

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

THE ORCHARD PROPERTY  
OWNERS ASSOCIATION II, INC.

Plaintiff,

v.

HABERSHAM COUNTY, GEORGIA

Defendant.

CIVIL ACTION NO.: 2023CV382248

**VERIFIED COMPLAINT FOR PERMANENT INJUNCTIVE RELIEF**

COMES NOW, The Orchard Property Owners Association II, Inc. (the “Association”), by and through its undersigned counsel, and files this Verified Complaint for Permanent Injunctive Relief (the “Complaint”) against Defendant Habersham County, Georgia (the “Defendant”) respectfully showing this Court as follows:

**PARTIES, JURISDICTION AND VENUE**

1.

Defendant is a political subdivision of the State of Georgia.

2.

Defendant may be served with the Summons and Complaint through a majority of its County Commissioners pursuant to O.C.G.A. § 36-1-5.

3.

Defendant is subject to the jurisdiction of this Court and venue is proper herein pursuant to O.C.G.A. § 50-21-1.

4.

The Association is a Georgia non-profit corporation created pursuant to the laws of the State of Georgia and the Declaration of Covenants and Restrictions for The Orchard, which is recorded in Deed Book 240, Page 419, et seq. of the Habersham County, Georgia records, as amended and supplemented (the “Declaration”).

5.

By filing this action, the Association submits itself to the jurisdiction and venue of this Court.

### **FACTS**

6.

This is an action for permanent injunctive relief for the Defendant’s violation of the Declaration and the Habersham County Code of Ordinances.

7.

A true and accurate copy of the Declaration and all amendments and supplements thereto is attached hereto as **Exhibit “A”** and is incorporated herein by this reference.

8.

The Orchard Subdivision is a residential subdivision development in Habersham County, Georgia.

9.

The Association is the property owners association for The Orchard Subdivision.

10.

Defendant is the purported owner of the real property commonly known as Lot 20, Phase IX of The Orchard Subdivision (the “Subject Property”), being more particularly described as follows:

**ALL THAT TRACT or parcel of land lying and being in Land Lots 122 and 123 of the 13<sup>th</sup> Land District of Habersham County, Georgia, and being Lot 20, Phase IX (9) of The Orchard Subdivision as per plat of record, recorded in Plat Book 38, Page 17, of the Habersham County, Georgia, deed records, said plat being incorporated herein and made a part hereof by reference.**

11.

The Subject Property is located within The Orchard Subdivision.

12.

A true and accurate copy of the Deed for Public Use recorded at Deed Book 489, Page 910 of the Habersham County, Georgia records evidencing the Defendant’s purported ownership interest in the Subject Property is attached hereto as **Exhibit “B”** and is incorporated herein by this reference.

13.

Defendant is an “Owner” as such term is defined in the Declaration.

14.

The Subject Property is a “Lot” as such term is defined in the Declaration.

15.

The Subject Property is subject to all the terms, conditions, requirements and restrictions in the Declaration.

16.

The Defendant is subject to all the terms, conditions and requirements of the Declaration.

17.

Defendant admits that the Subject Property is subject to the Declaration.

18.

The Deed for Public Use attached hereto as Exhibit “B” expressly states that the Subject Property is subject to the Declaration.

19.

Specifically, the Deed for Public Use attached hereto as Exhibit “B” states, in relevant portion, as follows:

**The above described property is conveyed subject to Declaration of Covenants and Restrictions for “The Orchard” dated November 21, 1988, recorded in the office of the Clerk of Superior Court of Habersham County, Georgia Deed Records in Deed Book 240, Pages 419, et seq.; as amended by an instrument dated March 13, 1989, recorded in Deed Book 244, Page 25; and as further amended by an instrument dated April 5, 1989, recorded in Deed Book 244, Page 396, et seq., and as further amended by an instrument dated August 22, 1994, and recorded in Deed Book 322, Page 491, et seq., in aforesaid records.**

20.

A true and accurate copy of the letter from Ty Akins, Chairman, Habersham County Board of Commissioners, to Mr. Thomas Wigley dated April 20, 2023, that the Association received from Defendant regarding the Subject Property is attached hereto as **Exhibit “C”** and incorporated herein by this reference.

21.

Article 8, Section 8.1.1 of the Declaration, as amended, restricts the use of all Lots in The Orchard Subdivision to single family, private, residential Dwellings and for no other purpose.

22.

Specifically, Article 8, Section 8.1.1 of the Declaration, as amended, states as follows:

**8.1.1 Residential Use.** The Lots at The Orchard shall be and are restricted exclusively to single-family residential use and no trade or business of any kind may be conducted in or from a Lot or any part of the Property either as a primary or accessory use of either the Lot or any portion of the Property; provided, however, an Owner or occupant may conduct accessory business activities on the Lot so long as the Lot is improved with a Dwelling and (a) the existence or operation of the business activity is not apparent or detectible by sound or smell from the exterior of the Dwelling; (b) the business activity does not regularly involve an unreasonable number of persons or vehicles coming on to the Property who do not reside on the Property; (c) the business activity would not include having any tools of a particular trade stored or placed in any area outside the Dwelling located on the Lot; (d) the business activity conforms to all zoning requirements for the Property; and (e) the business activity does not require use of common element utilities or does not constitute a nuisance or a hazardous or offensive use, as may be determined in the sole discretion of the Board of Directors. The foregoing restrictions as to residential use shall not, however, be construed in such a manner as to prohibit an Owner or his tenant, if any, from (i) maintaining his personal professional library, (ii) keeping his personal business or professional records or accounts, (iii) handling telephone calls, facsimile communications or correspondence relating to his or her business or profession. Such uses are expressly declared customarily incidental to the principal residential use and do not violate these restrictions.

23.

Article 8, Section 8.1.10 of the Declaration, as amended, prohibits the erection of radio, television or other electronic antennae, aerial or satellite receiving dish, or other reception or transmission devices on Lots in The Orchard Subdivision, including the Subject Property.

24.

Specifically, Article 8, Section 8.1.10 of the Declaration states as follows:

**8.1.10 Antennae.** No radio, television or other electronic antennae, aerial or satellite receiving dish, or other reception or transmission device may be erected or maintained anywhere on the Common Property or the exterior of any Dwelling (unless installed by Developer or the Association).

25.

Pursuant to Article 9, Section 9.2 of the Declaration, no Improvement shall be constructed or erected on any Lot in The Orchard Subdivision, including the Subject Property, without the express written approval of the Architectural Review Board of the Association (the "A.R.B.").

26.

Specifically, Article 9, Section 9.2 of the Declaration, as amended, states as follows:

**9.1.2 No Improvement shall be constructed, erected, removed, planted or maintained, nor shall any addition to or any change, replacement or alterations therein be made until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme and the locations of same shall have been submitted to and approved in writing by the A.R.B. As part of the application process, two (2) complete sets of plans and specifications prepared by an architect, landscape architect, engineer or other person found to be qualified by the A.R.B. shall be submitted for approval by written application on such form as may be provided or required by the A.R.B. The A.R.B. may require submission of samples of building materials and colors proposed to be used. All construction shall be done by a licensed general contractor approved in writing by the A.R.B.**

27.

Pursuant to Article I, Section 1.16 of the Declaration, the term "Improvements" means and refers to all structures of any kind for purposes of the Declaration. Article I, Section 1.16 of the Declaration.

28.

Specifically, Article I, Section 1.16 of the Declaration defines the term "Improvements" as follows:

**1.16 "Improvements" shall mean and refer to all structures of any kind, including, without limitation, any building, wall, fence, sign, paving, grading, swimming pool, jacuzzi, spa, patio, tennis court or screen enclosure or screening of any type, sewer, drain, disposal system, driveway, sidewalk, decorative building, planting, landscaping, landscape device or object or any and all types of structures or improvements, whether or**

**not the purpose thereof is purely decorative or otherwise, and any and all additions, alterations, modifications, or changes thereto or thereof.**

29.

A public communication tower is a structure.

30.

A public communication tower is considered an “Improvement” pursuant to Article I, Section 1.16 of the Declaration.

31.

Article 8, Section 8.1.32 of the Declaration expressly prohibits the installation or use of machinery or equipment on Lots in The Orchard Subdivision, including the Subject Property, unless consented by the A.R.B.

32.

Specifically, Article 8, Section 8.1.32 of the Declaration states as follows:

**8.1.32 Installation or Use of Machinery. No machinery or equipment other than the original installations may be installed or used unless the advance written consent of the A.R.B. is obtained in each and every instance.**

33.

Article 8, Section 8.1.37 of the Declaration prohibits removal of any tree having a diameter of 6 inches or more, measured from a point 4 feet above the ground, from Lots in The Orchards, including the Subject Property, without the prior written approval of the A.R.B.

34.

Specifically, Article 8, Section 8.1.37 of the Declaration states as follows:

**8.1.37 Tree Removal. No Owner shall remove any tree having a diameter of six (6) inches or more, measured from a point four (4) feet above the ground from the Lot without the prior written approval of the A.R.B. Under no circumstances may any Owner remove any tree, shrub, bush, flower, or other plant or vegetation, from any area of the Common Property at any time.**

35.

Pursuant to Article 14, Section 14.5 of the Declaration, as amended, each Owner of a Lot in the Orchard Subdivision is required to comply strictly with the Declaration.

36.

The Association has the express contractual right to enforce the Declaration.

37.

Pursuant to Article 14, Section 14.5 of the Declaration, as amended, in the event of a violation or breach, or threatened violation or breach, of the Declaration, the Association shall have the right to proceed at law or in equity to compel compliance therewith or to prevent a threatened violation or breach thereof.

38.

Specifically, Article 14, Section 14.5 of the Declaration, as amended, states as follows:



**14.5 Enforcement.** Each Owner of occupant of a Lot shall comply strictly with the covenants and restrictions set forth in this Declaration, with the By-Laws, and with any rules and regulations adopted pursuant to this Declaration, as any of the same may be lawfully amended from time to time. In the event of a violation or breach, or threatened violation or breach, of any of the same, the Association or any aggrieved Owner, jointly and severally, shall have the right to proceed at law or in equity to compel compliance therewith or to prevent a threatened violation or breach thereof. The Association or any duly authorized agent thereof shall, after ten (10) days written notice, have the right to enter upon any portion of the Property where a violation exists and summarily abate or remove, at the expense of the violating Owner, using such force as may be reasonably necessary, any erection, thing or condition that may be or exist contrary to the intent and meaning of the provisions hereof. Neither the Association nor its agents shall be deemed guilty or liable for any manner of trespass for such entry, abatement, or removal. Further, after ten (10) days written notice, the Association shall have the right to levy fines against the Owner for a continuing violation or breach. Collection of fines may be enforced against an Owner as if such charges were a Common Expense owed by the Owner involved, and such fines may be added and thereupon shall become part of such Owner's assessments. No delay, failure or omission on the part of the Association or any aggrieved Owner in exercising any right, power or remedy herein provided shall be construed as an acquiescence therein or shall be deemed a waiver of the right to do so thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach of the provisions and regulations, however long continued, or for impossible provisions which may be unenforceable.

39.

Defendant is erecting a public communication tower on the Subject Property in violation of the Declaration.

40.

The A.R.B. has not approved any plans and specifications for the erection of a public communication tower on the Subject Property.

41.

The A.R.B. has not approved the installation or use of equipment or machinery on the Subject Property.

42.

The erection of the public communication tower on the Subject Property violates the residential use restrictions in Article 8, Section 8.1.1 of the Declaration, as amended.

43.

The erection of the public communication tower on the Subject Property violates the prohibition against erecting antennae, dishes and other reception and transmission devices in Article 8, Section 8.1.10 of the Declaration, as amended.

44.

The erection of the public communication tower on the Subject Property, the cutting of trees, clearing of land and other site work violates the restrictions against installation and use of equipment and machinery without A.R.B. approval in Article 8, Section 8.1.32 of the Declaration.

45.

Defendant has cut trees from the Subject Property without approval from the A.R.B. in violation of the Declaration.

46.

Defendant has cut trees with a diameter of 6 inches or more, measured from a point 4 feet above the ground, on the Subject Property without approval from the A.R.B. in violation of the Declaration.

47.

Defendant has cut a new road on the Subject Property without approval from the A.R.B. in violation of the Declaration.

48.

A true and accurate photograph of the Subject Property which depicts the tree removal and new road on the Subject Property is attached hereto as **Exhibit “D”** and incorporated herein by this reference.

49.

There is no existing county fire, sheriff or other public service facilities owned and operated by Defendant on the Subject Property.

50.

The public communication tower does not fall within any of the non-commercial exceptions in Chapter 68, Article XVI, Sec. 68-1603 of the Habersham County Code of Ordinances.

51.

The public communication tower will be located within a traditional subdivision and not on the fringe in violation of Chapter 68, Article XVI, Sec. 68-1606(b)(3) of the Habersham County Code of Ordinances.

52.

The public communication tower will be located within one eighth mile from a dwelling in violation of Chapter 68, Article XVI, Sec. 68-1606(b)(3) of the Habersham County Code of Ordinances.

53.

There is no proof of technical need for the public communication tower to be located on the Subject Property pursuant to Chapter 68, Article XVI, Sec. 68-1606(c) of the Habersham County Code of Ordinances.

54.

There are alternative sites for the public communication tower in Habersham County.

**COUNT ONE – INJUNCTIVE RELIEF**

55.

The Association hereby incorporates Paragraphs 1-54 as if each such Paragraph was fully restated herein.

56.

Defendant has violated the Declaration by operating machinery and equipment on the Subject Property without approval from the A.R.B., cutting trees on the Subject Property without approval from the A.R.B., cutting a new road on the Subject Property without approval from the A.R.B., and proceeding with the erection of the public communication tower without approval from the A.R.B.

57.

As stated in the letter attached as Exhibit “C”, the County intends to proceed with the construction of the public communication tower notwithstanding the restrictions and requirements in the Declaration.

58.

As a result of the Defendant’s violation of the Declaration, the Association stands to suffer harm and damages for which there is no adequate remedy at law.

59.

The Association seeks an Order from this Court restraining Defendant from all of the following:

- (a) Operating machinery and equipment on the Subject Property without approval from the A.R.B.; and
- (b) Cutting trees on the Subject Property without approval from the A.R.B.; and
- (c) Clearing the Subject Property without approval from the A.R.B.; and
- (d) Erecting a public communications tower on the Subject Property; and,
- (e) Violating the Declaration.

**COUNT TWO – ATTORNEY'S FEES**

60.

The Association hereby incorporates Paragraphs 1-59 as if each said Paragraph was fully restated herein.

61.

Defendant's deliberate and willful violation of the terms, conditions and restrictions of the Declaration, despite reasonable demand made upon it, constitutes bad faith and stubbornly litigious behavior as defined by O.C.G.A. § 13-6-11.

62.

Defendant's conduct has caused the Association unnecessary trouble and expense, entitling the Association to its attorney's fees and costs incurred in asserting this claim.

WHEREFORE, the Association prays for the following cumulative relief:

- a) For a permanent injunction restraining Defendant from erecting a public communication tower on the Subject Property; and
- b) For a permanent injunction restraining Defendant from operating machinery and equipment on the Subject Property without approval from the A.R.B.; and
- c) For a permanent injunction restraining Defendant from cutting trees on the Subject Property without approval from the A.R.B.; and

- d) For a permanent injunction restraining Defendant from clearing the Subject Property without approval from the A.R.B.; and
- e) For a permanent injunction restraining Defendant from violating the residential use restriction in Article 8, Section 8.1.1 of the Declaration, as amended; and
- f) For a permanent injunction restraining Defendant from violating the antenna, dish and other reception and transmission device restrictions in Article 8, Section 8.1.10 of the Declaration, as amended; and
- g) For a permanent injunction restraining Defendant from violating the architectural restrictions in Article 9, Section 9.2 of the Declaration; and
- h) For a permanent injunction restraining Defendant from violating the machinery and equipment restrictions in Article 8, Section 8.1.32 of the Declaration; and
- i) For a permanent injunction restraining Defendant from violating the tree removal restrictions in Article 8, Section 8.1.37 of the Declaration; and
- j) For a permanent injunction restraining Defendant from violating the wireless telecommunications tower and facility restrictions in Chapter 68, Article XVI, Sec. 68-1606(b)(3) of the Habersham County Code of Ordinances; and
- k) For an Order awarding the Association a judgment against Defendant for its attorney's fees and expenses of litigation in connection with this matter pursuant to O.C.G.A. § 13-6-11; and
- l) For such other relief as this Court may deem just and proper.

This 30<sup>th</sup> day of June, 2023.

NOWACKHOWARD, LLC

/s/ William H. Gourley III  
William H. Gourley III  
State Bar No. 615023  
*Attorneys for Plaintiff*

One Alliance Center, Suite 1650  
3500 Lenox Road, NE  
Atlanta, Georgia 30326  
(770) 863-8907  
[bill@nowackhoward.com](mailto:bill@nowackhoward.com)

DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
THE ORCHARD

THIS DECLARATION OF COVENANTS AND RESTRICTIONS, made and executed this 21st day of November, 1988, by THE ORCHARD LIMITED PARTNERSHIP, a Georgia limited partnership, ("Developer"), joined by THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a Georgia not-for-profit corporation, and by FRED LOVELL, a resident of Habersham County, Georgia;

WITNESSETH:

WHEREAS, Fred Lovell is the owner of that real property located in Habersham County, Georgia, and legally described in Exhibit "A", attached hereto and made a part hereof (the "Property"); and

WHEREAS, it is the intent of Developer to acquire the Property from Fred Lovell and to establish a general plan and uniform scheme of development and improvement of the Property, as hereinafter defined; and

WHEREAS, Developer wishes to provide for the preservation and enhancement of property values, amenities and opportunities within the Property, in order to contribute to the personal and general health, safety and welfare of the property owners and residents therein, and to maintain the Property and improvements thereon, and to this end wishes to subject the Property to the covenants, restrictions, easements, reservations, assessments, charges, liens and other provisions hereinafter set forth.

NOW, THEREFORE, Developer hereby declares that the Property is and shall be owned, held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, reservations, assessments, charges, liens and other provisions hereinafter set forth in this Declaration of Covenants and Restrictions.

*Superior title agreement - 11-6-15 pg 235-237  
For amend. see bk 944 pg 392-394*

FOR QUITCLAIM SEE  
BOOK 644 PAGE 233-235  
ATTORNEY AGREEMENT  
DR 972 PG 191-201

ATTORNEY AGREEMENT

107A 584-590 1074 595-607

DB 125 PG 202-205

FOR QUITCLAIM SEE  
BOOK 642 PAGE 778-779

ARTICLE 1

DEFINITIONS

The following terms, as used in this Declaration, shall have the following meanings:

1.1 "Architectural Review Board" or "A.R.B." shall mean and refer to that permanent committee of the Association, created for the purpose of establishing and enforcing criteria for the construction of Improvements within the Property.

1.2 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association as they may exist from time to time.

1.3 "Assessment" shall mean and refer to those charges made by the Association from time to time, against each Lot within the Property for the purposes, and subject to the terms, set forth herein.

1.4 "Association" shall mean and refer to THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a Georgia not-for-profit corporation, its successors and assigns.

1.5 "Board" or "Board of Directors" shall mean and refer to the board of directors of the Association.

1.6 "By-Laws" shall mean and refer to the by-laws of the Association as they may exist from time to time.

1.7 "Club Documents" shall mean and refer to those documents which create the Golf Club, establish the rights and obligations of membership and regulate the operation of the Golf Club, including without limitation the Club Plan, the Subscription Agreement and the Rules and Regulations.

1.8 "Common Expenses" shall mean and refer to all expenses incurred by the Association in connection with its ownership, maintenance and other obligations set forth herein.



1.9 "Common Property" shall mean and refer to all portions of the Property which are intended for the common use and enjoyment of the Owners and which are conveyed to the Association by deed or which are dedicated to the Association on the recorded subdivision plats of the Property and all real and personal property which may be acquired by the Association for the benefit and private, common use and enjoyment of all Owners, but shall not include the Golf Club Facilities, or any portion thereof.

\* 12

1.10 "County" shall mean and refer to Habersham County, Georgia.

1.11 "Declaration" shall mean and refer to this instrument, and all exhibits hereto, as the same may be amended from time to time.

1.12 "Developer" shall mean and refer to The Orchard Limited Partnership, a Georgia limited partnership, and its successors and assigns.

1.13 "Dwelling" shall mean and refer to a single family dwelling, but specifically excluding the Villas.

1.14 "Golf Club" shall mean and refer to The Orchard Club, Inc., a Georgia not-for-profit corporation, its successors and assigns, and such other entities or persons that may now or hereinafter own or acquire the Golf Club Facilities within The Orchard.

1.15 "Golf Club Facilities" shall mean and refer to the eighteen (18) hole championship golf course owned by the Golf Club and such other properties, improvements and related amenities owned by the Golf Club in connection therewith, and such other properties and improvements as may now or hereinafter be constructed, acquired or designated as "Golf Club Facilities" by the Golf Club.

1.16 "Improvements" shall mean and refer to all structures of any kind, including, without limitation, any building, wall, fence, sign, paving, grading, swimming pool, jacuzzi, spa, patio, tennis court or screen enclosure or screening of any type, sewer, drain, disposal system, driveway, sidewalk, decorative building, planting, landscaping, landscape device or object or any and all types of structures or improvements, whether or

422

not the purpose thereof is purely decorative or otherwise, and any and all additions, alterations, modifications, or changes thereto or thereof.

1.18 "Institutional Mortgagee" shall mean and refer to any bank, bank holding company, trust company or subsidiary thereof, savings and loan association, Federal National Mortgage Association, insurance company, union pension fund, mortgage company approved by Developer, an agency of the United States Government, or Developer, which holds a first priority deed to secure debt of public record on any Lot, and the holder of any deed to secure debt of public record given or assumed by Developer, whether a first priority deed to secure debt or otherwise, and their successors.

1.19 "Lot" shall mean and refer to any tract of land located within the Property which is intended for use as a site for a Dwelling, excluding the Villas, and, except as provided in paragraph 6.12 of this Declaration, shall not include the Golf Club Facilities, or any portion thereof.

1.20 "Member" shall mean and refer to a member of the Association.

1.21 "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, excluding, however, any mortgagee unless and until such mortgage has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

1.22 "Property" shall mean and refer to the real property legally described in Exhibit "A", attached hereto and made a part hereof and such additional property as may be subjected to this Declaration by Developer from time to time, pursuant to Section 2.2 of this Declaration.

1.23 "Street" shall mean and refer to any street, highway or other thoroughfare which is constructed by Developer within The Orchard and is dedicated to the Association whether same is designated as street, avenue, boulevard, drive, place, court, road, terrace, way, circle, lane, walk, or other similar designation.

1.24 "The Orchard" shall mean and refer to that residential planned development located in Habersham County, Georgia as legally described in the P. D. Resolution.

1.25 "Traffic Regulations" shall mean and refer to the speed limits and other traffic regulations which may be promulgated by the Association for use of the Streets, as further set forth in this Declaration.

1.26 "Villas" shall mean and refer to those residential units located within The Orchard, which are operated by the Golf Club.

**ARTICLE 2**

**PROPERTY SUBJECT TO THIS DECLARATION**

2.1 Property. The Property subject to this Declaration upon the recordation hereof in the County Public Records is the property described in Exhibit "A" attached hereto and made a part hereof.

2.2 Additional Property. Developer may, at any time and from time to time, subject additional property to this Declaration, regardless of where such property is located, including without limitation, platted subdivisions, Lots, Dwellings, Common Property, commercial property, Golf Club Facilities and other amenities, by recording in the public records of the County an amendment to this Declaration, describing such additional property and setting forth any use restrictions, voting rights, maintenance requirements, user fees, dues or other provisions pertaining to such property. Notwithstanding the fact that the Declaration may result in an overall increase of Assessments attributable to each Lot, or may result in an overall increase on the total number of votes or Members in the Association, nonetheless such amendment(s) by Developer shall not require the joinder or consent of the Association, other Owners or mortgagees of any portion of The Orchard, or any other person or entity. Any property made subject to the Declaration pursuant to the terms hereof shall be included in the

#9

term "Property", and shall be part of The Orchard, regardless of where such property is located.

2.3 Changes to Golf Club Facilities. By its acceptance of title to the Golf Club Facilities, the Golf Club agrees that it may be necessary or desirable for the Developer to grant, modify, or enter into easements, dedications, agreements, licenses, restrictions, reservations, covenants, and rights of way, to modify the boundary lines and to plat or replat portions of the Golf Club Facilities, and to take such other action as Developer may deem reasonably necessary and appropriate, so long as it does not have a material adverse effect on the use of the Golf Club Facilities as a country club facility. The Golf Club agrees to execute and deliver, and will cause the holders of any liens upon or interests in the Golf Club Facilities to execute and deliver, any and all agreements, documents, plats, and instruments which Developer deems necessary or desirable to accomplish the same, specifically including without limitation deeds reconveying portions of the Golf Club Facilities to Developer. The Golf Club further agrees to accept such additional conveyances of land as Developer deems necessary or desirable, which conveyances may be subject to the provisions of the Declaration or other restrictions imposed at the sole discretion of Developer.

**ARTICLE 3**

**THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC.**

3.1 Formation. Developer has caused the Association to be formed by the filing of the Articles of Incorporation therefor in the office of the Secretary of State of Georgia. The Association is formed to operate, maintain and ultimately own the Common Property; to enforce the covenants, conditions, restrictions, and other provisions set forth in this Declaration and in the Articles of Incorporation and the By-Laws of the Association. Subject to the additional limitations provided herein and in the Articles of Incorporation and the By-Laws of the Association, the Association shall have all of the

425

powers and be subject to all the limitations of a not-for-profit corporation as contained in Georgia Statutes, Title 14, Chapter 3 (the "Georgia Not for Profit Corporation Act"), in existence as of the date of recording the Declaration in the public records of the County.

3.2 Membership. A person or entity shall automatically become a Member of the Association upon acquisition of fee simple title to any Lot, which acquisition shall be deemed to occur upon filing of a deed therefor in the public records of the County. Membership shall continue until such time as the Member properly transfers or conveys his interest of record in accordance with the terms and conditions set forth in Article 11 of this Declaration, or until such time as the interest is transferred or conveyed by operation of law. Upon transfer or conveyance of the interest of the Member in and to the Lot, membership in the Association shall be automatically conferred upon the transferee. Membership shall be appurtenant to, and may not be separated from, ownership of a Lot subject to this Declaration. No person or entity holding an interest of any type or nature whatsoever in a Lot only as security for the performance of an obligation shall be a Member. Developer, by including additional property as being subject to this Declaration, may cause additional membership in the Association and may designate the voting rights and Assessments attributable to such property.

3.3 Voting. The Association shall have one (1) class of voting membership. Each Member, including Developer, shall be entitled to one (1) vote for each Lot owned by such member as to matters on which the membership shall be entitled to vote (as set forth herein), which vote may be exercised or cast by the Member in such manner as may be provided in the By-Laws of the Association. Any Member who owns more than one (1) Lot, shall be entitled to exercise or cast one (1) vote for each such Lot. When more than one (1) person owns a Lot, all such persons shall be Members of the Association; provided, however, in no event shall more than one (1) vote be cast with respect to each Lot. If more than one (1) person, a corporation, or other entity owns a Lot, they shall file a certificate with the Secretary of the Association naming the person authorized to cast

votes for said Lot. If the certificate is not on file, the Owners(s) shall not be qualified to vote and the vote of such Owner(s) shall not be considered nor shall the presence of such Owner(s) at a meeting be considered in determining whether the quorum requirement has been met. If a Lot shall be owned by husband and wife as tenants in common or as joint tenants with right of survivorship, no certificate need be filed with the Secretary naming the person authorized to cast votes for said Lot, and either spouse, but not both, may vote in person or by proxy and be considered in determining whether the quorum requirement has been met at any meeting of the Members, unless prior to such meeting, either spouse has notified the Secretary in writing that there is a disagreement as to who shall represent the Lot at the meeting, in which case the certificate requirements set forth above shall apply. Developer, by including additional property as being subject to this Declaration, may designate the voting rights appurtenant to such property.

3.4 Administration of the Association. The affairs of the Association shall be administered by the Board of Directors in accordance with this Declaration, the Articles of Incorporation and the By-Laws of the Association. The Articles of Incorporation and the By-Laws may be amended in the manner set forth therein; provided, however, that no such amendment shall conflict with the terms of this Declaration or adversely affect the rights of Developer, without Developer's prior written approval; and provided further that no amendment, alteration or rescission may be made which adversely affects the rights or privileges of any Institutional Mortgagee, without the express prior written consent of the Institutional Mortgagee so affected, and provided further that no amendment, alteration or rescission of the Articles of Incorporation or the By-Laws shall be made without the Association's prior written approval. Any attempt to amend contrary to these prohibitions shall be of no force and effect.

3.5 Suspension of Membership Rights. No Member shall have any vested right, interest or privilege in or to the assets, functions, affairs or franchises of the Association, or any right, interest or privilege which may be transferable, or which shall

continue after his membership ceases, or while he is not in good standing. A Member shall be considered "not in good standing" during any period of time in which he is delinquent in the payment of any Assessment or fine, or in violation of any provision of this Declaration or of any rules or regulations promulgated by the Association. While not in good standing, the Member shall not be entitled to vote or exercise any other right or privilege of a Member of the Association.

3.6 Control By Developer. Anything contained herein to the contrary notwithstanding, Developer shall have the right to retain control of the Association until the Turnover Date. At the Turnover Date, the Association shall record a notice of turnover in the public records of the County.

3.6.1 Until turnover of control of the Association, no action shall be taken or decision adopted by the Board which would adversely impact on the construction, development, sale or marketing of the Property or on the condition or appearance of the Property without the prior written consent of the Developer. The Board shall submit such decisions and actions to the Developer, for approval. The Developer shall approve or disapprove such decisions and actions within twenty (20) days after receipt thereof. In the event the Developer fails to act within such time period, such failure shall be deemed approval by the Developer.

3.7 Fundamental Issues. Notwithstanding the composition of the Board of Directors from time to time, certain issues affecting the Association (the "Fundamental Issues") shall be subject to mutual agreement by a majority of the Directors, which majority shall include a majority of the Directors appointed by the Developer. These Fundamental Issues shall consist of: (a) the annual budget of the Association, including the maintenance and capital improvement expenditures indicated therein; (b) replacement of the management company employed by the Association and the selection of a new management company; and (c) amendments to the Articles of Incorporation, By-Laws or Rules and Regulations of the Association. In the event that the Board cannot agree upon

any one or more of the Fundamental Issues, as described above, then the disputed issue shall be subject to binding arbitration, in accordance with the following procedure: The arbitrator shall be selected by the American Arbitration Association within five (5) days after receipt of notice by either party and shall be an accounting firm which is nationally recognized in property owners association/homeowners association accounting or such other person as the members of the Board elected by the Lot Owners other than the Developer and those appointed by the Developer shall mutually agree upon. The members of the Board elected by the Lot Owners other than the Developer and those appointed by the Developer shall each submit a proposal setting forth its resolution of the issue(s) submitted to arbitration within ten (10) days of notice of selection of the arbitrator. The arbitrator shall investigate the facts and shall hold hearings at which the parties may present evidence and arguments, be represented by counsel and conduct cross-examination. The arbitrator shall render a written decision upon the matter presented to it by selecting either of the proposals within thirty (30) days after the later of the date upon which the last party submitted its proposal to the arbitrator or the date of the hearing before the arbitrator on the disputed issue. Judgment upon the decision rendered in such arbitration may be entered by any court having jurisdiction thereof. The arbitration proceedings shall be governed by the rules of the American Arbitration Association then in force. If necessary, the parties shall advance on an equal basis any costs of the arbitration, such as reporters' fees and arbitrators' fees. The prevailing party shall be entitled to recover as part of the award all such advanced costs and reasonable attorneys' fees and related costs, fees and expenses of the arbitration. Any fees and costs required to be paid by the Association shall be obtained through a special assessment levied against all Owners other than the Developer. In the event of any dispute over any such fees and costs, each party may apply to the arbitrator within thirty (30) days of the decision on the merits for a determination of an award of fees, costs and expenses. The arbitrator shall enter an award on such application within thirty (30) days from its receipt,



without a hearing, but with consideration of any factual material or brief submitted by the parties, and such award shall be complied with within thirty (30) days from the date of such award.

**ARTICLE 4  
COMMON PROPERTY**

4.1 Title to Common Property. Title to the Common Property shall remain vested in the Developer until the date it relinquishes control of the Association, as such date is defined hereinabove. Notwithstanding the manner in which fee simple title is held, the Association shall be responsible for the management, maintenance and operation of the Common Property from and after the date of recordation of this Declaration. Simultaneously with its relinquishment of control of the Association, Developer shall convey all of its right, title and interest in the Common Property to the Association. Anything contained herein to the contrary notwithstanding, certain portions of the Common Property may be reserved by the Developer for the exclusive benefit and use by the Developer or by Owners designated by the Developer. Any such property so designated by the Developer shall be excluded from the Common Property.

4.2 Acquisition and Conveyance of Property. The Association shall have the power and authority to acquire and convey such interests in real and personal property, as it may deem beneficial to its Members. Such interests may include fee simple or other absolute ownership interests, leaseholds, easements, licenses or such other possessory use interests as the Association may determine to be beneficial to its Members. Any property acquired pursuant to this section shall be Common Property.

4.3 Rules and Regulations Governing Use of Common Property. The Association, through its Board of Directors, shall regulate the use of the Common Property by Members and Owners, and may from time to time promulgate such rules and regulations consistent with this Declaration, governing the use thereof as it may deem to

be in the best interest of its Members. A copy of all rules and regulations established hereunder and any amendments thereto shall be made available to all Members at the office of the Association. Such rules and regulations and all provisions, restrictions and covenants as now or hereafter provided, including, without limitation, all architectural and use restrictions contained in this Declaration, may be enforced by legal or equitable action of the Association.

4.4 Traffic Regulations. The Association, through its Board of Directors, shall have the right, but not the obligation, to post motor vehicle speed limits throughout The Orchard, and to promulgate traffic regulations for the Streets. A copy of all Traffic Regulations established hereunder and any amendments thereto shall be made available to all Members at the office of the Association. The Association, through its Board of Directors, shall also have the right to establish enforcement mechanisms for violations of the Traffic Regulations, including without limitation, the removal of vehicles from the Property, the assessment of fines against Owners who violate the Traffic Regulations and against Owners whose family members, guests, invitees, licensees, employees or agents violate the Traffic Regulations, which fines shall be collected as an individual Assessment from Owners, and/or the suspension of an Owner's rights and easements of enjoyment, as provided hereinbelow. Owners who violate the Traffic Regulations and Owners whose family members, guests, invitees, licensees, employees or agents who violate the Traffic Regulations shall be entitled to notice and an opportunity for a hearing before the Board of Directors of the Association, prior to the imposition of any fine, the removal of any vehicle, the deprivation of any rights, or the enforcement of any other penalty for violation of the Traffic Regulations.

4.5 Owner's Easements of Enjoyment. Subject to the provisions herein, each Owner shall have a right and easement of enjoyment in and to the Common Property, which easement shall be appurtenant to, and shall pass with, the title to each Lot owned by the Owner.

*add - # 4*

4.6 Extent of Owner's Easement. The rights and easement of enjoyment created hereby shall be subject to the following:

4.6.1 The right of Developer and the Association to borrow money for the purpose of improving the Common Property and, in connection therewith, to mortgage the Common Property.

4.6.2 The right of Developer and the Association to take such steps as are reasonably necessary to protect the Common Property against foreclosure.

4.6.3 The right of the Association to suspend the enjoyment rights and easements of any Owner for any period during which an Assessment remains unpaid by the Owner and for any period during which such Owner is in violation of this Declaration, any rules and regulations promulgated by the Association or any Traffic Regulations promulgated by the Association.

4.6.4 The right of the Association to properly maintain the Common Property.

4.6.5 The right of the Association, its agents and employees, and any management entity contracted by the Association, to have access on the Common Property for purposes of maintenance of the Common Property.

4.6.6 The rules and regulations governing the use and enjoyment of the Common Property, as promulgated by the Association.

4.6.7 The Traffic Regulations governing the use and enjoyment of the Streets, as promulgated by the Association.

4.6.8 The right of the Developer or the Association to dedicate or transfer all or any part, of the Common Property to any governmental or quasi-governmental agency, authority, utility, water management or water control district.

4.6.9 Restrictions contained on any plat, or filed separately with respect to all or any portion of the Property.

4.6.10 All of the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association and all exhibits thereto, all rules and regulations and Traffic Regulations adopted by the Association, as same may be amended from time to time.

4.6.11 Such easements as may be granted or reserved on any recorded plat(s) of the Property; such easements as may be granted or reserved by the Developer or the Association; and such other easements as may be granted or reserved pursuant to the provisions of this Declaration.

4.6.12 In case of any emergency originating in, or threatening any Lot or Dwelling, regardless of whether the Owner is present at the time of such emergency, the Board of Directors of the Association, or the management agent under a management agreement, shall have the right to enter such Lot and the Improvements located thereon for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

4.6.13 The Owner's easement of enjoyment shall be subject to the rights reserved by Developer for future development of the Property. As a material condition for ownership of a Lot, each Owner, by accepting a deed to a Lot, releases Developer from any claim for interference with his quiet enjoyment of his Lot or Dwelling or the Common Property due to the development of The Orchard, whether or not the construction operations are performed on the Common Property, the Lots or elsewhere within The Orchard and each Owner acknowledges and agrees that Developer or its assigns shall have the sole right of design, construction, development and improvement of the Common Property within the Property.

4.6.14 The right of fire, police, health and sanitation and other public service personnel and vehicles to have access to, and use of, the Common Property for the purpose of performing their duly authorized duties.

4.6.15 The right and duty of the Association to levy assessments against each Lot for the purpose of maintaining the Common Property and facilities in compliance with the provisions of this Declaration.

4.7 Continual Maintenance. In the event of a permanent dissolution of the Association, the Members shall immediately thereupon hold title to the Common Property as tenants in common and shall collectively provide for the continued maintenance and upkeep thereof.

4.8 Streets. The Association shall be responsible for the maintenance and upkeep of all Streets located or constructed, in whole or in part, within the Property, to the extent that such Streets are physically located within the Property, and all costs of maintenance and upkeep thereof shall be a Common Expense.

ARTICLE 5

EASEMENTS

5.1 Easement Grants. The following easements are hereby granted and/or reserved over, under, across and through the Property:

5.1.1 The Developer reserves the right (but shall have no obligation) to grant easements for utilities throughout the Property, including without limitation, communications, security and cable television facilities. Each appropriate utility company or agency shall have an easement for the purpose of maintaining all utility lines, connections and equipment now or hereafter located on the Common Property or on the Lots.

5.1.2 Easements for the installation and maintenance of drainage facilities are granted to the Association, and/or other entities as shown on the recorded plat(s) of the Property. Within these easement areas, no structure, planting or other material, (other than sod) which may interfere with such installation and maintenance, or which may obstruct or retard the flow of water through drainage channels shall be placed



or permitted to remain unless such structure, planting or other material was installed by Developer. The Association (or such other entity as is indicated on the plat(s)) shall have access to all such drainage easements for the purpose of operation and maintenance thereof.

5.1.3 The Common Property is hereby declared to be subject to a perpetual non-exclusive easement in favor of the Association, employees and agents of the Association, and of any management entity or agent contracted by the Association, in order that such employees, agents or management entity or agent may carry out their duties and have access over the Common Property.

5.1.4 A non-exclusive easement is hereby granted for ingress and egress for pedestrian and vehicular traffic over, through and across the Streets, walks, parking areas, other rights-of-way, and such other portions of the Common Property as may from time to time be intended and designated for such uses and purposes, for the use and benefit of the Owners, their families, guests, employees and invitees, in obtaining reasonable access from the Lots to the abutting public way.

5.1.5 An easement is hereby granted over the Property to each Institutional Mortgagee for the purpose of access to the property subject to its mortgage, which easement shall be exercised in the manner as set forth in such mortgages.

5.1.6 Easements are hereby reserved throughout the Common Property, including without limitation, the Streets and the easements shown on the plat(s) of the Property, by Developer, for its use and the use of its agents, employees, licensees and invitees, for all purposes in connection with development and sales of property throughout The Orchard. Developer retains the right to maintain an office and a sales office on the Property, in a location to be selected by Developer, and to post and display signs on any Lots owned by Developer and on the Common Property.

5.1.7 A easement is hereby granted to members of the Golf Club, its officers, agents and employees, and guests, to permit the doing of every act necessary and

incident to the playing of golf on the golf course adjacent to the Lots and to permit the doing of every act necessary and incident to maintaining the Golf Club Facilities. These acts shall include, but not be limited to, the recovery of golf balls from Lots, the flight of golf balls over and upon the Lots, the creation of the usual and common noise level associated with the playing of the game of golf, the creation of the usual and common noise level associated with maintaining the Golf Club Facilities, the driving of machinery and equipment used in connection with maintaining the Golf Club Facilities over and upon the Streets, the Common Property and the Golf Club Facilities, together with all such other common and usual activities associated with the game of golf and with all the normal and usual activities associated with the maintenance and operation of the Golf Club Facilities. Such noise may occur on or off the Golf Club Facilities, throughout the day from early morning until late evening. The Developer shall have the right to prescribe in writing to the Golf Club the manner and extent to which the rights under this easement shall be exercised. In addition, the Developer may, in its sole discretion, limit or withdraw or prohibit certain of the acts authorized by this easement, and it may limit the manner or place of doing all or certain of the acts authorized by this easement.

5.1.8 A non-exclusive easement is hereby granted for ingress and egress over, across and through the Streets to and from the Golf Club Facilities for the use and benefit of the Golf Club and all members of the Golf Club, regardless of whether such members are also Owners. This easement is subject to all reasonable rules and regulations promulgated by the Association from time to time.

5.1.9 An easement for encroachments is hereby granted in the event that a Dwelling or any part of a Dwelling or any other Improvement now or hereafter constructed unintentionally encroaches upon another Lot or upon the Common Property due to minor inaccuracies in survey, construction, reconstruction, or due to settlement or movement of soil. The encroaching Improvement shall remain undisturbed as long as the



encroachment exists. This easement for encroachments shall also include an easement for the maintenance and use of the encroaching Improvements.

5.2 Additional Easements. Developer or the Association, shall have the right to grant such additional easements or to relocate existing easements throughout the Property as the Developer or the Association may deem necessary or desirable for the proper operation and maintenance of the Property, or any portion thereof, provided that such additional easements or relocation of existing easements do not prevent or unreasonably interfere with the Owners' use or enjoyment of his Lot and the Common Property.

5.3 Restriction on Owner Easements. Except as specifically provided in Section 5.2 with regard to the Developer or the Association, no Owner shall grant any easement upon any portion of the Property to any person or entity without the prior written consent of the A.R.B.

5.4 Intended Creation of Easements. Should the intended creation of any easement fail by reason of the fact that at the time of creation, there is no grantee in being having the capacity to take and hold such easement, any such grant of easement deemed to be so created shall nevertheless be considered as having been granted directly to the Association for the purpose of allowing the original party or parties to whom the easements were originally granted the benefit of such easements; the Owners hereby designate the Developer and/or Association as their lawful attorney in fact to execute any instrument on their behalf as may hereafter be required or deemed necessary for the purpose of creating such easement.

ARTICLE 6

ASSESSMENTS AND FINES

6.1 Authority of Association. The Association, through its Board of Directors, shall have the power and authority to make and collect assessments and fines as hereinafter set forth.

6.2 General Assessments. General Assessments shall be determined annually for the purpose of maintenance and management of the Association and the Common Property, and for the purpose of promoting the safety and welfare of the Owners. Without limiting the foregoing, General Assessments shall be used for payment of: operation, maintenance and management of the Association and the Common Property; legal and accounting fees; landscaping of the Common Property; management fees; security costs; emergency services; repairs and replacements for such property required to be maintained by the Association, pursuant to the terms of this Declaration; charges for utilities used upon the Common Property; cleaning services for such property required to be maintained by the Association, pursuant to the terms of this Declaration; expenses and liabilities incurred by the Association in the enforcement of its rights and duties against the Members or others; maintenance of vacant property; the creation of reasonable reserves; and all other expenses deemed by the Board of Directors of the Association to be necessary and proper for management, maintenance, repair, operation and enforcement.

6.3 Basis and Collection of General Assessments. The Association shall annually estimate the Common Expenses it expects to incur and the period of time involved therein and shall assess its Members sufficient monies to meet this estimate. All Lots shall be assessed at a uniform rate, to be determined by the Board of Directors, so that all Lots subject to a General Assessment shall be assessed equally. Should the Association at any time determine that any Assessments made are insufficient to pay the Common Expenses, the Board of Directors shall have the authority to levy and collect additional General Assessments to meet such needs. General Assessments shall be collectible in advance monthly, quarterly, semi-annually or annually, as the Board of Directors shall determine in its sole and absolute discretion. As additional property is subjected to this Declaration by amendment to this Declaration, the Board of Directors in its sole and absolute discretion may designate in such amendment the basis on which such

property shall be assessed and shall have the right to designate different levels of Assessments for the Lots located within the additional property.

6.4 Special Assessments. The Association shall have the power and authority to levy and collect Special Assessments from each Member for payment of the following: the acquisition of property by the Association; the cost of the construction of capital Improvements to the Common Property; the cost of construction, reconstruction, unexpected repair or replacement of a capital Improvement, including the necessary fixtures and personal property related thereto; and the expense of indemnification of each Director and officer of the Association. Special Assessments shall be levied on an equitable basis, as determined by the Board of Directors in its sole and absolute discretion and shall be collected in such manner as the Board of Directors shall determine, in its sole and absolute discretion.

6.5 Emergency Special Assessments. The Association may levy an Emergency Special Assessment when, in the sole and absolute determination of the Board of Directors, there is potential danger of damage to persons or property. Emergency Special Assessments may be utilized to pay for preventative, protective or remedial construction, reconstruction, Improvements, repairs or replacements. Events justifying Emergency Special Assessments include, but are not limited to, hurricanes, floods, freeze damage and fires. Emergency Special Assessments shall be levied on an equitable basis as determined by the Board of Directors in its sole and absolute discretion and shall be collectible in such manner as the Board of Directors shall determine in its sole and absolute discretion.

6.6 Individual Assessments. The Association shall have the power and authority to levy and collect an Individual Assessment against a particular Lot for the cost of maintenance, repairs or replacements within or without the Lot, which the Owner thereof has failed or refused to perform, and which failure or refusal has, in the opinion of the Association, endangered or impaired the use or value of other portions of the

Property. The Association shall have the right of entry onto each Lot to perform necessary maintenance, repairs and replacements, including the right to abate or eliminate any nuisance. The Individual Assessment may include an administrative fee charged by the Association in an amount to be determined by the Board of Directors in its discretion from time to time. All Individual Assessments shall be collectible in such manner as the Association shall determine.

6.7 Fines. The Association may levy reasonable fines against Owners or the Golf Club Owner for violations by Owners, or members of the Golf Club, or by Owners' family members, lessees, guests, licensees, invitees, employees or agents, of the provisions contained in this Declaration, the Articles of Incorporation, the By-Laws, the rules and regulations and Traffic Regulations promulgated by the Association from time to time. The Association may levy fines according to a schedule of fines to be adopted by the Board of Directors. Owners, or members of the Golf Club, who violate any of the foregoing documents or rules shall be entitled to notice and a hearing before the Board of Directors of the Association, prior to the imposition of any fine. Fines are Individual Assessments and shall be collectible as such and upon any delinquency in the payment of any fine the Association shall have all rights as set forth in Article 6 of this Declaration, including, without limitation, lien rights against the Owner or the Golf Club.

6.8 Effect of Non-Payment of Assessments or Fines. All notices of Assessments or fines from the Association to the Members of the Golf Club Owner shall designate when the Assessment or fine is due and payable. If an Assessment or fine is not paid on the date when due, it shall then become delinquent and shall bear interest at the maximum rate allowed by the civil usury laws of the State of Georgia or eighteen percent (18%) per annum, whichever is less, from the date when due until paid. The Assessment or fine, together with interest thereon and the costs of collection thereof, including attorneys' fees, shall be a continuing lien against the Lot against which the Assessment or fine is made, or against the Golf Club Facilities against which the Assessment or fine is

made, and shall also be the continuing personal obligation of the Owner thereof, or a continuing obligation of the Golf Club. The Association may also record a claim of lien in the public records of the County, setting forth the amount of the unpaid Assessment or fine and the rate of interest due thereon. If any Assessment or fine, or any installment thereof, shall not be paid within thirty (30) days following the due date, the Association may declare the entire Assessment or fine immediately due and payable. The Association may at any time thereafter bring an action to foreclose the lien assessed against the Lot or the Golf Club Facilities in the manner in which a mechanic's or materialman's lien against real property are foreclosed, or in the manner in which mortgages on real property are judicially foreclosed, or a suit on the personal obligation of the Owner or the Golf Club, as the case may be. There shall be added to the amount of the Assessment or fine the costs of such action, including attorneys' fees incurred by the Association. Regardless of the date of recordation of any claim of lien, the effective date thereof shall relate back, and it shall take priority, as of the date of recordation of this Declaration. Any successor in title to a Lot shall be held to have constructive notice of the records of the Association to determine the existence of any delinquency in the payment of Assessments or fines and shall be held liable and responsible for the payment of any delinquent Assessments or fines on the Lot.

6.9 Certificate of Assessments. The Association shall prepare a roster of the Lots and Assessments applicable thereto, which shall be open to inspection by all the Members. At the request of an Owner, the Board of Directors shall prepare a Certificate of Assessments signed by an officer of the Association, setting forth whether the Owner's Assessments have been paid and/or the amount which is due as of the date of the Certificate. As to parties without knowledge of error who rely thereon, such certificate shall be presumptive evidence of payment or partial payment of any Assessment therein stated as having been paid or partially paid.

6.10 Subordination of Lien to Mortgages. Regardless of the effective date of the lien of any Assessments or fines made by the Association, the lien of such Assessments or fines shall be superior to all liens, but shall be subordinate and inferior to the lien of any Institutional Mortgagee. Such subordination shall, however, apply only to the Assessments or fines which have become due and payable prior to a final sale or transfer of the mortgaged Lot pursuant to a foreclosure sale, or in any other proceeding or conveyance in lieu of foreclosure of the deed to secure debt. No sale or other transfer shall relieve any Lot from liability for any Assessment or fine becoming due thereafter, nor from the lien of any such subsequent Assessment or fine. Any delinquent Assessments or fines which are extinguished pursuant to a sale or transfer in connection with the foreclosure of a deed to secure debt, or any proceeding or deed in lieu of foreclosure, shall be reallocated and assessed to all Owners and the Golf Club Owner as a Common Expense. The written opinion of the Association that the lien for an Assessment or fine is subordinate to a lien for a deed to secure debt shall be dispositive of any question of subordination.

6.11 Payments by Developer.

In lieu of the payment of any Assessments, Developer shall be responsible only for the payment of that portion of the Common Expenses which exceeds the amount to be paid by Owners (other than Developer) pursuant to the budget of the Association (the "Association Shortfall"). In lieu of the payment of the Association Shortfall, Developer may elect, at any time and from time to time, in its sole and absolute discretion, to pay the Assessment(s) attributable to each Lot owned by Developer. Developer shall have no obligation to fund reserves for the Association at any time.

6.12 Golf Club Assessment.

For purposes of Assessment, the Golf Club Facilities shall be deemed to constitute ten (10) Lots, and accordingly, the Golf Club shall be assessed an amount equal to the assessments which are levied, from time to time, against ten (10) Lots. Each Villa shall be assessed on the same basis as the Lots, which

assessments for each Villa shall commence as of the date of issuance of a certificate of occupancy by the County for the Villa.

6.13 Exempt Property. The following property shall be permanently exempt from the payment of all Assessments:

6.13.1 All Common Property and property dedicated to, or owned by, the Association.

6.13.2 Any portion of the Property dedicated to the County.

6.13.3 Any portion of the Property owned by the Developer; provided, however, Developer shall pay those amounts stated above in Section 6.11.

Add 6.14 #4

ARTICLE 7

MAINTENANCE OF PROPERTY

7.1 Lot Owner Responsibility. The Owner of each Lot shall be responsible for maintenance of his Lot, exterior areas of his Dwelling, and all other Improvements located on his Lot including, without limitation, any landscaping, patio, terrace, garden or similar area adjacent to such Dwelling. The expense of any maintenance, repair or construction of the Common Property necessitated by the negligent or willful acts of an Owner, or his invitees, licensees, family or guests, shall be borne solely by such Owner, and his Lot shall be subject to an Individual Assessment for such expense.

7.1.1 The Association may require each Owner to enter into a landscape maintenance agreement with a company approved by the Association for the purpose of maintaining lawns and landscaping on the Lot.

7.2 Association Responsibility. The Association shall, either by virtue of appointment of a real estate management agent, or through its own personnel, be responsible for the maintenance of all of the Common Property dedicated to it on the plat of any portion of Property, or as otherwise established by other legal documentation affecting the Property.

*Adm - # 4*

7.2.1 The Association shall be responsible for the maintenance of a Lot and/or the Improvements located thereon, when it is determined by the Association in its sole and absolute discretion, that the Owner thereof has failed or refused to perform said maintenance, the expense of which will be borne by the Owner of said Lot pursuant to Section 6.6 of this Declaration.

7.2.2 Developer, its parents, subsidiaries, affiliates, their successors and/or assigns, may be the management agent for the Association and may hire such employees, including but not limited to: attorneys, accountants, bookkeepers, gardeners, and laborers, as the Developer may deem necessary in order to maintain the property described herein. No management agreement between the Association and Developer or its parents, subsidiaries, affiliates, or their successors and/or assigns shall be held invalid solely for the reason that at the time of entering into the management agreement, the employees, officers, or agents of Developer, or its parents, subsidiaries or affiliates or their successors and/or assigns are officers, directors and/or employees of the Association.

7.3 Maintenance of Additional Property. As additional property, including without limitation Lots, Villas and Common Property, is subjected to this Declaration, the Developer shall have the absolute right to change, amend, or alter the maintenance provisions set forth in this Article 7 and to add additional maintenance provisions for such additional property as deemed appropriate by Developer in its sole and absolute discretion.

**ARTICLE 8**

**USE RESTRICTIONS**

The following use restrictions shall apply to Lots located within the Initial Property:

8.1 Restrictions on Use of Lots and Common Property.

*Adm - # 4*



8.1.1 Residential Use. Except as provided in section 14.6 of this Declaration, the use of all Lots shall be limited to single family, private, residential Dwellings and for no other purpose. No business or commercial building may be erected on any Lot and no business may be conducted on any part thereof; provided, however, that nothing contained herein shall be construed to prohibit or limit the operation of the Golf Club Facilities, including the Villas.

8.1.2 Commercial Activities. No drilling, mining, manufacturing, trade, business, commerce, industry, profession or other occupation whatsoever shall be conducted or carried on upon any Lot or any part thereof, except as to those uses made by Developer.

8.1.3 Pets. Lot Owners may keep as pets, dogs and cats; provided that no such pets are kept, bred or maintained for any commercial purpose. All pets shall be under the control of a responsible person at all times when the pet is outside of a Dwelling. The pet owner shall be responsible at all times for cleaning up after the pet. The Board of Directors shall have the right to order the removal of any pet which is considered a nuisance, in the Board's sole and absolute discretion. In such event, the Board of Directors shall give written notice thereof to the pet owner, and the pet shall immediately thereafter be permanently removed by Owner from the Property.

8.1.4 Boats. Except as needed for authorized maintenance and control of lakes and waterways by Developer or the Association, no boat or water craft of any kind shall be kept or used upon any lake or waterway within the Property without the prior written approval of the A.R.B.

8.1.5 Vehicle Parking.

8.1.5.1 Recreational and Commercial Vehicles. No boats, trailers, recreational vehicles, trucks, commercial vehicles, motor homes, mobile homes or other habitable motor vehicles, except four-wheel passenger vehicles, may be placed, parked or stored upon any portion of a Lot except within a building which is totally removed from

public view and then only in accordance with Section 8.1.5.2 hereof, nor shall any maintenance or repair be performed upon any boat or motor vehicle upon any Lot except within a building which is totally removed from public view. Notwithstanding the foregoing, service and delivery vehicles may park in the driveway of a Dwelling or on the Streets during regular business hours, as needed for providing services or deliveries to the Lot. In the event of a dispute concerning the type of vehicle, the manufacturer's classification of the vehicle shall control.

8.1.5.2 Passenger Automobiles. Automobiles of Owners may be parked, placed or stored only in the garage or driveway of the Owner's Dwelling. Guests and invitees of Owners may park their automobiles, on a temporary basis, in the garage or driveway of the Owner's Dwelling or on the edge of Streets. No vehicle of any kind shall be placed, parked, or stored on the lawn of any Lots, or on any portion of the Common Property other than the Streets.

8.1.5.3 Enforcement of Violations. The Association shall have the right to levy reasonable fines against Owners for parking violations by the Owners or their family members, guests, invitees, licensees, employees or agents and such fines shall be treated as Individual Assessments shall have all rights as set forth in Article 6 of this Declaration, including, without limitation, lien rights against the Lot. In addition, the Association will have the right to have any vehicle which is in violation of a parking regulation towed at the Owner's expense.

8.1.6 Temporary Structures. No structure or object of a temporary character such as, but not limited to, house trailers, vans, tents, shacks, sheds, or temporary or accessory buildings or structures, shall be erected, kept or maintained on the Property, or any part thereof. This restriction shall not apply to temporary structures used by Developer for development, construction or sale of property throughout The Orchard or to Owners, their contractors and employees, during construction of a Dwelling on the Owner's Lot.

8.1.7 Insurance. No Owner shall permit or suffer anything to be done or kept within his Lot, or make any use of the Common Property which will increase the rate of insurance on any portion of the Property.

8.1.8 Nuisances. No use or practice which is either an annoyance to owners or an interference with the peaceful possession and proper use of the Property by the Owners shall be allowed. No Owner shall commit or permit any nuisance or any immoral or illegal activity in or about the Property, including, but not limited to knowingly or willfully making or creating any unnecessary, excessive or offensive noise or disturbance which destroys the peace, quiet or comfort of the Owners, or allowing any such noise or disturbance to be made on his Lot.

8.1.9 Outside Displays. No Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of his Dwelling, nor shall he place any furniture or equipment including, but not limited to, any swing sets, basketball hoops or lawn ornaments outside his Dwelling, without the prior written consent of the A.R.B., except that the consent of the A.R.B. shall not be required with respect to the use of lawn furniture or portable barbecue grills in the back yard of a Lot, nor shall it be required with respect to the Developer. Furniture or equipment including, but not limited to, lawn furniture and portable barbecue grills, placed outside a Dwelling shall be removed after use so as not to interfere with the maintenance obligations of the Association.

8.1.10 Antennae. No radio, television or other electronic antennae, aerial or satellite receiving dish, or other reception or transmission device may be erected or maintained anywhere on the Common Property or the exterior of any Dwelling (unless installed by Developer or the Association).

8.1.11 Subdivision of Lots. No Lot shall be re-subdivided by an Owner to form a lot smaller than a platted Lot; provided, however, that two or more entire Lots may be combined to form a larger lot, or lots with the prior written approval of the

A.R.B.; such larger lot(s) shall then be defined as the "Lot" for purpose of this Declaration. Notwithstanding the foregoing prohibition, the A.R.B. shall have the right to approve minor adjustments in the Lots lines.

8.1.12 Access to Lots. Whenever the Association is permitted or required by this Declaration to enter any Lot for the purpose of correction, repair, cleaning, clearing, mowing, or in the event of an emergency, or any other required or permitted activity, such entrance shall not be deemed a trespass.

8.1.13 Signs. Except in connection with development or sales of property throughout The Orchard by Developer, no signs, advertisements or notices of any kind, including without limitation "For Sale" or "For Rent" signs, shall be displayed to the public view on any Lot or on the Common Property, without the prior written approval of the A.R.B.

8.1.14 Easements. No Dwelling or other Improvement, or any tree, bush, shrub or landscaping of any kind shall be built or maintained upon any easement or right-of-way and said easements and rights-of-way shall at all times be open and accessible to the persons entitled to the use thereof.

8.1.15 Maintenance of Lots. All Lots shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage shall be allowed to accumulate or any fire hazard allowed to exist. In the event an Owner fails to maintain his Lot as aforesaid for a period of five (5) days, the Association shall have the right, exercisable in its sole discretion, to remove any rubbish, refuse or unsightly debris and/or growths from any Lot deemed by the Association to be a health menace, fire hazard or a detraction from the aesthetic appearance of The Orchard; provided, however, that at least ten (10) days prior notice shall be given by the Association to the Owner of such Lot before such work is done by the Association. In the event the Association, after such notice, causes the subject work to be done, then, and in that event, the cost of such work, together with interest thereon at the maximum rate allowed by the civil usury laws of the State of Georgia or

eighteen percent (18%) per annum, whichever is less, shall be charged to the Owner as an Individual Assessment and shall become a lien on the subject Lot, which lien shall be effective, have priority and be enforced pursuant to the procedures set forth in Article 6 of this Declaration.

8.1.16 Refuse Containers. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall be kept in sanitary refuse containers, which shall be placed in a walled-in area, so they are not visible from the Street, from adjoining Lots, from the Common Property or from the Golf Club Facilities.

8.1.17 Water Distribution System. A water distribution system shall be located within the Property (the "Water Distribution System") to provide potable water to all of the Property. No Owner shall be permitted to construct or maintain any water supply systems or wells on any portion of a Lot. The foregoing prohibition shall not apply to the Developer.

8.1.18 Independent Septic Systems. Each Owner shall be required to construct and maintain a septic tank to service the Dwelling on his Lot. Each Lot must have a septic tank installed whose size, dimensions, specifications and location are shown on plans and specifications submitted to the A.R.B. and approved by the A.R.B. Only those septic tanks which receive prior written approval from the A.R.B. will be permitted in The Orchard. The restrictions contained in this Subsection shall not apply to the Developer.

8.1.19 Streets. No title to any land in any Street is intended to be conveyed or shall be conveyed to the grantee of a Lot under a deed, or to the purchaser of a Lot under any contract, unless expressly so provided in such deed or contract of purchase from Developer.

8.1.20 Laundry. No portion of a Lot shall be used for the drying of laundry, unless such laundry is adequately screened from public view, so that the laundry is not visible from the Street, from adjoining Lots or from the Golf Club Facilities.

8.1.21 Golf Carts. Golf carts within The Orchard shall either be owned and maintained by the Golf Club, in which case, the golf carts shall only be parked, placed or stored upon the Golf Club Facilities, or, golf carts may be owned by the Golf Club and thereupon leased to and maintained by members of the Golf Club for a period of one (1) year, in which case, the golf carts must be stored in a garage of a Dwelling and operated and maintained in accordance with the Club Documents, or, with the prior written approval of the Board Directors, of which approval shall be discretionary with the Board, golf carts may be owned by Lot Owners or leased by them from third parties, in which case, the golf carts must be stored, operated and maintained under such terms, conditions, rules or regulations as may be established by the Board in its discretion, which discretion may not be exercised in a manner inconsistent with the Club Documents. No golf cart shall be placed, parked or stored on the lawn of any Lot or on any portion of the Common Property, unless such area is specifically designated as a golf cart parking area by the Board of Directors. No golf cart shall be permitted outside the gates and boundaries of The Orchard. Owners using golf carts shall be held fully responsible for any and all damages caused by the misuse of the golf cart by the Owners or their family members, guests, licensees, invitees, employees or agents, and the Owners shall reimburse the Association for any and all damages the Association may sustain by reason of such misuse. Such damages shall be collectible as an Individual Assessment enforceable pursuant to the procedures set forth in Article 6 of this Declaration. The Board of Directors in its sole and absolute discretion shall have the right to promulgate such other restrictions concerning golf carts as the Board may deem necessary and desirable.

8.1.22 Air Conditioners. All window or wall air conditioning units are prohibited. All air conditioner compressors shall be screened from view from the Street, from adjacent Lots, from the Golf Club Facilities, and shall be insulated by a fence, wall or shrubbery so as to minimize the transmittal of noise.

8.1.23 Underground Utilities. All electrical conduits and hook-ups to individual Lots shall be kept underground. No above ground wires of any kind shall be permitted.

8.1.24 Mailboxes and Newspaper Boxes. No mailboxes or newspaper boxes may be installed or maintained on any Lot without the prior written approval of the A.R.B.

8.1.25 Emergencies. Dwellings may be boarded up only when there is an imminent threat of a storm. In no event shall any Dwelling be boarded up for any period of time after the imminent threat of a storm has passed. No hurricane or storm shutters shall be installed or maintained unless they are first approved, in writing, by the A.R.B.

8.1.26 Storage Areas. All exterior storage areas and service areas shall be screened from view from the Street, from adjacent Lots and from the Golf Club Facilities by an enclosure, fence, wall, or landscaping.

8.1.27 Wheeled Vehicles. Bicycles, tricycles, scooters, baby carriages, skateboards, or other similar vehicles or toys shall be stored only within the Dwellings. In the event such vehicles are left on the Common Property, they may be impounded by the Association, and shall be released to the Owner only upon payment of an administrative fee established by the Association. Such administrative fee shall be an Individual Assessment enforceable pursuant to the procedures set forth in Article 6 of this Declaration.

8.1.28 Additions, Improvements and Painting. The exterior surfaces of all Dwellings, including all colors, materials and finishes on all exterior areas of Dwelling shall not be altered or changed in any manner whatsoever by an Owner. No Owner shall have the right to construct any Improvements of any type or nature whatsoever on his Lot, including without limitation, any fences, hedges, pools, patios, spas, jacuzzies or landscaping, without the prior written consent of the A.R.B.

8.1.29 Solar Heating. The location and size of all solar heating apparatus and equipment must be approved by the A.R.B. No solar panels, vents or any other roof-mounted, mechanical equipment shall project more than 1.5 feet above the surface of the roof of a Dwelling; further, all such equipment shall be painted consistent with the color scheme of the roof of the Dwelling as constructed.

8.1.30 Outside Lighting. The location, size, color and design of all lighting fixtures or similar equipment used outside of a Dwelling must be approved by the A.R.B.

8.1.31 Approval of Draperies, Curtains and Shades. All draperies, curtains, shades or other similar window coverings installed in a Dwelling and which are visible from the Street, from other Dwellings or from the Golf Club Facilities shall have a white backing, unless otherwise approved, in writing, by the A.R.B. In addition, the color of all draperies, curtains, shades or other similar window coverings installed inside a screened porch or glass-enclosed porch must be approved, in writing, by the A.R.B.

8.1.32 Installation or Use of Machinery. No machinery or equipment other than the original installations may be installed or used unless the advance written consent of the A.R.B. is obtained in each and every instance.

8.1.33 Swimming Pools. Unless installed by the Developer, the location, size and design of all swimming pools, including without limitation, plunge pools, must be approved, in advance, by the A.R.B. Any lighting of a pool shall be designed so as to buffer the surrounding Lots, Common Property and Golf Club Facilities from such lighting.

8.1.34 The Golf Club Facilities. Use of the Golf Club Facilities shall be totally at the risk of those individuals using such facilities and not at the risk of the Association or the Developer. Neither the Association nor the Developer shall be liable for the negligence of any party in connection with the use of The Golf Club Facilities, the Common Property or any other portion of the Property, except for such claims arising or



resulting solely from the willful and wanton conduct, or resulting solely from the gross negligence, of the Association (in the event of a claim asserted against the Association) or of the Developer (in the event of a claim asserted against the Developer).

8.1.35 Patio Landscaping. All landscaping on the patios of the Dwellings located within the Initial Property shall be maintained by the Owners of said Dwellings and shall be kept in pots or containers.

8.1.36 Erosion. All improvements, construction, and landscaping shall occur in such a manner and under such circumstances as to minimize any erosion, siltation, or the run-off or drainage of water, and all plans and specifications for such improvements, construction or landscaping submitted to the A.R.B. for approval shall contain plans and specifications for the implementation of this paragraph, and the A.R.B. shall have the power and the authority to condition its approval of any plan or specification submitted to the A.R.B. upon the Owner's use of means of preventing and controlling erosion, siltation, or the run-off or drainage of water. Such means may include physical devices to control erosion, siltation, or run-off or drainage of water, special precautions in grading or otherwise changing the natural landscape, special landscaping, or any other means which the A.R.B. may, in its sole discretion, deem necessary. Each Owner shall be liable to each other Owner and to the Association for the costs of cleanup or removal of dirt, silt, or other product of erosion from flowing from the Lot to any other Lot or Common Property.

8.1.37 Tree Removal. No Owner shall remove any tree having a diameter of six (6) inches or more, measured from a point four (4) feet above the ground from the Lot without the prior written approval of the A.R.B. Under no circumstances may any Owner remove any tree, shrub, bush, flower, or other plant or vegetation, from any area of the Common Property at any time.

8.1.38 Additional Protective Covenants. Developer may include in any contract or deed for any Lot, additional protective covenants and restrictions not inconsistent with those contained herein.

8.1.39 Developer. The foregoing use restrictions set forth in this section 8.1 shall not apply to the Developer.

8.2 Rules and Regulations. No person shall use the Common Property or any Lot, in any manner contrary to, or not in accordance with, the rules and regulations which may be promulgated by the Association, whether or not such rules and regulations are restated herein in whole or in part.

8.3 Restrictions on Use of Additional Property. As additional property, including without limitation, Lots, Villas (if any) and Common Property, is subjected to this Declaration in accordance with section 2.2 hereof, the Developer shall have the absolute right to change, amend, or alter the use restrictions set forth in this Article 8 and to add additional use restrictions for such additional property as deemed necessary or appropriate by Developer, in its sole and absolute discretion.

8.4 Uses of Golf Club Facilities. The Golf Club Facilities shall be used solely for recreational and open-space purposes. Notwithstanding any other provision of this Declaration, the restriction on the use of the Golf Club Facilities shall run with and bind the Property for a period of twenty (20) years from the date that management and control of the Golf Club are turned over to the members of the Golf Club.

ARTICLE 9

ARCHITECTURAL AND LANDSCAPE CONTROLS

9.1 Architectural Review Board. It is the intent of Developer to create a general plan and uniform scheme of development of the Property and to create within the Property a residential community of high quality and harmonious Improvements. Accordingly, the A.R.B. shall have the right to approve or disapprove all architectural, landscaping and location of any proposed Improvements, as well as the general plan for development of all Lots within the Property. In addition, the A.R.B. shall have the right to approve or disapprove all proposed additions, changes and any other type of remodeling

to the exterior of any Dwelling, however, this approval shall not be necessary with respect to any proposed changes to a Dwelling or Villa by the Developer. The A.R.B. may, in its sole discretion, impose standards for construction and development which may be greater or more stringent than standards prescribed in applicable building, zoning or other local governmental codes. The procedures of the A.R.B. shall be as set forth below.

9.1.1 The A.R.B. shall be a permanent committee of the Association and shall administer and perform the architectural and landscape review and control functions of the Association. The A.R.B. shall consist of five (5) voting members who shall initially be named by the Developer and who shall hold office at the pleasure of the Developer. Until turnover of control of the Association, as defined in this Declaration, the Developer shall have the right to change the number of members of the A.R.B., provided, however, that the A.R.B. shall at all times consist of at least three (3) members; to appoint all members of the A.R.B.; and to remove and replace all members appointed to the A.R.B. The Developer shall determine which member of the A.R.B. shall serve as its chairman, and which member or members of the A.R.B. shall serve as co-chairman or co-chairmen. In the event of the failure, refusal or inability to act of any of the members hereby appointed by the Developer, and in the event that the Developer fails to fill any such vacancy within thirty (30) days of such occurrence, the remaining members of the A.R.B. shall fill such vacancy by appointment. At such time as Developer no longer owns any property within The Orchard, or at such earlier date as Developer may decide, the Developer shall assign to the Association the rights, powers, duties and obligations of the A.R.B., whereupon the Board of Directors shall determine how many persons shall serve on the A.R.B., provided that the A.R.B. shall at all times consist of no less than three (3) members, shall appoint the members of the A.R.B., shall provide for the terms of the members of the A.R.B., and shall determine which member of the A.R.B. shall serve as its chairman. There shall be no requirement that any of the members of the A.R.B. be a member of either the Association or an Owner within The Orchard. A majority of the

A.R.B. shall constitute a quorum to transact business at any meeting, and the action of a majority present shall constitute the action of the A.R.B.

9.1.2 No Improvement shall be constructed, erected, removed, planted or maintained, nor shall any addition to or any change, replacement or alterations therein be made until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme and the locations of same shall have been submitted to and approved in writing by the A.R.B. As part of the application process, two (2) complete sets of plans and specifications prepared by an architect, landscape architect, engineer or other person found to be qualified by the A.R.B. shall be submitted for approval by written application on such form as may be provided or required by the A.R.B. The A.R.B. may require submission of samples of building materials and colors proposed to be used. All construction shall be done by a licensed general contractor approved in writing by the A.R.B.

9.1.3 In the event the information submitted to the A.R.B. is, in the A.R.B.'s opinion, incomplete or insufficient in any manner, the A.R.B. may request and require the submission of additional or supplemental information.

9.1.4 The A.R.B. shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons. In approving or disapproving such plans and applications, the A.R.B. shall consider the suitability of the proposed Improvements, and the materials of which the same are to be built, the site upon which such Improvements are proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property.

9.1.5 Construction of all Improvements for which the approval of the A.R.B. is required under this Declaration shall be completed within the time period specified by the A.R.B.

9.1.6 Upon approval by the A.R.B. of any plans and specifications submitted to the A.R.B., the A.R.B. shall notify the applicant in writing, which notification shall set forth any qualifications or conditions of approval. In the event that the A.R.B. disapproves any plans and specifications submitted to the A.R.B., the A.R.B. shall so notify the applicant in writing, stating the grounds upon which such disapproval is based. Any applicant may appeal the decision of the A.R.B. to the Board of Directors of the Association within thirty (30) days of the A.R.B.'s decision. The determination of the Board of Directors shall be final and binding upon the applicant; provided, however, that no Improvement shall be erected or shall be allowed to remain which violates any of the covenants, conditions or restrictions contained in this Declaration, or which violates any zoning or building ordinance or regulation.

9.1.7 Prior to the occupancy of any Improvement constructed or erected on a Lot, the prospective occupants thereof shall obtain a Certificate of Compliance from the A.R.B., certifying that the construction of the Improvement has been completed in accordance with the plans and specifications previously approved by the A.R.B. The A.R.B. may, from time to time, delegate to a member or members of the A.R.B. the responsibility for issuing such Certificate of Compliance.

9.1.8 There is specifically reserved unto the A.R.B., and to any agent or member of the A.R.B., the right of entry and inspection upon any portion of the Property for the purpose of determination by the A.R.B. whether there exists any construction of any Improvement which violates the terms of any approval by the A.R.B. or the terms of this Declaration or any amendments thereto, or of any other covenants, conditions and restrictions to which any deed or other instrument of conveyance makes reference. If any Improvement of any nature shall be constructed or altered without the prior written approval of the A.R.B., the Owner shall, upon demand of the Association, cause such Improvement to be removed, or restored in order to comply with the plans and specifications originally approved by the A.R.B. The Owner shall be liable for the

payment of all costs of such removal or restoration, including all costs and attorneys' fees incurred by the Association. Such costs may also be the basis for an Individual Assessment. The A.R.B. is specifically empowered to enforce the architectural and landscaping provisions of this Declaration by any legal or equitable remedy, and in the event that it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, or to remove any unapproved Improvement, the Association shall be entitled to recovery of court costs, expenses and attorneys' fees in connection therewith. All costs, expenses, and attorneys' fees of the A.R.B., including those incurred in connection with its enforcement or other powers, as provided herein, shall be borne by the Association; provided, however, that nothing provided herein shall be deemed to negate the Association's right to an award of the Association's and the A.R.B.'s attorneys' fees and costs if the Association is the prevailing party in any administrative or judicial proceeding. In the event that any Owner fails to comply with the architectural and landscape provisions contained herein or other rules and regulations promulgated by the A.R.B., the A.R.B. may, in addition to all other remedies contained herein, record against that Owners' Lot in the public records of the County a Certificate of Non-Compliance stating that the Improvements on the Lot fail to meet the requirements of the A.R.B.

9.1.9 The A.R.B. may promulgate construction guidelines to be designated THE ORCHARD CONSTRUCTION GUIDELINES, which, when promulgated, will be on file in the office of the Association, and which, when promulgated, will be automatically incorporated into this Declaration by reference. Except as otherwise specifically provided herein, all Improvements within The Orchard must be constructed in accordance with such Construction Guidelines, as promulgated and as they may be amended from time to time by the A.R.B. The A.R.B. is empowered to modify the design and development standards contained within such Construction Guidelines for the entire, or for any portion, of The Orchard, as it may deem appropriate from time to time.

9.1.10 The A.R.B. may grant variances from the requirements contained herein or as elsewhere promulgated by the A.R.B., on a case by case basis; provided however, that the variance sought is reasonable and does not impose a hardship upon other Owners. The granting of such a variance by the A.R.B shall not nullify or otherwise affect the A.R.B.'s right to require strict compliance with the requirements set forth herein on any other occasion.

9.1.11 Notwithstanding anything contained herein to the contrary, any Improvements of any nature made or to be made by the Developer, including, without limitation, Improvements made or to be made to the Common Property, shall not be subject to the review of the A.R.B.

9.1.12 The A.R.B. may adopt a schedule of reasonable fees for processing requests for approval. Such fees, if any, shall be payable to the Association at the time that the plans and specifications and other documents are submitted to the A.R.B. The payment of such fees, as well as other expenses of the A.R.B. required to be paid, shall be deemed to be an Individual Assessment, enforceable against the Owner and the Lot as provided hereinabove.

9.1.13 Neither the Developer, the directors or officers of the Association, the members of the A.R.B., nor any person acting on behalf of any of them, shall be liable for any costs or damages incurred by any Owner within The Orchard or any other party whatsoever, due to any mistakes in judgment, negligence or any action of the A.R.B. in connection with the approval or disapproval of plans and specifications, except for such claims asserted against the A.R.B. and arising or resulting solely from the willful and wanton conduct or gross negligence of the A.R.B., or of any member thereof while acting in his or her capacity as a member of the A.R.B. Each Owner and occupant of any property within The Orchard agrees, as do their successors and assigns by acquiring title thereto or an interest therein, or by assuming possession thereof, that they shall not bring any action or suit against the Developer, the directors or officers of the Association, the

members of the A.R.B., or their respective agents, in order to recover any damages caused by the actions of the A.R.B. The Association shall indemnify, defend and hold harmless the A.R.B. and each of its members from all costs, expenses and liabilities, including attorneys' fees, of all nature resulting by virtue of the acts of the A.R.B. or its members. Neither the Developer, the directors or officers of the Association, the members of the A.R.B., nor any person acting on behalf of any of them, shall be responsible for any defects in any plans or specifications, nor for any defects in any Improvements constructed pursuant thereto. Each party submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto.

**ARTICLE 10  
INSURANCE**

The Association is hereby authorized to purchase insurance on the Common Property in such amounts, with such deductibles, and with such companies as the Board of Directors shall deem appropriate.

# 4

**ARTICLE 11  
SALE OR OTHER ALIENATION OF LOTS**

In order to maintain a community of congenial residents who are financially responsible and thus protect the value of the Property, the transfer of a Lot by any Owner other than Developer shall be subject to the following provisions, which provisions each Owner covenants to observe:

**11.1 Notice to the Association.**

**11.1.1 Sale, Gift or Other Transfer.** An Owner intending to make a sale, gift or other transfer of his Lot, or any interest therein, shall give to the Association, notice of such intention, in writing, together with the name and address of the intended



purchaser or transferee, and such other information concerning the intended purchaser or transferee as the Association may reasonably require.

11.1.2 Devise or Inheritance. An Owner who has obtained title by devise or inheritance shall give the Association, notice of the acquisition of title, together with such information concerning the Owner as the Association may require.

11.1.3 Failure to Give Notice. If the above required notice to the Association is not given, the Association may deny the unauthorized Owner or occupant of a Dwelling the use of the Common Property, and may take such other action at law and/or equity to divest the unauthorized Owner or occupant of record title and/or possession of the Dwelling.

11.2 Certificates of Notice and Approval Shall Be Given in the Following Manner.

11.2.1 Except as otherwise provided hereinbelow, within ten (10) days of receipt of such notice and information, the Association shall cause a Certificate of Notice and Approval to be executed by any officer of the Association. Such Certificate of Notice and Approval shall be recorded in the public records of the County, along with the deed or other instrument of conveyance.

11.2.2 In the event that an Owner is delinquent in paying any Assessment assessed by the Association, or that an Owner, his family, guests, agents, licensees or invitees are not in compliance with any provision of this Declaration, the rules and regulations adopted by the Association, or the Traffic Regulations, the Association shall have the right to disapprove the proposed sale by sending a Notice of Disapproval to the Owner within ten (10) days after receipt of notice and information. In the event the delinquent assessment is paid or the violation is corrected, the Association shall cause a Certificate of Notice and Approval to be executed by any officer of the Association within ten (10) days after receipt of proof satisfactory to the Association that the delinquent assessment has been paid or the violation corrected.

#4

11.3 Leasing. An Owner may lease his Lot and the Dwelling thereon, provided that each lease term shall be for a minimum of thirty (30) days, and no Lot or Dwelling may be leased in excess of four (4) times in any twelve (12) month period.

11.4 Transfers Void. Any sale, gift, devise or other transfer not authorized pursuant to the terms of this Declaration shall be void unless a Certificate of Notice and Approval of the Association is subsequently obtained and recorded in the public records of the County.

11.5 Exceptions. The foregoing provisions of this Article 11 shall not apply to an Institutional Mortgagee that acquires its title as the result of holding a deed to secure debt upon the Lot concerned, and this shall be so, whether such title is acquired by deed from the mortgagor, his successors or assigns, or through foreclosure; nor shall such provisions apply to a transfer, sale, or lease by an Institutional Mortgagee that so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires title to a Lot at a duly advertised public sale with open bidding provided by law, including, but not limited to, execution sale, foreclosure sale, judicial sale, or tax sale, nor shall such provisions apply to any transfer by the Developer, nor shall such provisions apply to the sale, transfer or leasing of Villas.

**ARTICLE 12  
WATER UTILITIES**

12.1 Water Utilities. The Developer has constructed (or shall construct), the Water Distribution System, as defined herein, within the Property, and has extended (or shall extend) the water system lines either to the boundary line of each Lot or within a Street that adjoins such Lot. Each Owner shall be required to connect to the Water Distribution System (at the Owner's expense), at the time of construction of a Dwelling upon his Lot. All costs of operation and maintenance of the Water Distribution System, including but not limited to, the wells, pumps, treatment facilities and the collection lines shall be a Common Expense.

#4

12.2 Water Utility Fees. At the Turnover Date, the Developer shall convey the Water Distribution System and all related facilities to the Association (free of charge). The conveyance shall be by special warranty deed and/or bill of sale and the Association shall expressly accept the conveyance and all obligation for operation and maintenance of the Water Distribution System.

#### ARTICLE 13

##### INDEMNIFICATION OF DIRECTORS, OFFICERS AND COMMITTEE MEMBERS

By acceptance of a deed to a Lot, Owners acknowledge and agree that every director and officer of the Association and any committee member appointed by the Board shall be indemnified by the Association against all expenses and liability, including attorneys' fees, incurred by or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved by reason of his being or having been a director, officer or committee member of the Association at the time such expenses are incurred, except in such cases where the director, officer or committee member of the Association is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, however, that in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the director, officer or committee member of the Association seeking such reimbursement or indemnification, the indemnification herein shall apply only if the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such officer, director or committee member of the Association may be entitled. Further, by acceptance of a deed to a Lot, Owners acknowledge and agree that directors of the Association appointed by the Developer, officers of the Association elected by the Board of Directors appointed by the Developer,

and committee members appointed by said Board of Directors or by said officers shall act solely on behalf of the Developer and the Association and shall have no fiduciary or other obligation to act on behalf of the Owners. Further, by acceptance of a deed to a Lot, Owners acknowledge and agree that although directors, officers and committee members may be appointed, directly or indirectly by the Developer and be acting solely on behalf of the Developer and not on behalf of the Owners, nonetheless, such directors, officers and committee members shall be indemnified by the Association pursuant to the provisions of this Article 13.

ARTICLE 14

GENERAL PROVISIONS

14.1 Assignment.

14.1.1 All of the rights, powers, obligations, easements and estates reserved by, or granted to, Developer or the Association may be assigned by Developer or the Association as the case may be. After such assignment, the assignee shall have the same rights and powers, and be subject to the same obligations and duties as were the Developer or the Association prior to the assignment, and Developer or the Association shall be relieved and released of all obligations with respect to such rights, powers, obligations, easements or estates.

12

14.1.2 Any of the rights, powers, obligations, easements and estates reserved by, or granted to, Developer may be partially assigned by Developer. After such partial assignment, the assignee shall have such rights, powers, obligations, easements and estates as were specifically assigned to the assignee, and Developer shall be relieved and released of those rights, powers, obligations, easements or estates which were specifically assigned to the assignee.

14.2 Amendment. This Declaration may be amended upon the recordation of an appropriate instrument in the public records of the County, subject however, to the following provisions:

14.2.1 Except as provided hereinbelow, an amendment initiated by any party other than Developer must obtain the approval of at least fifty-one percent (51%) of the votes of Members; provided, however, that until such time as the Developer-relinquishes control of the Association, as described hereinabove, all amendments must include the joinder of Developer.

14.2.2 So long as Developer owns any property within The Orchard, the Developer shall have the right to make reasonable modifications, changes or cancellations to any or all of the provisions pertaining to the development of The Orchard contained in this Declaration including, but not limited to, provisions relating to the addition of property subject to this Declaration, use restrictions and Assessments, without the joinder or consent of the Owners, the Association, the Golf Club, Institutional Mortgagees or any other individual or entity and the foregoing parties hereby waive any right to consent to such changes. Such changes may affect the entire Property or only specific portions of the Property, but shall be subject to applicable governmental approvals.

14.2.3 Any amendment which would affect any of the requirements of the County Code of Laws and Ordinances must have the prior approval of the County.

14.2.4 Any duly adopted amendment to this Declaration shall run with and bind the Property for the same period and to the same extent as do the covenants and restrictions set forth herein.

14.3 Duration. All of the covenants, restrictions and other provisions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date of recordation of this Declaration, after which time they shall be automatically extended for successive periods of ten (10) years each, unless an instrument executed by at least seventy-five percent (75%) of the votes of the membership then existing, and by all Institutional Mortgagees, has been recorded, agreeing to change or terminate these covenants and restrictions; provided, however, that if the Property shall be located in an area for which zoning laws have been adopted at the time this Declaration is recorded,

then and in that event all of the covenants, restrictions, or other provisions of this Declaration which purport, attempt or otherwise restrict the use of the Property, or any portion thereof, shall run with and bind the Property for a term of twenty (20) years from the date of recordation of this Declaration; and further provided, however, that nothing contained in this paragraph 14.3 shall be deemed or considered to amend, alter, supersede, or control, in any respect or manner whatsoever, paragraph 8.4 of this Declaration, or any part thereof.

14.4 Covenants Running with the Property. The agreements, covenants, conditions, restrictions, Assessments, fines, liens and other provisions contained herein shall constitute a servitude upon the Property and each portion thereof, shall run with the Property, shall be binding upon the Owners of any portion thereof, and shall inure to the benefit of Developer, the Association, and the Owners.

14.5 Enforcement. Enforcement of the covenants, restrictions, conditions, obligations, reservations, rights, powers, Assessments, fines, liens and other provisions contained herein shall be by a proceeding at law or in equity against any persons or entities violating or attempting to violate same, or against the Property subject hereto to enforce any lien created by this Declaration or both. In the event that Developer and the Association fail to enforce the terms of this Declaration then any Member may do so. The failure or refusal of Developer, the Association, or any Member to enforce any of the provisions of this Declaration shall in no event be deemed to constitute a waiver of the right to do so thereafter.

14.6 Developer's Rights. Notwithstanding any other provision in this Declaration to the contrary, Developer, its agents, employees and officers, including without limitation, any management and marketing agents, are irrevocably empowered to sell or lease Lots or Villas on any terms to any purchasers or lessees, for so long as Developer owns any Lots or Villas in The Orchard. Additionally, for so long as Developer owns or has any right to use any property in The Orchard, Developer, its agents,

4/6/66

employees and officers, and any management and marketing agents employed by Developer, shall have the right to transact any business necessary to consummate sales of property throughout The Orchard, including but not limited to, the right to maintain office(s) on the Property in location(s) to be selected by Developer; to have employees in such offices, to construct and maintain sales agency offices, and such other structures or appurtenances which are necessary or desirable for the development and sale of property throughout The Orchard, including, without limitation, sales models and parking lots; to post and display a sign or signs on any Lots owned by Developer or on the Common Property; to use the Common Property; and to show Lots. Sales office signs and all other structures and appurtenances pertaining to the sale or development of property within The Orchard shall not be considered Common Property and shall remain the property of the Developer.

14.7 Golf Club Membership. The Golf Club Facilities shall be developed and provided at the discretion of the Developer and shall be considered property separate and distinct from Common Property. Rights to use the Golf Club Facilities will be on such terms and conditions as may be promulgated from time to time by the Golf Club. The Golf Club shall have the exclusive right, from time to time, in its sole and absolute discretion and without notice or approval by the Association, to change the terms and conditions under which the Golf Club Facilities shall be used, and the persons entitled to use the Golf Club Facilities, specifically including, without limitation, the terms of eligibility for use, privileges available to use such facilities, the categories of use and number of users permitted to use any of the Golf Club Facilities; to reserve use rights for future Owners or non-Owners; to terminate any and all use rights; to change, eliminate, or cease operation of any or all of the Golf Club Facilities; to transfer any or all of the Golf Club Facilities or the operation thereof to any person, including, without limitation, a member-owned or equity club; to limit the availability of any use privileges; or to require the payment of a purchase price, membership contribution, initiation fee, dues, or other

charges for use privileges. Ownership of a Lot does not confer any membership or ownership rights in the Golf Club, nor does ownership of a Lot confer or grant any vested right or easement, prescriptive or otherwise, to use the Golf Club Facilities. Owners of Lots shall have the right to apply for membership in the Golf Club on terms and conditions established and existing for the Golf Club at the time the Owner's subscription for a membership or ownership right in the Golf Club is submitted. In the event an Owner is accepted as a member of the Golf Club, he shall be subject to such documents and such rules and regulations of the Golf Club as are established and existing at the time of his acceptance, as the same may be amended from time to time, and shall be required to pay such equity membership fees, dues and other amounts as may be required by the Golf Club from time to time.

14.8 Guard House. Developer, in its sole and absolute discretion, may construct a guard house to be located at the entrance of The Orchard, and such guard house, if constructed, shall be maintained by the Association. All maintenance costs and any other security expenses associated with the guard house shall be the sole responsibility of the Association.

14.9 Non-Condominium.

14.9.1 The Association created pursuant to this Declaration and the Articles of Incorporation of the Association is expressly not intended to be a condominium association and is not created in accordance with the Georgia Condominium Statutes.

14.9.2 The Common Property is not intended to be condominium property under the Georgia Condominium Statutes in existence as of the date of recording this Declaration in the public records of the County, and is not part of the common elements of any condominium.

14.10 Golf Course Community. By acceptance of a deed to a Lot, the Owner thereof acknowledges and agrees that the Lot is located within a golf course community, that the Owner has assessed the location of the Lot in relation to the layout and operation



of the Golf Club Facilities, and that as a result of living in such a community, the Owner will be subjected to the usual and common noise level associated with playing the game of golf and with maintenance of the Golf Club Facilities including, but not limited to, such noises caused by any machinery and equipment used in maintaining the Golf Club Facilities which may be driven over and upon the Streets, the Common Property, the Golf Club Facilities and other portions of property located within The Orchard. Such noise may occur on or off the Golf Club Facilities, throughout the day from early morning until late evening. Neither the Association nor the Developer shall have any responsibility or liability to any Owner because of noise or because of any damage caused to an Owner, his family, guests, licensees, invitees, employees, agents or the Owner's Lot from the flight of errant golf balls or from any persons recovering golf balls from Lots. By acceptance of a deed to a Lot, an Owner waives any claims or causes of action which he, his family, guests, licensees, invitees, employees or agents may have against the Association or the Developer arising out of such personal injury or property damage. Further, by acceptance of a deed to a Lot, an Owner acknowledges that he knows and appreciates the nature of all risks both apparent and latent associated with living in a golf course community, that such risks may have an adverse effect upon the Owner's enjoyment of his Lot and that the Owner expressly assumes the risk of personal injury or property damage that may occur in connection with such risks. By acceptance of a deed to a Lot, each Owner further agrees that neither the Developer, nor the Golf Club, nor the Association, nor any other entity owning or managing the Golf Club Facilities, or any part thereof, shall be liable to Owner or to any other person claiming any loss or damage, including without limitation, any indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related, in whole or in part, to the proximity of the Owner's Lot to the Golf Club Facilities, including, without limitation, any claim arising in whole or in part from the negligence of the Developer, the Golf Club, the Association, or

any other entity owning, managing, or operating the Golf Club Facilities, or any portion thereof. Each Owner hereby agrees to indemnify and to hold harmless the Developer, the Golf Club, the Association, or any other entity owning, managing, or operating the Golf Club Facilities, or any part thereof, against any and all claims described herein and asserted by Owner, any member of the Owner's family, the Owner's guests, invitees, or licenses, including all attorney's fees incurred by the Developer, the Golf Club, the Association, or other entity owning, managing or operating the Golf Club Facilities, or any part thereof, in defending or contesting any such claim. Nothing contained in this paragraph 14.10 shall restrict or limit any power of the Developer, the Golf Club, the Association, or any other entity owning, managing, or operating the Golf Club Facilities, or any part thereof, to change the design of the Golf Club Facilities, or any part thereof, and such change, if any, shall not nullify, restrict, limit, or impair any covenant or duty of the Owner contained herein.

14.11 Developer's Right of Repurchase. Each Owner must commence construction of a Dwelling upon his Lot no later than twenty-four (24) months following the date of closing of the sale of the Lot by the Developer to the initial purchaser of the Lot (the "Acquisition Date"), and shall complete construction of the Dwelling no later than thirty (30) months following the Acquisition Date. For purposes of this Article, "commencement of construction" shall be deemed to mean the installation of the foundation for the primary residential structure of the Dwelling and "completion of construction" shall be deemed to mean final completion in accordance with the requirements of the A.R.B. and the County (including the installation of all landscaping and other Improvements approved by the A.R.B.), and receipt of a Certificate of Occupancy from the County.

In the event that an Owner fails to commence construction, or complete construction, in accordance with the above requirements, the Developer shall have the option to repurchase the Lot from the Owner. The purchase price shall be an amount

equal to: the original gross sales price received by the Developer for the Lot, plus interest thereon at the rate of nine percent (9%) per annum calculated from the Acquisition Date to the date of closing of the repurchase, which purchase price shall be considered and deemed to be the value of the Lot at the time of the repurchase, including any Improvements placed thereon by the Owner. The purchase price shall be paid to the Owner upon the closing of the repurchase. The re-conveyance shall be by Georgia Statutory Warranty Deed, subject only to those matters to which title was subject on the Acquisition Date.

The Developer may, in its discretion, give public notice of its option to repurchase as provided herein, by recording notice thereof in the public records of the County at any time from and after the date upon which the option becomes exercisable. Such notice shall not require the joinder or execution by the affected Owner.

14.12 Development of The Villas. At the discretion of the Developer, the Villas may be developed under a condominium regime or by transfer of an equity interest in an interval ownership development. In such event, The Villas may be developed with one or more condominium associations for the purpose of maintaining and operating separate facilities to be used exclusively by the Villas' guests. The Golf Club shall have the right to convey portions of the Golf Club Facilities including the Villas, or any portion thereof, to third parties, from time to time, in the Golf Club's discretion.

14.13 Notice. Any notice required or permitted to be given by this Declaration shall be given or made in writing by personal delivery or by certified mail addressed:

to the Developer at:

The Orchard  
P. O. Box 1270  
Clarkeville, Georgia 30523  
 Attention: John Mansfield

or to Owner at:

the last known address of Owner as appears on the records of the Association at the time of such delivery or mailing.

or to the Association at:

The Orchard Property Owners  
Association, Inc.

P. O. Box 1270  
Clarksville, Georgia 30523  
Attention: Virgil E. Lovell

Any notice given in accordance with the provisions of this subsection shall be deemed to be effective, if personally delivered, on the date of such delivery, or if mailed by registered or certified mail, on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be. Each party may give notice to each of the other parties of a change of its address for the purposes of giving notice under this subsection, which thereafter, until changed by like notice, shall be the address of such party for all purposes of this Declaration.

14.14 Plats. In addition to this Declaration, the Property shall be subject to the additional covenants, restrictions, reservations and other terms and provisions set forth in the plats of the Property, which plats are recorded or to be recorded in the public records of the County.

14.15 Gender and Number. The use of the singular herein shall include the plural, and the use of any gender shall include all genders.

14.16 Severability. Invalidation of any one of the covenants or restrictions contained herein by judgment or court order shall in no way affect any other provision hereof, which shall remain in full force and effect.

14.17 Captions. The captions used in this Declaration and exhibits annexed hereto are inserted solely as a matter of convenience and shall not be relied upon or used in construing the text of this Declaration or any exhibits hereto or amendments thereof.

14.18 Effective Date. This Declaration shall become effective upon its recordation in the public records of the County.

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed  
this 21st day of November, 1988.

Signed, sealed and delivered this  
21st day of November, 1988,  
in the presence of:

Aurelia L. Crawford  
Witness

Stephen D. Frankum  
Notary Public  
My Commission Expires: 4-30-89  
(notarial seal affixed)

THE ORCHARD LIMITED PARTNERSHIP,  
a Georgia limited partnership

By: VEL, INC., its general partner

By: Virgil E. Lovell  
Virgil E. Lovell, President

By: HABERSHAM INVESTORS, INC., its  
general partner

By: John E. Mansfield, Sr.  
John E. Mansfield, Sr., President

STATE OF GEORGIA )  
                          )  
COUNTY OF HABERSHAM )

The foregoing instrument was acknowledged before me this 21st day of November,  
1988, by Virgil E. Lovell, as President of VEL, INC., and John E. Mansfield, Sr.,  
as President of HABERSHAM INVESTORS, INC., the general partners of THE ORCHARD  
LIMITED PARTNERSHIP, a Georgia limited partnership, on behalf of the limited  
partnership.

My Commission Expires: 4-30-89

Stephen D. Frankum  
Notary Public

JOINDER OF ASSOCIATION

THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a Georgia not-for-profit corporation, hereby joins in this Declaration of Covenants and Restrictions for The Orchard for the sole purpose of agreeing to perform its obligations as contained herein.

Signed, sealed and delivered this 21st day of November, 1988, in the presence of:

THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a Georgia not-for-profit corporation

Bill Kirk  
Witness  
Andrew S. Crawford  
Notary Public  
My Commission Expires: 8/12/92

By: Virgil E. Lovell  
Virgil E. Lovell, President

STATE OF GEORGIA )  
COUNTY OF HABERSHAM )

The foregoing instrument was acknowledged before me this 21st day of November, 1988, by Virgil E. Lovell, the President of THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a Georgia not-for-profit corporation, on behalf of the corporation.

My Commission Expires: 8-12-92 Andrew S. Crawford  
Notary Public



2174

JOINDER OF FRED LOVELL

FRED LOVELL, a resident of Habersham County, Georgia, hereby joins in this Declaration of Covenants and Restrictions for The Orchard for the sole purpose of agreeing to subject the Property to the foregoing covenants and restrictions.

Signed, sealed and delivered this  
21st day of November, 1988,  
in the presence of:

Ross Kirk  
Witness

Fred Lovell (SEAL)  
FRED LOVELL

Amberica J. Crawford  
Notary Public  
My Commission Expires: 8-12-92

EXHIBIT A

THE PROPERTY

ALL THAT TRACT or parcel of land lying and being in Land Lots 95, 96, 115, 116, and 117 of the 13th Land District of Habersham County, Georgia, containing 734.1 acres, more or less, as shown on a plat of survey made for "The Orchard" by Hubert Lovell, R. S., under date of July 22, 1988, revised under date of September 14, 1988, and further revised under date of October 31, 1988, a copy of said plat being of record in the office of the Clerk of Superior Court of Habersham County, Georgia, in Plat Book 26, Page 111, to which said plat and the record thereof reference is hereby made for a more complete description.

GEORGIA, HABERSHAM COUNTY, CLERK'S OFFICE, SUPERIOR COURT  
Filed for record Nov 21, 1988 at 10:30a.m. Recorded Nov. 21, 1988

(fka) Ernest W. Nations, Jr., Clerk

GEORGIA, HABERSHAM COUNTY  
CLERK'S OFFICE, SUPERIOR COURT  
FILED FOR RECORD Nov 21  
19 88 AT 10:30 O'CLOCK A.M.  
RECORDED \_\_\_\_\_ PAGE \_\_\_\_\_  
IN BOOK NO \_\_\_\_\_ CLERK \_\_\_\_\_



A&S.

~~CONFIDENTIAL~~

GEORGIA, HABERSHAM COUNTY.

The indebtedness referred to in that certain Deed to Secure Debt from Bayne Richard Bunce to Habersham Bank, dated October 27, 1976, and of record in Deed Book 148, Page 738, in the office of the Clerk of the Superior Court of Habersham County, Georgia, having been paid in full and the undersigned being the present record holder and owner of such deed, the Clerk of such Superior Court is authorized and directed to cancel that deed of record.

IN WITNESS WHEREOF, the undersigned has set its hand and seal, this 18th day of November, 1988.

HABERSHAM BANK

(SEAL)

By: Bobby Black, Jr. Vice Pres.

Attest: [Signature]

Signed, sealed and delivered on the date above shown.

Janet Taylor  
Unofficial Witness  
[Signature]  
Notary Public  
My Comm. Expires: 05/27/90

Notary Public, Habersham County, Georgia  
My Commission Expires August 26, 1990

SATISFIED  
ERNEST W. MATIKONS, JR. CSR  
11-22-88

GEORGIA, HABERSHAM COUNTY, CLERK'S OFFICE, SUPERIOR COURT  
Filed for record November , 1988 at m. Recorded Nov. , 1988

(fka)

Ernest W. Matikons, Jr., Clerk

Exhibit A

CANCELLED

GEORGIA, HABERSHAM COUNTY  
CITY OF CORNELIA

Bill No. 1126

The tax li. fa.(s) against the property of C. Howard Moss  
in the City of Cornelia evidenced  
by lien which appears of record among the records of the  
Clerk of Superior Court of Habersham County, Georgia, in  
General Execution Docket No. 17, Page 57  
To Wit:

All that tract or parcel of land situate, lying and being in Land Lot  
No. 149 in the 10th Land District of Habersham County, Georgia, known  
as a part of Lot No. 2 in Block No. 3 of the Subdivision of the  
Arthur Malden property in the City of Cornelia, according to plat of  
survey made by Burgess Smith dated April 26-27, 1899, copy of which  
is recorded in Deed Book LL, page 456-457, Office of Clerk of  
Superior Court, Habersham County, Georgia; said tract of land being  
bounded on the Northeast by Fourth Street, Southeast by lands of  
Ray Smith in Lot No. 1, Southwest by lands of Freeman Dover, and  
Northwest by lands of Jim Smith and being a tract of land fronting  
fifty (50) feet on said Fourth Street and extending back of even  
width to a depth of eighty (80) feet, as will more fully appear by  
reference to plat of survey made by O. P. Smith, dated October 11,  
1946, a copy of which is recorded in Plat Book No. 3, Page 101,  
Office of Clerk of Superior Court, Habersham County.

having been fully paid and satisfied, the Clerk of Superior  
Court of Habersham County, Georgia, is authorized and  
directed to mark said lien(s) canceled and satisfied insofar  
as the same pertains to property shown thereby as being owned  
by C Howard Moss

This 18th day of November, 19 88

W. Maxwell  
Secretary of the City Commission  
of the City of Cornelia, Georgia

SATISFIED 11 22 88  
ERNEST W. MATTHEWS, JR. CSC

CANCELLED

GEORGIA, HABERSHAM COUNTY  
CITY OF CORNELIA

Bill No. 806

The tax li. fa.(s) against the property of Claude N & Britta M Holland in the City of Cornelia evidenced by lien which appears of record among the records of the Clerk of Superior Court of Habersham County, Georgia, in General Execution Docket No. 10, Page 39,  
To Wit:

All that tract or parcel of land lying and being in Land Lot No. 139 of the 10th Land District, G.M., Habersham County, Georgia, and more particularly described as follows:

BEGINNING at an iron pin corner on the southeast side of Myrl Drive at the north east corner of Lot No. 22 of the Pine Crest Subdivision; thence running along the southeast side of said Myrl Drive, North 59° 00' East 100 feet to an iron pin corner; thence running along the west line to Lot No. 20, South 31° 00' East 129 feet to an iron pin corner; thence running along the north line of Lot No. 8, South 59° 00' West 100 feet to an iron pin corner; thence running along the East line of Lot No. 22, North 31° 00' West 129 feet back to the iron pin point of Beginning on the Southeast side of Myrl Drive and being all of Lot No. 21 of Pine Crest Subdivision, all according to Plat and survey by J.G. King, Ga. Reg. No. 679, a copy of said plat being of record in the Office of the Clerk of Superior Court of Habersham County, Georgia, in plat book 12, page 4, reference being made to said plat and survey and made a part of this description.

having been fully paid and satisfied, the Clerk of Superior Court of Habersham County, Georgia, is authorized and directed to mark said lien(s) canceled and satisfied insofar as the same pertains to property shown thereby as being owned by Claude N & Britta M Holland.

This 2th day of November, 1988

Ernest W. Nations, Jr.  
Secretary of the City Commission  
of the City of Cornelia, Georgia.  
ERNEST W. NATIONS, JR. CSC

GEORGIA, HABERSHAM COUNTY  
CITY OF CORNELIA

Bill No. 1271

The tax fi. fa.(s) against the property of Paul Douglas & Gail K Pruitt in the City of Cornelia evidenced by lien which appears of record among the records of the Clerk of Superior Court of Habersham County, Georgia, in General Execution Docket No. 10, Page 70.  
To Wit:

ALL THAT TRACT or parcel of land lying and being in Land Lot 138 of the 10th Land District of Habersham County, City of Cornelia, Georgia, as shown on a plat of survey prepared by Max Lewallen, Registered Surveyor, under date of May 20, 1985, a copy of said plat being of record in the office of the Clerk of Superior Court of Habersham County, Georgia, in Plat Book 21, Page 158, and being more particularly described as follows: BEGINNING at an iron pin corner on the southeast right of way line of NoDoc Drive said corner being common to Lots 9 and 10; thence along the right of way line in a northeasterly direction 133.9 feet to the iron pin corner common to Lots 10 and 11; thence along the line common to Lots 10 and 11 S. 40° 47' E. 131.6 feet to an iron pin corner common to lands now or formerly of Clay Strange; thence along the line of lands of Strange S. 50° 26' W. 185.1 feet to an iron pin corner common to Lots 9 and 10 N. 21° 35' W. 171.4 feet to the Point of Beginning, containing 0.53 acre, more or less.

The above described property is Lot 10 of Shallow Creek Subdivision.

having been fully paid and satisfied, the Clerk of Superior Court of Habersham County, Georgia, is authorized and directed to mark said lien(s) canceled and satisfied insofar as the same pertains to property shown thereby as being owned by Paul Douglas & Gail K Pruitt.

This 21st day of November, 1988

[Signature]  
Secretary of the City Commission  
of the City of Cornelia, Georgia

PAID 11-22-88  
RECORDED NOV 22 1988

CANCELLED

GEORGIA, HABERSHAM COUNTY  
CITY OF CORNELIA

Bill No. 600

The tax fi. fa.(s) against the property of Willis Garrison  
\_\_\_\_\_ in the City of Cornelia evidenced  
by lien which appears of record among the records of the  
Clerk of Superior Court of Habersham County, Georgia, in  
General Execution Docket No. 10, Page 32,  
To Wit:

All that lot, tract or parcel of land lying and being in Land Lot  
173 of the 10th Land District and in the City of Cornelia, in  
Habersham County, Georgia, known and distinguished as Lots Nos.  
Nine (9) and Ten (10) of Block Five (5) of Park View Heights  
Subdivision to the City of Cornelia, according to survey and plat  
of Ethan Philbrick, dated October 31, 1912, and more fully  
described as follows: BEGINNING at iron pin corner on Grand  
Avenue, formerly Peachtree Road, with lands of Willis and Georgia  
Garrison; thence along Grand Avenue in a southeasterly direction  
250 feet, more or less, to intersection of Grand Avenue and  
Habersham Terrace; thence in a northerly direction along Habersham  
Terrace 213 feet, more or less to corner with Lot No. 8 of said  
subdivision; thence with Lot No 8 in a westerly direction 51  
feet, more or less, to corner with Lot No. 10; thence with Lot  
No. 10 in a northwesterly direction 100 feet, more or less, to  
corner with Lot No. 11; thence with Lot No. 11 in a southwesterly  
direction 170 feet, more or less, to corner on Grand Avenue, the  
point of beginning.

having been fully paid and satisfied, the Clerk of Superior  
Court of Habersham County, Georgia, is authorized and  
directed to mark said lien(s) canceled and satisfied insofar  
as the same pertains to property shown thereby as being owned  
by Willis Garrison.

This 9th day of November, 1988

R. M. Munnell  
Secretary of the City Commission  
of the City of Cornelia, Georgia

SATISFIED 11 2288  
ERNEST W. NATIONS, JR. CSC

GEORGIA, HABERSHAM COUNTY  
CITY OF CORNELIA

Bill Number  
01293

The tax fi. fa.(s) against the property of Patricia G Reed  
\_\_\_\_\_ in the City of Cornelia evidenced  
by lien which appears of record among the records of the  
Clerk of Superior Court of Habersham County, Georgia, in  
General Execution Docket No. 10, Page 73,  
To Wit:

All that tract or parcel of land beginning at a corner on  
the northerly side of Grand Avenue and running thence 170  
feet, more or less, along lands of Garrison to corner;  
thence in a westerly direction 81.8 feet, more or less,  
along lands of Lovell to corner; thence in a southerly  
direction 168.3 feet, more or less, along lands of Claxton  
to corner; thence in an easterly direction 90.6 feet  
along the northerly side of Grand Avenue to the point of  
beginning.

having been fully paid and satisfied, the Clerk of Superior  
Court of Habersham County, Georgia, is authorized and  
directed to mark said lien(s) canceled and satisfied insofar  
as the same pertains to property shown thereby as being owned  
by Patricia G Reed.

This 9th day of November, 1988

Wm. W. Wainwright  
Secretary of the City Commission  
of the City of Cornelia, Georgia

11 22 88

GEORGIA, HABERSHAM COUNTY, CLERK'S OFFICE, SUPERIOR COURT  
Filed for record November , 1988 at m. Recorded Nov. , 1988

(fka)

Ernest **Exhibit A**, Clerk

Affidavit

DB 972 PG 191-201

DB 244 p 25

FIRST AMENDMENT TO  
DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
THE ORCHARD

AMENDMENT TO THE DECLARATION OF COVENANTS AND RESTRICTIONS, made and executed this 13th day of March, 1989, by THE ORCHARD LIMITED PARTNERSHIP, a Georgia limited partnership, ("Developer"), joined by THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a Georgia not-for-profit corporation, and by FRED LOVELL a resident of Habersham County, Georgia;

W I T N E S S E T H :

THAT WHEREAS, the Parties hereto have heretofore executed a Declaration of Covenants and Restrictions for The Orchard dated November 21, 1988, recorded in the office of the Clerk of Superior Court of Habersham County, Georgia, in Deed Book 240, Page 419, et seq.; and

WHEREAS, none of the property subject to the Declaration of Covenants and Restrictions for The Orchard has been sold, and the Parties hereto desire to amend said covenants prior to the sale of any of said property.

NOW, THEREFORE, the Parties hereto hereby declare that the Declaration of Covenants and Restrictions dated November 21, 1988, recorded in the office of the Clerk of Superior Court of Habersham County, Georgia, in Deed Book 240, Page 419, et seq., is hereby amended as follows:

1.

By deleting paragraph 14.12 in its entirety.

2.

By adding thereto a new paragraph to be designated and to read as follows:

"8.1.29.1 Heat Pumps. Developer, in order to secure underground

Ernest W. Nations, Jr., Clerk

Exhibit A

Doc Doc re Bx 356 R 711

LOM  
H01  
Agreement  
DB 972 PG 191-201

148

wiring, entered into an agreement with Habersham Electric Membership Corporation that all residences constructed within The Orchard would be heated with electric heat pumps. In the event the owner of any lot within The Orchard desires to construct a dwelling which is to be heated and cooled other than by an electric heat pump, the owner of such lot shall be required to reimburse Habersham Electric Membership Corporation for his pro rata share of the cost of installation of underground wiring, as such costs may be determined by Habersham Electric Membership Corporation."

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed this 13th day of March, 1989.

Signed, sealed and delivered this 13th day of March, 1989, in the presence of:

Carole H. Strickling  
Witness

Alfred H. ...  
Notary Public  
My Commission Expires: 4-30-89

THE ORCHARD LIMITED PARTNERSHIP,  
a Georgia limited partnership  
By: VEL, INC., its general partner  
By: Virgil E. Lovell  
Virgil E. Lovell, President

By: HABERSHAM INVESTORS, INC., its  
general partner  
By: John E. Mansfield, Sr.  
John E. Mansfield, Sr., President



JOINDER OF ASSOCIATION

THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a Georgia not-for-profit corporation, hereby joins in this Declaration of Covenants and Restrictions for The Orchard for the sole purpose of agreeing to perform its obligations as contained herein.

Signed, sealed and delivered this 13th day of March, 1989, in the presence of:

THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a Georgia not-for-profit corporation

Carel H. Strubling  
Witness

By: Virgil E. Lovell  
Virgil E. Lovell, President

Stephen Strubling  
Notary Public  
My Commission Expires: 4-30-89



(Notarial seal affixed)

JOINDER OF FRED LOVELL

FRED LOVELL, a resident of Habersham County, Georgia, hereby joins in this Declaration of Covenants and Restrictions for The Orchard for the sole purpose of agreeing to subject the Property to the foregoing covenants and restrictions.

Signed, sealed and delivered this 13th day of March, 1989, in the presence of:

Carel D. Strickling  
Witness

Fred Lovell (SEAL)  
FRED LOVELL

Stephen W. ...  
Notary Public  
My Commission Expires: 4-30-89

*(notarial seal affixed)*

GEORGIA, HABERSHAM COUNTY  
CLERK'S OFFICE, SUPERIOR COURT  
FILED FOR RECORD March 24  
19 89 AT 9:00 O'CLOCK a.m.  
RECORDED \_\_\_\_\_ PAGE \_\_\_\_\_  
IN BOOK NO. \_\_\_\_\_ CLERK \_\_\_\_\_

GEORGIA, HABERSHAM COUNTY, CLERK'S OFFICE, SUPERIOR COURT  
Filed for record March 24, 1989 at 9:00 a.m. Recorded March 24, 1989.  
(fks) Ernest W. Nations, Jr., Clerk

**SECOND AMENDMENT TO  
DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
THE ORCHARD**

AMENDMENT TO THE DECLARATION OF COVENANTS AND RESTRICTIONS, made and executed this 5th day of April, 1989, by THE ORCHARD LIMITED PARTNERSHIP, a Georgia limited partnership, ("Developer"), joined by THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a Georgia not-for-profit corporation, and by FRED LOVELL a resident of Habersham County, Georgia;

**W I T N E S S E T H :**

THAT WHEREAS, the Parties hereto have heretofore executed a Declaration of Covenants and Restrictions for The Orchard dated November 21, 1988, recorded in the office of the Clerk of Superior Court of Habersham County, Georgia, in Deed Book 240, Page 419, et seq.; and

WHEREAS, the Parties hereto have heretofore executed a First Amendemnt to the Declaration of Covenants and Restrictions for The Orchard dated March 13, 1989, recorded in the office of the Clerk of Superior Court of Habersham County, Georgia, in Deed Book 244, Page 25; and

WHEREAS, none of the property subject to the Declaration of Covenants and Restrictions for The Orchard has been sold, and the Parties hereto desire to amend said covenants prior to the sale of any of said property.

NOW, THEREFORE, the Parties hereto hereby declare that the Declaration of Covenants and Restrictions dated November 21, 1988, recorded in the office of the Clerk of Superior Court of Habersham County, Georgia, in Deed Book 240, Page 419, et seq., is hereby amended as follows:

1.

By deleting paragraph 14.11 in its entirety.

**Exhibit A**

JOINDER OF ASSOCIATION

THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a Georgia not-for-profit corporation, hereby joins in this Declaration of Covenants and Restrictions for The Orchard for the sole purpose of agreeing to perform its obligations as contained herein.

Signed, sealed and delivered this  
5th day of April, 1989, in the  
presence of:

THE ORCHARD PROPERTY OWNERS  
ASSOCIATION, INC., a Georgia  
not-for-profit corporation

Janet C. Burton  
Witness

By: Virgil E. Lovell  
Virgil E. Lovell, President

Hazel Free  
Notary Public  
My Commission Expires: My commission expires Mar. 14, 1992

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed this 5th day of April, 1989.

Signed, sealed and delivered this 5th day of April, 1989, in the presence of:

Donald E. Umhel  
Witness

Burlyn R. Buckett  
Notary Public  
My Commission Expires: \_\_\_\_\_

MY COMMISSION EXPIRES DEC. 16, 1991

THE ORCHARD LIMITED PARTNERSHIP,  
a Georgia limited partnership

By: VEL, INC., its general partner

By: Virgil E. Lovell  
Virgil E. Lovell, President

By: HABERSHAM INVESTORS, INC., its  
general partner

By: John E. Mansfield, Sr.  
John E. Mansfield, Sr., President

JOINDER OF FRED LOVELL

FRED LOVELL, a resident of Habersham County, Georgia, hereby joins in this Declaration of Covenants and Restrictions for The Orchard for the sole purpose of agreeing to subject the Property to the foregoing covenants and restrictions.

Signed, sealed and delivered this 5th day of April, 1989, in the presence of:

Andrea L. Crawford  
Witness

Fred Lovell (SEAL)  
FRED LOVELL

Stephen A. Frankum  
Notary Public  
My Commission Expires: 4-30-89

GEORGIA, HABERSHAM COUNTY  
CLERK'S OFFICE, SUPERIOR COURT  
FILED FOR RECORD April 6  
19 89 AT 9:50 O'CLOCK AM  
RECORDED April 6 1989  
IN BOOK NO. 544 PAGE 396  
Robert W. Adams CLERK

The Orchard  
PO Box 1770  
Clarks Summit  
Ann. Lovick P  
Suddath.

RECORDED  
5-22-94  
ERNEST W. NATIONS JR

**THIRD AMENDMENT TO THE  
DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
THE ORCHARD**

This THIRD AMENDMENT (hereinafter referred to as the "Amendment") to the Declaration of Covenants and Restrictions for the Orchard (hereinafter referred to as the "Declaration") is made on this 22nd day of August, 1994.

**WITNESSETH**

WHEREAS, The Orchard Limited Partnership, a Georgia limited partnership (hereinafter referred to as the "Developer"), joined by The Orchard Property Owners Association, Inc., a Georgia not-for-profit corporation (hereinafter referred to as the "Association") and by Fred Lovell, a resident of Habersham County, Georgia (hereinafter referred to as "Lovell") have heretofore executed a Declaration of Covenants and Restrictions for The Orchard, dated November 21, 1988, and recorded in the office of the Clerk of the Superior Court of Habersham County, Georgia, in Deed Book 240, Page 419, et seq.; and

WHEREAS, the parties hereto have heretofore executed a First Amendment to the Declaration of Covenants and Restrictions for the Orchard on March 13, 1989, recorded in the Office of the Clerk of Superior Court of Habersham County, Georgia in Deed Book 244, Page 25; and

WHEREAS, the parties hereto have heretofore executed a Second Amendment to the Declaration of Covenants and Restrictions for the Orchard dated April 5, 1989, recorded in the Office of the Clerk of Superior Court, Habersham County, Georgia, in Deed Book 344, Page 396; and

WHEREAS, in accordance with Section 2.2<sup>c</sup> of the Declaration, Developer may, at any time or from time to time, subject additional property to the Declaration by recording in the public records of Habersham County, an Amendment to the Declaration describing such additional property; and

WHEREAS, Developer desires to amend the Declaration for purposes of submitting additional property to the Declaration so that such property will be subject to the restrictions, voting rights, maintenance requirements, user fees, dues and other provisions pertaining to the Property; and

WHEREAS, the property described herein on Exhibit "A", being Section VII, Lots 1-73, attached hereto and incorporated herein by this reference shall be subject to the Declaration; and

492

WHEREAS, the Developer still owns property within The Orchard and has the right to reasonably amend the Declaration pursuant to Section 14.2.2 of the Declaration; and

WHEREAS, the Developer desires to amend the Declaration as set forth herein; and

WHEREAS, this Amendment was approved and adopted by the Developer;

NOW THEREFORE, the Declaration is hereby amended as follows:

1. By adding a new Section 1.27 to Article 1, which shall read as follows:

1.27 "Turnover Date" shall mean and refer to the date of transfer of the management and control of the Association to the Members of the Association by the Developer, which shall occur upon the sale of the last lot in The Orchard.

2. By deleting in its entirety Section 4.5 of Article 4 and substituting in its place a new Section 4.5 which shall read as follows:

4.5 Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Property subject to any restrictions, limitations, or provisions contained in this Declaration. Such right and easement may be exercised by the Owner, the members of his family, and his tenants, licensees and invitees, subject to such reasonable regulations and procedures as may be adopted by the Board of Directors. An Owner may assign to the tenant of his Lot all rights of access to and use of the Common Property so that such tenant, his family and guests shall be entitled to access to and use and enjoyment of the Common Property on the same basis as the assignor and his family and guests. The aforementioned right and easement of enjoyment shall be appurtenant to and shall pass with the title to every Lot subject to the easements, reservations, rights and provisions herein.

3. By adding Section 6.14 to Article VI, which shall read as follows:

6.14 Computation of General Assessments.

(a) It shall be the duty of the Board at least forty-five (45) days prior to the commencement of a fiscal year to prepare a budget covering the estimated costs of operating the Association and the Properties during the coming year. The Board shall cause a copy of the budget and the assessments to be levied therefrom to be available to all members at a central location on the Properties at least twenty (20) days prior to the annual meeting of the Association. The budget and assessment established therefrom shall become and be effective unless objected to in writing executed by at least a majority of the total Association eligible vote and delivered to the Board of Directors no later than ten (10) days prior to the effective date of



the proposed budget. Notwithstanding the foregoing, in the event that the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein or by the procedure herein described repeated as need be, the budget and assessments in effect for the current year shall continue for the succeeding year.

(b) Despite anything else contained herein, the amount of the budgeted assessment in any particular year may be increased by the Board of Directors of the Association in a succeeding year without need of making the budget available for disapproval by the members, and without membership consideration, so long as the proposed assessment does not exceed the current "maximum allowable assessment amount." The current "maximum allowable assessment amount shall be determined as follows:

Take the difference between the consumer price index, as established by the Consumer Price Index for Urban Wage Earners and Clerical Workers, Atlanta, Georgia, all Items, ("Index"), for August of the year under consideration and the consumer price index as established by the Index for August, 1994, and divide such difference by the consumer price index as established by the Index for August, 1994. Thereafter, the resulting quotient is to be multiplied by one hundred. This resulting quotient expressed as a percentage, multiplied by the assessment existing in August, 1994, is the amount by which the assessment in existence may be increased, such increased amount being the current maximum allowable assessment amount.

4. By deleting in its entirety Section 7.2 of Article 7, leaving Section 7.2.1 and Section 7.2.2 intact, and substituting a new Section 7.2 which shall read as follows:

7.2 Association Responsibility. The Association or its duly authorized agents shall maintain, repair and replace all portions of the Common Property. This maintenance shall include, but not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all streets, sidewalks, curbs, trails, parking lots, drainage, water or sewer systems, facilities and amenities, landscaping, and any other improvements situated upon the Common Property. Subject to the limitations of Section 7.2.3 below, the Association shall also repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association.

5. By adding Section 7.2.3 and Section 7.2.4 to Article 7, which shall read as follows:

7.2.3 The Association shall not be liable for any injury or damage to any person or property (a) caused by the elements, (b) caused by any Owner or any other person, (c) resulting from any utility, rain, water, snow, ice or surface water which may leak or flow from any portion of the Common Property, or (d) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair or otherwise leaking.

494

The Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of any property which may be stored in or upon any portion of the Common Property.

7.2.4 No diminution or abatement of assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform such function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or governmental authority, the obligation to pay each such assessment being a separate and independent covenant on the part of each Owner.

6. By deleting in its entirety Section 8.1.1 of Article 8 and substituting in its place a new Section 8.1.1 which shall read as follows:

8.1.1 Residential Use. The Lots at The Orchard shall be and are restricted exclusively to single-family residential use and no trade or business of any kind may be conducted in or from a Lot or any part of the Property either as a primary or accessory use of either the Lot or any portion of the Property; provided, however, an Owner or occupant may conduct accessory business activities on the Lot so long as the Lot is improved with a Dwelling and (a) the existence or operation of the business activity is not apparent or detectible by sound or smell from the exterior of the Dwelling; (b) the business activity does not regularly involve an unreasonable number of persons or vehicles coming on to the Property who do not reside on the Property; (c) the business activity would not include having any tools of a particular trade stored or placed in any area outside the Dwelling located on the Lot; (d) the business activity conforms to all zoning requirements for the Property; and (e) the business activity does not require use of common element utilities or does not constitute a nuisance or a hazardous or offensive use, as may be determined in the sole discretion of the Board of Directors. The foregoing restrictions as to residential use shall not, however, be construed in such a manner as to prohibit an Owner or his tenant, if any, from (i) maintaining his personal professional library, (ii) keeping his personal business or professional records or accounts, (iii) handling telephone calls, facsimile communications or correspondence relating to his or her business or profession. Such uses are expressly declared customarily incidental to the principal residential use and do not violate these restrictions.

7. By deleting in its entirety Section 8.1.2 of Article 8 and substituting in its place a new Section 8.1.2 which shall read as follows:

8.1.2 Oil and Mining Operations. No oil drilling or development operations, water wells, soil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for

oil, water, natural gas, or minerals shall be erected, maintained, or permitted upon any Lot.

8. By deleting in its entirety Article 10 and substituting in its place a new Article 10 which shall read as follows:

ARTICLE 10

INSURANCE AND CASUALTY OR LIABILITY LOSSES

10.1 Insurance Coverage. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain fire insurance for all insurable improvements on the Common Property against loss or damage by fire or other hazards, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board shall also obtain a public liability policy applicable to the Common Property covering the Association, its officers, directors, members, and agents. The public liability policy shall have at least a One Million Dollar (\$1,000,000.00) each occurrence limit (combined single limit for bodily injury and property damage), Two Million Dollar (\$2,000,000.00) general aggregate, combined single limit, and Two Million Dollar (\$2,000,000.00) products/completed operations aggregate, combined single limit. Unless otherwise provided by the Board of Directors, the cost of all such insurance coverage shall be paid from the Common Expenses. Each insurance policy may contain a deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The Association may allocate equitably the payment of a reasonable insurance deductible between the Association and the Owners affected by a casualty against which the Association is required to insure, provided, however, that the amount of deductible which can be allocated to any one Owner shall not exceed \$1,000.00 per casualty loss.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as Trustee, for the respective benefitted parties, as further identified hereinbelow. Such insurance shall be governed by the provisions hereinafter set forth:

10.1.1 All policies shall be written with a company licensed to do business in the State of Georgia and holding a rating of "A-X1" or better in the Financial Category as established by A.M. Best Company, Inc., if available, or, if not available, the most nearly equivalent rating.

10.1.2 All policies on the Common Property shall be for the benefit of the Association and the Owners and their mortgagees, as their interests may appear.

496

10.1.3 Exclusive authority to adjust losses under policies in force on any portion of the Property, including the Common Property, obtained by the Association shall be vested in the Association's Board of Directors; provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

10.1.4 In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees, and the insurance carried by the Association shall be primary.

10.1.5 The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association, the Board of Directors, the officers of the Association, agents and employee of the Association, the individual Owners and their respective families, tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners, or their respective families, tenants, agents and guests, or on account of any defect or of the conduct of any director, officer, or employee of the Association without a prior demand in writing delivered to the Association and to all mortgagees to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which the defect may be cured;

(iv) a waiver of the insurer's right to cancel without first giving thirty (30) days prior written notice of such cancellation to the Association and to any mortgagee to which a mortgagee endorsement has been issued;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from its operation; and

(vi) all liability insurance policies shall contain cross-liability endorsements to cover liability of the Association to an individual Owner and shall also name the Developer as an additional insured.

10.1.6 It shall be the responsibility of each Owner at his own expense, to provide public liability, property damage, title, and other insurance with respect to his own Lot. The Association's Board of Directors may require all Owners to carry public liability and property damage insurance with respect to their respective Lots and to furnish copies of certificates thereof to the Association.

In addition to the other insurance required by this section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds (provided that the Property includes Lots upon which financing exists that is held or serviced by any financial agency, corporation, or secondary mortgage market enterprise which requires the maintenance of such fidelity bond) on directors, officers and employees of the Association, and other persons who handle or are responsible for handling the Association funds. The amount of fidelity coverage shall be determined in the directors' best business judgment, but may not be less than three (3) months' assessments, plus reserves on hand if such bond is obtained. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

10.2 Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction, as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction, or in the event no repair or reconstruction is made after making such settlement as is necessary and appropriate with the affected Owners or Owners and their mortgagee(s), as their interests may appear, shall be retained by and for the benefit of the Association. This is a covenant for the benefit of any mortgagee of any part of the Property and may be enforced by such mortgagee.

(b) If it is determined, as provided for in Section 10.3 herein, that the damage or destruction for which the proceeds are paid shall not be repaired or reconstructed, available proceeds shall be disbursed in the manner as provided for excess proceeds in subsection (a) hereinabove.

10.3 Damage and Destruction.

10.3.1 Immediately after the damage or destruction by fire or other casualty to all or any part of the Property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty.

10.3.2 Any damage or destruction to the Common Property shall be repaired or reconstructed unless at least seventy-five percent (75%) of the total vote of the Association and the Developer shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction,

498

or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, that such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction shall be repaired or reconstructed.

10.3.3 In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the Property shall be restored to its natural state and maintained as an undeveloped portion of the Property by its respective Owner or Owners in a neat and attractive condition.

10.4 Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners ultimately responsible for the payment of the policy premium in the same proportion as an Owner's assessment bears to the Association's budget. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be deposited to the benefit of the Association.

10.5 Lot Owner's Responsibility. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry all risk casualty insurance in respect to improvements on his or her Lot. Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of any structure located on a Lot, he or she shall proceed promptly to repair or reconstruct the damaged structure in a manner consistent with the aesthetic appearance and quality of the original construction. In the event that any improvement on any Lot is totally destroyed or rendered uninhabitable or unusable and the Owner thereof determines not to rebuild or reconstruct, then that Owner shall clear that Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. The obligation of an Owner hereunder specified shall not be applicable to any Owner whose Lot is insured under a casualty insurance policy obtained by the Association on his behalf. In the event that any Lot is totally destroyed or rendered uninhabitable or unusable and the Owner thereof determines to rebuild or reconstruct, then such Owner shall repair or rebuild such Lot to substantially the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations. All such work of repair and construction, as identified herein, shall be commenced promptly following such damage or destruction and shall be carried through diligently to conclusion within a reasonable time.

9. By deleting the last sentence of Section 11.2.1 of Article 11, such Section 11.2.1 to therefore read as follows:

11.2.1 Except as otherwise provided hereinbelow, within ten (10) days of receipt of such notice and information, the Association shall cause a Certificate of Notice and Approval to be executed by any officer of the Association.

10. By deleting in its entirety Article 12 and substituting in its place a new Article 12 which shall read as follows:

ARTICLE 12

WATER UTILITIES

12.1 Water Utilities. The Developer may assign all water rights of The Orchard to a private water utility company, which shall be responsible for the operation and maintenance of a water distribution system. Each Owner shall be required to connect to the water distribution company, through the private water utility company, at such Owner's expense, at the time of construction of a Dwelling upon his Lot.

12.2 Water Utility Fees. All costs of operation and maintenance of the water distribution system, including but not limited to all wells, pumps, treatment facilities and collection lines relating to the service and use of water on each Lot, shall be billed directly to the Owner of such Lot by the water provider, including the private water utility company. All costs relating to the service and use of water on the Common Property shall be the obligation of the Association.

11. By deleting in its entirety Section 14.3 of Article 14 and substituting in its place a new Section 14.3 which shall read as follows:

14.3 Duration and Perpetuities.

14.3.1 The provisions of this Declaration shall run with and bind the land constituting the Property, and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, and their respective legal representatives, heirs, successors and assigns for the maximum time period under Georgia law unless terminated by proper procedure of the Owners as provided herein. If it is determined that the restrictions hereunder are limited in duration pursuant to O.C.G.A. § 44-5-60(b), such shall be renewed in accordance with the procedures set forth in O.C.G.A. § 44-5-60(d), as may be amended from time to time. Such adoption shall be binding on all, and each Owner of any Lot by acceptance of a deed therefore is deemed to agree that if Georgia law limits the time period for the applicability of the restrictions herein, such may be extended as provided herein.

14.3.2 If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for a violation of the Rule

500

Against Perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living decedents of the President of the United States, William Jefferson Clinton.

12. By deleting in its entirety Section 14.5 of Article 14 and substituting in its place a new Section 14.5 which shall read as follows:

14.5 Enforcement. Each Owner of occupant of a Lot shall comply strictly with the covenants and restrictions set forth in this Declaration, with the By-Laws, and with any rules and regulations adopted pursuant to this Declaration, as any of the same may be lawfully amended from time to time. In the event of a violation or breach, or threatened violation or breach, of any of the same, the Association or any aggrieved Owner, jointly and severally, shall have the right to proceed at law or in equity to compel compliance therewith or to prevent a threatened violation or breach thereof. The Association or any duly authorized agent thereof shall, after ten (10) days written notice, have the right to enter upon any portion of the Property where a violation exists and summarily abate or remove, at the expense of the violating Owner, using such force as may be reasonably necessary, any erection, thing or condition that may be or exist contrary to the intent and meaning of the provisions hereof. Neither the Association nor its agents shall be deemed guilty or liable for any manner of trespass for such entry, abatement, or removal. Further, after ten (10) days written notice, the Association shall have the right to levy fines against the Owner for a continuing violation or breach. Collection of fines may be enforced against an Owner as if such charges were a Common Expense owed by the Owner involved, and such fines may be added and thereupon shall become part of such Owner's assessments. No delay, failure or omission on the part of the Association or any aggrieved Owner in exercising any right, power or remedy herein provided shall be construed as an acquiescence therein or shall be deemed a waiver of the right to do so thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach of the provisions and regulations, however long continued, or for impossible provisions which may be unenforceable.

13. By adding a new Article 15, which shall read as follows:

ARTICLE 15

CONDEMNATION

15.1 Common Property. If any portion of the Common Property is taken by any authority having the power of condemnation or eminent domain, the award of funds therefore shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

-#4

Add 16 - #4



501

15.2 Lots. If a Lot or any portion of a Lot is taken by any authority having the power of condemnation or eminent domain, the award of funds therefore shall be disbursed to the Owner of such Lot. If, after the taking of a portion of any Lot, the Owner decides not to use the remaining portion of that Lot, then such Owner shall have the option of deeding the remaining portion of the Lot as part of the Common Property, and thereafter any such Owner shall not have any further voting rights or membership rights or privileges in the Association and shall not be subject to any assessments imposed by the Association and payable after the date of such conveyance.

15.3 Apportioning. If the taking includes all or any portion of a Lot and also includes any part of the Common Property, then a court of competent jurisdiction shall apportion such award or proceeds and such award or proceeds shall be disbursed to the Association and the Owner so affected so as to give just compensation to the Owners of any Lot; provided, however, that such apportionment may instead be resolved by the agreement of the Board of Directors and the Owners of all Lots wholly or partially taken, together with the mortgagees for any such Lots.

14. By adding a new Article 16, which shall read as follows:

#### ARTICLE 16

#### MORTGAGEE'S RIGHTS

16.1 Notice of Action. For so long as required by the Federal National Mortgage Association, but only provided that The Orchard is a planned development approved by or seeking approval by such Association, an institutional holder, insurer, or guarantor or an Institutional Mortgagee who provides a written request to the Association, such request to state the name and address of such holder, insurer, guarantor or mortgagee and the applicable Lot (therefore becoming an "eligible holder"), shall be entitled to timely written notice of:

- (a) any proposed termination of The Orchard;
- (b) any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a first mortgage held, insured, or guaranteed by such eligible holder;
- (c) any delinquency in the payment of assessments of charges owed by an Owner of a Lot in which such eligible holder has an interest, where such delinquency has continued for a period of sixty (60) days;
- (d) any default in the performance by an Owner of a Lot in which such eligible holder has an interest, of any obligation under this Declaration, the By-Laws, or the Articles of Incorporation which is not cured within sixty (60) days;

502

(e) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(f) any proposed action which would require the consent of eligible holders.

16.2 Other Provisions for First Lien Holders.

16.2.1 Any restoration or repair of the Common Property after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless approval is obtained of the eligible holders of first mortgages on units to which at least fifty-one percent (51%) of the votes of Lots subject to mortgages held by such eligible holders are allocated.

16.2.2 Any election to terminate the development after substantial destruction or a substantial taking in condemnation must require the approval of the eligible holders of first mortgages to which at least fifty-one percent (51%) of the votes of Lots subject to mortgages held by such eligible holders are allocated.

16.3 Amendments to Documents. The following provisions do not apply to amendments to the constituent documents or termination of the development made as a result of destruction, damage, or condemnation or to the addition of land which might occur pursuant to any plan of expansion or phase development previously approved by the agencies and corporations, to the extent such approval was required under the applicable programs of the agencies and corporations.

16.3.1 The consent of at least sixty-seven percent (67%) of the members of the Association and of the Developer, so long as the Developer owns land subject to this Declaration, and the approval of the eligible holders of first mortgages on Lots to which at least sixty-seven percent (67%) of the votes of such subject to a mortgage appertain, shall be required to terminate the development.

16.3.2 For so long as required by the Federal National Mortgage Association but only provided that The Orchard is a planned development approved or seeking approval by Federal National Mortgage Association, the consent of at least sixty-seven percent (67%) of the members of the Association and of the Developer, so long as the Developer owns any land subject to this Declaration, and the approval of eligible holders of first mortgages to which at least fifty-one percent (51%) of the votes of the Lots subject to a mortgage appertain, shall be required to materially amend any provisions of the Declaration, Bylaws, or Articles of Incorporation of the Association, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following:

- (i) Voting;
- (ii) Assessments, assessment liens or subordination of such liens;

- (iii) Reserves for maintenance, repair, and replacement of the Common Property;
- (iv) Insurance of fidelity bonds;
- (v) Rights to use the Common Property, subject to the allowances herein contemplated;
- (vi) Responsibility for maintenance and repair of the Property;
- (vii) Other than in this Declaration provided, expansion or contraction of the Property, or addition, annexation, or withdrawal of the Property to and from the regime;
- (viii) Other than in this Declaration provided or contemplated, boundaries of any lot;
- (ix) Leasing of Lots;
- (x) Imposition of any right of first refusal or similar restriction on the right of any Owner to sell, transfer, or otherwise convey his or her Lot;
- (xi) Establishment of self-management by the Association where professional management has been required by any of the agencies or corporations; or
- (xii) Any provision included in the Declaration, Bylaws or Articles of Incorporation which is for the express benefit of holders, guarantors, or insurers of first mortgages on Lots.

16.4 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed to give any Owner or any other party any priority over any rights of the Institutional Mortgagee in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of a Lot.

14. That the properties described on Exhibit "A" attached hereto (Phase VII, Lots 1-73, as shown on Plat by Hubert Lovell, Surveyor, dated August 8, 1994, recorded in Plat Book 36, Page 209, Habersham County, Georgia Records) are made subject to the Declaration, Covenants and Restrictions, as amended previously and herein.

15. Except as herein modified and amended, the terms of the Declaration shall remain in full force and effect.

504

IN WITNESS WHEREOF, the undersigned does hereby certify and swear that the Third Amendment to the Declaration has been lawfully adopted.

THE ORCHARD LIMITED PARTNERSHIP,  
a Georgia limited partnership

VEL, INC.  
General Partner

By: Virgil E. Lovell  
Virgil E. Lovell  
President

Signed, sealed and delivered this  
22 day of August, 1994, in the  
presence of:

James A. Cowart  
Notary Public  
My Commission Expires: 9-4-94

CONSENT OF ASSOCIATION

THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a Georgia not-for-profit corporation, hereby joins in this Third Amendment to the Declaration for the purposes of agreeing to perform its obligations as contained herein and consenting to the adoption of such Amendment.

THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a Georgia not-for-profit corporation

By: Virgil E. Lovell  
Virgil E. Lovell  
President

Attest: Brenda C. Stearns  
Secretary

Signed, sealed and delivered this  
22 day of August, 1994, in the  
presence of:

Joseph F. Bollich  
Witness

James S. Curran  
Notary Public  
My Commission Expires: 9-4-94


Sole


CONSENT OF FRED LOVELL

FRED LOVELL, a resident of Habersham County, Georgia, hereby joins in this Third Amendment to the Declaration for the sole purpose of consenting to the adoption of the Amendment.

  
\_\_\_\_\_  
Fred Lovell (SEAL)

Signed, sealed and delivered this  
22 day of August, 1994, in the  
presence of:

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 9-4-94

bas/nickla@notboard

507

EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lots 122 and 123 of the 13th District, Habersham County, Georgia, being Lots 1-73 of Phase VII, of the Orchard Subdivision, as per plat of record, recorded in Plat Book 36, Page 209, of the Habersham County, Georgia Deed Records, said plat being incorporated herein and made a part hereof by reference.

520

REC'D 24 8 57

324-98

**FOURTH AMENDMENT TO THE  
DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
THE ORCHARD**

*THIS FOURTH AMENDMENT* (hereinafter referred to as the "Amendment") to the Declaration of Covenants and Restrictions for the Orchard (hereinafter referred to as the "Declaration") is made on this 19 day of August, 1997.

**WITNESSETH**

*WHEREAS*, The Orchard Limited Partnership, a Georgia Limited Partnership (hereinafter referred as the "Developer"), joined by The Orchard Property Owners Association, Inc., a Georgia not-for-profit corporation (hereinafter referred to as the "Association") and by Fred Lovell, a resident of Habersham County, Georgia (hereinafter referred to as "Lovell") have heretofore executed a Declaration of Covenants and Restrictions for The Orchard, dated November 21, 1988, and recorded in the office of the Clerk of the Superior Court of Habersham County, Georgia, in deed book 240, page 419, *et seq.*; and

*WHEREAS*, the parties hereto have heretofore executed a First Amendment to the Declaration of Covenants and Restrictions for The Orchard on March 13, 1989, recorded in the office of the Clerk of Superior Court of Habersham County, Georgia in deed book 244, page 25 *et seq.*; and

*WHEREAS*, the parties hereto have heretofore executed a Second Amendment to the Declaration of Covenants and Restrictions for The Orchard dated April 5, 1989, recorded in the office of the Clerk of Superior Court, Habersham County, Georgia, in deed book 344, page 396 *et seq.*; and

*WHEREAS*, the parties hereto have heretofore executed a Third Amendment to the Declaration of Covenants and Restrictions for The Orchard dated August 22, 1994, recorded in the office of the Clerk of Superior Court, Habersham County, Georgia, in deed book 322, page 491 *et seq.*; and

*WHEREAS*, in accordance with Section 2.2 of the Declaration, Developer may, at any time or from time to time, subject additional property to entire Declaration by recording in the public records of Habersham County, an Amendment to the Declaration describing such additional property; and

*WHEREAS*, Developer desires to amend the Declaration for purposes of submitting additional property to the Declaration so that such property will be subject to the restrictions, voting rights, maintenance requirements, user fees, dues and other provisions pertaining to the Property; and

*WHEREAS*, the property described herein on Exhibit "A", being attached hereto and incorporated herein by this reference shall be subject to the Declaration; and



WHEREAS, the Developer still owns property within The Orchard and has the right to reasonably amend the Declaration pursuant to Section 14.2.2 of the Declaration; and

WHEREAS, the Developer desires to amend the Declaration as set forth herein; and

WHEREAS, this Amendment was approved and adopted by the Developer; and

NOW THEREFORE, the Declaration is hereby amended as follows:

1. That the properties described on Exhibit "A" attached hereto are made subject to the Declaration, Covenants and Restrictions, as amended previously and herein.
2. Except as herein modified and amended by the addition of the tracts described in Exhibit "A" to these Declaration of Covenants and restrictions for The Orchard, the terms of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned does hereby certify and swear that the Fourth Amendment to the Declaration has been lawfully adopted.

THE ORCHARD LIMITED PARTNERSHIP

Shirley L. Hill  
Witness

BY: Virgil Lovell  
VEL, INC.  
VIRGIL E. LOVELL, PRESIDENT

Sworn to and subscribed before me this 09 day of August, 1997.

Virgil Lovell  
NOTARY PUBLIC  
My commission expires: \_\_\_\_\_  
Notary Public, Hall County, Georgia  
My Commission Expires Feb. 24, 2001  
(AFFIX SEAL)

Shirley L. Hill  
Witness

Virgil Lovell  
VIRGIL E. LOVELL D/B/A  
THE ORCHARD PHASE II

Sworn to and subscribed before me this 09 day of August, 1997.

Virgil Lovell  
NOTARY PUBLIC  
My commission expires: \_\_\_\_\_  
Notary Public, Hall County, Georgia  
My Commission Expires Feb. 24, 2001  
(AFFIX SEAL)

522

**CONSENT OF ASSOCIATION**

THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a Georgia non-profit corporation, hereby joins in this Fourth Amendment to the Declaration for the purposes of agreeing to perform its obligations as contained herein and consenting to the adoption of such Amendment.

**THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a Georgia non-profit corporation**

BY: *Virgil Lovell*  
**VIRGIL E. LOVELL**  
**PRESIDENT**

ATTEST: \_\_\_\_\_  
**SECRETARY**

*David L. Field*  
Witness

Sworn to and subscribed before me  
this 9 day of August, 1997.

*Bert S. ...*  
Notary Public

My commission expires: \_\_\_\_\_  
Notary Public, Hall County, Georgia  
My Commission Expires Feb. 24, 2000



(AFFIX SEAL)

**EXHIBIT "A"****PARCEL ONE:**

All that tract or parcel of land lying and being in Land Lot 115 and 116 of the 13th Land District, Habersham County, Georgia, and being Lots 1, 3, 6, 7, 8, 9, and 10 of Phase X (10), of The Orchard Subdivision, as per plat of record, recorded in plat book 42, page 5 of the Habersham County, Georgia deed records, said plat being incorporated herein and made a part hereof by reference for a more complete description of the property.

**PARCEL TWO:**

All that tract or parcel of land lying and being in Land Lot 116 and 123 of the 13th Land District, Habersham County, Georgia, and being Lots 6, 7, 8, 9, 10, 11, 12, 14, 15, and 16 of Phase XI (11), of The Orchard Subdivision, as per plat of record, recorded in plat book 42, page 157 of the Habersham County, Georgia deed records, said plat being incorporated herein and made a part hereof by reference for a more complete description of the property.

**PARCEL THREE:**

All that tract or parcel of land lying and being in Land Lot 116 and 123 of the 13th Land District, Habersham County, Georgia, and being Lots 1, 2, 5, 8, 9, 10, 11, 12, and 13 of Phase XII (12), of The Orchard Subdivision, as per plat of record, recorded in plat book 42, page 215 of the Habersham County, Georgia deed records, said plat being incorporated herein and made a part hereof by reference for a more complete description of the property.

**PARCEL FOUR:**

All that tract or parcel of land lying and being in Land Lot 115 of the 13th Land District, Habersham County, Georgia, and being Lots 1 through 32 of Phase VI (6), of The Orchard Subdivision, as per plat of record, recorded in plat book 42, page 216 of the Habersham County, Georgia deed records, said plat being incorporated herein and made a part hereof by reference for a more complete description of the property.

**PARCEL FIVE:**

All that tract or parcel of land lying and being in Land Lot 115, 116, 117, 122, 123, and 124 of the 13th Land District, Habersham County, Georgia, and being TRACT ONE of a Map prepared for The Orchard Subdivision, prepared by Lovell, Duval, Miller & Associates, Inc., dated July 23, 1997, as per plat of record, recorded in plat book 42, page 217 of the Habersham County,

524

Georgia deed records, said plat being incorporated herein and made a part hereof by reference for a more complete description of the property. Said Parcel Five less and excepting the following parcels described in *this Exhibit "A"* including only Parcels One, Two, Three, and Four as described infra. Said tract containing after reduction of the "less and excepting tracts or parcels" 98.09 acres, more or less, from the 180.13 acres as shown on said above described plat.

**PARCEL SIX:**

All that tract or parcel of land lying and being in Land Lot 95, and 96 of the 13th Land District, Habersham County, Georgia, and being TRACT FOUR of a Map prepared for The Orchard Subdivision, prepared by Lovell, Duval, Miller & Associates, Inc., dated July 23, 1997, as per plat of record, recorded in plat book 42, page 217 of the Habersham County, Georgia deed records, said plat being incorporated herein and made a part hereof by reference for a more complete description of the property. Said Parcel Six containing 77.96 acres, more or less.

'98 OCT 2 PM 2:51  
BOOK PAGE RECORDED  
ERNEST W. NATIONS JR

After recording, return to:  
Warren H. Small, Jr.  
McLarty, Robinson & Van Voorhies  
One Decatur TownCenter  
150 E. Ponce de Leon Avenue, Suite 330  
Decatur, GA 30030

CROSS REFERENCE:  
Declaration of Covenants and  
Restrictions for the Orchard  
Deed Book 290, page 419  
Habersham County, Georgia  
records

**FIFTH AMENDMENT TO THE  
DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
THE ORCHARD**

*THIS FIFTH AMENDMENT* (hereinafter referred to as the "Amendment") to the Declaration of Covenants and Restrictions for the Orchard is made on this 25<sup>TH</sup> day of SEPTEMBER, 1998.

**WITNESSETH**

*WHEREAS*, The Orchard Limited Partnership, a Georgia Limited Partnership (hereinafter referred to as the "Developer"), joined by The Orchard Property Owners Association, Inc., a Georgia not-for-profit corporation (hereinafter referred to as the "Association") and by Fred Lovell, a resident of Habersham County, Georgia (hereinafter referred to as "Lovell") have heretofore executed a Declaration of Covenants and Restrictions for The Orchard, dated November 21, 1988, and recorded in the office of the Clerk of the Superior Court of Habersham County, Georgia, in Deed Book 240, page 419, et seq.; and

*WHEREAS*, the parties hereto have heretofore executed a First Amendment to the Declaration of Covenants and Restrictions for The Orchard dated March 13, 1989, recorded in the office of the Clerk of the Superior Court of Habersham County, Georgia in Deed Book 244, page 25, et seq.; and

*WHEREAS*, the parties hereto have heretofore executed a Second Amendment to the Declaration of Covenants and Restrictions for The Orchard dated April 5, 1989, recorded in the office of the Clerk of Superior Court of Habersham County, Georgia, in Deed Book 244, page 396, et seq.; and

*WHEREAS*, the parties hereto have heretofore executed a Third Amendment to the Declaration of Covenants and Restrictions for The Orchard dated August 22, 1994, recorded in the office of the Clerk of Superior Court of Habersham County, Georgia in Deed Book 322, page 491, et seq.; and

*WHEREAS*, the parties hereto have heretofore executed a Fourth Amendment to the Declaration of Covenants and Restrictions for The Orchard dated August 29, 1997, recorded in the office of the Clerk of Superior Court of Habersham County, Georgia, in Deed Book 384, page 113, et seq.; and

*WHEREAS*, in accordance with Section 2.2 of the aforementioned Declaration of Covenants and Restrictions for The Orchard (as amended as herein above set forth herein referred to as the "Declaration"), Developer may, at any time or from time to time, subject additional property to entire Declaration by recording in the public records of Habersham County, Georgia, Amendment to the Declaration describing such additional property; and

*WHEREAS*, Developer desires to amend the Declaration for purposes of submitting additional property to the Declaration so that such property will be subject to the restrictions, voting rights, maintenance requirements, user fees, dues, golf club membership and facilities, and other provisions pertaining to the Property; and

*WHEREAS*, the property described herein on Exhibit "A", being attached hereto and incorporated herein by this reference (hereinafter referred to as the "Added Property") shall be subject to the Declaration; and

*WHEREAS*, the Developer still owns property within The Orchard and has the right to reasonably amend the Declaration pursuant to Section 14.2.2 of the Declaration; and

*WHEREAS*, the Developer desires to amend the Declaration as set forth herein; and

*WHEREAS*, this Amendment was approved and adopted by the Developer; and

*NOW THEREFORE*, the Declaration is hereby amended as follows:

1. That the Property described on Exhibit "A" attached hereto is made subject to the aforementioned Declaration, Covenants and Restrictions, as amended previously and herein, and shall henceforth constitute a portion of the "Property" thereunder.
2. The Developer hereby acknowledges and agrees that the terms "Institutional Mortgage" in Section 1.18 of the Declaration and "eligible holder" in Section 16 of the Declaration include, without limitation, John H. Perry, Jr. and J. Helena Perry, and their heirs, executors, legal representatives and assigns, as "Grantee," under that certain Deed to Secure Debt and Security Agreement (hereinafter referred to as the "Perry Security Deed") from Developer dated August 26, 1997, recorded in Deed Book 383, page 169, Habersham County, Georgia records, as the same may be amended from time to time, which encumbers the Added Property.
3. Except as herein modified and amended, the terms of the Declaration shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal, the date and year first above written.

Signed, sealed and delivered, in the presence of:

James C. Warden  
Unofficial Witness  
Lacey Coward  
Notary Public

My commission expires: 9-4-2002

Signed, sealed and delivered, in the presence of:

James C. Warden  
Unofficial Witness  
Lacey Coward  
Notary Public

My commission expires: 9-4-2002

[X:\60X\12607\DECLARATIONS.CLS]

THE ORCHARD LIMITED PARTNERSHIP, a Georgia limited partnership

By: VEL, INC. as General Partner  
By: Virgil E. Lovell  
Virgil E. Lovell, President

[CORPORATE SEAL]

Virgil E. Lovell (SEAL)  
Virgil E. Lovell

752

**CONSENT OF ASSOCIATION**

THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC. a Georgia non-profit corporation, hereby joins in this Fifth Amendment to the Declaration for the purposes of agreeing to perform its obligations as contained in the Declaration with respect to the property described in Exhibit "A" to this Amendment and consenting to the adoption of such Amendment.

Signed, sealed and delivered, in the presence of:

Jamie C. Warden  
Official Witness

James Coward  
Notary Public

My commission expires:  
1-1-2002

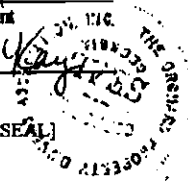
(L:\DON\NEW\COMBENT\CL1)

THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a Georgia non-profit corporation

By: Virgil E. Lovell  
Virgil E. Lovell, President

Attest: Brenda C. King  
Secretary

[CORPORATE SEAL]





753

ACKNOWLEDGMENT OF GOLF CLUB

THE ORCHARD CLUB, INC., a Georgia not-for-profit corporation, hereby joins in this Fifth Amendment to the Declaration for the purposes of (a) acknowledging that the property described in Exhibit "A" attached hereto now constitutes part of "The Orchard" pursuant to (i) the aforementioned Declaration, (ii) that certain Easement Agreement recorded in Deed Book 405, page 388, Habersham County, Georgia records and (iii) that certain Acknowledgment and Assignment recorded in Deed Book 405, page 394, aforesaid records and agreeing to perform its obligations thereunder with respect to, and to make "Golf Club" memberships available to lot purchasers in the property described in Exhibit "A" hereto.

Signed, sealed and delivered,  
in the presence of:

James C. Weidner  
Unofficial Witness

James Coward  
Notary Public  
My Commission expires:  
01-1-2002

THE ORCHARD CLUB, INC.

By: [Signature]  
Title: President

[CORPORATE SEAL]

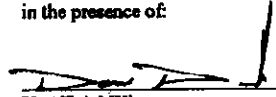

(K:\DOX\1346700\FCLU\BACK\CL3)

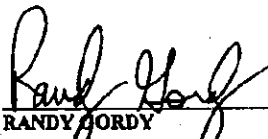
754

ACKNOWLEDGMENT OF OWNER OF GOLF CLUB FACILITIES

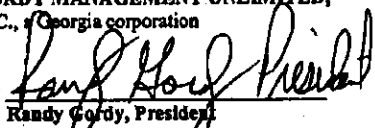
**RANDY GORDY and GORDY MANAGEMENT UNLIMITED, INC.**, a Georgia corporation, hereby join in this Fifth Amendment to the Declaration for the purposes of (a) acknowledging that the property described in Exhibit "A" to this Amendment now constitutes part of The Orchard Community pursuant to (i) the aforementioned Declaration, (ii) that certain Easement Agreement recorded in Deed Book 405, page 388, Habersham County, Georgia records and (iii) that certain Acknowledgment and Assignment recorded in Deed Book 405, page 394, aforesaid records, and (b) agreeing to perform its obligations thereunder with respect to the property described in Exhibit "A" hereto.

Signed, sealed and delivered  
in the presence of:

  
\_\_\_\_\_  
Unofficial Witness  
  
\_\_\_\_\_  
Notary Public  
My Commission Expires:  
9-4-2002

  
\_\_\_\_\_  
(SEAL)  
RANDY GORDY

GORDY MANAGEMENT UNLIMITED,  
INC., a Georgia corporation

By:   
\_\_\_\_\_  
Randy Gordy, President

[CORPORATE SEAL]

[XXXXXXXXXXXXXXXXXXXX]



755

EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lots 94, 95, 116, 117, of the 13th District of Habersham County, Georgia, and being described as 50.0 acres according to a plat for Carlos Lovell, dated April 22, 1997, and prepared by Hubert Lovell, registered surveyor, which plat is recorded at plat book 41, page 296 and incorporated herein by reference.

This is a portion of the property conveyed by C. D. Grills to Melvin Eugene Grills by Warranty Deed dated February 14, 1976, and recorded at deed book 145, pages 385-386.

798

Tim C. ...  
1/23/2007  
Charlotte, NC

2007 FEB 22 PM 2:33  
1111 798 2-25-07  
BOOK PAGE RECORDED  
ERNEST W. NADOLSKI JR.

SIXTH AMENDMENT TO THE  
DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
THE ORCHARD

THIS SIXTH AMENDMENT (hereinafter referred to as the "Amendment") to the Declaration of Covenants and Restrictions for the Orchard is made on this 25 day of January, 2000.

WITNESSETH

WHEREAS, The Orchard Limited Partnership, a Georgia limited Partnership (hereinafter referred to as the "Developer"), joined by The Orchard Property Owners Association, Inc., a Georgia not-for-profit corporation (hereinafter referred to as the "Association") and by Fred Lovell, a resident of Habersham County, Georgia (hereinafter referred to as "Lovell") have heretofore executed a Declaration of Covenants and Restrictions for The Orchard, dated November 21, 1988, and recorded in the office of the Clerk of the Superior Court of Habersham County, Georgia, in Deed Book 240, Page 419, et seq.; and

WHEREAS, the parties hereto have heretofore executed a First Amendment to the Declaration of Covenants and Restrictions for The Orchard dated April 5, 1989, recorded in the office of the Clerk of Superior Court of Habersham County, Georgia in Deed Book 244, Page 25, et seq.; and

WHEREAS, the parties hereto have heretofore executed a Second Amendment to the Declaration of Covenants and Restrictions for The Orchard dated April 5, 1989, recorded in the office of the Clerk of Superior Court of Habersham County, Georgia, in Deed Book 244, Page 196, et seq.; and

WHEREAS, the parties hereto have heretofore executed a Third Amendment to the Declaration of Covenants and Restrictions for The Orchard dated August 22, 1994 recorded in the office of the Clerk of Superior Court of Habersham County, Georgia in Deed Book 322, Page 491, et seq.; and

Conjectiv W/D 786 pg 521

WHEREAS, the parties hereto have heretofore executed a Fourth Amendment to the Declaration of Covenants and Restrictions for The Orchard dated August 29, 1997, recorded in the office of the Clerk of Superior Court of Habersham County, Georgia, in Deed Book 184, Page 113, et seq.; and

WHEREAS, the parties hereto have heretofore executed a Fifth Amendment to the Declaration of Covenants and Restrictions for The Orchard dated September 25, 1998, recorded in the office of the Clerk of Superior Court of Habersham County, Georgia, in Deed Book 414, Page 749, et seq.; and

WHEREAS, in accordance with Section 2.2 of the aforementioned Declaration of Covenants and Restrictions for The Orchard (as amended as herein above set forth herein referred to as the "Declaration"), Developer may, at any time or from time to time, subject additional property to entire Declaration by recording in the public records of Habersham County, Georgia, Amendment to the Declaration describing such additional property; and

WHEREAS, Developer desires to amend the Declaration for purposes of submitting additional property to the Declaration so that such property will be subject to the restrictions, voting rights, maintenance requirements, user fees, dues, golf club membership and facilities, and other provisions pertaining to the Property; and

WHEREAS, the property described herein on Exhibit "A", being attached hereto and incorporated herein by this reference (hereinafter referred to as the "Added Property") shall be subject to the Declaration; and

WHEREAS, the Developer still owns property within The Orchard and has the right reasonably amend the Declaration pursuant to Section 14.2.2 of the Declaration; and

WHEREAS, the Developer desires to amend the Declaration as set forth herein; and

WHEREAS, this Amendment was approved and adopted by the Developer; and

**NOW THEREFORE**, the Declaration is hereby amended as follows:

1. That the Property described on Exhibit "A" attached hereto is made subject to the aforementioned Declaration, Covenants and Restrictions, as amended previously and herein, and shall henceforth constitute a portion of the "Property" thereunder.

2. Except as herein modified and amended by the addition of the tracts described in Exhibit "A" to this Declaration of Covenants and Restrictions for The Orchard, the terms of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal, the date and year first above written.

THE ORCHARD LIMITED PARTNERSHIP,  
a Georgia Limited Partnership

BY: VEL INC, its General Partner

By: Virgil Lovell (SEAL)  
Virgil A. Lovell, President

(CORPORATE SEAL)

Signed, Sealed and Delivered  
in the presence of:

Barbara J. Bagwell  
Witness

Virgil A. Lovell  
Notary Public (SEAL)

My Commission Expires:

Notary Public, DeKalb County, Georgia  
My Commission Expires Aug. 19, 2009

Virgil A. Lovell (SEAL)  
VIRGIL A. LOVELL D/B/A  
THE ORCHARD PHASE II

Signed, Sealed and Delivered  
in the presence of:

Barbara J. Bagwell  
Witness

Virgil A. Lovell  
Notary Public (SEAL)

My Commission Expires:

Notary Public, DeKalb County, Georgia  
My Commission Expires Aug. 19, 2009

CONSENT OF ASSOCIATION

THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a Georgia non-profit corporation, hereby joins in this Sixth Amendment to the Declaration for the purposes of agreeing to perform its obligations as contained in the Declaration with respect to the property described in Exhibit "A" to this Amendment and consenting to the adoption of such Amendment.

Signed, sealed and delivered  
in the presence of:  
[Signature]  
Unofficial Witness  
[Signature]  
Notary Public  
(Seal)  
My Commission Expires: \_\_\_\_\_

Notary Public, Barrow County, Georgia  
My Commission Expires April 18, 2009

THE ORCHARD PROPERTY OWNERS  
ASSOCIATION, INC. a Georgia  
non-profit corporation  
By: [Signature]  
Virginia E. Lovell, President  
Attest: [Signature]  
Secretary

(CORPORATE SEAL)



ACKNOWLEDGMENT OF GOLF CLUB

THE ORCHARD CLUB, INC., a Georgia not-for-profit corporation, hereby joins in this Sixth Amendment to the Declaration for the purposes of (a) acknowledging that the property described in Exhibit "A" attached hereto now constitutes part of "The Orchard" pursuant to (i) the aforementioned Declaration, (ii) that certain Easement Agreement recorded in Deed Book 405, Page 388, Habersham County, Georgia records and (iii) that certain Acknowledgement and Assignment recorded in Deed Book 405, Page 394, aforesaid records and agreeing to perform its obligations thereunder with respect to, and to make "Golf Club" memberships available to lot purchasers in the property described in Exhibit "A" hereto.

Signed, sealed and delivered  
in the presence of:  
[Signature]  
Notary Public  
(Seal)  
My Commission Expires: \_\_\_\_\_

THE ORCHARD CLUB, INC.

By: [Signature]

Title: President

(CORPORATE SEAL)

Notary Public, State of Georgia  
My Commission Expires: \_\_\_\_\_



**ACKNOWLEDGMENT OF OWNER OF GOLF CLUB FACILITIES**

RANDY GORDY and GORDY MANAGEMENT UNLIMITED, INC., a Georgia corporation, hereby join in this Sixth Amendment to the Declaration for the purposes of (a) acknowledging that the property described in Exhibit "A" to this Amendment now constitutes part of The Orchard Community pursuant to (i) the aforementioned Declaration, (ii) that certain Easement Agreement recorded in Deed Book 405, Page 388, Habersham County, Georgia records and (iii) that certain Acknowledgment and Assignment recorded in Deed Book 405, Page 394, aforesaid records, and (b) agreeing to perform its obligations thereunder with respect to the property described in Exhibit "A" hereto.

Signed, sealed and delivered  
in the presence of

*Kevin B. Howell*  
Unofficial Witness

*Michael L. Hill*  
Notary Public  
(Seal)

My Commission Expires: \_\_\_\_\_

Notary Public, Habersham County, Georgia  
My Commission Expires April 19, 2000

*Randy Gordy* (SEAL)  
RANDY GORDY

GORDY MANAGEMENT UNLIMITED,  
INC., A Georgia Corporation

By: *Randy Gordy*  
Randy Gordy, President

(CORPORATE SEAL)

804

EXHIBIT "A"

All those tracts or parcels of land lying and being in Land Lots 115, 116, 123 and 124 of the 13th Land District of Habersham County, Georgia, being designated as Phase 6A of The Orchard Subdivision as shown on plat of survey of Phase 6A by Davidson Land Surveying, dated March 5, 1999 recorded in Plat Book 46, Pages 219-222, Habersham County, Georgia records which plat of survey is incorporated herein by reference as part of this description.

200 JUN -1 AM 10:23  
474 297 688  
SEVENTH AMENDMENT TO  
DECLARATION OF COVENANTS AND RESTRICTIONS  
BOOK PAGE RECORD  
ERNEST W. NATIONS JR.  
FOR THE ORCHARD

200 JUN -1 AM 10  
BOOK PAGE RECORD  
ERNEST W. NATIONS JR.

THIS AMENDMENT to the Covenants and Restrictions for The Orchard, made and executed this 22<sup>nd</sup> day of May, 2000, by The Orchard Limited Partnership, a Georgia Limited Partnership (hereinafter referred to as the Developer), and The Orchard Property Owners' Association, Inc.

W I T N E S S E T H :

WHEREAS, the parties hereto have heretofore executed a Declaration of Covenants and Restrictions for The Orchard, dated November 21, 1988, recorded in the Office of the Clerk of the Superior Court of Habersham County, Georgia, in Deed Book 240, p. 419, et. seq.; and

WHEREAS, the parties have heretofore executed previous amendments to the Covenants, which may be found recorded at Deed Book 244, p. 25, Deed Book 244, p. 396, Deed Book 322, p. 491, Deed Book 396, p. 540, and Deed Book 414, p. 749, of the Habersham County Deed Records; and

WHEREAS, the Developer wishes to amend the previously filed Covenants, pursuant to Article 14.2 of the Declaration of Covenants and Restrictions for The Orchard;

NOW, THEREFORE, the parties hereto hereby declare that the Declaration of Covenants and Restrictions dated November 21, 1988, recorded in the Office of the Clerk of Superior Court of Habersham County, Georgia, in Deed Book 240, p. 419, et. seq. are hereby amended as follows:

- 1) The real property described in the attached Exhibit A is hereby designated as a lot of Phase II of The Orchard.

All other covenants and provisions contained in the aforementioned Covenants hereby remain in full force and effect.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed this 22<sup>nd</sup> day of May, 2000.

THE ORCHARD LIMITED PARTNERSHIP,  
a Georgia Limited Partnership,  
by VEL, INC.

By: Virgil E. Lovell  
Virgil E. Lovell, President

THE ORCHARD PROPERTY OWNERS'  
ASSOCIATION, INC., a Georgia  
Non-Profit Corporation

By: Virgil Lovell  
Virgil E. Lovell, President

c:\files\The Orchard.amend cov

---

EXHIBIT A

LEGAL DESCRIPTION

All that tract or parcel of land lying and being in Land Lot 96 of the 13<sup>th</sup> Land District of Habersham County, Georgia, containing 1.00 acres, more or less, as shown on a plat of survey prepared for Carlos Lovell by Hubert Lovell, Georgia Registered Land Surveyor, dated May 20, 1993, recorded in Plat Book 34, p. 285, in the Office of the Clerk of Superior Court of Habersham County, which plat is hereby incorporated herein by reference for a more full and complete description of said property.

'02 APR 30 PM 4 44  
BOOK PAGE RECORDED  
ERNEST W. NATIONS JR

**EIGHTH AMENDMENT TO THE  
DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
THE ORCHARD**

This EIGHTH AMENDMENT (hereinafter referred to as the "Amendment" to the Declaration of Covenants and Restrictions for the Orchard is made this 30th day of April, 2002.

WITNESSETH

WHEREAS, The Orchard Limited Partnership, a Georgia limited partnership (hereinafter referred to as the "Developer"), joined by The Orchard Property Owners Association, Inc., a Georgia not-for-profit corporation (hereinafter referred to as "Association") and by Fred Lovell, a resident of Habersham County, Georgia (hereinafter referred to as "Lovell") have heretofore executed a Declaration of Covenants and Restrictions for The Orchard, dated November 21, 1988, and recorded in the office of the Clerk of the Superior Court of Habersham County, Georgia, in Deed Book 240, Page 419, et seq.; and

WHEREAS, the parties hereto have heretofore executed a First Amendment to the Declaration of Covenants and Restrictions for The Orchard, dated April 13, 1989, recorded in Deed Book 244, Page 25, Habersham County, Georgia Records; and

WHEREAS, the parties hereto have heretofore executed a Second Amendment to the Declaration of Covenants and Restrictions for The Orchard, dated April 5, 1989, recorded in Deed Book 344, Page 396, Habersham County, Georgia Records; and

WHEREAS, the parties hereto have heretofore executed a Third Amendment to the Declaration of Covenants and Restrictions for The Orchard, dated August 22, 1994, recorded in Deed Book 322, Page 421, Habersham County, Georgia Records; and

WHEREAS, the parties hereto have heretofore executed a Fourth Amendment to the Declaration of Covenants and Restrictions for The Orchard, dated August 29, 1997, recorded in Deed Book 384, Page 113, Habersham County, Georgia Records; and

WHEREAS, the parties hereto have heretofore executed a Fifth Amendment to the Declaration of Covenants and Restrictions for The Orchard, dated September 25, 1998, recorded in Deed Book 414, Page 749, Habersham County, Georgia Records; and

WHEREAS, the parties hereto have heretofore executed a Sixth Amendment to the Declaration of Covenants and Restrictions for The Orchard, dated February 22, 2000, recorded in Deed Book 464, Page 798, Habersham County, Georgia Records; and

WHEREAS, the parties hereto have heretofore executed a Seventh Amendment to the Declaration of Covenants and Restrictions for The Orchard, dated April 25, 2002, recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, Habersham County, Georgia Records; and

WHEREAS, on May 26, 2000, The Orchard Limited Partnership (hereinafter referred to as OLP), as Declarant and Developer, did assign all rights as Declarant and Developer to Orchard Realty & Development Co., LLC (hereinafter referred to as ORD) as shown in the attached Exhibit "A"; and

WHEREAS, on May 26, 2000, OLP granted to ORD an Option Agreement for the Sale and Purchase of Real Property as shown in the attached Exhibit "B"; and

WHEREAS, by the terms of said option, the same expired on April 26, 2002 at 5:00 p.m.; and

WHEREAS, as of 5:00 p.m. on April 26, 2002, ORD had failed to exercise the option, therefore, all rights of developer reverted to OLP; and

WHEREAS, OLP has regained its authority as developer; and

WHEREAS, the Developer still owns property within The Orchard and has the right to reasonably amend the Declaration, pursuant to Section 14.2.2; and

WHEREAS, the Developer desires to amend the Declaration as set forth herein; and

WHEREAS, this Amendment was approved and adopted by the Developer; and

NOW THEREFORE, the Declaration is hereby amended as follows:

1. By deleting in its entirety the Seventh Amendment to the Declaration of Covenants and Restrictions for The Orchard, dated April 25, 2002, recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, Habersham County, Georgia Records.

IN WITNESS WHEREOF, the undersigned does hereby certify and swear that the Eighth Amendment to the Declaration has been lawfully adopted.

THE ORCHARD LIMITED PARTNERSHIP,  
a Georgia limited partnership

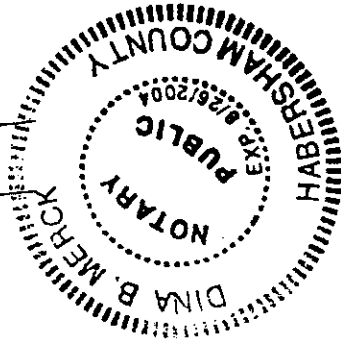
VEL, INC.  
General Partner

By: Virgil E. Lovell (SEAL)  
Virgil E. Lovell, President

Signed, sealed and delivered this  
20th day of April,  
2002, in the presence of:

Melissa C. Calkins  
Witness

Dina B. Meck  
Notary Public  
My Commission Expires: \_\_\_\_\_  
{Notarial Seal}





JOINDER OF ASSOCIATION

THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a Georgia not-for-profit corporation, hereby joins in this Eighth Amendment to the Declaration for the purposes of agreeing to perform its obligations as contained herein and consenting to the adoption of such Amendment.

THE ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a Georgia not-for-profit corporation.

By: [Signature] (SEAL)

Attest: [Signature] (SEAL)

Signed, sealed and delivered this 30th day of April, 2002, in the presence of:

[Signature]  
Witness

[Signature]  
Notary Public  
My Commission Expires: \_\_\_\_\_  
{Notarial Seal}

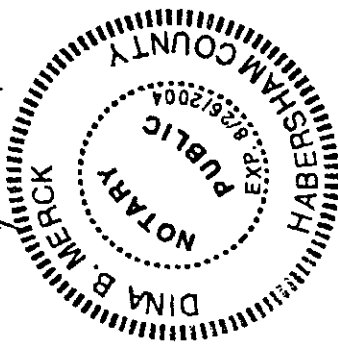


Exhibit "A"

After Recording, return to:  
Wes Robinson  
Carey, Jarrard & Walker  
P.O. Box 633  
Gainesville, GA 30503

STATE OF GEORGIA  
COUNTY OF HABERSHAM

OPTION AGREEMENT

FOR THE SALE AND PURCHASE OF REAL PROPERTY

THIS AGREEMENT, made by and between The Orchard Limited Partnership whose mailing address is P.O. Box 1270, Clarkesville, GA. 30523 (hereinafter referred to as "Seller") and Orchard Realty & Development Co., LLC, whose mailing address is P.O. Box 465, 2345 Main Street, Tucker, GA 30085-0465 (hereinafter referred to as "Purchaser"), entered into this 26<sup>th</sup> day of May, 2000..

WITNESSETH

FOR AND IN CONSIDERATION of the sum of TEN DOLLARS AND NO/100 Dollars (\$10), (said amount hereinafter referred to as the "Option Payment") and other good and valuable consideration, including the purchase this date of one hundred, twenty-five (125) residential lots located within The Orchard, in hand paid to Seller, receipt and sufficiency of which are hereby acknowledged by Seller, Seller does hereby grant and convey to Purchaser for the term hereof an exclusive and irrevocable option (hereinafter referred to as the "Option") to purchase upon the terms and conditions hereinafter set forth that certain tract or parcel of land located in Habersham County, Georgia, as more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof, together with all improvements, fixtures, plants, trees and shrubbery thereon (hereafter collectively referred to as the "Property").

1. *Term and Exercise of Option.* The term of the Option shall commence on the date hereof and shall terminate on April 26, 2002; if the option is not exercised prior to 5:00 P.M. Eastern Standard Time on April 26, 2002, then the Option and this Agreement shall at that time lapse and be of no further force or effect, Seller shall retain the Option Payment and neither Purchaser nor Seller shall have any rights or obligations hereunder. Purchaser may exercise the Option only during its term and only by the delivery of written notice to Seller, at the address of Seller hereinabove set forth, of Purchaser's election to exercise the Option. In the event that the Option is exercised, the Closing (as hereinafter defined) shall take place on or before the 26th day of May, 2002, at 5:00 P.M. in the offices of Carey, Jarrard & Walker, or such other place designated by Purchaser. Upon exercise of the Option, this Agreement shall constitute the agreement between Seller and Purchaser for the sale and purchase of the Property.

As a further limit on the execution of this Option, if at any time Purchaser's lot inventory from the lots purchased this same date within The Orchard reaches thirty (30) or fewer lots, Purchaser shall notify Seller within ten (10) days, and must exercise this Option within thirty (30) days of the date of sale of the lot which reduces the inventory to thirty (30) or fewer, or this Option shall terminate at that time. Purchaser shall have an additional thirty (30) in which to close on the purchase of the Option Property, should the Option be exercised in this manner.

2. *Condition Precedent.* Prior to exercising this Option, it shall be an express condition precedent of the Purchaser's right to exercise this Option, that any and all indebtedness due to The Orchard Limited Partnership under the terms of the Note executed this date between the parties shall be paid in full.

3. *Purchase Price.* The total purchase price (hereinafter referred to as the "Purchase Price") of the Property shall be that amount equal to FOUR MILLION DOLLARS (\$4,000,000). The Purchase Price shall be payable as follows:

A. The entire Purchase Price shall be paid at Closing in cash or by cashier's or certified check payable to the order of Seller.

4. *Representations and Warranties of Seller.* Seller hereby represents and warrants to Purchaser that Seller has the right, power and authority to enter into this Agreement and to sell the Property in accordance with the terms hereof, and Seller has granted no option to any other person to purchase the Property.

5. *Objections to Title.* Purchaser shall have ten (10) days from the date Purchaser exercises the Option hereunder to examine title to the Property and to furnish Seller a statement of objections to Seller's title to the Property, which objections, should they exist at the time of Closing, would make Seller unable to convey at Closing title to the Property provided for in Paragraph 5 hereof. Seller shall after receipt by Seller of such written statement of objections have twenty (20) days or until the date of Closing, whichever is later, in which to cure all such objections. If Purchaser does not timely provide the aforesaid statement of objections, Purchaser shall be deemed to have waived its right to object to the status of Seller's title to the Property. Seller shall, at or prior to Closing, pay all taxes and assessments which constitute a lien against the Property (other than those not then due and payable) and pay all indebtedness secured by the Property and obtain cancellations of all loan instruments affecting the Property.

6. *Closing and Conveyance of the Property.* At the Closing, each party shall execute and deliver all documents necessary to effect and complete the terms of this Agreement. Seller shall convey to Purchaser, by general warranty deed, good and marketable fee simple title, insurable as such by First American Title Insurance Company, or by another title insurance company licensed to do business in the State of Georgia, at standard rates, subject only to (i) ad valorem taxes and assessments not then due and payable (ii) zoning ordinances affecting the Property (iii) general utility easements of record servicing the Property (iv) and such other exceptions to title as Purchaser shall have approved, including a standard survey exception, unless a new survey is obtained pursuant to paragraph eight (8) below.

7. *Closing Costs and Prorations.* Seller shall pay the Georgia real estate transfer tax assessed in connection with the Closing, the legal fees of its own counsel and the cost of any title clearance documentation required to convey title pursuant to Paragraph 5 hereof. Purchaser shall pay all other closing costs including without limitation the cost of title insurance. All ad valorem taxes and annual special assessments and charges for the calendar year of Closing shall be prorated as of the date prior to Closing. If the Closing shall occur before the tax period is fixed for the current tax year, such taxes shall be apportioned on the basis of the tax rate for the preceding tax year applied to the latest

assessed valuation. Should the actual assessment of such taxes for the year in which the closing is consummated be different than the amount used as the basis for such proration, Purchaser and Seller, promptly upon receipt by either of them of the notice or bill for such taxes, shall make the proper adjustment so that such proration will be accurate, based upon the actual amount of such taxes. Payment of any such adjustment shall be made promptly to Seller or Purchaser, whichever shall be entitled to such payment, by the other party.

8. *The Possession of Property.* Seller shall deliver possession of the Property to Purchaser at the time of Closing.

9. *Survey.* Should the Purchaser desire to obtain a new survey of the Property, Purchaser, at Purchaser's sole cost and expense, shall obtain a survey from a Georgia Registered Land Surveyor, showing the Property to be conveyed under this Agreement. Promptly upon receipt of said survey, Purchaser will cause Seller to be provided with a copy thereof. The survey shall indicate the total number of acres of the Property to the nearest hundredth of an acre. The survey shall form the basis of the legal description to be used for the conveyance of the Property. In the event Seller disagrees with said survey, Seller shall have the right, at Seller's expense, to have a new survey of the Property prepared. In the event Purchaser does not accept Seller's survey, Purchaser's and Seller's surveyors shall name a third surveyor to survey the Property, the cost to be divided equally between Seller and Purchaser.

10. *Rights of Developer.* If for any reason, Purchaser fails to exercise this Option, than all rights, powers and duties as "Developer," conveyed to Purchaser pursuant to the Contract for Sale and Purchase of Real Property, executed by the parties, shall revert to the Seller.

11. *Brokerage Commissions.* Each party hereto represents to each other party hereto that it has not engaged any broker or agent in connection with this Agreement and each party hereby agrees to indemnify the other party and hold the other party harmless against all liability, loss, cost, damage and expense (including but not limited to attorneys' fees and costs of litigation) said other party shall ever suffer or incur because of any claim by any such broker, whether or not meritorious, for any fee, commission or other compensation with respect hereto resulting from the acts of the other party.

12. *Notices.* All notices, demands or requests required or permitted to be given pursuant to this Agreement shall be in writing and should be deemed to have been properly given or served and shall be effective upon being deposited in the United States mail, postpaid and registered or certified with return receipt requested, provided, however, the time period in which a response to any notice, demand or request must be given shall commence on the date of receipt by the addressee thereof. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been given shall constitute receipt of the notice, demand or request sent. Any such notice, demand or request shall be sent to the respective addresses set forth in the introductory paragraph of this Agreement.

13. *Inspection.* Commencing on the date hereof and continuing as long as this Agreement shall remain in force, Purchaser shall have the right to go on the Property personally or through agents, employers and contractors for the purpose of making boundary line and topographical surveys of same, soil tests and such other tests, analyses and investigations of the Property as Purchaser deems desirable. Purchaser shall pay all costs incurred in making such surveys, tests, analyses and investigations. Purchaser shall indemnify and hold harmless Seller from all damages and claims arising from Purchaser's entry under this Paragraph.

14. *Condition of the Property: Condemnation.* At Closing, Seller shall deliver to Purchaser possession of the Property in substantially the same condition as on the date of Purchaser's exercise of the Option. If all or any material portion of the Property shall be damaged prior to Closing, Purchaser may elect (i) to terminate this Agreement and if Purchaser so elects then Seller shall

refund the Option Payment to Purchaser or (ii) to consummate this transaction with full entitlement to receive any such insurance as is paid on the claim of loss or condemnation award as may be paid or payable with respect to such taking. Purchaser's election under this Paragraph shall be exercised by written notice to Seller given within ten (10) days after receipt of written notice from Seller that such damage has occurred or such taking is threatened or accomplished; failure of Purchaser to so notify Seller shall be deemed to be an election of clause (ii) above.

15. *Default by Purchaser.* If Purchaser fails to perform its obligations under this Agreement and/or to consummate the sale in accordance therewith, then Seller may, at its option (a) proceed to enforce this Agreement by an action of specific performance or other procedure in which event the Purchaser shall pay reasonable attorney's fees and court costs or (b) declare this Agreement in default and retain the Option Payment as liquidated damages, the exact amount of actual damages being incapable of ascertainment; and in the latter event, Seller shall be released from all liability hereunder and this Agreement shall become null and void.

16. *Default by Seller.* If Seller is unable to give good and marketable title to the Property or such as will be insured by a reputable title insurance company as provided in Paragraph 5 hereof, then Purchaser shall have the option of (a) taking such title as Seller can give without abatement of Purchase Price or (b) cancelling this Agreement, in which case there shall be no further liability or obligation by either of the parties hereunder and this Agreement shall become null and void.

17. *Miscellaneous.*

A. Time is of the essence of this Agreement.

B. This Agreement should be governed by and construed in accordance with the laws of the State of Georgia.

C. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one and the same instrument.

D. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

E. This Agreement shall survive the Closing and shall not be merged into any of the documents executed at Closing.

F. This Agreement supersedes all prior discussions and agreements between Seller and Purchaser with respect to the conveyance of the Property and all other matters contained herein and constitutes the sole and entire agreement between Seller and Purchaser with respect thereto. This Agreement may not be modified or amended unless such amendment is set forth in writing and signed by both Seller and Purchaser.

G. This Agreement shall apply to, inure to the benefit of and be binding upon and enforceable against Seller and Purchaser and their respective heirs, legal representatives, successors and assigns, as the case may be.

18. *Assignment.* This option may not be assigned by the Purchaser without the express written consent of the Seller.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as to the date first above written.

SELLER:

As to Seller, executed in the presence of:

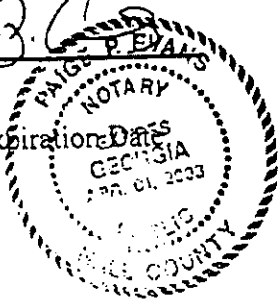
The Orchard Limited Partnership  
By: VEL, Inc. general partner

By: Virgil E. Lovell  
Virgil E. Lovell  
Title: President

Walter C. Alford  
Unofficial Witness

Paige P. Evans  
Notary Public

Commission Expires Apr. 01, 2003



PURCHASER:

Orchard Realty & Development Co., LLC

By: Walter C. Alford  
Walter C. Alford  
Title: Managing Member

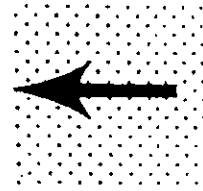
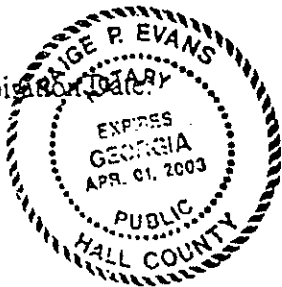
By: James L. Enix  
James L. Enix  
Title: Member

As to Purchaser, executed in the presence of:

Walter C. Alford  
Unofficial Witness

Paige P. Evans  
Notary Public

Commission Expires Apr. 01, 2003



**SIGN  
HERE**

EXHIBIT "A"

OPTION

TRACT ONE:

All that tract or parcel of land lying and being in Land Lot 95 & 96, 13<sup>th</sup> Land District, Habersham County, containing 77.96 acres, and being described as TRACT FOUR of a map prepared for "The Orchard," prepared by Lovell, Duvall, Miller & Assoc., Georgia Registered Land Surveyor, dated July 23, 1997, recorded in plat book 42 page 217, Habersham County records, said plat is incorporated herein by reference for a more full and complete description of said property.

TRACT TWO:

All that tract or parcel of land lying and being in Land Lots 94, 95 116 & 117, 13<sup>th</sup> Land District Hall County, containing 174.98 acres, described as TRACT ONE, according to a survey for Melvin Eugene Grills, prepared by Hubert Lovell, dated April 22, 1997, recorded at plat book 41, page 297, Habersham County records, which survey is incorporated herein by reference.

LESS AND EXCEPT the following two parcels:

1. All that tract All that tract or parcel of land lying and being in Land Lots 95 13<sup>th</sup> Land District Hall County, containing 7.77 acres, described as Tract 1-A, and 19.07 acres, described as Tract 1-B, according to a survey for James D. Esslinger, prepared by Lovell, Duvall, Miller & Assoc., Georgia Registered Land Surveyors, dated February 12, 1999, recorded at plat book 48, page 170, Habersham County records, which survey is incorporated herein by reference.
2. All that tract or parcel of land lying and being in Land Lots 95 & 116, 13<sup>th</sup> Land District Hall County, containing 50.0 acres, according to a survey for, Carlos Lovell, prepared by Hubert Lovell, dated April 22, 1997, recorded at plat book 41, page 296, Habersham County records, which survey is incorporated herein by reference.

TRACT THREE

All that tract or parcel of land lying and being in Land Lots 116 & 123, 13<sup>th</sup> Land District, Habersham County, containing 180.13 acres, and more particularly described as Tract One, on a survey for "The Orchard," prepared by Lovell, Duvall, Miller & Assoc., Georgia Registered Land Surveyors, dated July 23, 1997, recorded in deed book 42, page 217, Habersham County records, which survey is incorporated herein by reference for a more full and complete description of said property.

**LESS AND EXCEPT:** The following six parcels:

1. All that tract or parcel of land lying and being in **Phase VI-A**, according to a survey entitled "The Orchard - Phase 6A," by Davidson Land Surveying, Inc., Georgia Registered Land Surveyors, dated March 5, 1999, recorded in plat book 46, pages 219-222, Habersham County Records, totaling approximately 82.746 acres, which survey is incorporated herein by reference for a more full and complete description of said property.
2. All that tract or parcel of land lying and being in of **Phase X**, according to a survey entitled "Final Plat, Phase Ten, The Orchard," by Hubert Lovell, Georgia Registered Land Surveyor, dated October 31, 1996, recorded in Plat Book 43, page 93, Habersham County Records, totaling approximately 10.69 acres which survey is incorporated herein by reference for a more full and complete description of said property.
3. All that tract or parcel of land lying and being in **Phase XI**, according to a survey entitled "Final Plat, Phase Eleven, The Orchard," by Hubert Lovell, Georgia Registered Land Surveyor, dated December 20, 1996, recorded in plat book 43, page 92, Habersham County Records, totalling approximately 20.03 acres, which survey is incorporated herein by reference for a more full and complete description of said property.
4. All that tract or parcel of land lying and being in **Phase XII**, according to a survey entitled "Final Plat, Phase Twelve, The Orchard," by Hubert Lovell, Georgia Registered Land Surveyor, dated April 14, 1995, recorded in plat book 43, page 94, Habersham County Records, totaling approximately 15.80 acres, which survey are incorporated herein by reference for a more full and complete description of said property.
5. All that tract or parcel of land lying and being in Land Lot 116 & 123, 13<sup>th</sup> Land District, Habersham County, containing 4.872 acres, described as lot 1214, and 1.976 acres and designated as lot 1215, according to a survey for "The Orchard - revision of Phase 12," by Holcomb Surveying, dated March 7, 1999, revised August 3, 1999, recorded in plat book 47, page 173, Habersham County records, which survey is incorporated herein by reference for a more full and complete description of said property.
6. All that tract or parcel of land lying and being in Land Lot 116, 13<sup>th</sup> Land District, Habersham County, containing approximately 3.84 acres, and more particularly described as all of "Final Plat Phase 7A - Orchard Limited Partnership," prepared by Holcomb Surveying, Inc., dated May, 18, 1999, recorded in plat book 47, page 8, Habersham County records, which survey is incorporated herein by reference.

The resulting TRACT THREE containing 40.178 acres, more or less, and comprising all of Phase VI-B.



CONTRACT FOR THE SALE AND  
PURCHASE OF REAL PROPERTY

THIS CONTRACT, made as of this \_\_\_\_\_ day of May, 2000, by and between The Orchard Limited Partnership (hereinafter referred to as "Seller") and Orchard Realty & Development Co., LLC (hereinafter referred to as "Purchaser").

WITNESSETH

WHEREAS, Seller wishes to sell to Purchaser, and Purchaser wishes to purchase from Seller, certain real property more particularly hereinafter described upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises and of the letter of credit hereinbelow described and for other valuable considerations, in hand paid by Purchaser to Seller, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby covenant and agree as follows:

1. *Sale of Property.* Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, upon the terms and conditions hereinafter provided, that certain real property lying and being in the 13<sup>th</sup> land District of Habersham County, consisting of one-hundred, twenty five (125), developed lots within The Orchard subdivision, and being more particularly described in Exhibit "A" attached hereto and by reference made a part hereof, together with any improvements located thereon, any fixtures affixed thereto, all right, title and interest of Seller in and to any public rights-of-way or private drives adjacent thereto, and all right, title and interest of Seller, if any, in and to all common areas and common facilities such as swimming pools, tennis courts and other recreation areas located within said subdivision.

2. *Purchase Price and Time of Payment.* The purchase price to be paid by Purchaser to Seller for the Property shall be SIX MILLION AND NO/100 Dollars (\$6,000,000) (hereinafter referred to as the "Purchase Price"), payable, at Purchaser's option, either (i) all cash (certified or cashier's check) at the closing of the transaction contemplated by this Contract (hereinafter referred to as the "Closing"), or (ii) as follows:

A. Purchaser shall pay to Seller the sum of FOUR MILLION, FIVE HUNDRED THOUSAND and NO/100 Dollars (\$4,500,00) in cash (certified or cashier's check) at the Closing.

B. The balance of the Purchase Price shall be paid in the form of a purchase money indebtedness evidenced by a promissory note, and secured by a deed to secure debt. The Note and the Security Deed shall contain the provisions hereinbelow stated.

C. The Note shall provide that the balance of the Purchase Price shall bear no annual interest, to the extent interest is imputed to the Seller by either the Internal Revenue Service, or the State of Georgia Department of Revenue.

The Note shall further provide, without limitation, that the maker thereof may prepay the indebtedness evidenced thereby, in whole or in part, at any time and from time to time without penalty, premium, or payment of unearned interest. The Note shall further provide that written notice

of default thereunder or under the Security Deed shall be given by the holder of the Note to the Maker of the Note and the then owners of record title to the Property (if such be other than the maker of the Note) and that a period of ten (10) days (as to monetary defaults) and thirty (30) days (as to all other defaults) shall be allowed for the cure of such default prior to any acceleration of the indebtedness evidenced by the Note or any commencement of foreclosure proceedings under the Security Deed.

D. The Security Deed shall convey the Property to secure the indebtedness evidenced by the Note. The Seller understands that this Security Deed will be subordinate to a Security Deed executed the same date in favor of Regions Bank in the amount of \$4,500,000. The Security Deed shall provide that the indebtedness secured thereby may be prepaid in accordance with the provisions of the Note. The Security Deed shall further provide that written notice of default thereunder or under the Note shall be given by the grantee under the Security Deed to the maker of the Note and that a period of ten (10) days (as to monetary defaults) and thirty (30) days (as to all other defaults) shall be allowed for the cure of such default, by the maker of the Note, prior to any acceleration of the indebtedness evidenced by the Note or any commencement of foreclosure proceedings under the Security Deed. The Security Deed shall further provide that the Property may be developed by Purchaser in connection with a scheme of development which is commercially reasonable and which does not materially adversely affect the value of the Property.

3. *Option to Purchase Additional Land.* As a part of the consideration of this Agreement, Seller has agreed to grant to the Purchaser an option to purchase the additional land described in the attached Exhibit "B." The terms shall payment of FOUR MILLION AND NO/100 Dollars (\$4,000,000), within the term of the option, which shall be two years from the date of closing. In order to exercise this option, Purchaser must previously satisfy any outstanding indebtedness to the Seller arising out of the initial purchase, all as more particularly set forth in the Option Agreement to be executed by the parties at the time of closing.

4. *Joint Venture Agreement.* As part of the consideration of this Agreement, Seller hereby assigns, at the time of closing, all of its rights, powers and duties in and to the "Phase 14 Perry/Orchard Joint Venture Agreement" attached hereto as Exhibit "C." This Agreement is restricted to the property described in the attached Exhibit "D." It is intended hereby that the rights of John and Elena Perry, the Grantees set forth in said Agreement, shall not be affected. The Real Estate Commission set forth in said Agreement shall be paid to "Orchard Realty." The Lot Development Fee of SEVEN THOUSAND AND NO/100 Dollars (\$7,000), shall be paid to The Orchard Limited Partnership. The balance shall be divided pursuant to said Agreement between Purchaser and the Perrys. Seller agrees to complete the paving of the roadways within Phase XIV at Seller's expense. Purchaser shall be entitled to begin marketing lots within Phase XIV at the time of closing.

5. *Tests, Borings and Examinations.* Seller will permit representatives of Purchaser to enter upon the Property for the purposes of conducting soil tests, borings, percolation tests, and any other tests, inspections, or examinations that Purchaser desires in regard to the engineering and planning for development of the Property, including (but not by way of limitation) such other tests, inspections, or examinations that Purchaser may desire to determine subsurface or topographic conditions of the Property. Purchaser shall hold Seller harmless for any and all costs, expenses, liabilities and damages resulting from the performance by Purchaser or Purchaser's representatives of such tests, inspections, or examinations. Purchaser shall use due care not to disrupt Seller's use of and activities on the Property while conducting such tests. Purchaser shall cause such tests as Purchaser desires to be conducted on or before forty-five (45) days from Completion of Assemblage, and, if Purchaser in its sole discretion shall conclude from the results of said tests that the commercial development of the Property is not economically feasible, and Purchaser shall so notify Seller in writing on or before forty-five (45) days from Completion of Assemblage, then this Contract shall be deemed of no further force or effect, and the letter of credit referred to in Paragraph

24 hereinbelow shall be returned to Purchaser as soon as reasonably possible.

6. *Examination of Title and Defects in Title.* Purchaser shall have until the time of closing in which to examine Seller's title to the Property and in which to furnish Seller with a written statement of defects in such title, which defects, should they exist at the time of Closing, would make Seller unable to convey title to the Property as provided in Paragraph 8 hereinbelow. Seller shall have thirty (30) days after receipt by Seller of such written statement of defects or until the date of Closing, whichever period shall be the greater, in which to cure all defects, whether reported to Seller by Purchaser as provided for in this Paragraph 6 or otherwise known to Seller. Seller agrees to use its best efforts to cure such defects promptly. Purchaser shall also have right, at Purchaser's sole election and in Purchaser's sole discretion, to waive any defect in title known to Purchaser by giving notice in writing to Seller of the specific defect which Purchaser waives, whereupon Purchaser may close the transaction in accordance with this Contract.

7. *Closing.* The Closing will be held on May 26, 2000, in the law offices of Carey, Jarrard & Walker.

~~8. *Conveyance of Property.* At the closing, Seller shall execute and deliver a general warranty deed, with full warranties of title, conveying marketable fee simple title to the property, free and clear of all mortgages, security deeds, liens and other encumbrances of any kind, except for ad valorem taxes not yet due and payable and the lis pendens notice discussed below.~~

9. *Orchard Realty.* In addition to the Real Property described in the attached Exhibit "A," Seller shall convey at the time of closing, all right title and interest in and to "Orchard Realty," including but not limited to the actual sales office located on the Property, and all furniture and equipment contained therein.

10. *Warranties of Seller.* Seller warrants to Purchaser as follows.

A. Seller presently has good and marketable fee simple title to the Property, subject only to the lis pendens discussed below,

B. The Property will be in substantially the same condition at time of Closing as on the date hereinabove first written, subject to the provisions of Paragraph 11 hereinbelow.

C. The Property has private water system sufficient to accommodate required capacity for residential development.

11. *Termination.* Purchaser may terminate this Agreement without penalty in the event any of the following conditions exist at the scheduled time of closing..

A. Any notice shall be given of proceeding filed or commenced by any governmental authority or other agency having powers of condemnation concerning the Property or any portion thereof,

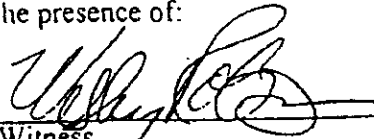
B. Purchaser, at Purchaser's expense, shall have applied to First American Title Insurance Company for a title insurance binder or commitment agreeing to issue, at standard rates, a title insurance policy to Purchaser insuring fee simple title to the Property in favor of Purchaser without exception except for the then current State and County ad valorem taxes and those items more particularly described in Paragraph 8 hereinabove, and said title insurance company shall have refused to issue such binder;

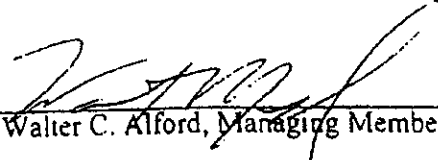
C. Failure of Seller to deliver to Purchaser at Closing an affidavit of Seller stating that there are no outstanding indebtedness, security agreements, financing statements, or title

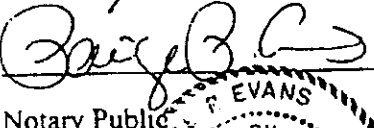
As to Purchaser:


PURCHASER:  
Orchard Realty & Development Co., LLC

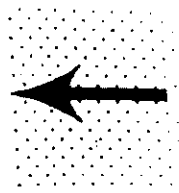
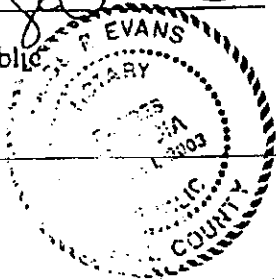
Signed, sealed, and delivered in  
the presence of:

  
\_\_\_\_\_  
Witness

By:   
\_\_\_\_\_  
Walter C. Alford, Managing Member

  
\_\_\_\_\_  
Notary Public

By:   
\_\_\_\_\_  
James L. Enix, Member



### TRACT FIVE

All that tract or parcel of land lying and being in Land Lot 116, 13<sup>th</sup> Land District, Habersham County, containing 2.273 acres, and being designated as lot 159, according to a survey for "The Orchard - Revision of Phase I," prepared by Holcomb Surveying, dated March 20, 1999, revised July 18, 1999, and September 12, 1999, recorded in plat book 47, page 168, Habersham County records, which survey is incorporated herein by reference for a more full and complete description of said property.

### Phase II

All of lot 40 of Phase II, according to a survey entitled "Final Plat, Phase Two, The Orchard," by Hubert Lovell, Georgia Registered Land Surveyor, dated April 21, 1989, recorded in plat book 27, page 186-187, Habersham County Records, which survey is incorporated herein by reference for a more full and complete description of said property.

### Phase III

All of lots 43, 51, 52, 53 & 60 of Phase III, according to a survey entitled "Final Plat, Phase Three, The Orchard," by Hubert Lovell, Georgia Registered Land Surveyor, dated January 22, 1990, recorded in plat book 29, page 299, Habersham County Records, which survey is incorporated herein by reference for a more full and complete description of said property.

### Phase IV

All of lots 22, 23, 43, 48, 49, 50, 51, 52, & 56 of Phase IV, according to a survey entitled "Final Plat, Phase Four, The Orchard," by Hubert Lovell, Georgia Registered Land Surveyor, dated October 5, 1993, recorded in plat book 35, page 105, Habersham County Records, which survey is incorporated herein by reference for a more full and complete description of said property.

### Phase VI-A

All of lots 1, 2, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 27, 28, 29, 32, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 62, 63, 64, 65 & 66 of Phase VI-A, according to a survey entitled "The Orchard - Phase 6A," by Davidson Land Surveying, Inc., Georgia Registered Land Surveyors, dated March 5, 1999, recorded in plat book 46, pages 219-222, Habersham County Records, which survey is incorporated herein by reference for a more full and complete description of said property.

### Phase VII

All of lots 1, 5, 6, 7, 8, 9, 10, 25, 59, 60, 61 of Phase VII, according to a survey entitled "Final Plat, Phase Seven, The Orchard," by Hubert Lovell, Georgia Registered Land Surveyor, dated July 8, 1994, recorded in plat book 36, page 209, Habersham County Records, which survey is incorporated herein by reference for a more full and complete description of said property.

All that tract or parcel of land lying and being in Land Lot 123, 13<sup>th</sup> Land District, Habersham County, containing 1.25 acres, described as lot 774 according to a survey for "The Orchard - revision of Phase 7," by Holcomb Surveying, dated March 30, 1999, revised July 18, 1999 and September 12, 1999, recorded in plat book 47, page 170, Habersham County records, which survey is incorporated herein by reference for a more full and complete description of said property.

### Phase VIII

All of lots 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13 & 14 of Phase VIII, according to a survey entitled "Final Plat, Phase Eight, The Orchard," by Hubert Lovell, Georgia Registered Land Surveyor, dated June 22, 1995, recorded in Plat Book 38, page 19, Habersham County Records, which survey is incorporated herein by reference for a more full and complete description of said property.

### Phase IX

All of lots 24, 26, 27, 28, 29, 30 & 32 of Phase IX, according to a survey entitled "Final Plat, Phase Nine, The Orchard," by Hubert Lovell, Georgia Registered Land Surveyor, dated June 21, 1995, recorded in plat book 38, page 17, Habersham County Records, which survey is incorporated herein by reference for a more full and complete description of said property.

### Phase X

All of lots 1, 3, 8 & 9 of Phase X, according to a survey entitled "Final Plat, Phase Ten, The Orchard," by Hubert Lovell, Georgia Registered Land Surveyor, dated October 31, 1996, recorded in Plat Book 43, page 93, Habersham County Records, which survey is incorporated herein by reference for a more full and complete description of said property.

### Phase XI

All of lots 4, 5, 6, 7, 8, 9, 10, 14 & 15 of Phase XI, according to a survey entitled "Final Plat, Phase Eleven, The Orchard," by Hubert Lovell, Georgia Registered Land Surveyor, dated December 20, 1996, recorded in plat book 43, page 92, Habersham County Records, which survey is incorporated herein by reference for a more full and complete description of said property.

### Phase XII

All of lots 1, 5, 11, 12 & 13 of Phase XII, according to a survey entitled "Final Plat, Phase Twelve, The Orchard," by Hubert Lovell, Georgia Registered Land Surveyor, dated April 14, 1995, recorded in plat book 43, page 94, Habersham County Records, which survey are incorporated herein by reference for a more full and complete description of said property.

All that tract or parcel of land lying and being in Land Lot 116 & 123, 13<sup>th</sup> Land District, Habersham County, containing 4.872 acres, described as lot 1214, and 1.976 acres and designated as lot 1215, according to a survey for "The Orchard - revision of Phase 12," by Holcomb Surveying, dated March 7, 1999, revised August 3, 1999, recorded in plat book 47, page 173, Habersham County records, which survey is incorporated herein by reference for a more full and complete description of said property.

Also conveyed herein:

All that tract or parcel of land lying and being in Land Lot 116, 13<sup>th</sup> Land District, Habersham County, containing 0.843 acres, described as lot 8-1, according to a survey for "The Orchard," prepared by Holcomb Surveying, Inc., dated March 15, 1999, recorded in plat book 46, page 192, Habersham County records, which survey is incorporated herein by reference for a more full and complete description of said property

All that tract or parcel of land lying and being in Land Lot 115, 13<sup>th</sup> Land District, Habersham County, Georgia, designated as the "Water Tank Lot" acres according to the "Final Plat - Phase Three, The Orchard," dated November 22, 1990, recorded in plat book 29, page 299, Habersham County Records, which survey is incorporated herein by reference for a more full and complete description, along with the water system as described in plat book 30, page 268, Habersham County records..

All that tract or parcel of land lying and being in Land Lot 96 of the 13<sup>th</sup> Land District, Habersham County, commonly referred to as "Yates Lake," and designated as "Lake" on Final Plat Phase Four, The Orchard Subdivision, prepared by Hubert Lovell, Georgia Registered Land Surveyor, dated October 5, 1993, recorded in Plat Book 35, page 105, Habersham County Records, which survey is incorporated herein by reference.

All that tract or parcel of land lying and being in Land Lot 116, 13<sup>th</sup> Land District, Habersham County, Georgia, commonly referred to as "Orchard Lake," "Golden Lake," and "Baldwin Lake," as shown on a survey for The Orchard Club, Inc., dated April 8, 1998, recorded in Plat Book 44, pages 123-127, Habersham County Records, which survey is incorporated herein by reference.

Together with all roadways lying and being within The Orchard Subdivision as shown on the above referenced surveys.

The above-described property is conveyed subject to Declaration of Covenants and Restrictions for "The Orchard" dated November 21, 1988, recorded in the office of the Clerk of Superior Court of Habersham County, Georgia deed records in deed book 240, pages 419 et seq.; as amended by an instrument dated March 13, 1989, recorded in deed book 244, page 25; ~~and as further amended by an instrument dated April 5, 1989, recorded in deed book 244, page 396, et. seq.;~~ and as further amended by an instrument dated August 22, 1994 and recorded in deed book 322, page 491 et seq. and as further amended by an instrument dated August 10, 1997 and recorded in deed book 396, page 520 et seq.; and as further amended by an instrument dated September 25, 1998 and recorded in deed book 414, page 749 et seq.; and as further amended by an instrument dated January 25, 2000 and recorded in deed book 464, page 798 et seq. in aforesaid records.



EXHIBIT "B"

OPTION

TRACT ONE:

All that tract or parcel of land lying and being in Land Lot 95 & 96, 13<sup>th</sup> Land District, Habersham County, containing 77.96 acres, and being described as TRACT FOUR of a map prepared for "The Orchard," prepared by Lovell, Duvall, Miller & Assoc., Georgia Registered Land Surveyor, dated July 23, 1997, recorded in plat book 42 page 217, Habersham County records, said plat is incorporated herein by reference for a more full and complete description of said property.

TRACT TWO:

All that tract or parcel of land lying and being in Land Lots 94, 95 116 & 117, 13<sup>th</sup> Land District Hall County, containing 174.98 acres, described as TRACT ONE, according to a survey for Melvin Eugene Grills, prepared by Hubert Lovell, dated April 22, 1997, recorded at plat book 41, page 297, Habersham County records, which survey is incorporated herein by reference.

LESS AND EXCEPT the following two parcels:

1. All that tract All that tract or parcel of land lying and being in Land Lots 95 13<sup>th</sup> Land District Hall County, containing 7.77 acres, described as Tract 1-A, and 19.07 acres, described as Tract 1-B, according to a survey for James D. Esslinger, prepared by Lovell, Duvall, Miller & Assoc., Georgia Registered Land Surveyors, dated February 12, 1999, recorded at plat book 48, page 170, Habersham County records, which survey is incorporated herein by reference.
2. All that tract or parcel of land lying and being in Land Lots 95 & 116, 13<sup>th</sup> Land District Hall County, containing 50.0 acres, according to a survey for, Carlos Lovell, prepared by Hubert Lovell, dated April 22, 1997, recorded at plat book 41, page 296, Habersham County records, which survey is incorporated herein by reference.

TRACT THREE

All that tract or parcel of land lying and being in Land Lots 116 & 123, 13<sup>th</sup> Land District, Habersham County, containing 180.13 acres, and more particularly described as Tract One, on a survey for "The Orchard," prepared by Lovell, Duvall, Miller & Assoc., Georgia Registered Land Surveyors, dated July 23, 1997, recorded in deed book 42, page 217, Habersham County records, which survey is incorporated herein by reference for a more full and complete description of said property.

**LESS AND EXCEPT:** The following six parcels:

1. All that tract or parcel of land lying and being in **Phase VI-A**, according to a survey entitled "The Orchard - Phase 6A," by Davidson Land Surveying, Inc., Georgia Registered Land Surveyors, dated March 5, 1999, recorded in plat book 46, pages 219-222, Habersham County Records, totaling approximately 82.746 acres, which survey is incorporated herein by reference for a more full and complete description of said property.
2. All that tract or parcel of land lying and being in of **Phase X**, according to a survey entitled "Final Plat, Phase Ten, The Orchard," by Hubert Lovell, Georgia Registered Land Surveyor, dated October 31, 1996, recorded in Plat Book 43, page 93, Habersham County Records, totaling approximately 10.69 acres which survey is incorporated herein by reference for a more full and complete description of said property.
3. All that tract or parcel of land lying and being in **Phase XI**, according to a survey entitled "Final Plat, Phase Eleven, The Orchard," by Hubert Lovell, Georgia Registered Land Surveyor, dated December 20, 1996, recorded in plat book 43, page 92, Habersham County Records, totalling approximately 20.03 acres, which survey is incorporated herein by reference for a more full and complete description of said property.
4. All that tract or parcel of land lying and being in **Phase XII**, according to a survey entitled "Final Plat, Phase Twelve, The Orchard," by Hubert Lovell, Georgia Registered Land Surveyor, dated April 14, 1995, recorded in plat book 43, page 94, Habersham County Records, totaling approximately 15.80 acres, which survey are incorporated herein by reference for a more full and complete description of said property.
5. All that tract or parcel of land lying and being in Land Lot 116 & 123, 13<sup>th</sup> Land District, Habersham County, containing 4.872 acres, described as lot 1214, and 1.976 acres and designated as lot 1215, according to a survey for "The Orchard - revision of Phase 12," by Holcomb Surveying, dated March 7, 1999, revised August 3, 1999, recorded in plat book 47, page 173, Habersham County records, which survey is incorporated herein by reference for a more full and complete description of said property.
6. All that tract or parcel of land lying and being in Land Lot 116, 13<sup>th</sup> Land District, Habersham County, containing approximately 3.84 acres, and more particularly described as all of "Final Plat Phase 7A - Orchard Limited Partnership," prepared by Holcomb Surveying, Inc., dated May, 18, 1999, recorded in plat book 47, page 8, Habersham County records, which survey is incorporated herein by reference.

The resulting TRACT THREE containing 40.178 acres, more or less, and comprising all of Phase VI-B.

Phase 14  
Perry/Orchard Joint Venture Agreement

LOT PAYMENT RELEASE SCHEDULE

Principal and interest shall be due and payable upon the sales of individual lots, in accordance with the following payment schedule:

1. First 14 Lots in the following order of priority of disbursements of sale proceeds:
  - (a) Grantees (principal reduction - \$30,000);
  - (b) real estate commission (10% of sales price);
  - (c) reimburse lot development fee to Grantor (\$7,000);
  - (d) ~~split balance of proceeds between Grantor and Grantees (50%-50%);~~
2. Next 12 Lots in the following order of priority of disbursements of sale proceeds:
  - (a) Grantees (principal reduction - \$20,000);
  - (b) real estate commission (10% of sales price);
  - (c) reimburse lot development fee to Grantor (\$7,000);
  - (d) split balance of proceeds between Grantor and Grantees (50%-50%);
3. One-half of the next remaining Lots in the following order of priority of disbursements of sale proceeds (provided, however, if the number of remaining Lots is an odd number such that one-half of such number would not be a whole number, then sale proceeds shall be disbursed pursuant to this subsection (c) with respect to that number of next remaining Lots equal to the next highest whole number above one-half of the number of next remaining Lots):
  - (a) Grantees (principal reduction - \$19,000);
  - (b) real estate commission (10% of sales price);
  - (c) reimburse lot development fee to Grantor (\$7,000);
  - (d) split balance of proceeds between Grantor and Grantees (50%-50%);
4. Last remaining Lots in the following order of priority of disbursements of sale proceeds:

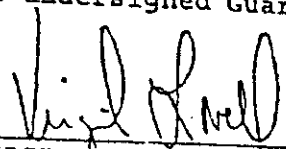
- (a) Grantees (principal reduction - quotient obtained by dividing (x) the principal balance outstanding following the last payment under subsection (c) above by (y) the number of Developed Lots then last remaining);
- (b) real estate commission (10% of sales price);
- (c) reimburse lot development fee to Grantor (\$7,000);
- (d) split balance of proceeds between Grantor and Grantees (50%-50%);

No other amounts (real estate transfer tax, lot release recording charges or other charges or expenses) incurred in connection with a lot sale shall be deducted from lot sale proceeds in determining the net sales proceeds under subsections 1(d), 2(d), 3(d) or 4(d) above. All such expenses shall be paid solely by Grantor, either from its aforementioned share of net sale proceeds or from other funds of Grantor. No less than forty (40) Lots shall be developed upon the property, and each Lot shall be sold for cash at a price which will maintain a minimum cumulative average price for all Lots then sold of Seventy Thousand and No/100 Dollars (\$70,000.00) cash.

CONSENT OF GUARANTOR

THE UNDERSIGNED, VIRGIL E. LOVELL, as Guarantor of the payment and performance by The Orchard Limited Partnership of its obligations under the above-described Deed, hereby consents to the foregoing modification thereof and agrees that his liability as Guarantor shall extend to and include the terms and provisions of the above Amendment, as fully and to the same extent as though the same had originally been incorporated into the Deed.

WITNESS the hand and seal of the undersigned Guarantor, as of the 25<sup>th</sup> day of September, 1998.

  
 \_\_\_\_\_ (Seal)  
 VIRGIL E. LOVELL

---

**EXHIBIT "D"**

All that tract or parcel of land lying and being in land lots 94, 95, 116, 117, 13<sup>th</sup> Land District, Habersham County, Georgia, and being described as 50.0 acres according to a plat for Carlos Lovell, dated April 22, 1997, and prepared by Hubert Lovell, registered surveyor, which plat is recorded at plat book 41, page 296. Habersham County records, incorporated herein by reference.

---

2011 JAN 21 PM 2:34

944 392-804  
Book Page Recorded  
David C. Wall

**NINTH AMENDMENT TO THE  
DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR THE ORCHARD**

THE NINTH AMENDMENT (hereinafter referred to as the "Amendment" to the Declaration of Covenants and Restrictions for the Orchard is made this 30<sup>th</sup> day of November 2010.

**WITNESSETH:**

WHEREAS, The Orchard Limited Partnership, a Georgia limited partnership (hereinafter referred to as the "Developer"), joined The Orchard Property Owners Association, Inc., a Georgia not-for-profit corporation (hereinafter referred to as "Association") and by Fred Lovell, a resident of Habersham County, Georgia (hereinafter referred to as "Lovell") have heretofore executed a Declaration of Covenants and Restrictions for the The Orchard, dated November 21, 1988 (hereinafter "Declaration of Covenants and Restrictions") and recorded in the office of the Clerk of the Superior Court of Habersham County, Georgia, in Deed Book 240, Page 419, *et seq.*; and

WHEREAS, the parties hereto have heretofore executed a First Amendment to the Declaration of Covenants and Restrictions, dated April 13, 1989, recorded in Deed Book 244, Page 25, Habersham County, Georgia Records; and

WHEREAS, the parties hereto have heretofore executed a Second Amendment to the Declaration of Covenants and Restrictions, dated April 5, 1989, recorded in Deed Book 344, Page 396, Habersham County, Georgia Records; and

WHEREAS the parties hereto have heretofore executed a Third Amendment to the Declaration of Covenants and Restrictions, dated August 22, 1994, recorded in Deed Book 322, Page 421, Habersham County, Georgia Records; and

WHEREAS, the parties hereto have heretofore executed a Fourth Amendment to the Declaration of Covenants and Restrictions, dated August 29, 1997, recorded in Deed Book 384, Page 113, Habersham County, Georgia Records; and

WHEREAS, the parties hereto have heretofore executed a Fifth Amendment to the Declaration of Covenants and Restrictions, dated September 25, 1998, recorded in Deed Book 414, Page 749, Habersham County, Georgia Records; and

WHEREAS, the parties hereto have heretofore executed a Sixth Amendment to the Declaration of Covenants and Restrictions, dated February 22, 2000, recorded in Deed Book 464, Page 798, Habersham County, Georgia Records; and

WHEREAS, a Seventh Amendment to the Declaration of Covenants and Restrictions, dated April 25, 2002, was executed and subsequently recorded in Deed Book 474, Page 227, Habersham County, Georgia Records; and

WHEREAS, on April 30, 2002, an Eighth Amendment to the Declaration of Covenants and Restrictions was executed, deleting and rescinding the Seventh Amendment in its entirety, said Eighth Amendment being recorded in the Habersham County Records; and

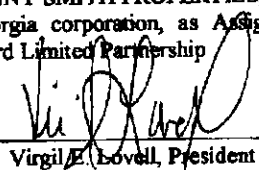
WHEREAS, on April 21, 2008, Granny Smith Properties, Inc. (hereinafter referred to as "Granny Smith"), as Assignee of all the rights and privileges of The Orchard Limited Partnership (the "Developer") under the Declaration of Covenants and Restrictions, gave notice of the renewal of the Declaration and Covenants for a period of twenty (20) years to and through November 21, 2028, which Notice of Renewal was recorded at Deed Book 846, Pages 79-80, Habersham County, Georgia Records; and

WHEREAS, under the Declaration, Granny Smith, as Assignee of Developer, is authorized under the terms of the Declaration of Covenants and Restrictions to amend the Declaration without the joinder of or consent of any other party;

NOW, THEREFORE, the Declaration of Covenants and Restrictions is hereby amended to provide that the "Association" as defined in the Declaration at Article 1.4 shall hereinafter be The Orchard Golf and Tennis Club Properties Owners Association, Inc., a Georgia non-profit corporation, which shall henceforth have all the rights, privileges and obligations previously granted to The Orchard Property Owners Association, Inc. under its by-laws and the Declaration of Covenants and Restrictions.

IN WITNESS WHEREOF, the undersigned attest that this Ninth Amendment to the Declaration of Covenants and Restrictions was duly and lawfully adopted this 30<sup>th</sup> day of November, 2010.

GRANNY SMITH PROPERTIES, INC.,  
a Georgia corporation, as Assignee of The  
Orchard Limited Partnership

By:   
Virgil E. Lovell, President

Signed, sealed and delivered this 30<sup>th</sup> day  
of November, 2010, in the presence of:

*Kelina Mills*  
Witness

*[Signature]*  
Notary Public

My Commission Expires 10/2/2011  
Notary Seal  
Fulton County  
State of Georgia  
My Commission Expires Oct 2, 2011



**Tenth Amendment to the Declarations of Covenants  
And Restrictions for the Orchard**

2013 FEB 26 PM 3:35

1018 506-526

Book Page Recorded

Deed Book Page

This Tenth Amendment (hereinafter as the "Amendment") to the Declaration of Covenants and Restrictions for the Orchard is made this 26<sup>th</sup> day of February, 2013.

WHEREAS, Granny Smith Properties, Inc. has been designated as (the "Developer") of the Orchard by virtue of the attached Order (See Exhibit "A") of the Superior Court of DeKalb County, Georgia dated October 19, 2011, Civil Action No. 11CV-1661-4 and the Orchard Property Owner's Association II, Inc. (the "Association") (See Exhibit "A") are parties to a set of Covenants, Declarations, Restrictions, Easements, Assessments, Charges, Licns and other provisions contained in and constituting the Declaration of Covenants and Restriction for the Orchard (the "Declaration") which is originally recorded in the deed records of Habersham County, Georgia in Deed Book 240, Page 419 *et seq.*; and

WHEREAS, a First Amendment to the Declaration of Covenants and Restrictions, dated April 13, 1989, was recorded in Deed Book 244, Page 25, Habersham County, Georgia Records; and

WHEREAS, a Second Amendment to the Declaration of Covenants and Restrictions, dated April 5, 1989, was recorded in Deed Book 344, Page 396, Habersham County, Georgia Records; and

WHEREAS, a Third Amendment to the Declaration of Covenants and Restrictions, dated August 22, 1994, was recorded in Deed Book 322, Page 421, Habersham County, Georgia Records; and

WHEREAS, a Fourth Amendment to the Declaration of Covenants and Restrictions, dated August 29, 1997, was recorded in Deed Book 384, Page 113, Habersham County, Georgia Records; and

WHEREAS, a Fifth Amendment to the Declaration of Covenants and Restrictions, was dated September 25, 1998, recorded in Deed Book 414, Page 749, Habersham County, Georgia Records; and

WHEREAS, a Sixth Amendment to the Declaration of Covenants and Restrictions, was dated February 22, 2000, recorded in Deed Book 464, Page 798, Habersham County, Georgia Records; and

WHEREAS, a Seventh Amendment to the Declaration of Covenants and Restrictions, dated April 25, 2002, was executed and subsequently recorded in Deed Book 474, Page 227, Habersham County, Georgia Records; and

WHEREAS, on April 30, 2002, an Eighth Amendment to the Declaration of Covenants and Restrictions was executed, deleting and rescinding the Seventh Amendment in its entirety, said Eighth Amendment being recorded in the Habersham County, Georgia Records; (See Civil Action 02-CV-310S and Order of May 17, 2002, filed in the Superior Court of Habersham County); and

WHEREAS, a Ninth Amendment to the Declaration of Covenants and Restrictions, dated November 30, 2010, was recorded in Deed Book 944, Page 392, Habersham County, Georgia Records; and

WHEREAS, the property described in Exhibit "B" which is attached hereto and made a part hereof; (the "Property") is owned, held and occupied subject to the Declaration which establish a general plan and scheme for the development and use of the Property as the Orchard Subdivision; and

WHEREAS, the Declaration provides for the preservation and enhancement of property values, amenities and opportunities within the Property and promotes, protects and contributes to the general health, welfare and property value of the Property owners (the "Owners") in the Orchard; and

The Declaration contains definitions of terms used therein including Section 1.9 of Article 1 which defines the term "common property" which is to be used and managed by the Association for the benefit and common use and enjoyment of all owners of lots in the Orchard; and

WHEREAS, there is located in the Property golf club facilities which are specifically excluded as part of the "common property" as defined in Article 1, Section 1.9 and not subject to control of the Association even though the availability and operation of the golf club facilities significantly effects the property values of every Owner's lot in the Orchard; and

WHEREAS, the Developer and the Association believe it is in the best interest of the Association as well as each Owner in the Orchard for the golf club facilities to become common property and to thereby be subject to the control and management of the Association for the common use, benefit, and enjoyment of all Owners; and

WHEREAS, Section 14.2.2 of Article 14 of the Declaration allows the Developer to make reasonable modifications, changes or cancellations to any and all the provisions pertaining to the development of the Orchard contained in the Declaration.

NOW THEREFORE, for and in consideration of carrying out the purposes set forth herein for the benefit of all of the owners of lots at the Orchard, the undersigned Developer and Association hereby take the following action:

1. By deleting in its entirety Paragraph 1.9 of Article 1 of the Declaration and substituting in its place the following: "1.9 'common property' shall mean and refer to all portions of the property which are intended for the common use and enjoyment of owners and which are conveyed to the Association by deed or which are dedicated to the Association on the recorded subdivision plats of the property and all real and personal property which may be acquired by the Association for the benefit and private, common use and enjoyment of all Owners, and shall include the golf club facilities and all portions thereof."
2. Notwithstanding any other provision, Covenant, Restriction or Article of the Declaration, the authority and powers of the Association under Article 4 of the Declaration shall specifically include the authority and power, should the Association choose to do so, to acquire the real and personal property constituting the golf club facilities as common property under the Declaration.
3. By adding to Paragraph 4.2 of Article 4 of the Declaration the following: "The Association's authority and power to acquire the golf club facilities as common property shall specifically include but not be limited to the authority to enter into such contracts and agreements as the Association, in its sole discretion deems necessary or convenient.
4. By adding to Paragraph 6.2 of Article 6 the following: "Notwithstanding any provision to the contrary, the Association shall have the right to assess, charge and collect from any owner of the golf club facilities other than the Association, the reasonable and necessary costs of maintaining a guard house, as well as the

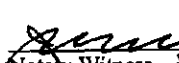
reasonable and necessary costs of maintaining all streets used by patrons of the owner of the golf club facilities.

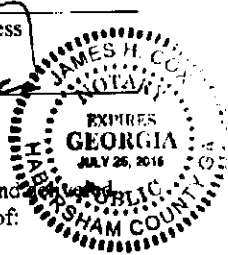
- 5. Above Section 2 and Section 3 of this Amendment shall become effective upon recording and Section 1 and Section 4 shall become effective once title to the property described on Exhibit "C" vests in the Association.

IN WITNESS WHEREOF, the undersigned hereby amend the Declaration as set forth herein by setting their hands and affixing their seals on the day and year first written above.


Signed, sealed and delivered  
In the presence of:


  
Unofficial Witness

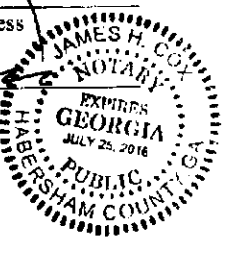
  
Notary Witness




Signed, sealed and delivered  
In the presence of:


  
Unofficial Witness

  
Notary Witness



Granny Smith Properties, Inc.

By:   
Virgil E. Lovell, CEO

By:   
Virgil E. Lovell, Secretary

The Orchard Property Owner's Association  
II, Inc.

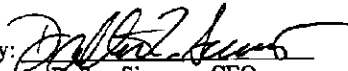
By:   
Dalton Sirmans, CEO

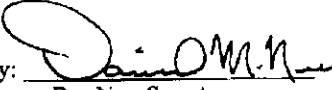
By:   
Dan Nee, Secretary

**CONSENT OF ASSOCIATION**

The Orchard Property Owner's Association II, Inc., a Georgia not-for-profit corporation, hereby joins in this Tenth Amendment to the Declaration for the purposes of agreeing to perform its obligations as contained herein and consents and ratifies the adoption of the Tenth Amendment.

The OPOAI II, Inc. a Georgia  
Not-for-profit Corporation

By:   
Dalton Sirmans, CEO

By:   
Dan Nee, Secretary

CLERK OF SUPERIOR COURT  
(CASE DISPOSITION)  
DATE 10/13/11

IN THE SUPERIOR COURT OF DEKALB COUNTY

STATE OF GEORGIA

2011 OCT 19 P 2:04

CLERK OF SUPERIOR COURT  
DEKALB COUNTY GA

THE ORCHARD PROPERTY OWNERS  
ASS'N 2011, INC., and LOUIS BONADIES,

Plaintiffs,

vs.

THE ORCHARD PROPERTY OWNERS  
ASS'N, INC., et al.,

Defendants.

Civil Action File  
No. 11CV-1661-4

ORDER AND FINAL JUDGMENT

Plaintiff's motion to enforce settlement (filed August 10, 2011) came on for hearing on October 13, 2011 with counsel for the parties in attendance. Upon review of the pleadings and other matters of record, and in consideration of the argument and authority advanced at such hearing, the Court finds and adjudges as follows:

The parties to this action, which arises out of disputes relating to a planned development known as "The Orchard" located in Habersham County, Georgia, entered into a written agreement in mediation purporting to settle all issues between them on April 14, 2011. (Consent Order to Mediate and Stay, filed March 31, 2011; Affidavit of Cynthia Briscoe Brown, Exhibit "1" thereto, filed August 10, 2011.) Plaintiffs subsequently submitted to Defendants a proposed "Consent Order and Final Judgment" purportedly incorporating the terms of the mediation agreement, but Defendants refused to sign such consent order, drawing the instant motion to enforce.



"Under Georgia law, an attorney of record has apparent authority to enter into an agreement on behalf of his client and the agreement is enforceable against the client by other settling parties..." Stephens v. Alan V. Mock Construction Co., 302 Ga.App. 280, 690 S.E.2d 225 (2010) (citation omitted). "In considering the enforceability of an alleged settlement agreement, however, a trial court is obviously limited to those terms upon which the parties themselves have mutually agreed. Absent mutual agreement, there is no enforceable contract between the parties. It is the duty of courts to construe and enforce contracts as made, and not to make them for the parties." Mealer v. Kennedy, 290 Ga.App. 432, 659 S.E.2d 809 (2008) (citation omitted).

At oral argument on Plaintiffs' motion to enforce, Defendants admitted that on April 14, 2011 they mediated and entered into a written agreement, a true and correct copy of which is attached to the Brown Affidavit, but declined to sign the proposed consent final order submitted to them by Plaintiffs.<sup>1</sup> Defendants, however, have failed to articulate any legal reason why the terms and conditions of the agreement they freely and voluntarily entered into on April 14, 2011 should not be enforced against them (e.g., duress, incapacity to contract, inadequacy of consideration, etc., etc.) See, e.g., Compris Technologies, Inc. v. Techwerks, Inc., 274 Ga.App. 673, 618 S.E.2d 564 (2005).

---

<sup>1</sup> While not abundantly clear, it seems that subsequent to mediation one or more Defendants had "second thoughts" about his authority to enter into such an agreement. Indemnification was another issue raised after the mediation concluded, but it is likewise unclear whether Defendants were requesting the inclusion or exclusion of indemnification language in the final consent order. In their brief filed on the eve of the hearing, Defendants contend that indemnification was never discussed at the April 14 mediation and object to the inclusion of such language in Paragraph 14 of the proposed consent order. (Defendant's brief in opposition, p. 4.) Plaintiffs likewise agree that indemnification was not an issue raised or considered at the April 14, 2011 mediation.



"[T]hese sophisticated businessmen, with the advice of counsel, made an informed decision to settle their claims instead of pursuing the [instant litigation].

They may not avoid the settlement agreement... "merely because [they] entered into it with reluctance, the contract was very disadvantageous to [them], the bargaining power of the parties were not equal or there was some unfairness in the negotiations preceding the agreement." *Frane, Booth, Wade & Campbell*, 238 Ga.App. 428, 430 (2), 519 S.E.2d 237 (1999).

Compris Technologies, 274 Ga.App. at 682-683.

Accordingly, based upon the foregoing, Plaintiff's motion to enforce settlement agreement (filed August 10, 2011) shall be, and hereby is GRANTED, and it is hereby ORDERED AND ADJUDGED:

1.

The ORCHARD PROPERTY OWNERS ASSOCIATION, INC. ("OPOAI"), a Georgia non-profit corporation, was formed on April 26, 2011. The OPOAI is and shall be the legal and designated successor to that certain Georgia non-profit corporation by the same name which was irrevocably dissolved by the Georgia Secretary of State in 2010. As such, the OPOAI assumes all the rights, duties, and responsibilities granted to the mandatory homeowners association of The Orchard by the Declarations, as amended, and the ByLaws of the original association. Within ten (10) days of the date of entry of this Order, the parties shall submit a name change to the Georgia Secretary of State, and the OPOAI's new name shall be: "The Orchard Property Owners Association II, Inc." (hereafter "OPOAI II").

OPOAI II shall have an initial board of directors made up of five (5) members ("the Board"). With the exception of the Board members chosen pursuant to subsection (A) below, each Board member shall be a property owner in The Orchard. Board members shall be chosen as follows:

- (A) Two Board members shall be chosen by Virgil Lovell;
- (B) Two Board members shall be elected by the property owners at the initial meeting of OPOAI II. Plaintiffs herein shall submit up to two (2) nominees. Additional candidates may be nominated from the floor at such meeting, provided the nomination is supported by a written petition signed by ten per cent (10%) or more of the property owners entitled to vote. No Defendant herein shall have the right to vote at such initial meeting.
- (C) Within ten (10) days after the OPOAI II's initial meeting, the four (4) Board members shall meet and choose a fifth member, who shall be initial Chair of the Board. The nominee for Chair shall be submitted to the parties herein for approval, who shall have five (5) days from the date of submission to communicate objections in writing or the selection of Chair shall be deemed approved.
- (D) The following persons are not eligible to be nominated or to serve on the initial Board: Virgil Lovell, Carlos Lovell, Fred Lovell, Andy Hatcher, Lon Bonadies, Dave Thomas, Bob Parker, Doug Longerbone, and Bill Gaik.

(B) The above process shall be completed no later than March 1, 2012.

3.

The initial Board shall serve a term of two (2) years. Any vacancies shall be filled as provided in paragraph 2 above.

4.

At the end of the initial two-year term the membership shall hold an election for a second two-year term as provided in paragraph 2 above. The initial Board members shall be eligible to serve a second term. Vacancies shall be filled as provided in paragraph 2 above.

5.

At the end of the Board's second two-year term, the membership shall hold an election for a third two-year term. This election shall be free, fair and open and shall be held as provided in the ByLaws. All parties hereto shall be eligible to run and vote if qualified as provided in the ByLaws, but no party hereto shall maintain any control or power over the election process.

6.

Once constituted as set forth herein, the Board of the OPOAI II shall be the governing body of the mandatory homeowners association of The Orchard. The Board shall have full power and authority to bind the OPOAI II, to deposit and extend funds, to collect assessments and other charges, to enact and amend bylaws, rules and policies, and to take any and all other

actions authorized by Georgia law. At the first meeting of the Board, the OPOAI II shall ratify the actions of the parties to this lawsuit and take as its own the duties and responsibilities set out herein.

7.

All right, title, and interest in and to the lakes and the gatehouse property shall be transferred of record to the OPOAI II within ten (10) days after the Board is selected.

8.

Any and all funds held by or under the control of any party for assessments, fees, or other charges paid by any person or entity to any party named herein since December 1, 2010 shall be transferred to a bank account held by OPOAI II within ten (10) days after the Board is selected. Each party transferring any such funds shall also provide the Board with a full and complete accounting of the funds and a list of payors, as well as copies of invoices, cancelled checks, or receipts for all amounts expended from any such funds since the collection thereof, in addition to the name(s) of the payee(s) of any such expended funds.

9.

The OPOAI II shall become the Trustee of the Trust Indenture for the water system within ten (10) days after the Board is selected. The parties agree to cooperate in executing all documents necessary to effect such transfer.

10.

All liens for nonpayment of assessments shall be assigned to the OPOAI II within ten (10) days after the Board is selected. The OPOAI II shall have full authority and discretion to resolve said liens pursuant to the ByLaws and applicable Georgia law.

11.

Until April 13, 2014, Virgil Lovell shall retain veto power over the actions of the Board of the OPOAI II, as provided in the ByLaws of the original association. On April 14, 2014, Virgil Lovell's veto power shall cease and expire, and the Board shall thereafter operate as an independent entity.

12.

On April 13, 2015 there shall be a Turnover of the OPOAI II as provided in the ByLaws of the original association, whether or not there are any remaining lots owned by Virgil Lovell or by any entity related to Virgil Lovell.

13.

The Developer, as that term is defined in the Declarations and the ByLaws of the original association, is hereby designated as: Granny Smith Properties, Inc. Any rights accorded to the Developer which do not conflict with the terms of this Order shall accrue to Granny Smith Properties, Inc., *provided, however,* that Granny Smith Properties, Inc. shall be subject to any amendments, changes or revisions to the Declarations or ByLaws duly adopted by the OPOAI II.

14.

Each party to the above-styled case is hereby restrained and enjoined from any action which interferes with or frustrates the implementation of the terms of this Order. The parties shall bear their own costs in bringing and defending this action.

SO ORDERED this the 19 day of October, 2011.



JUDGE GAIL C. FLAKE  
DEKALB SUPERIOR COURT, Division IV  
STONE MOUNTAIN JUDICIAL CIRCUIT

cc. Richard F. Evans, counsel for Plaintiffs  
James H. Cox, Walter C. Alford, counsel for Defendants

EXHIBIT "B" TO TENTH AMENDMENT TO DECLARATION OF  
COVENANTS, ETC. FOR THE ORCHARD SUBDIVISION

PROPERTY DESCRIPTION

Approximately 1220 acres, more particularly described and being as follows:

ALL THAT TRACT or parcel of land lying and being in Land Lots 94, 95, 116 and 117 of the 13<sup>th</sup> Land District of Habersham County, Georgia, containing 734.1 acres, more or less, as shown on a plat of survey made for "The Orchard" by Hubert Lovell, R.S., under date of July 22, 1988, revised under date of October 31, 1988, a copy of which plat being of record in the office of the Clerk of the Superior Court of Habersham County, Georgia, in Plat Book 26, Page 111, to which said plat and the record thereof reference is hereby made for a more complete description.

TOGETHER WITH:

ALL THAT TRACT or parcel of land lying and being in Land Lots 122 and 123 of the 13<sup>th</sup> Land District of Habersham County, Georgia, being lots 1-73 of Phase VII, of the Orchard Subdivision, as per plat of record, recorded in Plat Book 36, Page 209, of the Habersham County, Georgia deed records, said plat being incorporated herein and made a part hereof by reference.

TOGETHER WITH:

ALL THAT TRACT or parcel of land lying and being in Land Lots 115 and 116 of the 13<sup>th</sup> land district, Habersham County, Georgia, being Lots 1, 3, 6, 7, 8, 9 and 10 of Phase X (10) of the Orchard Subdivision, as per plat of record recorded in Plat Book 42, Page 5 of the Habersham County, Georgia deed records, (SAID TRACT REFERRED TO HEREIN AS "PARCEL ONE");

TOGETHER WITH:

ALL THAT TRACT or parcel of land lying and being in Land Lots 116 and 123 of the 13<sup>th</sup> land district, Habersham County, Georgia, and being lots 6, 7, 8, 9, 10, 11, 12, 14, 15 and 16 of Phase XI (II) of the Orchard Subdivision, as per plat of record recorded in Plat Book 43, Page 157 of the Habersham County, Georgia deed records, (SAID TRACT REFERRED TO HEREIN AS "PARCEL TWO");

TOGETHER WITH:

ALL THAT TRACT or parcel of land lying and being in Land Lots 116 and 123 of the 13th land district, Habersham County, Georgia, and being Lots 1, 2, 5, 8, 9, 10, 11, 12 and 13 of Phase XII (12) of the Orchard Subdivision, as per plat of record recorded at Plat Book 42, page 215 of the Habersham County, Georgia deed records (SAID TRACT REFERRED TO HEREIN AS "PARCEL THREE");

TOGETHER WITH

ALL THAT TRACT or parcel of land lying and being in Land Lot 115 of the 13th land district, Habersham County, Georgia, and being lots 1- 32 of Phase VI (6) of the Orchard Subdivision, as per plat of record, recorded in Plat Book 42, Page 216 of the Habersham County, Georgia, deed records, said plat being incorporated herein and made a part hereof by reference (SAID TRACT REFERRED TO HEREIN AS "PARCEL FOUR");

TOGETHER WITH:

ALL THAT TRACT or parcel of land lying and being in Land Lots 115, 116, 117, 122, 123 and 124 of the 13th land district, Habersham County, Georgia, and being tract one of the map prepared for the Orchard Subdivision by Lovell, Duvall, Miller and Associates, Inc., dated July 23, 1997, as per plat of record, recorded in plat book 42, page 217 of the Habersham County, Georgia, deed record LESS AND EXCEPT the tracts referred to hereinabove as Parcels One, Two, Three and Four, said tract or parcel containing, after reduction of the "Less and Except Parcels," 98.09 acres, more or less, from the 180.13 acres shown on the July 25, 1997 plat, said plat being incorporated herein and made a part hereof by reference for a more complete description of the property

TOGETHER WITH:

ALL THAT TRACT or parcel of land lying and being in Land Lots 95 and 96 of the 13th land district, Habersham County, Georgia, and being Tract Four of the map prepared for the Orchard Subdivision by Lovell, Duvall, Miller and Associates, Inc., dated July 23, 1997, as per plat of record recorded in plat book 42, page 217 of the Habersham County Georgia deed records, said plat being incorporated herein and made a part hereof by reference for a more complete description, said tract or parcel containing 77.96 acres, more or less.



TOGETHER WITH:

ALL THAT TRACT or parcel of land lying and being in Land Lots 115, 116, 123 and 124 of the 13th land district of Habersham County, Georgia, being designated as phase 6A of The Orchard Subdivision, as shown on a plat of survey of Phase 6A by Davidson Land Surveying, dated March 5, 1999, and recorded in Plat Book 46, Pages 219 - 222, Habersham County, Georgia records, which plat of survey is incorporated herein by reference for a more complete description;

TOGETHER WITH:

ALL THAT TRACT or parcel of land lying and being in Land Lots 95, 96, 114, 115, 116, 117, 122, 123, and 124 of the 13th district of Habersham County, Georgia, consisting of 30 developed lots located within Phase XIII of The Orchard Subdivision, and more particularly described as follows:

All of Lots 1, 2, 3, 4, 5, 6, 7, 9, 13, 14, 15, 16, 17, 20, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 38, 39, and 40 of Phase XIII, according to a survey entitled "The Orchard-Phase XIII", prepared by Davidson Land Surveying, Inc., Georgia Registered Land Surveyors, dated November 25, 2002, recorded in Plat Book 53, Pages 117-119, Habersham County Records, which survey is incorporated herein by reference for a more full and complete description of said property;

TOGETHER WITH:

ALL THAT TRACT or parcel of land lying and being in Land Lot 96 of the 13th Land District of Habersham County, Georgia and being more particularly described as Lot 25, Phase 15 of The Orchard Subdivision, as depicted on the plat of survey dated September 13, 2004, and prepared by Edwin G. Davidson, Georgia Registered Land Surveyor No. 2586. Said plat is of record in Plat Book 56, Pages 157-160, in the Office of the Clerk of the Habersham Superior Court. Reference is had and made to said plat and the record thereof for a full and complete description of Lot 25, Phase 15, as depicted thereon.

All of the above-described property having been subjected to the Declaration of Covenants and Restrictions for The Orchard, dated November 21, 1988 and the Third, Fourth, Fifth, Sixth and Tenth Amendments to the Declaration of Covenants and Restrictions, which Declaration and Amendments have been recorded in the office of the Clerk of the Superior Court of Habersham County, Georgia.

[END OF EXHIBIT "B"]

**PHASE 14**

All that tract of land according to a survey entitled "The Orchard-Phase 14," by Davidson Land Surveying, Inc., G.R.L.S., dated July 28, 2004, recorded in Plat Book 56, pages 134-138 of the Habersham County, Georgia Plat Records. Said plat is incorporated herein by reference and made a part of this description.

**PHASE 17**

All that tract of land according to a survey entitled "The Orchard-Phase 17," by Davidson Land Surveying, Inc., G.R.L.S., dated July 25, 2004, recorded in Plat Book 54, pages 159 of the Habersham County, Georgia Plat Records. Said plat is incorporated herein by reference and made a part of this description.

00 DEC 27 PM 4 17  
489 010 01-10-01  
BOOK PAGE RECORDED

HABERSHAM COUNTY  
DEED FOR PUBLIC USE

STATE OF GEORGIA,  
COUNTY OF HABERSHAM.

THIS CONVEYANCE made and executed the 5<sup>th</sup> day of October, in the year of 1999, between VIRGIL E. LOVELL, Grantor, and Party of the First Part and HABERSHAM COUNTY, Grantee, and Party of the Second Part.

WITNESSETH:

THAT THE SAID PARTY of the First Part, for and in consideration of the benefit to the citizens of Habersham County by the construction and installation of a water tank and in consideration of the sum of ONE AND NO/100 (\$1.00) DOLLAR, in hand paid, the receipt and sufficiency of which is hereby acknowledged, the Party of the First Part hereby grants, bargains, sells and conveys to Party of the Second Part and its successor in office or successor governing authority or board the following described property:

ALL THAT TRACT or parcel of land lying and being in Land Lots 122 and 123 of the 13<sup>th</sup> Land District of Habersham County, Georgia, and being Lot 20, Phase IX (9) of The Orchard Subdivision as per plat of record, recorded in Plat Book 38, Page 17, of the Habersham County, Georgia, deed records, said plat being incorporated herein and made a part hereof by reference.

The above described property is conveyed subject to Declaration of Covenants and Restrictions for "The Orchard" dated November 21, 1988, recorded in the office of the Clerk of Superior Court of Habersham County, Georgia Deed Records in Deed Book 240, Pages 419, et seq.; as amended by an instrument dated March 13, 1989, recorded in Deed Book 244, Page 25; and as further amended by an instrument dated April 5, 1989, recorded in Deed Book 244, Page 396, et seq., and as further amended by an instrument dated August 22, 1994, and recorded in Deed Book 322, Page 491, et seq., in aforesaid records.

TO HAVE AND HOLD said bargained premises, together with all and singular the rights, members, and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of it, the said Party of the Second Part, its successors and assigns, forever, in fee simple.

AND THE SAID Party of the First Part, for his executors, and administrators, will warrant and forever defend the right and title of the above described property unto the said Party of the Second Part, its successors and assigns, against the claims of all persons whomsoever.

BE IT NOTICED, delivery and acceptance of this deed shall not be complete until such time as the deed is accepted by a majority vote of the Board of Commissioners of Habersham County in a regularly scheduled or specially called meeting of the Board.

DELIVERY OF THIS DEED was accepted by a majority vote of the Board of Commissioners of Habersham County on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

IN WITNESS WHEREOF, Party of the First Part has hereunto set his hand and affixed his seal, the day and year first above written.

*Virgil E. Lovell*  
Witness

*Virgil E. Lovell* (SEAL)  
Print Name: Virgil E. Lovell

*James C. [Signature]*  
Notary Public

(SEAL)  
My Commission Expires: 8-11-2000

Habersham County, Georgia  
Real Estate Transfer Tax

Exhibit B



**Office of County Commissioners**  
130 Jacob's Way, Suite 301, Clarkesville, GA 30523  
706-839-0200 Fax: 706-839-0209  
www.habershamga.com

---

---

April 20, 2023

Mr. Thomas Wigley, CEO  
The Orchard Property Owners Association II, Inc.  
229 Pippin Circle  
Clarkesville, GA 30523

Dear Mr. Wigley:

As you and The Orchard Property Owners Association II, Inc. (The Orchard) are aware, Habersham County (HC) is the owner of Lot 20, Phase 9 of The Orchard subdivision by virtue of that certain Habersham County Deed for Public Use conveyed to Habersham County by Virgil E. Lovell on October 5, 1999, recorded in Deed Book 489, Page 910, Habersham County records. The deed expressly conveyed Lot 20 subject to the Declaration of Covenants and Restrictions for the Orchard subdivision dated November 21, 1988, as amended. The covenants restrict the use of all lots within the subdivision to residential uses. However, a water tower was constructed on the lot many years ago, presumably shortly after HC received the deed. The water tower is owned by the City of Demorest. Essentially, this creates a ground lease from HC to the City for public use.

HC has determined to proceed in erecting a public communications tower for use in its emergency response system. There were two issues considered by HC before deciding to proceed with the erection of the communications tower on this site. Before discussing the legal issues, it should be noted that HC has sought to shorten the tower below 200 feet in height so as to remove the requirement for a flashing light on top. In response the technical group advising the County has approved a shorter tower of 190 feet in height which does not compromise the effectiveness and feasibility of the tower at this site. Also, multiple alternate sites have been considered with none offering the coverage or feasibility of this site. Thus, the County intends to proceed with construction of the communications tower on its property.

As mentioned above, there are two primary issues: (1) whether the exercise of eminent domain can be used to free the lot from the restrictive covenants and (2) whether the County has the right to use the lot for public purposes without the exercise of eminent domain given the fact that the County owns the lot and has used the lot for public purposes for approximately 20 years or longer.

The Georgia Constitution grants the County a right to condemn property for "any public purpose". See Ga. Const. Art. IX, Sec. II, Par. V. In the general provisions applicable to the exercise of the power of eminent domain, the term "interest" is defined as any title or nontitle interest other than fee simple title. O.C.G.A. § 22-1-1(6). Thus, Habersham County has the statutory authority to exercise the power of eminent domain as to any interest in property intended for public use and this

definition would give the County the authority to condemn any interest in the property, such as easements. This broad definition would also apply to any interests created by restrictive covenants. Notwithstanding the County's authority to condemn, there is an underlying issue as to whether restrictive covenants are construed as property rights. In that regard, Georgia law provides that restrictive covenants do not create property rights in favor of surrounding property owners which would give the surrounding property owners the right to enjoin the government's right to use the lot for public purposes. This particular issue was addressed by the Supreme Court of Georgia in *Anderson v. Lynch*, 188 Ga. 154, 3 S.E.2d 85 (1939). In *Anderson*, a lot owner in a subdivision sought to sell his lot to Fulton County for use as a public road. Other lot owners within the subdivision filed an action to enjoin the transaction claiming that the restrictive covenants for the subdivision prevented this use. The trial court dismissed the lawsuit and the lot owners appealed. The Supreme Court upheld the dismissal of the lawsuit as the Court determined that the covenants did not convey property rights to the surrounding lot owners. Further, the Georgia Supreme Court further reasoned that if restrictive covenants were construed to burden the free right of the county to acquire and use the property for the purpose of establishing a new public road, such a construction would be contrary policy and void. The Court ruled that the restrictions **should be construed as "not intended to apply so as to prevent the county authorities from acquiring and using any of the lots for the purpose of a public road, or to prevent anyone from selling or dedicating his lot for that purpose."**

Notwithstanding the fact that HC has the legal right to use eminent domain to condemn any interest in this parcel which would prevent the construction of the communication tower, it is obvious that HC has the right to construct the tower without condemnation. This parcel is uniquely situated in that (a) HC owns the lot in question; (b) the warranty deed in favor of HC was for public use and (c) HC has used the lot for public purposes for more than 20 years. Under *Anderson*, the surrounding property owners have no right to enjoin the construction of the tower since they have no property rights in the property. Consequently, HC will proceed to construct the necessary tower on parcel 20 for the public health, safety and welfare of the citizens of Habersham County. Our hope is that the residents of The Orchard also recognize the necessity of the tower and how it affects the health, safety and welfare of ALL citizens of Habersham County.

Sincerely,



Ty Akins  
Chairman

Habersham County Board of Commissioners



Habersham County Office of County Commissioners  
130 Jacob's Way, Suite 301  
Clarksville, GA 30523

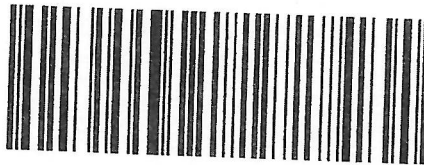


U.S. POSTAGE PAID  
FORM LETTER  
CLARKESVILLE, GA  
30523  
APR 21, 23  
AMOUNT  
**\$8.13**  
R2305H127440-23

RDC 28 30523

Mr. Thomas Wigley, CEO  
The Orchard Property Owners Assoc. II  
229 Pippin Circle  
Clarksville, GA 30523

7264 260E E000 0740 2202



CERTIFIED MAIL

3052381321 R007





**Exhibit D**



**Exhibit D**





**Exhibit D**



**Exhibit D**

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

THE ORCHARD PROPERTY  
OWNERS ASSOCIATION II, INC.

Plaintiff,

v.

HABERSHAM COUNTY, GEORGIA

Defendant.

CIVIL ACTION NO.:

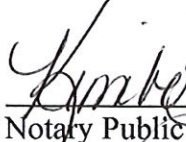
**VERIFICATION**

Personally appeared before the undersigned attesting officer Kimberly Dimick, who, after being first duly sworn, states under oath that she is the President of The Orchard Property Owners Association II, Inc. (the "Association"), and, as such, she is authorized by the Association to make this Verification on behalf of the Association, and that the facts set forth in the Association's Verified Complaint for Permanent Injunctive Relief are true and correct to the best of her knowledge and belief.



\_\_\_\_\_  
Kimberly Dimick, President  
The Orchard Property Owners Association II, Inc.

Sworn and subscribed  
before me this 29 day of June 2023

  
\_\_\_\_\_  
Notary Public



My Commission Expires: 9/30/2025