

463 616 2-17-00

COUNTY OF HABERSHAM
STATE OF GEORGIA

MODIFICATION OF DECLARATION OF REALTY COVENANTS

THIS AMENDMENT, made this 17th day of February, 2000, by MICHAEL HICKS,
herein after referred to as Owner.

WHEREAS, Owner collectively owns lots 1-6, 18-26 and Lot 29 of the Subdivision of the
Ralph Loudermilk property which is now subject to a Declaration of Covenants which is
recorded in the office of the Clerk of Superior Court of Habersham County, Georgia, in Deed
Book 310, Pages 227-233; and

WHEREAS, Owner desires to amend said Declaration of Covenants in accordance with §3.3 of
said covenants;

NOW THEREFORE, in consideration of the premises and the mutual benefits derived
herefrom, the undersigned Owner do hereby amend said Declaration of Covenants as follows:

SECTION 5.1 of said covenants requires 1,500 square feet of heated interior living
space. Said square footage requirement is amended to now and hereafter read "1,200" square
feet of heated interior living space.

IN WITNESS, hereof the undersigned Owner does hereby affix his hand and seal the day and
year first above written.

Signed, sealed and delivered in the presence of:

Colleen R. King
Witness

Michael Hicks (SEAL)
MICHAEL HICKS
Owner of Lots 1-6 and Lots 18-26 and Lot 29.

Melanie L. Coffey
Notary Public
My Commission Expires:



①
T. Carter

'93 NOV 9 PM 2 01
11-10-23
BOOK PAGE RECORDED
ERNEST W. NATIONS JR.

COUNTY OF HABERSHAM
STATE OF GEORGIA

MODIFICATIONS OF DECLARATIONS OF REALTY COVENANTS

THIS DECLARATION, made this 29th day of October, 1993, by SARA WOFFORD LOUDERMILK of Habersham County, Georgia (herein OWNER).

WHEREAS, Owner owns the subject realty herein below describe (herein, REALTY);

WHEREAS, Owner intends to develop and sell off parcels out of said realty to various future prospective purchasers for residential uses only; and

WHEREAS, Owner desires and intends, by this Declaration of Usage restrictions, limitations, and covenants to run with the land (herein collective, COVENANTS) to enhance and protect and preserve the value, desirability, and attractiveness of said realty and the parcels to be sold off therefrom for residential purposes and uses;

NOW THEREFORE, for and in consideration of the premises, and the good, valid, and sufficient benefits deriving to Owner from the making and establishing of these covenants, and as an inducement to promote and further the future sale of parcels out of said realty to prospective residential purchasers, Owner does hereby create, establish, and impose the following covenants upon said realty, and all lots and parcels thereof to be henceforth sold, conveyed, transferred, or disposed of therefrom, with said covenants to be continuing and to be deemed to be covenants running with the land;

1.
REALTY: The said realty, to be governed by these covenants, is particularly described as ATTACHMENT ONE, said attachment being attached hereto and being incorporated as a part hereof by reference, and being dated and signed by Owner for purposes of identification and authentication.

2.
DEFINITIONS: The following words and phrases as used herein, shall have and be subject to only the following respective interpretations and meanings herein (whether in the singular or plural, and irrespective of gender):

2.1 Lot (or PARCEL): Shall mean any subdivided parcel of the subject realty.

2.2 Lot Owner (or PARCEL OWNER): Shall mean the holder of either, the fee simple title, or the holder of the equity of redemption of a lot, as defined herein.

2.3 Residential: Shall mean use of a lot, having (or potentially having) a dwelling thereon, exclusively, as one's home; as distinguished from use of such lot for commercial, industrial, business, professional, or other non-homemaking purposes. (Purchasing and owning a lot; for investment or resale purposes; or to rent to tenants for the tenants' homemaking purposes; shall be included within the term, residential, and permitted under these covenants.)

2.4 Dwelling: Shall mean a structure designed and constructed on a lot for residential uses, which structure must be constructed by conventional means on the site of the lot; (but this term, dwelling, shall not mean or include any: mobile home; manufactured or modular home; house trailer (whether single or double wide, or larger); or any motor home, camper, or recreational vehicle, for temporary or permanent occupancy and use on a lot for residential uses and purposes).

2.5 Owner: Shall also mean the Buyer who simultaneously buys, (for resale), all of Sara Loudermilk's then remaining unsold lots of said realty (provided that said lots thus sold, number in excess of four (4) lots).

3.

DURATION; TERMINATION, MODIFICATIONS, ADDITIONS:

3.1 These covenants shall endure and govern the use of the subject realty

and its lots for twenty (20) consecutive years, immediately after the date of execution of these covenants.

3.2 These covenants (as amended) shall automatically renew, at the end of said initial twenty-year term, for successive ten-year renewal terms thereafter, unless, and until such renewal is prevented by implementation of the procedures for terminating these covenants hereinafter stated in this item.

3.3 These covenants may be terminated, extended, changed, amended, modified, deleted, or added to, in whole or in part, by written declaration of at least three-fourths (3/4) of the then holders of the lots composing this realty; which said declaration by lot holders shall be dated, signed by each lot owner, properly witnessed and notarized and in recordable form, and shall not be effective until such lot owner's declaration is recorded amount the official deed records of the county in which this realty is located.

Only one signatory and vote per lot shall be effective and counted; and only the single owner, (or only one of multiple owners) of the fee simple title, or equity of redemption, of any single lot, shall be deemed to be a lot owner for these purposes (exclusive of any lot mortgagee, or security deed grantee).

Provided that, no such lot owners' declaration shall be permitted or effective to terminate, change, amend, modify, delete, or add to these covenants, without owner's witnessed and notarized signature thereon (in owner's sole discretion); so long as owner owns the fee simple title, or equity of redemption, to at least five of the lots composing this realty.

4.

RESIDENTIAL USES ONLY: Lots shall be used solely and exclusively for residential purposes, as defined herein, and for no other purpose.

5.

ONLY SINGLE FAMILY DWELLINGS: Only one permanent type single family dwelling (as herein defined) may be constructed upon any one lot.

5.1 **Dwelling size:** A dwelling must have at least 1,800 square feet of interior, heated, living space (including closets; but excluding porches, carports, patios, garages).

(a) Provided that the existing dwellings on Lots (14) & (30), respectively are permanently excepted from this dwelling square footage --(provided however, that this exception shall not apply to any possible future replacement of either of said excepted dwellings).

5.2 **Garage or carport:** Each dwelling must be accompanied by a carport attached to the dwelling, or a garage, either attached to, or freestanding from, the dwelling.

5.3 **Other permanent structures:** Each dwelling may be accompanied by one of each of the following additional permitted domestic type structures: greenhouse, utility and tool building, swimming pool (with or without cabana), children's playhouse; provided that no such outbuilding shall be used fro any uses except to aid and facilitate the residential use of the main dwelling (and no such outbuilding shall be used or occupied as an independent place of abode or living quarters).

6.

ARCHITECTURAL AND SCENIC COVENANTS: The following covenants shall govern the architectural, design, construction, and scenic characteristics for all lots and improvements to be hereafter erected or constructed on any lot:

8.1 **Subdivision of Lot:** No lot may be resubdivided following its acquisition from owner. However, adjoining lots may be annexed, by a common lot owner, to form one larger lot provided that a previously annexed lot may be resubdivided and returned into a separate lot of its original size and configuration, in the lot owner's discretion.

8.2 **Building setback lines:** No dwelling or other permitted structure may be erected within fifteen (15) feet of any side or rear lot boundary line. For these purposes lots bounded by Elrod Street and Sara Lane, shall be

For these purposes lots bounded by Elrod Street and Sara Lane, shall be deemed to front on said streets, (provided that any lot bounded by both of said streets shall be deemed to front on Elrod Street). Provided that, the side boundary building setback line requirement shall be deemed to be waived, to the extent deemed reasonably necessary, for the erection of a dwelling and permitted structures on a lot number (6) of the subject realty (as depicted on that certain plat prepared for Ralph Loudermilk by Russell N. Bartlett, R. S., originally dated November 6, 1984, and last revised on December 11, 1986, and recorded in Habersham County, Georgia, Plat Book 23 at Page 191).

No dwelling or other permitted structure shall be hereafter erected within thirty-five (35) feet of the front lot boundary line.

6.3 Continuous and completed construction: Construction, once commenced on a lot, shall be continuously and diligently continued and pursued until its completion at the earliest possible date.

And all exterior structure walls, roofs, foundations, and surfaces shall be completed with no exposed unfinished or unpainted concrete blocks, tar paper, insulation, or other unfinished building materials.

6.4 Architectural, scenic, and construction harmony: The architecture, construction and scenic characteristics, of each lot's dwelling and related permitted structures shall be residential in character; and shall reasonably harmonize and be compatible with the then existing improvements on the other lots in this realty.

Exterior walls shall be constructed of only the following exterior wall building materials: bricks; stucco or other veneer; cement; stone; wood siding, shingles, shakes, or logs; or other harmonious exterior wall building materials, constructed on site.

6.5 Fences: A fence may be erected on a lot, provided that its design, materials, construction, and appearance reasonably harmonize, and are compatible with the lot's dwelling, and with other surrounding and nearby lots; and provided that the fence must be well maintained.

6.6 Temporary structures: No temporary: building, house trailer, mobile home, modular home, tent, shack, or other temporary type structure may be placed, erected, or constructed upon any lot, for any use or purpose.

6.7 House trailer, or mobile home (whether single wide or double wide, or manufactured house): No house trailer, mobile home, or manufactured house, shall be either temporarily or permanently placed upon or kept on any lot.

(Provided that, a lot owner may keep (off street) a recreational vehicle (namely, a camper or motor home) on his lot; but provided that such unit shall not be used or occupied for living purposes while on the lot).

6.8 Junk vehicles: No wrecked, junk, inoperable, or unlicensed vehicle shall be parked or kept on any lot within this realty; or by any lot occupant, on any street (private or public) serving any lot.

6.9 Garbage, waste disposal: No garbage, refuse, or waste materials or elements shall be kept, or dumped on any lot or adjacent street serving this realty. Each lot's garbage, refuse, and waste shall be regularly and continuously collected and kept in substantial sanitary containers with closed lids until their removal; and each lot's garbage, refuse, and waste materials shall be regularly removed from this realty; and each lot's owner or occupant shall be personally obligated and responsible for the timely performance of all duties arising under this item herein, or arising under any applicable federal, state, county, or city law, regulation, or ordinance, and governing the dispositions of garbage and waste storage and disposition.

6.10 Utility, water, and sewage systems: Each lot's utility (electrical, gas, water, sewage disposal, etc.) systems, and their respective designs, and components, shall be erected and emplaced in conformity with all governing governmental laws, regulations, and ordinances.

6.11 Environmental protection: All lots, streams or bodies of water situated on, or bounding any lot, shall be used and preserved pursuant to

the requirements of all governmental laws, regulations, and ordinances; and in such manner as to assure that no waters (including the underground water table) are polluted, or unreasonably or unduly diminished, or diverted.

7.

OFFENSIVE ACTS OR CONDITIONS:

7.1 Annoyances, nuisances, unlawful activities: Each lot owner, and those claiming, occupying or visiting any lot by, through, or under any lot owner, shall be under an affirmative duty to not do, cause or permit the existence, presence or occurrence on such lot of: any activity, noise, sound, odor, light, emission, or other circumstance that would be unusually and unreasonably annoying, disturbing, or offensive to other lot owners; or any activities or circumstances constituting an unlawful nuisance, activity, or condition, or constituting a breach of these covenants.

7.2 Pets: Domesticated household pets may be kept on any lot having a dwelling; providing that they shall be kept and maintained in a manner that does not create an unreasonable or disturbing noise, odor, annoyance, nuisance, or danger to other parcel owners. However, no livestock (such as, but not limited to, cattle, pigs, sheep, goats, llamas, poultry, fowl, etc.,) and no horses, may be kept or maintained on a lot.

8.

UTILITY AND OTHER EASEMENTS: Each lot at the time of its initial sale by owner, shall be sold and conveyed subject to any then existing and continuing electrical, water, gas, telephone, sewer, TV cable, or other type utility lines and easements (arising hereunder, or otherwise arising) then on, within, traversing, or affecting such lot, and serving that lot, or other lots or realty, (irrespective of whether such easements be of record, or known to buyer).

9.

ENFORCEMENT OF COVENANTS:

9.1 So long as owner remains owner of any lot of the subject realty, owner reserves the exclusive right and power to, in its sole and absolute discretion, to enforce or not to enforce, these covenants by any and all legal and equitable remedies; either through owner's action individually, or by assignment of this enforcement right from time to time to owner's assignee; and in such case of assignment, owner's assignee shall be fully authorized and empowered to independently initiate and prosecute any legal or equitable enforcement rights and remedies as fully as owner could have done itself. However, any such assignee of owner shall undertake and exercise such enforcement rights and remedies independently, at such assignee's own risk and costs; and not as owner's agent, partner, or joint venturer; and owner shall in no way be responsible or liable for any acts or omissions by such assignee in respect to such enforcement efforts; and such assignee, at its own costs, shall: hold owner harmless, and make owner whole from all related damages, losses, costs and expenses (including, but not limited to, expenses of litigation and attorney's fees) whether direct or indirect; and shall come in and defend owner against the lawful claims of any persons or entities whomsoever arising out of any acts or omissions on the part of such assignee undertaken in respect of such assignment.

9.2 Whenever Owner no longer owns any lot of the subject realty, then any then present or future lot owner shall have, and may independently exercise, the non-exclusive right and power, at such lot owner's sole cost and risk, to enforce these covenants against any other lot owner or violator of these covenants.

9.3 In the event of enforcement of these covenants by owner, or by owner's assignee, against any future violator thereof, owner or owner's assignee, shall be entitled to be reimbursed from any such violator, immediately upon demand, for all of its reasonable costs and expenses incurred in such enforcement efforts; including but not limited to any and all court costs, and out of pocket expenses; and including but not limited to reasonable attorney's fees (to be computed at the rate of \$100.00 per hour) in the event of the engagement of an attorney's assistance; for which said reimbursable costs and expenses, Owner (or

Owner's assignee) shall have a special lien upon the lot in respect of which any enforcement shall have been obtained against such lot's owner or occupant; which lien shall be enforceable by either judicial foreclosure, or by non-judicial foreclosure as in the case of foreclosure under a power of sale contained in a Deed to Secure Debt, under Georgia law.

9.4 It shall be the affirmative duty of each lot owner to take whatever steps are reasonably necessary to assure that no violation of these covenants occurs on such lot owner's lot.

10.

LOT ENCUMBRANCES NOT INVALIDATED BY BREACH OF COVENANTS: No mortgage, security deed, or other encumbrances upon any lot shall be invalidated by the occurrence of any breach of these covenants. However, neither shall any foreclosure of any mortgage, security deed, or assertion of any lien, against any lot remove such lot from the operation of these covenants.

11.

DISCLAIMER BY OWNER OF FURTHER OBLIGATIONS:

11.1 Owner hereby fully and finally disclaims any responsibility, obligation, or liability to erect, construct, provide, maintain, repair or furnish any additional common improvements, amenities, roadways, utilities, services, easements, or other common benefits or appurtenances of whatever kind or character, to, or for any lot or lot owner; or to further repair, maintain, or replace any such common items that may now be, or hereafter come to be, in existence, if any.

11.2 Notwithstanding any depictions of any subdivision road or cul-de-sac on any present recorded, or unrecorded, plat of all, or any portion of this realty (herein collectively, either platted road, or common road); no lot owner or any other person or entity shall acquire, have, or enjoy any roadway easement for access or other use in any such platted or common road; unless, or until, any such platted or common roadway shall actually have been fully constructed and put into service by owner, in owner's sole and absolute discretion; provided that this reservation shall not apply to any present or future public road serving any part of this realty. (In this regard it is noted that Sara Lane, serving this realty, is, and for several years, has been publicly maintained by the City of Mt. Airy, Georgia.)

Owner reserves the right, at any time in the future, to convey, to any appropriate governmental body, fee simple title and ownership in and to any present or future platted or common roadway in said realty, in order to convert the same to a public street or road; and such conveyance by owner shall convey first and paramount priority and fee simple title in and to such conveyed common roadway; and the full and final consent and concurrence, by all present and future lot owners, shall be conclusively presumed.

11.3 All lots hereafter conveyed shall be subject to any existing or proposed platted or common roadways, as the same may be depicted on any then existing recorded plat, or unrecorded plat that is cited in the original lot owner's deed from owner.

11.4 **Owner's powers coupled with an interest:** All of owner's rights, discretion, powers, elections, options, reservations, and protections, arising under this or any other item in this declaration shall be deemed to be powers, rights, protections, and reservations coupled with an interest, and irrevocable; for so long as owner owns title to any platted or common roadway, or any lot in the subject realty.

11.5 **Users of common roadways:** Any common roadway which shall have become actually cleared, graded, constructed and completed, shall be subject to a nonexclusive and continuing right of vehicular and pedestrian ingress and egress access, for the benefit of owner and each lot owner whose lot is thereby served, and the guests, invitees, and licensees, of owner and any lot owner or occupant; provided that each user shall pass upon said roadways at their own risk, and affirmative duty to inspect for any latent or patent defects or dangers attending the use of any such common roadway. Provided that the members of the public shall not acquire any use rights in any such platted or common roadway, unless, and until, such time as the same shall have been formally converted to a public street

and road.

11.6 Roadway maintenance, repair, and replacement: Each owner of a lot which has been improved by a residential dwelling, shall be under a pro rata responsibility, obligation, and liability to perform, and assist in the performance of, and to contribute to the costs and expense of, all reasonably needed repairs and maintenance of then existing common roadways serving the respective lots and leading from their lots to a public street or roadway.

12.

UTILITY EASEMENTS: Owner, and lot owners, shall have a continuing nonexclusive utility easement, for the benefit of the respective realty and lots, over and along any present or future (if any), platted or common roadways, if and when the same come to be actually constructed, completed, and put into service; so as to authorize and permit them, respectively, to lay, erect, construct, place, run, repair, maintain, and replace, from time to time, electrical, gas, water, telephone, sewer, TV cable, and other types of utility lines, equipment, and systems, whenever reasonably necessary and appropriate to serve the subject realty, and its respective parcels; provided that such easements shall be exercised in such manner, and at such times, as to reasonably minimize any disruption of the use of the common roadway affected, and so as to assure such roadway's restoration to its original state of repair and condition before the performance of such utility easement work.

13.

SEVERABILITY: Should any covenant or provision herein be found and determined, by a tribunal having jurisdiction, to be invalid or unlawful, then such invalid or unlawful provision or covenant shall be deemed severed herefrom, ab initio; and all other provisions and covenants herein shall continue to be valid and of full force and effect.

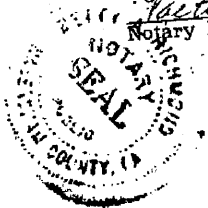
WHEREFORE, BASED UPON THE FOREGOING, undersigned owner does hereunto below set and affix owner's hand and seal this day.

Sara Wofford Loudermilk (SEAL)
SARA WOFFORD LOUDERMILK, Owner

Duly read, executed, and delivered by
named Owner before us this 29th
day of October, 1993.

James Carter
Witness

Robert G. Richmond
Notary Public



ATTACHMENT ONE

(Reference is to Paragraph 1. in Covenants)

Description of Realty to be governed by these Covenants:

Tract One: All of those parcels of land designated as lots: (1), (2), (3), (4), (5), (6), (14), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (30), (31) together with the proposed roadway designated as Sarah Court, all as designated on that certain plat of survey prepared for Ralph Loudermilk by Russell Bartlett, R. S., originally dated November 6, 1984, and as last revised on October 15, 1993 and recorded in Habersham County, Georgia platbook 35 at page 164 (herein BARTLETT PLAT); with the location, distances, directions, and depictions of the boundaries of the subject realty herein conveyed, as depicted on said Bartlett plat, being referred to and incorporated as a part hereof by reference for a particular description of the subject realty conveyed herein.

Subject realty is a portion of an original larger tract acquired by Ralph C. Loudermilk from Lorraine Farlinger by deed dated October 11, 1948, and recorded in Habersham County, Georgia, deed book A-53, at page 522-3.