

ORCHARD KNOLLS HOMEOWNERS ASSOCIATION, INC.

RULE NO. 2005-3

**A Rule Pertaining to Maintenance of Properties and
Architectural Control Enforcement.**

WHEREAS, Article XIII, Section 1 of the Declaration of Covenants, Conditions and Restrictions for the Orchard Knolls Homeowners Association, Inc., (hereinafter the "Association") dated June 30, 1989 and recorded on August 14, 1989 in Liber 8948 at folio 380, (hereinafter the "Declaration") states that the Lots within the Association and all improvements located thereon shall be kept in good order and repair and free of debris, including, but not limited to, the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management; and

WHEREAS, Article XIII, Section 1 of the Declaration states that if an Owner of any Lot in the Association fail to maintain the lot and improvements located thereon in keeping with the provisions of the Declaration the Association may appoint someone to enter upon the Lot to repair, maintain and restore the lot and may place a lien against the property for the costs of said correction, repair or restoration, which lien may be enforced in the same manner as an annual assessment; and

WHEREAS, Article VIII, Section 6 of the Declaration states that the Architectural Review Committee (ARC) may from time to time adopt and promulgate rules and regulations (one such adoption, but not limited to this adoption, is published Architectural

Guidelines of the Architectural Review Committee) regarding the form and content of plans and specifications suitable for approval, and may publish and record such statement of policy, standards, guidelines, and establish such criteria relative to styles, details, fences, colors, set-backs, materials or other matters relative to architectural control and protection of the environment, as it may consider necessary or appropriate; and

WHEREAS, Article VIII, Section 13 of the Declaration states that the Association may enter upon a Lot to remove or otherwise terminate or abate any violation of the Association's architectural controls (including Architectural Guidelines lawfully created under Article VIII), if said violation is not corrected within fifteen days after notice of such violation is delivered to the owner of the Lot upon which the violation exists; and

WHEREAS, Article VIII, Section 13 of the Declaration further provides that the costs incurred by the Association in removing, terminating or abating the violation of the Association's architectural controls and any other conduct in violation of the provisions of the conditions and restrictions set forth in Article VIII of the Declaration, and the reasonable attorneys' fees incurred thereby may be assessed against the Lot upon which such violation occurred; and

WHEREAS, Article V, Section 1 of the Declaration requires that the owner of any Lot shall, at his own expenses, maintain his Lot and dwelling and any and all appurtenances thereto, in good order, condition and repair and in a clean, sightly and sanitary condition at all times; and

WHEREAS, Article VIII, Section 13, allows that the Association shall have the further right to enter upon and inspect any Lot at any reasonable time (such as semi-annual Lot, improvements and appurtenances inspections by Architectural Review Committee and/or Board of Directors) for the purpose of ascertaining whether any violation of the provisions of this Article or any of the provisions or requirements of the Declaration, exist on such lot; and

WHEREAS, Chapter 10B of the Montgomery County Code establishes the Commission on Common Ownership Communities (CCOC) and sets forth a dispute resolution procedure to determine, among other things, the authority of a homeowners association to require a homeowner to take action (or refrain from taking action), in connection with his home; and

WHEREAS, the Board of Directors (BOD) is desirous of adopting a policy to govern the enforcement and application of Article XIII and Article VIII and Article V of the Declaration, and to that end, adopted the following resolution at a regularly scheduled monthly Board meeting identified in the execution and adoption page at end of this Rule.

NOW THEREFORE, the Board of Directors hereby adopts the following rule:

A. Inspections: Four Types of Private Property Lot Inspections:

1. Planned, Semi-Annual Community Walk-Through Inspections conducted jointly by members of Architectural Review Committee (ARC) and Board of Directors (BOD). Semi-annual inspections are generally conducted on, but not limited to, day of conversion to daylight savings time and day of

return from daylight savings time.

2. Random ARC or BOD Member Observations of Unsatisfactory Lot Conditions reported to Secretary, Board of Directors for recording in the minutes.
3. Random Owner Observations of Unsatisfactory Lot Conditions reported as complaints to ARC or BOD.
4. Random ARC or BOD Exterior Change Inspection after completion of an approved Architectural Change Request. There shall be no limitations to the post-completion inspection date allowed or conducted, nor shall any inspection by ARC or BOD guarantee or constitute satisfactory final approval of the project.
5. Not Covered: Guests, tenant and non-Orchard Knolls complaints are not covered by this Rule. Unsatisfactory conditions of the Association's Common Areas are not covered by this Rule. Those complaints should be reported directly to Board of Directors.

B. Basis of Violations:

1. Exterior Maintenance: Upon notification, either through a periodic visual inspection of Association or through a complaint received by the Board, that a Lot, appurtenance, or improvement has deviated from published standards of the association, and/or has become unsightly, and/or is not receiving routine and proper upkeep and/or maintenance, not being kept in

good order, repair, and free of debris, including, but not limited to, seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or any other external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management, and/ or

2. Architectural Change Request: Upon notification, either through a periodic visual inspection of Association or through a complaint received by the Board, that a Lot, appurtenance, or improvement has any violation of terms and/or conditions of an Architectural Change Request previously approved by ARC or BOD, regardless of the approval date of the Architectural Change Request, and/or
3. Covenants and or By-Laws: Upon notification, either through a periodic visual inspection of Association or through a complaint received by the Board, that a Lot, appurtenance, or improvement has any violation of any of the covenants pertaining to property maintenance identified in the Declaration or the By-Laws, Board shall initiate and execute all provisions of this Rule

C. Violation Notifications and Unresolved Remedy Process:

1. Two BOD initiated violation notification letters are required, followed by a 3rd letter identifying a scheduled hearing before the board of directors (BOD): Association shall initiate two notifications to owner of the alleged

violation(s), the first being a letter sent to owner by US Mail. The second letter shall be mailed by regular and by certified mail, "Return Receipt Requested", with receipt to the Association. This rule will be satisfied upon mailing said letter, whether or not a signed return receipt is received from the homeowner. This rule will be deemed to have been complied with upon mailing of said letters, whether or not a signed return receipt is received from the homeowner.

2. Letters shall cite specific unacceptable condition and violation source: Violation notification letters shall cite in general terms the current conditions of the site that are unacceptable. The notification letter shall also cite in specific terms, the lawful source of the violation, (either the applicable Article from the Declaration of Covenants or the Architectural Guidelines.
3. Restoration Period: The restoration period of the first letter shall not be less than 90 days, and shall begin with date of the letter. The restoration period of the second letter shall not be less than 30 days, and shall begin from date of receipt of the certified letter. The Board reserves the right to impose shorter restoration periods in the event of any danger to the health, safety or welfare of Association residents. Duration of the restoration period shall be set at discretion of the Board of Directors with due consideration for reasonable labor requirements, materials availability, and

weather restrictions. Such restoration period shall not exceed 6 months. Restoration periods shall be unique to the violation and lot and shall not be globally fixed by type of correction, home, or location. Restoration periods do not have to be applied equally Lot-to-Lot or violation-to-violation. The restoration period may vary Lot to Lot according to restorative needs and desires of the community as determined by and expressed by the Board of Directors.

D. Property Maintenance and Architectural Control Enforcement Violation Hearing:

1. **Hearing Notice:** After completing a process of mailing two initial violation notices to owner as identified herein, without satisfactory remedy or restoration, BOD is to cause owner to receive a 3rd notification letter for a scheduled hearing before Board of Directors. The 3rd notification letter is to be sent to owner by regular mail and by certified mail, "Return Receipt Requested," which shall advise the owner of the alleged violation and provide a minimum of fifteen days (15) notice of a hearing at which time the owner will be permitted to attend and present information, either orally or in writing. This rule will be satisfied upon mailing said letters, whether or not a signed return receipt is received from the homeowner.
2. **Hearing Procedure:** At the hearing before the Board of Directors the following procedures will be followed:
 - a. Identification (by reading aloud) of the notice of hearing and the

invitation to be heard will be placed in the minutes of the hearing.

This requirement is waived if the homeowner appears at the hearing

- b. The ARC or Board Member reporting the violation will present the information concerning the alleged violation. The ARC or Board Member will be afforded a presentation time not to exceed 10 minutes.
 - c. The unit owner, if present, may present information regarding the alleged violation. The unit owner will be afforded a presentation time not to exceed 20 minutes.
 - d. Any other parties who wish to speak at the hearing will be allowed a time period not to exceed 3 minutes.
 - e. After the last party wishing to speak, President will adjourn the hearing, note the time in the minutes, dismiss any non-owners, and continue with the business of the monthly board meeting.
3. BOD Follow-up: After the hearing the following procedures will be accomplished:
- a. Determination Vote and Owner Notice: The Board will caucus and determine, by majority vote, a decision that: "Violation Exists" or "Violation Does Not Exist". Caucus discussions shall not be included in the minutes; however, numerical results of the vote shall be identified in the minutes.

- b. **Owner Notice:** The board will attempt to advise the unit owner, in writing, of the decision made by the Board of Directors, within fifteen days (15) after the date of the hearing. If a violation is found to exist, the unit owner will be notified in writing of the corrective actions required and the restoration period by which the corrective actions must be completed. The unit owner will be afforded a minimum of fifteen (15) days (unless an earlier date is specified by the Board in order to correct a violation which threatens the health, safety or welfare of residents in the community) to complete corrective actions.
- c. **Failure to Appear:** If the Lot owner fails to appear at the hearing, then no hearing need be held and the Board may take whatever action may be appropriate to enforce its covenants, rules, and regulations.

E. Uncorrected Violations:

- 1. **Entering the Lot for Restoration:** After the BOD Hearing, If the Board determines that the unit owner is in violation of the Architectural Controls of the Association and the violation is not corrected by the final restoration period date specified by the Board, the Board may appoint an agent to enter upon the Lot, remove, terminate or abate the violation by contracting for such modifications as the Board deems necessary, in the Board's exclusive

discretion, to either restore the premises to its original condition, or to complete an architectural change previously approved by the Board or ARC, and the entire cost thereof, plus any attorneys' fees incurred by the Association in connection with the violation, will be assessed against the owner of the Lot and a lien shall be placed against the lot to recover said costs and fees.

2. BOD's CCOC Hearing: Alternate Corrective Measure: If so desired, BOD may file a Legal Order of Complaint to Montgomery County CCOC: If the Board elects not to appoint an agent to enter upon the lot to abate the violation, it will direct legal counsel to file a Complaint with the Montgomery County Commission on Common Ownership Communities (CCOC) seeking an Order for the homeowner to remove, terminate, or abate the violation, and requesting that the homeowner be required to pay all legal fees incurred by the Association. The dispute resolution procedures set forth in this Rule will be deemed to satisfy the requirement of Section 10B-9(b) of the Montgomery County Code, which requires that a party not file a dispute with the CCOC until the party has made a good faith attempt to exhaust the procedures and remedies set forth in the Association documents.
3. Legal Action: In lieu of appointing an agent to enter upon the lot to abate the violation or filing a dispute with the CCOC, the Board reserves the right

to file a legal action in the Circuit Court for Montgomery County to obtain a Court Order directing the homeowner to remove, terminate or abate the violation, and requesting that the homeowner pay all legal fees or other expenses incurred by the Association in connection with the violation. The Board may also direct legal counsel to file suit in either the District Court or in the Circuit Court for Montgomery County to collect any monies that may be due to the Association as a result of the uncorrected violation and/or legal fees or other expenses incurred by the Association in connection with its actions to correct or abate the violation.

F: Financial Collections Procedure:

1. **Invoice to Owner:** Immediately after completion of restoration, BOD shall cause to be generated an invoice for the total of all remedy costs associated with restoration of the property, including reasonable attorney fees and documented administrative costs. Invoice shall be mailed to owner via "Certified, Return-Receipt US mail."
2. **Owner Payment:** Owner shall have no more than 10 business days from date of certified receipt to pay said invoice in full to the association before the invoice is declared a delinquent owner's debt to the association.
3. **Delinquent Owner's Debt:** If in default after 10 business days, the delinquent owner's debt will be turned over to legal collection by association's attorney for lawful collections. In addition, the delinquent

owner's debt shall immediately be escalated in priority to a more demanding debt than owner's monthly property assessment.

4. Owner's Monthly Property Assessment Becomes Default Payment: In parallel with legal collection process for the restoration debt, all incoming assessment monies for this property shall be first applied to satisfy owner's outstanding restoration debt. If the assessment becomes delinquent as a consequence of this priority, By-Law provisions shall apply including the steps necessary to record a financial (delinquent assessment) lien against the property.

IN WITNESS WHEREOF, the undersigned has executed this instrument this ____ day of Apr 11, 2005.

ORCHARD KNOLLS HOMEOWNERS ASSOCIATION, INC.

By: Richard F. Elm
President, Orchard Knolls HOA

This is to certify that at a regularly scheduled meeting of the Board of Directors of Orchard Knolls Homeowners Association on the 11th day of April, 2005, this Rule was adopted by a majority of the Board of Directors

By: Barbara
Secretary, Orchard Knolls HOA Board of Directors

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