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**FIRST AMENDED AND RESTATED BY-LAWS
OF
THE ORCHARD TOWNHOMES ASSOCIATION**

INTRODUCTION

These First Amended and Restated Bylaws of **The Orchard Townhomes Association**, (the "Association") are adopted for the regulation and management of the Association in conformance with the Colorado Revised Nonprofit Corporation Act, C.R.S. 7-121-101, et seq., as amended from time to time (the "Nonprofit Corporation Act") and the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101, et seq., as amended from time to time (the "Act"). The Association is referenced in the Declaration of Covenants, Conditions, Restrictions and Easements (the "Declaration") for the Orchard Townhomes Association, located in Glenwood Springs, Colorado, which Declaration has been recorded in the Office of the Clerk and Recorder of Garfield County, Colorado. The Association is to operate the Common Interest Community for same, in accordance with the requirements for an association of Unit Owners charged with the administration of property under the Act. Each capitalized term not otherwise defined in these Articles shall have the meaning specified or used in the Act or as defined in the Declaration.

**ARTICLE I
UNIT OWNERS/MEMBERS**

1.1 **Unit Owners/Members.** Every Unit Owner while such person is a Unit Owner, shall be a Member of the Association. 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.

1.2 **Annual Meeting.** Annual meetings of Members shall be held in November or December of each year on such date and time as set forth in the notice. At the annual meetings, the Directors of the Executive Board shall be elected by ballot of the Members, in accordance with the provisions of Article II of these Bylaws. The Members also shall set a time (within 10 days of each such annual meeting) and place for the first regular meeting of the Executive Board. The Members may transact other business as may properly come before them at these annual meetings.

1.3 **Special Meetings.** Special meetings of the Association may be called by the president, by a majority of the Directors of the Executive Board or by Members comprising 20 percent of the votes in the Association.

1.4 **Place of Meetings.** Meetings of the Members shall be held at the Property or at a suitable place convenient to the Members, as may be designated by the Executive Board.

1.5 **Notice of Meetings.** 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 the mailing address designated in writing by the Member, not less than ten (10)

(b) Votes allocated to a Unit may be cast under a proxy duly executed by a Member, provided that any proxy shall be filed with the Secretary of the Association at least 24 hours prior to the time of any meeting. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other owners of the Unit through a duly executed proxy. A Member 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 board of directors or bylaws of the owning corporation or business trust. The vote of a partnership may be cast by any general partner of such entity in the absence of express notice of the designation of a specific person by the owning partnership. The vote of a limited liability company may be cast by any manager of such entity in the absence of express notice of the designation of a specific person by the owning 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 owner is qualified to vote.

1.10 **Quorum.** Members present in person or by proxy at any meeting of Members but no less than 20 percent of the Members, shall constitute a quorum at that meeting. 8.4

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

ARTICLE II EXECUTIVE BOARD

2.1 **Number and Qualification.** The affairs of the Common Interest Community and the Association shall be governed by an Executive Board which shall consist of up to five (5) persons to be known as "Directors", who shall be Unit Owners. The number of Directors who shall be elected to serve shall be established at the annual meeting of the Members. If any Unit is owned by a partnership or corporation, any officer, partner or employee of that 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 the Unit Owners. Directors shall serve until their successors are duly elected and qualified.

2.2 **Powers and Duties.** The Executive Board may act in all instances on behalf of the Association, except as provided in the Declaration, the Articles of Incorporation of the Association (the "Articles"), these Bylaws or the Act. The Executive Board shall have, subject to the limitations contained in the Declaration, the Articles and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community, which shall include the powers and duties set forth in the Declaration.

2.3 Election and Term of Office. At annual meetings of the Members of the Association to be held as herein provided, the terms of office of the Directors may be fixed for such period of time as the Members entitled to vote may determine, and such terms may be staggered, that is to say, various Directors may be elected for terms of different lengths so that there will be a carryover of old Directors at each annual meeting, and only new Directors will be designated thereafter, provided that nothing herein contained shall prevent the election of a Director whose term has expired to a new term as such Director. At any meeting at which Directors are to be elected, the Members may, by resolution, adopt specific procedures which are not inconsistent with these Bylaws or the Corporation Laws of the State of Colorado for conducting the elections.

2.4 Vacancies. Vacancies in the Executive Board, caused by any reason other than the removal of a Director by a vote of the Members, 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. Vacancies shall be filled by a majority of the remaining elected Directors constituting the Executive Board. Each person so elected or appointed shall be a Director for the remainder of the term of the Director so replaced. The term of office of any Director shall be declared vacant when such Director ceases to be a Member of the Association by reason of the transfer of such Director's ownership of a Unit.

2.5 Resignation of Director. Any Director may resign at any time. Any Director who lists his Unit for sale shall be deemed to have resigned as a Director effective as of the time of such listing.

2.6 Removal of Directors. Members, by a two-thirds vote of all persons present and entitled to vote, at any meeting of the Members at which a quorum is present, may remove any Director of the Executive Board, with or without cause.

2.7 Regular Meetings. The first regular meeting of the Executive Board following each annual meeting of the Members shall be held within 10 days after the annual meeting at a time and place to be set by the Members at the meeting at which the Executive Board shall have been elected. No notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, provided a majority of the Directors are present. The Executive Board may set a schedule of additional regular meetings by resolution, and no further notice is necessary to constitute regular meetings.

2.8 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.

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

2.10 **Waiver of Notice.** Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to giving of such notice. 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.

2.11 **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.

2.12 **Compensation.** A Director shall not receive a fee from the Association for acting as a Director, as may be set by resolution of the Members, but may receive reimbursement for necessary expenses actually incurred in connection with the Director's duties. Directors acting as officers shall not be compensated for those duties.

2.13 **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 these consents with the minutes of the meetings of the Executive Board.

2.14 **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 Directors and may hear the deliberations of the other Directors on any matter properly brought before the Executive Board. The Director's vote shall be counted and the presence noted as if that Director were present in person on that particular matter.

2.15 **Manager or Managing Agent.** The Executive Board may engage the services of a manager or managing agent for the purpose of administering and carrying out the purposes and intent of the Declaration; provided, however, the manager or managing agent shall not have authority to levy assessments or to take action which affects the title of a Member in and to such owner's Unit, or his interest in the common elements, which rights shall be reserved to the Board of Directors, subject to the vote of the Members of the Association as provided in the Articles or these By-Laws, the Declaration or the Act.

2.16 **Indemnification.** The Directors of the Executive Board shall not be liable to the Members of the Association or to any other person for any mistake of judgment, negligence, or otherwise, except in the event of wanton and willful acts or omissions. The Association shall indemnify and hold harmless each of the Directors of the Executive Board against all contractual

liabilities of others arising out of contracts made by the Executive Board on behalf of the Association and its Members, and in connection with any act performed pursuant to the Declaration, unless such Director or Directors are adjudged guilty of wanton and willful acts or omissions in the performance of their duties as Directors. Without limiting the foregoing, the Directors of the Executive Board of the Association shall have the liabilities, and be entitled to indemnification, as provided in Colorado's nonprofit corporation laws.

ARTICLE III OFFICERS

3.1 **Designation.** The principal officers of the Association shall be the president, the 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 and vice president, but no other officers, need to 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.

3.2 **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. They shall hold office at the pleasure of the Executive Board.

3.3 **Removal of Officers.** Upon the affirmative vote of a majority of the Directors, any officer may be removed, either 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.

3.4 **President.** The president shall be the chief executive officer of the Association. The president shall preside at all meetings of the Members 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 non-stock corporation organized under the laws of the State of Colorado, including but not limited to the power to appoint committees from among the Members 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, certify, and record amendments, attested by the secretary, to the Declaration and these Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

3.5 **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 required by the Executive Board or by the president.

3.6 **Secretary.** The secretary shall keep the minutes of all meetings of the Members 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 non-stock corporation organized under the laws of the State of Colorado. The secretary may attest to the 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.

3.7 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 non-stock 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 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 determines. 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.

3.8 Agreements, Contracts, Deeds, Checks and Other Instruments. Except as otherwise provided in these Bylaws, all agreements, contracts, deeds, leases, checks and other instruments of the Association may be executed by any officer of the Association or by any other person or persons designated by the Executive Board.

3.9 Compensation. An officer may receive a fee from the Association, in an amount set by resolution of the Members, for acting as an officer. An officer may also receive reimbursement for necessary expenses actually incurred in connection with Association duties.

3.10 Indemnification. Officers of the Association shall be indemnified for any act they may perform upon behalf of the Association in the same manner herein provided for indemnification of the Board of Directors. Without limiting the forgoing, the officers of the Association shall have the liabilities, and be entitled to indemnification, as provided in Colorado's nonprofit corporation laws.

3.11 Statements of Unpaid Assessments. The treasurer, assistant treasurer, a manager employed by the Association or, in their absence, any officer having access to the books and records of the Association may prepare, certify, and execute statements of unpaid assessments, in accordance with Section 38-33.3-316 of the Act. The Association may charge a reasonable fee for preparing statements of unpaid assessments. The amount of this fee and the time of payment shall be established by resolution of the Executive Board. The Association may refuse to furnish

statements of unpaid assessments until the fee is paid. Any unpaid fees may be assessed as a Common Expense against the Unit for which the statement is furnished.

ARTICLE IV ENFORCEMENT

4.1 **Abatement and Enjoinment of Violations by Members.** The violation of any of the Rules and Regulations adopted by the Executive Board or the breach of any provision of the Declaration 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) To enter the Unit or Limited Common Element in which, or as to which, the violation or breach exists and to summarily abate and remove, at the expense of the defaulting Member, 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. The Executive Board shall not be deemed liable for trespass by this action; or

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

4.2 **Fine for Violation.** By resolution, following notice and hearing, the Executive Board may levy a fine of up to \$25 per day for each day that a violation of the Declaration or Rules and Regulations persists after notice and hearing.

4.3 **Fine for Nonpayment of Assessments.** The late fee which shall be chargeable for nonpayment of assessments when due shall be \$25.00 per month.

4.4 **Insurance Coverage for Property Damage.** Each Unit Owner shall maintain an insurance policy with a minimum limit of \$300,000 for "property damage" and shall provide evidence of this as well as all other insurance coverages required by the Declaration. Without limiting the foregoing, any Unit Owner renting a Unit: (a) shall provide a Tenant's insurance policy to the Association naming the Association as the holder of an additional interest in the property, (b) shall be responsible for such Unit Owner's tenants and (c) shall be liable to the Association for any property damage which arises out of an event occurring in such Unit or from the actions or inactions of the Unit Owner or the Unit Owner's family and every guest, invitee, tenant, employee, contractor, agent, licensee and invitee of a Unit Owner which occurs anywhere on the Orchard Townhomes.

4.5 **Design Review.** As stated in the Declaration, 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. In the event of any requested addition or alteration, the applicant shall 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 Executive Board 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. The Executive Board may adopt and apply Design Guidelines for any proposed change to the exterior of any Unit, which Design Guidelines shall establish criteria, including, without limitation, for design, scale and color, in the interest of preserving the aesthetic standards of **The Orchard Townhomes**. The Design Guidelines may be modified or amended from time to time by the Executive Board. Further, the Executive Board, in its sole discretion, may excuse compliance with the Design Guidelines that are not necessary or appropriate in specific situations. Compliance with the Association's Design Review process shall not be a substitute for compliance with applicable governmental building, zoning and subdivision regulations.

4.6 Design Review Procedure. The Executive Board shall review, study and either approve or reject proposed changes in Improvements in The Orchard Townhomes, in compliance with the Design Guidelines. Each application for design review shall include such plans and specifications and other information as may reasonably be required by the Executive Board. In any Design Review, the Executive Board shall exercise its best judgment to see that all Improvements conform and harmonize with any existing structures as to external design, quality and type of construction, materials, color, location of Improvements, height, grade and finished ground elevation and all aesthetic considerations set forth in the Declaration and in the Design Guidelines. The Executive Board's exercise of discretion in approval or disapproval of plans or with respect to any other matter before it, shall be conclusive and binding on all parties. The President or other executive officer of the Association shall preside over all meetings for Design Review and shall provide for reasonable notice to each member of the Association before any such meeting. The notice shall set forth the time and place of the meeting, and notice may be waived by any member. The Executive Board may avail itself of technical and professional advice as it deems appropriate. The Executive Board shall make reasonable rules as it may deem appropriate to govern its such proceedings.

4.7 Design Review Expenses. The Executive Board shall have the right to recover the reasonable costs and expenses of any technical and professional advice required to properly consider the application from Applicant.

4.8 Limitation of Liability. The Executive Board shall use reasonable judgment in accepting or rejecting plans and specifications submitted to it for Design Review. Neither the Executive Board, Declarant, nor any officer, Executive Board member or individual Executive Board member shall be liable to any person for any act of the Executive Board concerning submitted plans and specifications, except for wanton and willful acts. Approval by the Executive Board does not necessarily assure approval by any governmental authority having jurisdiction. Notwithstanding Executive Board approval of plans and specification, neither the Executive Board nor any of its members shall be responsible or liable to any Lot Owner, developer or contractor with respect to any loss, liability, claim or expenses which may arise because of approval of the

construction of the Improvements. Neither the Executive Board, the Association, nor Declarant, nor any of their employees, agents or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Declaration, nor for any structural or other defects in any work done according to such plans and specifications.

ARTICLE V RECORDS

5.1 **Records.** The Association shall keep the following records to the extent they are applicable:

- (a) An account for each Unit, which shall designate the name and address of each Member, the name and address of each mortgagee who has given notice to the Association that it holds a mortgage on the Unit, the amount of each Common Expense assessment, the dates on which each assessment comes due, the amounts paid on the account and the balance due;
- (b) An account for each Member showing any other fees payable by the Member;
- (c) A record of any capital expenditures in excess of \$1,000 approved by the Executive Board for the current and next two succeeding fiscal years;
- (d) A record of the amount and an accurate account of the current balance of any reserves for capital expenditures, replacement and emergency repairs, together with the amount of those portions of reserves designated by the Association for a specific project;
- (e) The most recent regularly prepared balance sheet and income and expense statement of the Association;
- (f) The current operating budget;
- (g) A record of the actual cost, irrespective of discounts and allowances, of the maintenance of the Common Elements;
- (h) All insurance policies then in force, in which the Unit Owners, the Association, or its Directors or officers are named as insured persons;
- (i) The original or a certified copy of the recorded Declaration, as amended, the Association's Articles of Incorporation, Bylaws, Minute Books, other books and records and any Rules and Regulations which may have been promulgated;
- (j) An inventory list of the Association's tangible personal property;
- (k) Copies of any plans and specifications used in the construction of the improvements in the common elements in the common interest community;
- (l) Employment contracts in which the Association is a contracting party;
- (m) Any service contract in which the Association is a contracting party or in which the Association or the Unit Owners have any obligation to pay a fee to the persons performing the services;
- (n) A record of any alterations or improvements to Units or Limited Common Elements which violate any provisions of the Declaration of which the Executive Board has actual knowledge;
- (o) A record of any violations, with respect to any portion of the Common Interest Community, of health, safety, fire or building codes or laws, ordinances, or regulations of which the Executive Board has actual knowledge; and

(p) A record of any unsatisfied judgments against the Association and the existence of any pending suits in which the Association is a defendant.

5.2 **Records Availability.** All records maintained by the Association or a manager employed by the Association shall be available for examination and copying by any Member, any holder of a Security Interest in a Unit or its insurer or guarantor, or by any of their duly authorized agents or attorneys, at the expense of the person examining the records, during normal business hours and after reasonable notice.

ARTICLE VI GENERAL

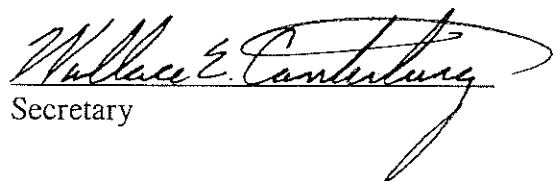
6.1 **Notices.** All notices for the Association or the Executive Board shall be delivered to the office of the Association, or to such other address as the Executive Board may designate by written notice to all Members and to all holders of Security Interests in the Units who have notified the Association that they hold a Security Interest in a Unit. Except as otherwise provided, all notices to any Member shall be sent to the Member's address as it appears in the records of the Association. All notices to holders of Security Interests in the Units shall be sent by registered or certified mail to their respective addresses, as designated by them in writing to the Association. All notices shall be deemed to have been given when mailed, except notices of changes of address, which shall be deemed to have been given when received.

6.2 **Waiver.** No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

6.3 **Amendment.** These Bylaws may be amended only by the assent of at least 67 percent of the Members. No amendment of these Bylaws shall be adopted which would affect or impair the validity or priority of any security interest encumbering any Unit or which would otherwise change the provisions of the Bylaws with respect to such security interests of record.

ATTEST:

Certified to be the FIRST AMENDED AND RESTATED BY-LAWS OF THE ORCHARD TOWNHOMES ASSOCIATION adopted by the Members of THE ORCHARD TOWNHOMES ASSOCIATION, dated December 1, 1999.


Secretary