

**RETURN ADDRESS:**

VELIKANJE, MOORE & SHORE, INC., P.S.  
Attn: James C. Carmody  
405 East Lincoln Avenue  
Yakima, Washington 98901

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS AND RESERVATIONS  
FOR APPLE TREE NO. 1**

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose and shall not affect the intent of any warranty contained in the document itself.

**Reference number(s) (if applicable):**

**Declarant:** APPLE TREE RESORT DEVELOPMENT

**Legal Description:**

1. Abbreviated form: *South 1/2 of SW 1/4, Sec. 31, T13N, R. 18E, W. 1/2*
2. Additional legal description is on page 5 of document

**Assessor's Tax Parcel ID Number(s):** *181331-33005 and 33006*



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**EXHIBITS**

Exhibit A – Plat of Apple Tree No. 1

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**THIS DECLARATION** of covenants, conditions, restrictions, easements and reservations for Apple Tree No. 1 (the "Declaration") is made by **APPLE TREE RESORT DEVELOPMENT**, a Washington general partnership, as of this \_\_\_\_\_ day of March, 2002.

### **RECITALS**

- A. This Declaration of Covenants, Conditions, Restrictions, Easements and Reservations for Apple Tree No. 1 is prepared for the purpose of assuring the mutual interests and expectations of homeowners and Apple Tree Resort Development. It is the purpose of these provisions to make the home owning experience rewarding and pleasant for all lot owners. Much thought and research has gone into these provisions in order to protect and enhance the value of the investment; promote an enjoyable recreational lifestyle; and offer and sustain a quality living environment for all within the resort and residential communities. We at Apple Tree believe in this project and its future and are very excited about further expansion that will make it even better.
- B. Declarant Apple Tree Resort Development (hereinafter "Apple Tree" or "Declarant") is the owner and developer of Apple Tree Resort, a multi-phased residential, commercial, resort and golf course community authorized as a planned development pursuant to approvals from Yakima County, Washington. The master plan for development of the real property is set forth in twelve (12) phases. The development shall be managed by Apple Tree in a manner which integrates, coordinates and assures the orderly and consistent development of the entire project and harmonizes the various phases of development.
- C. Apple Tree No. 1 represents the first phase subdivision of the project. The plat creates forty (40) single-family residential parcels, an exclusive common recreational facility (Lot 41), private access roadways, and utility rights-of-way. Also included in the first phase of development are areas reserved for a portion of the existing golf course (Tract "A" of Apple Tree No. 1) and areas reserved for future development (Tract "B", "C", "D" and "G" of Apple Tree No. 1). This Declaration of Covenants, Conditions, Restrictions and Easements shall be applicable to the following lots and tracts created by Apple Tree No. 1:

Lots 1 through 41 of Apple Tree No. 1; and  
Tracts "E" and "F" of Apple Tree No. 1.

A plat map is attached as Exhibit A. Apple Tree reserves the right to establish covenants, conditions, restrictions, easements and reservations with respect to the golf course and undeveloped portion of the property as well as subsequent phases of Apple Tree Resort.



- D. Apple Tree shall have the sole and exclusive responsibility for construction and installation of common use areas and facilities (i.e., private roadways, irrigation water delivery system, recreational areas and facilities, and other limited common facilities); the interpretation, administration and enforcement of these covenants, conditions, restrictions and reservations; the repair, maintenance and replacement of common areas and facilities; and design review for proposed site and structural improvements. Apple Tree shall further have exclusive authority to levy assessments upon each lot or parcel within the subdivision for purposes established herein.

**NOW, THEREFORE,** Declarant declares that the property, and every portion thereof, shall be held, transferred, sold, conveyed, leased, used and occupied subject to the covenants, conditions, restrictions, easements, assessments, and liens hereinafter set forth which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the property and which shall be binding on all parties having any right, title, or interest in the property or any portion thereof, and their respective heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## I. DEFINITIONS

1.1 **Definitions.** Unless otherwise expressly provided, the following words and phrases, when used in this Declaration and in any project documents, shall have the following meanings:

(a) "Apple Tree" shall refer to Apple Tree Resort Development, a Washington general partnership, and its successors or assigns. Any duties or responsibilities of Apple Tree hereunder may be assigned to related entities or parties as deemed reasonable or appropriate by Apple Tree.

(b) "Apple Tree Resort" shall mean the multi-phased planned development providing residential, multi-family, lodging, commercial and golf course properties and facilities located in Yakima County, Washington and as authorized by land use approvals from Yakima County, Washington. Apple Tree contemplates the future expansion of the planned development and such additions and/or expansions shall also be considered a part of Apple Tree Resort.

(c) "Assessment" shall mean periodic charges established by Apple Tree or its designated property manager to be paid by lot owners for administration of these covenants and provisions (including, but not limited to, design and lot improvement review and approval; interpretation and enforcement of use restrictions, conditions, covenants, and all other aspects of this Declaration; and construction, installation, care, repair and maintenance of common areas and facilities); delivery of irrigation water and maintenance, repair and replacement of irrigation water distribution



system; capital costs, expenses for development of common areas and facilities (including swimming pools, tennis courts, pathways and recreational facilities); and other charges set forth herein. Assessments shall include three (3) separate charges: (i) regular assessments; (ii) special assessments; and (iii) service charges.

(d) "Common Areas" shall mean those portions of real property (including the improvements and facilities thereon) designated herein for the common use and benefit of identified properties, including roadways, walkways, parking areas, open space, and community recreational areas and facilities. The common areas will be owned by Apple Tree but held for the common use and enjoyment of the identified owners served by the common area or facility. Common Areas may include categories based on the nature of benefitted properties, namely:

(i) "Limited Common Areas" shall mean areas and facilities that benefit and are appurtenant to a limited number of specially benefitted lots, including private roadways and neighborhood swimming and recreational facilities. The amortized capital cost, and costs and expenses for repair, maintenance, replacement and management, shall be specially assessed only to benefitted parcels and lots.

(ii) "Community Common Areas" shall mean areas and facilities available to and benefitting all properties within Apple Tree Resort including, but not limited to, community swimming pools, tennis courts, walkways and other community facilities. Amortized capital costs, and costs and expenses for repair, maintenance, replacement and management of such facilities, shall be a portion of regular assessments hereunder.

(e) "Common Expenses" shall mean the shared cost and charges for maintenance, construction, improvement, repair, replacement, operation, insurance and management of common areas and facilities, and administration and management of the covenants applicable to properties which are the subject of this Declaration. The common expenses shall also include reserves for such purposes as well as compensation to property managers.

(f) "Construction" and "Constructed" shall mean any construction, reconstruction, erection or alteration of an Improvement, except wholly interior alterations to a then existing structure.

(g) "Declarant" shall mean Apple Tree Resort Development, or such successor or assign as Declarant may designate in writing recorded in the records of the Auditor of Yakima County.

(h) "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, and Reservations for Apple Tree No. 1, as it may from time to time be amended.





(i) "Development Plan" shall mean the overall plan of development for Apple Tree Resort. The development of the golf course, public facility and residential components are part of an integrated planned development and each phase is a separate component of the project. The development plan is for a master planned development pursuant to prior land use approvals issued by Yakima County, Washington. Apple Tree (or other designated entities) shall coordinate overall development and reserves the right to modify development plans in the exercise of its sole discretion.

(j) "Fairway Lot" shall mean any lot that is adjacent or contiguous to any fairway of the Apple Tree Golf Course.

(k) "Golf Course" shall mean the Apple Tree Golf Course, and all real and personal property appurtenant thereto. The golf course may be expanded or modified as determined reasonable or appropriate by Apple Tree.

(l) "Improvement" shall mean any man-made undertaking which would modify the physical appearance of any lot or the common area, including construction of structures (residences, guest houses, garages, shops, sheds, pools, gazebos, platforms, decks or constructed patios); driveways, parking pads or other surface modifications where a vehicle will be parked or driven; or any other construction activity which would result in material impacts on adjoining properties and/or owners. Improvement shall also include any remodel or addition to an existing structure.

(m) "Lot" shall mean each legally platted parcel of land within the property, with the exception of the Common Areas. For purposes of this Declaration, "lot" shall refer solely to Lots 1 through 41 of the recorded plat of Apple Tree No. 1.

(n) "Manager" of "Property Manager" shall mean Apple Tree or such entity appointed by Apple Tree to manage and administer the Declaration and perform duties and responsibilities hereunder with respect to management, maintenance, repair, assessment and enforcement within Apple Tree Resort.

(o) "Mortgage" shall mean a recorded mortgage, deed of trust or other real estate interest that creates a lien against a lot.

(p) "Mortgagee" shall mean the beneficial owner, or the designee of the beneficial owner, of an encumbrance on a lot created by a mortgage or deed of trust and shall also mean the vendor, or the designee of a vendor, of a real estate contract for the sale of a lot.

(q) "Owner" shall mean the record owner of fee simple title to a lot within the property, but shall exclude persons or entities having any interest merely as security for the performance of any obligation. If a lot is sold under a recorded contract



for sale, the purchaser (rather than the fee owner) shall be considered the "owner" of the property.

(r) "Person" shall mean an individual, corporation, partnership, association, trustee, or other legal entity.

(s) "Plans" shall mean site plan, building plan and landscape plan presented for review and approval by Apple Tree or Manager.

(t) "Plat" shall mean the recorded plat of Apple Tree No. 1 and any amendments, corrections or addenda thereto subsequently recorded.

(u) "Project" or "Development" shall mean the Master Planned Development of Apple Tree Resort. The property subject to this Declaration is a part of the Master Planned Development and all matters shall be construed and applied in a manner consistent with the overall development.

(v) "Structure" shall mean any building, fence, wall, driveway, walkway, patio, garage, storage shed, carport, mailboxes, swimming pool, rockery, dog run, or the like.

1.2 **Form of Words.** The singular form of words shall include the plural and the plural shall include the singular. Masculine, feminine and neuter pronouns shall be used interchangeable.

1.3 **Exhibits.** The following are exhibits to this Declaration:

Exhibit A – Plat of Apple Tree No. 1

## II.

### **PROPERTY, COMMON AREAS AND EASEMENTS**

2.1 **Property and Master Plan.**

2.1.1 **Property Subject to Declaration.** This Declaration of Covenants, Conditions, Restrictions, Easements and Reservations shall be specifically applicable to the following described real property situated in Yakima County, Washington:

- Lots 1 - 41 of the Plat of Apple Tree No. 1, recorded under Auditor's File No. 7266551, records of Yakima County.
- Tracts "E" and "F".



- Any and all easements shown on the face of the Plat of Apple Tree No. 1, as recorded under Auditor's File No. 7266551, records of Yakima County.

The property subject to this Declaration is more particularly described on attached Exhibit A and is a portion of the Plat of Apple Tree No. 1. Areas reserved for golf course (Tract "A" of Apple Tree No. 1) and future development (Tracts "B", "C", "D" and "G" of Apple Tree No. 1) shall not be subject to this Declaration but may be subject to such covenants, conditions and restrictions as determined in the future to be reasonable or appropriate by Apple Tree.

2.1.2 **Master Plan.** Apple Tree Resort is a master planned development approved by Yakima County, Washington, and contemplates the development of residential, commercial, resort and golf course properties in twelve (12) phases. The development is an evolving design and may be modified or expanded in the exercise of the sole judgment of Apple Tree. The reservation of rights shall include authority to amend the master plan; add additional properties to the development; modify, change or expand golf course design, routing or facilities (including construction of additional golf holes); and the development of shared common facilities for residents and visitors to the development (e.g., swimming pools, tennis courts and similar facilities).

2.2 **Designation of Common Areas/Facilities.** a portion of the lots created by the Plat of Apple Tree No. 1 are served by private roadways or share common facilities. Special assessments will apply only to benefitted properties and the following are designated Common Areas:

(a) **Private Roadway -- Lots 26 Through 41.** A nonexclusive easement for ingress, egress and road access purposes is granted over and across Tract E of the Plat of Apple Tree No. 1 for the benefit of Lots 26 through 41 of Apple Tree No. 1. The private roadway easement shall be appurtenant to each such lot and will be constructed and maintained by Apple Tree for the benefitted properties. The access easement may also include gates, access security system and landscaping as determined appropriate by Apple Tree.

(b) **Private Roadway -- Lots 1 Through 11.** A nonexclusive easement for ingress, egress and road access purposes is granted over and across Tract F of the Plat of Apple Tree No. 1 for the benefit of Lots 1 through 11 of Apple Tree No. 1. The private roadway easement shall be appurtenant to each such lot and will be constructed and maintained by Apple Tree for the benefitted properties. The access easement may also be landscaped as determined appropriate by Apple Tree.

(c) **Recreation Area.** A recreation area (swimming pool, hot tub, patio, changing room and associated facilities) shall be established on Lot 41 of the Plat of Apple Tree No. 1 for the exclusive benefit of the owners of Lots 26 through 40. the



construction of the recreation facility shall be started upon sale of fifty percent (50%) of the benefitted parcels, or at such earlier time as determined by Apple Tree.

(d) **Common Recreation Facilities.** Apple Tree contemplates the development and construction of common recreational facilities (including swimming pool, tennis courts and community pathways) for the benefit of all properties within Apple Tree Resort. The common recreational facilities may be constructed at a central location within the resort but will be available for usage by owners of Lots 1 through 40 of Apple Tree No. 1 subject to reasonable rules and regulations established by Apple Tree.

(e) **Irrigation Delivery System.** The irrigation water delivery system is owned by Apple Tree (or its assignee) but shall be for the use and benefit of properties holding water share rights or interests in Yakima-Tieton Irrigation District. The system use, charges and assessments shall be as more particularly set forth in that certain Master Declaration for Irrigation Water recorded with Yakima County, Washington under Auditor's File No. 7266564.

(f) **Entry Monument and Landscaping.** Declarant hereby reserves the right to construct entry monuments and landscape access locations associated with private roadways and recreational facilities designated herein and provide for the repair, maintenance, replacement and operation of entry facilities or controls and landscaping. Entry improvements may include monuments, lighting, gates and electronic access controls (or security system) as determined appropriate by Apple Tree.

2.3 **Use of Common Areas/Facilities.** Common Areas may be utilized by lot owners (and guests) specifically benefitted by the common area or facility. Such areas are divided into two categories: (i) community common areas benefitting all properties within Apple Tree Resort; and (ii) areas and facilities limited to the exclusive use of specific lots or parcels ("limited common areas"). Management of all Common Areas, however, is exclusively vested in Apple Tree (or its assigns) and no owner shall exercise or possess any right to modify, alter or otherwise utilize the Common Areas except for the limited purposes established herein. The right to use the Common Areas shall be appurtenant to the ownership of benefitted parcels and shall extend to each owner, and his agents, tenants, members of his household, invitees, and licensees. The right to use the Common Areas shall not be assigned or conveyed except upon the transfer of a lot, and then only to the purchaser or transferee of the lot.

2.4 **Abandonment of Common Areas.** The Common Areas may not be abandoned or vacated by Apple Tree or any successor in interest provided, however, that Apple Tree reserves the right to modify, reconfigure, alter or replace such areas and facilities as determined appropriate for the resort.. Apple Tree may, in the exercise of its sole discretion, dedicate private roadways to a public agency, authority or utility and shall, upon such dedication and acceptance of roadways into the public road



system, be released of any responsibility for maintenance, repair or replacement of such roadways.

2.5 **Maintenance of Common Areas.** Apple Tree (or its successor or designee) shall maintain, repair, replace, improve, and otherwise manage all of the Common Areas so as to keep them in good repair and condition. The maintenance, repair and improvement of Common Areas shall be consistent with standards established by Declarant for Apple Tree Resort and may also include pathways, landscaping of entry or common walkways or pathway areas, and establishment of rules and regulations to assure a uniform and high quality appearance for Apple Tree Resort. Any charges and reserves established by or incurred by Apple Tree (or its successor or designee) for maintenance, repair, replacement and management of Common Areas shall be specially assessed for benefitted lots and owners.

2.6 **Easements for Utilities.** Declarant hereby creates and reserves an 8-foot utility easement designated on the Plat of Apple Tree No. 1 for the purpose of locating the irrigation water delivery system.

### III.

#### **DESIGN REVIEW, IMPROVEMENT STANDARDS AND USE RESTRICTIONS**

3.1 **Uniformity of Use and Appearance.** One of the purposes of this Declaration is to establish design criteria and use restrictions which preserve and enhance the resort living environment and assure quality of workmanship, materials, design, maintenance and location for any and all structures and improvements within Apple Tree Resort. It is in the best interests of each owner that such standards be maintained and coordinated with the overall development of properties. Apple Tree reserves the right, in its sole and absolute authority, to review and approve or disapprove any and all proposed construction, alteration, or improvement of buildings, structures, landscaping, fences and exterior lighting placed on each residential lot.

3.2 **Design Review -- Improvements.** No structure or improvement (including remodel and/or alteration affecting exterior appearance) shall be constructed or caused to be constructed on any lot unless and until a complete set of plans and specifications for buildings, structures and/or site improvements have been submitted to and approved in writing by Apple Tree (or its successor or designee).

3.2.1 **Preliminary Concept Plan.** Owner may submit to Apple Tree a preliminary concept plan for improvement of a lot or parcel. The preliminary concept plan need not contain the detail of a final complete set of plans and specifications, but shall set forth a conceptual site plan (with location of structures and improvements); identify design characteristics of structures including size, materials and other salient features; and other conceptual design components. Apple Tree shall review the preliminary concept plan and provide initial comments within fifteen (15) days following receipt of such concept plan. The purpose of review of preliminary concept plans is to



provide input and guidance to owner in the development of final plans and specifications for proposed buildings, structures and other site improvements.

**3.2.2 Submission of Plans.** Owner shall submit to Apple Tree two (2) complete sets of plans and specifications for all proposed buildings, structures and other site improvements (including but not limited to landscaping, fencing, lighting, driveways, parking areas and concrete and/or masonry walls), together with a detailed site plan setting forth the location of such buildings, structures and site improvements. The detailed building and construction plan and specifications shall include identification of surface water runoff control and other pertinent design components. The site plan shall locate all utility installations as well as all trees, bushes or other landscaping, having a present or reasonably expected height in excess of six (6) feet.

The plans shall also include a floor plan with typical wall sectioning and four (4) major exterior building elevations indicating exterior materials, finishings, window sizes and materials, door sizes and materials, and exterior finish and color scheme. Apple Tree may request additional information, data or material in order to review and evaluate the proposed plans and specifications.

**3.2.3 Review of Plans.** The plans and specifications submitted by lot owner shall be reviewable by Apple Tree to assure compliance with these covenants, conditions and restrictions as well as assure consistency with the overall development standards of Apple Tree Resort. The plans and specifications shall be reviewed and a determination made by Apple Tree within fifteen (15) days following receipt of an initial conceptual site plan and/or a final complete set of such plans and specifications.

(a) **Basis of Approval.** In reviewing the application and materials submitted therewith and in reaching a decision thereon, Apple Tree shall use its best efforts and judgment to assure that all improvements shall produce and contribute to an orderly and aesthetically complimentary design and appearance to be of a quality required to maintain the properties as a first-class residential development. Approval by Apple Tree shall be based, among other things, on: (i) consistency with development standards set forth in this Declaration; (ii) conformity and harmony of external design with neighboring improvements; (iii) the affects of location and use of proposed improvements on neighboring lots, common areas and golf course; (iv) natural landscaping of the lot in relation to that of neighboring lots; (v) proper facing of the main elevation with respect to adjacent lots, common areas and golf course; and (vi) the conformity of plans to the purpose and general plan and intent of Apple Tree Resort.

(b) **Determination by Apple Tree.** A decision following plan review may be for approval, a conditional approval or a denial, and shall be in writing and dated by Apple Tree. Conditional approval may be granted outlining specific changes or modifications to submitted plans and specifications. Apple Tree shall also have authority to modify development standards contained herein when reasonably required by topography, natural conditions or undue hardship.



(c) Time Table for Construction. Any approved plans and/or specifications for improvements to lots within the plat shall be subject to a reasonable time table for completion, including landscaping of the parcel. Any improvement of property shall be completed within one (1) year following date of approval by Declarant, provided that such period of time may be extended due to weather and/or other exceptional circumstances. The approved set of plans and specifications must be on the job site at all times.

(d) Construction Period Activities. During construction of any improvement on a lot within the plat, the owner and their agents and contractors shall be responsible to take all steps reasonable or necessary to minimize unreasonable, excessive or persistent construction impacts upon neighboring properties. Work on exterior portions of improvements shall be prohibited on Sundays or holidays.

(e) Effect of Approval - Nonliability. Apple Tree's approval of any plans or specifications shall not constitute a warranty or representation that such plans and specifications were examined or approved for (i) engineering or structural integrity; (ii) internal operation or functional integrity of improvements; or (iii) sufficiency or compliance with applicable governmental laws, codes, ordinances and regulations. Owner shall be solely responsible for such matters. Each owner hereby further releases any and all claims or possible claims against Declarant and its heirs, successors and assigns, or of any nature whatsoever, based upon engineering or structural integrity or sufficiency or compliance with applicable Governmental laws, codes, ordinances and regulations.

3.2.4 Code Compliance. Notwithstanding anything set forth herein, the construction, modification or alteration of any structure shall comply with the more restrictive of either (i) the terms and conditions of this Declaration, or (ii) the laws, codes, ordinances and regulations of Yakima County or any other governmental entity having jurisdiction over the subject matter.

3.3 Building Specifications and Restrictions. All single-family residences, secondary buildings and other site improvements authorized on lots within the subdivision shall comply with the following requirements:

3.3.1 Size - Minimum Square Feet. Apple Tree is a diverse resort community with a variety of housing alternatives. In order to assure the coordinated development of properties, the following minimum size requirements (exclusive of garages, decks and porches) are established for the identified lots:

<u>Lot</u>		<u>Minimum Size</u>
Lots 5-15	single story	1,850 square feet
	two story	2,050 square feet
Lots 1-4 & 18-25	single story	2,000 square feet



	two story	2,150 square feet
Lots 26-40	single story	2,200 square feet
	two story	2,350 square feet

3.3.2 **Lot Size.** No lot (or portion thereof) within this plat shall be divided and/or transferred where a resulting parcel shall be less than (i) eight thousand (8,000) square feet, or (ii) the minimum lot size established by zoning ordinances for the use district in which the parcel is located.

3.3.3 **Set Backs.** Fairway lots will have a minimum rear set back from the common boundary line of the lot and the fairway of not less than fifteen (15) feet unless otherwise required by applicable building code or zoning ordinance. Absolutely no structures, including fences, shall be permitted within such setback area unless specifically approved by Apple Tree.

3.3.4 **Local Codes.** All buildings or structures shall be constructed in accordance with the applicable codes and regulations of Yakima County. In the event of a conflict between any applicable codes and these covenants, the more restrictive provision shall govern.

3.4 **Appearance.** Unless otherwise approved by Apple Tree, the following design/construction requirements shall apply.

3.4.1 **Roofing.** No residence or other building within the development shall have composition (i.e., asphalt, three-tabbed shingles), aluminum, flat gravel or tarred roof. Acceptable roofing material shall consist of wooden shingles or shakes, architectural composition or tile; provided, however, that modern roofing materials generally acceptable and used in high-quality residential construction shall be allowed if reviewed and approved by Declarant.

3.4.2 **Residence/Exterior.** All exterior portions of a single-family residence shall be constructed of brick, stone, stucco, or wood product approved by Declarant. The architecture of each residence (including siding) shall be uniform and consistently applied to all exterior sides of the single-family residence. Those portions of the structure not constructed of ornamental masonry or brick shall be painted with two coats of paint or stain in colors consistent with development design and standards established by Declarant. No residence or other structure shall be erected on a lot within the subdivision which contains synthetic siding such as fiberglass or aluminum; provided, however, that modern siding materials generally acceptable and used in high-quality residential construction may be allowed following review and approval by Declarant. All wood siding used on residences shall be individual board siding, such as cedar or redwood; and no plywood sheeting, T-111, or similar type siding shall be allowed within the subdivision.





3.4.3 **Garages.** Each residence shall be constructed with a garage that holds at least two (2) but no more than four (4) full-size vehicles. All automobiles (including pick-ups) must be parked in the garage or driveway of the residence. Guest vehicles may be parked on the street (if necessary) for a temporary period associated with the visit.

3.4.4 **Entry Walks, Porches and Decks.** All front entry walks shall be concrete, exposed aggregate concrete, pavers or other products approved by Apple Tree. All decks and wood porches shall be constructed of approved wood products or comparable high quality material approved by Apple Tree.

3.4.5 **Driveways.** All driveways shall be constructed of concrete, exposed aggregate concrete paving, pavers or other approved materials (but not asphalt).

3.4.6 **Fences/Hedges.** Individual lots (and improvements thereon) shall be integrated with golf course facilities to provide an open landscaping theme. No fences or landscaping hedges (unless approved by Apple Tree as part of the landscaping plan) shall be allowed on any property line bordering the golf course. Side lot perimeter fencing adjacent to adjoining residential properties may be installed, provided such fencing is consistent with the overall aesthetics and architectural design for the subdivision, does not extend into the rear setback area (15 feet from real property line) on fairway lots, and is reviewed and approved by Apple Tree. Limited fencing and privacy screening of a deck, patio or limited backyard area may be permitted upon review and approval by Declarant. No front yard fencing shall be allowed on any lot.

3.4.7 **Chimneys.** Any fireplace chimney shall be constructed of brick, rock or other suitable masonry product approved by Apple Tree in design review.

3.4.8 **Utilities.** All utilities shall be installed underground.

3.4.9 **Mailboxes.** Apple Tree reserves the right to require community type (cluster) mailboxes.

### 3.5 **Landscaping and General Property Maintenance.**

3.5.1 **Approval of Landscaping Plan.** All landscaping within the Subdivision shall be subject to the approval of Declarant. The term "landscaping" shall include an inground sprinkler system and shall be predominantly comprised of lawns; shrubs, trees and bushes; and garden areas.

3.5.2 **Appearance of Lot.** No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon properties (whether improved or vacant) and no refuse, garbage, disabled or unused motor vehicles or unsightly objects



shall be allowed to be placed or to remain anywhere upon the subject properties. In the event that any owner of property shall fail or refuse to keep the premises free from weeds, underbrush, refuse piles, garbage, unused motor vehicles or other unsightly growth or objects. Apple Tree may proceed with enforcement pursuant to Section 4.7 to abate or remedy the condition or violation. Such entry shall not be deemed a trespass and, for purposes of such entry, the lot owner hereby grants to Declarant an irrevocable license to enter upon their respective property.

3.5.3 **Limitations on Landscaping.** The use of large trees as part of an owner's landscaping plan shall be discouraged and no tree shrub or other planting shall exceed the elevation of twelve (12) feet in height. In the event a lot owner's landscaping includes any trees or other plants which establish a root system under the common areas, including streets, the subject lot owner or owners shall be solely responsible for all costs incurred to repair any damage caused directly or indirectly by said landscaping. In addition, Apple Tree shall have the right, but not the obligation, to order removal of any tree, shrub or plant causing damage to common areas or otherwise obstructing or impairing views from adjoining properties (irrespective of height) as determined by Apple Tree. The cost of removal shall be borne solely by subject lot owner.

3.5.4 **Landscape Installation.** All landscaping must be completed within ninety (90) days from the date of issuance of the certificate of occupancy, however, with good cause shown, Apple Tree may extend this term. All lots shall be maintained in a neat and orderly condition during construction.

3.6 **Use Restrictions.** Apple Tree No. 1 is a part of the Apple Tree Resort, a multi-phased residential commercial and golf course master planned development. Project design contemplates the integrated development of properties and facilities in a manner to achieve over-all development objectives. The following use restrictions are an integral component of the project:

3.6.1 **Tract "A".** Tract "A" of the subdivision shall be used only as a golf course or amenity to Apple Tree Golf Course. The current golf course is subject to revision and/or reconfiguration including, but not limited to, redesign of golf holes (including routing, greens, fairways, etc.); modifications or additions to the existing 18-hole golf course; and reconfiguration of associated amenities.

3.6.2 **Tracts "C" and "D".** Tracts "C" and "D" are reserved for future development. The master plan for Apple Tree Resort contemplates multi-family, lodge and/or commercial development of such properties. Declarant does, however, reserve the right to revise, modify or amend the development plan to allow such uses and occupancies as determined reasonable or appropriate by Declarant. To the extent that future development of Tract "C" utilizes the private roadway over Tract "F" of Apple Tree No. 1, such properties shall bear an equitable share of special assessments with respect to such private roadway.



3.6.3 **Tracts "B" and "G".** Tracts "B" and "G" are reserved for future development as residential properties. The design, shall be determined by Declarant but shall be consistent with overall development and master planning for Apple Tree Resort.

3.7 **Residential Uses.** Lots 1-40 are reserved for single-family residential purposes and shall be subject to the following use restrictions designed to preserve, protect and enhance the residential character of such properties:

3.7.1 **Parking.** No commercial-type trucks, campers, trailers, motor homes, recreational vehicles, boats or trailers (boat, utility, camping, horse or otherwise) shall be parked or permitted to remain on any lot, unless the same is stored or placed in a garage or in an approved screened carport. No such vehicles shall be parked overnight on any street adjoining a single-family residence; provided that such vehicles belonging to Guests may be temporarily parked in driveways or curbside areas adjoining the single-family residence. No motor vehicles, inoperative for reasons of mechanical failure, shall be parked and/or stored on any lot or in the street right-of-way for more than 72 hours.

3.7.2 **Signs.** No sign of any kind shall be displayed which is visible to the public or from the Golf course on any lot without the prior written consent of Declarant, except for customary "For Sale" signs in a form not prohibited by any rules or regulations of Apple Tree. This restriction shall not apply to any lots owned by Declarant or authorized builder.

3.7.3 **Animals.** No horses, livestock, poultry, reptiles, pigs or other non-domestic animals shall be kept on any lot. All domestic animal enclosures must be kept in a clean, neat and odor-free condition at all times. Any dogs must be controlled when outdoors. In the event that Apple Tree determines that any pet is a nuisance, the owner shall be responsible for correcting or alleviating the nuisance and otherwise controlling the animal. All owners shall also comply with applicable governmental laws, codes, ordinances, and relations pertaining to pets and animals.

3.7.4 **Temporary Structure.** No structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuilding shall be installed, placed or used on any lot as a residence, either temporarily or permanently. Contractors may locate temporary offices on site during a period of construction and upon approval by Apple Tree.

3.7.5 **Clothes Lines.** No washing, rugs, clothing, apparel or any other article shall be hung from the exterior of any structure or on a lot so as to be visible from the adjacent streets or roadways or from the Golf course.

3.7.6 **Radio and Television Aerials/Satellite Dishes.** No television or radio aerial shall be erected or placed on any lot. No Satellite receiving dishes more



than twenty-four (24) inches in diameter may be permitted without review and approval by Apple Tree.

**3.7.7 Trash Containers and Debris.** All trash shall be placed in sanitary containers either buried or screened so as not to be visible from adjoining structures, streets or roadways. No lot or any portion thereof shall be used as a dumping ground for trash or rubbish of any kind. Yard waste and debris resulting from landscaping work or construction shall not be dumped onto adjoining lots or streets or roadways. Compost piles may be kept upon the lots provided they are kept in a clean, neat, odorless and sanitary condition.

**3.7.8 Offensive Activities.** No noxious activity, including but not limited to the creation of excess levels of noise, shall be carried on in any lot, nor shall anything be done therein which may be or become an annoyance or nuisance to other owners or tenants.

**3.7.9 Underground Utilities.** No outdoor overhead wire or service drop for the distribution of electric energy or for telecommunications purposes nor any pole, tower or other structure supporting said outdoor overhead wires shall be erected, placed or maintained within the property. All owners shall use underground service wires to connect any structure to electric or telephone utility facilities.

**3.7.10 Water Supply/Sewage Disposal.** No individual water supply system or individual sewage system shall be permitted on any lot.

**3.7.11 Damage.** Any damage to streets, plat improvements, entry structure or monuments, fences, landscaping, mailboxes, the golf course, lights and lighting standards by lot owners, their children, contractors, agents, visitors, friends, relatives or service personnel shall be repaired and restored to like new condition by Apple Tree at the sole cost and expense of owner causing such damage. Lot owners shall be responsible for any damage to glass or other property caused by golf balls from the golf course and shall hold the owners of the Golf course, their successors and assigns harmless from any liability due to golfing activities on the Golf course.

**3.7.12 Fairway Lots.** In addition to the use restrictions set forth above, all fairway lots shall be subject to the following additional restrictions:

(a) No sign of any kind shall be displayed to the public view from the Golf course, with the exception of one (1) "For Sale" sign of not more than five (5) square feet;

(b) No structure or enclosure for the purpose of containing pets shall be allowed except for a small dog run if properly screened and landscaped;



(c) No fences, walls or other hedges shall be erected on lot lines abutting Golf course fairways or fairway envelopes; and

(d) Owners of fairway lots recognize and accept the risk that golfers will occasionally misplay golf balls into lots.

3.7.13 **Lease - Rental of Property.** The leasing and/or rental of property shall be coordinated and administered through Apple Tree (or its assigns). Any proposed lease or rental must be submitted and approved by Apple Tree; comply with established rules and regulations with respect to rental properties; and otherwise complement both adjoining properties and the resort as a whole. Apple Tree may offer rental services for administration and management; establish rental pools for properties; and provide services reasonably associated with such activities.

3.8 **Golf Course Activities - Fairway Lots.** Fairway lots are situated immediately adjacent to Apple Tree Golf Course and owners recognize and accept the risk associated with such location and golfing activities. Apple Tree Golf Course is a public facility with rounds of golf played during daylight hours; course maintenance and improvement activities conducted on a regular basis, including, but not limited to, operation of irrigation systems and mowing equipment; and that golfers will occasionally misplay golf balls into lots. Each of these activities is recognized and accepted and shall not constitute a nuisance or otherwise be supportive of legal claim, demand or cause of action. The lot owners shall further take such activities into consideration in the design, location and occupancies of any residences located on fairway lots.

3.9 **Golf Course Owner.** The covenants, conditions and restrictions shall be deemed to inure to the benefit of the owner of the golf course its successors and assigns, and all remedies available to lot owners shall be available to the owner of the golf course, its successors and assigns, as well as any other remedies available at law or in equity. For any fairway lot, the restrictions and requirements applicable thereto and contained herein may not be waived, modified, altered or adjusted without the prior written approval of the owner of the golf course, its successors and assigns, which approval may be withheld in said owners sole discretion.

#### IV. **MANAGEMENT AND ADMINISTRATION**

4.1 **Designation of Manager.** Apple Tree is designated as manager and vested with administrative responsibilities for installation and construction of common facilities (private roadways, irrigation water delivery system, and other community facilities); review and approval of plans for property improvements (structures and landscaping); administration and enforcement of covenants, conditions and restrictions applicable to properties; and assessment for such management services. The management and administration shall be in accordance with the terms and provisions of this Declaration as more particularly set forth herein.



4.2 **Management of Common Area/Facilities.** Apple Tree shall be responsible for construction, installation, maintenance and management of common areas and facilities made available to residents of Apple Tree Resort (e.g., central swimming, tennis, reception and recreational facilities), including but not limited to private roadways, entry monuments and gates (if any), irrigation water delivery system, common pathways and other facilities. The repair and maintenance responsibilities shall include but not be limited to repair and maintenance of private roadways in good and workable order and condition; repair of defects or breaks in systems; street cleaning and snow removal; and other common requirements of common management.

4.3 **Costs and Expenses.** Any and all costs, expenses and charges for installation, repair, maintenance or improvement of common facilities or systems shall be billed to and paid by Apple Tree. Such costs and expenses shall include, but not be limited to, labor, materials, finance charges, insurance, property taxes, utility charges, overhead and allowable staff charges. All such costs and expenses shall be considered in establishing assessments hereunder.

4.4 **Administration of Declaration/Covenants.** Apple Tree shall have the power and responsibility to enforce the provisions of this Declaration, and the adopted rules and regulations for Apple Tree Resort. The failure of any owner to comply with the provisions of this Declaration, or the rules and regulations of Apple Tree Resort will give rise to a cause of action to individual owners and Apple Tree and any aggrieved lot owner or Apple Tree for recovery of damages, or injunctive relief, or both. If a legal action is brought to interpret or enforce compliance with the provisions of this Declaration, or the rules or regulations of the Apple Tree Resort, the prevailing party shall be entitled to judgment against the other party for its reasonable expenses, court costs, and attorneys' fees in the amount awarded by the Court.

4.5 **Protection of Common Areas.** Apple Tree may spend such funds and take such action as it may from time to time deem necessary to preserve the Common Areas, settle claims, or otherwise act in what it considers to be the best interests of the property owners.

4.6 **Adoption of Rules and Regulations.** Apple Tree is authorized to adopt, amend, and revoke reasonable and detailed administrative rules and regulations necessary or convenient from time to time to insure compliance with the general guidelines of this Declaration; to promote the comfortable use and enjoyment of the property; and to govern the consistent and uniform development and management of all properties within Apple Tree Resort. The rules and regulations of Apple Tree shall be binding upon all owners and occupants and all other persons claiming any interest in the property.

4.7 **Enforcement of Covenants/Assessments.** Apple Tree shall have the right to enforce, by any proceedings at law or in equity, these conditions, covenants, restrictions and reservations; any and all regular assessments, special assessments



or service charges; enforcement and foreclosure of liens; and recovery of costs, expenses and damages reasonably incurred with respect to enforcement or abatement of violations and breaches hereunder. Any enforcement shall be subject to the following procedures and notifications:

(a) **Notice of Violation.** Apple Tree shall provide to a lot owner a written notice of any violation or breach of covenants, conditions or restrictions hereunder, with such notice specifically identifying the violation or breach and establishing a reasonable period of time for cure of such violation or breach. In the event of a violation or breach which causes immediate harm or threat to residents or properties within Apple Tree Resort, Apple Tree is authorized to immediately take action (without notice) in order to abate the immediate and threatened violation or breach, or otherwise protect properties and residents of Apple Tree Resort.

(b) **Opportunity to Cure.** Lot owner shall be provided with a reasonable period of time in which to cure, correct or abate any asserted violation or breach of the covenants, conditions or restrictions contained herein. The period for cure, correction or abatement shall be established by Apple Tree (in the exercise of its sole discretion) and determined in light of the nature of the violation or breach; the reasonable time required for cure, correction or abatement; and such other factors as determined reasonable or appropriate by Apple Tree.

(c) **Enforcement.** In the event a lot owner fails to cure, correct or abate the identified violation and/or breach within the specified period of time, Apple Tree is authorized to take any and all actions reasonable or necessary to remedy the violation or breach including, but not limited to, entry upon the property; enforcement by litigation; or such other remedy as determined reasonable and/or appropriate. Failure, delay or omission by Apple Tree (or its agents) to enforce any such provisions shall in no way be deemed a waiver of the right to do so thereafter.

(d) **Legal Proceedings.** Apple Tree may commence such legal or equitable proceedings as are determined to be necessary or proper to correct or enjoin any activity or condition in violation or breach of provisions of this Declaration; enforce and collect assessments and charges; or otherwise assure compliance with the intent of this Declaration.

(e) **Costs of Enforcement.** Any and all costs and expenses incurred by Apple Tree in the enforcement and/or correction of any violation or breach of the covenants, conditions and restrictions shall be borne solely by the property owner. Costs and expenses shall include any and all costs of litigation, including but not limited to reasonable attorney's fees, filing fees, expert witness and discovery costs and expenses, deposition and transcript fees, and any and all other costs and expenses reasonably incurred in the enforcement and correction of the violation or breach.



V.  
**ASSESSMENTS AND CONNECTION CHARGES**

5.1 **Assessments.** Apple Tree shall establish assessments to individual lots for the promotion of the health, safety and welfare of residents of subdivision and Apple Tree; provide for repair, maintenance and operation of common areas and facilities; administer and enforce provisions of these covenants, conditions and restrictions; and otherwise provide for the coordinated and integrated management of the Apple Tree Resort. The specific assessments shall be as follows:

(a) **Regular Assessments.** Apple Tree shall determine and fix the amount of an annual assessment (regular assessment) against each lot at least thirty (30) days in advance of the start of each calendar year. The regular assessment shall fund and establish reserves for: (i) administration and enforcement of covenants, conditions and restrictions (including design review); (ii) maintain, repair and replace infrastructure and improvements serving lots within the development (including but not limited to irrigation water delivery system, common community facilities, pathways, and related facilities); (iii) defray administrative costs incurred by Apple Tree and their agents in the performance of their duties; (iv) provide for the amortization of capital costs associated with community facilities (such as swimming pools, tennis courts and other recreational facilities); and (v) for such other purposes and may be deemed appropriate for the collective benefit and welfare of owners.

(b) **Special Assessment.** Apple Tree may establish a special assessment for properties specifically benefitted by common areas and facilities, including but not limited to private roadways, security gates and systems, and exclusive recreational areas. The special assessment shall consider costs and expenses incurred in the repair, maintenance and replacement of such facilities; amortization of capital costs and investments, reserves for future repair, maintenance and replacement; street cleaning and snow removal; maintenance of entry monuments; landscaping for entry areas; utility charges; insurance; and property taxes. Such assessment shall include an equitable allocation of overhead and management compensation attributable to exclusive common area activities. The special assessment shall be allocated and assessed only to properties specially benefitted by such common areas and facilities.

(c) **Service Charges.** Service charges are assessments imposed on an owner for services provided by Apple Tree unique to the specific lot and/or owner, or for any act or omission of the owner which is contrary to or in conflict with this Declaration. The amount of the service charge shall be based on all reasonable costs and expenses incurred by Apple Tree in the enforcement, cure or abatement of a breach or violation of this Declaration; interest on said costs and expenditures; allocations for administrative or management charges; and any and all additional charges, costs or expenses arising from or related to such enforcement, cure or abatement.





5.2 **Connection Charges.** Apple Tree has installed sewer trunk and collection lines, as well as an irrigation water delivery system, for the benefit of residential properties within the development. A connection charge for irrigation water and sewer shall be as follows:

5.2.1 **Sewer Connection Fees.** Owner shall be responsible for any and all connection fees and costs with respect to connection to public sewer service for the property and payable to the City of Yakima. The connection fees shall include, but not be limited to, the treatment component of such connection charges together with applicable tax and service fee thereon. City of Yakima shall not charge Owner for the trunkage element (YMC 7.58.060) or the collection element of wastewater connection charges. The trunkage and collection element of the wastewater connection charges have been waived because of Apple Tree's funding and installation of the sewer trunk lines and collection systems. Prior to connection to public sewer service, owner shall pay Apple Tree as reimbursement for installation of such trunk and collection lines the following:

(a) **Trunkage Element.** An amount equal to the connection charge established by City of Yakima for Base Trunk/Interceptors Charge (calculated pursuant to YMC 7.58.060, as amended or updated from time to time), together with an amount charged by City as tax and service fee thereon. In no event, however, shall such charge be less than twenty-four cents (24¢) per square foot. The payment shall be made to Apple Tree in consideration for waivers previously secured by Developer.

(b) **Collection Pipes Charge.** An amount equal to the connection charge established by City of Yakima for Base Collection Pipes Charge (calculated pursuant to YMC 7.58.070, as amended or updated from time to time), together with an amount charged by City as tax and service fee thereon. In no event, however, shall such charge be less than thirty-nine cents (39¢) per square foot. The payment shall be made to Apple Tree in consideration for waivers previously secured by Developer.

5.2.2 **Irrigation Water Service.** Apple Tree will have installed an irrigation water delivery system prior to the issuance of the first certificate of occupancy for the subdivision. Owner shall pay to Apple Tree a connection charge as equitable reimbursement for the installation of the irrigation water delivery system. The connection fee shall be Three Hundred Dollars (\$300.00), such amount subject to periodic amendment for additional costs, finance charges and related expenses. Any valves, turnouts, flow control devices or other equipment or mechanisms necessary for a site delivery line to the lot or parcel shall be the sole expense of owner.

5.2.3 **Cascade Natural Gas.** Cascade Natural Gas has agreed to provide natural gas service to lots and parcels within the subdivision. The agreement for provision of service anticipates connection of all properties to the natural gas service and imposes a charge of Two Hundred Dollars (\$200.00) for any parcel not connecting to the service. In the event that a lot owner elects not to receive natural gas service



from Cascade Natural Gas, the lot owner shall pay to Apple Tree the sum of Two Hundred Dollars (\$200.00) with respect to the election of non-service by the natural gas provider.

**VI.**  
**LIEN AND COLLECTION OF ASSESSMENTS.**

6.1 **Assessments are a Lien; Priority.** All unpaid sums assessed by Apple Tree for regular and/or special assessments, service charges or connection fees under the authority of this Declaration shall constitute a lien on the lot and all its appurtenances from the date the assessment becomes due and until fully paid. The lien for such unpaid assessments shall be subordinate to tax liens on the lot in favor of any assessing unit and/or special district, and to all sums unpaid on prior mortgages of record, but shall have priority over all other liens against the lot. A first mortgage that obtains possession through a mortgage foreclosure or deed of trust sale, or by taking a deed in lieu of foreclosure or sale, or a purchaser at a foreclosure sale, shall take the lot free of any claims for the share of common expenses or assessments by Apple Tree chargeable to the lot which became due before such possession, but will be liable for the assessments and connection charges that accrue after the taking of possession. A lot's past-due share of assessments and connection charges shall be incorporated in subsequent regular assessments to all of the lot owners, including the mortgagee or foreclosure sale purchaser and their successors and assigns, in proportion to the number of lots owned by each of them. Notwithstanding any of the foregoing, however, the owner shall continue to be personally liable for past due assessments and connection charges.

6.2 **Lien for Assessment/Connection Fee.** In the event a parcel owner fails to pay an assessment or connection fee on or before the due date, the unpaid assessment and/or connection fee shall become a lien on the property for all outstanding and unpaid amounts, together with interest at the rate of twelve percent (12%) per annum and any and all additional costs, including reasonable attorney's fees, all costs of enforcement and collection, and all costs of foreclosure. Such lien shall become effective upon the recording of a notice of lien with Yakima County Auditor, which lien may be foreclosed in the same manner as a mechanic's or materialmen's lien under Washington State law (RCW 60.04 et seq.).

6.3 **Assessments are Personal Obligations.** In addition to constituting a lien on the lot, all sums assessed by Apple Tree and chargeable to any lot together with interest (at the rate of twelve percent (12%) per annum), late charges, all costs of collection, enforcement and/or foreclosure, and attorneys' fees in the event of delinquency, shall be the joint and several personal obligations of the owner and any contract purchaser of the lot when the assessment is made and their grantees. Suit to recover personal judgment for any delinquent assessments shall be maintainable without foreclosing or waiving the liens securing them.



6.4 **Late Charges and Interest on Delinquent Accounts.** Apple Tree may from time to time establish late charges and a rate of interest to be charged on assessments delinquent for a period of more than 10 days after the date when due. In the absence of another established, non-usurious rate, delinquent assessments shall bear interest at the rate of 12% per annum. If an installment on an assessment against a lot is not paid when due, Apple Tree may elect to declare the entire assessments against the lot for the remainder of the fiscal year to be immediately due and payable.

6.5 **Remedies Cumulative.** The remedies provided herein are cumulative and Apple Tree may pursue them, and any other remedies, which may be available under law although not expressed herein, either concurrently or in any order.

6.6 **No Avoidance of Assessments.** No owner may avoid or escape liability for assessments provided for herein by abandoning his or her lot.

## VII.

### **FAILURE OF APPLE TREE TO INSIST ON STRICT PERFORMANCE - NO WAIVER**

The failure of Apple Tree in any instance to insist upon the strict compliance with this Declaration or established rules and regulations, or to exercise any right contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of any term, covenant, condition, or restriction. The receipt by the Apple Tree of payment of any assessment from an owner, with knowledge of any breach by the owner, shall not be a waiver of the breach. No waiver by Apple Tree of any requirement shall be effective unless expressed in writing and signed by an authorized representative of Apple Tree.

## VIII.

### **INSURANCE**

At such times as Apple Tree deems appropriate, Apple Tree may purchase and maintain as a common expense a policy or policies which Apple Tree deems necessary or desirable to provide casualty insurance; comprehensive liability insurance, with such deductible provisions as Apple Tree deems advisable; insurance, if available, for the protection of Apple Tree's representatives from personal liability in the management of Apple Tree's affairs; and such other insurance as Apple Tree deems advisable.

## IX.

### **DAMAGE AND REPAIR OF DAMAGE TO PROPERTY**

In the event of any casualty, loss or other damage to the common area for which the then current assessments by Apple Tree are insufficient to repair, or restore or for which there are not insurance proceeds or insufficient insurance proceeds available to Apple Tree for such restoration or repair, Apple Tree may make a special assessment against each lot within the property benefitted by the improvement or common area for its pro



rata share of the cost and expenses to repair and/or restore the common areas. The special assessment shall be payable, at the determination of Apple Tree, in either monthly or quarterly installments or in a single lump sum amount. Apple Tree shall notify each lot owner of any such special assessment not less than 20 days prior to the date such special assessment or the first installment thereon is due and payable, which notice shall be accompanied by a reasonably detailed statement of Apple Tree's estimated costs and expenses of repairing and/or restoring the common areas.

**X.**  
**DURATION**

The covenants, conditions, and restrictions of this Declaration shall run with and bind the property and shall inure to the benefit of and be enforceable by the owners, their respective legal representatives, heirs, successors, and assigns, in perpetuity.

**XI.**  
**RESERVATION OF DECLARANT'S RIGHT TO AMEND**

11.1 **Amendment by Declarant.** Declarant reserves the right to amend the Declaration for the following purposes:

(a) **Mortgage Requirements.** As may be necessary to comply with Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA") or Federal Housing Administration ("FHA") regulations or requirements as necessary to enable the holders of first mortgages or deeds of trust to sell first mortgages or deeds of trust to FHLMC or FNMA or if such amendment is necessary to secure funds or financing provided by, through or in conjunction with FHLMC or FNMA or FHA or, if such amendment is necessary, in Declarant's sole opinion, for the efficient functioning of the Association, the property, or the plat.

(b) **Interests of Development/Property Owners.** Apple Tree may amend this Declaration, in the exercise of its sole discretion, for the purpose of coordinating, enhancing, facilitating or assuring the development of Apple Tree Resort as a first-class golf course, residential and commercial development, or is deemed reasonable or necessary for the protection of property interests and values within the Apple Tree Resort. The amendments may include (but not be limited to) modifications, alterations or supplementations of development standards (structural and landscaping); use and occupancy conditions and restrictions; development and maintenance of common areas and facilities; and reasonable rules and regulations related thereto.

11.2 **Proposals by Lot Owners.** The owners of seventy-five percent (75%) of the lots which are subject to this Declaration may propose amendments to this Declaration. The proposed amendments shall contain a specific identification of the section to be amended; proposed language for the amendments; and statements providing a basis for the requested amendments. Apple Tree shall consider such



amendments and, in the exercise of its sole discretion, determine whether such amendments promote the coordinated development of Apple Tree Resort and is in the best interests of all lot owners and occupants. In the event that Apple Tree determines that such amendment is appropriate, the proposed amendment will be approved by Apple Tree and incorporated under its reserved right of amendment hereunder.

11.3 **Authorization to Amend.** If Declarant, at its option, determines that it is necessary so to amend the Declaration, then Declarant, on behalf of all lot owners in the Association, is hereby authorized to execute and to have recorded (or filed, in the case of the Articles) said required amendment or amendments. All lot owners hereby grant to Declarant a full and complete power of attorney to take any and all actions necessary to effectuate and record said amendment or amendments and agree that said amendment or amendments shall be binding upon their respective lots and upon them and their heirs, personal representatives, successors and assigns to the same extent as if they had personally executed said amendment or amendments. All lot owners hereby acknowledge and agree that the power of attorney granted herein shall be deemed coupled with an interest and shall be irrevocable.

## **XII. GENERAL PROVISIONS**

12.1 **Severability.** The provisions of this Declaration shall be independent and severable, and the unenforceability of any one provision shall not affect the enforceability of any other provision, if the remainder affects the common plan.

12.2 **Effective Date.** This Declaration shall be effective upon recording.

12.3 **Assignment.** Declarant reserves the right to assign, transfer, sell, lease, or rent all or any portion of the property and reserves the right to assign or delegate all or any of its rights, duties, and obligations created under this Declaration.

12.4 **Binding Effect.** All present and future owners and occupants of lots or parcels shall be subject to and comply with the provisions of this Declaration, and any amendments thereto. The acceptance of a deed or conveyance for the entry into occupancy of any lot or parcel shall constitute an agreement that the provisions of this Declaration and amendments are accepted and ratified by each such owner and/or occupant, and that all such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time an interest or estate in any lot or parcel subject to this Declaration.

12.5 **Dispute.** In the event of any dispute or cause of action arising from or related to the interpretation or enforcement of provisions of this Declaration, the parties agree to submit such dispute or cause of action to mandatory arbitration. A single arbitrator shall be appointed either upon the mutual consent of the parties or by the Superior Court of the State of Washington for Yakima County. The arbitration shall be



conducted in accordance with the Mandatory Rules for Arbitration for Yakima County. Venue for the arbitration shall be in Yakima, Yakima County, State of Washington. An arbitration award may be entered in the court of any state that has jurisdiction over any of the parties. The costs of arbitration shall be borne equally by the parties with the arbitrator authorized to adjust such costs and award reasonable attorney's fees to the substantially prevailing party in the arbitration.

12.6 **Interpretation.** This Declaration shall be liberally construed to effectuate the purpose of protecting and enhancing the value, marketability and desirability of lots and parcels by providing a common plan for the development of the property in planned development.

DATED as of the date first written above.

**DECLARANT:**

**APPLE TREE RESORT DEVELOPMENT,  
a Washington general partnership**

By: John E. Barton  
Authorized Partner

By: John E. Barton  
Authorized Partner

STATE OF WASHINGTON )  
County of Yakima ) ss.

I certify that I know or have satisfactory evidence that John E. Barton and \_\_\_\_\_ are the persons who appeared before me and signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as partners of **APPLE TREE RESORT DEVELOPMENT**, a Washington general partnership, to be the free and voluntary act of such partnership for the uses and purposes mentioned in the instrument.

Dated this 3 day of <sup>April</sup> ~~March~~, 2002.



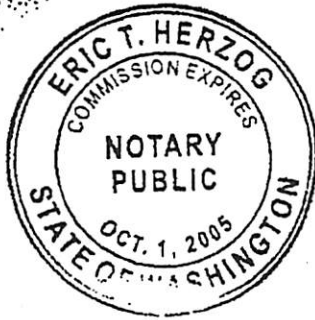
Eric T. Herzog  
Printed name: Eric T. Herzog  
NOTARY PUBLIC in and for the state of  
Washington, residing at Yakima.  
My appointment expires 10-1-05.



STATE OF WASHINGTON )  
County of Yakima ) ss.

I certify that I know or have satisfactory evidence that John E. Barton  
and \_\_\_\_\_ are the persons who appeared before me and signed  
this instrument, on oath stated that they were authorized to execute the instrument and  
acknowledged it as partners of **APPLE TREE PARTNERSHIP**, a Washington general  
partnership, to be the free and voluntary act of such partnership for the uses and  
purposes mentioned in the instrument.

Dated this 3 day of <sup>April</sup> ~~March~~, 2002.



Eric T. Herzog  
Printed name: Eric T. Herzog  
NOTARY PUBLIC in and for the state of  
Washington, residing at Yakima.  
My appointment expires 10-1-05.



**RETURN ADDRESS:**

VELIKANJE, MOORE & SHORE, INC., P.S.  
Attn: James C. Carmody

405 East Lincoln Avenue  
Yakima, Washington 98901

**MASTER DECLARATION OF COVENANTS  
FOR IRRIGATION WATER SYSTEM  
(WITHIN YAKIMA-TIETON IRRIGATION DISTRICT)**

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose and shall not affect the intent of any warranty contained in the document itself.

**Reference number(s) (if applicable):**

**Declarants:**

1. Apple Tree Partnership
2. Apple Tree Resort Development

**Legal Description:**

1. Abbreviated form:  
Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16 and 17, Auditor's file  
*Survey* number 7175850
2. Additional legal description is on page 2 of document

**Assessor's Tax Parcel ID Number(s):** 181331-33005, -33006, -43002,  
171201-11006, 11007, ~~22~~ 14010, 14012, 13013, 24008, 24004, 24005,  
14011, 181206-23024, 23023, 22008, 22009.

**NAME OF DEVELOPMENT:** APPLE TREE RESORT

**DECLARANTS:**

(1)	APPLE TREE PARTNERSHIP, a Washington general partnership
(2)	APPLE TREE RESORT DEVELOPMENT, a Washington general partnership

**LEGAL DESCRIPTION OF SUBDIVISION:**

The real property which is the subject matter of these Covenants for Irrigation Water System is situated in Yakima County, State of Washington as described as follows:





Parcels 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16 and 17, of that Record of Survey, recorded under Auditor's file number 7175850, dated July 7, 2000, records of Yakima County, Washington.

AND the Southwest quarter of the Southeast quarter of Section 31, Township 13 North, Range 18 East, W.M.;

EXCEPT the East 378.00 feet of the West 1335 feet of the South 310.00 feet thereof;

AND EXCEPT Lots 1 and 2 of Short Plat 82-162, Records of Yakima County, Washington.

## INTRODUCTION:

A. Declarants Apple Tree Partnership and Apple Tree Resort Development (collectively "Apple Tree") are the owners and developers of Apple Tree Resort ("Apple Tree Resort" or "Development"), a multi-phased resort, residential and golf course community authorized as a Planned Development pursuant to approvals from Yakima County, Washington. The master plan for development of the real property is set forth in twelve (12) phases. Apple Tree desires to establish a master agreement in order to provide for the coordinated delivery of irrigation water to properties within the development and to assure for maintenance, repair and operation of the irrigation water delivery system for the entire development.

B. Yakima-Tieton Irrigation District ("Yakima-Tieton") is a provider of irrigation water to the subject properties. Water shares of the Yakima-Tieton are appurtenant to the property and Apple Tree desires to establish a means for distribution of irrigation water; establish responsibility for maintenance, repair and operation of the water delivery system; and provide for single billing of water accounts.

C. Apple Tree adopts covenants, conditions, reservations and restrictions upon which and subject to which all owners of lots or portions of parcels within Apple Tree Resort shall receive irrigation water and share in the cost of constructing, maintaining, repairing and administering the irrigation water delivery system. These provisions shall be binding on all properties within Apple Tree Resort and any subsequently created parcels whether by subdivision or otherwise. The "irrigation water delivery system" shall consist of pipes, pumps, pump houses, pressure tanks, mainlines, and all other appurtenances or fixtures to the irrigation system serving the development. The delivery system shall be located within utility easements designated on plats, short plats or site plans for various phases of the development.

D. Apple Tree intends to establish a uniform, coordinated and integrated irrigation water delivery system for Apple Tree Resort and provide for common singular management of the system within the development.

## COVENANTS, CONDITIONS, RESERVATIONS AND RESTRICTIONS:

1. Covenant Running with the Land. Each and every one of the covenants, conditions, reservations and restrictions relating to the provision of irrigation



water and installation, maintenance, repair, operation and administration of the irrigation water delivery system is for the benefit of each parcel of land within the Apple Tree Resort; shall inure to the benefit of and pass with each and every lot or parcel within the development; and shall bind the respective successors in interest of each lot or parcel of land within the development. All covenants, conditions, reservations and restrictions contained in this instrument are imposed upon each and every lot or parcel within the development and, shall be construed as restrictive covenants running with the title to such lots and with each and every parcel thereof.

2. **Utility Easement.** The irrigation water delivery system shall be located within designated utility easements (established in conjunction with recordation of final plats for various phases) with such easements benefitting lots and/or parcels served by the system. The utility easements for the irrigation water delivery system are granted for the purpose of constructing, installing, maintaining, repairing, reconstructing, and operating irrigation water delivery system. The "irrigation water delivery system" shall mean the pipes, pumps, pump houses, pressure tanks, main lines, and all other appurtenances or fixtures to the irrigation system serving the development and shall be owned by Apple Tree.

2.1 **Review of Plat/Short Plats.** Yakima-Tieton shall review and approve each plat and/or short plat with respect to rights-of-way for each parcel prior to recordation of the final plat or short plat. Any easements shall be set forth on the final plat or short plat and include the right of ingress and egress for the above-described purposes, it being understood that the right will be exercised in such a manner as to do as little damage as possible to the property while accomplishing the easement's desired purpose. All main lines for the water system serving the development shall be located on the utility easements set forth on the face of recorded plats.

Apple Tree shall place the following covenant on the face of any plat or short plat:

The undersigned owner and developer of the plat shown on the face hereof hereby covenants and agrees for the benefit of any future owner or owners of a parcel or parcels within this plat, that prior to the sale of any parcel within the plat, the owner and developer shall provide the Yakima-Tieton Irrigation District (the "District") and shall record with the Yakima County Auditor a certificate of the owner, developer and a registered professional engineer or a registered contractor for a commercial/residential irrigation system, jointly and severally certifying under oath that completed irrigation water distribution facilities, including individual deliveries for each parcel, have either been installed for all lands or appropriate provision for installation has been made within the plat to which water shares of the District are appurtenant, and further certifying that such facilities provide for the full and equitable distribution of water of the District to each parcel. The undersigned furthermore agrees that this covenant and agreement shall run with the land and shall be enforceable by a court of competent jurisdiction by specific performance, restraining order, injunction or any other appropriate remedy sought by any future owner or owners of a parcel or parcels within the plat, and that the prevailing party in any such action shall be entitled to recovery of its



reasonable attorney's fees and costs. Neither the District nor its directors, officers or employees shall have any responsibility whatsoever with respect to the enforcement of this covenant and agreement of the undersigned owner and developer.

2.2 **Lateral Lines.** A lateral line connecting to the irrigation water delivery system and serving individual lots or parcels shall be the sole responsibility of the individual parcel owner and shall not be considered a part of the irrigation water delivery system.

2.3 **Turnouts for Water Service.** Yakima-Tieton and Apple Tree shall designate water turnouts at mutually agreeable locations for service to Apple Tree Resort. Apple Tree or other such water users shall be responsible for the cost of installing new turnouts so that the water turnouts serving Apple Tree Resort are exclusively used by lands within the Apple Tree Resort. All turnouts for service to Apple Tree Resort shall be installed at the sole expense of Apple Tree and properties served, and all such turnouts shall be owned by the United States and/or Yakima-Tieton Irrigation District.

3. **Use of System.** The irrigation water delivery system serving Apple Tree Resort shall be used by lot or parcel owners within the development for irrigation water only, and shall not be used by any residential lot owners to irrigate orchards or crops; provided, however, residential lot owners may use water from the irrigation system to irrigate a non-commercial garden, consistent with the owner's residential use.

3.1 **Rules and Regulations.** Apple Tree may establish reasonable rules and regulations with regard to irrigation practices including, but not limited to, schedules for irrigation for residential users within the development consistent with the equitable distribution of irrigation water; review and approval of residential irrigation systems; and specification of equipment, meters, flow control devices, or other items deemed reasonable or appropriate for lateral water lines serving residences.

3.2 **Equitable Use.** In order to insure that lot or parcel owners receive equitable benefit and use of the irrigation water delivery system serving the development, Apple Tree may install water mains, including a shut-off valve, at the point where a lot or parcel owner's service line connects to the irrigation water distribution system. Maintenance of these valves and fixtures shall be considered part of the irrigation water delivery system serving the development.

4. **Management of Irrigation Delivery System.** Apple Tree Resort is designated manager of the irrigation water delivery system for Apple Tree Resort and shall be primarily responsible for installation, maintenance and administration of the water and system. Responsibilities shall include:

4.1 **Installation of System.** The irrigation water delivery system shall be installed by Apple Tree in conjunction with the development and/or subdivision of property within the development. Irrigation water services shall be available to individual lots or parcels prior to the issuance of a certificate of occupancy for any residential dwelling. The irrigation water delivery system will be constructed in phases concurrent



with the development of properties within Apple Tree Resort. Apple Tree shall establish reserves for replacement and/or upgrading of the irrigation water delivery system.

4.2 **Maintenance/Repair of System.** Apple Tree shall have responsibility for the operation, maintenance and repair of the irrigation water distribution system, including but not limited to the irrigation pump, main lines, valves, pipes and other parts of the system. Apple Tree shall maintain the system in good condition and repair in order to insure the appropriate delivery of irrigation water to parcels served by the system.

4.3 **Administration of Water Delivery.** Apple Tree shall be responsible for administration of the irrigation water delivery system, including but not limited to establishing reasonable rules and regulations for water usage in accordance with equitable distribution; contracting for repairs and/or improvements to the system; billing and collecting assessments to property owners; and maintaining reasonable reserves for future repair, replacement and/or improvements. The administrative responsibility shall also include coordination and communication with Yakima-Tieton Irrigation District.

4.4 **Lateral Service Lines.** The costs of installation, repair, maintenance and replacement of any lateral water lines serving individual lots or parcels within Apple Tree Resort shall be the sole responsibility of the owner of the affected lot or parcel. The plans and specifications for any lateral water line must be reviewed and approved by Apple Tree prior to installation.

4.5 **Assignment/Transfer of Management.** The ownership, installation, management, maintenance, operation and administration of the irrigation water delivery system may be transferred to a water users' association in either of the following events: (a) the election of Apple Tree to assign or transfer management responsibilities hereunder to the association; or (b) Apple Tree's failure to perform its obligations under this Master Declaration. Any water users' association shall be comprised of all properties within Apple Tree Resort entitled to an equitable share of irrigation water from Yakima-Tieton Irrigation District. The transfer/assignment and any association documents shall be subject to review and approval by Yakima-Tieton Irrigation District. In the event of an assignment/transfer, Apple Tree shall be released of any and all obligations with respect to management of the irrigation delivery system and held harmless and indemnified from and against any claims, demands, causes of action or other liabilities arising from the use, maintenance, management or administration of the irrigation water delivery system subsequent to date of transfer/assignment.

4.6 **Action by Parcel Owner.** In the event Apple Tree, or its successor, fails to perform its obligation to deliver irrigation water or to collect and remit amounts due the Yakima-Tieton for tolls, charges and assessments, as provided in this Declaration, the parcel owners, either individually or collectively, may take action to protect their interests. In such event, the parcel owner shall provide written notice of proposed action to Apple Tree or its successor. If Apple Tree, or its successor, fails to cure its nonperformance within thirty (30) days of receipt of such notice, the parcel owner, at the owner's option, may contract individually or with other parcel owners and the Yakima-Tieton for an individual delivery or a delivery with other parcel owners by a



joint use or association agreement. The parcel owner and Yakima-Tieton, in establishing such individual delivery or delivery with others, shall be entitled to utilize the designated utility easements (established in conjunction with recordation of final plats for various phases). The parcel owners shall be responsible for all costs associated with an individual delivery or a delivery with other parcel owners including, but not limited to, the cost of a new turnout from Yakima-Tieton. In the event a parcel owner so contracts, it shall be released from any obligation pursuant to this Declaration. In addition, the parcel owner, at the owner's option, may pay to Yakima-Tieton any delinquent tolls, charges and assessments, along with interest and costs, attributable to the shares appurtenant to the parcel owner's property, plus any account or other charge that would have been due Yakima-Tieton had the parcel owner's Yakima-Tieton Irrigation District billing not been combined with the Apple Tree billing. To the extent the parcel owner had previously paid its share of such Yakima-Tieton billing to Apple Tree or its successor, the parcel owner shall have a right of reimbursement from Apple Tree or its successor. Payment by a parcel owner of the owner's share of delinquent amounts due Yakima-Tieton shall not necessarily result in resumption delivery of irrigation water from Yakima-Tieton. Resumption of the delivery of irrigation water from Yakima-Tieton may be dependent upon the parcel owner contracting for an individual delivery or delivery with other parcel owners.

5. **Electricity Charges.** In the event that any pump is utilized in the delivery of water from the Yakima-Tieton Irrigation System or is supplementally provided by Apple Tree, any power or electricity charges shall be billed to Apple Tree and may be included in assessments and or charges to property owners. Apple Tree shall contract directly with the appropriate power or utility company for electric service, and account billings shall be made directly to Apple Tree.

6. **Yakima-Tieton Irrigation District Billing.** Yakima-Tieton Irrigation District shall consolidate all billings into a single consolidated statement for water and other charges to Apple Tree Resort. Apple Tree shall be responsible for making all payments due to the Yakima-Tieton Irrigation District at such times as said monies are due. It is understood that no water shall be delivered through the irrigation turnout serving the development until the Yakima-Tieton Irrigation District has received payment in full as required by the guidelines, rules, regulations and policies of the Yakima-Tieton Irrigation District then in force. It is further understood that late or deficient payments will cause water service to all properties within the development served by the irrigation water delivery system to be suspended by Yakima-Tieton, and shall cause such properties to be subject to foreclosure for delinquent tolls, charges, and/or assessments, along with interest and costs, in accordance with the laws of the state of Washington.

7. **Assessments/Charges for Water Service.** Each parcel or lot served with irrigation water from Yakima-Tieton and delivered through the irrigation water delivery system shall be responsible for a fair and equitable share of any and all costs, expenses and charges associated with provision and delivery of water, including but not limited to the installation, maintenance, repair, operation, and administration of the irrigation water delivery system. Assessments and charges shall be periodically established by Apple Tree based upon and in consideration of charges for water; all costs, charges and expenses for development and installation of the irrigation water delivery system (turnouts, pipes, pumps, mainlines, and all associated components and appurtenances);

**DECLARATION OF COVENANTS**

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any and all costs, charges and expenses for repair and/or maintenance of the delivery system; reasonable reserves for delivery system repairs, replacements and upgrades; and charges for management and administration (including allocation of overhead, finance charges and other similar items). The provision of such work and/or services may be provided by Apple Tree or affiliated entities at rates customary or reasonable within the community.

**7.1 Payment of Assessments.** Each parcel owner shall pay its assessment for the irrigation water delivery system within twenty (20) days of billing date. Assessments shall be periodic and as determined efficient or appropriate by Apple Tree.

**7.2 Lien for Assessment.** In the event a parcel owner fails to pay an assessment on or before the due date, Apple Tree may disconnect the defaulting owner from the irrigation water delivery system following thirty (30) days written notice of default and failure to cure by property owner. The subject parcel shall be further subject to a claim of lien for all outstanding and unpaid amounts and/or assessments, together with interest at the rate of twelve percent (12%) per annum and any and all additional costs, including reasonable attorney's fees, all costs of enforcement and collection, and any costs associated with termination of service. Such lien shall become effective upon the recording of a notice of lien with the Yakima County Auditor, which lien may be foreclosed in the same manner as a mechanic's or materialmen's lien under Washington State law (RCW 60.04 et seq.). Upon payment of any and all delinquencies, Apple Tree shall allow the owner to reconnect and continue receiving water from the irrigation water delivery system serving Apple Tree Resort.

**7.3 Consent to Repairs.** Each property owner consents and authorizes Apple Tree to enter upon its property for the purpose of maintaining and/or repairing the water delivery system, provided such work shall be undertaken in a reasonable manner.

**7.4 Hold Harmless.** Individual property owners shall defend, indemnify and hold Apple Tree and its agents harmless from and against any and all liability, damages or claims arising out of the repair, maintenance or replacement of the irrigation water delivery system serving the development.

DATED this 8 day of April, 2002.

**APPLE TREE PARTNERSHIP**

By: John E. Borton  
John E. Borton, Partner



APPLE TREE RESORT DEVELOPMENT

By: John E. Borton  
John E. Borton, Partner

STATE OF WASHINGTON }  
County of Yakima } ss.

I certify that I know or have satisfactory evidence that **JOHN E. BORTON** is the person who appeared before me, and said person acknowledged that he was authorized to execute the instrument, and acknowledged he is a partner in **APPLE TREE PARTNERSHIP, a Washington general partnership**, to be the free and voluntary act of such partnership for the uses and purposes mentioned in the instrument.



E. T. Herzog  
Printed name: ERIC T. HERZOG  
Notary Public in and for the state  
of Washington, residing in Yakima.  
My appointment expires OCT 1, 2005

STATE OF WASHINGTON }  
County of Yakima } ss.

I certify that I know or have satisfactory evidence that **JOHN E. BORTON** is the person who appeared before me, and said person acknowledged that he was authorized to execute the instrument, and acknowledged he is a partner in **APPLE TREE RESORT DEVELOPMENT, a Washington general partnership**, to be the free and voluntary act of such partnership for the uses and purposes mentioned in the instrument.



E. T. Herzog  
Printed name: Eric T. Herzog  
Notary Public in and for the state  
of Washington, residing in Yakima.  
My appointment expires OCT 1, 2005



Wednesday Scan List  
Search Description: Party = APPLE TREE\*  
Display Order: Ascending By Filed Date, Doc # (Duplicates Removed)  
Effective Date: Not Set  
Date: 04-10-2002  
Time: 16:31:48

Grantor	Grantee	Filed Date	Doc #	Instr Type	SC	TS	RG	Legal
APPLE TREE RESORT		04/09/2002	7266552	DECLARATION	31	13	18	ALL;
APPLE TREE PARTNE		04/09/2002	7266564	DECLARATION	6	12	18	ALL;

Total Indexes Listed 2