

WAKE COUNTY, NC 994
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
07/28/2005 AT 16:27:29

BOOK:011495 PAGE:01611 - 01629

Prepared by and mail to: Savage and Godfrey, Attorneys at Law (#171)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE GROVES
(A TOWNHOME DEVELOPMENT)

THIS DECLARATION, made this 25th day of July, 2005, by JVI CONSTRUCTION, INC., a North Carolina Corporation, (hereinafter referred to as "Declarant"),

WHEREAS, the Declarant is the owner of the real property described in Exhibit A of this Declaration known as THE GROVES and desires to provide for the preservation of values, the maintenance of common facilities and services, and the administration and enforcement of covenants and restrictions; and

WHEREAS, the Declarant has caused or will cause to be incorporated under the laws of the State of North Carolina a non-profit corporation for the purpose of exercising the functions aforesaid and which are hereinafter more fully set forth;

NOW, THEREFORE, the Declarant declares that the real property described in Exhibit A, and such additions thereto as may hereinafter be made pursuant to Article II hereof, is and shall be held, conveyed, occupied and used subject to the covenants, restrictions, conditions, easements, assessments, affirmative obligations, and liens (all hereinafter sometimes referred to as "the Covenants" or the "Covenants and Restrictions") hereinafter set forth.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to The Groves Townhome Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Board" or "Board of Directors" shall mean those persons elected or appointed to act collectively as the Board of Directors of the Association.

Section 3. "Building" shall mean a structure containing one or more townhomes constructed or erected on the Property.

Section 4. "Declarant" shall mean and refer to JVI Construction, Inc., including its successors and assigns to whom the rights of Declarant hereunder may be expressly transferred in whole or in part, subject to such terms and conditions as Declarant may impose.

Section 5. "Limited Townhome Common Element" shall mean those portions of the

Townhome Common Elements that serve only a single Lot or a limited number of Lots, and which may include but specifically is not limited to, driveways, walkways, parking areas or areas serving only specified Lots, and such other similar areas as may be designated by a subdivision map of the Property or the Association.

Section 6. "Living Unit" shall mean and refer to any Lot on which a dwelling unit has been fully constructed and made ready for occupancy as a residence, for which a Certificate of Occupancy or Compliance has been issued, and which is owned by anyone other than the original builder thereof.

Section 7. "Lot" shall mean and refer to any plot of land plotted for the construction of townhomes as shown upon recorded subdivision maps of the Property referred to herein, as such maps may be from time to time amended or recorded, with the exception of the Townhome Common Elements.

Section 8. "Member" shall mean and refer to every Owner, and every person or entity who holds membership in the Association.

Section 9. "Owner" or "Lot 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 a part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

Section 10. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee or other legal entity.

Section 11. "Property" shall mean and refer to that certain real property known as THE GROVES as described on Exhibit "A", and such additions thereto as may hereafter be subjected to this Declaration.

Section 12. "Townhome Common Elements", "RCA Areas", "Common Areas" shall mean all real property, now or hereafter owned by the Association for the common use and enjoyment of the Owners or members or designated classes of members of the Association, including but not limited to Limited Townhome Common Elements, RCA areas, Common Areas and private streets, and utility lines, as may be designated on any subdivision map of the Property or by the Association. The Townhome Common Elements anticipated to be owned by the Association is all of the Property other than the Lots.

Section 13. "Townhome Common Expenses" shall mean and include:

(a) Expenses of administration, maintenance, repair, or replacement of the Townhome Common Elements;

(b) Expenses declared to be Townhome Common Expenses by the provisions of this Declaration or the Bylaws;

(c) Hazard, liability, and such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase, or as the Association may deem appropriate to purchase;

(d) Ad valorem taxes and public assessment charges levied against Townhome Common Elements;

(e) Expenses for maintenance of roads, streets, rights of way, drainage and utility easements and amenities as provided in this Declaration;

(f) Expenses for maintenance of security devices or personnel; and

(g) Any other expense determined to be reasonably necessary to carry out the purposes of this Declaration by the Board or approved by the members to be Townhome Common Expenses of the Association.

ARTICLE II
EXISTING PROPERTY AND ADDITIONS

Section 1. Existing Property. The real property which is subject to these Covenants is described on EXHIBIT "A" attached hereto and incorporated herein by reference.

Section 2. Additions to Existing Property. The Declarant and its successors and assigns shall have the right, by Supplementary Declarations, to bring within the plan and operation of this Declaration additional property, which may be in multiple parcels and take place on more than one occasion. The additions of property authorized under this paragraph may increase the cumulative number of Lots and, therefore, may alter the relative maximum potential voting strength of the various types of membership of the Association. The Supplementary Declaration may contain such complementary additions and modifications of the Covenants and Restrictions contained in this Declaration as may be necessary or convenient in the sole judgment of the Declarant as are not inconsistent with the plan of this Declaration.

ARTICLE III
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Subject to the provisions of this Declaration, and the rules, regulations, and bylaws of the Association, every Owner, together with his or her tenants and invitees, shall have a right and easement of use and enjoyment in and to the Townhome Common Elements, including the right of access, ingress and egress, on and over the drives, walkways and parking areas of the Townhome Common Elements, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

- (a) the ordinances of the Town of Apex, North Carolina;
- (b) the right of the Association to charge reasonable admission and other fees for the use of any recreational or other similar facility, including the pool house and swimming pool, situated upon the Townhome Common Elements;
- (c) the right of the Association to suspend the voting rights and the right to use the Townhome Common Element facilities by an Owner, and his or her tenants and invitees, for any period during which any assessment against the Owner's Lot remains unpaid, or for infraction of the Association's published rules and regulations;
- (d) the right of the Association to dedicate, sell, lease, or transfer all or any part of the Townhome Common Elements, or any interest therein, to any public agency, authority, or utility, for such purposes and subject to such conditions as may be agreed upon by the members. Notwithstanding the foregoing, the Association shall have a right to participate in an equal exchange of open space as permitted by local government ordinances. No such dedication, sale or transfer shall be effective unless it has been approved by (i) two-thirds (2/3) of each class of Members and (ii) the Declarant, for so long as the Declarant owns any interest in the Property. Provided, however, conveyances for general utility purposes as specified herein may be made by the Association without consent of the members;
- (e) the right of the Association to limit the number of guests of member;
- (f) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving or maintaining the Townhome Common Elements and facilities and in aid thereof to mortgage the Townhome Common Elements, the rights of such mortgage in the Townhome Common Elements to be subordinate to the rights of the Lot Owners;
- (g) the right of the individual Members to the use of parking spaces as provided in this Article;

(h) the right of the Association in accordance with its Articles of Incorporation or Bylaws to impose rules and regulations for the use and enjoyment of the Townhome Common Elements and improvements thereon, which rules and regulations may further restrict the use of the Townhome Common Elements and to create Limited Townhome Common Elements.

(i) the right of Owners of Lots on additional lands annexed to the Property initially, or subsequently, to the easements of enjoyment and rights of ingress, egress and access, as specified herein, to the initial Property and all lands included in subsequent phases.

Section 2. Title to the Townhome Common Elements. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Townhome Common Elements located within the Property to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, except encumbrances of this Declaration, service and utility easements, access, storm drainage and other similar service or utility easements.

The Association shall purchase from the Declarant, at fifty (50) percent of the development and construction costs of same, any pool house and/or swimming pool and any other recreational facility to be constructed upon the Property. The Declarant shall be paid in full within the period of time that the Declarant owns a Class B membership. Upon the completion of the construction of such pool house and swimming pool and any other recreational facility, homeowners dues will be increased as necessary to maintain and pay for same.

Section 3. Parking Rights. Ownership of each Lot shall entitle the Owner thereof to the use of two automobile parking spaces, together with the right of ingress and egress in, to, and upon said parking areas. The Association shall permanently provide two vehicular parking spaces for each Lot, such spaces to be as near the Lot to which assigned as reasonably possible. No boats, trailers, campers, motorhomes, trucks or tractors shall be parked on the Property or on the right of way of any streets adjoining the Property by any Lot Owner, or his or her family members, guests, or tenants. No unregistered vehicles or vehicles without current registration plate shall be parked on the Property.

Section 5. TV Antennas, Cablevision, Music. The Association may provide one or more central television or radio antennas for the convenience of the members and may supply cablevision and piped-in music, and the cost of these may be included in annual or special assessments. The Association may regulate or prohibit the erection of television, radio or other antennas, or dishes on the Property to the extent permitted by law.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When any property entitling the Owner to membership as a Class "A" Member of the Association is owned of record in the name of two (2) or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or any other manner of joint or common ownership, or if two (2) or more persons or entities have the same fiduciary relationship respecting the same property, then their acts with respect to voting shall have the following effect:

- (1) If only one (1) votes, in person or by proxy, his or her act shall bind all;
- (2) If more than one (1) votes, in person or by proxy, the act of the majority so voting

shall bind all. In no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited.

Class B. The Class B member shall be the Declarant and shall be entitled to seven (7) votes for each Lot owned, including Lots later added pursuant to annexation of additional property as set forth in this Declaration. The Class B membership shall cease and be converted to Class A membership with one vote for each lot owned on the happening of either of the following events, whichever occurs earlier:

(a) when eighty-five percent (85%) of the Lots or Living Units in Exhibit A comprising THE GROVES project are constructed and initially deeded to Owners other than the Declarant; provided, however, that the Class "B" membership shall be reinstated with all rights and privileges if after conversion of the Class "B" membership to Class "A" membership as herein provided, additional land is annexed to the Property by the Declarant in the manner provided in this Article, or

(b) on July 1, 2035.

Section 3. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and the Articles and Bylaws of the Association and according to the provisions of this Declaration.

Section 4. Governance. The Association shall be governed by a Board of Directors, the number, election, and term to be determined in accordance with the Bylaws of the Association.

Section 5. Quorum Required for any Action Authorized at Regular or Special Meetings of the Association; Notice. Unless otherwise provided by law, this Declaration, or the Association Bylaws, (a) the Owners of fifty-one percent (51%) of the Lots constitute a quorum, and (b) proper notice of meetings shall be deemed to be given when personally delivered to the Member or mailed to the Member's last known address according to the Association's records not less than ten (10) days prior to the date of the meeting at which any proposed action is to be considered.

Section 6. Proxies. Members of the Association may vote and transact business at any meeting of the Association by authorized written proxy, subject to the provisions of the Association's bylaws.

Section 7. Ballots by Mail. When requested by the Board of Directors, there shall be sent with notices of regular or special meetings of the Association a statement of motions to be introduced for vote for the Members and a ballot on which each Member may vote for or against each such motion. Each properly completed ballot presented at such meeting shall be counted in calculating the quorum requirements set out above; provided, however, such ballots shall not be counted in determining whether a quorum is present to vote upon motions not appearing on the ballot.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual and special assessments. Annual and special assessments, together with interest and costs, and reasonable attorney's fees for collection, shall be a charge upon, and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due.

The personal obligation for the delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

The Association shall also have the authority through the Board of Directors to establish and levy a special assessment on any Lot or Living Unit to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and/or money, by the Association for repair or remedy.

Each Owner covenants for him/herself and his/her heirs, successors and assigns, to pay any assessment levied by the Association on the Lot owned by him or her within ten (10) days of the due date as established by the Board, and further covenants that if said assessment shall not be paid within thirty (30) days of the due date, the amount of such assessment shall be in default and become a lien upon said Owner's Lot as provided herein and shall continue to be a lien until fully paid.

Section 2. Purpose of Assessments. The Annual Assessments levied by the Association shall be used for the establishment, improvement, insurance of, maintenance, enhancement, enlargement, and operation of the Townhome Common Elements, and to provide services which the Association is authorized to provide. Permitted purposes include but are not limited to: the paying of Townhome Common Expenses to promote the convenience, property values, health, and safety of the Property and its Owners, including but not limited to, for the acquisition, improvement and maintenance of property, services, amenities and facilities, for the exterior maintenance of the Buildings and for the use and enjoyment of the Townhome Common Elements, including but not limited to the cost of repairs, replacements and additions, the cost of maintenance of private streets and lighting on private streets, the cost of labor, equipment, materials, management and supervision, the payment of taxes and assessments assessed against the Townhome Common Elements, the procurement and maintenance of insurance in accordance with the Declaration and Bylaws or as deemed appropriate by the Board, the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise in the Board's reasonable discretion.

Section 3. Amount of Assessment.

(a) Initial Maximum Assessment. To and including August 1, 2005, the maximum monthly assessment shall not exceed \$75.00 per month for each Lot, payable quarterly in advance. Upon completion of the pool house and swimming pool construction a minimum of \$25 per month increase shall be assessed upon each Lot.

(b) Increase by Association. From and after August 1, 2005, the monthly assessment may be increased for each succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed the greater of (i) ten (10%) percent, or (ii) the percentage increase for the previous year reflected in the Consumer Price Index published by the United States Government.

(c) Increase by Members. From and after August 1, 2005, the monthly assessment may be increased by a percentage greater than permitted by Section 3(b) by agreement of not less than two-thirds (2/3) of each class of Members.

(d) Criteria for Establishing Monthly Assessment. In establishing the monthly assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the monthly assessment in an amount in excess of ten (10%) percent or the sums derived by application of the Consumer Price Index formula provided in Section 3(b) without the consent of Members required by Section 3(c).

Section 4. Special Assessments for Improvements. In addition to the monthly assessments authorized above, 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, reconstruction, restoration, repair or replacement of a capital improvement upon the Townhome Common Elements, any extraordinary maintenance, and in connection with exterior maintenance, including fixture and personal property relating thereto and any property for which the Association is responsible, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, except that the Board without a vote by the Members may approve one special assessment every three (3) years not to exceed \$500.00.

Section 5. Special Assessment for Maintenance. The Association will authorize a termite inspection of The Groves's Lots and Living Units annually. The costs of the termite protection will be shared by each Owner of a Lot or Living Unit and the Association will bill separately each Owner for such service.

Section 6. Replacement Reserve. Out of the Townhome Common Expenses assessment, the Board shall create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Townhome Common Elements and any Limited Townhome Common Elements which the Association may be obligated to maintain.

Section 7. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast forty percent (40%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 8. Uniform Rate of Assessment. Monthly and special assessments must be fixed at a uniform rate for all Lots and Living Units.

Section 9. Date of Commencement of Monthly Assessments; Due Dates. The monthly assessments provided for herein shall commence as to each Lot or Living Unit on the first day of the month following the conveyance of said Lot or Living Unit from the Builder thereof to the subsequent Owner. The Board of Directors shall fix the amount of the monthly assessment against each Lot at least thirty (30) days in advance of each monthly assessment period. Written notice of the monthly assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and without charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

Section 10. Two Months Initial Working Capital. In addition to the regular assessments to be charged and paid hereunder, each Lot Owner shall, at the time of the initial sale of each Lot by Declarant to a Lot Owner, pay to the Association a sum equal to two (2) months assessment on that Lot as additional working capital of the Association. These amounts need not be segregated but may be commingled with regular assessment funds. This working capital amount shall be paid by the Lot

Owner notwithstanding the fact that Declarant may have made prior regular assessment payment to the Association on the Lot being sold pursuant to the provisions of the first sentence hereunder.

Section 11. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default and shall bear interest from the due date at the rate of eighteen (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, and/or perfect and foreclose the lien against the Lot pursuant to North Carolina law.

Section 12. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to such mortgage or tax 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. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 13. Responsibility for Maintenance of Private Streets and Driveways. The Association shall be responsible for maintenance of the private streets, parking lots and driveways as shown on the subdivision maps of the Property.

Private streets will not necessarily be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

Section 14. Annual Statements. The President, Treasurer, or such other Officer as may have custody of the funds of the Association shall, within sixty (60) days after the close of each fiscal year of the Association, prepare a financial statement showing the assets and liabilities of the Association, and a statement of revenues and expenses. Such Officer shall furnish to the Board of Directors, the Declarant, and to each Member of the Association upon the Member's request, a copy of such statement without charge.

Section 15. Annual Budget; Books. The Board of Directors shall prepare, at least sixty (60) days prior to the first day of the upcoming fiscal year, a budget outlining anticipated receipts and expenses for the upcoming fiscal year. A copy shall be furnished to the Declarant, and to each Member of the Association upon the Member's request, without charge. The fiscal books of the Association shall be available for inspection by the Declarant and the Members and their authorized agent during normal business hours.

ARTICLE VI PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Townhomes upon the Property and placed on the dividing line between the Lots and all reconstruction or extensions of such walls shall constitute party walls, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below-ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repairs and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who owns or has used the wall may restore it, and if the other

Owners own or 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 others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Easement to Adjoining Lot. The Owner of any Lot has an appurtenant easement upon adjoining Lots to construct, reconstruct, repair, or extend a party wall (subject to and within the limitations of architectural control and other limitations of these covenants). Such construction shall be done expeditiously.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the cost of furnishing the necessary protection against such elements.

Section 6. Right to Contribution Not Run with Land. The right of any Owner to contribution from any other Owner under this Article shall be contractual hereunder and shall not be appurtenant to the land and shall not pass to such Owner's successors in title.

Section 7. Certification by Adjoining Property Owner That No Contribution is Due. If any Owner desires to sell his or her property, he/she may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article V, request of the adjoining Owner a certificate that no contribution obligation exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request without charge; provided, however, that where the adjoining Lot Owner claims a right of contribution, the certification shall contain recital of the amount claimed.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina relating to arbitration as then existing.

ARTICLE VII

ARCHITECTURAL CONTROL

No site preparation (including, but not limited to, grading, elevation work, sloping or tree work) or construction, erection or installation of any improvements, including but not limited to, buildings, fences, signs, walls, screens, plantings or other structure, shall be commenced, erected, placed, or altered upon the Property or any Lot, nor shall any exterior addition, or change, or alteration be made to any improvement by any Owner, other than Declarant, until the plans and specifications showing the nature, kind, shape, height, materials, exterior design, colors, siding, location and elevations of the proposed improvements shall have been submitted to, and approved in writing, by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated Committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required; and this Article will be deemed to have been fully complied with; provided that plans and specifications that contain inaccurate or missing data or information when submitted shall not be deemed to be approved notwithstanding the foregoing.

The primary purpose and foremost consideration of these restrictive covenants is the creation of a community which is aesthetically pleasing, functionally convenient, and protective of the Owners' investment. In order to implement the purposes of these covenants the Declarant may establish and amend from time to time objective standards, regulations, specifications, rules and guidelines for architecture, construction, signs, mailboxes and landscaping.

No Building or other improvement shall be constructed or altered on any Lot until the plans and specifications for same have been approved in writing by the Architectural Committee, in its sole and uncontrolled discretion and based upon such grounds as it alone deems sufficient, so as to ensure the goals above as well as conformity and harmony of exterior design and construction with existing structures and improvements in the Property and the intent of these covenants.

Until responsibility for same is transferred to the Association's Board of Directors, the architectural committee shall be composed of the Declarant, and such persons and entities as designated or appointed by Declarant.

Upon request the committee shall provide any Owner with a letter stating that plans and specifications have been approved and may be relied upon by third parties.

Refusal of approval of plans, or specifications may be based upon any grounds, including purely aesthetic, that in the sole discretion of the Committee, it shall deem sufficient. The Committee shall not be responsible for any defects in plans and specifications submitted to it or in any structure erected according to such plans and specification.

The Association shall have the right, at its election, but shall not be required, to enter upon any Lot during construction or repairs to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

ARTICLE VIII

EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance by Association. In addition to maintenance of the Townhome Common Elements, the Association shall provide exterior maintenance upon each Living Unit which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, termite inspection and treatment, trees, shrubs, grass, walks, mailboxes, fences installed by Declarant or the Association, exterior post lights (excluding electricity therefor), and other exterior improvements. Such exterior maintenance shall not include glass surfaces, screens for windows and doors, improvements contained within courtyards or areas secured by the Owner or the repair or reconstruction of any improvements on any lot, the cost of which repair or reconstruction is covered by the Owner's casualty insurance. Further, the Owner of any Lot may at his or her election plant trees, shrubs, flowers and grass in his or her rear yard provided that such maintenance by the Owner does not hinder the Association in performing its maintenance of the exterior of the dwelling and the remaining yard spaces. The Owner shall not plant any vegetation in the front yard except with the prior written approval of the Association.

Section 2. Damage by Owner. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner or his/her tenants or invitees, that Owner shall, at his or her sole expense, promptly complete the maintenance and repair.

Section 3. Inspection Rights Reserved. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association, its agents, employees or contractors, the right to unobstructed access over and upon each Lot at reasonable times for inspection and to perform maintenance as provided in this Article.

Section 4. Casualty Loss Not Included. Maintenance and repairs under this Article include those arising from normal usage and weathering and do not include maintenance and repairs made necessary by fire or other casualty or damage.

ARTICLE IX
USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the yard space of each Lot and the Townhome Common Elements. Such rules and regulations may provide for imposition of fines and penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Property. No portion of the Property (except for temporary office of the Declarant and/or model townhouses used by Declarant) shall be used other than single-family residential purposes and for purposes reasonably incidental or accessory thereto.

Section 3. Quiet Enjoyment. No illegal, obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done thereon which is an embarrassment, discomfort, nuisance or annoyance to other Owners, their tenants and invitees. There shall not be maintained or operated any activity, device, or thing of any sort whose activity or existence is in any way noxious, loud, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Property by the Owners thereof.

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes, are controlled in accordance with applicable governmental ordinances, and are not a nuisance to other Owners.

Section 5. Insurance; Waste; Contamination. Nothing shall be kept, and no activity shall be conducted, on the Property which will increase the rate of insurance applicable to residential use for the Property or the contents thereof. No Owner shall do or keep anything, nor cause or allow anything to be done or kept in his or her Townhome or in the Townhome Common Elements which will result in the cancellation of insurance on any portion of the Property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Townhome Common Elements. No Owner shall contaminate a Lot, the Common Elements, or any portion of the Property with any hazardous or toxic waste or other environmental contamination.

Section 6. Offensive Behavior. No immoral, improper, offensive, or unlawful use shall be made of the Property or any part thereof, and all valid laws, ordinances, and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, order, rules, regulations, or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain or repair such portion of the Property.

Section 7. Structural Integrity. Nothing shall be done in, upon, or to any Building or any of the Townhome Common Elements which will impair the structural integrity of any Building, or portion of the Townhome Common Elements, or which would impair or alter the structure of any Building or portion thereof, except in the manner provided in this Declaration.

Section 8. Business. No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any part of the Property, except that the Declarant or its agents may use any unsold townhome for sales or display purposes.

Section 9. Signs; Window Treatments. No owner shall display, or cause or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any Building, or any portion of the Townhome Common Elements, except as allowed by the Association pursuant to its Bylaws or regulations or as required by local governmental authority; provided, however, that the Declarant and any mortgagee who may become the Owner of any Lot, or their respective agents, may place "For Sale" signs on the unsold or unoccupied townhomes and in suitable places on the Townhome Common Elements provided however, that during the development of the Property and the marketing of townhomes, the Declarant may maintain a sales office and may erect and display such signs as the Declarant deems appropriate as aids to such development and marketing, provided that such signs do not violate any applicable laws.

Section 10. Alterations. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Townhome Common Elements except at the direction of with the express written consent of the Association.

Section 11. Townhome Common Elements Use. The Townhome Common Elements shall be used only for purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the townhomes, subject to any rules or regulations that may be adopted by the Association pursuant to its Bylaws.

Section 12. Parking. No boats, trailers, campers, motorhomes, trucks or tractors shall be parked on the Property or on any right of way of any streets adjoining the Property by any Lot Owners, its family members, tenants, or contract purchasers, except as may be permitted by rules and Regulations to be parked in a closed garage.

Section 13. Satellite Dishes. Radio towers, exterior television antennas and similar transmission and receiving apparatus shall not be placed on the property, except that one satellite dish not larger than 24 inches in diameter may be placed on each Building so as not to be visible from each street adjoining the Building.

Section 14. Lots Free of Debris. All lots shall be kept clean and free of garbage, junk, trash, debris, non-operable vehicles and apparatus, and any substance and condition that might contribute to an unsightly condition or health hazard. Each Lot Owner shall provide sufficient receptacles for garbage in an area not visible from the street. Garbage, trash, leaves, and refuse shall be disposed of in accordance with applicable laws and ordinances and reasonable safety measures.

Section 15. Leases. No Living Unit may be leased for a period of less than twelve (12) months.

ARTICLE X EASEMENTS

Section 1. Utility Easements. All of the Property, including Lots and Townhome Common Elements, shall be subject to such easements for driveways, walkways, parking area water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power line and other public utilities as shall be established by the Declarant or its predecessors in title. The Association shall have the power and authority to grant and establish upon, over, under, and across the Townhome Common Elements conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property.

Section 2. Adjoining Areas. Each Owner is hereby declared to have an easement, and the same is hereby granted by the Declarant, over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, additional settlement or

shifting of the building, or any other cause. There shall be valid easements for the maintenance of said encroachments, settlement or shifting; provided however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of Owner or Owners. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and that there shall be valid easements for the maintenance of said encroachments to long as they shall exist.

Section 3. Unintentional Encroachments. In the event that any Building on a Lot shall encroach upon any Townhome Common Elements or upon any other Lot for any reason not caused by the purposeful or negligent act of the Owner or agents of such Owner, then an easement appurtenant to such Lot shall exist for the continuance and maintenance of such encroachment upon the Townhome Common Elements or other Lot for so long as such encroachment shall naturally exist; and in the event that any portion of the Townhome Common Elements shall encroach upon any Lot, then an easement shall exist for the continuance and maintenance of such encroachment of the Townhome Common Elements onto any such Lot for so long as such encroachment shall naturally exist.

Section 4. Overhanging Roofs and Eaves. Each Lot and its Owner within the Properties is hereby declared to have an easement, and the same is hereby granted by the Declarant, over each adjoining Lot and/or the Townhome Common Elements, as the case may be, for overhanging roofs and eaves and the maintenance thereof.

Section 5. Easement for the Benefit of Governmental Authorities. An easement is hereby established for the benefit of the Town of Apex or other governmental agencies, over all Townhome Common Elements for the setting, removing and reading of water meters (which shall be separate for each Living Unit), maintaining and replacing water, sewage and drainage facilities, for police protection, fire fighting and garbage collection, postal services, termite inspections and treatments and the rendering of such other services as are appropriate and necessary for the use and enjoyment of the Property. In no case shall the Town of Apex or other responsible agency be responsible for failing to provide any emergency or regular fire, police, or other public service to the Property or to any of its occupants when such failure is due to the lack of access to such area due to inadequate design or construction, blocking of access routes, or any other factor within the control of the Declarant, the Association, the Owners or occupants. All conveyances of any portion of the property shall be subject to these limitations on the City's or other agency's responsibilities.

Section 6. Easement for Benefit of Utility Companies. The Declarant reserves the right to subject the Property, including the Townhome Common Elements, to a contract with the Town of Apex for the installation of underground electric lines, cables and connector posts or for the installation of street lighting, either or both of which, may require an initial payment or a continuing monthly payment to the utility by the owner of each Lot.

Section 7. Priority of Easements. Each of the easements referred to herein shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Lots, and the Townhome Common Elements, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Property or any portion thereof.

Section 8. Declarant Easement. If any encroachment shall occur subsequent to subjecting the Property to this Declaration as a result of setting or shifting of any building or as a result of any

permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed twenty-four (24) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant upon making entry for such purpose, shall restore the affected lot or lots to as near the original condition as practicable.

Section 9. Structural Support. Every portion of a Townhome which contributes to the structural support of the Building shall be burdened with an easement of structural support for the benefit of all other Townhomes within the Building.

Section 10. Emergencies. Every Lot and Townhome shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or within any Townhome that endangers any Building or portion of the Common Area.

Section 11. Maintenance Easement. The Association reserves an easement over and across every Lot for the purpose of performing the maintenance requirements of the Association as prescribed herein.

Section 12. Easements for Repairs. Each Lot Owner shall have a perpetual access easement over the adjoining Lot and Townhome Common Elements to the extent reasonably necessary to perform repair, maintenance, or reconstruction of his or her Townhome. Such repair, maintenance, or reconstruction shall be done expeditiously, and, upon completion of the work, the Owner shall restore the adjoining Lot and Townhome Common Elements to as near the same condition as that which prevailed prior to the commencement of the work as is reasonable practicable. This easement is required by the Town of Apex Code.

ARTICLE XI INSURANCE

Section 1. Insurance to be Maintained by the Association. The following insurance coverage shall be maintained in full force and effect by the Association:

(a) Public liability and property damage insurance in such amount and in such forms as shall be required by the Association, but public liability shall be an amount of at least \$1,000,000 for each occurrence;

(b) All liability insurance shall contain cross-liability endorsements to cover liability of the Owners as a group to an individual Owner;

(c) Fidelity bond coverage covering those that shall be responsible for or handle funds of the Association; and

(d) Such other insurance coverage as it may determine to be desirable and necessary, including fire and hazard insurance covering all buildings located on the Property as specified in Section 4, if determined to be better served by the Association procuring such insurance.

Section 2. Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and charged ratably to Owners as an assessment according to the applicable provisions of this Declaration.

Section 3. Insurance Beneficiaries. All such insurance policies shall be purchased by the Association for the benefit of the Association and the Owners.

Section 4. Insurance to be Maintained by the Owners. Every Owner shall maintain in full force and effect at all times fire and hazard insurance in an amount equal to the full replacement value

of his or her Living Unit, including the value of excavations and foundations. An Owner shall exhibit to the Board, upon request, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the Board, and the cost of such insurance shall be included in the assessment of the Owner and shall constitute a lien against his or her Lot until paid as a result of enforcement by the Association or otherwise.

The Association may, at its election, procure and pay for such insurance on all buildings, improvements and Living Units.

Casualty coverage shall afford protection against:

(a) Loss or damage to property by fire or other hazards covered by a standard extended coverage endorsements; and

(b) Such other risks as from time to time shall be customarily covered with respect to buildings and improvements similar in construction, location and use as the buildings and improvements to be insured, including, but not limited to, vandalism and malicious mischief.

Such insurance shall be issued with an insurer licensed to do business in North Carolina and holding a rating of "A" or better by Best's Insurance Reports, and such policy must provide that the insurer will not cancel, reduce or substitute coverage without first giving the Association and any mortgagee named in the policy thirty (30) days prior written notice thereof.

ARTICLE XII

REPAIR, RESTORATION OR RECONSTRUCTION OF CASUALTY DAMAGE

Section 1. Repair and Restoration. Except as otherwise herein provided, damage to or destruction of Living Units or Lots shall be promptly repaired, restored or reconstructed by the affected Owners, such repair and restoration or reconstruction, insofar as possible, to be in accordance with the original plans and specifications of the original building. In the event that the Owners of damaged Living Units and Lot default in the obligation to promptly repair and restore or reconstruct as herein provided, the Association may (but shall be under no obligation to) repair and restore or reconstruct the damaged Living Unit or Lot. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association and its agents the right to unobstructed access over and upon each Lot at all reasonable times to perform repair and restoration or reconstruction as provided in this Article. In the event of action by the Association as herein permitted, the Owners of damaged Living Unit and Lots shall be liable for assessment for the entire cost of such repair and restoration or reconstruction and subject to exercise of the enforcement remedies herein provided in the event of failure of timely payment of the assessment.

ARTICLE XIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Term; Amendments. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date hereof, after which time they shall be automatically extended for successive periods of ten (10) years, unless revoked or amended by an instrument signed by not less than the Owners of ninety percent (90%) of the Lot Owners.

Section 4. The following amendments may be effected by the Declarant without consent of the Members:

(a) Prior to the sale of the first Lot, this Declaration may be amended by the Declarant.

(b) Declarant may amend this Declaration by annexation of additional lands as specified in Article II, Section 2 herein.

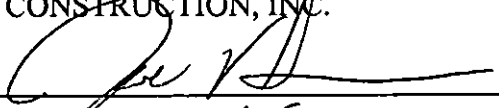
(c) The Declarant, so long as it shall retain control of the Association, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale in such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirement of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

(d) The Declarant, for so long as it shall retain control of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status.

Section 5. FHA/VA Approval. As long as there is a Class B membership, and if Declarant determines to qualify this Property for Federal Housing Administration or Veterans Administration approval the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional property, dedication of Townhome Common Elements, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, has executed this document this 28 day of July, 2005.

JVI CONSTRUCTION, INC.

By:  (SEAL)

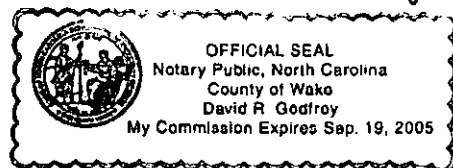
President

NORTH CAROLINA WAKE COUNTY

I, a Notary of the County and State aforesaid, certify that Joseph T. Tammone, JR. personally came before me this day and acknowledged that he is ___ President of JVI Construction, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its ___ President. WITNESS my hand and official stamp or seal, this 28 day of July, 2005.

Notary Public

My Commission Expires:



BK011495PG01628

EXHIBIT A

BEING ALL of that certain 3.914 acres as shown on map entitled "Annexation Map for The Town of Apex, Property Owned by JVI Construction, Inc., dated February 11, 2004, and recorded in Book of Maps 2004, page 596, Wake County Registry.



BOOK:011495 PAGE:01611 - 01629

Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.



Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

North Carolina – Wake County

The foregoing certificate___ of David R. Godfrey

____ Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By: [Signature]
Assistant/Deputy Register of Deeds **DEPUTY**

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
19 # of Pages