

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ORCHARD VALLEY SUBDIVISION

THIS DECLARATION is made on the date hereinafter set forth by WIMAN/JOYNER DEVELOPMENT CO., a Colorado partnership, hereinafter referred to as the "Declarant."

RECITALS:

A. Declarant is the owner of certain real property located solely in the County of Mesa, State of Colorado, known as Orchard Valley Subdivision, Filing No. 3, a planned community, which is more particularly described on Exhibit C attached hereto and made a part hereof.

B. Declarant desires to create a planned community upon the real property described on Exhibit C attached hereto, and to subject and place upon the property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein pursuant to the provisions of the Colorado Common Interest Ownership Act, for the purpose of protecting the value and desirability of said property and for the purpose of furthering a plan for the improvement, sale and ownership of said property.

NOW, THEREFORE, Declarant hereby declares that the property shall be held, sold and conveyed subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, charges and other provisions set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which run with, the above described property and be binding upon all parties having any right, title or interest in the above described property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Orchard Valley Homeowners Association, Inc., its successors and assigns, identified in that certain Declaration of Covenants, Conditions and Restrictions recorded in Book 1401 at Page 299 of the Mesa County Clerk and Recorder's records.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Property" shall mean and refer to the real property described in the recital above, and with such additions thereto as may be annexed thereto and brought within the jurisdiction of the Association.

Section 4. "Lot" shall mean and refer to the specific plots of land shown upon the plat or map of the Property to be recorded in the Mesa County Clerk and Recorder's office.

Section 5. "Declarant" shall mean and refer to WIMAN/JOYNER DEVELOPMENT CO., a Colorado partnership, and any successor or assignee, or transferee of the rights of Declarant reserved hereunder.

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 7. "Architectural Control Committee" shall mean the committee appointed by the Board of Directors of the Association.

Section 8. "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, duly elected pursuant to the Bylaws of the Association or appointed by Declarant as therein provided.

Section 9. "Common Expenses" shall mean each Owner's pro rata share of the Association's operating expenses, including, but not limited to, maintenance and repairs to the irrigation system and Common Area, management costs, salaries and employment taxes, reserves, capital improvements, assessments and all other charges which the Association may levy upon the Owners in accordance with the Declaration and the Articles and Bylaws.

Section 10. "Article" or "Bylaws" shall respectively mean the Articles of Incorporation for the Association filed with the Colorado Secretary of State and the Bylaws adopted by the Association, as amended from time to time.

Section 11. "Common Area" shall mean all property owned by the Association for the common use and enjoyment of Members, including the irrigation pond and easements, together with all pumps, pipelines and other distribution facilities for irrigation water and private park.

Section 12. "Dwelling Unit" shall mean a residence and improvements constructed within the Lots. The maximum number of Dwelling Units shall be 58.

ARTICLE II
PROPERTY RIGHTS

Section 1. Owners' Right of Enjoyment. Every Owner shall have a right to the beneficial enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to own, operate, repair, manage, maintain and administer (including the right to promulgate and publish rules and regulations which each Member shall strictly comply with) the Common Area and to charge reasonable fees for the use thereof;

(b) the right of the Association to suspend, according to its Articles and Bylaws, the voting rights of any Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and

(c) the right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements thereto.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment of the Common Area to the members of his family, his tenants, or contract purchasers who reside in the Dwelling Units.

ARTICLE III
RESTRICTIONS ON USE

Section 1. No Dwelling Unit shall be erected, altered, placed or permitted on any Lot within the Property except for use as a family residence and a private garage of a size not larger than required to house three (3) automobiles.

Section 2. Only new construction shall be permitted within the Property and no structures for occupancy as residences shall be moved upon Lots within the Property. No structure shall be built which does not meet or exceed requirements of the Uniform Building Code then in effect at the time of construction.

Section 3. No temporary building or structure of any type or kind shall be used at any time for a residence, either temporary or permanent. No mobile homes, trailer homes or other movable structures shall be permitted as dwellings within the Property. The Declarant reserves the right and privilege, during construction, sales of lots and dwellings, to place a temporary and movable trailer on Lot of his choice in Filing No. 3. Said Temporary structure or trailer will be removed no later than final sale of lots or dwellings in Filing No. 3.

Section 4. Landscaping shall be of a type complimentary to the residential character of the Property and be acceptable to the Architectural Control Committee. Desert or "native plant" landscaping shall be acceptable. Each Owner shall keep all shrubs, trees, grass and plantings of every kind on his Lot, and all planted areas between his Lot and adjacent streets, if any, neatly trimmed, properly cultivated and free of trash, weeds and other unsightly materials.

Section 5. No noxious or offensive trade or activity shall be carried on within any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No Lot may be used for commercial purposes except for home occupations. "Home Occupations" as used herein means an occupation by the resident conducted totally within the principal building which does not entail the delivery of goods and services to customers upon the premises. For example, an insurance agent may use his residence as a personal office so long as customers are not permitted to come to the residence; but the establishment of a barber shop or a beauty shop is prohibited. Fruit stands, machinery repair, and all other occupations requiring external buildings are specifically prohibited.

Section 6. No Lot shall be used as a dumping ground for rubbish. All garbage, rubbish and trash shall be placed and kept in covered containers and shall not be allowed to accumulate on any Lot. In no event shall any container be maintained where visible from neighboring property except to make the same available for collection and then only for a period not to exceed twenty-four (24) hours.

Section 7. No animals other than a reasonable number of household pets, but not more than two (2) dogs, shall be maintained on any Lot, and then only if they are kept, bred or raised thereon solely as household pets for private use and not for commercial purposes. No such animal may be kept which is a nuisance or annoyance to other Owners in the neighborhood. Ordinary house pets shall be contained on the Owner's property or on a leash. At the request of any Owner, the Board of Directors shall determine whether a particular animal shall be considered a house or yard pet, a nuisance, or whether the number of any of such animals on any Lot is reasonable.

Section 8. All buildings and structures shall observe setback requirements of the applicable zone.

Section 9. The total living area of any principal building for a single-level structure shall not be less than one-thousand two-hundred fifty (1,250) square feet, and for a multilevel structure shall not be less than one-thousand six-hundred (1,600) square feet, exclusive of open porches and garages. In addition to the principal building, the building shall have an enclosed two-car garage.

Section 10. All structures shall be constructed so as to provide sufficient off-street parking to accommodate not less than four (4) automobiles, inclusive of garage and driveway. Driveways shall be composed of asphalt, concrete or other hard surface, dirt driveways being expressly prohibited. Driveways shall extend to and connect with the street. Storing automobiles, trucks, campers, boats, snowmobiles, motorcycles, motorbikes, or any vehicle of any other description in the street, driveway, yards of residences or in the front of the principal building's front yard setback line is specifically prohibited. Such vehicles may be stored behind the front yard setback lines within the boundaries of such Lot provided such vehicles do not bar access to adjoining Owners for roof eaves, water drainage and building maintenance. Screening approved by the Architectural Control Committee shall be installed to shield the stored vehicles from public view.

Section 11. No signs of any kind shall be displayed in public view on any Lot except one sign of not more than six (6) square feet advertising such Lot for sale, resale or lease.

Section 12. Any fencing shall be a maximum height of six (6) feet and shall be approved in writing by the Architectural Control Committee prior to erection. All perimeter Lot fencing shall be of chain link, wood, brick or stone material. Cinder-block material shall be expressly prohibited. No solid fencing shall be allowed within twenty-five (25) feet of the front yard property line. Fencing closer than twenty-five (25) feet from the front Lot line shall not exceed three (3) feet in height and be of a construction acceptable to the Architectural Control Committee.

Section 13. If the parties hereto, or any of them, or their heirs, grantees or assigns, shall violate or attempt to violate any of the covenants herein or provisions hereof, it shall be lawful for any other person or persons owning real property situated within the Property to prosecute in any proceedings at law or in equity the person or persons violating or attempting to violate any such covenants or provisions hereof and either to prevent him or them from such violations or to recover damages from such violations, or both such remedies may be pursued.

ARTICLE IV ASSESSMENTS

Section 1. Assessments. Each Owner of a dwelling unit, by acceptance of a deed, agrees to pay to the Association (1) assessments or charges, and (2) special assessments to be fixed, established and collected from time to time as herein provided. Such assessments, together with interest and costs of collection in the event of delinquency in payment as allowed herein, also shall be the personal obligation of the person who was the Owner, or of the persons jointly and severally who were the Owners, at the time when the assessment was made. Payment of assessments made shall be paid by the Owners to the Association as of the date of closing the original purchase of an Owner's dwelling and prorated if upon a date other than the due date of an assessment, and thereafter in monthly or other periodic installments as determined by the Board of Directors commencing on the first day of each month or period following the closing.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the management and maintenance of the Common Area; exterior maintenance; landscaping, fencing, pedestrian and irrigation easements as shown on the plat of the Property to be recorded with the Mesa County Clerk and Recorder's official records; and, for the performance of all other duties and obligations incurred by the Association pursuant to this Declaration and the Articles and Bylaws, including, but not limited

to: the maintenance, repair and replacement of Common Area, landscaping, fencing, and pedestrian easements and structures pertaining thereto; and, such expenses as the Association, in its opinion, shall determine to be necessary and desirable, including the establishment and maintenance of a cash reserve for all of the foregoing purposes. In the event repairs are required resulting from negligent acts of an Owner, the Owner's family, guests, employees, invitees or lessees, the Association shall be reimbursed forthwith by such Owner therefore.

Section 3. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement to the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members of the Association subject to such assessment who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4. Notice and Quorum for Capital Improvements Special Assessments. Written notice of any meeting called for the purpose of making special assessments for capital improvements provided in the immediately preceding section shall be sent to all Members not less than ten (10) nor more than fifty (50) days in advance of such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of the membership subject to the assessment shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5. Uniform Rate of Assessment. Annual, special and exterior maintenance assessments shall be levied at a uniform rate against the membership subject to such assessments on the basis of a fractional share per Dwelling Unit with one (1) being the numerator and the total number of Lots subject to the jurisdiction of the Association being the denominator.

Section 6. The Lien Remedies of the Association. If the assessments are not paid on the date when due, then such assessments shall become delinquent and shall, together with such interest thereon and costs of collection thereof, including reasonable attorneys' fees, as herein provided, thereupon become a continuing lien on the property in accordance with section 38-33.3-316, C.R.S., and which shall bind the property in the hands of the then Owner and his heirs, successors, and assigns. The personal obligation of the then Owner to pay such assessment shall remain his personal obligation and lien on his dwelling unit for the statutory period.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall have the priority set forth in section 38-33.3-316. C.R.S.

Section 8. Exempt Property. All properties to the extent of any easement or other interest therein dedicated and accepted by a local public authority and devoted to public use shall be exempt from the assessments, charges and liens created herein.

ARTICLE V
ARCHITECTURAL CONTROL COMMITTEE

Section 1. No structure, whether residence, accessory building, fences, walls, exterior lighting or other improvements shall be erected, altered or maintained within the Property until the plans and specifications showing the nature of such improvements shall have been submitted to and approved by the Architectural Control Committee as established by the Bylaws of the Association as to the quality of workmanship and materials, harmony of exterior design with existing structures, and the location with respect to topography and finish grade elevation. To seek approval, the plans and specifications must be submitted in writing or drawn form to the chairman of the Architectural Control Committee.

Section 2. Careful attention shall be given to aesthetic and functional consideration of any design submitted in order to enhance the entire Property. The Architectural Control Committee will consider the following:

- (a) The overall nature and character of the site and appearance of the structure, including orientation with regard to sun, wind, view and privacy and the consistent quality use of exterior materials;
- (b) The grading of building sites to allow natural drainage;
- (c) The use of earthen tone colors and discouragement or prohibition of bright colors, especially when a Lot Owner seeks to change or alter the existing color of the structure;
- (d) The installation of patio structures designed such that they will blend and complement the appurtenant structure; and
- (e) The use of landscaping, plantings and lawn complementary to the residential character of the neighborhood, desert-style landscaping being acceptable.

Section 3. Copies of plans and specifications shall be submitted to the Architectural Control Committee for review and final written approval before construction may be undertaken. Plans and specifications shall contain a plot plan showing Lot layout, including setbacks, flow and manner of surface drainage, finish and natural grade elevations, floor plans showing overall dimensions, roof plans showing pitch, roof materials, color, exterior elevations showing doors, windows and exterior materials and color, a perspective sketch if requested, and any other details necessary to explain exterior design features or components.

Section 4. The Architectural Control Committee shall approve or disapprove in writing all plans and requests within three (3) days after submission. In the event the Architectural Control Committee fails to take any action within three (3) days after requests have been submitted, approval will not be required, and this Article will be deemed to have been fully complied with.

Section 5. A majority vote of the Architectural Control Committee is required for approval or disapproval of proposed improvements.

Section 6. The Architectural Control Committee shall maintain written records of all applications submitted to it and of all actions it may have taken.

Section 7. The Architectural Control Committee shall not be liable in damage to any person submitting requests for approval or to any Owner within the Property by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such request.

ARTICLE VI
THE ASSOCIATION

Section 1. Membership. Every Owner of a Dwelling Unit or Lot within the Property shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Dwelling Unit.

Section 2. Voting Rights. Each Dwelling Unit or Lot Owner shall represent one (1) vote in the Association to be cast according to the decision of the Owner(s) of the Dwelling Unit or Lot.

Section 3. Indemnification of Officers and Directors. Neither the Association, any member of the Board, any officer of the Association, nor any agent or employee of the Association shall be liable to any Owner or other person or entity for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without willful or intentional misconduct. The Association shall indemnify and hold harmless any member of the Board, any officer of the Association, or any agent or employee of the Association from any and all reasonable costs, damages, charges, liabilities, obligations, fines, penalties, claims, demands, or judgments and any and all expenses, including, without limitation, attorneys' fees, incurred in the defense or settlement of any action arising out of or claimed on account of any act, omission, error or negligence of such person or of the Association, the Board, or any committee of the Association, provided that such person has acted in good faith and without willful or intentional misconduct.

Section 4. Limitation Upon Liability of the Association. Notwithstanding the duty of the Association to maintain and repair parts of the Property, the Association shall not be liable for any injury or damage, other than the normal costs of the maintenance and repair, caused by any latent condition of the Property or by the conduct of other Owners or persons or by casualties for which insurance pursuant to this Declaration is not required, or for which insurance is not provided by the Association.

ARTICLE VII
ASSOCIATION WATER AND DEVELOPMENT RIGHTS

Section 1. Description of Water Rights. The Association owns seventy-five (75) shares of water in the Grand Valley Irrigation Company. Such water rights shall be titled in the name of the Association, but held, managed and distributed for the exclusive use and benefit of the Members of the Association for domestic lawn, landscaping and related irrigation purposes.

Section 2. Irrigation Facilities. The irrigation system for the Property, including any annexed Property, shall consist generally of a storage pond together with a system of pumps and pipelines situated within easements designated on the recorded plat of the Property so as to deliver and distribute the irrigation water of the Association under pressure to each Lot.

Section 3. Obligations of the Association. By executing this Declaration, and in consideration of the dedication of the private park as Common Area by Declarant, the Association agrees to accept the Property as part of the property subject to the Association's jurisdiction and to hold and manage the water rights and operate, maintain and repair the irrigation facilities for the distribution of irrigation water to each Lot of the Property described on Exhibit A in addition to the Lots described in the Declaration recorded in Book 1401 at Page 299 of the Mesa County Clerk and Recorder's records; the expense thereof to be borne as a Common Expense by all Members prorated in the form of an assessment levied in the method and manner as provided in Article IV hereof.

The Association shall have full power and authority to promulgate rules and regulations controlling the time, manner, rotation and allocation of water for use by the Lot Owners. The Association shall be specifically authorized to contract with third parties for the purpose of sharing the costs and expenses of operating, maintaining and repairing the irrigation facilities, or permitting the utilization of the same for other beneficial purposes, as the Association shall deem appropriate. The obligation of operation, maintenance and repair hereunder shall extend up to, but not beyond, the irrigation line tap provided to each Lot, it being specifically intended that each Lot Owner shall bear the costs and expenses of operation, maintenance and repair of his own Lot sprinkling or watering facility.

Section 4. Development Rights. For a period of twenty (20) years from the recording of this Declaration, Declarant reserves the right to annex the real property described on Exhibit C attached hereto and incorporated herein to the Property and subject the same to the jurisdiction of the Association and the provisions of this Declaration or modifications and alterations as necessary or required by Declarant for future filings. In the event of annexation, the assessments levied by the Association shall be in the same manner and according to the same formula provided in Article IV of this Declaration.

ARTICLE VIII
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provision which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. So long as Declarant owns seventy-five percent (75%) of the Lots within the Property, Declarant shall have the right to amend this Declaration. At such time as Declarant owns less than seventy-five percent (75%) of the Lots within the Property, this Declaration may be amended by an instrument signed by not less than sixty-six and two-thirds (66-2/3) of the Lot Owners.

Section 4. Public Service Company Tariffs. All Lots are subject to and bound by Public Service Company tariffs which are now and may in the future be filed with the Public Utilities Commission of the State of Colorado relating to street lighting situate within the Property, together with rates, rules and regulations therein provided and subject to all future amendments and changes thereto. The Owner or Owners shall pay as billed the portion of the cost of public street lighting in the Property according to Public Service Company rates, rules and regulations, including future amendments and changes on file with the Public Utilities Commission of the State of Colorado.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunder set its hand this 5 day of October, 1995.

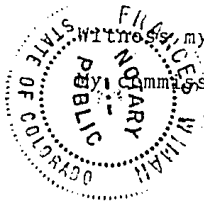
WIMAN/JOYNER DEVELOPMENT CO.
a Colorado partnership

By Chuck Wiman
CHUCK WIMAN
a general partner

By Tom Joyner
TOM JOYNER
a general partner

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 5 day of October, 1995, by CHUCK WIMAN & TOM JOYNER, general partners of WIMAN/JOYNER DEVELOPMENT CO., a Colorado partnership.



Witness my hand and official seal.

My Commission expires: _____

My Commission expires
August 18, 1999

Notary Public

Frances Wiman

ACKNOWLEDGED AND ACCEPTED:

ORCHARD VALLEY
HOMEOWNERS ASSOCIATION, INC.,
a Colorado nonprofit corporation

By Karman Flohr
Title PRES.

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 5 day of October, 1995, by Karman Flohr, as President of Orchard Valley Homeowners Association, Inc., A Colorado nonprofit corporation.

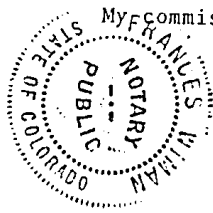
Witness my hand and official seal.

My Commission expires: _____

My Commission expires
August 18, 1999

Notary Public

Frances Wiman



LEGAL DESCRIPTION OF FILING NO. TWO,
ORCHARD VALLEY SUBDIVISION

A tract of land located in the NE¼ of the SW¼, Section 8, Township 1 North, Range 2 West, Ute Meridian, County of Mesa, State of Colorado, more fully described as follows:

Beginning at the southwest corner of Filing No. 2, Orchard Valley Subdivision, which is a point on the easterly right-of-way line of Mesa Street, also being on the southern line of NE¼, SW¼ of said Section 8, whence the SW 1/16 corner of said Section 8 bears S 89° 55' 09" W, 40.00 feet;

1. Thence N 00° 01' 01" W, 275.00 feet;
2. Thence N 89° 55' 09" E, 135.00 feet;
3. Thence S 00° 04' 51" E, 15.00 feet;
4. Thence N 89° 55' 09" E, 390.00 feet;
5. Thence N 05° 09' 29" E, 81.08 feet;
6. Thence N 37° 59' 05" E, 208.93 feet;
7. Thence N 52° 00' 55" W, 15.00 feet;
8. Thence N 37° 59' 05" E, 137.50 feet;
9. Thence S 52° 00' 55" E, 151.05 feet;
10. Thence N 82° 28' 47" E, 43.04 feet;
11. Thence S 43° 03' 23" E, 109.47 feet;
12. Thence S 00° 00' 26" E, 295.10 feet;
13. Thence N 89° 55' 09" E, 3.79 feet;
14. Thence S 00° 04' 51" E, 160.00 feet;
15. Thence S 89° 55' 09" W, 974.14 feet to the point of beginning.

The tract of land as described above contains 8.405 acres more or less.



RECORDER NOTE: POOR QUALITY DOCUMENT
PROVIDED FOR REPRODUCTION

NW $\frac{1}{4}$ SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 8, Township 1 North, Range 1 West,
Ute Meridian, Mesa County, Colorado.



EXHIBIT "C"

BOOK 2200 PAGE 67

A tract of land located in the NE 1/4 SW 1/4 of Section 8, Township 1 North, Range 2 West of the Ute Meridian more particularly described as follows:

Beginning at a point, which is situated on the assumed future right-of-way for 17 1/2 Road and also being the Northeast corner of future Orchard Valley Filing Three, in which the C 1/4 Corner of said Section 8 bears North 89°56'21" East 33.00 feet,
thence South 00°00'26" East 1,319.67 feet to the Southeast corner of future Filing Three, thence South 89°55'09" West 273.00 feet along the southern boundary of future Filing Three, thence along the common boundary with Filings Two and future Filing Three for the following 6 courses:

thence North 00°04'51" West 160.00 feet,
thence South 89°55'09" West 3.79 feet,
thence North 00°00'26" West 295.10 feet,
thence North 43°03'23" West 109.47 feet,
thence South 82°28'47" West 43.04 feet,
thence North 52°00'55" West 151.01 feet to a point in common with with Filings One, Two and future Filing Three; thence along the common boundary with Filing One and future Filing Three for the following 12 courses:

thence North 37°59'05" East 137.50 feet,
thence South 52°00'55" East 3.03 feet,
thence 21.66 feet along the arc of a curve to the left whose central angle is 03°49'09" and whose radius is 325.00 feet with a chord bearing South 53°55'31" East 21.66 feet,
thence North 34°09'54" East 127.99 feet,
thence South 66°39'19" East 67.53 feet,
thence North 05°36'33" East 132.94 feet,
thence North 00°00'26" West 142.13 feet,
thence South 89°56'38" West 449.31 feet,
thence North 00°03'22" West 15.00 feet,
thence South 89°56'38" West 125.00 feet,
thence North 00°03'22" West 25.00 feet,
thence South 89°56'38" West 140.00 feet,
thence North 00°01'01" West 209.99 feet to the north boundary of future Filing Three, thence North 89°56'21" East 976.35 feet along the said north boundary to the Point of Beginning,

ALL IN MESA COUNTY, COLORADO.

RECORDER NOTE: POOR QUALITY DOCUMENT
PROVIDED FOR REPRODUCTION

Book 2209 Page 259

1747131 0324PM 02/20/96
MONIKA TODD CLK&REC MESA COUNTY CO

**COVENANTS
STREET IMPROVEMENTS
ORCHARD VALLEY SUBDIVISION, FILING #3**

THIS AGREEMENT is made and entered into this 13 day of Feb, 1996, by and between Wiman-Joyner Development Company, hereinafter referred to as "Developer," and the City of Fruita, a municipal corporation of the State of Colorado, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, Developer is the owner of real property known as Orchard Valley Subdivision, Filing #3, situate in the City of Fruita, Mesa County, State of Colorado, (hereinafter referred to as "Filing #3") and more particularly described as follows:

- Lot 6 thru 24, Block 1, Orchard Valley Subdivision, Filing #3,
- Lots 10 thru 22, Block 2, Orchard Valley Subdivision, Filing #3,
- Lots 9 thru 15, Block 3, Orchard Valley Subdivision, Filing #3,
- Lots 16 thru 24, Block 5, Orchard Valley Subdivision, Filing #3,

WHEREAS, the parties mutually agree that the development of Filing #3 will impact vehicular and pedestrian traffic on N. Maple adjacent to the east boundary of Orchard Valley Subdivision when Filing #3 is built and Pinyon Drive is extended to N. Maple and that properties located in Filing #3 should pay their share of costs to improve N. Maple.

In consideration of the foregoing premises and the covenants, promises and agreements of each of the parties hereto, it is agreed as follows:

**AGREEMENT
ESCROW OF FUNDS FOR FUTURE STREET IMPROVEMENTS**

1. Prior to issuance of a planning clearance for a building permit to construct a single family dwelling unit for each and every lot in Filing #3, the property owner of the lot shall be required to pay a sum of five hundred dollars (\$500.00) to the City of Fruita for future street and sidewalk improvements on N. Maple.
2. The City of Fruita agrees to escrow the \$500.00 fee per lot in an account designated for future improvements to N. Maple. The sum of \$500.00 per lot represents the pro rated share of estimated costs for 1/2 street improvements to North Maple when combined with the development and similar escrow of funds for Filing #2 at four hundred and twenty five dollars (\$425.00) per lot for 28 lots and Filing #3, Phase 1 and 2, of Orchard Valley Subdivision consisting of 48 lots.
3. The street improvements contemplated by such escrowed funds shall be made at a

time, and in a manner, determined solely by the City of Fruita.

4. Any and all funds deposited into the escrow account shall become the property of the City of Fruita and no such funds shall be refundable for any reason.

5. Developer agrees that all of the terms and conditions herein set forth shall extend to and be binding upon their heirs, assigns or successors in interest and shall be considered as a covenant running with Filing #3. Furthermore, it is agreed that, in accepting title to the above described property, any grantee, heir, assign or successor in interest expressly agrees to be bound by the terms of this agreement.

6. This agreement shall be recorded pursuant to the provisions of Colorado Statutes; and the City may undertake any action legally available to enforce the provisions hereof. In the event the City is required to undertake any action to enforce the terms hereof, the undersigned and their heirs, successors and assigns agree that the City may recover from the owners of said property its reasonable expenses, including attorney's fees incurred with respect to such action.

7. If any section or provision of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other sections or provisions of this Agreement if they can be given effect without the invalid section, sections or provision.

IN WITNESS WHEREOF, Wiman-Joyner Development Company has hereunto set their hands and seals this 13 day of Feb., 1996.

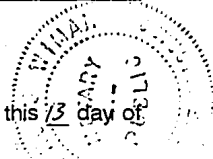
Wiman-Joyner Development Company

Tom Joyner
Tom Joyner

Chuck Wiman
Chuck Wiman

STATE OF COLORADO)
COUNTY OF MESA)

Subscribed and sworn to before me by Chuck Wiman and Tom Joyner this 13 day of February, 1996.



WITNESS my hand and official seal.

Frances Wiman
Notary Public

My Commission Expires: Commission expires August 18, 1999

ATTEST
Margaret Fuhrman
City Clerk

City of Fruita
Daniel J. Wilkie
Mayor

1774271 1015AM 10/15/96
MONIKA TODD CLK&REC MESA COUNTY CO

REVISED AND AMENDED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ORCHARD VALLEY SUBDIVISION
Previously recorded at Book 2200, Page 56
Recorded on June 12, 1996

RECORDER NOTE: POOR QUALITY DOCUMENT
PROVIDED FOR REPRODUCTION

THIS DECLARATION is made on the date hereinafter set forth by WIMAN/JOYNER DEVELOPMENT, CO., a Colorado partnership, hereinafter referred to as the "Declarant".

RECITALS:

A. Declarant is the owner of certain real property located solely in the County of Mesa, State of Colorado, known as Orchard Valley Subdivision, Filing No. 3, a planned community, which is more particularly described on Exhibit C attached hereto and made a part hereof.

B. Declarant desires to create a planned community upon the real property described on Exhibit C attached hereto, and to subject and place upon the property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein pursuant to the provisions of the Colorado Common Interest Ownership Act, for the purpose of protecting the value and desirability of said property and for the purpose of furthering a plan for the improvement, sale and ownership of said property.

NOW, THEREFORE, Declarant hereby declares that the property shall be held, sold and conveyed subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, charges and other provisions set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which run with, the above described property and be binding upon all parties having any right, title or interest in the above described property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Orchard Valley Homeowners Association, Inc., its successors and assigns, identified in that certain Declaration of Covenants, Conditions and Restrictions recorded in Book 1401 at Page 299 of the Mesa County Clerk and Recorder's records.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple

title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Property" shall mean and refer to the real property described in the recital above, and with such additions thereto as may be annexed thereto and brought within the jurisdiction of the Association.

Section 4. "Lot" shall mean and refer to the specific plots of land shown upon the plat or map of the Property to be recorded in the Mesa County Clerk and Recorder's office.

Section 5. "Declarant" shall mean and refer to WIMAN/JOYNER DEVELOPMENT, CO., a Colorado partnership, and any successor or assignee, or transferee of the rights of Declarant reserved hereunder.

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 7. "Architectural Control Committee" shall mean the committee appointed by the Board of Directors of the Association.

Section 8. "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, duly elected pursuant to the Bylaws of the Association or appointed by Declarant as therein provided.

Section 9. "Common Expenses" shall mean each Owner's pro-rata share of the Association's operating expenses, including, but not limited to, maintenance and repairs to the irrigation system and Common Area, management costs, salaries and employment taxes, reserves, capital improvements, assessments and all other charges which the Association may levy upon the Owners in accordance with the Declaration and the Articles and Bylaws.

Section 10. "Article" or "Bylaws" shall respectively mean the Articles of Incorporation for the Association filed with the Colorado Secretary of State and the Bylaws adopted by the Association, as amended from time to time.

Section 11. "Common Area" shall mean all property owned by the Association for the common use and enjoyment of Members, including the irrigation pond and easements, together with all pumps, pipelines and other distribution facilities for irrigation water and private park.

Section 12. "Dwelling Unit" shall mean a residence, whether single or multi-family, and improvements constructed within the

Lots. The maximum number of Dwelling Units shall be 58 and all dwelling units shall comply with the Community Residence Zone of the Fruita Land Use Code.

ARTICLE II
PROPERTY RIGHTS

Section 1. Owner's Right of Enjoyment. Every owner shall have a right to the beneficial enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to own, operate, repair, manage, maintain and administer (including the right to promulgate and publish rules and regulations which each Member shall strictly comply with) the Common Area and to charge reasonable fees for the use thereof;

(b) the right of the Association to suspend, according to its Articles and Bylaws, the voting rights of any Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and

(c) the right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements thereto.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment of the Common Area to the members of his family, his tenants, or contract purchasers who reside in the Dwelling Units.

ARTICLE III
RESTRICTIONS ON USE

Section 1. No Dwelling Unit shall be erected, altered, placed or permitted on any Lot within the Property except for use as a family residence and a private garage of a size not larger than required to house three (3) automobiles.

Section 2. Only new construction shall be permitted within the Property and no structures for occupancy as residences shall be moved upon Lots within the Property. No structure shall be built which does not meet or exceed requirements of the Uniform Building Code then in effect at the time of construction.

Section 3. No temporary building or structure of any type or kind shall be used at any time for a residence, either temporary or permanent. No mobile homes, trailer homes or other movable structures shall be permitted as dwellings within the Property. The Declarant reserves the right and privilege, during

construction, sales of lots and dwellings, to place a temporary and movable trailer on Lot of his choice in Filing No. 3. Said Temporary structure or trailer will be removed no later than final sale of lots or dwellings in Filing No. 3.

Section 4. Landscaping shall be of a type complimentary to the residential character of the Property and be acceptable to the Architectural Control Committee. Desert or "native plant" landscaping shall be acceptable. Each Owner shall keep all shrubs, trees, grass and plantings of every kind on his Lot, and all planted areas between his lot and adjacent streets, if any, neatly trimmed, properly cultivated and free of trash, weeds and other unsightly materials.

Section 5. No noxious or offensive trade or activity shall be carried on within any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No Lot may be used for commercial purposes except for home occupations. "Home Occupations" as used herein means an occupation by the resident conducted totally within the principal building which does not entail the delivery of goods and services to customers upon the premises. For example, an insurance agent may use his residence as a personal office so long as customers are not permitted to come to the residence; but the establishment of a barber shop or a beauty shop is prohibited. Fruit stands, machinery repair, and all other occupations requiring external buildings are specifically prohibited.

Section 6. No Lot shall be used as a dumping ground for rubbish. All garbage, rubbish and trash shall be placed and kept in covered containers and shall not be allowed to accumulate on any Lot. In no event shall any container be maintained where visible from neighboring property except to make the same available for collection and then only for a period not to exceed twenty-four (24) hours.

Section 7. No animals other than a reasonable number of household pets, but not more than two (2) dogs, shall be maintained on any Lot, and then only if they are kept, bred or raised thereon solely as household pets for private use and not for commercial purposes. No such animal may be kept which is a nuisance or annoyance to other Owners in the neighborhood. Ordinary house pets shall be contained on the Owner's property or on a leash. At the request of any Owner, the Board of Directors shall determine whether a particular animal shall be considered a house or yard pet, a nuisance, or whether the number of any of such animals on any Lot is reasonable.

Section 8. All buildings and structures shall observe setback requirements of the applicable zone.

Section 9. A single family dwelling may be a single level structure or a multi-level structure; a multi-family dwelling may consist of two levels. The total living area of any single level principal building for a single family dwelling shall not be less than one thousand two hundred fifty square feet (1,250), the total living area of any multi-level principal building for a single family shall not be less than one thousand six hundred square feet (1,600) and the total living area of any principal building for a multi-family, multi-level residence shall not be less than nine hundred (900) square feet, exclusive of open porches and garages. In addition to the principal building, all single family dwellings shall have an enclosed, two car garage, and a multi-family dwelling shall have an enclosed, one car garage.

Section 10. All structures shall be constructed so as to provide sufficient off-street parking to accommodate not less than two (2) automobiles, inclusive of garage and driveway. Driveways shall be composed of asphalt, concrete or other hard surface, dirt driveways being expressly prohibited. Driveways shall extend to and connect with the street. Storing automobiles, trucks, campers, boats, snowmobiles, motorcycles, motorbikes, or any vehicle of any other description in the street, driveway, yards of residences or in the front of the principal building's front yard setback line is specifically prohibited. Such vehicles may be stored behind the front yard setback lines within the boundaries of such Lot provided such vehicles do not bar access to adjoining Owners for roof eaves, water drainage and building maintenance. Screening approved by the Architectural Control Committee shall be installed to shield the stored vehicles from public view.

Section 11. No signs of any kind shall be displayed in public view on any Lot except one sign of not more than six (6) square feet advertising such Lot for sale, resale or lease.

Section 12. Any fencing shall be a maximum height of six (6) feet and shall be approved in writing by the Architectural Control Committee prior to erection. All perimeter Lot fencing shall be of chain link, wood, fiber glass, brick or stone material. Cinder-block material shall be expressly prohibited. No solid fencing shall be allowed within twenty-five (25) feet of the front yard property line. Fencing closer than twenty-five (25) feet from the front Lot line shall not exceed three (3) feet in height and be of a construction acceptable to the Architectural Control Committee.

Section 13. If the parties hereto, or any of them, or their heirs, grantees or assigns, shall violate or attempt to violate any of the covenants herein or provisions hereof, it shall be lawful for any other person or persons owning real property situated within the Property to prosecute in any proceedings at law or in equity the person or persons violating or attempting to violate any such covenants or provisions hereof and either to prevent him or

them from such violations or to recover damages from such violations, or both such remedies may be pursued.

ARTICLE IV
ASSESSMENTS

Section 1. Assessments. Each Owner of a dwelling unit, by acceptance of a deed, agrees to pay to the Association (1) assessments or charges, and (2) special assessments to be fixed, established and collected from time to time as herein provided. Such assessments, together with interest and costs of collection in the event of delinquency in payment as allowed herein, also shall be the personal obligation of the person who was the Owner, or of the persons jointly and severally who were the Owners, at the time when the assessment was made. Payment of assessments made shall be paid by the Owners to the Association as of the date of closing the original purchase of an Owner's dwelling and prorated if upon a date other than the due date of an assessment, and thereafter in monthly or other periodic installments as determined by the Board of Directors commencing on the first day of each month or period following the closing.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the management and maintenance of the Common Area; exterior maintenance; landscaping, fencing, pedestrian and irrigation easements as shown on the plat of the Property to be recorded with the Mesa County Clerk and Recorder's official records; and, for the performance of all other duties and obligations incurred by the Association pursuant to this Declaration and the Articles and Bylaws, including, but not limited to: the maintenance, repair and replacement of Common Area, landscaping, fencing, and pedestrian easements and structures pertaining thereto; and, such expenses as the Association, in its opinion, shall determine to be necessary and desirable, including the establishment and maintenance of a cash reserve for all of the foregoing purposes. In the event repairs are required resulting from negligent acts of an Owner, the Owner's family, guests, employees, invitees or lessees, the Association shall be reimbursed forthwith by such Owner therefore.

Section 3. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement to the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members of the Association subject to such assessment who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4. Notice and Quorum for Capital Improvements Special Assessments. Written notice of any meeting called for the purpose of making special assessments for capital improvements provided in the immediately preceding section shall be sent to all Members not less than ten (10) nor more than fifty (50) days in advance of such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of the membership subject to the assessment shall constitute a quorum. If the required quorum is not present, another meeting maybe called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5. Uniform Rate of Assessment. Annual, special and exterior maintenance assessments shall be levied at the uniform rate against the membership subject to such assessments on the basis of a fractional share per Dwelling Unit with one (1) being the numerator and the total number of Lots subject to the jurisdiction of the Association being the denominator.

Section 6. The Lien Remedies of the Association. If the assessments are not paid on the date when due, then such assessments shall become delinquent and shall, together with such interest thereon and costs of collection thereof, including reasonable attorney's fees, as herein provided, thereupon become a continuing lien on the property in accordance with section 38-33.3-316, C.R.S., and which shall bind the property in the hands of the then Owner and his heirs, successors, and assigns. The personal obligation of the then Owner to pay such assessment shall remain his personal obligation and lien on his dwelling unit for the statutory period.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall have the priority set forth in section 38-33.3-316, C.R.S.

Section 8. Exempt Property. All properties to the extent of any easement or other interest therein dedicated and accepted by a local public authority and devoted to public use shall be exempt from the assessments, charges and liens created herein.

ARTICLE V
ARCHITECTURAL CONTROL COMMITTEE

Section 1. No structure, whether residence, accessory building, fences, walls, exterior lighting or other improvements shall be erected, altered or maintained within the Property until the plans and specifications showing the nature of such improvements shall have been submitted to and approved by the Architectural Control Committee as established by the Bylaws of the

Association as to the quality of workmanship and materials, harmony of exterior design with existing structures, and the location with respect to topography and finish grade elevation. To seek approval, the plans and specifications must be submitted in writing or drawn form to the chairman of the Architectural Control Committee.

Section 2. Careful attention shall be given to aesthetic and functional consideration of any design submitted in order to enhance the entire Property. The Architectural Control Committee will consider the following:

(a) The overall nature and character of the site and appearance of the structure, including orientation with regard to sun, wind, view and privacy and the consistent quality use of exterior materials;

(b) The grading of building sites to allow natural drainage;

(c) The use of earthen tone colors and discouragement or prohibition of bright colors, especially when a Lot Owner seeks to change or alter the existing color of the structure;

(d) The installation of patio structures designed such that they will blend and complement the appurtenant structure; and

(e) The use of landscaping, plantings and lawn complementary to the residential character of the neighborhood, desert-style landscaping being acceptable.

Section 3. Copies of plans and specifications shall be submitted to the Architectural Control Committee for review and final written approval before construction may be undertaken. Plans and specifications shall contain a plot plan showing Lot layout, including setbacks, flow and manner of surface drainage, finish and natural grade elevations, floor plans showing overall dimensions, roof plans showing pitch, roof materials, color, exterior elevations showing doors, windows and exterior materials and color, a perspective sketch if requested, and any other details necessary to explain exterior design features or components.

Section 4. The Architectural Control Committee shall approve or disapprove in writing all plans and requests within three (3) days after submission. In the event the Architectural Control Committee fails to take any action within three (3) days after requests have been submitted, approval will not be required, and this Article will be deemed to have been fully complied with.

Section 5. A majority vote of the Architectural Control Committee is required for approval or disapproval of proposed improvements.

Section 6. The Architectural Control Committee shall maintain written records of all applications submitted to it and of all actions it may have taken.

Section 7. The Architectural Control Committee shall not be liable in damage to any person submitting requests for approval or to any Owner within the Property by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such request.

ARTICLE VI
THE ASSOCIATION

Section 1. Membership. Every Owner of a Dwelling Unit or Lot within the Property shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Dwelling Unit.

Section 2. Voting Rights. Each Dwelling Unit or Lot Owner shall represent one (1) vote in the Association to be cast according to the decision of the Owner(s) of the Dwelling Unit or Lot.

Section 3. Indemnification of Officers and Directors. Neither the Association, any member of the Board, any officer of the Association, nor any agent or employee of the Association shall be liable to any Owner or other person or entity for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without willful or intentional misconduct. The Association shall indemnify and hold harmless any member of the Board, any officer of the Association, or any agent or employee of the Association from any and all reasonable costs, damages, charges, liabilities, obligations, fines, penalties, claims, demands, or judgments and any and all expenses, including, without limitation, attorney's fees, incurred in the defense or settlement of any action arising out of or claimed on account of any act, omission, error or negligence of such person or of the Association, the Board, or any committee of the Association, provided that such person has acted in good faith and without willful or intentional misconduct.

Section 4. Limitation Upon Liability of the Association. Notwithstanding the duty of the Association to maintain and repair parts of the Property, the Association shall not be liable for any injury or damage, other than the normal costs of the maintenance and repair, caused by any latent condition of the Property or by

the conduct of other Owners or persons or by casualties for which insurance pursuant to this Declaration is not required, or for which insurance is not provided by the Association.

ARTICLE VII
ASSOCIATION WATER AND DEVELOPMENT RIGHTS

Section 1. Description of Water Rights. The Association owns seventy-five (75) shares of water in the Grand Valley Irrigation Company. Such water rights shall be titled in the name of the Association, but held, managed and distributed for the exclusive use and benefit of the Members of the Association for domestic lawn, landscaping and related irrigation purposes.

Section 2. Irrigation Facilities. The irrigation system for the Property, including any annexed Property, shall consist generally of a storage pond together with a system of pumps and pipelines situated within easements designated on the recorded plat of the Property so as to deliver and distribute the irrigation water of the Association under pressure to each Lot.

Section 3. Obligations of the Association. By executing this Declaration, and in consideration of the dedication of the private park as Common Area by Declarant, the Association agrees to accept the Property as part of the property subject to the Association's jurisdiction and to hold and manage the water rights and operate, maintain, and repair the irrigation facilities for the distribution of irrigation water to each Lot of the Property described on Exhibit A in addition to the Lots described in the Declaration recorded in Book 1401 at Page 299 of the Mesa County Clerk and Recorder's records; the expense thereof to be borne as a Common Expense by all Members prorated in the form of an assessment levied in the method and manner as provided in Article IV hereof. The Association shall have full power and authority to promulgate rules and regulations controlling the time, manner, rotation and allocation for water for use by the Lot Owners. The Association shall be specifically authorized to contract with third parties for the purpose of sharing the costs and expenses of operating, maintaining and repairing the irrigation facilities, or permitting the utilization of the same for other beneficial purposes, as the Association shall deem appropriate. The obligation of operation, maintenance and repair hereunder shall extend up to, but not beyond, the irrigation line tap provided to each Lot, it being specifically intended that each Lot Owner shall bear the costs and expenses of operation, maintenance and repair of his own Lot sprinkling or watering facility.

Section 4. Development Rights. For a period of twenty (20) years from the recording of this Declaration, Declarant reserves the right to annex the real property described on Exhibit C attached hereto and incorporated herein to the Property and subject the same to the jurisdiction of the Association and the

provisions of this Declaration or modifications and alterations as necessary or required by Declarant for future filings. In the event of annexation, the assessments levied by the Association shall be in the same manner and according to the same formula provided in Article IV of this Declaration.

ARTICLE VIII
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce by an proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provision which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. So long as Declarant owns seventy-five percent (75%) of the Lots within the Property, Declarant shall have the right to amend this Declaration. At such time as Declarant owns less than seventy-five (75%) of the Lots within the Property, this Declaration may be amended by an instrument signed by not less than sixty-six and two-thirds (66-2/3) of the Lot Owners.

Section 4. Public Service Company Tariffs. All Lots are subject to and bound by Public Service Company tariffs which are now and may in the future be filed with the Public Utilities Commission of the State of Colorado relating to street lighting situate within the Property, together with rates, rules and regulations therein provided and subject to all future amendments and changes thereto. The Owner or Owners shall pay as billed the portion of the cost of public street lighting in the Property according to Public Service Company rates, rules and regulations, including future amendments and changes on file with the Public Utilities Commission of the State of Colorado.

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

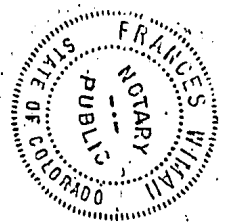
BOOK 2271 PAGE 595

The foregoing instrument was acknowledged before me this 11th
day of October, 1996, by NORMAN ELCHO, as President
of Orchard Valley Homeowners Association, Inc., a Colorado
nonprofit corporation.

Witness my hand and official seal.

My commission expires: _____

My Commission expires
August 18, 1999



Frances Wilham
Notary Public

EXHIBIT "C"

A tract of land located in the NE 1/4 SW 1/4 of Section 8, Township 1 North, Range 2 West of the Ute Meridian more particularly described as follows:

Beginning at a point, which is situated on the assumed future right-of-way for 17 1/2 Road and also being the Northeast corner of future Orchard Valley Filing Three, in which the C 1/4 Corner of said Section 8 bears North 89°56'21" East 33.00 feet,
 thence South 00°00'26" East 1,319.67 feet to the Southeast corner of future Filing Three, thence South 89°55'09" West 273.00 feet along the southern boundary of future Filing Three, thence along the common boundary with Filings Two and future Filing Three for the following 6 courses:

thence North 00°04'51" West 160.00 feet,
 thence South 89°55'09" West 3.79 feet,
 thence North 00°00'26" West 295.10 feet,
 thence North 43°03'23" West 109.47 feet,
 thence South 82°28'47" West 43.04 feet,
 thence North 52°00'55" West 151.01 feet to a point in common with with Filings One, Two and future Filing Three; thence along the common boundary with Filing One and future Filing Three for the following 12 courses:

thence North 37°59'05" East 137.50 feet,
 thence South 52°00'55" East 3.03 feet,
 thence 21.66 feet along the arc of a curve to the left whose central angle is 03°49'09" and whose radius is 325.00 feet with a chord bearing South 53°55'31" East 21.66 feet,
 thence North 34°09'54" East 127.99 feet,
 thence South 66°39'19" East 67.53 feet,
 thence North 05°36'33" East 132.94 feet,
 thence North 00°00'26" West 142.13 feet,
 thence South 89°56'38" West 449.31 feet,
 thence North 00°03'22" West 15.00 feet,
 thence South 89°56'38" West 125.00 feet,
 thence North 00°03'22" West 25.00 feet,
 thence South 89°56'38" West 140.00 feet,
 thence North 00°01'01" West 209.99 feet to the north boundary of future Filing Three, thence North 89°56'21" East 976.35 feet along the said north boundary to the Point of Beginning,

ALL IN MESA COUNTY, COLORADO.