

May 30, 2007

Design and Use Restrictions for The Orchard

From the Annexation Agreement:

5. Residential Density and Phasing. Seawright shall not apply to the Town to subdivide or develop the residentially zoned portion of the Property at an aggregate density of greater than one hundred four (104) dwellings, and shall not apply for more than thirty-five (35) residential building permits in any twelve (12) month period, except that any allowable building permits not used in a preceding twelve (12) month period may be used in any succeeding twelve (12) month period. It is the intent of this paragraph that residential development of the Property shall be sequenced so as to avoid overcrowding of the public schools serving the area in which the Property is located, and to coordinate development of the Property with the applicable provisions of the Water Service Area Agreement hereinafter referenced.

6. Architectural Review.

(a) All residential development and construction on the Property shall be subject to architectural review by the Town Architect identified in the Guidelines referred to below or by the Architectural Review Commission of the Town, as appropriate. The guidelines appended as Exhibit B to this Agreement (the "Guidelines") shall be applicable in architectural review. No construction or modification of any dwelling or other improvement shall be commenced or modified in a manner which is inconsistent with the Guidelines. This provision shall be applicable to both initial construction and any subsequent modification or improvement. The compliance with the requirements of this paragraph shall be a prerequisite to the issuance of any zoning certificate or building permit for the construction or modification of any residential improvement on the Property. The provisions of this paragraph shall run with the Property, are binding upon Seawright, its heirs and assigns, and shall be enforceable by the Town or its designee, by the Architectural Review Commission of the Town and by the Zoning Administrator of the Town. The provisions of this paragraph may be enforced administratively or by an action in law or in equity in a court of competent jurisdiction. The costs of enforcement, including court costs, litigation expenses and reasonable attorney's fees may be assessed against the defendant in any judicial proceeding brought for that purpose.

(b) Seawright shall include in a homeowners' association declaration or other instrument satisfactory to the Town restrictive covenants prohibiting the construction or exterior modification of residential improvements except in conformity with the Guidelines and the provisions of this paragraph 6 of this Agreement. Each deed or other instrument conveying the residential portion of the Property or any portion thereof, except public dedications, shall include the restrictive covenants contemplated in this paragraph, or a reference incorporating the same, and the residential portion of the Property shall be deemed to be subject to a common plan or scheme of development to which the restrictive covenants shall be applicable.

(c) The commercial portion of the Property has been evaluated by the Town and the County in architectural review, and the architectural elevations submitted therewith are deemed satisfactory by the Town. Provided the commercial development conforms to the elevations, plans and representations provided in connection with the prior architectural review, no further architectural review or approval of the commercial portion of the proposed development is required. Any change in the elevations, plans and representations, and any new structures proposed to be constructed on the commercial portion of the Property shall be subject to approval of the Architectural Review Commission of the Town. For the purposes of this paragraph, the elevations, plans and representations are those included in File No. SP-98-37 of the Frederick County Department of Planning and Zoning. The requirement of approval of changes set forth in this paragraph shall be included in restrictive covenants, in form satisfactory to the Town, to be recorded by Seawright at its expense among the land records of Frederick County.

From the Annexation Agreement (amended):

The Orchard at New Market, Architectural Covenants is hereby amended to revise the Residential Category of "Garden Wall and Fences" to add stone, fired masonry and vinyl as permitted fencing materials in the common areas.

From the Architectural Covenants:

The Orchard at New Market Design Matrix is provided as a guide to assist homeowners, architects, the Annexation Applicant and any subsequent builders engaged in home renovations or remodeling to fully understand The Orchard at New Market approved plan and the character of the physical environment associated with it.

The intent of the Design Matrix is to, as a minimum, satisfy the Now Market ARC Guidelines, and to amplify certain design aspects that may not be included in the present guidelines. It is our desire to facilitate creating a comfortable and inviting community in The Orchard at New Market that is compatible with historic architecture In the Town of New Market.

EXTERIOR WALLS

Materials

1. Exterior building walls may be constructed of brick, stone, vinyl, cementitious, wood, or masonite siding.
2. Vinyl siding products permitted include Certainteed or equivalent quality in styles of Double 4 or Double 5, Dutch Lapp or Carolina Beaded.
3. Foundation walls shall be constructed of brick, stone, concrete, or concrete pressed with a brick pattern, or cement block that is parged.

Forms and types

1. All building materials and colors must be submitted to the ARC for review and approval.
2. All joints in siding other than vinyl or cementitious material must be painted, caulked or have ends cut at 45°.
3. Vertical corner boards shall be no less than 4" wide.
4. All trim used with siding shall be a minimum 5/4" wide.

Building Technique

1. Brick shall be coursed in horizontal running bond, common bond, or Flemish bond. Accent patterns may be used at sills, lintels, chimneys, etc.
2. All siding shall be arranged 4" to 8" to the weather.
3. All street facades on a corner lot shall be of the same material.
4. Brick or Stone used on a front facade only must return to the side facade a minimum of 16".
5. Concrete foundation walls on front elevation shall be visible no more than 24" high.

GARDEN WALLS AND FENCES

Materials

1. Garden walls shall be made of brick, concrete block finished in stucco or stone and shall be compatible with the main building. Fences shall be made of wood or wrought iron.

Forms and Types

1. Garden walls and fences shall be a minimum of 30" and a maximum of 6' in height.
2. Garden walls and fences, if utilized, shall be placed at the rear and side lot lines to maintain street continuity, unless otherwise noted.
3. Wooden fences shall be natural or painted white and wrought iron fences shall be painted black unless otherwise approved by the ARC or their designee.
4. Picket fences may not exceed 48" in height.

PORCHES, DECKS, AND PATIOS

Materials

1. Decks shall be made of pressure treated wood or synthetic wood.
2. Rail posts and caps of deck railing, risers, band boards and lattice may be made of wood or vinyl and shall match the predominate building trim color.
3. Porches shall be constructed of concrete or wood. Concrete porches shall be veneered in (i) brick, (ii) concrete pressed with brick pattern or (iii) wood.
4. Porches shall be a minimum of six feet in depth.

Forms and Types

1. Decks are permitted in rear yards only.
2. The undercroft of decks, when visible from the street, must be screened with lattice and/or vegetation.
3. For all single family detached residences, decks shall not exceed the footprint of 1/5 (square feet) the footprint of the ground level of the main building.

ARCHITECTURAL ELEMENTS

Materials

1. Columns shall be made of wood, fiberglass or precast concrete.
2. Piers shall be made of brick wood, or precast concrete.
3. Railings shall be made of wood, steel, wrought iron or vinyl coated metal.
4. Exterior stairs shall be brick, wood or stone.
5. Facia and rake trim can be wrapped with aluminum coil.

Forms and Types

1. Wrought iron railings shall be painted black.
2. All columns and piers made of wood shall be painted.
3. All wooden risers, railings and trim for all porches shall be painted.

Building Technique

1. Architectural elements such as columns, pilaster, cornices, and piers shall be either the Doric or Tuscan order (as designated by William Ware in the "American Vignola") unless otherwise approved.
2. Piers must be a minimum of 12" wide.

ROOFS AND CHIMNEYS

Materials

1. Roofs shall be constructed of standing seam steel or copper, cedar shake, slate, artificial slate, or 25-year architectural asphaltic fiberglass shingles. Copper accents shall be permitted.
2. Gutters shall be constructed of steel, aluminum, or copper.
3. Those portions of chimneys located in front or side yard elevations and visible from the street shall be finished with masonry, brick, or stone. All chimneys that rise from the ground on the exterior of house shall be finished in brick or stone. Chimneys that rise from the interior of house and exit on the rear roof may be veneered with other materials. These materials shall not be wood, or vinyl clapboards. Bump outs for direct vent fireplaces must be brought to the ground.
4. Asphaltic roofing material should be "Architectural Quality" and shall be approved by the ARC. (Classic Horizon Shingle, Landmark 25 or equivalent).

Forms and Types

1. Roof configurations generally shall be symmetrics and simple except that roof configuration may be asymmetrical for a saltbox-designed house. Pitches shall range from 8:12 to 14:12 and arranged in a hip, gable, or gambrel configuration.
2. All roofs shall overhang the adjacent facade a minimum of 8" and a maximum of 2'6", which may encroach into the required yard set back.
3. Shed roofs are permitted when used as a secondary roof set against the wall of the main building. Pitch is limited to 3:12 to 12:12.

Building Technique

1. Metal standing seam roofs shall be painted, galvanized, prefinished aluminum, or copper left to weather.

WINDOWS, DOORS, AWNINGS

Materials

1. Doors shall be constructed of wood, metal, or wood veneer fiberglass.
2. Windows and window shutters shall be constructed of wood or vinyl.
3. Storm windows and doors shall match the material and color of the window or door they attach to.
4. Garage doors shall be made of wood, metal, embossed hardboard, or wood veneer. Fenestration is permitted but must be approved as part of the elevation review.

Forms and Types

1. Window lites shall match the architectural style of the house.
2. Muntins may be real, between the glass, or glued on.

3. Shutters for a single window shall be sized so as if to cover the entire window when closed.
4. Skylights shall be located on the backside of the roof ridge.
5. Shutters on a front facade shall continue to side yard windows on corner lots.

Building Technique

1. All building openings shall be surrounded by trim a minimum of 4" wide on all walls constructed of siding.

DRIVEWAYS AND GARAGES

Materials

1. Garages shall be made of the same materials as the main building.
2. Driveways shall be made of brick, brick pavers, concrete, black asphalt, or crushed stone.
3. Lead walks, shall be constructed of brick, brick pavers, or concrete.

Forms and Types

1. Garage doors shall be recessed a minimum of 6" from the exterior garage wall face.
2. All residences with alleys are required to use the alley for garage access.

MECHANICAL EQUIPMENT AND REFUSE CONTAINERS

Materials

1. All mechanical equipment, if located in front or side yard, shall be screened from view by landscaping or other material which is consistent with the main building.
2. Dryer vents shall be located on the side or rear yard.

Forms and Types

1. All accessory structures shall be located in the rear yard.

OTHER PROVISIONS

1. Design Review of Exterior Home Elevations, Details, and Features and Subsequent Revisions During the Time When Homes Originally Are Being Built by the Annexation Applicant or Affiliated Entity:

- a. The New Market ARC shall utilize the ARC guidelines (as distinguished from HDC Guidelines) to review elevations, submitted by the Annexation Applicant, for ARC review of exterior architecture, design details and features. Following such revisions as may be necessary to amend submitted plans so that they meet the expectation of the ARC for architectural compatibility with the overall exterior designs characteristic of the Town of New Market, minutes of the ARC meeting reflecting design review comments shall be furnished to the Annexation Applicant.
- b. If variations to the exterior of approved design elevations are requested by original purchasers prior to the completion of homes first constructed by the Annexation Applicant and such variations go beyond the alternatives to elevations and details that can be anticipated by the Annexation Applicant and included in the approved design elevations, such reviews and approvals shall be made by the ARC with the participation of the Town Architect, as hereinafter defined. After the Town Architect has participated in 10 to 15 (or a lesser number determined by the ARC as a function of the Town Architect's demonstrated

understanding of the ARC's design guidelines and their application by the ARC) design revision reviews with the ARC, the Town Architect will be delegated responsibility for these reviews. The Town Architect's decisions will be ratified by the ARC. In reviewing and approving qualifying variations to approved elevations, the Town Architect shall be guided by the provisions of this Design Matrix, objectives of the ARC expressly communicated during its original architectural design reviews, or by objectives or intent reasonably inferred by design objectives consistently articulated by the ARC during its review of proposed design changes described above.. All such reviews and approvals of exterior architectural variations by the Town Architect during the period of original home construction by the Annexation Applicant shall be documented by monthly report from the Town Architect to the ARC identifying all such approved variances from approved elevations and special considerations, if any, associated with documented reviews and approvals. This report shall be reviewed and ratified by the ARC.

2. Design Review of Changes and Additions to Exterior Home Elevations. Details and Features Following the Date When a Use & Occupancy Permit has Been Obtained for a Home Constructed By The Annexation Applicant or Affiliated Entity.

a. All such changes and additions to exterior home elevations, details or features described by this paragraph 2 shall be submitted to the Environmental Preservation Committee (EPCOM) of the Orchard Community Service Association (OCSA), for their review and approval. After approval, those changes shall be submitted to the ARC for ratification in those cases where changes sought are the exception to the design matrix.

3. Whether review for changes from the approved plans or this Design Matrix is being accomplished by the ARC, the Town Architect or a committee of the OCSA that has received delegated authority from the ARC, approvals may be granted based upon architectural merit, site conditions or a finding of "no adverse impact".

4. Additional materials to those listed in the Design Matrix may be approved for use by the ARC when such additional materials are of equal or enhanced quality or suitability. 5. The following are prohibited in The Orchard at New Market (i) chain link fences and (ii) large satellite dishes, (iii) window air conditioning units in windows on front elevation.

6. The following are not permitted in front yards or in side yards visible from a street (i) clotheslines, (ii) solar panels, (iii) dog houses and dog runs, (iv) Jacuzzis, and (v) hot tubs.

7. Above ground swimming pools are not permitted, except for inflatable pools not exceeding 8' in diameter and 14" in height. All other kinds of pools must be screened from the street.

8. The preferred location for flagpoles shall be attached to the main building or porch and limited to five feet in length.

9. The architecture shall be compatible with the architectural styles reflected in the Town of New Market.

10. All materials and colors proposed for exterior construction for proposed master model plans must be submitted to the ARC for approval prior to construction.

From the Developers Rights and Responsibilities Agreement:

9. Permissible Uses of the Property. The Residential Property may be used for any purpose permitted under the Zoning Ordinance of the Town, applicable to land zoned R-3 (High-density Residential). In addition, pursuant to the establishment of a Planned Unit Development (PUD) floating zone or designation, the Property may be used in accordance with the provisions of the Zoning Ordinance applicable to planned unit development, subject to the terms and conditions, if any, established at the time of approval of the PUD classification or destination. The Commercial Property may be used for any purpose permitted under the Zoning Ordinance of the Town, applicable to land zoned

B-2 (Shopping Center).

10. Density of Development. The density of development permitted with respect to the Residential Property shall not exceed one hundred four (104) residential units. The Commercial Property has been evaluated by the Town and the County, and provided the development thereon conforms to the plans in File No. SP-98-37 of the Frederick County Department of Planning and Zoning (which plans incorporate 43,100 square feet of space for commercial and retail use), no further architectural review or approval of the development on the Commercial Property is required.

18. Building Standards. Except as may be otherwise expressly provided for herein, nothing in this Agreement shall apply to or limit the application of present or future building standards or building code requirements now or hereafter in effect or otherwise applicable generally to property in this Town.

From the Declaration of Covenants, Conditions and Restrictions The Orchard Community Service Association:

ARTICLE VII

1. General Control of Construction and Land Use. The Environmental Preservation Committee and the Town of New Market Architectural Review Committee (ARC).

Except for construction or development approved by the ARC and done by or under contract with the Declarant, its successors or assignee(s), and except for any improvements to any Lot or to the Common Areas made by the Declarant and approved by the ARC concurrently with the construction and development of the Property, and except for purposes of proper maintenance and repair, no building, deck, fence, wall or other improvements or structures shall be placed, moved, altered or maintained upon the Property, nor shall any exterior addition to or change (including any change of color) or other alteration, including any alteration to the grade of any Lot or the change of any water runoff pattern, be made until the complete plans and specifications showing the location, nature, shape, height, material, color, type of construction and any other proposed form of change, including, without limitation, any other information specified by the ARC or Environmental Preservation Committee, ("EPCOM") shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the Community by members of the EPCOM as designated by the Association Board of Directors. Such approvals shall be obtained first from the EPCOM and then from the ARC or its designee.

Subject to the same limitations as above provided, it shall be prohibited to install, attach, build or remove any exterior lighting, shades, screens, awnings, address plaques or numerals, patio covers, fences, walls, slabs, sidewalks, curbs, gutters, patios, balconies, porches, driveways, or to make any change or otherwise alter (including any alteration in color) in any manner whatsoever to the exterior of any improvements constructed upon any Lot or upon any of the Common Areas, or to combine or otherwise join two or more Dwellings, or to partition them after combination, or to remove or alter any windows or exterior doors of any Dwelling, until the complete plans and specifications, showing the location, nature, shape, height, material, color, type of construction and any other proposed form of change, including, without limitation, any other information specified by the ARC and EPCOM, shall have been submitted to and approved in writing as to safety, harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the Community by the ARC and by the EPCOM

2. ARC Powers. Procedures and Requirements.

(a) If changes to ARC-approved design elevations are requested by future members of the OCSA prior to the construction completion of a home first sold and constructed by the Declarant and such variations go beyond Declarant's alternatives to elevations and details that originally were approved by the ARC, such reviews and approvals shall be made by the ARC following recommendation by the town architect, if a town architect has been

selected by the Town. Decisions of the town architect, if such party has been selected by the Town, will be ratified by the ARC. In reviewing and approving variations to previously approved elevations, the town architect and the ARC shall be governed first by the provisions of the Design Matrix regarding use of materials and next by objectives of the ARC expressly communicated during its original architectural design reviews or by objectives of intent reasonably inferred by design objectives consistently articulated by the ARC during its review and approval of Declarant's alternative house elevations referenced above.

(b) For changes and additions to exterior home elevations, details and features proposed by a Member following the date when a Use & Occupancy Permit has been obtained for a home constructed by the Declarant or affiliated entity, all such matters shall be submitted to the EPCOM of the OCSA for its review and approval. After approval by the EPCOM, those changes shall be submitted to the ARC for ratification in those cases where changes sought by a Member involve the use of materials other than those detailed in the Design Matrix as being approved for a particular application.

(c) For those changes requiring ARC review and approval no structure or appurtenance shall be commenced, erected, placed, moved on to or permitted to remain on any Lot, nor shall any existing structure or appurtenance upon any Lot be altered in any way which materially changes the exterior appearance thereof, unless plans and specifications shall have been submitted to and approved in writing by the ARC. Such plans and specifications shall be in such form and shall contain such information, as may be required by the ARC, but in any event shall include: (i) plans showing the nature, exterior color scheme, kind, shape, height, materials size and location with respect to the particular Lot (including proposed front, rear and side set-backs and free spaces, if any are proposed) of all structures or appurtenances, the location thereof with reference to structures or appurtenances on adjoining portions of the property, and the number and location of all parking spaces and driveways on the Lot; and (ii) a grading plan for the particular Lot. Such plans and specifications shall be accompanied with a non-refundable fee established by the Mayor and Council of the Town of New Market. The plans and specifications must be acted upon by the ARC within forty-five (45) days after submission. If the ARC fails to act on said plans and specifications within the aforesaid forty-five (45) day period, the plans and specifications shall automatically be deemed approved, unless an extension of the said forty-five (45) day period is mutually agreed upon between the applicant and the ARC.

The ARC shall have the right to disapprove the plans and specifications submitted hereunder because of any of the following:

- (i) the failure of such plans or specifications to comply with any of these Covenants and Restrictions;
- (ii) failure to include information in such plans and specifications as may have been reasonably requested;
- (iii) objection to the exterior design, appearance or materials of any proposed structure or appurtenance;
- (iv) incompatibility of any proposed structure or appurtenance with existing structures or appurtenances upon other Lots in the Orchard at New Market Subdivision; and/or
- (v) any other condition which the ARC reasonably determines would be adverse to the Town of New Market.

In any case where the ARC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ARC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

(d) If any structure or appurtenance shall be altered, erected, placed on maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the ARC pursuant to the provisions of this Article VII and without the approval required herein, then, in such event, in addition to any penalties provided for in the Zoning Ordinance of the Town of New Market, any and all costs and

expenses to which the Declarant or its assigns, or the ARC shall be put as a result of said violation, including (but not limited to) Court costs and attorney's fees, shall be the binding, personal obligation of the owner of the Lot in question, as well as a lien (enforceable in the same manner as a mortgage) upon the Lot in question. The lien provided for in this Article VII, paragraph 2 (c) shall not be valid as against a bona fide purchaser (or bona fide mortgagee) of the Lot in question unless a suit to enforce said lien shall have been filed in a Court of record in Frederick County, Maryland, prior to the recordation among the Land Records of Frederick County, Maryland, of the deed (or mortgage) conveying the Lot in question to such purchaser (or subjecting the same to such mortgage).

3. Mailboxes. Whether located upon a Lot or within the public right of way, no mailbox shall be installed or erected except upon approval as provided in this Article VII.

4. "EPCOM" — Composition and Operation. EPCOM shall be composed of at least three (3) persons and not more than seven (7) persons designated by the Board of Directors. These members of the Committee shall have staggered terms, as the Board may assign. Until the Committee is designated, the functions of the Committee shall be performed by the Board of Directors.

The affirmative vote of a majority of the members of EPCOM shall be required in order to adopt or promulgate any rule or regulation, or to make any finding, determination, ruling or order, or to issue any permit consent, authorization, approval or the like pursuant to the authority contained in this Article VII. Any member of the EPCOM may, at any time, resign from EPCOM upon written notice to the other members of the Committee. Vacancies on the Committee, however caused, shall be filled by a majority vote of the Board of Directors within thirty (30) days of the creation of the vacancy. Any new member elected to EPCOM, to fill a vacancy, shall serve the unexpired term of the vacated EPCOM member.

5. Approvals. Upon approval by EPCOM of any plans and specifications submitted to them, a copy of such plans and specifications, as approved, shall be deposited among the permanent records of the Committee and a copy noting such approval, in writing, shall be returned to the applicant. In the event the Committee fails to approve or disapprove any plans and specifications which may be submitted to it pursuant to the provisions of this Article VII within forty-five (45) days after such plans and specifications (and all other materials and information required by the EPCOM) have been submitted to it in writing, then EPCOM approval will not be required and this Article VII will be deemed to have been fully satisfied with respect to the EPCOM.

6. Limitations. Construction or alterations, in accordance with plans and specifications approved by both the ARC and EPCOM, shall be commenced within six (6) months of the latest date when they are approved by the ARC and EPCOM, respectively (whether by affirmative action or by forbearance from action, as stated in paragraph 3. of this Article VII), and shall be substantially completed within six (6) months of the date of commencement, or within such other period as EPCOM shall specify in its approval. In the event construction is not commenced within the period required, the approval of the plans and specifications by EPCOM shall be conclusively deemed to have lapsed and compliance with the provisions of this Article VII shall again be required. There shall be no deviation from the plans and specifications approved by the ARC and EPCOM without the prior consent in writing of each approval body. Approval of any particular plan and specification or design shall not be construed as a waiver of the right of the EPCOM to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance.

7. Certificate of Compliance. Upon the completion of any project done in accordance with plans and specifications approved by EPCOM, EPCOM shall, at the request of the owners thereof, issue a certificate of compliance which shall be prima facie evidence that such construction, alteration or other improvements referenced in such certificate have been approved by EPCOM and constructed or installed in full compliance with the conditions of EPCOM approval.

8. Rules and Regulations — Architectural Control. EPCOM may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted for approval and may publish and record such statements of policy, standards, guidelines and establish such criteria relative to

architectural styles or details, landscaping, fences, colors, setbacks, materials or other matters relative to architectural styles or details, landscaping, fences, colors, setbacks, materials or other matters relative to architectural control and the protection of the environment, as it may consider necessary or appropriate. No such rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this Article VII or any other provision or requirement of this Declaration, especially as pertains to satisfaction of ARC approval requirements. EPCOM may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to the provisions of this Article. The decisions of EPCOM shall be final, except that any Member who is aggrieved by any action or forbearance from action by the Committee (or by any policy, standards or guidelines established by the Committee) may appeal the decision of EPCOM to the Board of Directors and, upon the request of such Member, shall be entitled to a hearing before the Board of Directors of the Association. Any action requiring EPCOM or ARC approval, which is carried out by a Member without that approval, shall be a violation of this Declaration and shall be removed or terminated immediately upon notice from EPCOM or the Board of Directors. Any construction or alteration accomplished without required approval shall not be the subject of an application for EPCOM approval or Board of Directors appeal until and unless it is first removed. If the unapproved construction or alteration is not removed within thirty (30) days following notice to remove, the Board of Directors shall have the right but not the obligation to remove the violating alteration or improvement at the expense of the Member. Each Member shall be deemed to permit the entry of a delegate of the Board of Directors for such purpose and pay for the costs of such undertaking.

9. "Standing Resolutions". EPCOM is authorized to adopt resolutions defining certain criteria, specifications or, as the case may be, performance standards, for frequently requested types of home improvements. EPCOM shall make known to all Members any Standing Resolutions adopted. Any improvements or alterations accomplished in conformity with Standing Resolutions shall be deemed approved and permitted with respect to EPCOM approval. An improvement which meets some but not all criteria of a Standing Resolution shall be submitted to EPCOM for approval, as above provided. Notwithstanding Member compliance with an EPCOM Standing Resolution, ARC approvals shall not be implied from member compliance with an EPCOM Standing Resolution unless the materials specified in the Standing Resolution conform to the Design Matrix listing of materials permitted in specified applications.

10. Prohibited Uses and Nuisances. Except for the activities of the Declarant and its assignees during the construction or development of the Community, or as may be necessary in connection with reasonable and necessary repairs or maintenance upon the Common Areas, or unless expressly permitted by affirmative resolution of the Committee.

(a) No unsafe or offensive trade, activity or installation shall be carried on upon any Lot or within any Dwelling, nor shall anything be done therein, including landscaping or gardening, which may be or become an annoyance or nuisance to the neighborhood or other members. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell or other sound device, except such devices as may be used exclusively for security purposes, shall be maintained on the exterior of any Dwelling or the exterior of any other improvements.

(b) The keeping, boarding or raising of animals, livestock, or poultry of any kind, regardless of number, shall be prohibited on any Lot or within any Dwelling, except that this shall not prohibit the keeping of dogs, cats or customary household animals as domestic pets, provided that such animals are not kept or bred for commercial purposes and, provided further, that such domestic pets are not a source of annoyance or nuisance to the neighborhood or Owners and do not roam at large. The Board of Directors or, upon resolution of the Board of Directors, EPCOM, shall have the authority, after hearing, to determine whether a particular pet is a nuisance or a source of annoyance to other Members, and such determination shall be conclusive. Pets shall be attended at all times and shall be registered, licensed and inoculated as may from time to time be required by law. Pets shall not be permitted upon the Common Areas unless accompanied by a responsible person and unless they are under control or leashed. Any fecal waste deposited by a pet shall be forthwith removed by the responsible Member. The Board of Directors shall have the right to adopt such additional rules and regulations regarding pets as it may from time to time consider necessary or appropriate. The Community shall be subject to an easement for the benefit of the Animal Control agents of Frederick County, Maryland or the Town of New Market, to permit their entry for the purposes of

enforcing the animal control laws of Frederick County, Maryland or the Town of New Market.

(c) No lumber, metals, bulk materials, refuse or trash shall be stored or allowed to accumulate on any Lot, except for building materials used during the course of construction of any approved Dwelling or other permitted structure. This prohibition shall not be construed so as to prohibit the outdoor storage of up to one (1) cord of neatly stacked firewood.

(d) No burning of trash shall be permitted on any Lot, if trash or other refuse is to be disposed of by being picked up and carried away on a regular basis, containers may be placed in the open, following daylight, on any day that a pickup is to be made at such place on the Lot so as to provide access to persons making such pickup. At all other times trash containers shall be stored so that they cannot be seen from any public way or from any other Lot.

(e) No junk vehicle, unlicensed or inoperable motor vehicle, commercial vehicle, trailer, camp truck, house trailer, boat or boat trailer, motorcycle, bus or other similar machinery or equipment of any kind or character (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any Lot) shall be kept upon the Property or a street, whether public or private, serving the Property, unless stored or parked within garages or other permitted structures nor (except for bonafide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. These prohibitions, however, shall not be construed to prohibit pick-up trucks of the 3/4 ton or smaller variety. Except when required to be open for ingress or egress, garage doors shall be kept closed. The provisions of this subsection shall apply to and bind all public streets within the Community. Enforcement of this Section (e) may be carried out by the Management Agent, the Board of Directors, EPCOM or any agent designated by one of them and may include physical removal of the violating vehicle, at the expense of the Member.

(f) No structure of a temporary character shall be erected, used or maintained on any Lot at any time.

(g) No vegetables shall be cultivated in front yards or in other areas clearly visible from a public street, except with written permission of EPCOM.

(h) No landscaping shall be done with plants or trees having a mature height in excess of eight (8) feet except with written permission of EPCOM, except as permitted by a Standing Resolution.

(i) No structure shall be erected, placed or maintained on any Common Area except:

(i) Structures designed exclusively for the common use of Owners, including, but not limited to, shelters, benches, chairs or seating facilities, fences and walls, walkways, roadways, parking facilities, sanitary facilities, gate houses, recreational or maintenance facilities and structures; and

(ii) Storm drainage and utility systems, water, sewer, telephone, gas, electricity and CATV lines or conduits:

The Common Areas may be graded, planted with trees, shrubs or other plants and maintained for the use and enjoyment of the Owners, or for the establishment, retention or preservation of the natural growth or topography of the Common Areas, or for aesthetic reasons.

(iii) Except for entrance signs, directional signs, signs for traffic control or safety and such promotional or other informational sign or signs as may be maintained by the Declarant, no signs or advertising devices of any character shall be posted or displayed on or about any Lot or Dwelling; provided, however, that the following signs may be displayed in the manner described below when two (2) or more homes on the same block are "for sale" or "for lease" at the same time:

a. One (1) temporary real estate sign, not exceeding five (5) square feet in area, may be displayed within a window of a home on any Lot placed upon the market for sale or rent. In the

case of corner Lots, a sign of up to the maximum permitted area in size may be placed in one (1) window facing each street frontage.

b. A sign containing red letters on a white field, reading "for sale" or "for lease", as appropriate, and measuring up to five (5) inches in height by the length of the standard mail box may be attached to the top of the Lot's curbside mailbox.

c. A clear or white plastic hanger box measuring not more than 9" by 12" may be attached to the side of the curbside mailbox to hold "information sheets" for pick-up by anyone interested in obtaining information on the home that is for sale or lease.

d. In addition to the permitted window sign, a real estate sign advertising that the Lot is "for sale" or "for lease" or advertising an "open house" may be displayed in the front yard of the Lot whenever the home that is for sale or lease is being held open for showing. Such "open house" yard sign shall be displayed only when someone is home and available to hold the home open for showing.

When only one (1) Lot on the same block is available for sale or for lease, the Member selling or leasing their Lot may elect to display a real estate yard sign of up to the allowable five (5) square feet in size in lieu of the permitted window sign and such sign may remain in the yard continuously until the home is sold or leased or until another Lot on the same block is placed on the market for sale or lease. When only a single Lot on the same block is available for sale or lease the Member also may display an "open house" sign, not exceeding five (5) square feet in area, when someone is home to hold the house open for showing. All such temporary real estate signs described in this section shall be removed promptly following the sale or rental of such Lot. Political signs of a customary residential dimension, as permitted by local ordinance, are permitted, and shall be promptly removed following elections.

(iv) No commercial activities shall be conducted on any Lot and no Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

(v) No structure, planting or other material shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may unreasonably change, obstruct or retard direction or flow of any surface flow patterns or drainage channels established by Declarant resulting in an adverse impact upon any Lot or Common Area.

(vi) No trees measuring in excess of six (6) inches in diameter, two (2) feet above the ground shall be removed from any Lot without written approval of the Association acting through the EPCOM or duly appointed subcommittee in conformity with any law, ordinance or regulation promulgated on that subject. EPCOM may, from time to time, adopt and promulgate such additional rules and regulations regarding Lot owner's installed landscaping and the preservation of trees and other natural resources and wildlife as it may consider appropriate.

(vii) No poles or wires for the transmission of electricity, telephone and the like shall be placed or maintained above the surface of the ground on any Lot.

(viii) No outside television aerial or radio antenna, or other aerial or antennae for either reception or transmission which may be viewed from the front yard of the Lot or which projects above the roof ridge line, shall be maintained upon the Property or Lot, except as addressed by a Standing Resolution.

(ix) No Lot shall be subdivided; provided, however, that this restriction shall not be construed to prohibit the adjustment or realignment of boundary lines between Lots or Lots and Common Areas, as long as such adjustment or realignment shall not create an additional Lot.

(x) No Dwelling and/or building appurtenant thereto, including, without limitation, detached

garages, accessory dwellings, sheds, swimming pools, or hot tubs, children's play houses, dog kennels, clotheslines, fuel tanks, garbage cans, incinerators, gardens and wood and/or compost piles shall be located within any setback required by zoning. If a zoning setback for any one or more of the preceding uses is not specified by an ordinance of the Town of New Market, a setback of three (3) feet from the boundary line of any Lot shall apply. Above-ground swimming pools shall not be permitted at any location within the Property.

(xi) No excavation shall be made on any Lot except for the purpose of building thereon at the same time when the building operations are commenced, and no earth or sand shall be removed from any Lot except as a part of such operations; provided, however, that this restriction shall not be construed to prohibit the construction of in-ground swimming pools, including in-ground hot tubs or ponds.

(xii) No exterior lighting shall be placed or fixed in such a manner as to cause a concentrated beam or significant volume of light to be directed outside the boundaries of any Lot.

(xiii) No Lot shall be so used as to cause any pollution to waterways, streams or ponds on or adjacent to the Lots or to any adjoining property's water supplies. No Lots shall be so used or maintained as to cause any erosion of soil or sediment into such waterways, streams or ponds. During the grading and construction of any improvements upon any Lot, adequate arrangements shall be made to insure that no erosion of soil or sediment into such waterways, streams or ponds shall take place and that no water is diverted or concentrated in any manner, which will cause flooding or erosion on any adjacent or downstream lot or Common Area.

(xiv) Not more than one (1) Dwelling shall be erected on any one (1) Lot within the Property, and each Dwelling shall be restricted to a single family Dwelling.

(xv) These restrictions shall not be construed as permitting any action or thing prohibited by the applicable zoning laws, or the laws, rules or regulations of any appropriate governmental authority. In the event of any such conflict, the most restrictive provision of such laws, rules, regulations or the restrictions shall be deemed to govern and control.

The interpretation, application and enforcement of these restrictions shall all be within the discretion of EPCOM and the Board of Directors.

11. Residential Use. All Dwellings shall be used for private residential purposes exclusively. Nothing contained in this Article, or elsewhere in this Declaration, shall be construed to prohibit the Declarant from the use of any Common Area, Lot or Dwelling for promotional or display purposes, or as "model homes", a sales office, or the like. The foregoing limitations notwithstanding, Dwellings may be used for those home occupations permitted by the Town of New Market zoning ordinance or the Frederick County Code, provided the following criteria are met:

- (a) The home occupation does not result in more than six vehicular trips to the Dwelling each day by persons who are visiting by reason of the home occupation; and
- (b) Not more than one non-resident person shall be employed in the Dwelling; and
- (c) All parking demands created by the home occupation shall be satisfied on the Lot and within its driveway or garage, with no parking created by the home occupation being permitted upon the streets of the Community.

12. Fences. Any fence constructed upon a Lot or the Property shall conform to the approved requirements of the ARC and to the standards promulgated in Standing Resolutions or shall have been expressly approved by EPCOM. The erection of fences shall be subject to the provisions of Article VII of this Declaration and, further, shall be required to be erected in a manner avoiding any encroachment on a neighboring Lot; provided, however, that a fence may be erected directly upon the lot-line if done pursuant to an agreement between the adjoining Lot owners which grants a license or easement for the encroachment and allocates responsibility for maintenance and

replacement. A copy of such a fence agreement shall be deposited with the Board of Directors or EPCOM. A fence installed by Declarant on or within a Lot line shall be the property of the Member owning that Lot and shall be maintained and, as needed, replaced or reconstructed to substantially the same dimension and appearance as originally constructed by Declarant. The obligation to maintain and reconstruct such fences shall bind and run with the Lot until and unless discharged by written direction or authorization of EPCOM or the Board of Directors.

13. Maintenance. Each Owner shall keep his Lot, and all improvements in good order and repair, including, but not limited to, the seeding, watering and mowing of the lawn, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management, to the extent that such exterior maintenance services are not provided by the Association. The Association shall have the right, but not the obligation, to correct any default of performance of a member of this covenant. Neither the Association, its Directors, agents or employees shall be deemed to be a trespasser when coming upon the Lot of a defaulting Member, after reasonable notice of entry, to correct a default of performance. The cost of correcting such default may be assessed against the Lot in question and enforced against such Lot in accordance with the provisions of the Maryland Contract Lien Act. Each Owner shall be obligated to maintain all trees planted by Declarant on the Owner's Lot in a healthy condition and, for a period of ten (10) years following the conveyance of the Lot to Owner, to replace any trees which die with healthy trees of comparable type and original size, which is to say, shade trees with shade trees, evergreens with evergreens, and flowering or fruit trees with the same, but this shall not be deemed to require replacement with identical species of trees.

Fences or driveways installed by Declarant or by Members' agreement to serve two (2) or more Lots shall be maintained, repaired and replaced by the Members whose Lots are served by or confront such facilities proportionately to their respective frontages upon fences or areas of traversed surface of driveways. Shared private driveways shall be governed by a Deed of Easement and "Joint Right of Way Use and Maintenance Agreement", the standard form for which is attached hereto as Exhibit C, and made a part hereof. Lots subject to a driveway Deed of Easement and "Joint Right of Way Use and Maintenance Agreement" include Lots numbered 9, 10, 11, 17, 18, 19, 31, 32, 33, 64, 65, 102, 103, and 104. Any disagreements respecting such allocations shall be bindingly arbitrated in the following manner:

Any party to the disagreement may invoke the arbitration procedure by delivering to the other party or parties a written statement of the controversy and copies of all documentary or graphic evidence supporting the position of the party invoking. Within five (5) days of the receipt of the submission of the invoking party, the recipient shall prepare and deliver their written response, accompanied by copies of all documentary or graphic evidence supporting the respondent's position.

If within five (5) days after the exchange of submissions the parties are still in disagreement, the invoking party may submit the matter to EPCOM which shall promptly render a decision in the matter which shall bind the parties.

14. Community Rules — Common Areas and Community Facilities. The Board of Directors may adopt and publish rules and regulations regarding the use of the Common Areas as it deems appropriate and necessary for the common good. No rule or regulation published shall be considered a waiver or termination of any provision of this Declaration. The violation of any rule or regulation published by the Board of Directors shall be considered a violation of these covenants.

15. Enforcement — Right to Remove or Correct Violations. In the event any violation or attempted violation of any of the covenants or restrictions contained in this Article VII shall occur or be maintained upon any Lot, or in the event of any other conduct in violation of any of the provisions or requirements of this Declaration, then the same shall be considered to have been done in violation of this Declaration and without the required approval of EPCOM required, and, upon written notice from EPCOM, after approval of such action by the Board of Directors, such violation shall be promptly removed or abated. If not removed, or the violation is not otherwise terminated or abated, within fifteen (15) days (or such shorter period as may be required in any such notice) after notice of the violation is delivered to the Owner of the Lot upon which such violation exists then EPCOM shall have the right, through its

agents and employees, to enter upon such Lot and to take such steps as may be necessary to remove or otherwise terminate or abate such violation and the cost of these steps may be assessed against the Lot upon which this violation occurred and when so assessed, a statement for the amount shall be given to the Owner of the Lot which assessment will be due and payable upon the stated due date, and shall be a continuing lien upon such Lot, and a binding personal obligation of the Owner of such Lot. Any lien established upon a Lot for such charges shall be subject to the provisions of the Contract Lien Act.

EPCOM shall have the further right, through its agents or employees, after reasonable notice, to enter upon and inspect any Lot at any reasonable time for the purpose of ascertaining whether any violation of the provisions of this Article VII or any of the other provisions or requirements of this Declaration exist on such Lot. Neither EPCOM nor any agent or employee shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. Further, the Committee shall have the authority to promulgate, enforce and collect a system of fines for the violation of any provisions of this Article VII.

- * 16. Architectural Covenants With The Town of New Market. The design, construction and modification of homes within The Orchard at New Market shall be subject to the Architectural Covenants entered into between Declarant and The Town of New Market, which Architectural Covenants also are identified as the Design Matrix and are set forth in their entirety in Exhibit D, attached hereto and made a part hereof.