

Orchard Cove Property Owner's Association

Post Office Box 1766
Elizabeth City, NC 27906

August 30, 2004

Declaration of Restrictive Covenants

12. Property Owner's Association

g. Date of Commencement of Annual Assessments. The annual assessment provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Community Use Areas to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors of the Association.

Change for 2004:

The ByLaws reference that the fiscal year of the Corporation shall be January 1 to December 31 each year. Currently, our Association dues are for September 1 to August 31. For the remaining months of 2004, \$50 in dues should be paid for September 1, 2004 to December 31, 2004, which is 1/3 of the amount of the dues for a four month period. Thereafter, Association dues are due on December 1 for the period of January 1 to December 31 (of the following calendar year) in the amount of \$150. Dues paid at the first annual assessment were apparently not adjusted for remaining months in the calendar year. This would place the Association in line with the Restrictive Covenant indicated above. A dues notice will be sent November 1, and thirty days after the due date of December 1, the Association would be entitled to pursue "h. Effect of Nonpayment of Assessments: Remedies of the Association" due to nonpayment. This action is also in accordance with ByLaws.

***This action does not require a vote, but is provided to explain changes for 2004 dues payment.

Proposed ByLaw Revision

Article III, Meeting of Members, Section I.

Currently reads:

Annual Meetings. The first annual meeting of the members shall be held on _____, 1997 and each subsequent regular meeting of the members shall be held on the first day of May of each year thereafter at the hour of 7:30 o'clock p.m. If the day of the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Proposed Revision to Read:

Annual Meetings. The first annual meeting of the members shall be held on _____, 1997 and each subsequent regular meeting of the members shall be held *during the month of October of each year thereafter.*

Rationale:

More in line with current practice and with proposed schedule of payment of dues.

***This action will require a vote, establishing a revision to the current ByLaws.

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STATE OF NORTH CAROLINA
COUNTY OF PASQUOTANK

Prepared by and return to:
Thomas P. Nash, IV
P.O. Box 768
Elizabeth City, NC 27907-0768

DECLARATION OF RESTRICTIVE COVENANTS

Orchard Cove, L.L.C., a North Carolina Limited Liability Company, owner of the property situated in Nixonton Township, Pasquotank County, North Carolina, known as ORCHARD COVE SUBDIVISION, hereby declares that the limitations and restrictions set forth herein shall be binding upon the properties described and delineated on that plat recorded in the Pasquotank County Registry in Plat Book 22 at Pages 42, 43 and 44. Orchard Cove, L.L.C. is hereby designated as "Declarant".

If any person subsequently acquiring title to or possession of any lot or lots within said subdivision, or his or her heirs or assigns, shall violate any of the restrictions hereinafter set out, it shall be lawful for any person owning real property situated in said subdivision or for the Property Owners Association hereinafter named to institute legal proceedings against the person or persons violating any of said restrictions, and either prevent him from so doing or recover damages for such violation or both. Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

1. Definitions. The following definitions shall be applicable to this Declaration of Restrictive Covenants:

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- a. "Association" shall mean and refer to Orchard Cove Property Owners Association (or some other appropriate name), its successors and assigns.
- b. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the Properties, including contract sellers but excluding those having such interest merely as security for the performance of an obligation.
- c. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association or added by supplemental declaration of restrictive covenants.
- d. "Community Use Areas" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Community Use Areas to be owned by the Association shall include that property delineated as "Reserved, 4.021 Ac." as shown on plat recorded in Plat Book 22, Page 42, Pasquotank County Registry and those certain parcels labeled "Open Space 8 Ac. ±" and "Open Space 20 Ac. ±" as delineated on that plat recorded in Plat Book 22, Page 44, Pasquotank County Registry.
- e. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Community Use Areas and that lot labeled "Reserved Area" as shown on plat recorded in Plat Book 22, Page 43, Pasquotank County Registry.

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f. "Declarant" shall mean and refer to Orchard Cove, L.L.C., its successors and assigns, if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

2. Residential Use. All lots shall be used for residential purposes only, with no structures erected or maintained on any such lot other than a private single-family residence, a private garage for the sole use of the lot owner or occupant and/or a private storage building for the sole use of the lot owner or occupant, so long as said private garage and/or private storage building is completed with the same exterior materials and appearance as the single family residence situated thereon.

3. Type, Size and Construction. Any dwelling erected, placed or altered on any residential lot in the subdivision must conform to the following minimum standards:

a. The minimum heated floor living area, excluding garage and patio or terrace shall be as follows:

i. On Lots 25 through 39 and 42 through 46 -- 2,000 square feet;

ii. On Lots 12 through 24 and 40 and 41 -- 2,200 square feet; and

iii. On Lots 01 through 11 -- 2,400 square feet.

b. No more than 200 square feet of a finished room over garage ("FROG") shall be allowed in computing total square footage of heated floor living area within a private single family residence.

c. All construction materials must be new, except wood

flooring, interior paneling and brick.

d. All dwellings must be centered on an individual lot. With the exception of Lots 1 through 11, when an owner acquires two or more adjoining lots, then and in that event the adjoining one or more lots may be used as one building site in which event the side easements and/or setbacks referred to herein shall apply to the outside perimeter property line of the combined lots acquired by one property owner. Lots 1 through 11 must each maintain a fifteen foot side lot setback in order to provide a view corridor line for the lots across the street.

e. All residences must have private inside bathroom facilities and septic tanks which conform to the minimum requirements in accordance with the public health laws.

f. Fences, walls and hedges, if any, shall be of open construction, not more than five feet in height and shall not extend nearer the street than the front of the main dwelling constructed on the lot. This shall not preclude the placement of a privacy fence adjoining a patio, terrace, deck or pool, which fence may be closed construction of wood or masonry materials. Provided, however, in no event shall any wall, fence or hedge extend within fifty (50) feet of the shoreline of Newbegun Creek. Any fence or wall must have prior written approval from Declarant (or its Architectural Review Committee if formed).

g. Roof-line -- No dwelling shall be constructed with a roof containing less than a 7/12 pitch and less than four separate roof planes.

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h. Each waterfront lot owner shall maintain in a good state of repair the shoreline adjoining the creek so that no erosion will result to said lot or adjoining lots.

i. Any piers and/or boathouses which are erected from a waterfront lot into Newbegun Creek shall be erected within twenty (20) feet of the centerline of said lot as same extends into Newbegun Creek. All piers and/or boathouse construction must have prior written approval from Declarant (or its Architectural Review Committee if formed).

j. All structures shall be completed on the exterior within nine (9) months after the start of construction.

k. No structure of a temporary nature shall be placed upon any portion of any lot. Temporary shelters, tents, travel trailers, campers or self-propelled mobile homes shall not at any time be used as a temporary residence. Campers, travel trailers, boat trailers, self-propelled mobile homes and other vehicles of that nature may not be stored on a lot. A designated area has been set aside on the property in Orchard Cove for the lot owners of Orchard Cove for such storage, provided, however, that no lot owner shall be entitled to utilize more than two (2) spaces within the designated storage area. No mobile homes, doublewide mobile homes or modular homes shall be occupied as a residence on any residential lot either temporarily or permanently.

l. After a residential dwelling is placed on a subdivision lot, the lot owner shall be required to place and maintain on the lot sufficient shrubbery and trees to satisfy the

minimum landscaping requirements of the Declarant (or the Architectural Review Committee if formed). These requirements can be obtained from the Declarant or the Secretary of the Association.

m. All buildings, structures, and other appurtenances shall be maintained in a suitable state of repair, and in the event of destruction by fire or other casualty, the premises are to be cleaned and cleared of debris within ninety (90) days after the date of such casualty.

n. No owner of any lot in the subdivision shall permit the riding of two, three or four wheeled motorized vehicles, motorcycles or go-carts over a vacant lot in Orchard Cove or over the Community Use Areas or Streets of the subdivision, nor shall any such owner permit the creation of a trail or tract on which said two, three or four-wheeled motorized vehicles, motorcycles or go-carts shall be operated.

o. Satellite Dish--Lot owners shall not be allowed to place satellite antenna dishes on a lot unless totally screened from view by a 360 degree landscape screen. It is recommended that any such device must be within the dwelling itself or concealed within the roofline of said dwelling. No dish shall exceed 36 inches in diameter and location of same must be approved in writing by Declarant (or its Architectural Review Committee if formed) prior to its being placed on a lot.

p. No above-ground swimming pool, permanent or otherwise, which stands more than two feet in height shall be permitted on any lot. Plans including landscaping and fencing for

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in-ground pool construction must be approved in writing by Declarant (or its Architectural Review Committee if formed) prior to the commencement of construction of same.

q. No trees larger than three feet in circumference on Lots 1 through 11 may be cut down or removed without written permission of the Declarant (or the Orchard Cove Architectural Review Committee if formed). The circumference shall be determined by measuring the tree at a point three feet above the ground or water level.

4. Setback Restrictions. No building shall be erected or maintained on any lot closer than fifty (50) feet from the front lot lines, fifteen (15) feet from a side lot line, or thirty (30) feet from a side street line. On waterfront lots (1-11), no building shall be erected or maintained on any such lot within fifty (50) feet of Newbegun Creek as shown on the subdivision plat. On non-waterfront lots (12-46), no building shall be erected or maintained on any such lot within thirty (30) feet of the rear lot line as shown on the subdivision plat. For the purpose of this covenant, eaves, steps and open porches shall be considered as a part of a building. In addition, no unattached storage buildings or garages (each of which shall be considered a building) shall be constructed or permitted on any lot nearer the street than the rear line of the main dwelling house situated on the lot. As to corner lots within the subdivision, the front line shall be considered the line facing the front door of the house placed on said lot.

5. Easements. Easements are reserved by Declarant along and

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within twenty feet of all front lot lines, and within ten feet of all side and rear lot lines (except as to Lots 01 through 11 inclusive, in which no easements along rear lot lines are reserved) for the construction and perpetual maintenance of conduits, poles, wires and fixtures for electricity, telephone service, water mains, sanitary and storm sewers, road drains and other public and quasi-public utilities, and for the trimming of any trees which may at any time interfere or threaten to interfere with the maintenance of such lines, with right of ingress, egress and regress from and across said premises to duly authorized maintenance personnel.

6. Re-subdivide. No lots may be re-subdivided for the purpose of creating additional lots.

7. Nuisances. No nuisance or offensive, noisy or illegal activity shall be done, suffered or permitted upon any lot. Outside garbage and trash accumulations shall be maintained in closed, sturdy containers as inconspicuously as possible and they shall be emptied regularly. No signs or advertising posters shall be permitted on any residential lot, except signs identifying the owner or occupant of the property or signs used by a builder to advertise the property during construction, or a sign advertising the property for sale. Any such sign shall not exceed twenty-four (24) inches high by forty-eight (48) inches wide. No animals, livestock or poultry of any kind, other than household pets which are not kept for breeding or any other commercial purpose, shall be kept or maintained on any lot. No junk, wreck, or inoperative automobile, truck, bus or boat shall be permitted to remain on the

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property, nor shall other unsightly materials be stored thereon. All lots, whether occupied or unoccupied, shall be well maintained and no unattractive growth of vegetation or accumulation of rubbish or debris shall be permitted.

8. Prior Approval of Building Plans. No building or other structure shall be erected, placed or altered on any lot until the proposed building plans and specifications shall have been approved in writing by the Declarant (or the Architectural Review Committee if formed). Refusal or approval of plans or specifications may be based upon any grounds including purely aesthetic considerations, harmony or external design, location in relation to surrounding structures, and topography, which, in its sole and uncontrolled discretion, the Declarant (or Architectural Review Committee if formed) shall deem sufficient.

9. Compliance with Storm Water Runoff Rules. No more than 10,000 square feet of any lot including that portion of the right-of-way between the edge of pavement and the front lot line, shall be covered by impervious structures, including asphalt, gravel, concrete, brick, stone, slate or similar materials not including decking or the water surface of swimming pools. In addition, no one may fill in or pipe any roadside or lot line swale, except as necessary to provide a minimum driveway crossing. This covenant is intended to ensure continued compliance with storm water runoff rules adopted by the State of North Carolina and may be enforced by the State of North Carolina. This covenant may not be changed or deleted without the consent of the State.

10. Compliance with the Requirements of District Health Department Regulations. Each Owner shall be bound by the requirements of District Health Department regulations, including the provisions of 15A NCAC 18A.1961 requiring maintenance of drainage and routine inspections and repairs of septic tank systems under the supervision of a management entity being developed by Pasquotank County and the District Health Department. Each Lot Owner shall be deemed obligated to all such inspections and improvements, through membership in the Association, to include the maintenance of drainage to allow the proper operation of septic systems, with said obligations and requirements being deemed an incident of lot ownership.

11. Declarant's Non-liability for Septic Tank Failure. Declarant shall have no liability or responsibility for the failure of a septic tank system after same is installed by, at the direction of, or for the benefit of a lot owner.

12. Property Owners' Association.

a. A corporation named Orchard Cove Property Owners Association (or some other appropriate name) has been or will be formed pursuant to the rules and requirements of the Nonprofit Corporation Act (Chapter 55A) of the General Statutes of North Carolina, as an association of the owners of lots. Said property owners association is hereinafter referred to as "the Association". Its purposes are to own, manage, maintain, and operate the Community use Areas and the facilities located upon said Community Use Areas; to enforce the restrictions contained herein; to make

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and enforce rules and regulations governing the owners' use and occupation of lots and Community Use Areas; and to collect assessments as hereinafter stated. The management and administration of the affairs of the Community Use Areas shall be carried out by the Association in accordance with the terms and conditions of these restrictions and the articles and bylaws of the Association, but may be delegated or contracted to managers or management services.

b. Membership -- Each owner of a lot within the Subdivision which is subject to assessments shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessments. Each owner will perform all acts necessary to remain in good and current standing as a member of the Association and each owner shall be subject to the rules and regulations of the Association with regards to the ownership of a Lot.

c. Voting Rights. The Association shall have one class of members who shall be lot owners. Declarant shall be included as a member as long as the Declarant shall own a lot or lots within the subdivision. Each member shall be entitled to one vote for each lot owned provided, however, when more than one person holds an interest in any lot, all such persons shall be members and, the vote for such lot shall be executed as they, among themselves, determine, but in no event shall more than one vote or any fraction of a vote be cast with respect to any lot.

d. Creation of Lien and Personal Obligation of

Assessment. The Declarant, for each lot owned within the Properties hereby covenants, and each Owner of any lot by acceptance of a deed therefore, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association:

- i. Annual assessments or charges, and
- ii. Special assessments to meet any requirements of the District Health Department or special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, cost and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

e. Annual Assessments and Charges. There shall be an annual assessment assessed by the Association in such amount as may be required to satisfy the requirements of these restrictive covenants including, but not limited to, the cost of inspection or maintenance of drainage and other facilities as required by the District Health Department, payment of the expenses of the Association, payment of the costs of lighting the streets and Community Use Areas, payment of the costs of any insurance the Association deems necessary, payment for the promotion of the recreation, health, safety and welfare of the members and in

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particular for the improvement and maintenance of the property, services and facilities devoted to this purpose and related to the use and enjoyment of the Community Use Areas and the payment of the taxes levied upon Community Use Areas.

f. Special Assessments. Special Assessments as approved by the Board of Directors of the Association may be assessed as required to meet any requirements of the District Health Department. In addition, the Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, re-construction, repair or replacement of a capital improvement upon the Community Use Area, including fixtures and personal property related thereto, provided that any such special assessment for such capital improvement shall have the assent of a majority of the votes of members who are voting in person or by proxy at a meeting duly called for that purpose.

g. Date of Commencement of Annual Assessments. The annual assessment provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Community Use Areas to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be

established by the Board of Directors of the Association.

h. Effect of Nonpayment of Assessments; Remedies of the Association. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property in the subdivision owned by the "Owner". Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may file a lien with the Pasquotank County Clerk of Superior Court's Office evidencing the amount due for delinquent assessments together with interest, costs and reasonable attorney's fees. The Association may bring an action at law against the owner personally obligated to pay the same or may foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Community Use Area or abandonment of his lot.

i. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any valid mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer.

13. Additional Property Subject to These Restrictions. Declarant has the right to make additional properties located adjacent to the properties herein described subject to this

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Declaration of Restrictive Covenants. Such additions may be annexed by the Declarant by filing of record a Supplemental Declaration of Restrictive Covenants with respect to the additional property which shall extend the scheme of this Declaration to such property. Such supplemental declaration may contain such complimentary additions and modifications of the Declaration of Restrictive Covenants as may be necessary to reflect the differing needs, if any, of the added properties. However, this reservation shall in no way be construed as a requirement on the part of the Declarant to make such additional properties subject to this Declaration.

14. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

15. Duration of Restrictions. These restrictions shall be binding on the land and all parties owning same or in possession thereof for a period of twenty years from the date hereof and shall be extended for successive periods of ten years thereafter unless prior to the expiration of any such period an instrument signed by the owners of record of the majority of the lots in the subdivision has been recorded revoking and modifying said restrictions.

IN WITNESS WHEREOF, Orchard Cove, L.L.C. has executed this instrument by affixing their signature and seal this the 12th day of November, 1997.

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ORCHARD COVE, L.L.C.,
a North Carolina Limited Liability
Company (SEAL)

By: [Signature] (SEAL)
Managing Member

By: William D. Rich (SEAL)
Managing Member

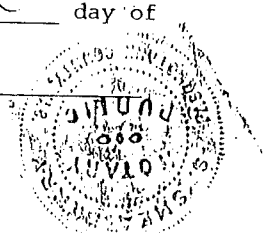
STATE OF NORTH CAROLINA
COUNTY OF Perquimans

I, a Notary Public of the County and State aforesaid, certify that
Randy Heaton Managing Member of Orchard Cove, L.L.C.
personally appeared before me this day and acknowledged the
execution of the foregoing instrument as manager on behalf of and
as the act of the company referred to in this acknowledgment.

Witness my hand and official stamp or seal, this 12th day of
November, 1997.

My commission expires:
June 19, 2000

[Signature]
Notary Public



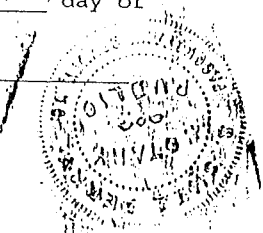
STATE OF NORTH CAROLINA
COUNTY OF Perquimans

I, a Notary Public of the County and State aforesaid, certify that
William D. Rich Managing Member of Orchard Cove, L.L.C.
personally appeared before me this day and acknowledged the
execution of the foregoing instrument as manager on behalf of and
as the act of the company referred to in this acknowledgment.

Witness my hand and official stamp or seal, this 12th day of
November, 1997.

My commission expires:
June 19, 2000

[Signature]
Notary Public



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NORTH CAROLINA
PASQUOTANK COUNTY

The foregoing or annexed certificate(s) of S. Shea Berry,
Notary ~~(is)~~ Public of Pasquotank County, State of NC, ~~is~~/are
certified to be correct. This instrument was presented for
registration this day and hour and duly recorded in the Office of
the Register of Deeds of Pasquotank County, North
Carolina, in Deed Book 618, Page 800.

This the 13th day of November, 1997, at 1:40
o'clock P M.

Dellie J. Summers
Registered of Deeds

By: Clementine White
Deputy ~~Assistant~~

r\orchard.dec