FILE # 2333096 RCD: 05/26/2006 @ 02:24 PM, BK: 2711 PG: 543 RECORDING: $37.50 RECORDING $ CLE V: $32.00 DEPUTY CLERK GDUN NT DON W. HOWARD, CLERK OF COURTS, OKA SA COUNTY FL

50 50
4
60 00

Prepared by:
Michael Wm Mead
Attorney at Law
Post Office Drawer 1329
Fort Walton Beach, Florida 32549

DECLARATION OF COVENANTS, EASEMENTS, CONDITIONS, RESTRICTIONS AND ROAD MAINTENANCE AND STORM WATER MANAGEMENT AGREEMENT AND PARTY WALL AGREEMENT FOR QUAIL RUN TOWNHOMES

WHEREAS, COURTYARD DEVELOPMENT, LLC, A Florida limited liability company, hereinafter referred to as **"DECLARANT"**, is the owner of that real property legally described as follows:

> QUAIL RUN TOWNHOMES according to Plat thereof as recorded in Plat Book 22, Page 20, of the Public Records of Okaloosa County, Florida.

and,

WHEREAS, the **DECLARANT** has subdivided the above-described real property into a 98-lot townhome development known as **QUAIL RUN TOWNHOMES,** as recorded in Plat Book 22, at Page 20 of the Public Records of Okaloosa County, Florida.

DEFINITIONS

"Association" shall mean and refer to **QUAIL RUN TOWNHOMES OWNERS ASSOCIATION, INC. a Florida nonprofit corporation,** its successors and assigns.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities of the fee simple title to any lot which is a part of the property which is made subject to this Declaration pursuant to the preceding section.

"Properties" shall mean and refer to that certain real property herein above described in the preamble hereof.

"Common Elements" shall mean all of the real property shown on the plat of **QUAIL RUN TOWNHOMES** less and except the 98 lots as shown on the plat.

30-25-22-1025

MMM

"Lot" shall mean and refer to any one of those Lots Numbered 1 through 98 as described and shown on the plat of **QUAIL RUN TOWNHOMES.**

"Declarant" shall mean and refer to **COURTYARD DEVELOPMENT, LLC, a Florida limited liability company,** and its successors and assigns.

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be sold and conveyed subject to the following easements, restrictions, conditions, and covenants which are for the purpose of protecting the value and desirability of the property, and which shall run with the title to all real property described above, and be binding on all parties have any rights, title and interest in the described property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of the owners thereto, the **Declarant** and it successors in title.

Each and every future owner of said property, by virtue of becoming such an owner, agree with the **DECLARANT** and with each other owner or future owner of any part of said property, that the following covenants, restrictions and limitations apply to the property in said residential development:

1. All lots in the development shall be known and described as residential lots and no lot shall be used except for residential purposes. It is anticipated that townhomes shall be constructed upon all lots by which these structures shall share a common party wall.

2. Each wall which is built as a part of the original construction of the units upon the properties and placed on the dividing line between the lots shall constitute a party wall and, to the extent not inconsistent with the provisions contained herein, the general rule of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

3. Each lot owner shall have an easement over, upon and under each adjoining lot described above to accommodate encroachments from one lot upon another lot of building projections, including but not limited to wall, rooms, living spaces, brick, eaves and roof overhangs, together with like easements of access of adjoining lots and structures for the purpose of repairing and maintaining such encroachment building projections; provided that the lot owner exercising such easement shall restore at such

owner's expense all damages to the lot subject to such easement. The easement privilege granted herein shall be exercised only between 9:00 o'clock a.m. and 5:00 o'clock p.m. daily except in cases of emergency.

4. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the party wall in proportion to such use.

5. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owners to call for a larger contribution from the owners under any rules of law regarding liability for negligent or willful acts or omissions.

6. Notwithstanding any other provisions of this instrument, any owner who, by his negligence or willful acts causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

7. The right of any owner to contribution from any other owner arising under this party wall agreement shall be appurtenant to the land and shall pass to such owner's successor in title.

8. In the event of damage to or destruction of any unit by fire, windstorm, water or any other cause whatsoever, the owner shall, within reasonable time, cause said unit to be repaired or rebuilt so as to place the same in as good an tenantable condition as it was before the event causing such damage or destruction; failure to do so shall constitute a breach of these covenants. Subject to priority of any mortgagee under a mortgage clause, all insurance proceeds for loss or damage to any unit or any other improvements upon any lot shall be used to assure the repair or rebuilding of any such unit, or any part thereof.

9. All units shall be insured, at the owner's expense, in an amount equal to the maximum insurable replacement value, excluding the foundation and excavation costs. Such coverage shall afford protection against:

(1) loss or damage by wind, fire and other hazards covered by a standard extended coverage endorsement; and

(2) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the land, including but not limited to vandalism and malicious mischief.

10. No noxious or offensive activity shall be permitted on any lot, nor shall anything be built thereon which may become a nuisance or annoyance to the neighborhood.

11. No hedge or fence shall be located nearer than the front of the townhouse of such lot, and no fence, wall, or other structure shall be constructed on any portion of any lot which would impede drainage of ground water, or which would otherwise interfere with the drainage and storm water management.

12. The owner of each lot/townhome, shall keep such lot free from trash and rubbish and shall keep such lot in a neat and attractive condition at all times. No abandoned vehicle shall be kept on any lot.

13. None of the restrictive covenants contained herein, nor shall any breach thereof, forfeit the title of the property of the owner violating said restrictions. The **ASSOCIATION** created herein, or the lot owners or the **DECLARANT**, shall all have the right to enforce any of the restrictions or obligations contained herein by appropriate proceedings in a court of competent jurisdiction, seeking damages or injunctive relief. In any litigation arising out of this instrument, the prevailing party shall be entitled to recover a reasonable attorney fee.

14. Dogs, cats and other domesticated animals may be kept by lot owners, provided they are not kept, bred or maintained for any commercial purpose or use and are not a nuisance, annoyance or danger to the neighborhood. No hoofed animals and no fowl or other animal shall be kept or maintained in the development.

15. For any of those townhome units which are located adjacent to the common area swimming pool, it shall be specifically encumbent upon the owners of those units to keep the poolside area (rear of unit) of those townhome units free and clear of any unsightly materials and free and clear of items such as bicycles, grills, and other items of personal property. There will be permitted lawn chairs and tables.

16. Every owner of a lot shall be a member of the **ASSOCIATION.** All lot owners within **QUAIL RUN TOWNHOMES** shall automatically become members of

the **ASSOCIATION** by the acceptance of a deed to such lot within **QUAIL RUN TOWNHOMES**, whether or not it shall be so expressed in such deed and, by accepting such deed, said lot owner shall be deemed to covenant and agree to pay to the **ASSOCIATION** the following:

(a) An initial annual general assessment of **$840.00** per year to be used as follows:

(1) The repair and maintenance of that private street for ingress and egress to the townhomes is a private road which shall not be dedicated to the public for use, but will be used by some or all of the residents of **QUAIL RUN TOWNHOMES**. It shall be the obligation of all lot owners within the subdivision to share equally in the maintenance, repair and replacement of said road, and

(2) To operate and maintain the storm water management system, the storm water drainage facility as exempted or permitted, and to otherwise fulfill the responsibilities of the Association to Okaloosa County and the State of Florida as it may relate to the drainage and storm water management and landscaping, and

(3) To repair, maintain and replace the subdivision swimming pool, and

(4) To purchase any insurances which may be reasonably required by the **ASSOCIATION** for the common elements, and

(5) To repair, maintain and replace any common area sprinkler system, and

(6) To provide all of the benefits and services necessary for the use and equipment of the Common Elements. It shall not, however, be the responsibility of the **ASSOCIATION** to maintain the roof or exteriors of the townhomes, as this shall be the responsibility of each unit owner.

(7) At initial closing, each Owner shall pay a $300.00 start up fee to the **ASSOCIATION** and a $300.00 reimbursement fee to the **DECLARANT**.

17. The annual assessment by the **ASSOCIATION** shall commence as to all improved or unimproved lots on the 1st day of the month following the conveyance month of each owner's lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The **Declarant** will be exempt from payment of association dues as long as its units are for sale in the ordinary course.

18. In addition to the annual assessment, the **ASSOCIATION** may levy, in any assessment year, a special assessment for capital improvements for any expenses not covered by the annual assessment. Special assessments may be imposed upon an individual townhouse owner for repair, maintenance or replacement of the street or storm water management and drainage system and landscaping or any other common expense.

19. The annual or special assessments, together with interest thereon, costs and reasonable attorney's fee, shall be a charge on each lot within **QUAIL RUN TOWNHOMES**, and shall be a continuing lien upon each lot against which such assessment is made. Each such assessment, together with interest thereon, costs and reasonable attorney's fees, shall be the personal obligation of the person or persons who were the owners of such property at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to a successor in title unless it is expressly assumed by them, and is to be paid by the new owner at the time of closing of the sale of the property.

20. The lot owners recognize the existence of the private drainage easements created and shown upon the plat of **QUAIL RUN TOWNHOMES**. These drainage easements will contain the storm water drainage system which shall initially be installed by the **DECLARANT**. This includes sodded swales and holding pond facilities. Lot owners agree that they shall not interfere with, alter or in any way change the contour of the property in order that these drainage facilities be interfered with. No construction or filling of these easements shall be permitted except as to maintain, and facilitate the purpose of these drainage facilities.

21. **QUAIL RUN TOWNHOMES OWNERS ASSOCIATION** shall act through its members, whose vote of a majority thereof of the members present and voting at a meeting of the membership called for such purpose, shall establish the amount of the annual assessment, which annual assessment must be fixed at a uniform rate for all lots, initially not to exceed **$840.00** annually. Each lot shall be entitled to one vote at such meeting.

22. In addition to the annual assessments authorized above, the **ASSOCIATION** may levy, in any assessment year, a special assessment for the purposes set forth above, provided that such assessment shall have the assent of three-fourths (3/4ths) of the votes of all lot owners who are voting, in person or by proxy, at the meeting duly called for that purpose.

23. Written notice of any meeting called for the purpose of taking any action authorized above shall be sent to all members, not less than ten (10) days nor more than

sixty (60) days in advance of the meeting. At the first such meeting called, the presence of the members or proxies entitled to cast fifty percent (50%) of all votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

24. Any assessments 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 bring an action at law against the owner personally obligated to pay the same and/or 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 road or easement or by the abandonment of his lot.

25. The lien of the assessments provided for herein shall be subordinate to the lien of any first or second mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to a mortgage foreclosure or proceedings in lieu thereof, shall extinguish the lien of such assessment as to the payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assesements thereafter becoming due or from the lien thereof.

26. When more than one person holds an interest in any lot, all persons shall be members. The vote for such lot may be determined among themselves but, in no event, shall more than one vote be cast with respect to any one lot.

27. **DECLARANT** reserves the right to grant variances, modifications or waivers regarding this instrument, specifically including the right, but without limitations, to modify building setback lines, or to grant waivers for violations thereof.

IN WITNESS WHEREOF, the undersigned being the **DECLARANT** have hereunto caused their hands and seals to be affixed this 25th day of May, 2006.

WITNESSES:

Michael Wm Mead

LEILA J. EVANS

COURTYARD DEVELOPMENT, LLC,
A Florida limited liability company

By Its Manager:

Robert Donovan Construction, Inc.

By: James D Monsees
James D. Monsees

STATE OF FLORIDA
COUNTY OF OKALOOSA

The foregoing instrument was acknowledged before me this 15th day of May, 2006, by James D. Monsees, as Vice-President of Robert Donovan Construction, Inc., Manager of Courtyard Development, LLC, he is personally known to me.

Notary Public

My Commission Expires:

MICHAEL WM. MEAD
MY COMMISSION # DD146348
EXPIRES: September 9, 2006