



Doc ID: 028131260004 Type: CRP
 Recorded: 03/10/2015 at 11:31:25 AM
 Fee Amt: \$26.00 Page 1 of 4
 Workflow# 0000270479-0001
 Buncombe County, NC
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BK **5292** PG **511-514**

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

This Document Prepared By and Return to: Kassie M. Moore - Patla, Straus, Robinson & Moore, Box 35

This Fourth Amendment to Declaration of Village Park Development Planned Community is made as of this 9th day of March, 2015, by and between Village Park Development, LLC, a North Carolina limited liability company (hereinafter called "Developer"), for itself and the other Owners, as defined in the Declaration of Village Park Development Planned Community recorded in Buncombe County Book 4152 at Page 1980 (hereinafter called "Declaration"), and Raymond McClinton and Susan H. McClinton (hereinafter "McClinton").

Whereas, the First Amendment to the Declaration is recorded in Buncombe County Book 4176 at Page 1553 the Second Amendment to the Declaration is recorded in Buncombe County Book 4588 at Page 1021, and the Third Amendment to the Declaration is recorded in Buncombe County Book 4771 at Page 1656, and said Declaration, First Amendment, Second Amendment and Third Amendment, collectively are hereinafter called the "Original Declaration"; and

Whereas, Developer, together with McClinton, executed and recorded the Original Declaration; and

Whereas, Developer and McClinton further desire to amend the Original Declaration as set forth herein; and

Whereas, Developer and McClinton wish to amend the Original Declaration for the purpose of clarifying the same, which clarification will not disturb the basic scheme of development; and

Whereas, Developer and McClinton, by virtue of the Control Rights, are authorized to amend the Original Declaration as set forth herein.

Now, therefore, in consideration of the foregoing, it is agreed as follows:

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 without modification.
2. Section 1, Paragraph aa is deleted in its entirety and the following substituted in lieu thereof:

"aa. 'Expense elements' - Those portions of the Common elements which require, from time to time, expenditures to be made pursuant hereto. The Expense elements include (i) the Development's Entrance. (ii) the Development's green areas and parks and improvements or

structures located on land portions of the Common elements, which are intended to be of general benefit and usage by all Owners, (iii) the entrance road and any other roads within the Development that are intended to be of general benefit and usage by all Owners, (iv) the portion of the roads serving and intended to benefit only Residential Units, (v) the park areas within the Development serving and intended to benefit only Residential Units, (vi) the green areas (lawns, shrubs, parks and yards) of the Residential Units, other than those of the Subdivision Lot Owners who have elected to not have their green areas maintained by the Association, (vii) any improvements or structures owned by the Association serving and intended to benefit only the Twinplex Units, as defined in Section 1, Paragraph ccc, (viii) the structural members and exterior portions of the Twinplex Units, as defined in Section 1, Paragraph ccc, including but not limited to, roofs, siding, exterior surfaces of windows and skylights (including framing and screening but excluding glass breakage and routine cleaning, all of which the Twinplex Owner is responsible for), exterior surfaces of the front door and garage door (including framing), garage soffit lighting and fixtures and bulbs, porches (including deck railing and flooring not within the drip line), crawl spaces vents and access doors, downspouts, gutters, etc., (ix) the portion of the roads in the Development serving and intended to benefit only the Commercial Units, (x) the green areas (lawns, shrubs, parks and yards) of the Commercial Units, other than the Entrance, (xi) the parking areas serving and intended to generally serve and benefit all the Commercial Units and (xii) the portion of the roads and any park areas serving and intended to benefit only Subdivision Lots."

3. Section 1, Paragraph bbb is deleted in its entirety and the following substituted in lieu thereof:

"bbb. "Twinplex expense elements"- Items (vii) and (viii) of the Expense elements, as defined in Section 1, Paragraph aa, which are intended to directly benefit only the Twinplex Unit Owners."

4. The portion of Section 2 of the SECOND AMENDMENT TO DECLARATION OF VILLAGE PARK DEVELOPMENT PLANNED COMMUNITY reading as follows:

"2. The Board shall appoint the Twinplex Subcommittee (the "Subcommittee"), which shall, subject to the limitations set forth hereafter, have the authority to generally govern the Twinplex community by setting the Twinplex budget for payment of the Expense elements, including those set forth in Original Declaration Section 1 (aa)(i), (ii), (iii), (iv), (vi), (vii), and (viii)."

is deleted and the following substituted in lieu thereof:

"2. The Board shall appoint the Twinplex Subcommittee, sometimes referred to as the Meadows Subcommittee (the "Subcommittee"), which shall, subject to the limitations set forth hereafter, have the authority to generally govern the Twinplex community by developing the Subcommittee budget for payment of Twinplex expense elements, as defined in Section 1, Paragraph bbb of the Declaration and recommending said budget to the Board. "

5. Section 4, Paragraph p of the Declaration is deleted in its entirety and the following substituted in lieu thereof:

"p. That except for the purposes of amending this Declaration to add additional, adjacent land to the Development upon the recording of a new Plat, which Developer and McClinton may do at any time prior to the Release Date without joinder of anyone else, this Declaration shall not be amended unless a Majority of Owners vote affirmatively to effect such amendment (giving full effect to the Control Rights of Developer). Any amendment affecting the Residential Units must have a Majority of the Residential Unit Owners voting in favor thereof and any matter affecting the Commercial Units must have a Majority of the Commercial Unit Owners voting in favor thereof. Prior to the Release Date, no amendment hereto may be adopted without the approval of both Developer and McClinton;"

6. Section 4, Paragraph u of the Declaration is deleted in its entirety and the following substituted in lieu

thereof:

"u. That all Owners are responsible to keep their Homes and Subdivision Lots in slightly condition and in reasonably good repair, maintenance and replacement, except for those obligations specifically undertaken herein by the Association. All Owners are obligated hereby to maintain sufficient hazard insurance (one hundred percent (100%) All Risk replacement coverage, with a deductible no greater than \$2,500, to replace the improvements on the Owner's property within the Development in the event of any damage to or destruction of the improvements on a Subdivision Lot by fire or other casualty. A copy of such insurance policy or the certificate therefor shall be provided to the Association by the Owner at all times. An Owner's failure to keep such insurance in force and to provide a copy of the certificate to the Association is a material breach hereof. All Owners must promptly restore any damaged improvements in accordance with the design criteria of the Architectural Review Committee and other reasonable regulations established by the Association from time to time in connection therewith. Additionally, all Twinplex Owners shall attempt, where possible, to cause the Association to be named as a loss payee on the hazard insurance policy on the Twinplex Unit, and shall attempt to cause a certificate of the current coverage to be provided to the Association. However, an insurer's refusal to name the Association as a loss payee shall not be treated as a violation of these covenants. The Twinplex Unit's Owner shall cause its Twinplex to be promptly restored to the pre-casualty condition in the event of damage thereto or destruction thereof by fire or other casualty, with the Association coordinating and controlling the restoration or replacement of the Twinplex expense elements, and the Owner causing the balance of the Twinplex to be properly restored. The Association and the Twinplex Unit Owner shall reasonably cooperate in furtherance of the matters set forth in this Subsection, and all insurance proceeds arising from such damage or destruction shall be used in furtherance thereof."

7. Article III, Section 5 of the Declaration is deleted in its entirety and the following substituted in lieu thereof:

"Section 5: The Secretary shall provide a notice of each annual or special meeting stating the purpose thereof as well as the time and place where it is to be held to each Owner at least ten (10) but not more than sixty (60) days prior to such meeting. Notice shall be personally delivered, electronically mailed (e-mailed) or mailed, postage prepaid, to the Owner's address within the Development or to such other address, as an Ownership shall have specified to the Association in writing. A notice personally delivered or e-mailed shall be deemed communicated when delivered or e-mailed. A notice mailed shall be deemed delivered the third day following mailing."

8. Article VI, Section 8 of the Declaration is deleted in its entirety and the following substituted in lieu thereof:

"Section 8: Owners must at all times, and at their own expense, carry All-Risk Hazard insurance in the amount of the replacement cost of the Home, Subdivision Lot improvements or Pad, and TWINPLEX OWNERS MUST, AT ALL TIMES, AND AT THEIR OWN EXPENSE, CARRY ALL-RISK HAZARD INSURANCE ON THEIR UNIT, AND ATTEMPT, WHERE POSSIBLE, TO CAUSE THE ASSOCIATION TO BE ADDED AS A LOSS PAYEE. All Owners individual policies must contain waivers of subrogation; and the liability of the carriers issuing insurance obtained by the Board must not be affected or diminished by reason of any such additional insurance carried by any Owner. All Owners must, as required by the Declaration, provide the Association evidence of the insurance being in effect at all times."

9. Article IX of the Declaration is deleted in its entirety and the following substituted in lieu thereof:

"These Bylaws may be amended by the affirmative vote of a Majority of Owners. Notwithstanding the foregoing, no amendment hereof shall occur prior to the Release Date without the approval of Developer and McClinton. No amendment hereof shall occur without notice of the proposed amendment being provided in the notice of the meeting. No amendment hereof which could reasonably affect a Residential or Commercial Unit may be adopted without the affirmative vote of a Majority of Owners of that type of Unit, as well as the majority vote of all Owners."

In Witness Whereof, McClinton and Developer executed the foregoing in the ordinary course of business and Developer caused the due execution of the foregoing by its duly authorized corporate officers, as of the day and year above written.

Village Park Development, LLC

By: _____
Member

Raymond McClinton
Raymond McClinton

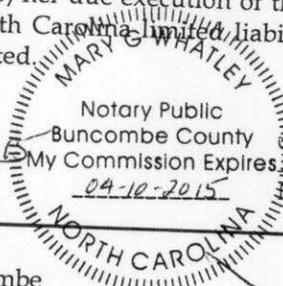
By: _____
Member

Susan H. McClinton
Susan H. McClinton

State of North Carolina - County of Buncombe

I, a Notary Public of said County and State, certify that Raymond McClinton and Susan H. McClinton personally appeared before me on this 9th day of March, 2015, and personally acknowledged his/her due execution of the foregoing instrument as a Member of Village Park Development, LLC, a North Carolina limited liability company, on behalf of said limited liability company, by authority duly vested

My Commission Expires: April 10, 2015



Mary D. Whatley
Notary Public

State of North Carolina - County of Buncombe

~~I, a Notary Public of said County and State, certify that Raymond McClinton and Susan H. McClinton, personally appeared before me this ___ day of _____, 201__ and acknowledged the due execution of the foregoing instrument.~~

~~My Commission Expires: _____~~

~~Notary Public~~