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GARFIELD COUNTY, COLORADO

BOOK 0924 PAGE 847

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
THE ORCHARD TOWNHOMES**

DONEGAN DEVELOPMENT LLC, a Colorado Limited Liability Company ("Declarant"), is the owner of certain real property in the City of Glenwood Springs, County of Garfield, State of Colorado, which real property is described and depicted on the plat of The Orchard Townhomes recorded as Reception No. 471876 in the records of the Clerk and Recorder of said County. Said plat and description are incorporated herein by this reference. Declarant desires to create a Planned Community Common Interest Community, to be known as The Orchard Townhomes, in which portions of the real estate described and depicted on said plat will be designated for separate ownership and with the remainder owned by The Orchard Townhomes Association, a Colorado nonprofit corporation, its successors and assigns (the "Association"). Declarant makes the following declarations:

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**ARTICLE I  
STATEMENT OF PURPOSE AND IMPOSITION OF COVENANTS**

1.1 Imposition of Covenants. Declarant hereby makes, declares and establishes the following covenants, conditions, restrictions and easements (the "Covenants"), which shall affect all of the real property described and depicted on the plat of The Orchard Townhomes recorded as Reception No. 471876 in the records of the Clerk and Recorder of Garfield County, Colorado, (hereinafter "The Orchard Townhomes" or the "Property"), including all improvements, appurtenances and facilities relating to or located on the Property now and in the future. From this day forward, The Orchard Townhomes shall be held, sold, conveyed, encumbered, leased, rented, occupied and improved, subject to these Covenants. These Covenants shall run with the land or as equitable servitudes, as the case may be, and shall be binding upon all persons or entities having any right, title, or interest in all or any part of The Orchard Townhomes, including Declarant and all Unit Owners and their respective heirs, executors, administrators, personal representatives, successors, assigns, families, tenants, guests, employees, contractors, agents, licensees and invitees. These Covenants shall inure to and are imposed for the benefit of all Unit Owners. These Covenants create specific rights and privileges which may be shared and enjoyed by all owners and occupants of any part of the Property. Declarant hereby submits The Orchard Townhomes to the provisions of the Colorado Common Interest Ownership Act, Sections 38-33.3-101, et seq., Colorado Revised Statutes, as it may be amended from time to time (the "Act"). In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable.

1.2 Declarant's Intent. Declarant intends to ensure the attractiveness of individual Units and Improvements to be made within The Orchard Townhomes, to prevent any future impairment of The Orchard Townhomes and to preserve, protect and enhance the value and desirability of The Orchard Townhomes and to promote and safeguard the health, comfort, safety, convenience and welfare of the Unit Owners in the Orchard Townhomes. Declarant intends to encourage the construction and maintenance of attractive permanent improvements of advanced technological, architectural and engineering design, appropriately located to preserve



the harmonious development of the Property and to promote and safeguard the health, comfort, safety, convenience and welfare of the Unit Owners.

ARTICLE II  
DESCRIPTION OF COMMON INTEREST COMMUNITY

2.1 Units. The maximum number of Units in The Orchard Townhomes are forty two (42). Identification numbers and boundaries of each Unit shall be shown on supplemental plats to be recorded, which shall specifically depict each unit as constructed. The boundary lines depicted on the supplemental plats are designated as boundaries of a Unit, which shall conform to the walls, floors and ceilings of each Unit. Each Unit shall include any utility line or heating, cooling, hot water or other apparatus exclusively serving such Unit whether or not located within the boundaries of the Unit. The wall and any structural extension that forms the division between any two (2) Units is declared to be a party wall. Subsequent to the recording of this Declaration, contracts to convey, instruments of conveyance, and all other instruments affecting title to a Unit shall be in substantially the following form, subject to such changes or other provisions as may be required by any law, practice or usage:

Townhome Unit \_\_\_\_\_, Building \_\_\_\_\_, Orchard Townhomes, according to the Declaration for Orchard Townhomes, recorded \_\_\_\_\_, 1994, in Book \_\_\_\_\_ at Page \_\_\_\_\_ in the office of the Clerk and Recorder of Garfield County, Colorado and the Plat recorded \_\_\_\_\_, 1994, as Reception No. \_\_\_\_\_ as amended by the Lot Boundary Adjustment Plat recorded \_\_\_\_\_, 199\_\_, as Reception No. \_\_\_\_\_.

2.2 Common Elements. The Common Elements are all portions of The Orchard Townhomes other than units and are designated by this Declaration for the common use and enjoyment of Unit Owners and their families, tenants, guests and invitees and not for the public. The Association, subject to the rights and obligations of the Unit Owners set forth in this Declaration, shall be responsible for the management and control of the Common Elements. Every Unit Owner and occupant shall have a perpetual right and easement of access over, across and upon the Common Elements for the purpose of access to and from a Unit from public ways for both pedestrian and vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Unit; provided, however, that such right and easement shall be subject to:

(a) the covenants, conditions, restrictions and easements contained in this Declaration and the Plat of the Orchard Townhomes, including restrictions regarding use of Limited Common Elements; and

(b) the right of the Association to adopt, from time to time, rules and regulations for vehicular traffic and travel upon, in, under and across the Orchard Townhomes and to facilitate the optimum and most convenient availability and use of the Units and Common Elements by Unit Owners.

2.3 Limited Common Elements. A "Limited Common Element" means a portion of the Common Elements, designated in this Declaration, or on a plat, or by the Act, for the exclusive use of one or more but fewer than all of the Units. The following portions of the buildings, in addition to the portions described in Sections 38-33.3-202(1)(b) and (d) of the Act, are designated as Limited Common Elements, to-wit: crawl spaces, attics, balconies, decks, patios and driveways, together with doors and entrance structures and their related frames, sills and hardware.

2.4 Allocation of Use of Common Elements. Portions of the Common Elements shall include, without limitation, vehicle parking areas and storage facilities. Declarant reserves the right to allocate specified areas of the Common Elements as Limited Common Elements for the exclusive use of individual Unit Owners to which these specified areas shall become appurtenant, provided that each Unit which has only a single car garage shall be assigned the exclusive use of the nearest parking space on the Common Elements. No use of the Common Elements shall be made which will reduce the number of parking spaces or other facility required by the City of Glenwood Springs pursuant to its development approval for the Property and, in the event any vehicle parking space or other required facility located on an easement which space or facility is required for use by a public authority at a future date and which public use precludes use as a parking space or other facility, then any such parking space or other facility shall be located elsewhere on the Common Area without diminution of number or size. The Declarant may assign such Common Elements as Limited Common Element areas pursuant to the provisions of C.R.S. 38-33.3-208 of the Act (a) by making such an allocation in a recorded instrument or (b) in the deed to the Unit to which such Limited Common Element storage area shall be appurtenant or (c) by recording an appropriate amendment or supplement to this Declaration. Such allocations by the Declarant may be to Units owned by the Declarant. After the period of Declarant control, the right of allocation pursuant to this Section shall pass from the Declarant to the Executive Board and the Declarant may not thereafter exercise any such right.

2.5 Allocation of Specified Common Elements. The Executive Board may designate parts of the Common Elements from time to time for use by less than all of the Unit Owners or by nonowners for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Executive Board. Any such designation by the Executive Board shall not be a sale or disposition of such portions of the Common Elements.

2.6 Allocated Interests. The undivided interest in the Common Elements, the Common Expense Liability and votes in the Association allocated to each Unit shall be allocated to each Unit and calculated as follows:

- (a) the undivided interest in Common Elements, on the basis of the relative floor area of each Unit to as compared to the floor area of all Units;
- (b) the percentage of liability for Common Expenses, on the basis of the relative floor area of each Unit as compared to the floor area of all Units; and
- (c) the number of votes in the Association, on the basis of one vote per Unit.

The square footage of a Unit shall be measured using the exterior surfaces of a Unit and shall include garages. One-half (1/2) of any common wall shall be used to calculate the square footage of a Unit. The floor area of the Units shall be determined by the Declarant for the purposes of this Section. If construction of Units in a building envelope as depicted on the Plat of The Orchard Townhomes results in fewer units than forty two (42), then the total number of Units in the common interest community shall be likewise reduced. Prior to the completion of construction of Units in all building envelopes depicted on the Plat of The Orchard Townhomes, the following provisions will apply:

(a) For the purpose of calculating an unconstructed Unit's undivided interest in Common Elements, the average square footage of all Units for which certificates of occupancy have been issued shall be used to determine the "square footage" of each unconstructed unit;

(b) For the purpose of calculating an unconstructed Unit's percentage of liability for Common Expenses, the average square footage of all Units for which certificates of occupancy have been issued shall be used to determine the "square footage" of each unconstructed unit. The amount so obtained shall then be divided by three (3) and the result shall be used as each unconstructed Unit's share.

(c) For the purpose of voting, each unconstructed Unit shall have one (1) vote.

For the purpose of determining percentage interest, fractions shall be rounded up to the nearest one-tenth of one percent, so as to equal 100% for the purpose of this Declaration.

**2.7 Improvements.** For the purpose of this Declaration, the word "Improvements" shall mean all buildings, parking areas, loading areas, fences, walls, hedges, plants, poles, antennae, driveways, signs, changes in any exterior color or shape, excavation and all other site work, including, without limitation, grading, roads, utility improvements, removal of trees or plants. "Improvements" include both original improvements and all later changes and improvements. "Improvements" do not include turf, shrub or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearances.

**2.8 Easements for Encroachments.** The Property, and all portions thereof, is subject to an easement of up to three (3) feet from any Unit boundary line or Common Area boundaries for the actual extent of encroachments created by construction as designed or constructed by the Declarant and for settling, shifting and movement of any portion of the Property. Such encroachments shall not be considered to be encumbrances upon any part of the Property. Encroachments referred to include, but are not limited to, encroachments caused by error in the original construction by Declarant of Improvements on any Unit, or by settling, rising or shifting of the earth.

**2.9 Emergency Access Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

**2.10 Maintenance Easement.** An easement is hereby reserved to Declarant and granted to the Association and their respective officers, agents, employees and assigns, upon, across,

over, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to these Covenants or the Act, including the right to enter upon any Unit for the purpose of performing maintenance to the landscaping, any utility service or the exterior of Improvements as may be required by these Covenants or the Act.

### ARTICLE III THE ASSOCIATION

3.1 Membership. Every person, by virtue of being a Unit Owner and while such person is a Unit Owner, shall be a member of the Association and shall remain a member for the period of the Unit Owner's ownership of a Unit. Membership shall be appurtenant to and may not be separated from ownership of any Unit. No Unit Owner, whether one or more persons, shall have more than one membership per Unit owned, but all of the persons owning each Unit shall be entitled to rights of membership and use and enjoyment appurtenant to such ownership.

3.2 Authority. The business affairs of The Orchard Townhomes shall be managed by The Orchard Townhomes Association, a Colorado nonprofit corporation. The Association shall be governed by its Bylaws, as amended from time to time.

3.3 Powers. The Association shall have all of the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of The Orchard Townhomes.

3.4 Declarant Control. The Declarant shall have all the powers reserved in Section 38-33.3-303(5) of the Act to appoint and remove officers and members of the Executive Board.

### ARTICLE IV COVENANTS FOR COMMON EXPENSE ASSESSMENTS

4.1 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments. Declarant, for each Unit, hereby covenants, and each Unit Owner of any Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed, are deemed to covenant and agree to pay to the Association annual Common Expense Assessments. Such assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Unit Owner at the time when the assessment or other charges became or fell due. Two or more Unit Owners of a Unit shall be jointly and severally liable for such obligations. 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. The Common Expense Assessments of the Association shall be a continuing lien upon the Unit against which each such assessment is made. A lien under this Section is prior to all other liens and encumbrances on a Unit except: (a) liens and encumbrances recorded before the recordation of the Declaration; (b) a first lien Security Interest on the Unit recorded before the date on which the Common Expense Assessment sought to be enforced became delinquent; and (c) liens for real estate taxes and other governmental assessments or charges against the Unit. This

Section does not prohibit an action to recover sums for which this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Unit shall not affect the Association's lien except that sale or transfer of any Unit 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 Association's lien as provided in the Act. No such sale, transfer, foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any Common Expense Assessments thereafter becoming due, nor from the lien thereof.

4.2 Apportionment of Common Expenses. Common Expenses shall be allocated and assessed against Units based on the square footage of each Unit to the total square footage of all Units constructed and in place, subject to the provisions of Section 2.6.

4.3 Purpose of Assessments. Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of The Orchard Townhomes and for the improvement and maintenance of the Common Elements, including, but not limited to: taxes and insurance on the Common Elements, insurance on Units as described in Section 7.2 below, repair, replacement and additions to any Improvements on the Common Elements, reserve accounts, the cost of labor, equipment, materials, management and supervision, the salary or fee of any manager, utilities, transportation, professional fees and other customary charges.

4.4 Annual Assessment/Commencement of Common Expense Assessments. Common Expense Assessments shall be made on an annual basis against all Units 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. Common Expense Assessments shall be payable in monthly installments and shall begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs.

4.5 Effect of Non-Payment of Assessments. Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof shall bear interest at the rate as determined by the Executive Board. A late charge of up to five percent (5%) of each past due installment may also be assessed thereon. Further, the Association may bring an action at law or in equity, or both, against any Unit 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 Unit Owner's Unit. An action at law or in equity by the Association against a Unit 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.

4.6 Working Fund. The Association or Declarant shall require the first Unit Owner of each Unit (other than Declarant) to make a nonrefundable payment to the Association in an amount equal to one-fourth of the annual Common Expense Assessment against that Unit in effect at the closing thereof, which sum shall be held, without interest, by the Association as a "working fund." The working fund shall be collected and transferred to the Association at the time of closing of each sale by Declarant of each Unit and shall be maintained for the use and

benefit of the Association. Such payment shall not relieve a Unit Owner from making regular payments of the assessments when due. Upon the transfer of his Unit, a Unit Owner shall be entitled to a credit from his transferee for any unused portion of the working fund.

#### ARTICLE V PROPERTY USE RESTRICTIONS

5.1 General Restriction. The Orchard Townhomes shall be used only for the dwelling purposes set forth in these Covenants, as permitted by the applicable rules and regulations of all governmental authorities having jurisdiction, and the laws of the State of Colorado and the United States, and as set forth in this Declaration, including amendments or other specific recorded covenants affecting all or any part of The Orchard Townhomes.

5.2 Construction and Alteration of Improvements. No Unit Owner shall construct, erect, place any structure or replace, repair, reconstruct, refinish or alter any part of the exterior of any building or other Improvement upon, under or above any part of The Orchard Townhomes, including all Common Elements, without the written consent of the Executive Board and compliance with the provisions of this Declaration. However, Improvements and alterations which are completely within the interior of a Unit's structure may be undertaken without such approval. No window coverings or other improvements, alterations or decorations visible from outside a Unit shall be added by a Unit Owner without the prior written approval of the Association. Without limiting the foregoing, no towers, exterior radio, television or communication antennae or dish receivers, pens, sheds, fences or outbuildings or other structures shall be permitted without the prior written approval of the Board. In the event of any requested addition or alteration, the Association may require that the applicant submit plans and specifications showing the nature, kind, shape, heights, color, materials and location of the proposed addition or alteration in sufficient detail for the Association to properly review same and to pay for processing and review costs, which may include any professional fees the Association may incur in retaining architects or engineers to review the plans and specifications. The review by the Association shall specifically consider the impact of the addition or alteration on the harmony of external design and location in relation to surrounding structures and topography. Any approval may impose such terms and conditions as the Association deems appropriate.

5.3 Subdivision or Change in Boundaries of Units. No Unit may be subdivided nor shall the boundaries of any Unit be altered or relocated except as provided by the Act. A relocation of a boundary of a Unit may be approved by the Association in its sole discretion, subject the provisions of Section 5.2.

5.4 No Partition of Common Elements. The Common Elements shall be owned by the Association, and no Unit Owner shall bring any action for partition or division of the Common Elements. By acceptance of a deed or other instrument of conveyance or assignment, each Unit Owner shall be deemed to have specifically waived such Unit Owner's rights to commence or maintain a partition action or any other action designed to cause a division of the Common Elements. This Section may be pleaded as a bar to any such action. Any Unit Owner who commences or maintains any such action shall be liable to the Association and agrees to

reimburse the Association for its costs, expenses and reasonable attorneys' fees in defending any such action.

5.5 Vehicles. All permitted vehicles shall be parked only on assigned parking spaces. Except for a temporary period, no vehicle owned by a Unit Owner shall be parked on a parking space designated for visitors. No guest of a Unit Owner shall use a parking space designated for visitors for more than three (3) days without the consent of the Association, which may impose a fee for such use. No trucks, recreational vehicles, motor homes, motor coaches, snowmobiles, campers, trailers, boats or boat trailers or similar vehicles other than passenger automobiles or pickup or utility trucks with a capacity of one ton or less or any other vehicles shall be parked, stored or kept on any portion of The Orchard Townhomes. This restriction shall not prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing service to The Orchard Townhomes. No work on automobiles or other vehicle repair shall be performed in any visible or exposed portion of The Orchard Townhomes, except in emergencies. Abandoned or inoperable vehicles shall not be stored or parked on any portion of The Orchard Townhomes. An abandoned or inoperable vehicle is any vehicle which has not been driven under its own propulsion for three (3) weeks or longer and which appears incapable of operation. A written notice describing the abandoned or inoperable vehicle and requesting its removal shall be personally served upon the Unit Owner or posted on the vehicle. If such vehicle has not been removed within 72 hours after notice is given, the Association may remove the vehicle without liability, and the expense of removal shall be charged against the Unit Owner.

5.6 Signs. No signs of any kind shall be displayed to the public view on or from any portion of The Orchard Townhomes except those signs approved by the Board, ordinary real estate signs or signs required by law.

5.7 Animals and Pets. Subject to the prior written approval of the Association, up to two (2) pets may be kept in a Unit. Only dogs, cats, and other nonexotic household pets shall be permitted. Dogs and cats shall be neutered. The type and behavior of permitted pets shall be regulated by the Association Rules. Permitted pets must be kept in the interior of a Unit, shall not be kept in any manner on a patio or deck, shall not be permitted to run at large and shall not cause any nuisance by noise or otherwise. Persons within The Orchard Townhomes who are accompanied by permitted dogs must keep such dogs under the person's direct control by use of a leash not to exceed ten (10) feet in length. Any animal waste deposited on the Common Elements shall be immediately removed by the Unit Owner and placed in a trash receptacle. No other animals, livestock or poultry of any kind shall be kept, raised or bred on any portion of The Orchard Townhomes.

5.8 Drainage. No Unit Owner shall do or allow any work, construct any Improvements, place any landscaping or allow any condition which alters or interferes with the drainage pattern for The Orchard Townhomes, unless approved in writing by the Board.

5.9 Solid Waste. No trash, ashes, garbage, rubbish, debris or other refuse shall be thrown, dumped or otherwise accumulated on The Orchard Townhomes. There shall be no burning of refuse. Each Unit Owner shall use the central receptacles for the temporary storage and collection of solid waste, which shall be screened from public view and protected from



wind, animals and other disturbances. Each Unit shall be kept in a sanitary condition, free of offensive odors, rodent and insect infestations.

5.10 Outside Burning. There shall be no exterior fires, except barbecues and braziers. No Unit Owner shall allow any condition upon such Unit Owner's Unit which creates a fire hazard or violates fire prevention regulations.

5.11 Noise. No exterior horns, whistles, bells or other sound devices, except security devices approved in writing by the Association, shall be placed or used on any portion of The Orchard Townhomes. Unit Owners shall not allow any noise or disturbance on their respective Units which is offensive, disturbing or otherwise detrimental to any other person.

5.12 Lighting. No flood lighting, security lighting or other type of high intensity lighting shall be permitted without the approval of the Board.

5.13 Compliance With Laws. Subject to the rights of reasonable contest, each Unit Owner shall promptly comply with the provisions of all applicable laws, regulations and ordinances with respect to The Orchard Townhomes including, without limitation, all applicable environmental laws and regulations.

5.14 Prohibition of Increases in Insurable Risks. Nothing shall be done or kept in any Unit or in or on any part of the Common Elements which would result in the cancellation of insurance on all or any part of the Property or the increase in the cost of the insurance on all or any part of the Property over the cost the Association would pay, but for such activity, without the prior written approval of the Association.

5.15 Prohibition against Damage or Waste. No damage to or waste of the Common Elements shall be committed by any Unit Owner and each Unit Owner hereby indemnifies and holds the Association and the other Unit Owners harmless against and shall be liable to the Association for any and all damages or losses resulting from any such damage or waste caused by a Unit Owner or the Unit Owner's family, tenants, guests, pets, employees, contractors, agents, licensees and invitees.

5.16 No Outside Clotheslines. No laundry shall be dried or hung outside any building.

5.17 Obstructions. There shall be no obstruction of any walkways or interference with the free use of walkways or other Common Elements, except as may be reasonably required for repairs. The Association shall take such action as may be necessary to abate or enjoin any interference with or obstruction of walkways and paths. The Association shall have a right of entry on any part of The Orchard Townhomes for the purposes of enforcing this Section. Any costs incurred by the Association in enforcement shall be specially assessed to the Unit Owners or other persons responsible for the interference.

5.18 Unit Numbers. Each Unit shall have an exterior identifying number with a design and location established by the Board.

5.19 Leasing and Restrictions on Alienation. A Unit may not be owned or occupied pursuant to a time-sharing arrangement described in Sections 38-33-110 to 113, Colorado Revised Statutes. A Unit Owner shall have the right to lease a Unit, provided that such lease shall be in writing and subject to the reasonable requirements of the Executive Board. A Unit may not be leased or rented for a term of less than 60 days. Any lease shall be specifically subject to the Declaration. Any failure of a tenant to comply with the Declaration shall be a default under the lease and the Unit Owner shall be liable for any violation of the Declaration committed by the Unit Owner's tenant, without prejudice to the Unit Owner's rights against the Unit Owner's tenant.

5.20 Use and Occupancy. All Units shall be used for dwelling and lodging purposes only. Occupancy of any Unit shall be limited to two (2) adults or two (2) children per bedroom. No business activity shall be conducted on any Unit which is not permitted by law or governmental regulation, nor which would materially increase motor vehicle traffic in the parking areas. No licensed day care business shall be conducted on any Unit.

5.21 Non-conversion of Garages. That portion of each Unit originally constructed as a garage and storage area shall not be converted to a living area, but shall remain the principal vehicle parking area for such Unit.

## ARTICLE VI MAINTENANCE

6.1 Association's Maintenance Responsibility. The Association shall maintain and keep the Common Elements and the roofs and exterior surfaces of the Improvements in good, clean, attractive and sanitary condition and repair consistent with the requirements of a first class residential development.

6.2 Unit Owner's Maintenance Responsibility. Except as provided otherwise in the Declaration or by written agreement with the Association, all maintenance of individual Units including, without limitation, all interior surfaces, structural and nonstructural members, utility systems, utility lines from the point of departure from a shared usage, glazing, doors, patios, decks and other fixtures designed to serve a single Unit, shall be the sole responsibility of the respective Unit Owners. Each Unit shall be maintained in a good, clean, attractive and sanitary condition and repair consistent with the requirements of a first class residential development.

6.3 Unit Owner's Maintenance Responsibility for Limited Common Elements. The Owner of a Unit to which any doorstep, stoop, porch, balcony, patio, deck and driveway is allocated shall be responsible for removal of snow, leaves and debris from same. Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed equally against the Units to which the Limited Common Element is assigned.

## ARTICLE VII INSURANCE

7.1 Association's Insurance Responsibility. The Association shall maintain all insurance coverage required by the provisions of C.R.S. 38-33.3-101, et. seq., as the same may

be amended from time to time, together with such other insurance as the Executive Board of the Association shall deem advisable.

7.2 Association's Responsibility for Hazards Insurance on Units. In supplementation of and addition to insurance required by applicable statute, the Association shall obtain property insurance against damage or loss for broad form covered causes of loss for all Units to the interior surface of walls, ceilings and floors as initially constructed, in an amount equal to the full replacement value (i.e., 100 percent of the current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage) and less applicable deductibles. The determination of value shall be made solely by the Association based on a good faith estimate of value which need not include a written appraisal. Such policy shall include, if available, a standard form of mortgagee clause, a "Demolition Cost Endorsement" or the equivalent, an "Increase Cost of Construction Endorsement" or the equivalent, and all casualty insurance policies shall have an inflation guard endorsement, if reasonably available.

7.3 Unit Owner's Insurance Responsibility. Each Unit Owner shall be responsible for all insurance coverage for all interior finishes on the walls, ceilings and floors of such Owner's Unit, together with all appliances, cabinets, plumbing and electrical fixtures and all other improvements and betterments to the Unit not insured by the Association. In addition, each Unit Owner shall be responsible for insuring all personal property within the Unit, as well as general liability insurance and any other insurance coverage deemed appropriate by such Unit Owner.

#### ARTICLE VIII DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS

8.1 Development Rights and Special Declarant Rights. The Declarant reserves the following Development Rights and other Special Declarant Rights for the maximum time limit allowed by law:

- (a) The right to complete or make improvements for the construction of forty two (42) Townhome Units as indicated on the plat;
- (b) The right to maintain sales offices, management offices and models in a single Unit;
- (c) The right to maintain signs on the Common Elements and Units to advertise The Orchard Townhomes;
- (d) The right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations under the Act and this Declaration; and
- (e) The right to appoint or remove any officer of the Association or any Director during the Declarant control period consistent with the Act.

8.2 Limitations on Development Rights and Special Declarant Rights. Unless sooner terminated by a recorded instrument signed by Declarant, any Development Right or Special Declarant Right may be exercised by the Declarant for the period of time specified in the Act.

#### ARTICLE IX ENFORCEMENT OF COVENANTS

9.1 Violation Deemed a Nuisance. Every violation of this Declaration is declared and deemed to be a nuisance. All public and private remedies allowed at law or equity against anyone in violation of these Covenants shall be available.

9.2 Compliance. Each Unit Owner and every member of a Unit Owner's family and every guest, invitee, tenant, employee, contractor, agent, licensee and invitee of an Unit Owner shall comply with the provisions of these Covenants as the same may be amended from time to time. Failure to comply with these Covenants shall be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Each Unit Owner shall be responsible for the conduct of the Unit Owner's family, tenants, employees, guests, contractors, agents, licensees and invitees whether or not the Unit Owner is present. Each Unit Owner shall inform all such persons of these Covenants. Any violation of these Covenants by any such person shall be deemed a violation by the Unit Owner.

9.3 Who May Enforce. Any action to enforce these Covenants may be brought by the Declarant or the Executive Board in the name of the Association on behalf of the Unit Owners. If, after a written request from an aggrieved Unit Owner, neither of the foregoing entities commence an action to enforce these Covenants, then the aggrieved Unit Owner may bring such an action.

9.4 Nonexclusive Remedies. All the remedies set forth herein are cumulative and not exclusive.

9.5 Nonliability. No member of the Executive Board, the Declarant, or any Unit Owner shall be liable to any other Unit Owner for the failure to enforce these Covenants at any time.

9.6 Recovery of Costs. If legal assistance is obtained to enforce any provision of these Covenants, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of these Covenants or the restraint of violations of these Covenants, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorney's fees.

#### ARTICLE X MISCELLANEOUS PROVISIONS

10.1 Severability. This Declaration, to the extent possible, shall be construed or reformed to give validity to all of its provisions. Any provision of this Declaration found to be prohibited by law or unenforceable shall be construed to be independent and shall not invalidate any other provision.

10.2 Construction. In interpreting words in the Declaration, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

10.3 Headings. The headings are included only for reference and shall not affect the meaning or interpretation of this Declaration.

10.4 Notice. All notices or requests required shall be in writing. Notice to any Unit Owner shall be considered delivered and effective upon personal delivery, or three (3) days after posting when sent by certified mail, return receipt requested, to the address of the Unit Owner on file in the records of the Association at the time of the mailing or if no such address is available, then to the address shown by the County Assessor. Notice to the Executive Board or the Association shall be considered delivered and effective upon personal delivery, or three (3) days after posting when sent by certified mail, return receipt requested, to the Association, the Executive Board or the Board at the address as shall be established by the Association from time to time by notice to the Unit Owners. General notices to all Unit Owners need not be certified, but may be sent by regular first class mail.

10.5 Waiver. No failure by the Association or the Executive Board to give notice of default or any delay in exercising any right or remedy shall operate as a waiver, except as specifically provided above. No waiver shall be effective unless it is in writing signed by the President or Vice President of the Executive Board on behalf of the Association or by the Chairman of the Board on behalf of the Board.

10.6 Amendment and Mortgagee Requirements. Except as otherwise provided by the Act, unless at least fifty-one percent (51%) of the First Mortgagees (based on one vote for each First Mortgage owned) and at least sixty-seven percent (67%) of the Unit Owners have given their prior written approval, the Association shall not be entitled to amend provisions affecting the following: voting rights, assessments and assessment liens, reserves, maintenance and repair responsibilities, reallocation of interests in common elements, redefinition of Unit boundaries, convertibility of Units into Common Elements, expansion or contraction of The Orchard Townhomes, insurance or fidelity bonds, leasing of Units, restrictions on sales or transfers, decisions to self-manage, restoration or repair of The Orchard Townhomes, termination after destruction or condemnation and benefits of mortgagees, insurers or guarantors. Unless a First Mortgagee provides the Secretary of the Association with written notice of its objection, if any, to any proposed amendment of action outlined above within 30 days following the First Mortgagee's receipt of notice of such proposed amendment or action, the First Mortgagee will be deemed conclusive to have approved the proposed amendment or action.

2  
10.7 Rule Against Perpetuities. Notwithstanding anything in this Declaration to the contrary, if any of the covenants, conditions, restrictions, easements or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall terminate on the death of the survivor of the now living children of His Royal Highness, Charles, Prince of Wales, plus twenty-one (21) years.

10.8 Term. This Declaration and any amendments or supplements hereto shall remain in effect from the date of recordation until December 31, 2024. Thereafter, these Covenants

BOOK 0924 PAGE 860

shall be automatically extended for five (5) successive periods of ten (10) years each, unless otherwise terminated or modified as provided herein or by the Act.

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 6 day of December, 1994.

DONEGAN DEVELOPMENT LLC,  
a Colorado Limited Liability Company

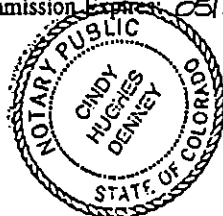
By: [Signature]  
Manager

STATE OF COLORADO )  
                                  ) ss.  
COUNTY OF GARFIELD )

The foregoing instrument was acknowledged before me this 06th day of December, 1994, by S. Cameron Calder as Manager of DONEGAN DEVELOPMENT LLC, a Colorado Limited Liability Company.

Witness my hand and official seal.

My Commission Expires 05/17/95.



[Signature]  
Notary Public

BYLAWS  
OF  
THE ORCHARD TOWNHOMES ASSOCIATION

ARTICLE I  
INTRODUCTION

These are the Bylaws of The Orchard Townhomes Association which shall operate under the Colorado Nonprofit Corporation Act, as amended, the Colorado Common Interest Ownership Act, as amended (the "Act") and the Articles of Incorporation of The Orchard Townhomes Association filed with the Colorado Secretary of State (the "Articles").

ARTICLE II  
UNIT OWNERS

2.1 Membership. Membership in the Association shall be as set forth in the Articles.

2.2 Annual Meeting. Annual meetings of Unit Owners shall be held in November or December of each year within Garfield County, Colorado at such specific time, date and place set forth in the notice. Directors shall be elected at such meetings by ballot of the Unit Owners, in accordance with the provisions of Article III of the Bylaws. The Unit Owners may transact other business as may properly come before them at these meetings.

2.3 Budget Meeting. Meetings of Unit Owners to consider proposed budgets shall be called in accordance with the Act. The budget also may be considered at Annual or Special Meetings called for other purposes.

2.4 Special Meetings. Special meetings of the Association may be called by the president, by a majority of the members of the Executive Board or by Unit Owners comprising 20 percent of the votes in the Association.

2.5 Place of Meetings. Meetings of the Unit Owners shall be held at The Orchard Townhomes Association or may be held at a suitable place convenient to the Unit Owners, as may be designated by the Executive Board or the president.

2.6 Notice of Meeting. The secretary or other officer designated by the Executive Board shall cause notice of meetings of the Unit Owners to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to the mailing address designated in writing by a Unit Owner, not less than 10 nor more than 50 days in advance of a meeting. No action shall be adopted at a meeting except as stated in the notice.

2.7 Waiver of Notice. Any Unit Owner may, at any time, in writing waive notice of any meeting of the Unit Owners, and such waiver shall be deemed equivalent to the receipt of notice.

2.8 Adjournment of Meeting. At any meeting of Unit Owners, a Majority of the Unit Owners who are present at that meeting, either in person or by proxy, may adjourn the meeting to another time not more than ten (10) days from the time of the original meeting.

2.9 Order of Business. The order of business at all meetings of the Unit Owners shall be as follows:

- (a) Roll call of Unit Owners;
- (b) Proof of notice of meeting;
- (c) Inspection and verification of proxies;
- (d) Reading of minutes of the preceding meeting;
- (e) Reports;
- (f) Establishment of the number and terms of memberships of the Executive Board (if required and noticed);
- (g) Election of inspectors of election (when required);
- (h) Election of Directors of the Executive Board (when required);
- (i) Ratification of budget (if required and noticed);
- (j) Unfinished business; and
- (k) New business.

2.10 Voting. Subject to the provisions of the Articles:

(a) If only one of several owners of a Unit is present at a meeting of the Association, the owner present is entitled to cast the vote allocated to that Unit. If more than one of the co-owners are present, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the co-owners. There is majority agreement if any one of the co-owners casts the vote allocated to the Unit without protest being made promptly to the person presiding over the meeting by another co-owner of that Unit.

(b) A vote allocated to a Unit may be cast under a proxy duly executed by a Unit Owner. If a Unit is owned by more than one person, each co-owner of such Unit may vote or register protest to the casting of a vote by the other co-owners of that Unit through a duly executed proxy. A Unit Owner may revoke a proxy given under this section only 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 one year after its date, unless it specifies a shorter term.



(c) The vote of a corporation or business trust may be cast by any officer of that corporation or business trust in the absence of express notice of the designation of a specific person by the executive board of directors or bylaws of such corporation or business trust. The vote of a partnership may be cast by any general partner of such partnership in the absence of express notice of the designation of a specific person by such partnership. The vote of a limited liability company may be cast by any manager of such limited liability company in the absence of express notice of the designation of a specific person by such limited liability company. The moderator of the meeting may require reasonable evidence that a person voting on behalf of a corporation, partnership, limited liability company or business trust is qualified to vote.

(d) Votes allocated to a Unit owned by the Association may not be cast.

2.11 Quorum. Except as otherwise provided in these Bylaws, Unit Owners present in person or by proxy at any meeting of Unit Owners, but not less than 50 percent of the Unit Owners, shall constitute a quorum at that meeting.

2.12 Majority Vote. The vote of a majority of the Unit Owners present in person or by proxy at a meeting at which a quorum is present shall be binding upon all Unit Owners for all purposes except when a higher percentage vote is required in the Declaration, the Articles, these Bylaws or by law.

### ARTICLE III EXECUTIVE BOARD

3.1 Election. The affairs of the Common Interest Community and the Association shall be governed by an Executive Board which, until the termination of the period of Declarant Control, shall consist of three persons, the majority of whom, excepting Directors appointed by Declarant, shall be Unit Owners. If any Unit is owned by a partnership, trust, limited liability company or corporation, any officer, partner, manager or employee of such Unit Owner shall be eligible to serve as a Director and shall be deemed to be a Unit Owner for the purposes of the preceding sentence. Directors shall be elected by Unit Owners, except for those appointed by Declarant. At any meeting at which Directors are to be elected, Unit Owners may, by resolution, adopt specific procedures which are not inconsistent with these Bylaws, the Articles or the Colorado Nonprofit Corporation Act for conducting the elections.

The terms of at least one-third of the Directors not appointed by Declarant shall expire annually, as established in a resolution of the Unit Owners. Directors shall take office immediately upon election. The Declaration shall govern appointment of Directors of the Executive Board during the period of Declarant Control. Pursuant to the provisions of Section 5.4 of the Articles (governing the election of Directors by Unit Owners during the period of Declarant Control), or in the event of the removal of a Director under the provisions of these Bylaws, the Association shall call a meeting and give not less than 10 nor more than 60 days' notice to the Unit Owners for this purpose. Such a meeting may be called and the notice given by any Unit Owner if the Association fails to do so.

3.2 Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in the Declaration, the Articles, these Bylaws or the Act. The Executive Board shall have, subject to the limitations contained in the Declaration and the

Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community, including the following powers and duties:

- (a) Adopt and amend Bylaws and Rules and Regulations;
- (b) Adopt and amend budgets for revenues, expenditures and reserves;
- (c) Collect assessments for Common Expenses from Unit Owners;
- (d) Elect officers of the Association;
- (e) Hire and discharge managing agents;
- (f) Hire and discharge employees, independent contractors and agents other than managing agents;
- (g) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Association's Declaration, Bylaws or Rules and Regulations in the Association's name, on behalf of the Association or two or more Unit Owners on matters affecting the Common Interest Community;
- (h) Make contracts and incur liabilities;
- (i) Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- (j) Cause additional improvements to be made as a part of the Common Elements;
- (k) Acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real or personal property, provided that Common Elements may be conveyed or subjected to a security interest only pursuant to Section 38-33.3-312 of the Act;
- (l) Grant easements for any period of time, including permanent easements, and grant leases, licenses and concessions for no more than one year, through or over the Common Elements;
- (m) Impose and receive a payment, fee or charge for services provided to Unit Owners and for the use, rental or operation of the Common Elements, other than Limited Common Elements described in Subsections 38-33.3-202(1)(b) and (d) of the Act;
- (n) Impose a reasonable charge for late payment of assessments and, after notice and hearing, levy a reasonable fine for a violation of the Declaration, Bylaws, Rules and Regulations of the Association;
- (o) Impose a reasonable charge for the preparation and recording of amendments to the Declaration or statements of unpaid assessments;

(p) Provide for the indemnification of the Association's Officers and the Executive Board and maintain Directors' and Officers' liability insurance;

(q) Exercise any other powers conferred by the Declaration or Bylaws;

(r) Exercise any other power that may be exercised in the state by a legal entity of the same type as the Association;

(s) Exercise any other power necessary and proper for the governance and operation of the Association; and

(t) By resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Unit Owner within 45 days of publication of notice of that action, and the committee's action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

3.3 Manager. The Executive Board may employ a Manager for the Common Interest Community, at a compensation established by the Executive Board, to perform duties and services authorized by the Executive Board. The Executive Board may delegate to the Manager only the powers granted to the Executive Board by these Bylaws under Section 2.2, Subdivisions (c), (f), (h) and (i). Licenses, concessions and contracts may be executed by the Manager pursuant to specific resolutions of the Executive Board and to fulfill the requirements of the budget.

3.4 Removal of Directors. The Unit Owners, by a two-thirds vote of all persons present and entitled to vote, at any meeting of the Unit Owners at which a quorum is present, with or without cause, may remove any Director of the Executive Board, other than a Director appointed by a Declarant.

3.5 Vacancies. Vacancies in the Executive Board, caused by any reason other than the removal of a Director by a vote of the Unit Owners, may be filled at a special meeting of the Executive Board held for that purpose at any time after the occurrence of the vacancy, even though the Directors present at that meeting may constitute less than a quorum. These appointments shall be made in the following manner:

(a) As to the vacancies of Directors whom Unit Owners other than the Declarant elected, by a majority of the remaining elected Directors constituting the Executive Board; and

(b) As to the vacancies of Directors whom the Declarant has the right to appoint, by the Declarant.

Each person so elected or appointed shall be a Director for the remainder of the term of the Director so replaced.

3.6 Regular Meetings. The first regular meeting of the Executive Board following each annual meeting of the Unit Owners shall be held within ten (10) days after the annual meeting. No notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, provided such Directors are present. The Executive Board may set a schedule of additional regular meetings by resolution, and no further notice shall be necessary to constitute scheduled regular meetings.

3.7 Special Meetings. Special meetings of the Executive Board may be called by the President or by a majority of the Directors on at least three (3) business days' notice to each Director. The notice shall be hand-delivered or mailed and shall state the time, place and purpose of the meeting.

3.8 Location of Meetings. All meetings of the Executive Board shall be held within Garfield County, Colorado, unless all Directors consent in writing to another location.

3.9 Waiver of Notice. Any Director may waive notice of any meeting in writing. Attendance by a Director at any meeting of the Executive Board shall constitute a waiver of notice. If all the Directors are present at any meeting, no notice shall be required, and any business may be transacted at such meeting.

3.10 Quorum of Directors. At all meetings of the Executive Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute a decision of the Executive Board. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting. At any adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.11 Consent to Corporate Action. If all the Directors or all Directors of a committee established for such purposes, as the case may be, severally or collectively consent in writing to any action taken or to be taken by the Association, and the number of the Directors constitutes a quorum, that action shall be a valid corporate action as though it had been authorized at a meeting of the Executive Board or the committee, as the case may be. The secretary shall file written consents with the minutes of the meetings of the Executive Board.

3.12 Telephone Communication in Lieu of Attendance. A Director may attend a meeting of the Executive Board by using an electronic or telephonic communication method whereby the Director may be heard by the other members and may hear the deliberations of the other members on any matter properly brought before the Executive Board. The Directors' vote shall be counted and the presence noted as if that Director were present in person on that particular matter.

3.13 Compensation. Directors shall not be paid any compensation for their services performed as Directors unless a resolution authorizing such remuneration shall have been adopted by the Executive Board and ratified by resolution of the Unit Owners. Directors may be reimbursed for actual expenses incurred in connection with their duties as Directors.

## ARTICLE IV OFFICERS

4.1 Designation. The principal officers of the Association shall be the president, vice president, the secretary and the treasurer, all of whom shall be elected by the Executive Board. The Executive Board may appoint an assistant treasurer, an assistant secretary and other officers as it finds necessary. The president, vice president and treasurer, but no other officers, shall be Directors. Any two offices may be held by the same person, except the offices of president and secretary. The office of vice president may be vacant.

4.2 Election of Officers. The officers of the Association shall be elected annually by the Executive Board at the organizational meeting of each new Executive Board. Officers shall hold office at the pleasure of the Executive Board.

4.3 Removal of Officers. Upon the affirmative vote of a majority of the Directors, any officer may be removed, with or without cause. A successor may be elected at any regular meeting of the Executive Board or at any special meeting of the Executive Board called for that purpose.

4.4 President. The president shall be the chief executive officer of the Association. The president shall preside at all meetings of the Unit Owners and of the Executive Board. The president shall have all of the general powers and duties which are incident to the office of president of a nonprofit corporation organized under the laws of the State of Colorado, including but not limited to, the power to appoint committees from among the Unit Owners from time to time as the president may decide is appropriate to assist in the conduct of the affairs of the Association. The president may fulfill the role of treasurer in the absence of the treasurer. The president may cause to be prepared and may execute amendments, attested by the secretary, to the Declaration, the Articles and these Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

4.5 Vice President. The vice president shall take the place of the president and perform the president's duties whenever the president is absent or unable to act. If neither the president nor the vice president is able to act, the Executive Board shall appoint some other Director to act in the place of the president on an interim basis. The vice president shall also perform other duties imposed by the Executive Board or by the president.

4.6 Secretary. The secretary shall keep the minutes of all meetings of the Unit Owners and the Executive Board. The secretary shall have charge of the Association's books and papers as the Executive Board may direct and shall perform all the duties incident to the office of secretary of a nonprofit corporation organized under the laws of the State of Colorado. The secretary may cause to be prepared and may attest to execution by the president of amendments to the Declaration and the Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

4.7 Treasurer. The treasurer shall be responsible for Association funds and securities, for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. The treasurer shall be responsible for the deposit of all monies and other valuable effects in depositories designated by

the Executive Board and shall perform all the duties incident to the office of treasurer of a nonprofit corporation organized under the laws of the State of Colorado. The treasurer may endorse on behalf of the Association, for collection only, checks, notes and other obligations and shall deposit the same and all monies in the name of and to the credit of the Association in banks designated by the Executive Board. Except for reserve funds described below, the treasurer may have custody of and shall have the power to endorse for transfer, on the behalf of the Association, stock, securities or other investment instruments owned or controlled by the Association or as fiduciary for others. Reserve funds of the Association shall be deposited in segregated accounts or in prudent investments, as the Executive Board decides. Funds may be withdrawn from these reserves for the purposes for which they were deposited, by check or order, authorized by the treasurer, and executed by two Directors, one of whom may be the treasurer, if the treasurer is also a Director.

## ARTICLE V ENFORCEMENT

5.1 Abatement and Enjoinment of Violations by Unit Owners. The violation of any of the Rules and Regulations adopted by the Executive Board or the breach of any provision of the Documents shall give the Executive Board the right, after notice and hearing, except in case of an emergency, in addition to any other rights set forth in these Bylaws:

(a) Without liability for any manner of trespass, to enter the Unit or Limited Common Element on which, the violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition (except for additions or alterations of a permanent nature that may exist in that Unit) that is existing and creating a danger to the Common Elements contrary to the intent and meaning of the provisions of the Declaration and the Rules and Regulations; or

(b) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

5.2 Fine for Violation. By resolution, following notice and hearing, the Executive Board may levy a fine of up to \$25.00 per day for each day that a violation of the Declaration or Rules and Regulations persists after notice and hearing, but this amount shall not exceed that amount necessary to insure compliance with the rule or order of the Executive Board.

## ARTICLE VI INDEMNIFICATION

The Directors and Officers of the Association shall have the liabilities, and be entitled to indemnification, as provided in Colorado Nonprofit Corporation Act, the provisions of which are incorporated by reference and made a part of this document.

## ARTICLE VII RECORDS

7.1 Records and Audits. The Association shall maintain financial records. The cost of any audit shall be a Common Expense unless otherwise provided.



the contribution to the working capital shall be considered an unpaid Common Expense Assessment, with a lien on the Declarant's unsold Units pursuant to the Act. Until termination of Declarant Control of the Executive Board, the working capital shall be deposited without interest in a segregated fund. While the Declarant is in control of the Executive Board, the Declarant shall not use any of the working capital funds to defray Declarant's expenses, reserve contributions or construction costs or to make up budget deficits.

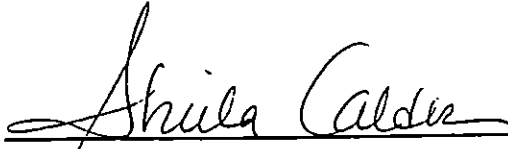
8.6 Reserves. As a part of the adoption of the regular budget the Executive Board shall include an amount which, in its reasonable business judgment, will establish and maintain an adequate reserve fund for the replacement of improvements to the Common Elements and those Limited Common Elements that it is obligated to maintain, based upon and among other relevant factors, the age, remaining life, quantity and replacement cost of such improvements.

ARTICLE IX  
AMENDMENTS TO BYLAWS

9.1 The Bylaws may be amended only by a vote of two-thirds of the members of the Executive Board, following notice to all Unit Owners, at any meeting duly called for such purpose.

9.2 No amendment of the Bylaws of this Association shall be adopted which would affect or impair the validity or priority of any security interest encumbering any Unit or which would change the provisions of the Bylaws with respect to security interests of record.

ATTEST: Certified to be the Bylaws adopted by consent of the Directors of The Orchard Townhomes Association, dated 16<sup>th</sup> DEC., 1994.

  
\_\_\_\_\_  
Secretary



COPY

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ARTICLES OF INCORPORATION  
OF  
THE ORCHARD TOWNHOMES ASSOCIATION  
A NONPROFIT CORPORATION

NONPROFIT  
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The undersigned natural person, being more than twenty-one years of age, and acting as incorporator, does hereby establish a nonprofit corporation under and by virtue of the Colorado Nonprofit Corporation Act and adopts the following Articles of Incorporation:

ARTICLE I  
NAME

The name of the corporation is The Orchard Townhomes Association (the "Association").

ARTICLE II  
DURATION

The Association shall have perpetual existence.

ARTICLE III  
PURPOSES AND POWERS

The nature of the Association and the purposes and powers of the Association are as follows:

3.1. To operate the Common Interest Community known as The Orchard Townhomes Association located in the municipality of Glenwood Springs, County of Garfield, State of Colorado, in accordance with the Colorado Common Interest Ownership Act of the Colorado Revised Statutes, as amended, and the Colorado Nonprofit Corporation Act, as amended.

3.2. To be and constitute the Association to which reference is made in the Declaration of Covenants, Conditions, Restrictions and Easements (the "Declaration") for The Orchard Townhomes Association, which Declaration is to be recorded in the Office of the Clerk and Recorder of Garfield County, Colorado.

3.3. To promote the health, safety, welfare, and common benefit of the residents of the Common Interest Community.

3.4. To acquire ownership of and title to certain common elements, as shown on the subdivision map of The Orchard Townhomes Association and to maintain and operate such common elements subject to such regular or special assessments or charges as may be required to defer the cost and expense thereof.

3.5. To do any and all permitted acts, and shall have and exercise any and all powers, rights, and privileges which are granted to a Common Interest Community Association under

the laws of the State of Colorado and the Declaration, these Articles of Incorporation, the Bylaws, Rules and Regulations, and other governing documents of the Association.

#### ARTICLE IV NONPROFIT STATUS

The Association shall be a nonprofit corporation, without shares of stock.

#### ARTICLE V MEMBERSHIP

5.1. The classes, rights and qualifications and the manner of election or appointment of members are as follows: Any person who holds title to a Unit in the Common Interest Community shall be a member of the Association. There shall be one membership for each Unit owned within the Common Interest Community. This membership shall be automatically transferred upon the conveyance of that Unit. Voting shall be one vote per unit, and the vote to which each membership is entitled is the vote assigned to its Unit in the Declaration of the Common Interest Community. If a Unit is owned by more than one person, those persons shall agree among themselves how a vote for that Unit's membership is to be cast. Individual co-owners may not cast fractional votes. A vote by a co-owner for the entire Unit's membership interest shall be deemed to be pursuant to a valid proxy, unless another co-owner of the same Unit objects at the time the vote is cast, in which case such membership's vote shall not be counted. Cumulative voting shall not be allowed for any purpose.

5.2. The members shall be of one class consisting of Unit Owners who own Units as defined in the Declaration. These Unit Owners shall elect all members of the Executive Board, following the period of Declarant Control defined below.

5.3. Notwithstanding the foregoing, the Declarant of the Common Interest Community shall have additional rights and qualifications as may be provided under the Colorado Common Interest Ownership Act and the Declaration, including the right to appoint members of the Executive Board as follows: During the period of Declarant Control, Declarant, or persons designated by Declarant, subject to certain limitations, may appoint and remove the officers and members of the Executive Board. The period of Declarant Control terminates not later than the earlier of: (1) Sixty days after conveyance of 75 percent of the Units that may be created to Unit Owners other than Declarant; (2) Two years after Declarant has last conveyed a Unit in the ordinary course of business; or (3) Two years after any right to add new Units was last exercised. Declarant may voluntarily surrender the right to appoint and remove officers and Directors of the Executive Board before termination of the period of Declarant Control, but in that event, Declarant may require, for the duration of the period of Declarant Control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

5.4. Not later than 60 days after conveyance of 25 percent of the Units that may be created to Unit Owners other than Declarant, at least one member, and not less than 25 percent of the members of the Executive Board shall be elected by Unit Owners other than Declarant. Not later than 60 days after conveyance of 50 percent of the Units that may be created to Unit

Owners other than Declarant, not less than one-third of the members of the Executive Board shall be elected by Unit Owners other than Declarant.

ARTICLE VI  
INITIAL REGISTERED OFFICE AND AGENT

The address of the initial registered office of the Association is 603 Columbia Court, Glenwood Springs, Colorado, 81601. The name of its initial registered agent at such address is S. Cameron Calder.

ARTICLE VII  
EXECUTIVE BOARD

The initial Executive Board shall consist of two (2) persons. The number of Directors may be changed by a duly adopted amendment to the Bylaws, except that in no event may the number of Directors be less than two (2). The names and addresses of the persons who shall serve as Directors until their successors shall be elected and qualified are as follows:

<u>Name</u>	<u>Address</u>
S. Cameron Calder	603 Columbia Court Glenwood Springs, CO 81601
Sheila Calder	603 Columbia Court Glenwood Springs, CO 81601

ARTICLE VIII  
LIMITATION OF LIABILITY

8.1. The Association shall indemnify its directors to the fullest extent permitted by Colorado law as the same now exists or may hereafter be amended.

8.2. The personal liability of a director to the Association or its shareholders for monetary damages for breach of fiduciary duty as a director is limited to the fullest extent permitted by Colorado law as the same now exists or may hereafter be amended.

ARTICLE IX  
INCORPORATOR

The incorporator of this Association is S. Cameron Calder, whose address is 603 Columbia Court, Glenwood Springs, Colorado, 81601.

ARTICLE X  
AMENDMENT

Amendment of these Articles shall require the assent of at least two-thirds of the members of the Association as provided in the Colorado Nonprofit Corporation Act.

**ARTICLE XI**  
**DISSOLUTION**

In the event of the dissolution of the Association, the assets of the Association shall be distributed to all Unit Owners and all lienholders as their interests may appear and in accordance with the Colorado Common Interest Ownership Act, C.R.S. 38-33-101, as the same may be amended from time to time.

IN WITNESS WHEREOF, the undersigned incorporator has signed these Articles of Incorporation on this 27 day of OCT., 1994.

  
\_\_\_\_\_  
S. Cameron Calder, Incorporator