



**Sheila Reiner**  
 Clerk and Recorder  
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**Print Date:**  
 10/14/2011 1:32:47 PM

Transaction #: **122466**  
 Receipt #: **2011017512**  
 Cashier Date: **10/14/2011 1:32:47 PM**

Mailing Address:  
 P.O.BOX 20,000-5007  
 Grand Junction, CO 81502  
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| Customer Information               | Transaction Information                                                                                              | Payment Summary                                |
|------------------------------------|----------------------------------------------------------------------------------------------------------------------|------------------------------------------------|
| ( ) ORCHARD RUN SUB HOA<br><br>OTC | Date Received: 10/14/2011<br>Source Code: Over The Counter<br>Return Code: Over The Counter<br>Trans Type: Recording | Total Fees \$131.00<br>Total Payments \$131.00 |

#### 1 Payments

|      |          |
|------|----------|
| CASH | \$131.00 |
|------|----------|

#### 1 Recorded Items

|                                                                                                                  |                                                                                                           |          |
|------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|----------|
|  <u>(COVENANTS) COVENANTS</u> | <i>BK/PG: 5212/14 Reception Number: 2588171</i><br><i>Date: 10/14/2011 1:32:42 PM</i><br><i>From: To:</i> |          |
| Recording @ \$10 per page \$1 Surcharge                                                                          | 25                                                                                                        | \$131.00 |

#### 0 Search Items

#### 0 Miscellaneous Items

THIRD AMENDED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF ORCHARD RUN SUBDIVISION

At least sixty seven percent (67%) of the Owners of Lots within Orchard Run Subdivision, hereby amend the Declaration of Covenants, Conditions and Restrictions for Orchard Run Subdivision.

RECITALS

A. The Owners of at least sixty seven percent (67%) of the Lots situated in Mesa County, Colorado, known as Orchard Run Subdivision, including the easements and licenses appurtenant to, or included in the property as shown on the plats for Orchard Run Subdivision and described in the plat books of the Mesa County Clerk and Recorder.

B. The Undersigned desire to maintain a planned community and to subject and place upon Orchard Run Subdivision ("Property") certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein pursuant to the provisions of the Colorado Common Interest Ownership Act ("CCIOA"), including but not limited to those changes to CCIOA under Senate Bills 05-100 and 06-89, for the purpose of protecting the value and desirability of said Property and for the purpose of furthering a plan for the improvement, maintenance, and ownership of said Property.

NOW, THEREFORE, the Undersigned hereby declare that all of the Property shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, which are for the purpose of protecting the value and desirability of, and which shall run with the above-described Property and be binding on all parties having any right, title, or interest in the above-described Property or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each Owner thereof. The modifications and amendments contained herein replace and supercede the Second Amended Declaration recorded in Book 2244 beginning at Page 458 of the records of the Mesa County Clerk and Recorder. All prior declarations and covenants are of no force or effect.

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to Orchard Run Homeowners Association, its successor and assigns.

Section 2. "Allocated Interests" shall mean and refer to the common expense liability and the ownership interest and votes in the Association as set forth in this Declaration.

Section 3. "Architectural Control Committee" or "ACC" or the "Committee" shall mean and refer to the committee appointed by the Board of Directors of the Association, as more fully provided in Article VIII of this Declaration.

Section 4. "Articles" shall mean the Articles of Incorporation of the Association, as they may be amended from time to time.

Section 5. "Assessment" shall mean and refer to any assessment levied against one or more Owner(s) or Lot(s) as permitted by this Declaration or applicable law, including without limitation any of the following:

- (a) "Regular Assessment" shall mean and refer to a charge against each Lot representing that portion of the Common Expenses attributable to such Lot as provided for in this Declaration including all fees, charges, late charges, attorney fees, fines and interest arising from failure to pay when due the principal amount of such assessment.
- (b) "Special Assessment" shall mean and refer to a charge against any Lot for certain costs incurred by the Association for materials or services furnished to the Owner or his Lot at the request of or on behalf of such Owner, or as a result of any Owner failing to maintain any portion of his Lot in accordance with the provisions of this Declaration, or as a result of the negligence, recklessness, or willful misconduct of any Owner, his employees, guests or invitees, or for excessive use or special use of the services or facilities, if any, provided by the Association, or for any other purpose for which this Declaration or applicable law specifies or permits the imposition of a Special Assessment.
- (c) "Capital Assessment" shall mean and refer to a charge against any Lot representing a portion of the Association's cost for the purchase, installation, construction, expected or unexpected repair or replacement of any capital improvement (including the necessary fixtures and personal property related to it) on the Common Area or on any other portion of the Property, upon which the Association may be required or permitted to install, maintain, repair or replace any capital improvements as provided in this Declaration (including without limitation, the Irrigation Facilities), plus reserves for repair or replacement of existing capital items and acquisition, construction, and installation of new capital improvements.

Section 6. "Association Water" shall mean and refer to all Grand Valley Water Users Association water and water rights appurtenant to, associated with or used in connection with all or any part of the Property, plus any other water or water rights, ditch or ditch rights, reservoir or water storage rights appurtenant to any portion of the Property or used in connection with any portion of the Property owned or controlled by the Association.

Section 7. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

Section 8. "By-Laws" shall mean the By-Laws of the Association as they may be amended from time to time.

Section 9. "CCIOA" means the Colorado Common Interest Ownership Act presently codified at C.R.S. §38-33.3-101, et seq., as it may subsequently be amended from time to time.

Section 10. "Common Area" shall mean any and all real property, and the improvements and fixtures on it owned, leased or controlled by the Association for the common use and enjoyment of the Members, plus any street or other lighting fixtures owned or controlled by the Association and signage on any Common Area or for the general benefit of the Subdivision or Owners, whether or not located on the real property owned or leased by the Association. The Common Area shall be as shown on the recorded plat of the Property and described in the Map.

Section 11. "Common Expenses" shall mean and include expenditures made, and liabilities incurred, by or on behalf of the Association.

Section 12. "Conveyance" shall mean and refer to transfer of a fee simple title by deed, installment land purchase contract or otherwise of any part of the Property.

Section 13. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of Orchard Run Subdivision, as the same may be amended from time to time.

Section 14. "Improvements" shall mean and refer to any and all buildings, parking areas, fences, retaining walls, stairs, decks, hedges, windbreaks, plantings, trees, shrubs, signs, objects of art, mailboxes, storm water retention/detention and irrigation water system, irrigation facilities such as pumps, pipelines and sprinklers and other structures or landscaping of every type and kind situate on the Properties.

Section 15. "Lot" shall mean and refer to each numbered lot of the Property described in the Map as recorded and amended. Boundaries of a Lot shall be as shown and defined on the Map.

Section 16. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 17. "Mortgage" shall mean any mortgage or deed of trust or other conveyance or encumbrance of a Lot, or any interest in it, including, but not limited to, the improvements on it, to secure the performances of an obligation.

Section 18. "Mortgagee" shall mean and include mortgagees, trustees, beneficiaries and holders of a Mortgage, and the holders of any indebtedness secured by a Mortgage.

Section 19. "Mortgagor" shall mean and include mortgagors and trustors under Mortgages.

Section 20. "Occupant" shall mean any person occupying a residence on a Lot within the Subdivision who is not an Owner.

Section 21. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Property, and to any other

person or entity holding a fee simple ownership interest in any Lot which is a part of the Property, including contract purchasers and lessees with enforceable options to purchase, but excluding Mortgagees (unless and until a Mortgagee acquires record fee ownership) and those having such interest merely as security for the performance of an obligation.

Section 22. "Property or Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 23. "Residence" means the single family dwelling improvements (including garage, whether attached or detached, but excluding any outbuildings) located on a Lot.

Section 24. "Subdivision" shall mean Orchard Run Subdivision, and all of the Property, and improvements thereon, subject to this Declaration or any amendment to this Declaration.

## ARTICLE II ASSOCIATION DUTIES

Section 1. Duties of Owners. Each Owner agrees to and shall be a member of the Association and shall be subject to the obligation upon such members, and agrees to abide by the provisions of the Association Articles of Incorporation, Bylaws, Rules and Regulations and these Covenants, Conditions and Restrictions.

Section\_ 2. Association Responsibilities. The Association shall be responsible for:

- (a) The maintenance and operation of the irrigation system as well as regulating the water rights attributable to the Property; and
- (b) The maintenance and operation of the detention facilities constructed on the Property; and
- (c) To maintain the berm running parallel to F Road and to maintain and irrigate the landscaping on said berm; and
- (d) The maintenance of the landscaping surrounding said monuments, if any; and
- (e) The enforcement of the provisions of this Declaration or any party thereof.

In addition, the Association may, upon an affirmative vote of two-third (2/3) of the members, assume responsibility for any common community service for the subdivision not provided by some other organization.

## ARTICLE III MEMBERSHIP AND VOTING RIGHTS;

## DIRECTORS AND OFFICERS; MEETINGS

Section 1.     **Membership.** Every Owner of a Lot in the Subdivision shall be entitled and required to be a Member of the Association, subject to the voting rights provisions of this Article II. No person or entity other than an Owner of one Lot in the Subdivision may be a Member of the Association. No Owner shall be entitled to sever his ownership interest in a Lot from membership in the Association; provided that this shall not be construed as precluding the Owner of a Lot from creating or severing a co-tenancy, joint tenancy or any other form of co-ownership with any other person or persons.

Section 2.     **Allocation of Votes.** Each Lot shall be allocated one vote in the Association, subject to Section 7 below.

Section 3.     **No Cumulative Voting.** In the election of directors of the Association, cumulative voting shall not be allowed.

Section 4.     **Membership Appurtenant.** By accepting a deed to a Lot or other instrument the acceptance of which would render the holder an Owner, Membership in the Association shall be appurtenant to and inseparable from a Lot. Membership in the Association may not be transferred except in connection with the transfer of ownership of a Lot and shall be automatically transferred by Conveyance of a Lot without additional action or documentation.

Section 5.     **Directors of the Association.** In accordance with the Bylaws, the affairs of the Association shall be managed by a Board of Directors consisting of between three (3) and seven (7) Directors. The number of directors may be adjusted or modified pursuant to the amendment to the By-Laws of the Association. Terms of office and removal and vacancies of Directors shall be in accordance with the Bylaws.

Section 6.     **Quorum.** A quorum will be deemed present throughout any meeting of the Association if persons entitled to cast 20% of the votes which may be cast for election of the Board of Directors of the Association are present in person or by proxy at the beginning of the meeting. A quorum will be deemed present throughout any meeting of the Board of Directors of the Association if persons entitled to cast 51% of the votes on the Board are present at the beginning of the meeting.

Section 7.     **Voting Membership.** Every Owner of a Lot which is subject to assessment hereunder shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Each Lot shall be entitled to one vote and the vote for such Lot shall be exercised by the Owner or Owners as they determine. If only one of the multiple Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast all the votes allocated to that Lot. If more than one of the multiple Owners are present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners. There is majority agreement if any one of the multiple Owners casts the votes allocated to that Lot without a protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot. If there is no majority agreement among the owners of a Lot, there shall be no vote for such Lot.

- (a) Votes for contested positions on the Board shall be taken by secret ballot. At the discretion of the Board or upon the request of at least twenty percent (20%) of the Owners who are present in person or represented by proxy if a quorum has been achieved, a vote on any other matter affecting the subdivision on which all Owners are entitled to vote shall be by secret ballot. Ballots shall be counted by a neutral third party or by a committee of volunteers. Such volunteers shall be Owners who are selected or appointed at an open meeting, in a fair manner, by the chair of the Board or another person presiding during that portion of the meeting. The volunteers shall not be board members, and in the case of a contested election for a Board position, shall not be a candidate. The results of the vote shall be reported without reference to names, addresses, or other identifying information of Owners participating in such vote.
- (b) Votes allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner. A proxy shall not be valid if obtained through fraud or misrepresentation. Unless otherwise provided in the Declaration, Bylaws, or Rules of the Association, appointment of proxies may be made substantially as provided in Colorado Revised Statute (CRS) § 7-127-203.
- (c) If a Lot is owned by more than one person, any Owner of the Lot may vote or register a protest to the casting of votes by the other Owners of the Lot through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven months after its date, unless it provides otherwise.
- (d) The Association is entitled to reject a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the Owner.
- (e) The Association and its officer or agent who accepts or rejects a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the standards of this section are not liable in damages for the consequences of the acceptance or rejection.
- (f) Any action of the Association based on the acceptance or rejection of a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise.
- (g) The Board may suspend the voting rights of any Owner during any period for which an Owner is in default and delinquent in paying any amount owed to

the Association or is in violation of any of the governing documents of the Association.

**Section 8. Officers of the Association.** The Officers of the Association shall be those specified by the Bylaws. Other matters relating to officers shall be set forth in the Bylaws.

**Section 9. Meetings.**

- (a) Meetings of the Owners, as the members of the Association, shall be held at least once each year. Special meetings of the Owners may be called by the president, by a majority of the Board, or by Owners having ten percent (10%), as specified in the Bylaws, of the votes in the Association. Not less than ten (10) nor more than fifty (50) days in advance of any meeting of the Owners, the secretary or other officer specified in the Bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the Owner. The notice of any meeting of the Owners shall be physically posted in a conspicuous place, to the extent that such posting is feasible and practicable, in addition to any electronic posting or electronic mail notices that may be given pursuant to paragraph (b) of this section. The notice shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Board.
- (b) Notices of all regular and special meetings of the Association's Board, or any committee thereof shall be provided to all members at least three (3) days before such meeting. Such meeting shall be open to attendance by all members of the Association or their representatives. Agendas for meetings of the Board shall be made reasonably available for examination by all members of the Association or their representatives. The Association may provide all notices and agendas required by this article in electronic form, by posting on a web site or otherwise, in addition to printed form. If such electronic means are available, the Association shall provide notice of all regular and special meetings of Owners by electronic mail to all Owners who so request and who furnish the Association with their electronic mail addresses. Electronic notice of a special meeting shall be given as soon as possible but at least twenty-four hours before the meeting.
- (c) Notwithstanding any provision in the Declaration, Bylaws or other documents to the contrary, all meetings of the Association and Board of Directors are open to every Owner of the Association, or to any person designated by an Owner in writing as the Owner's representative at an appropriate time determined by the Board, but before the Board votes on any issue under discussion. Owners or their designated representatives shall be permitted to speak regarding that issue. The Board may place reasonable time restrictions on persons speaking during the meeting. If more than one



person desires to address an issue and there are opposing views, the Board shall provide for a reasonable number of persons to speak on each side of the issue.

- (d) Upon the final resolution of any matter for which the Board received legal advice or that concerned pending or contemplated litigation, the Board may elect to preserve the attorney-client privilege in any appropriate manner, or it may elect to disclose such information, as it deems appropriate, about such matter in an open meeting.

#### ARTICLE IV PROPERTY RIGHTS IN THE LOTS AND COMMON AREA

Section 1. Members' Easements of Enjoyment. Every Member shall have a nonexclusive right and easement in and to the Common Area, including, but not limited to, an easement for ingress and egress over and through the Common Area. Each such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The Association shall have the right to adopt uniform rules and regulations pertaining to the use and enjoyment of the Common Area;
- (b) The Association may borrow money and encumber (by mortgage, deed of trust or otherwise) the Common Area or any part of it for the purpose of improving the Common Area, provided any such encumbrance shall be expressly subordinate to the rights of the Members;
- (c) The right of the Association to suspend a Member's voting rights and Common Area use for any period during which any Assessment against his Unit remains unpaid and delinquent, and for a period not to exceed thirty (30) days for any single infraction of the rules and regulations of the Association; provided that any suspension of such voting rights, except for failure to pay Assessments, shall be made only by the Association or a duly appointed committee of the Association, after notice and hearing given and held in accordance with the By-Laws of the Association;
- (d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes. and subject to such conditions as may be agreed to by the Members; no such dedication or transfer shall be effective unless an instrument in any number of counterparts signed by Members entitled to cast two-thirds of the votes has been recorded, agreeing to such dedication or transfer, and provided written notice of the proposed action is sent to every Member no less than thirty (30) days nor more than (60) days in advance; and
- (e) The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area.

Section 2. Delegation of Use. In accordance with any requirements or limitations in the By-Laws, any Member may delegate his right of enjoyment to the Common Area and Association Water to the members of his family, his licensees and invitees, or to his tenants, occupants or contract purchasers who are in possession of such Member's Residence.

Section 3. Waiver of Use. No Member may exempt himself from personal liability for Assessments duly levied by the Association nor release the Lot owned by him from the liens and charges created by CCIOA or this Declaration, by waiver of the use and enjoyment of the Common Area or the facilities on it or by abandonment of his Lot.

Section 4. General Restrictions. All Owners of Lots by their acceptance of their respective deeds or other instruments causing them to become Owners, covenant and agree that the Common Area shall remain undivided, and no Owner shall bring any action for partition (which right is expressly waived), it being agreed that this restriction is necessary in order to preserve the rights of all of the Members with respect to the operation and management of the Property.

## ARTICLE V BUDGET AND RECORDS

Section 1. Books and Records. The Board of Directors shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Association. All books, records, and papers of the Association shall be available for inspection and copying by any Member or his representative during regular business hours at the principal office of the Association. The Board of Directors may establish reasonable rules concerning notice to be given to the custodian of the records by anyone desiring to inspect them, and payment of reproduction costs by the requesting Member.

Section 2. Annual Budget. The Board of Directors shall cause an operating budget, balance sheet, and cash flow statement for the Association to be prepared no less frequently than annually.

Section 3. Delivery of Budget. Within thirty (30) days after adoption of any proposed budget, the Board of Directors shall mail (by ordinary first-class mail or email) or otherwise deliver, a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary.

Section 4. Ratification of Budget. Unless at the meeting the Owners of a majority of all Lots reject the budget, the budget shall be deemed as ratified, whether or not a quorum is present.

Section 5. Rejection of Budget. In the event that the proposed budget is rejected, the budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

Section 6. Reserve Fund. As part of each annual budget, the Board of Directors shall include an amount which, in its reasonable business judgment, will at least establish and maintain

an adequate reserve fund for the repair or replacement of any personal property, fixtures, and improvements required to be operated or maintained by the Association based upon age, remaining life, replacement cost, and any other relevant factors.

Section 7. Fiscal Year. The fiscal year of the Association shall initially be the calendar year, but the Association may adopt a different fiscal year, for Assessments or otherwise, if permitted by law.

## ARTICLE VI COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments of charges, (2) special assessment for capital improvements, with such assessment to be established and collected as hereinafter provided, and (3) any other charges properly assessed hereunder. No transfer of title to the Property by any means shall extinguish the lien. All such assessments, together with interest and all costs and reasonable attorneys' fees incurred by the Association in enforcing its rights under this Article VI, shall be a charge on the land and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees as herein provided, shall also be the joint and several personal obligation of each person who was the Owner of such Property at the time when the assessment fell due. Such Owner's personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Property and for the improvement, maintenance and repair items referred to in this Declaration.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Seventy-five and 00/100 Dollars (\$75.00) per Lot.

(a) From and after January 1, of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased more than 5% by a vote of two-third (2/3) of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment of an amount not in excess of the maximum.

Section 4. Assessment Obligations. The Owners shall be obligated to pay the assessment imposed by the Association.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, preconstruction repair or replacement of a capital improvement owned by the Association, including the Common Areas, the irrigation system (on premises and pipes for conduction to down-line users), berm and landscaping to berm, water detention facilities and/or open spaces within or for the use of the Property, provided that any such assessment shall have the assent of two-third (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Reconstruction Assessments. In addition to the annual and special assessments authorized in this Article, the Association may levy a reconstruction assessment for the purpose of making capital improvements, or the repair or reconstruction of damaged or destroyed improvements owned by the Association, including the Common Areas, or the irrigation system. All such reconstruction assessments shall be equal to the net amount of the cost of repair or reconstruction of such improvements and shall be calculated by subtracting from the total cost of repair or reconstruction the sum of the insurance proceeds awarded for the damage or destruction thereof, if any, and shall be set equally against each Lot unless the provisions of Article VII, Section 11 apply,

Section 7. Reserve Fund. The association may establish a reserve fund for the maintenance, repair and replacement of any part of the irrigation system (on premises and pipes for conduction to down-line users), berm and landscaping to berm, water detention facilities and/or open spaces within or for the use of the Property, that must be replaced periodically, and such reserve fund shall be funded through the annual assessments and not be extraordinary special assessments.

Section 8. Notice and Quorum for Any Action Authorized Under Sections 3 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section-3-or-5 shall be sent to all members not less than 14 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 9. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. Notwithstanding the foregoing, if any assessment is necessary as a result of the negligent or intentional conduct of an Owner, or such Owner's family, invitee or occupant of a residence owned by an Owner, the Owner shall be responsible for the cost of such assessment.

Section 10. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots as determined by the Board of Directors. The first annual assessment shall be adjusted according to the number of months

remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty(30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 11. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within ten (10) days after the due date shall bear interest from the due date at a rate of interest to be determined by the board not to exceed the legal rate. The Board may also assess a late fee. The Association may bring an action at law against the property and/or the Owner(s) thereof to collect any monies due hereunder and not paid as assessments(s). In addition to recovery of the monies due, the Association shall also recover all costs of litigation, including reasonable attorneys' fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the irrigation system or abandonment of his Lot.

Section 12. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be superior (prior) to all other liens and encumbrances, except the lien of any first mortgage on the Lots, and except for tax and special assessment liens in favor of a governmental assessing entity. Each Owner hereby agrees that such Association assessment lien shall be superior to any homestead exemption provided by state or federal law, and each Owner agrees that the acceptance of the deed or other instrument of conveyance in regard to any Lot shall signify such assessment lien. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE VII RESTRICTIONS

Section 1. Restrictions on Lots. Only one detached single family residence may be constructed on a Lot. All of the Lots in Orchard Run shall be used primarily for residential purposes. Business may be conducted in a residence and shall be considered a residential purpose; however, no signs or excessive parking will be permitted.

Section 2. Parking. Parking is limited to those areas adjacent to the residence and on the driveway of said residence. All trailers, boats, snowmobiles, recreational vehicles and trucks over 3/4 ton, which are not kept in the garage, must be parked in the side yard or rear yard of the residence. Any such vehicles may only be parked on a driveway for a 48-hour period while loading or unloading. On-street parking of such vehicles shall be in compliance with all laws, ordinances and statutes. No boats, trailers, buses, recreational vehicles, inoperative private automobiles or inoperative vehicles of any kind, camper rigs, trucks or boat rigs, or other similar items, shall be parked or stored permanently on any driveway within the subdivision. Permanent or semi-permanent storage for such vehicles or items on any Lot must be screened from public view, either

in garage or behind a screen or fence, of at least six feet in height, no farther forward than the front building line of the dwelling unit. All screens for above-named items must be approved in advance by the Architectural Control Committee. Notwithstanding the foregoing provisions, the parking of a motor vehicle by an occupant of a Lot on a street or driveway in the Subdivision shall be allowed if the vehicle is required to be available at designated periods at the occupant's residence as a condition of the occupant's employment and all of the following criteria are met:

- (a) The vehicle has a gross vehicle weight rating of ten thousand pounds or less;
- (b) The occupant is a bona fide member of a volunteer fire department or is employed by a primary provider of emergency fire, law enforcement, ambulance or emergency medical services;
- (c) The vehicle bears an official emblem or other visible designation of the emergency service provider; and
- (d) Parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other Owners or occupants to use streets, driveways and guest parking areas within the subdivision.
- (f) The vehicle is not otherwise abandoned or inoperable and does not violate any local ordinances.

Section 3. Temporary Structures. No structure of a temporary nature, tent, garage, trailer houses, barns or other out buildings shall be used on any Lot at any time as either a temporary or permanent residence. All structures shall be of new construction.

Section 4. No Further Subdivision of Lots. No Lot shall be re-subdivided unless approved in writing by the Homeowners representing a majority of the Lots in Orchard Run Subdivision.

Section 5. No Obstruction of Views. No planting or fence shall be placed on any Lot so as to obstruct the view of any street at any intersection or cause a safety issue. No planting, fence, shed or other implement may be placed on any Lot so as to obstruct the maintenance and repair of irrigation lines for the irrigation of the Subdivision or for the conduction of water to down-line water users.

Section 6. Trash or Dumping. No lot shall be used or maintained as a dumping ground or as a storage area. Trash, garbage or other waste must be kept in sanitary containers properly screened in accordance with the standards established by the Architectural Control Committee. All equipment for the storage or disposal of refuse shall be kept in a clean and sanitary condition. No noxious or offensive activity shall be carried out upon any Lot nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.

Section 7. Mining. No oil, natural gas, mining, quarrying or other similar development of any kind shall be permitted within the subdivision nor shall survey stakes pertinent to these operations be permitted on any portion of the platted area.

Section 8. Signs. No sign, graphic, or advertising device shall be placed on the Property except (a) one sign of not more than four square feet advertising a Lot or a Residence for sale, and (b) political signs in support of candidates or ballot issues. An Owner or Occupant may display a political sign on his or her property or in a window of the Owner's or Occupant's residence; except that no political signs shall be displayed earlier than 45 days before an election and 7 days after an election. One political sign per political office or ballot issue that is contested in a pending election shall be allowed, with the maximum dimensions of such signs being 36 inches by 48 inches. However, to the extent that the foregoing restrictions are more restrictive than any applicable ordinance, rule or regulations of the City of Grand Junction or Mesa County, the governmental ordinances, rules and/or regulations shall control. If no such regulations exist, the limitations contained herein shall control. As used herein, "Political Sign" means a sign that carries a message intended to influence the outcome of an election, including supporting or opposing the election of a candidate. This provision shall not limit or preclude street, road, or residence identification signs or traffic control signs or devices.

Section 9. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for commercial purposes. Household pets must be kept fenced in or on a leash at all times and must not be allowed to run loose.

Section 10. Electrical Services. All electrical services and telephone lines shall be placed underground, except temporary lines installed for construction and marketing purposes.

Section 11. Damage by Owner. In the event of any damage, or interference with the operation of the irrigation system, pipes for conduction of irrigation to down-line users and/or landscaping and/or signs pertaining to the berm and public areas of the Property which occurs from any act or omission of an Owner, such Owner shall be responsible for the attributable costs of restoring the irrigation system, pipes for conduction of irrigation water to down-line users and/or landscaping and/or signs pertaining to the berm and public areas or the Property. At the election of the Board of Directors of the Association, such Owner may be assessed for such costs in the same manner as provided in Article VI herein.

Section 12. Use of Irrigation Water. Each Owner shall have a right to use only his pro-rata share of available irrigation water, as determined by the Irrigation District having authority over the Property. Charges for available water shall be assessed against each Lot by Mesa County,

Section 13. Association Regulation of Water. The Association shall have the right to monitor, regulate and limit the use of water by each Owner, within the limits of each Owner's pro-rata share, as the Association may determine necessary.

Section 14. Completion of Landscaping. Landscaping of each Lot shall be completed within six (6) months from the closing date of the purchase of said Lot by the homeowner. An

extension or hiatus is granted for the months of October, November, December, January, February, March and April (the winter months) when counting the six (6) month period allowed.

Section 15.     Flags. An Owner or Occupant may display of the American flag on his or her property, in a window of the Owner's or Occupant's residence, or on a balcony adjoining the Owner's or Occupant's property if the American flag is displayed in a manner consistent with the Federal Flag Code, Public Law 94-344; 90 Stat, 810; 4 U.S.C. 4 to 10. The Association may adopt reasonable rules regarding the placement, manner of display of the American flag, and the location and size of flags and flagpoles, but shall not prohibit the installation of a flag or flagpole. An Owner or Occupant may display a service flag bearing a star denoting the service of the Owner or Occupant or a member of the Owner's or Occupant's immediate family in the active or reserve military service of the United States during a time of war or armed conflict, on the inside of a window or door of the Owner's or Occupant's residence. The maximum dimensions allowed shall be nine inches by sixteen inches.

Section 16.     Removal of Vegetation for Fire Prevention. An Owner may remove trees, shrubs, or other vegetation to create a defensible space around a dwelling for fire mitigation purposes, so long as such removal complies with a written defensible space plan created for the property by the Colorado State Forest Service, an individual or company certified by a local governmental entity to create such a plan, or the fire chief, fire marshal, or fire protection district within whose jurisdiction the unit is located, and is no more extensive than necessary to comply with such plan. The plan shall be registered with the Association before the commencement of work. The Association may require changes to the plan if the Association obtains the consent of the person, official, or agency that originally created the plan. The work shall comply with applicable Association standards regarding slash removal, stump height, vegetation, and contractor regulations.

## ARTICLE VIII ARCHITECTURAL CONTROL COMMITTEE

Section 1.     Architectural Control Committee. An Architectural Control Committee (the "Committee") is hereby established which shall consist of three or more persons chosen as set forth in the Articles of Incorporation or Bylaws of the Association. Committee members may resign in writing at any time, and acceptance of the Association shall not be required for such resignation to be effective. A majority of the Committee may act for the whole Committee.

Section 2.     Procedures. No building, fence, wall or other structure shall be commenced, erected nor maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to an approved as to the harmony of external design and location in relation to surrounding structures (above and below ground) and topography by the Committee. Two complete sets of plans and specifications (which shall include the proposed location of any structure (above and below ground) upon any Lot with respect to other structures upon such Lot and those upon adjacent Lots) shall be submitted to the Committee and approval shall be evidenced by written endorsement on such plans and specifications signed by at least two members of the Committee. No changes or deviations in or from such plans and specifications, as approved, shall be made without the prior written consent of



the Committee. In reviewing submittals, the Committee shall consider the nature and use of the proposed installation, construction, remodeling or use, together with its shape, dimensions, location, color(s), cost and the materials to be utilized. Neither the Committee nor any member thereof shall be responsible for any structural defects in such plans or specifications, nor for their actions taken in good faith pursuant to the authority granted them. The Committee shall have thirty (30) days in which to respond to any request. If the Committee shall not have issued its response within such thirty-day period, the plans and specifications shall be deemed to have been approved. The Committee shall not be liable for damages to any person submitting requests for approval or to any owner by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such requests. The Committee shall record from time to time a notice of the current address to which submittals should be delivered.

Section 3.     Vote and Appeal. A majority vote of the Architectural Control Committee is required to approve a request for architectural approval pursuant to this Article V. An owner may appeal the decision of the Architectural Control Committee to the Board if the Board is composed of different members than the Architectural Control Committee, and, in such event, the decision of the Board shall be final.

Section 4. Records. The Architectural Control Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

Section 5.     Liability. The Architectural Control Committee and its members shall not be liable in damages to any person submitting requests for approval or to any Owner, by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove in regard to any matter within its jurisdiction under this Declaration.

Section 6.     Variance. The Architectural Control Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by Article VII, in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the conditions and restrictions contained in Article VII. Variances or adjustments shall be granted only in case they shall not be materially detrimental or injurious to the other Lots or the Subdivision or the general intent and purpose of this Declaration. The grant or denial of a variance request shall not operate on any other occasion of any of the terms and provisions of this Declaration covered by the variance and shall not serve as a basis for subsequent variances with respect to any other request. The grant of any variance shall not affect in any way the Association's or Owner's obligation to comply with the ordinances of the City of Grand Junction and other applicable governmental laws or regulations.

Section 7.     Waivers. The approval or consent of the Architectural Control Committee to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee as to any other application submitted for approval or consent hereunder.

Section 8.     No Liability. None of Declarant, the Association, or the Committee or its members shall be liable in damages to anyone submitting plans or specifications to them for approval, nor to any owner of property affected by these restrictions by reason of a mistake in

judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Any Owner submitting, or causing to be submitted, any plans or specifications agrees and covenants on behalf of himself and his heirs, successors, legal representatives, and assigns that he will not bring any action or suit at law or in equity against the Declarant, the Association, the Committee, or any of the members of those entities to recover any such damages.

Section 9. No Restrictive Covenants Limiting Xeriscaping. Neither the Association nor the Architectural Control Committee may adopt a restrictive covenant that prohibits or limits xeriscape landscaping, prohibits or limits the installation or use of drought-tolerant vegetative landscapes, or requires cultivated vegetation to consist exclusively or primarily of turf grass.

Section 10. No Procedural Steps for Landscaping which Include Xeriscaping. The Architectural Control Committee shall not place a procedural step or burden, financial or otherwise, on an Owner who seeks approval for a landscaping change which includes Xeriscaping, including but not limited to the following:

- (a) An architect's stamp;
- (b) Preapproval by an architect or landscape architect retained by the Board;
- (c) An analysis of water usage under the proposed new landscape plan or a history of water usage under the Owner's existing landscape plan; and
- (d) The adoption of a landscaping change fee.

The following definitions shall apply.

- (e) "Restrictive covenant" means any covenant, restriction, bylaw, Board policy of practice or condition applicable to real property for the purpose of controlling land use, but does not include any covenant, restriction, or condition imposed on such real property by any governmental entity.
- (f) "Turf grass" means continuous plant coverage consisting of hybridized grasses that, when regularly mowed, form a dense growth of leaf blades and roots.
- (g) "Xeriscape" means the application of the principles of landscape planning and design, soil analysis and improvement, appropriate plant selection, limitation of turf area, use of mulches, irrigation efficiency, and appropriate maintenance that results in water use efficiency and water-saving practices.

Section 11. Enforcement Action Against Owner. The Architectural Control Committee may take enforcement action against an Owner who allows his or her existing landscaping to die; except that:

- (a) Such enforcement action shall be suspended during a period of water use restrictions declared by the jurisdiction in which the Association is located, in which case the Owner shall comply with any watering restrictions imposed by the water provider for the Association;
- (b) Enforcement shall be consistent within the community and not arbitrary or capricious; and

- (c) Once the drought emergency is lifted, the Owner shall be allowed a reasonable and practical opportunity, as defined by the association's board, with consideration of applicable local growing seasons or practical limitations, to reseed and revive turf grass before being required to replace it with new sod.

ARTICLE IX  
INFORMATION AND POLICIES; RECORDS,  
DISCLOSURES; LOT OWNER EDUCATION

Section 1. Information Available to Owners. Pursuant to CRS § 38-233.3-303(5), the Association shall make the following information available to Owners upon reasonable notice in accordance with Colorado law: the name of the Association; the name of the Association's designated agent or management company, if any; a valid physical address and telephone number for both the Association and the designated agent or management company, if any; the name of the subdivision; the initial date of recording of the Declaration; and the reception number or book and page for the main document that constitutes the Declaration. If the Association's address, designated agent or management company changes, the Association shall make updated information available within ninety days after the change.

- (a) Within ninety (90) days after the end of each fiscal year hereafter, the Association shall make the following information available to Owners upon reasonable notice:
1. the date on which its fiscal year commences;
  2. its operating budget for the current fiscal year;
  3. a list, by unit type, of the Association's current assessments, including both regular and special assessments;
  4. its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;
  5. the results of its most recent available financial audit or review;
  6. a list of all Association insurance policies, including but not limited to property, general liability, Association director and officer professional liability, and fidelity policies. Such list shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed.
  7. all the Association's Bylaws, Articles and Rules and Regulations;
  8. the Minutes of the Board and member meetings for the fiscal year immediately preceding the current annual disclosure; and
  9. the Association's responsible governance policies adopted under CRS § 38-33.3-209.5.

It is the intent of this subsection to allow the Association the widest possible latitude in methods and means of disclosure, while requiring that the information be readily available at no cost to Owners at their convenience. Disclosure shall be accomplished by one of the following means: posting on a an internet web page with accompanying notice of the web address via first class mail or e-mail; the

maintenance of a literature table or binder at the Association's principal place of business; or mail or personal delivery. The cost of such distribution shall be accounted for as a common expense liability.

- (b) Except as otherwise provided herein, all financial and other records shall be made reasonably available for examination and copying by any Owner and such Owner's authorized agents.
1. Notwithstanding paragraph (c) of this subsection, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to an Owner's interest as an Owner without prior written consent of the Board.
  2. Without limiting the generality of paragraph (c) of this subsection, without the prior written consent of the Board, a membership list or any part thereof may not be:
    - i. Used to solicit money or property unless such money or property will be used solely to solicit the votes of the Owners in an election to be held by the Association;
    - ii. Used for any commercial purpose; or
    - iii. Sold to or purchased by any person.
  3. The Association may charge a fee for copies provided to an Owner or Owner's representative which may be collected in advance but which shall not exceed the Association's actual cost per page, for copies of the Association records.
  4. As used in this section, "reasonably available" means during normal business hours, upon notice of five business days, or at the next regularly scheduled meeting if such meeting occurs within thirty days after the request, to the extent that:
    - i. The request is made in good faith and for a proper purpose;
    - ii. The request describes with reasonable particularity the records sought and the purpose of the request; and
    - iii. The records are relevant to the purpose of the request.
  5. This section shall not be construed to invalidate any other provision of the Declaration, Bylaws, the corporate law under which the Association is organized, or other documents that more broadly define records of the Association that are subject to inspection and copying by Owners, or that grants Owners free access to such records; except that the privacy protections contained in subparagraph (c) of this section shall supersede any such provision.

Section 2. Association Policies. To promote responsible governance, the Association shall :

- (a) Maintain accurate and complete accounting records; and
- (b) Adopt policies, procedures, and Rules and Regulations concerning:
  - 1. collection of unpaid assessments;
  - 2. handling of conflicts of interest involving Board members;
  - 3. conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles;
  - 4. enforcement of Covenants and Rules, including notice and hearing procedures and the schedule of fines;
  - 5. inspection and copying of Association records by Owners;
  - 6. investment of reserve funds; and
  - 7. procedures for the adoption and amendment of policies, procedures, and rules; and .
  - 8. procedures for addressing disputes arising between the Association and Owners.

Section 3. Disclosure by Lot Owner Upon Sale of Lot.

- (a) Lot Owners may request Association documents relating to a proposed sale of an Owner's Lot. The Association shall use its best efforts to accommodate a request by the seller for documents that are within the Association's control, in accordance with C.R.S. § 38-33.3-317.
- (b) On and after January 1, 2007, every contract for the purchase and sale of a unit shall contain a disclosure statement in bold-faced type that is clearly legible and in substantially the following form:

THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BY LAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY

SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

- (c) The obligation to provide the disclosure set forth in this section shall 'be upon the seller, and, in the event of the failure by the seller to provide the written disclosure described in subsection (1) of this section, the purchaser shall have a claim for relief against the seller for actual damages directly and proximately caused by such failure plus court costs. It shall be an affirmative defense to any claim for damages that the purchaser had actual or constructive knowledge of the facts and information required to be disclosed.
- (d) Upon request, the seller shall either provide to the buyer or authorize the Association to provide to the buyer, upon payment of the Association's usual fee pursuant to section 50(a) (3), all of the Association's governing documents and financial documents, as listed in the most recent available version of the Contract to Buy and Sell Real Estate promulgated by the real estate commission as of the date of the contract.
- (e) All Lot Owners are hereby notified that except in the case of a foreclosure sale, upon request, the seller of a Lot within the Subdivision shall either provide to the buyer or authorize the Association to provide to the buyer, upon payment of the usual Association fee, all of the Association's governing documents and financial documents, as listed in the most recent available version of the Contract to Buy and Sell Real Estate promulgated by the Real Estate Commission as of the date of the contract, or shall mail or deliver to the buyer, on or before the title deadline, copies of all of the following in the most current form available:
  - 1. the Bylaws and rules of the Association.
  - 2. the Declaration;
  - 3. the Covenants;
  - 4. any Party Wall Agreements;
  - 5. Minutes of the most recent annual Owner's meeting and of any Board meetings that occurred within the six months immediately preceding the tide deadline;
  - 6. the Association's operating budget;
  - 7. the Association's annual income and expenditures statement , and;

8. the Association's annual balance sheet.

- (f) The Association shall use its best efforts to accommodate a request by a seller for documents that are within the Association's control, in accordance with CRS § 38-33.3-317.

#### Section 4. Association Records.

- (a) The Association shall keep financial records sufficiently detailed to enable the Association to comply with C.R.S. §38.33.3-316 (8) concerning statements of unpaid assessments.
- (b) The Association shall keep as a permanent record the minutes of all meetings of Owners and the Board, a record of all actions taken by the Owners or Board by written ballot or written consent in lieu of a meeting, a record of all actions taken by a committee of the Board in place of the Board on behalf of the association, and a record of all waivers of notices of meetings of Owners and of the Board or any committee of the Board.
- (c) The Association or its agent shall maintain a record of Owners in a form that permits preparation of a list of the names and addresses of all Owners, showing the number of votes each Owner is entitled to vote.
- (d) The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time. All financial and other records shall be made reasonably available for examination and copying by any Owner and such Owner's authorized agents. The Association may charge a fee, not to exceed the Association's actual cost per page, for copies of association records.
- (e) A membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to an Owner's interest as a unit Owner without the prior written consent of the Board. Without such consent, a membership list or any part thereof may not be:
  - 1. used to solicit money or property unless such money or property will be used solely to solicit the votes of unit Owners in an election to be held by the Association;
  - 2. used for commercial purposes; or
  - 3. Sold to or purchased by any person.
- (f) The Association may charge a fee, which may be collected in advance, but which shall not exceed the Association's actual cost per page, for copies of Association records.

- (g) As used in this section, "reasonably available" means available during normal business hours, upon notice of five business days, or at the next regularly scheduled meeting if such meeting occurs within thirty (30) days after the request, to the extent that the request is made in good faith and for a proper purpose; the request describes with reasonable particularity the records sought and the purpose of the request; and the records are relevant to the purpose of the request.
- (h) In addition to the records specified herein, the Association shall keep a copy of each of the following records at its principal office:
  - 1. Its Articles of Incorporation;
  - 2. The Declaration;
  - 3. The Covenants;
  - 4. Its Bylaws;
  - 5. Resolutions adopted by its Board relating to the characteristics, qualifications, rights, limitations, and obligations of Owners or any class or category of Owners;
  - 6. The minutes of all Owners' meetings, and records of all action taken by Owners without a meeting, for the past three years;
  - 7. All written communications within the past three years to Owners generally as Owners;
  - 8. A list of the names and business or home addresses of its current Directors and officers;
  - 9. Its most recent annual report, if any; and
  - 10. All financial audits or reviews conducted pursuant to C.R.S. §3833.3-303 (4) (b) during the immediately preceding three years.
- (i) This section shall not be construed to affect:
  - 1. The right of an Owner to inspect records:
    - i. Under corporation statutes governing the inspection of lists of shareholders or members prior to an annual meeting; or
    - ii. if the Owner is in litigation with the Association, to the same extent as any other litigant;



2. The power of a court, independently of this Article, to compel the production of Association records for examination on proof by an Owner of proper purpose.

- (j) This section shall not be construed to invalidate any provision of the Declaration, Bylaws, the corporate law under which the Association is organized, or other documents that more broadly defines records of the Association that are subject to inspection and copying by Owners, or that grants Owners freer access to such records.

Section 5. Lot Owner Education. The Association shall provide, or cause to be provided, education to Owners at no cost on at least an annual basis as to the general operations of the Association and the rights and responsibilities of Owners, the Association, and its Board under Colorado Law. The timing and criteria for compliance with this section shall be determined by the Board.

## ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. The Association and/or any aggrieved Owner shall have the right to institute, maintain and/or prosecute any such proceedings, and the Association shall further have the right to levy and collect fines for the violation of any provision of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or Rules and Regulations of the Association, as amended. In any civil action to enforce or defend the provisions of this article or of the declaration, bylaws, articles, or rules and regulations, the court shall award attorney fees, costs and costs of collection to the prevailing party, as well as any and all other sums awarded by the Court. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, or a waiver of any other or subsequent breach of any covenant, condition or restriction herein contained.

- (a) In connection with any claim in which an Owner is alleged to have violated a provision of this article or of the declaration, bylaws, articles, or rules and regulations of the Association and in which the court finds that the Owner prevailed because the Owner did not commit the alleged violation:
1. The court shall award the Owner reasonable attorney fees and costs incurred in asserting or defending the claim; and
  2. The court shall not award costs or attorney fees to the Association. In addition, the Association shall be precluded from allocating to the Owner's account with the Association any of the Association's costs or attorney fees incurred in asserting or defending the claim.

- (b) An Owner shall not be deemed to have confessed judgment to attorney fees or collection costs.
- (c) Any controversy which may be litigated hereunder may be submitted to mediation by either party to the controversy prior to the commencement of any legal proceeding. The mediation agreement, if one is reached, may be presented to the court as a stipulation. Either party to the mediation may terminate the mediation process without prejudice. If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief, and the prevailing party shall be entitled to reasonable attorneys fees.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in nowise affect any other provision(s) which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. The Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than sixty seven percent (67%) of the Lot Owners. Any amendment must be recorded.

IN WITNESS WHEREOF, the undersigned, being at least sixty seven percent (67%) of the Owners of Lots within Orchard Run Subdivision, set their hands and seals this day of 2011.

President (Printed) STEPHEN M. FEUER  
Address: 615 BETH CT. G.I.CO. 81504  
Signature *Stephen M. Feuer*

STATE OF COLORADO. COUNTY OF MESA

The foregoing instrument was acknowledged before me this 14 day of Oct., 2011.

WITNESS my hand and official seal.

My commission expires:

6/17/2015

Notary Public

*Christina Giner*

