway, Community streets or guest parking, if any.

(f) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted outside of garages. This provision shall not be deemed to prevent washing and polishing of a vehicle, together with those activities normally incident and necessary to such washing and polishing, provided washing is done with a hose with a shut off valve to prevent waste of water. Minor repairs may be performed, provided they may be completed the day commenced, there is no damage (e.g., oil, residue) to paved areas, and all equipment and parts are removed upon completion of the work. No vehicles may be left unattended on jacks or jack stands.

(g) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall be prohibited.

(h) Subject to applicable towing and other Colorado laws, if any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's Rules and Regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after at least 24 hours the vehicle may be towed or booted. The notice and required signage shall comply with applicable towing laws. If at least 24 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user, and the owner thereof shall be solely responsible for all towing and storage charges.

(i) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Lot, or is otherwise parked in a manner that allows for immediate towing under applicable Colorado law, no notice shall be required and the vehicle may be towed or booted immediately.

(j) If a vehicle is towed or booted in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for towing and storage costs or for any claim of damage as a result of the towing or booting activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the

Association, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

[Note: This provision updates and expands Section 7.18 of your current Declaration.]

Section 5.12 Use of Common Area.

There shall be no obstruction of any Common Area, nor shall anything be kept or stored on any part of any Common Area without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from any Common Area without the prior written approval of the Association.

[Note: This provision has been added per recommendation of the attorney.]

Section 5.13 No Annoying Lights, Sounds, or Odors.

No light shall be emitted from any portion of the Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community which would reasonably be found by others to be noxious or offensive as further defined in the Rules and Regulations. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Community except with the prior written approval of the Association.

[Note: This provision is similar to Sections 7.6 and 7.7 of your current Declaration.]

Section 5.14 No Hazardous Activities.

No activity shall be conducted on and no improvement shall be constructed on any Property within the Community 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 Property within the Community. No open fires shall be lighted or permitted on any Property within the Community except as permitted by applicable local ordinances. No Owner or Owners shall permit any condition on their Lot or Lots which creates a fire hazard or is in violation of applicable fire prevention regulations.

[Note: This provision is similar to Section 7.8 of your current Declaration.]

Section 5.15 Restrictions on Clotheslines and Storage.

Except for retractable clotheslines which comply with reasonable aesthetic regulations adopted by the Board, as required by the Act, no clotheslines, drying areas or yards, service yards, shops, equipment, storage, or storage areas shall be installed, allowed, kept, maintained or permitted on any Lot unless the same, in each instance, is expressly permitted in writing by the Association.

[Note: This provision is similar to Section 7.9 of your current Declaration but has been revised to be consistent with CCIOA, which requires you to allow retractable clotheslines.]

Section 5.16 Restriction on Signs and Advertising Devices.

Signs and flags (including flag poles) may be displayed in accordance with the Act. The Association may prohibit and otherwise regulate signs and flags bearing commercial messages, and may establish reasonable, content-neutral regulations addressing the number, placement, or size of non-commercial signs and flags, and based on other objective factors as permitted under the Act.

[Note: This provision updates Section 7.11 of your current Declaration pursuant to CCIOA. You can no longer regulate non-commercial signs and flags on the Lot based on content or message. You can adopt content-neutral regulations (i.e., size, number, height, installation, etc.). You also have the ability to regulate commercial signs and flags however you wish.]

Section 5.17 Outbuildings and Temporary Structures.

An “outbuilding” shall mean an enclosed or covered structure not directly attached to the dwelling it serves. No outbuilding or temporary structure, including trailers, mobile homes, tents, shacks, barns, or detached garages or carports, shall be allowed on any Lot unless approved in writing by the Board of Directors or the Design Review Committee. One shed per Lot shall be permitted, provided such sheds comply with the Rules and Regulations, which may establish location and installation requirements, such as minimum distance from the fence.

Sheds existing on Lots at the time of recordation of this Declaration shall be permitted to remain, regardless of number or location on the Lot. The Board may catalog or otherwise require some verification of such existing sheds, and the Board’s determination of which sheds are in existence at the time of recording of this

Declaration shall be final.

[Note: This provision is similar to Section 7.4 of your current Declaration, but we have added clarification re sheds per your questionnaire response.]

Section 5.18 Trash Removal Restriction.

No garbage, refuse, rubbish, or cuttings shall be deposited on any street, road, barrow ditch bordering a Lot, Common Area, or on any Lot, unless placed in a suitable container suitably located. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage cans, trash cans or receptacles shall be maintained in an exposed or unsightly manner. The Association shall have the exclusive right to engage a trash removal contractor on behalf of the Owners.

[Note: This provision is similar to and expands Sections 7.5 and 7.9 of your current Declaration and makes it clear that the Association may contract for a common trash removal service.]

Section 5.19 Prohibition of Marijuana Distribution and Growing.

No Owner or occupant of a Lot may utilize such Lot for the purpose of growing or distributing marijuana. This prohibition may further be clarified by the Board of Directors through Rules and Regulations.

[Note: This provision has been added pursuant to your questionnaire response to prohibit the growth and distribution of marijuana in the Community.]

Section 5.20 Smoking and Vaping Prohibition.

(a) Definitions. For the purposes of this Section, the following terms shall be defined as follows:

(i) "Smoking" shall mean and include the inhaling, exhaling, burning or carrying of any lighted cigarette, cigar or other tobacco product, marijuana or any other legal or illegal substance.

(ii) "Vaping" shall mean and include the inhaling and exhaling of vapor through the mouth from a battery or other operated electronic device (such as an electronic cigarette or JUUL) that heats up and vaporizes a liquid or solid.

(b) Smoking and Vaping Prohibition. No Owner, guest, family member, tenant, resident, business invitee or visitor shall smoke cigarettes, vaping devices, cigars, other tobacco products and/or any other legal or illegal substance within the Common Areas in the Community.

(c) Disclosure Requirement. Any Owner who rents their Lot or otherwise allows someone other than the Owner to reside within or occupy the Lot shall disclose to all persons residing within the Lot that Smoking and Vaping is prohibited on Common Areas, prior to their residency or occupancy.

[Note: This provision has been added pursuant to your questionnaire response to prohibit smoking on Common Area.]

Section 5.21 Hoarding and Similar Prohibited Activities.

No Owner or occupant of a Lot may engage in hoarding, creating conditions conducive to indoor fires, allowing Lots to fall into a state of disrepair to the point that rodents or other pests enter, or any other conditions which could cause damage or harm to other Lots in the Community.

[Note: This provision has been added pursuant to your request to prohibit activity on Lots which could cause harm or damage to other Lots or Owners (i.e. hoarding).]

Section 5.22 Placement and Usage of Rain Barrels.

(a) Residents who choose to collect precipitation from their rooftops must use rain barrels. A Rain Barrel is defined as a storage container with a sealable lid located above ground outside of a residential home that is used for collecting precipitation from a downspout of a rooftop.

(b) Written Committee approval is required prior to placement of Rain Barrels on a Lot.

(c) No more than two Rain Barrels with a combined storage capacity of 110 gallons may be utilized at any given time;

(d) Rain Barrels must be placed in the back of the house so as not to face or be visible from the street.

(e) Rain Barrels must be mosquito resistant, commercially manufactured, and harmonize with the color scheme of the home.

(f) Precipitation collected must be utilized for the Lot upon which it is collected and may only be used for outdoor purposes such as lawn irrigation. Collected precipitation may not be utilized for any indoor purposes or as drinking water.

[Note: This provision has been added pursuant to your questionnaire response to comply with the Act regarding rain barrels.]

Section 5.23 Rules and Regulations.

In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time to time by the Board of Directors. The Board of Directors may establish and enforce penalties for the infraction thereof.

[Note: This provision is similar to Article III, Section 3.4(b) of your current Declaration.]

Section 5.24 Compliance with Governing Documents.

Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Association, as amended.

[Note: This provision has been added per recommendation of the attorney.]

Section 5.25 Restriction on Mining and Drilling.

No Property within the Community shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel or earth.

[Note: This provision has been added pursuant to your questionnaire response.]

Section 5.26 Compliance with Insurance Requirements.

Except as may be approved in writing by the Association, nothing shall be done or kept on the Community 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.

[Note: This provision is similar to Section 7.13 of your current Declaration.]

Section 5.27 Use of the Words The Orchard and The Orchard Homeowners' Association, Inc.

No Owner or resident shall use the words The Orchard or The Orchard Homeowners' Association, Inc. or the logo of the Community or Association, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

[Note: This provision has been added and is intended to prevent residents from using the Association or Community name in connection with personal business uses not associated with the operation of the Association or the Community.]

ARTICLE 6 DESIGN REVIEW

Section 6.1 Establishment of the Committee.

The Board of Directors shall appoint an Design Review Committee ("Committee") to perform the duties set forth in this Article 6. The Committee shall consist of a minimum of three members appointed by the Board of Directors, at such terms as the Board shall determine. The Board shall have the authority to remove any members of the Committee at its sole discretion.

[Note: This provision is similar to Section 6.3 of your current Declaration. Your current Declaration requires five committee members but we changed that to "at least three to give you more flexibility. It might be difficult to get five homeowners to volunteer to be on the committee.]

Section 6.2 Required Approval.

No structures, including Residences, outbuildings, accessory dwelling units and other accessory structures, tennis courts, swimming pools, antennas (except as otherwise permitted in this Declaration), flag poles (except as otherwise permitted by the Act), fences, walls, exterior lighting, landscaping, grading or other disturbance of land, or any other improvements shall be constructed, erected, relocated, removed or installed on a Lot, nor shall any painting, alteration or change to the exterior of the improvements, the exterior of a Residence, to a Lot or to any structure or any attachment to the exterior of a Residence (including paint, awnings, patios, decks, or shutters) be commenced unless complete plans and specifications shall have been first submitted to and approved in writing by the Design Review Committee ("Committee")

as may be outlined in the Rules and Regulations.

[Note: This is similar to Section 6.2. The requirement to get prior approval for mailboxes, currently in Section 7.12 of your current Declaration, has been removed.]

Notwithstanding the above, approval shall not 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 Residence, or to paint the interior of his or her Residence any color desired.

[Note: The above was taken from Section 6.25 of your current Declaration, and it allows an Owner to repaint the same color without approval.]

The Committee may require that applications of Owners and their plans and specifications show exterior design, height, materials, color, location of the structure or addition to the structure or proposed improvement (plotted horizontally and vertically), location and size of driveways, walls, windbreaks, and grading plan, as well as such other materials and information as may be required by the Committee.

[Note: This provision contains language similar to Sections 6.1, 6.2, 6.5, 6.25, 7.3, and 7.12 of your current Declaration.]

Section 6.3 Acknowledgment of Owners.

Owners acknowledge, accept and agree to the following:

- (a) Owners will not commence construction or installation of an improvement until they have submitted improvement plans and specifications and received written approval from the Committee;
- (b) Owners shall immediately comply with any request by the Association for additional information relating to an improvement prior to the Committee's approval of a request and/or prior to the completion of an improvement. Failure to comply with such a request by an Owner shall result in the withdrawal of Committee approval, if previously granted;
- (c) Committee approval does not constitute approval of the local building or zoning department, drainage design or structural soundness; which will be solely the Owner's obligation to obtain and the Association shall not have liability therefore;

(d) Owners, by submitting an application for approval, hereby certify:
(i) they will construct or modify improvements located only on their own Lot or upon Property which they have permission to construct, modify or improve; and
(i) they will not violate any easements, rights-of-way, or other rights appurtenant to such Property;

(e) Owners shall notify the Committee of completion of the improvement's installation or construction within five days of such completion;

[Note: This provision expands Section 6.13 of your current Declaration to require Owners to notify the Committee within five days of completion of an approved improvement.]

(f) Upon completion of an improvement, Owners authorize the Committee or its representative(s) to enter onto the Lot for exterior inspection;

[Note: This provision is similar to Section 6.14 of your current Declaration.]

(g) Failure of an Owner to notify the Committee of completion of an approved improvement, or refusal to allow inspection, shall result in the withdrawal of the Committee's approval;

(h) If the improvement as built does not conform to the improvement as approved by the Committee, the Committee's approval will be deemed withdrawn, and upon written request of the Committee, Owners shall, at their own expense and cost, promptly bring the improvement into compliance with the submitted and approved plans and specifications;

(i) In the event of withdrawal of Committee approval for any reason(s) cited in this Section, and upon written request from the Committee, the Owner, at their expense and cost, shall promptly restore the Lot to substantially the same condition as it existed prior to commencement of the improvement's installation or construction, and such withdrawal will be deemed to toll the statute of limitations as it pertains to the improvement until such time as the improvement is brought into compliance.

[Note: This provision updates Sections 6.15 through 6.18 of your current Declaration.]

Section 6.4 Design Review Criteria.

The Committee shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to improvements on a Lot or landscaping of a Lot shall comply with the requirements set forth in this Declaration. The approval or consent of the Committee on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. Approval shall be based upon, but not limited to, conformity and harmony of exterior appearance of structures with neighboring structures, and conformity with the specifications and purposes generally set out in this Declaration.

Upon its review of such plans, specifications and submittals, the Committee may require that the applicant(s) reimburse the Board for actual expense incurred by it in its review and approval process. Additionally, the Committee may provide for a reasonable fee to accompany each design review submission under this Article 6. The Committee may provide that the amount of such fee shall be uniform for similar types of proposed improvements or that the fee shall be determined in any other reasonable manner, such as the estimated cost of the proposed improvement.

[Note: This provision is similar to Sections 6.7 and 6.8 of your current Declaration.]

Section 6.5 Design Guidelines.

The Committee may propose design guidelines from time to time, which guidelines shall require approval by the Board of Directors prior to effectiveness, and which may be included in or with any Rules and Regulations of the Association.

[Note: This provision is similar to Section 6.24 of your current Declaration; however, it requires the Board to approve any such guidelines.]

Section 6.6 Reply and Communication.

The Committee shall reply to all submittals of plans made in accordance herewith in writing within 45 days after receipt. In the event the Committee fails to take any action on submitted plans and specifications within 45 days after the Committee has received the plans and specifications, approval shall be deemed to be approved; provided, however, nothing in this Section shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of this Declaration, the Rules and Regulations or any design guidelines adopted by the Board. All communications and submittals shall be addressed to the Committee in care of the

Association.

[Note: This provision combines and revises Sections 6.9 and 6.11 of your current Declaration to increase the Committee review deadline from 30 to 45 days pursuant to your request.]

Section 6.7 Conditions of Approval.

In the discretion of the Board or the Committee, an Owner may be required to enter into a written agreement establishing the approval of the application in recordable form acknowledged by such Owner on behalf of Owner and all successors-in-interest. As a condition of approval for a requested design change, modification, addition or alteration, an Owner, on behalf of Owner and their successors-in-interest, affirms and shall assume, unless otherwise agreed in writing, all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition or alteration.

[Note: This provision has been added per recommendation of the attorney. An agreement is only needed if the proposed improvement could increase the Association's maintenance responsibilities or expose the Association to liability.]

Section 6.8 Commencement and Completion of Construction.

All improvements approved by the Committee must be commenced within six months from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the Committee, unless the Committee gives a written extension for commencing the work. Additionally, except with written Committee approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the Committee shall be completed within one year of commencement.

[Note: This provision revises Section 6.12 of your current Declaration to require Owners to commence approved improvements within six months of approval, and to complete approved improvements within one year of commencement, pursuant to your request.]

Section 6.9 Variances.

The Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical

difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Declaration or in design guidelines.

[Note: This provision has been added per recommendation of the attorney.]

Section 6.10 Right to Appeal.

If the Board of Directors is not acting as the Committee, an Owner whose plans have been disapproved or conditionally approved may appeal any decision of the Committee to the Board of Directors. The Board of Directors shall review the decision of the Committee pursuant to the criteria set forth in this Article and/or the design guidelines. Any decision of the Committee may be overruled and reversed on appeal by a majority of the directors by a written decision setting forth the reasons for the reversal when the directors conclude that the Committee's decision was inconsistent with the criteria set forth in this Article and the guidelines.

[Note: This provision is similar to Section 6.10 of your current Declaration.]

Section 6.11 Waivers.

The approval or consent of the Committee, or appointed representative thereof, to any application for design review approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Committee as to any application or other matters subsequently or additionally submitted for approval or consent.

[Note: This provision is similar to Section 6.6 of your current Declaration.]

Section 6.12 Liability.

The Committee and the members thereof, as well as any representative of the Board designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or for any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants. Neither the Board nor the Committee shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. The Association will not make any investigation into title, ownership, easements, rights-of-way, or other rights appurtenant to Property with respect to design review requests and shall not be liable for any disputes relating to the

same.

[Note: This provision is similar to Section 6.23 of your current Declaration.]

Section 6.13 Enforcement.

Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right, but not the obligation, to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association may be entitled to recover its costs and reasonable attorney fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Association to enforce any covenant or restriction contained in this Section shall in no event be deemed a waiver of the right to do so thereafter. In addition, or in the alternative, the Association shall have all other enforcement rights as set forth in this Declaration.

[Note: This provision has been added to further clarify the enforcement rights held by the Committee and the Association.]

ARTICLE 7 INSURANCE/CONDEMNATION

[Note: The insurance requirements set forth in Article X of your Declaration have been substantially revised and updated by the provisions of this Article. Additionally, the damage, destruction and condemnation provisions (Article IX) have been eliminated and the provisions of the CCIOA have been adopted instead.]

Section 7.1 Insurance on the Lots.

Each Owner has the responsibility to obtain hazard insurance covering loss, damage or destruction by fire or other casualty to the improvements, installed or made to their Lot, or other property of that Owner located on such Lot, and liability insurance covering any injuries occurring to persons or property damages on a Lot.

Section 7.2 Insurance to be Carried by the Association.

The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth in this Declaration and as set forth in the Act, which insurance coverage shall include the following terms and shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.

Section 7.3 Hazard Insurance on Common Area.

The Association shall obtain hazard insurance covering loss, damage or destruction by fire or other casualty to any insurable improvements installed or made to any Common Area and the other property of the Association.

Section 7.4 Association Liability Insurance.

The Association shall obtain public liability and property damage liability insurance covering any Common Area, in such limits as the Board may determine from time to time, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries and operation of automobiles on behalf of the Association.

Section 7.5 Association Fidelity Insurance.

The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees, as required by law.

Section 7.6 Association Worker's Compensation and Employer's Liability Insurance.

The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 7.7 Directors' and Officers' Personal Liability Insurance.

The Association shall obtain directors' and officers' personal liability insurance to protect the officers, directors, committee members and any person acting at the discretion of the Board from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

Section 7.8 Miscellaneous Terms Governing Insurance Carried by the Association.

The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:

(a) All policies of insurance shall provide that each Owner is an insured under the policy with respect to liability arising out of such Owner's membership in the Association.

(b) All policies of insurance shall contain waivers of subrogation against any Owner or member of their household.

(c) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without prior written notice to all of the Owners as provided by Colorado law and to the Association.

(d) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of first lien security interests at least 10 days prior to the expiration of the then current policies.

(e) All liability insurance shall name the Association, the Board, the manager or managing agent, if any, the officers of the Association, holders of first lien security interests, their successors and assigns and Owners as insureds.

(f) Prior to the Association obtaining any blanket policy of casualty insurance on any Common Area, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of any Common Area and any improvements thereon, without deduction for depreciation, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In the event the Association obtains casualty insurance on the Lots, then in no event shall that casualty insurance policy contain a co-insurance clause.

(g) All policies of insurance of the Association shall be primary, providing the primary insurance of the loss, if there is other insurance in the name of the Owner.

(h) All policies of insurance shall provide that the insurance thereunder shall not be invalidated, suspended, voidable or have any condition of recovery due to an act or omission by any Owner.

Section 7.9 Other Association Insurance.

The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 7.10 Insurance Premium.

Insurance premiums for insurance provided by the Association shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 7.11 Annual Insurance Review.

The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

Section 7.12 Adjustments by the Association.

Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners and holders of first lien security interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association is not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 7.13 Duty to Repair.

Any portion of the Community for which the Association is required to insure under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association, except as provided in the Act.

Section 7.14 Condemnation and Hazard Insurance Allocations and Distributions.

In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

Section 7.15 Responsibility for Payment of Deductible Amount.

Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Area or other property insured by the Association unless the damage is caused by the negligent or willful act or omission of an Owner, their family, guests, renters, or invitees, in which case the Association shall seek reimbursement of the deductible amount in compliance with and under the terms of the Declaration.

Section 7.16 Insurance Assessments.

If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. Notwithstanding the budget ratification procedure set forth in this Declaration, the insurance Assessment shall be ratified unless vetoed by Members holding at least 90% of the total votes entitled to be cast in the Association pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. Notwithstanding the Special Assessment procedure set forth this Declaration, the insurance Assessment shall be ratified unless vetoed by Members holding at least 90% of the total votes entitled to be cast in the Association pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time.

Section 7.17 Damage to or Destruction on Lots.

In the event of damage to or destruction of structures or improvements on a Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure and improvements in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration, unless a determination not to rebuild is made by the Owner in cases of substantial damage or destruction. If the structure is substantially destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and, thereafter, the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with this Declaration.

[Note: This provision is similar to Section 7.16 of your current Declaration.]

ARTICLE 8 GENERAL PROVISIONS

Section 8.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Lot shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

(b) The Association may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Lot;

(ii) suspending the right to vote and the right to use Common Area;

(iii) exercising self-help (including, but not limited to, performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Lot and the Owner as an Assessment) or taking action to abate any violation of the Governing Documents;

(iv) requiring an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, at the Owner's expense, and any such action shall not be deemed a trespass, with all fees and costs in connection with such removal and restoration to be assessed to the Owner as an Assessment under the terms of this Declaration;

(v) without liability to any person, the Association precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;

(vi) levying specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents; and

(vii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(c) In addition to any other enforcement rights, if an Owner fails to properly perform their maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation against the Owner and the Lot.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.

(e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association to not pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

[Note: This provision is similar to Sections 14.1 and 14.2 of your current Declaration.]

Section 8.2 Attorney Fees.

If an Owner fails to pay any Assessment as provided in this Declaration, the Association may require reimbursement for reasonable attorney fees and costs without the necessity of commencing a legal proceeding. If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to comply with any other provision of the Governing Documents, the Association may seek reimbursement for reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. In a legal proceeding in any way related to the Governing Documents or the Community, the court shall award to the prevailing party reasonable attorney fees and costs incurred in asserting or defending the claim. Such reasonable attorney fees and costs, if awarded against an Owner shall be charged as an

Assessment and shall constitute a lien against the Lot. Attorney fees charged to the Owner shall be further limited by any applicable provisions of Colorado law.

[Note: This provision updates Section 14.6 of your current Declaration pursuant to Colorado law.]

Section 8.3 Severability.

Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

[Note: This provision is similar to Section 14.3 of your current Declaration.]

Section 8.4 Term of Declaration.

The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

[Note: This provision revises Section 13.1 of your current Declaration has been revised to state that the covenants shall be perpetual. Colorado law authorizes this so that the covenants do not need to be automatically extended for ten year periods.]

Section 8.5 Amendment of Declaration by Owners.

Except as provided in the Act, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of Members holding at least majority of the total votes in the Association and with the written consent of the Association. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Jefferson County of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

[Note: The amendment requirements set forth in Section 13.2 of your current Declaration have been revised to lower the 67% to a majority of the total vote of the Association. However, we added "except as provided by the Act" because the Act still

requires the following proposed amendments to be approved by at least 67% of the Members: (i) an increase in the number of Lots, (ii) a change in the boundaries of any Lots, and (iii) a change in the use to which any Lot is restricted.]

Section 8.6 Amendment of Articles of Incorporation.

Notwithstanding any other provision stated in the Articles of Incorporation or other Governing Documents, and except for those types of amendments that are permitted to be approved by the Board of Directors, amendment of the Articles of Incorporation, shall require the affirmative vote of a majority of Members, assuming at least a quorum of Members vote.

[Note: This is new and added per recommendation of the attorney.]

Section 8.7 Captions.

All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

[Note: This provision is similar to Section 14.7 of your current Declaration.]

Section 8.8 Interpretation.

The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Board of Directors shall have the authority to interpret the meaning of any provision contained in this Declaration.

[Note: This provision has been added per recommendation of the attorney.]

Section 8.9 Singular Includes the Plural.

Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neutral.

[Note: This provision is similar to Section 14.8 of your current Declaration.]

Section 8.10 Challenge to this Amendment.

All challenges to the validity of this amendment or any future amendments must be made within one year after the date of recording of this document. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

[Note: This provision has been added pursuant to CCIOA.]

Section 8.11 Non-Waiver.

Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of such provision.

[Note: This provision is similar to Section 14.4 of your current Declaration.]

Section 8.12 Conflict of Provisions.

In case of conflict between this Declaration and the Articles or Bylaws, this Declaration shall control. In the case of conflict between the Articles and Bylaws, the Articles shall control.

[Note: This provision has been added per recommendation of the attorney.]

[Note: Article XII (First Mortgage Provisions) has been removed as such provisions are not required for single family communities under current lending guidelines.]

The undersigned, being the President and the Secretary of The Orchard Homeowners' Association, Inc., hereby certify that the Association has obtained written approval of this Declaration from Owners of at least 67% percent of the Lots or Units subject to the Original Declaration. Alternatively, a court order entered by the District Court for Jefferson County, Colorado pursuant to C.R.S. §38-33.3-217(7), has been entered approving this Declaration. Approvals obtained shall remain in effect until this Declaration is approved unless approval is expressly revoked in writing.

The Orchard Homeowners' Association, Inc.,
a Colorado nonprofit corporation,

By: _____
President

ATTEST:

Secretary

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Declaration was acknowledged before me by _____, as
President of The Orchard Homeowners' Association, Inc., a Colorado nonprofit
corporation, on this ____ day of _____, 20__.

Notary Public

My commission expires: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Declaration was acknowledged before me by _____, as
Secretary of The Orchard Homeowners' Association, Inc., a Colorado nonprofit
corporation, on this ____ day of _____, 20__.

Notary Public

My commission expires: _____

EXHIBIT A PROPERTY

LEGAL DESCRIPTION:

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 89 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER OF SAID SECTION 19, FROM WHICH THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SAID SECTION 19 BEARS NORTH 00°09'04" WEST 2650.86 FEET; THENCE ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER SOUTH 89°19'58" WEST 329.40 FEET; THENCE LEAVING SAID SOUTH LINE NORTH 00°09'04" WEST 40.00 TO THE TRUE POINT OF BEGINNING ON THE NORTHERLY RIGHT-OF-WAY LINE OF WEST 44th. AVENUE AS DESCRIBED IN BOOK 359 AT PAGE 223, JEFFERSON COUNTY RECORDS; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE SOUTH 89°19'58" WEST 385.96 FEET TO THE SOUTHEAST CORNER OF GOLDEN VALLEY SUBDIVISION AS DESCRIBED IN PLAT BOOK 15 AT PAGE 34, JEFFERSON COUNTY RECORDS; THENCE LEAVING SAID NORTHERLY RIGHT-OF-WAY LINE AND ALONG THE EASTERLY BOUNDARY LINE OF SAID GOLDEN VALLEY SUBDIVISION THE FOLLOWING COURSES: NORTH 00°09'04" WEST 149.04 FEET; THENCE NORTH 48°17'24" WEST 181.28 FEET; THENCE NORTH 00°09'04" WEST 832.36 FEET; THENCE NORTH 48°17'24" WEST 339.00 FEET; THENCE NORTH 20°16'58" WEST 125.00 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF THE BURLINGTON NORTHERN RAILWAY COMPANY, FORMERLY KNOWN AS THE COLORADO AND SOUTHERN RAILROAD OR THE COLORADO CENTRAL RAILROAD COMPANY, AS DESCRIBED IN BOOK "P" AT PAGE 510, JEFFERSON COUNTY RECORDS; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE NORTH 69°43'02" EAST 869.57 FEET TO THE NORTHWEST CORNER OF A PARCEL OF LAND AS DESCRIBED IN BOOK 828 AT PAGE 56, JEFFERSON COUNTY RECORDS, SAID POINT BEING 329.41 FEET WESTERLY AS MEASURED AT RIGHT ANGLES FROM THE EAST LINE OF SAID NORTHWEST QUARTER OF SAID SECTION 19; THENCE LEAVING SAID SOUTHERLY RIGHT-OF-WAY LINE AND PARALLEL TO SAID EAST LINE OF SAID NORTHWEST QUARTER OF SAID SECTION 19 SOUTH 00°09'04" EAST 880.66 FEET TO THE NORTHWEST CORNER OF A PARCEL OF LAND, RECORDED AT RECEPTION 84118882, JEFFERSON COUNTY RECORDS; THENCE ALONG THE NORTH LINE OF SAID PARCEL NORTH 89°19'58" EAST 329.41 FEET TO THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19; THENCE ALONG SAID EAST LINE SOUTH 00°09'04" EAST 99.00 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL; THENCE LEAVING SAID EAST LINE AND ALONG THE SOUTH LINE OF SAID PARCEL SOUTH 89°19'58" WEST 329.41 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL; THENCE LEAVING SAID SOUTH LINE AND PARALLEL TO THE EAST LINE OF SAID NORTHWEST QUARTER OF SAID SECTION 19 SOUTH 00°09'04" EAST 762.10 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 21.575 ACRES MORE OR LESS.

EXCEPT LOT 54 AS IDENTIFIED IN THE PLAT

THE PLAT

The Orchard Filing 1, Plat recorded on February 26, 1993
under Reception Number 9302573.

Proposed Final for Owner Input

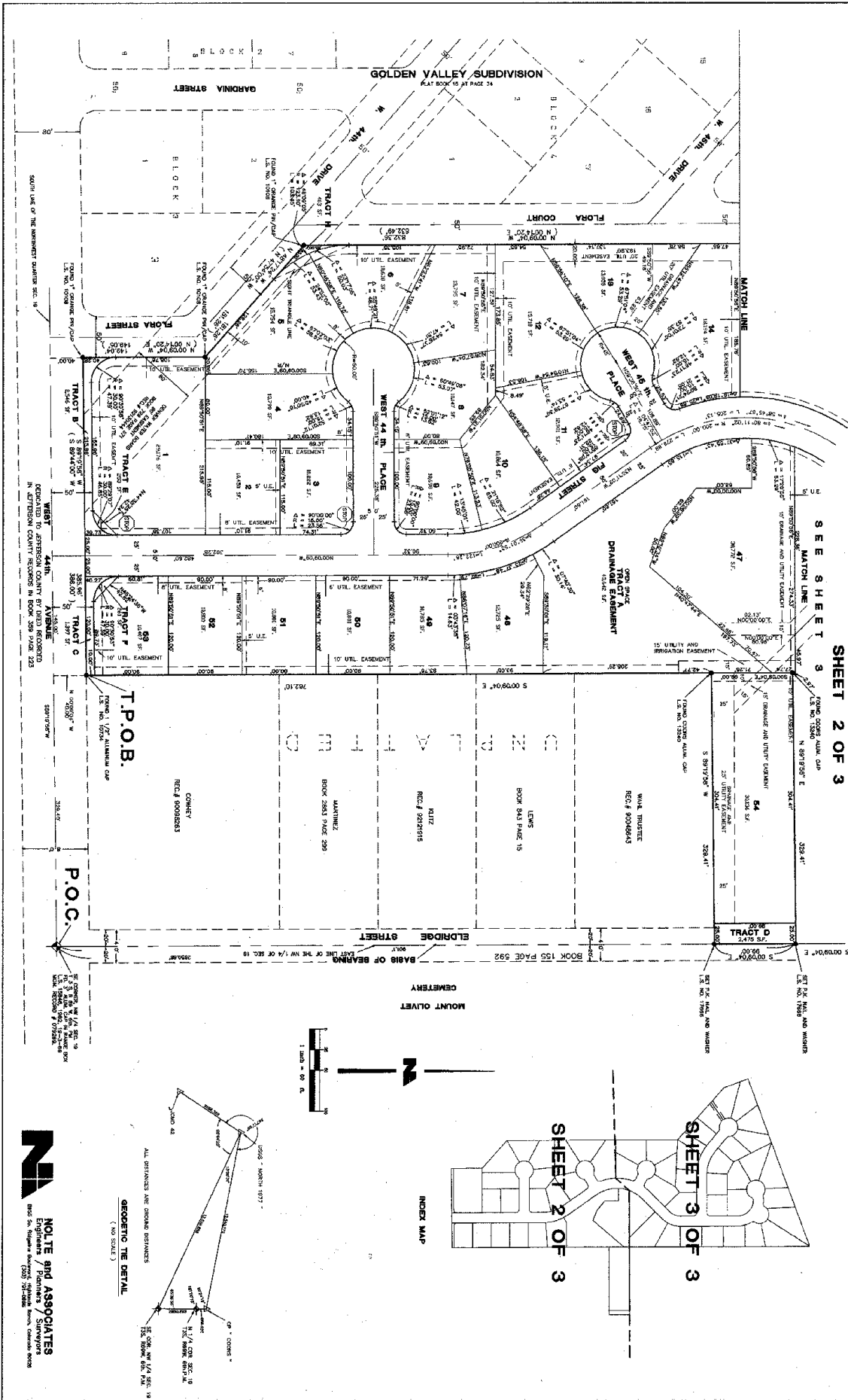
File 112 Pg 25 Rec # 93025732

THE ORCHARD FILING NO. 1

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 19,
TOWNSHIP 3 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN,
COUNTY OF JEFFERSON, STATE OF COLORADO.

SHEET 2 OF 3

MAP NO. 50
CASE NO. 93-5-82



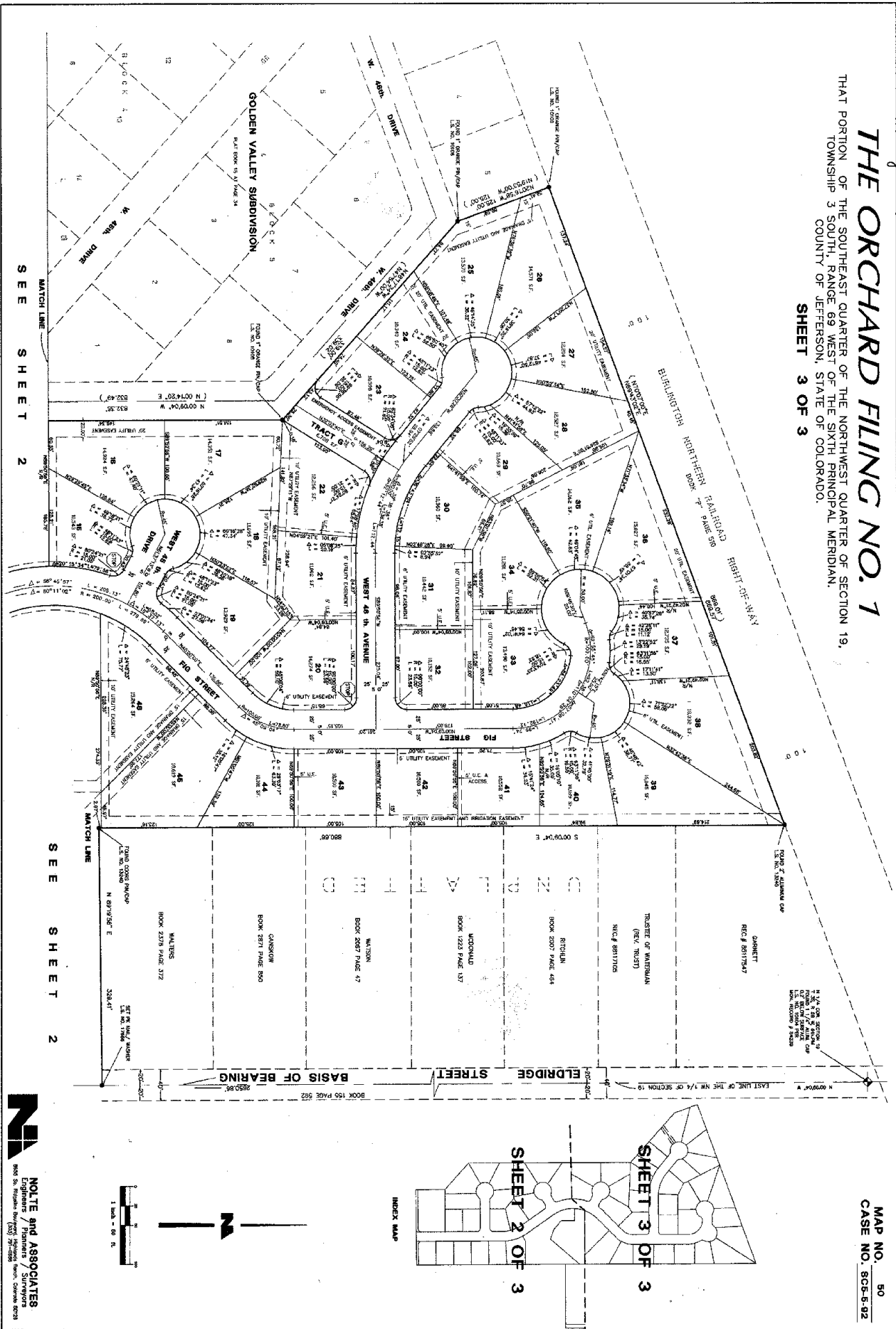
Plat No. 19-26 Rec. # 93025732

THE ORCHARD FILING NO. 1

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 19,
TOWNSHIP 3 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN,
COUNTY OF JEFFERSON, STATE OF COLORADO.

SHEET 3 OF 3

MAP NO. 50
CASE NO. 805-5-92



EXCEPTIONS TO TITLE

Draft-Subject to Final Title Commitment

A L T A C O M M I T M E N T

SCHEDULE B-2

(Exceptions)

Our Order # AF0354791-4

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The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1. Standard Exceptions 1 through 5 printed on the cover sheet.
6. Taxes and assessments not yet due or payable and special assessments not yet certified to the Treasurer's office.
7. Any unpaid taxes or assessments against said land.
8. Liens for unpaid water and sewer charges, if any.
9. EXISTING LEASES AND TENANCIES, IF ANY.
10. RIGHT OF WAY EASEMENT AS GRANTED TO DENVER BOARD OF WATER COMMISSIONERS IN INSTRUMENT RECORDED August 13, 1951, IN BOOK 729 AT PAGE 571.
11. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE NORTH TABLE MOUNTAIN WATER AND SANITATION DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED July 03, 1989, UNDER RECEPTION NO. 89057042.
12. TERMS, CONDITIONS AND PROVISIONS OF INCLUSION AND SERVICE AGREEMENT RECORDED August 09, 1989 AT RECEPTION NO. 89068105.
13. THE EFFECT OF THE ORCHARD OFFICIAL DEVELOPMENT PLAN RECORDED OCTOBER 22, 1992 UNDER RECEPTION NO. 92134995.
14. RIGHT OF WAY EASEMENT AS GRANTED TO DENVER BOARD OF WATER COMMISSIONERS IN INSTRUMENT RECORDED October 13, 1992, UNDER RECEPTION NO. 92130444.
15. EASEMENTS, CONDITIONS, RESTRICTIONS, AND RESERVATIONS ON THE RECORDED PLAT.
16. RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, AS CONTAINED IN INSTRUMENT RECORDED March 04, 1993, UNDER RECEPTION NO. 93029132.
17. TERMS, CONDITIONS AND PROVISIONS OF MEMORANDUM OF COMMERCIAL CONTRACT TO BUY AND SELL REAL ESTATE BY AND BETWEEN GOLDEN EQUITIES, INC., A COLORADO CORPORATION AND ADVANTAGE DESIGN BUILD, INC., A COLORADO CORPORATION RECORDED MARCH 26, 1993 UNDER RECEPTION NO. 93039264.

A L T A C O M M I T M E N T

SCHEDULE B-2

(Exceptions) Our Order # AF0354791-4

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18. A DEED OF TRUST DATED March 08, 1993 FROM ADVANTAGE DESIGN BUILD, INC., A COLORADO CORPORATION TO THE PUBLIC TRUSTEE OF JEFFERSON COUNTY FOR THE USE OF MEGABANK OF ARAPAHOE TO SECURE THE SUM OF \$130,157.00, AND ANY OTHER AMOUNTS PAYABLE UNDER THE TERMS THEREOF, RECORDED March 26, 1993, UNDER RECEPTION NO. 93039276.

SAID DEED OF TRUST WAS FURTHER SECURED IN ASSIGNMENT OF RENTS RECORDED March 26, 1993, UNDER RECEPTION NO. 93039277.

DISBURSER'S NOTICE IN CONNECTION WITH SAID DEED OF TRUST WAS RECORDED March 26, 1993, UNDER RECEPTION NO. 93039278.

(AFFECTS LOT 2)

19. A DEED OF TRUST DATED March 08, 1993 FROM ADVANTAGE DESIGN BUILD, INC., A COLORADO CORPORATION TO THE PUBLIC TRUSTEE OF JEFFERSON COUNTY FOR THE USE OF MEGABANK OF ARAPAHOE TO SECURE THE SUM OF \$127,968.00, AND ANY OTHER AMOUNTS PAYABLE UNDER THE TERMS THEREOF, RECORDED March 26, 1993, UNDER RECEPTION NO. 93039279.

SAID DEED OF TRUST WAS FURTHER SECURED IN ASSIGNMENT OF RENTS RECORDED March 26, 1993, UNDER RECEPTION NO. 93039280.

DISBURSER'S NOTICE IN CONNECTION WITH SAID DEED OF TRUST WAS RECORDED March 26, 1993, UNDER RECEPTION NO. 93039281.

(AFFECTS LOT 3)

20. A DEED OF TRUST DATED March 08, 1993 FROM ADVANTAGE DESIGN BUILD, INC., A COLORADO CORPORATION TO THE PUBLIC TRUSTEE OF JEFFERSON COUNTY FOR THE USE OF MEGABANK OF ARAPAHOE TO SECURE THE SUM OF \$128,979.00, AND ANY OTHER AMOUNTS PAYABLE UNDER THE TERMS THEREOF, RECORDED March 26, 1993, UNDER RECEPTION NO. 93039282.

SAID DEED OF TRUST WAS FURTHER SECURED IN ASSIGNMENT OF RENTS RECORDED March 26, 1993, UNDER RECEPTION NO. 93039283.

DISBURSER'S NOTICE IN CONNECTION WITH SAID DEED OF TRUST WAS RECORDED March 26, 1993, UNDER RECEPTION NO. 93039284.

(AFFECTS LOT 4)

PROX

A L T A C O M M I T M E N T

SCHEDULE B-2

(Exceptions) Our Order # AF0354791-4

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21. A DEED OF TRUST DATED March 08, 1993 FROM ADVANTAGE DESIGN BUILD, INC., A COLORADO CORPORATION TO THE PUBLIC TRUSTEE OF JEFFERSON COUNTY FOR THE USE OF WESTMONT MORTGAGE SERVICES, INC. AND ROBERT L. KEY TO SECURE THE SUM OF \$36,000.00, AND ANY OTHER AMOUNTS PAYABLE UNDER THE TERMS THEREOF, RECORDED March 26, 1993, UNDER RECEPTION NO. 93039285.

SUBORDINATION AGREEMENT IN CONNECTION WITH SAID DEED OF TRUST WAS RECORDED March 26, 1993, UNDER RECEPTION NO. 93039286.

22. A DEED OF TRUST DATED March 08, 1993 FROM ADVANTAGE DESIGN BUILD, INC., A COLORADO CORPORATION TO THE PUBLIC TRUSTEE OF JEFFERSON COUNTY FOR THE USE OF FIRST INTERSTATE BANK OF GOLDEN TO SECURE THE SUM OF \$136,049.00, AND ANY OTHER AMOUNTS PAYABLE UNDER THE TERMS THEREOF, RECORDED March 26, 1993, UNDER RECEPTION NO. 93039267.

SAID DEED OF TRUST WAS FURTHER SECURED IN ASSIGNMENT OF RENTS RECORDED March 26, 1993, UNDER RECEPTION NO. 93039268.

DISBURSER'S NOTICE IN CONNECTION WITH SAID DEED OF TRUST WAS RECORDED March 26, 1993, UNDER RECEPTION NO. 93039269.

23. FINANCING STATEMENT WITH FIRST INTERSTATE BANK OF GOLDEN, THE SECURED PARTY, RECORDED March 26, 1993, UNDER RECEPTION NO. 93039270.

(ITEMS 22 AND 23 AFFECT LOT 50)

24. A DEED OF TRUST DATED March 08, 1993 FROM ADVANTAGE DESIGN BUILD, INC., A COLORADO CORPORATION TO THE PUBLIC TRUSTEE OF JEFFERSON COUNTY FOR THE USE OF FIRST INTERSTATE BANK OF GOLDEN TO SECURE THE SUM OF \$121,270.00, AND ANY OTHER AMOUNTS PAYABLE UNDER THE TERMS THEREOF, RECORDED March 26, 1993, UNDER RECEPTION NO. 93039271.

SAID DEED OF TRUST WAS FURTHER SECURED IN ASSIGNMENT OF RENTS RECORDED March 26, 1993, UNDER RECEPTION NO. 93039272.

DISBURSER'S NOTICE IN CONNECTION WITH SAID DEED OF TRUST WAS RECORDED March 26, 1993, UNDER RECEPTION NO. 93039273.

25. FINANCING STATEMENT WITH FIRST INTERSTATE BANK OF GOLDEN, THE SECURED PARTY, RECORDED March 26, 1993, UNDER RECEPTION NO. 93039274.

(ITEMS 24 AND 25 AFFECT LOT 51)