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Buncombe County, NC
Otto W. DeBruhl Register of Deeds

BK **4176** PG **1553-1555**

**FIRST AMENDMENT TO DECLARATION OF
VILLAGE PARK DEVELOPMENT PLANNED COMMUNITY**

clients/VillagePark/1stAmend.Dec.ofVillagePark.V2.0

Prepared by: Steven I. Goldstein
Box to: Patla, Straus - #35

This First Amendment to Declaration of Village Park Planned Development Planned Community is made and entered into this the 20th day of January, 2006, by Village Park Development LLC, a North Carolina limited liability company, Raymond McClinton and Susan H. McClinton.

WHEREAS, the Declaration of Village Park Development Planned Community is recorded in Buncombe County Book 4152 at page 1980 (the "Original Declaration"); and

WHEREAS, all terms which are capitalized herein but not defined shall have the same meaning ascribed to them in the original Declaration; and

WHEREAS, Developer and McClinton are the only parties with any interest in the Property and pursuant to Section 4(p) of the Original Declaration are entitled to amend the Declaration; and

WHEREAS, Developer and McClinton have determined that certain clarification is required with respect to Section 4(v) of the Original Declaration; and

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the Original Declaration is amended as set forth below.

1. The Original Declaration, as amended hereby, constitutes the "Declaration" except as otherwise set forth herein. All provisions of the Original Declaration remain in full force and effect and without modification.

2. Section 4(v.) is deleted in its entirety and the following substituted in lieu thereof:

"4(v.) Unless permitted otherwise by Developer, the residence to be constructed on an Owner's Subdivision Lot must be commenced (Building Permit issued and site preparation started) no later than one (1) year from the Owner's acquisition of such Lot from Developer; and the same must be completed no later than twenty four (24) months following such acquisition. Developer may (but is not obligated to), for good cause shown (as determined by it), in order to avoid hardship or to be

equitable if the delay is a result of matters beyond the reasonable control of the Subdivision Lot's Owner, extend such time to commence and complete. If an Owner fails to commence construction on a Subdivision Lot within one year of such Owners acquisition thereof from Developer, or if an Owner does not thereafter complete the improvements within twenty four (24) months following the acquisition of the Subdivision Lot from Developer, then any of such events Developer may provide written notice thereof to said Lot's Owner at such Owner's last known address of the Owner's failure to comply herewith (the "Failure Notice"). If, within thirty days of the forwarding of the Failure Notice to the Lot's Owner, such Owner fails to remedy the breach hereof noted in the Failure Notice in a manner satisfactory to Developer, then Developer may, at Developer's option, by written notice to such Owner of Developer's exercise of its right to purchase the Lot, thereafter acquire such Lot from its Owner at a price equal to an amount set by Developer, which amount shall be no less than (but may equal) ninety (90%) percent of the purchase price paid by the Owner to Developer for the Lot, plus the balance due on any Holders first lien deed of trust on the Lot. but reduced by any part of such balance arising from an advance by the Lender to pay for the Lot's acquisition (i.e., the Lot's price to be increased by the Holder's construction and development advances, but not its acquisition advances). The Lot shall be reconveyed to Developer in such instance free of all liens and encumbrances arising subsequent to Developer's conveyance of the Lot. The revenue stamp on the conveyancing deed shall be paid by the deed's grantor. Taxes shall be prorated for the year of closing. The closing shall occur within thirty (30) days of Developer's exercise. By acceptance of a deed from Developer, the Lot's Owner acknowledges the valid existence of Developer's option to repurchase, and agrees to convey the Lot to Developer in accordance herewith. Once a Certificate of Compliance and Occupancy is issued for the Lot's residence, this option expires. The rights of Developer under this Section 4(v) are superior to the rights of any lien holder who is not a Holder and to the rights of any subsequent Owner of the Lot. Thus, if the original purchaser of the Lot from Developer has resold the same, the buyer thereof (and any subsequent buyers) are bound hereby to reconvey the Lot to Developer at the foregoing (reduced) price, regardless of what price such buyer actually paid for the Lot. The rights of Developer hereunder are optional, may be enforced by it at any time following a breach of this Section and no waiver of rights hereunder should be inferred from the failure of Developer to enforce rights hereunder. Developer has no obligation to repurchase a Lot, only the option to do so. The provisions hereof are intended to be, and are, specifically enforceable."

IN WITNESS WHEREOF, the parties hereto have caused the due execution of the foregoing as of the day and year above written.

Village Park Development, LLC

By:

Member

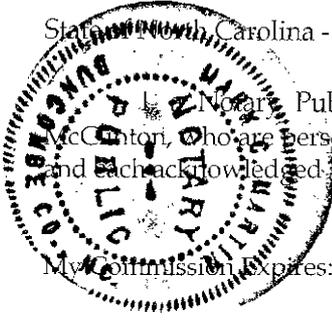
Raymond McClinton

By:

Member

Susan H. McClinton

State of North Carolina - County of Buncombe



I, Notary Public of said County and State, certify that Raymond McClinton and Susan H. McClinton, who are personally known to me, personally appeared before me this 3 day of February, 2006 and each acknowledged their voluntary execution of the foregoing instrument.

My Commission Expires: 3-10-2009

Mark C. Martin
Notary Public

State of North Carolina - County of Buncombe



I, Mark C. Martin, a Notary Public of said State and County hereby certify that Ronald S. Butler personally came before me this 7 day of February, 2006 and acknowledged the execution of the foregoing instrument in his capacity as President of RSR Development, Inc., a North Carolina corporation, in its capacity as Member/Manager of Village Park Development, LLC, a North Carolina limited liability company, as the act and deed of said limited liability company.

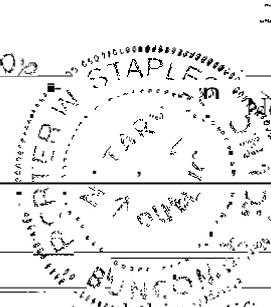
My Commission Expires: 3-10-2009

Mark C. Martin
Notary Public

State of North Carolina - County of Buncombe

I, Otto W. DeBruhl, a Notary Public of said State and County hereby certify that Raymond S. McClinton personally came before me this 3 day of February, 2006 and acknowledged the execution of the foregoing instrument in his capacity as President of McClinton Development, Inc., a North Carolina corporation, in its capacity as Member/Manager of Village Park Development, LLC, a North Carolina limited liability company, as the act and deed of said limited liability company

My Commission Expires: 12-11-06



O. W. DeBruhl
Notary Public

The foregoing Certificate(s) of _____ 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.

Otto W DeBruhl Register of Deeds for Buncombe County

By _____ Deputy/Assistant - Register of Deeds