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**DECLARATION OF VILLAGE PARK
DEVELOPMENT PLANNED COMMUNITY**

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This Declaration of Village Park Planned Development Planned Community is made and entered into this the 6th day of December 2005, by Village Park Development LLC, a North Carolina limited liability company, for itself and the other Owners (as defined below). Raymond McClinton and Susan H. McClinton join herein for certain limited purposes, as set forth herein.

WHEREAS, all capitalized terms have the meanings set forth in Section 1 below; and

WHEREAS, Developer is the owner of the Property, upon which certain improvements have been or will be made, as hereinafter set forth; and

WHEREAS, McClinton is the Owner of the Commercial Tract; and

WHEREAS, Developer owns the Additional Property, which may hereafter become part of the Development, as provided below; and

WHEREAS, Developer and McClinton (who are affiliates) intend to develop the Property and the Commercial Tract (and possibly some or all of the Additional Property) as the Development, ultimately dividing the same into the Common elements and Land Parcels, as the same are shown on the Phase 1 Plat, or as they may be shown on the Plats recorded hereafter, with each of the Land Parcels containing either a Home, a Pad or Subdivision Lot improvements, in accordance herewith, and with the Development only to be used as permitted hereby; and

WHEREAS, the Development will be operated and managed by the Association, as set forth herein; and

WHEREAS, the Association, which is responsible in accordance herewith for the care and maintenance of the Common elements, will be controlled by the Developer and McClinton through the Release Date; and

WHEREAS, Developer and McClinton intend for the Development to be pursuant to a general scheme of development which will provide benefits to all Owners of property therein; and

WHEREAS, it is intended to be an overriding principle hereof by both Developer and McClinton that neither McClinton nor any successor to McClinton in ownership of any of the Commercial Tract is to be materially interfered with in the development and/or operation of the Commercial Tract on matters which are of only incidental interest to the Owners of Residential Units; and

WHEREAS, Developer and McClinton intend to be able to convey and/or demise the Units to purchasers and/or tenants; and

WHEREAS, Developer and McClinton intend hereby to establish by this Declaration a plan for the individual ownership of the Units, and the fee simple ownership by the Association of the Common elements, subject to the provisions and limitations herein.

NOW, THEREFORE, in consideration of the above, Developer and McClinton hereby declare that the following limitations, restrictions and conditions shall affect, bind and encumber the Property and the Commercial Tract as to the uses to which the same may be put, that this Declaration shall constitute covenants to run with the Property and the Commercial Tract, and that the same shall bind the Owners, at all times hereafter.

1. **Definitions:** The following terms shall have the meanings set forth below:

a. "Act" - The Planned Community Act (N.C.G.S. 47F) in force in the State of North Carolina, as amended from time to time.

b. "Additional Property" - Any land described in the Deed, other than the part thereof shown on the Phase 1 Plat, and any land owned by McClinton adjacent to the Commercial Tract that is shown on a Plat. At such time as other Plats are recorded and the Declaration amended, if required hereby, the portion(s) of the Additional Property shown thereon shall become part of the Property.

c. "Architectural Review Committee" - The committee of the Association to review and determine whether a proposed improvement may be constructed. Prior to the Release Date, the Architectural Review Committee shall be the Developer (or its designees) for construction on Residential Land Parcels and shall be McClinton (or their designees) for construction on Commercial Land Parcels. Subsequent to the Release Date, the Residential Directors (or their designees) shall be the Architectural Review Committee for construction on Residential Land Parcels and Commercial Directors (or their designees) for construction on Commercial Land Parcels.

d. "Assessments" - Those amounts levied and so declared (as regular or special Assessments), from time to time, by the Association against the Owners, in order for the Association to be able to pay the Common costs, the Subdivision Lot costs, the Commercial costs and the Twinplex costs; together with all late charges, costs and attorneys fees levied by the Association against any Owner resulting from any failure of an Owner to timely pay.

e. "Association" - That North Carolina non-profit corporation entitled "Village Park Development Association, Inc."

f. "Board" - The Board of Directors of the Association, as elected or appointed from time to time, in accordance with the Bylaws.

g. "Bylaws" - The Bylaws of the Association, initially as set forth in Section 10 of the Declaration, but as the same may be amended thereafter.

h. "Commercial costs" - Those amounts required hereby to be expended by the Association to care for and keep in reasonably good and slightly condition, all the Commercial expense elements, including, but not limited to, lighting, repairing, maintaining, replacing, paving, striping, insuring, removing snow from roads, landscaping and mowing.

i. "Commercial Director(s)" - The two members of the Board elected (but with both of them selected by McClinton during the Control Period) by the majority vote of only the Owners of Commercial Units.

j. "Commercial expense elements" - Items (ix) through (xi) of the Expense elements, which directly benefit only the Commercial Unit Owners.

k. "Commercial Land Parcel(s)" - The land portion of a Commercial Unit, shown as a numbered parcel (with the letter "C") on any of the Plats.

l. "Commercial Tract" - All the property described in the deed recorded in Buncombe County Book 2226 at page 66, plus that described in the deed in Buncombe County Book 1835 at page 531, but less and excepting therefrom any part thereof described in the Deed or which is Common element; plus any Additional Property so declared by McClinton.

m. "Commercial Unit(s)" - That real property consisting of a Commercial Land Parcel, the Pad thereon and the Easements.

n. "Common costs" - The sum of the amounts expended by the Association to repair, maintain, replace, pave, stripe, insure (liability only), remove snow from roads, landscape, mow, keep lit and otherwise care for and keep in reasonably good and slightly condition, all the Common expense elements.

o. "Common elements" - All of the Property, other than the Units; and any part of the Commercial Tract designated on a Plat as Common element, but subject to the Developer's (McClinton) Reservations.

p. "Common expense elements" - Items (i) through (iii) of the Expense elements, which are intended to directly benefit all Owners.

q. "Control Period" - The period prior to the Release Date.

r. "Control Rights" - The extraordinary rights of the Developer, which expire on the Release Date, to appoint two (2) of the three (3) Residential Directors to the Board, and to cast one more Residential Unit vote in matters voted upon at Owner's meetings by Residential Unit Owners than the number of such Units that have been sold to that time.

s. "Date" - The date the Declaration is first recorded in the Buncombe County Registry.

t. "Declaration" - This Declaration of Village Park Development Planned Community, as the same may be amended hereafter in accordance herewith.

u. "Deed" - The deed recorded in Buncombe County Deed Book 3888 at page 248.

v. "Developer" - Village Park Development, LLC, a North Carolina limited liability company, and any person or entity hereafter specifically designated, in writing, by Village Park Development, LLC (or its successors) as the Developer hereof.

w. "Developer's (McClinton) Reservation(s)" - Developer's and McClinton's reservation in any deed from Developer or McClinton to the Association of the rights of Developer or McClinton to construct additional Units, infrastructure or other items on the parcel being conveyed by Developer and/or McClinton; and, in addition the rights to convey such additional Units, from time to time. It shall be conclusively deemed that all Units conveyed by Developer or McClinton to Owners hereafter are validly located; and that the Developer or McClinton has, and has conveyed to Owners, valid, fee simple title to said conveyed Units. Developer and McClinton shall each, upon sale of the last Unit pursuant to a specific Developer's (McClinton) Reservation, acknowledge the same therein. Thus, the estate in the parcel conveyed to the Association by Developer and/or McClinton, if so stated therein, may be a fee simple defeasible (not fee simple absolute), with the Developer or McClinton having the right to, in effect, retain and/or retake portions thereof for conveyance as Units or easements, prior to the said Developer's and/or McClinton's said acknowledgement.

x. "Development" - That planned community to be known as Village Park Planned Community (or Development), which is presently comprised of the Property and the Commercial Tract, which may have the Additional Property added hereafter, as provided in this Declaration, and which is established by the Declaration, as the same may be amended hereafter.

y. "Easement(s)" - The non-exclusive easements and rights of Developer, McClinton and all other Owners, and those otherwise authorized by the Declaration, to use the Common elements in common with all other permitted users thereof, in accordance with the Declaration, subject to the Developer's (McClinton) Reservation.

z. "Entrance" - The area of the Development on U.S. Highway 74 which leads into the Development and which contains the Development's identification sign, the lighting fixtures thereof and the immediately adjacent landscaping features, as in existence from time to time.

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 Residential Units, (viii) the structural members and exterior portions of Twinplex

structures, including roofs, siding, exterior surfaces of windows and skylights (excluding glass breakage and routine cleaning, all of which the Twinplex Owner is responsible for), 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.

bb. "Holder(s)" - An institutional (a commercial lender such as a bank, mortgage bank, savings and loan association, insurance company, or financial services company) lender holding a first lien deed of trust on a Unit.

cc. "Home(s)" - A single family residence, which may be a Twinplex, and which may be constructed by, for, or pursuant to obligations to, Developer, on a Residential Land Parcel. While a Residential Unit may be sold by Developer prior to the completion of the Home, there must be an obligation to complete one thereon in accordance with the design guidelines and limitations established by Developer and/or the Association, and the completed Home shall be a part of the Unit.

dd. "Home Office Use" - The use of a Residential Unit, as a minor adjunct to such Unit's primary use as a residence, for office purposes, so long as no visitation by clients or customers occurs and such use does not increase traffic in the Development in any material (as determined by the Association) way.

ee. "Land Parcel(s)" - Collectively, the Residential Land Parcels and the Commercial Land Parcels.

ff. "Limited common element(s)" - Those portions (if any) of the Common elements which, by their nature, are reasonably usable by less than all of the Units and/or are so designated on a Plat as being appurtenant to one or more (but less than all) Units.

gg. "Majority of Owners" - On matters which reasonably affect only Residential Units, one more than one-half of the number of Owners of Residential Units; or on matters which reasonably affect only Commercial Units, one more than one-half of the number of Owners of Commercial Units; or on matters reasonably affecting both Residential and Commercial Units, a Majority of both Residential and Commercial Unit Owners. The foregoing are always subject to the Control Rights with respect to the Residential Units and the McClinton Rights with respect to the Commercial Units. In the event of any dispute over the effect (whether Residential, Commercial or both) of a matter, Developer and McClinton shall, so long as either of them own any part of the Development, make the determination.

hh. "McClinton" - Raymond McClinton, Susan H. McClinton, their heirs and any successors in ownership of the Commercial Tract which is designated by McClinton to have the McClinton Rights.

ii. "McClinton Rights" - The right of McClinton, their heirs and designated (by them) successors to appoint both Commercial Directors and to cast one more Commercial Unit vote at Owners meetings than the number of Commercial Units sold by McClinton. The McClinton Rights shall expire at the Release Date.

jj. "Owner(s)" - Being the Developer, McClinton and any and all other persons or

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entities which now or hereafter own a Land Parcel, and such parties heirs, successors and assigns, but excluding Holders and persons or entities only holding lien rights or easement rights.

kk. "Pad" - Either the structure constructed for commercial use by Developer or McClinton on a Commercial Land Parcel, or the site thereon prepared by Developer or McClinton and sold to a buyer for the construction of a commercial structure thereon by said buyer; but all commercial structures must be built in accordance with design guidelines and limitations established by the Architectural Review Committee. While a Pad may be sold prior to completion of improvements, in such event, there must be an obligation for the buyer or the seller to complete a commercial structure thereon.

ll. "Permitted Commercial Enterprise(s)" - The use of Commercial Units for residential, office, retail and/or restaurant purposes; however, no business generally thought of as an "Adult" - type business (e.g. night clubs, adult bookstores, etc.) shall be Permitted Commercial Enterprises. In the event of any questions as to the proposed use, during the Control Period, McClinton's judgment shall control, and thereafter the entire Board's.

mm. "Phase 1 Plat" - That plat recorded in Buncombe County Plat Book 100 at page 160.

nn. "Plat(s)" - The Phase 1 Plat and any plats hereinafter recorded by or for the Developer or McClinton that show all or part of the Property, the Commercial Tract and/or the Additional Property.

oo. "Property" - At present, that tract of land which is shown on the Phase 1 Plat. Upon the recording of other Plats by Developer or McClinton, the portion of the Additional Property shown thereon shall become a part of the Property or the Commercial Tract, and the Property and Commercial Tract, as they exist from time to time, shall comprise the Development.

pp. "Release Date" - The first to occur of the following: (i) the day that is twenty (20) years from the Date, (ii) the day that neither Developer nor McClinton own any of the Development, or (iii) the day the Developer releases its Control Rights in a document signed by the Developer and delivered to the Board and McClinton releases their Control Rights in a document signed by them and delivered to the Board. Developer and McClinton may separately release their own Control Rights, and the release by one shall not affect the other's Control Rights, with the Release date not occurring as a result of the mere release of rights by only Developer or McClinton.

qq. "Residential costs" - Those amounts expended by the Association to repair, maintain, replace, pave, stripe, insure (liability only), remove snow from roads, landscape, mow, keep lit and otherwise care for and keep in reasonably good and sightly condition, all the Residential expense elements.

rr. "Residential Director(s)" - The three members of the Board elected (with two of them (or two votes) selected by Developer during the Control Period) by the majority vote of the Owners of Residential Units.

ss. "Residential expense elements" - Items (iv) through (vii) of the Expense elements, which are intended to directly benefit all the Residential Unit Owners.

tt. "Residential Land Parcel(s)" - The land portion of a Residential Unit, shown as a

numbered parcel (without the letter "C" designation) on the Plats, and which may, but need not, be a Subdivision Lot, excepting and reserving therefrom the non-exclusive easements and rights of way over and across the numbered Lots shown on a Plat for the purpose(s) shown on the Plat. All the 45' R/W and extensions and spurs therefrom shown on the Phase 1 Plat are for pedestrian, vehicular and utility access purposes, are Common elements and are part of the Easements.

uu. "Residential Unit(s)" - That real property consisting of a Residential Land Parcel, the Home thereon and the Easements.

vv. "Rules and Regulations" - The Rules and Regulations set forth in Section 9 of the Declaration, as the same may be modified hereafter.

ww. "Subdivision Lot(s)" - The numbered Residential Land Parcel shown on a Plat as Lot 1 through 38, inclusive, thereon, or such other numbered parcels of land shown on a Plat (as Subdivision Lots) which are for conveyance by Developer, other than to the Association, and which is not to have a Twinplex located thereon.

xx. "Subdivision Lot Costs" - Those amounts expended by the Association to repair, maintain, replace, pave, stripe, insure (liability only), remove snow from roads, landscape, mow, keep lit and otherwise care for and keep in reasonably good and sightly condition, all the Subdivision expense elements. Unless a Subdivision Lot Owner elects to not have such Lot's green areas maintained by the Association, the Association shall maintain the same and the cost thereof is a Residential expense element; but if the Subdivision Lot Owner has elected to not have its green areas maintained by the Association, such Lot's Owner must maintain it in a good and sightly condition.

yy. "Subdivision Lot expense elements" - Items (vi) and (xii) of the Expense elements, which are intended to directly benefit only the Subdivision Lot Owners.

zz. "Twinplex" - A Home which shares a party (or near party) wall with an adjacent Home, is a dwelling type customarily considered to be a Twinplex residence, and which is the Home portion of a Residential Unit with a Twinplex. The Owner of a Twinplex must maintain certain insurance for the benefit of the Association, as per Article VI, Section 8 of the Bylaws.

aaa. "Twinplex costs" - Those amounts expended by the Association to repair, maintain, replace, treat against termites, and keep in generally good and sightly condition, the Twinplex expense elements.

bbb. "Twinplex expense elements" - Item (viii) of the Expense elements, which are intended to directly benefit only the Twinplex Unit Owners.

ccc. "Twinplex Unit" - That real property consisting of a Residential Land Parcel, the Twinplex thereon, and the Easements. A Twinplex Unit is thus a Residential Unit with a Twinplex and this definition is used for ease in understanding.

ddd. "Unit(s)" - Collectively, the Residential Units and the Commercial Units.

2. **Establishment:** Developer and McClinton, in order to establish the Development as a Planned Community hereby initially divide it into the following separate freehold estates:

a. Thirty Eight (38) Subdivision Lots shown on the Phase 1 Plat and to be known as Units 1 through 38, each consisting of (i) a like numbered Residential Land Parcel, (ii) the Home thereon (or to be constructed thereon), and (iii) the Easements. The said Units shall only be conveyed subject hereto.

b. Twenty four (24) Twinplex Units to be known as Units 39 through 62 (but if the Phase 1 Plat only shows 39, then such numbered parcel may, at Developer's option, be subsequently be subdivided into less or more Residential Land Parcels on each of which a Twinplex shall be (or has been) located.

c. One (or more if so shown on the Phase 1 Plat) Commercial Unit shown on the Phase 1 Plat as Unit C1 (being further subdividable by the holder of the McClinton Rights).

d. The Common elements, which are for the use and benefit of all of the Owners, subject to the Developer's (McClinton) Reservation, the restrictions and limitations set out herein, the Easements, or as limited in the Bylaws or in the Rules and Regulations. The Common elements (then existing) shall be conveyed to the Association prior to the conveyance of the first Unit, in accordance herewith; and thereafter, from time to time, Common elements shown on Plats shall be conveyed to the Association, subject to said Reservation, if contained therein.

3. **Common Elements:** Every Owner shall have the non-exclusive right of use and enjoyment of the Easements, which shall include for the Owners' benefit, inter alia, ingress, egress and regress to and from the Residential Land Parcels and the Commercial Land Parcels over the streets and walkways of the Development to U.S. Highway 74, the use of any parks established in the Common elements and the right to park vehicles on areas so designated therefor, all subject, however, to the following provisions and conditions:

a. The right of the Association to manage and control all the Common elements, including charging reasonable admission and other fees for the use of any recreational or other facilities situated upon, or being part of, the Common elements or otherwise under its control; regulating, locating, relocating and directing access routes in the Development; designating parking areas, establishing rules therefor and granting easements therein; and performing all other actions in furtherance thereof and in furtherance of all other matters with respect to the Common elements or as otherwise are reasonably necessary to carry out the obligations of the Association hereunder;

b. The right of the Association to dedicate or transfer all or any part of the Common elements to any public agency, authority, or utility upon such terms as are approved by a Majority of Owners;

c. The right of the Association to declare portions of the streets, walkways and parking areas of the Development to be of benefit to some (but not all) of the Units and/or to have some or all the streets in the Development be public roads maintained by the State of North Carolina, and the balance be private streets and walkways maintained by the Association;

d. The right of the Association, in accordance with its Bylaws, to borrow money for the purpose of constructing, maintaining, repairing, replacing and/or improving the Common elements; and in aid thereof, to mortgage and grant liens and encumbrances upon the Common elements, except that the right of any such mortgagee or purchaser at a foreclosure sale or sale in lieu thereof shall be subject to this Declaration, the Easements and rights of others in the Common elements created herein;

e. The right of the Association to limit the number of guests of Owners as to the use

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of any (none promised herein) recreational facilities situated upon, or being part of, the Common elements;

f. The right of the Association to suspend an Owner's voting rights and an Owner's right to use any of the recreational or other Common elements (other than Unit access) for any period during which any Assessment against such Owner's Unit, remains unpaid, or during the pendency of a breach by such Owner or anyone occupying such Owner's Unit of the Rules and Regulations;

g. The rights of Developer and/or McClinton, prior to the Release Date, to utilize and occupy, without charge, some or all of any of the Common elements as a sales office, business office or otherwise.

h. The rights of Developer, McClinton and Association, as available to them, to the full extent provided by the Act. It is Developer's and McClinton's intent that all of the Declaration be in full compliance with the Act. Anything contained herein in violation to the provisions of the Act is void ab initio; and anything herein which the Act provides may override the Act, to the extent the same is different from the Act, shall override it.

i. Notwithstanding the above, at no time hereafter shall any of the Common elements in the Commercial Tract be modified, altered or removed without McClinton's consent unless McClinton no longer owns any of the Commercial Tract.

4. **General Matters:** Developer and McClinton, by this Declaration, and all other Owners, by their acceptance of a deed and/or lease to a Unit, covenant and agree as follows:

a. That the Common elements shall remain undivided (other than as a result of Developer and/or McClinton exercising rights under the Developer's (McClinton) Reservations), and no Owner shall bring any action for partition (or sale in lieu thereof), it being agreed that this restriction is necessary in order to preserve the rights of the Owners;

b. That the Residential Land Parcels shall only be occupied and used as single family dwellings for residential purpose, which may have a Home Office Use; and which may only be occupied and used in accordance with the provisions of this Declaration, the Bylaws and the Rules and Regulations, and for no other purpose; provided, however, that Developer and McClinton have the right at all times prior to the Release Date to use Units owned or leased by them as a sales office(s) and/or for model or demonstration purposes;

c. That the Commercial Land Parcels shall be occupied and used only for Permitted Commercial Enterprises, and for no other purposes;

d. That the Commercial Tract is subdividable, so long as McClinton consents thereto (once a portion is conveyed by McClinton, such portion may not be further subdivided without McClinton's consent prior to the Release Date and the Board's consent thereafter) and all subdivision must be in accord with all applicable laws;

e. That no Owner shall be deemed to own any pipes, wires, conduits, or other public utility lines or public convenience facilities running through a Unit which are utilized for or provide service to more than one Unit, and that each Unit is subject to an easement in favor of Developer, McClinton, the Association and their designees for location, replacement and maintenance of same;

f. That every Subdivision Lot shall be subject to such setbacks, easements and reservations as may be shown on any Plat showing a Subdivision Lot, with no structure to be erected in violation thereof, and no Residential Land Parcel may be subdivided without the prior written consent of the Developer prior to the Release Date and of the Board subsequent thereto;

g. That unless otherwise consented to by the Residential Directors as the Architectural Review Committee, no dwelling constructed on a Subdivision Lot shall have less than two thousand (2,000) square feet of enclosed, heated living space within the dwelling, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, storage areas, attics and basements. If the structure to be constructed on a Subdivision Lot has more than one (1) level, exclusive of basement, then the first (above-ground) floor must have not less than one thousand six hundred (1,600) square feet of living space, exclusive of the same items set forth above. No structure on a Subdivision Lot may exceed two (2) stories above basement level, as measured from ground elevation. No structure shall be constructed on a Subdivision Lot without a garage with a capacity to hold no less than two (2) automobiles, SUVs or trucks. All such garages must be attached to the structure unless a detached garage is approved in writing by the Architectural Review Committee. The construction on the Commercial Land Parcels shall require consent from McClinton prior to the Release Date and by the Commercial Directors, as a Architectural Review Committee thereafter.

h. Developer (on the Residential Land Parcels) and McClinton (on the Commercial Land Parcels) prior to the Release Date and the Board thereafter shall have the right to waive unintentional violations of the setback lines, minimum square footage requirements and any other such numerical limitations set forth herein, so long as such waiver does not exceed ten percent (10%) of the minimum setback/residence size, etc. If a violation exceeds said ten percent (10%), then the same may be waived only with the consent of the applicable Architectural Review Committee, and of all adjoining Unit Owners with like types of Units (i.e. Commercial consents to Commercial, Twinplex to Twinplex and Subdivision Lot to Subdivision Lot).

i. That if any portion of the Common elements encroaches upon any Unit as a result of the construction, repair, shifting, settlement or movement of any portion of any improvements on the Property or of any of the Common elements, a valid easement for the encroachment thereof and for the maintenance of same, shall and does exist. In the event any such improvement is partially or totally destroyed, and then rebuilt, minor encroachments of parts of the Common elements and facilities due to reconstruction shall be permitted and a valid easement for said encroachment and the maintenance thereof should exist. No encroachment may remain if it constitutes an unreasonable burden on a Unit;

j. That no wall which serves as a party (or near party) wall between any two (2) structures shall be altered, modified or rebuilt without making adequate provision for the care and protection of both structures served. All walls between Twinplexes which can be reasonably inferred to be intended to be equally located on adjoining Residential Land Parcels shall be deemed to be so located and equally owned and controlled by the two respective Owners, regardless of whether the said wall is actually located on more than one Residential Land Parcel. While the faulty location of the wall shall not alter the boundary line, an easement for its encroachment (and the encroachment of any part of a Unit which encroaches on an adjoining Unit in a non-material way) shall exist;

k. That the Association (and its assigns) shall have, at all times hereafter, an easement for the installation, location, reinstallation, relocation, repair and maintenance of utility lines, five feet along all side interior Land Parcel lines and ten (10) feet along all rear Land Parcel lines (none to encroach on any Twinplex), and such locations as may be shown on the Plat, or otherwise as set forth herein.

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Notwithstanding the foregoing, if a Land Parcel is to be subdivided, it must be in accord herewith, and said utility line easement is relocatable by the subdividing party so that the easement is adjacent to the revised lines and the former lines. In addition, the Association may preserve views for any structure within the Development including the right to reasonably top or trim trees or shrubbery, which obstruct the natural view of the surrounding areas from structures erected within the Development. While the Association must reasonably seek to provide advance notice to any Owner whose Land Parcel is to have trees topped or trimmed, such notice is not a precondition to the Association causing such topping or trimming to occur;

l. That the Developer and McClinton retain a permanent easement over and across the Common elements and over and across the Land Parcels, including but not limited to, the right to change grades and swales to properly control water run-offs, the right to utilize portions thereof to afford access to the remainder of the Property, the Commercial Tract, the Additional Property, or to such adjacent properties as may now or hereafter be owned by the Developer and/or McClinton or to provide utility services and ingress, egress and regress thereto; and, the right to grant reasonable easements to other persons, firms and corporations over and across the Common elements and Units in furtherance of the foregoing;

m. That the Developer and McClinton further retain the right to subject the Property to a contract with any power company providing electric power to the Development for the installation of underground electric cables and/or area lighting, either or both of which may require an initial payment and/or a continuing monthly payment to such power Company by each Owner directly or as a component of the Assessment;

n. That an Owner, by virtue of being an Owner, is automatically a member of the Association and shall remain a member of the Association until such time as such person's ownership of the Unit ceases for any reason, at which time such Owner's membership in the Association shall automatically cease. No Owner is exempt from liability to pay Assessments by waiver of the use of enjoyment of any of the Common elements, or by the abandonment of the Owner's Unit;

o. That the administration and maintenance of the Development, including the sale, lease, use or encumbrance of any Unit, must be in accordance with the provisions of this Declaration, the Bylaws and the Rules and Regulations, as the same may now exist or may be hereinafter enacted by the Association. The failure of an Owner or any occupant of a Unit to comply with all the foregoing be grounds for an action to recover damages, including fines to the full extent permitted by the Act, and/or injunctive relief brought by the Association or by any other Owner against the Owner of the Unit from which the failure to comply stems. Notwithstanding the foregoing, the Association shall have the exclusive right for the period of thirty days after it has been notified of a claimed failure by an Owner to comply herewith, to commence proceedings against the offender. If the Association so commences and prosecutes, no Owner shall maintain an action arising out of the same failure to comply. Should any Owner claim a right of action against the Association, such Owner shall provide notice of same to the Association, and it shall have a reasonable time for it to cure such claimed default;

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 and Holders 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. Any Unit which is encumbered by a Holder's deed of trust shall be deemed to have voted against an amendment hereof, unless both the Unit's

Owner and its Holder affirmatively vote therefor. Prior to the Release Date, no amendment hereto may be adopted without the approval of both Developer and McClinton;

q. That no structure of any kind or other externally visible item (including plantings, finish colors and statuary) shall be placed in, on or about the Development by anyone other than Developer and/or McClinton prior to the Release Date, unless the Architectural Review Committee consents thereto. Subsequent to the Release Date, no structure or other externally visible item (including plantings and statuary) shall be placed on the Development by anyone other than the Association, without the prior express, written, permission of the Architectural Review Committee, which may be given or withheld for any reason or no reason. Without limiting what the Architectural Review Committee shall have a right to require to be provided to it, all site plans, specifications, contractors, finishes, structures, parking, recreational equipment and fencing requires the prior written consent of the Architectural Review Committee, which may, from time to time, provide design guidelines and forms in furtherance of its mission. Subject to the Association's right to require the removal of plantings it considers unsightly, an Owner may effect plantings in the Owner's Limited common element area, if any exists. No mobile home, doublewide, tent, shack, detached garage or other outbuilding or other temporary structure may at any time be used as a residence, either temporarily or permanently. The form of window treatments and the color of any lining thereof which is externally visible may be directed by the Architectural Review Committee;

r. That the Association shall keep the Twinplex expense elements in reasonably good repair, maintenance and replacement. No Owner shall repair, paint, replace or otherwise affect the Twinplex expense elements, unless expressly authorized by the Association. Notwithstanding the foregoing, since the Association's reserves attributable to the Twinplex expense elements are based upon the anticipated useful life of finishes, exterior materials and roofing materials of the Twinplexes, should the occupant of a Twinplex cause, by unusual or extraordinary use thereof, repair, maintenance or replacement to be required in advance of the reasonably anticipated date thereof, the Association may assess, and the said Twinplex Owner shall pay, the reasonable additional cost resulting from said acts;

s. That all external painting, staining and other maintenance, replacement and repair to keep the exterior portions of all Units, other than Twinplexes, in reasonably slightly condition, as determined by the Architectural Review Committee, shall be promptly performed by the Unit's Owner, but always subject to the control and direction of the Association. The Association has, and shall have, an easement over and across all portions of the Units in order for the Association to maintain, at the Association's expense, the exterior of the Twinplexes, and easements over all Land Parcels for the purposes set forth herein. The Association may require a uniform color scheme or schemes throughout the Development. Except for those Owners of Subdivision Lots who have elected to not have their green areas maintained by the Association, the Association shall keep the Land Parcel grounds and the green areas of the Common elements cut, trimmed, pruned, planted and generally in reasonably slightly condition. Any Subdivision Lot Owner which has elected to maintain such Owner's Subdivision Lot green areas, must keep them in a reasonably slightly condition and shall not, except within the house site approved by the Architectural Review Committee remove any vegetation having a trunk diameter of six (6) inches or more at a point within four and one half (4 1/2) feet above ground level, unless such vegetation has been declared dead or diseased by the Architectural Review Committee;

t. That no activity shall be conducted or permitted to exist on any part of the Development which is reasonably deemed to constitute a nuisance by Developer or McClinton, prior to the Release Date, or by the Association at any time. Any Owner or anyone occupying an Owner's Unit which is deemed in violation of the foregoing by the Developer, McClinton or the Association shall cease and desist immediately upon notice thereof from Developer, McClinton or the Association.

u. That all Owners are responsible to keep their Homes and Subdivision Lots in sightly 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, other than Twinplex Unit 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. All Twinplex Unit Owners shall cause the Association to be named as a loss payee on the hazard insurance policy on the Twinplex Unit and shall always cause a certificate of the current coverage to be provided to the Association. 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.

v. Unless permitted otherwise by Developer prior to the Release Date and the Association thereafter, the residences to be constructed on a Subdivision Lot must be commenced no later than one (1) year from such Owner's acquisition thereof and the same must be completed no later than eighteen (18) months following such acquisition. Developer and the Association shall, for good cause shown, in order to avoid hardship or if the delay is a result of matters beyond the reasonable control of the Land Parcel's Owner, extend such time to commence and complete. The foregoing time requirement does not affect Developer which may construct improvements at any time, and from time to time prior to the Release Date.

5. **Assessments:** Assessments shall be made, kept and used as follows:

a. At the earlier to occur of (i) the conveyance of a Unit by Developer or McClinton or (ii) the occupancy of a Home or a Commercial Unit by Developer, McClinton or the tenants thereof, the regular monthly Assessment thereon shall be due. Developer and McClinton have no obligation to pay Assessments on Units owned by them until at least one of the foregoing events has occurred, but Assessments shall be based on a per Unit (not per Unit sold) budget; and if the Assessments against Unit Owners obligated to pay the same is insufficient to pay the budget costs, the Developer and McClinton shall each have the option to either pay the regular Assessment on each Unit owned by them or to collectively pay the shortfall between the budgeted amount and the amounts of the Assessments against Owners obligated to pay the same. Upon the regular monthly Assessments being due, at a closing of sale or otherwise, in addition to the first regular monthly Assessment, the purchaser (or Developer/McClinton if an unsold but occupied Unit) shall pay an amount equal to two months of the regular monthly Assessment against such Unit to the Association, to be deposited as a portion of the Association's reserve. From and after the date that the first regular monthly Assessment is due on a Unit, the said Unit's Owner shall be obligated to pay Assessments on or before the first day of each successive month thereafter. If the date the first regular Assessment is due is not the first of a month, the Assessment shall be appropriately prorated;

b. Except as otherwise set forth herein, each Owner shall timely pay the Association all

Assessments levied against such Owner by the Association. All Assessments made pursuant hereto shall be a charge and lien upon the Unit against which the Assessment is made. Each Assessment shall also be the personal financial obligation of the person, or persons, who was, or were, the Owner or Owners, of such Unit at the time the Assessment became due. The personal financial obligation for delinquent Assessments shall not pass to successors in title to any Unit, unless expressly assumed by such purchaser; however, the same shall be and remain a lien upon the Unit until satisfied, except as may be herein otherwise provided;

c. All Owners shall be Assessed an amount that will be sufficient for the Association to pay the Common costs. Commercial Unit Owners shall also be Assessed an amount that will be sufficient for the Association to pay Commercial costs. Residential Unit Owners shall also be Assessed amounts that will be sufficient for the Association to pay the Residential costs. Twinplex Owners shall also be assessed an amount that will be sufficient for the Association to pay the Twinplex costs. If any Owner fails to keep the Unit insured as required herein, the Association may, after providing written notice to such Owner, purchase such insurance on behalf of such Owner, and the cost thereof shall be a part of the Assessment due from that Unit's Owner. Subdivision Lot Owners shall also be assessed an amount that will be sufficient for the Association to pay the Subdivision Lot costs;

d. Garbage pickup shall, to the extent available to the Association by licensed trash haulers, be contracted for by the Association, but the cost of same shall not be a component of the Assessment if the Owners shall be individually billed by the trash hauler. All Owners shall comply with the rules established by the Association for garbage pickup;

e. Each Unit shall be Assessed equitably, as reasonably determined by the Association, so that all Units of like type and size shall bear relatively the same Assessment, with larger Units bearing a larger Assessment than smaller Units, etc., but the Association may limit the number of type and size designations in order for ease in handling;

f. Any Assessment, which is not paid when due, shall be delinquent. Each Owner, by acceptance of a deed to a Unit, hereby expressly vests in the Association, or its agents, the right and power to file liens and to bring all actions against such Owner personally for the collection of such Assessment by methods available for the enforcement of contractual liabilities and liens, including lien foreclosure by an action brought in the name of the Association. The lien provided for in this section shall be in favor of the Association and shall be for its benefit and the benefit of all Owners. The Association, acting on behalf of the Owners, shall have the power to bid at any foreclosure sale and to acquire and hold, lease, mortgage and convey any Unit, and to subordinate so much of its right to such liens as may be necessary or expedient; and

g. No sale or transfer of any Unit shall affect the Assessment lien. However, the sale or transfer of a Unit pursuant to a mortgage or deed of trust foreclosure or any formal, legal proceeding in lieu thereof, shall extinguish the lien (but not the personal obligation of the previous Owner) of the Assessments which became due prior to such sale or transfer. No such sale or transfer shall relieve such Unit from liability for all Assessments thereafter becoming due. The extinguishment of said lien shall permit the allocation of the unpaid Assessment (or so much as is necessary) as a common expense of all other Owners.

6. **Future Development:** While Developer and McClinton intend the Development to contain a number of Residential and Commercial Units, they reserve the right to construct a different number thereof. While Developer and McClinton may convey any Common elements not previously conveyed by them to the Association at any time, any remaining Common elements then shown on the Plats (but unconveyed) shall be conveyed to the Association not later than the first to occur of (i) Developer and McClinton causing the recording of a Plat or an amendment hereto acknowledging that no further Units are to be established,

or (ii) the end of the Control Period. The conveyance of Common elements shall be subject to the Easements and Developer's (McClinton) Reservation. If any Common elements are shown on Plats recorded thereafter, Developer (and McClinton if applicable) shall, within a reasonable time, convey such Common elements to the Association, subject to the Easements and the Developer's (McClinton) Reservation. The Common elements may be encumbered at the time of conveyance, so long as the Declaration, the Easements and the Developer's (McClinton) Reservation are superior to the encumbrance. Prior to the conveyance of the Common elements shown on a Plat to the Association, Developer (or McClinton, if applicable) shall be responsible for the maintenance of said Common elements, and each Owner shall have a non-exclusive, easement for ingress, egress and regress over any street shown on any Plat, to provide access and to and from the Owner's Home, Pad or Subdivision Lot and the public road. Developer and McClinton retain and reserve the Developer's (McClinton) Reservation, the rights of access and use of and over all Common elements, any other easements shown as appurtenances on any Plat, the rights set forth herein, the right to develop the Additional Property, from time to time, in order to complete the Development, and all other rights required in furtherance thereof.

7. **Registered Office and Agent:** Raymond McClinton, whose address is 108 Big Spring Drive, Asheville, NC 28804, is hereby designated as initial agent for the service of process of Developer, McClinton and Association pursuant to the General Statutes of North Carolina. His appointment may be revoked, and another agent appointed, in the manner provided by law. Said office shall be the Developer's Registered Office.

8. **Compliance and Duration:** This Declaration is intended to comply with the requirements of the Act and all other laws of North Carolina and the United States of America. The provisions hereof shall run with the land and shall be binding on Developer, McClinton, the Association, all Owners and all others claiming under them until December 31, 2026, at which time they shall be automatically extended for successive ten (10) year periods, unless by vote of no less than eighty percent (80%) of the Owners it is agreed to amend or terminate the same. Prior to the Release Date, no termination hereof shall occur without the consent of Developer and McClinton. Invalidation of any part hereof shall not serve affect or invalidate of the other parts hereof.

9. **Rules and Regulations:** The present Rules and Regulations are as set forth below:

Rules and Regulations

a. No pet or other animal, fish, bird, reptile or other wildlife of any kind or nature shall be kept, stored or otherwise be allowed to occupy any part of any Land Parcel or Subdivision Lot, except as follows:

(i) Tropical fish, goldfish, parakeets, canaries, or other such customary, domestic pets, that remain at all times inside a structure, so long as the same does not constitute a nuisance.

(ii) No more than three (3) cats or three (3) dogs or any combination of cats and dogs, so long as the sum total thereof does not exceed three (3), may be kept, so long as none of them constitutes a nuisance. No commercial breeding operation is or shall be permitted. The dogs are not to be allowed off a leash outside of the Owner's Land Parcel. All solid waste of any animal must be immediately removed or disposed of in a sanitary manner by the Owner of the Land Parcel where the animal is being kept, using a shovel, scoop or the like. No pet of any kind may be kept if the same is deemed a nuisance by the Board. No animal shall be allowed to roam outside the Land Parcel owned by the animal's Owner.

b. No garbage, trash or refuse of any kind or nature shall be stored, kept, deposited or allowed to remain outside the Home or improved Pad by any Owner or Development occupant, other than the placement of garbage in the containers designated therefor by the Board. No Land Parcel may be used as a dumping ground for rubbish, trash or garbage and all storage containers for rubbish, trash or garbage must be kept in a clean and sightly condition.

c. No loud noises, offensive odors or other nuisance shall exist on, about, or be permitted to emanate from any Land Parcel.

d. At such time as any facilities intended to be for common use are placed into operation by the Association, the Developer or McClinton, the Association may, from time to time, establish specific rules and regulations governing the use thereof.

e. Except for short term visitors, customers and invitees, all of whose vehicles may be parked on the street while visiting, all vehicles of every kind shall be parked on the Land Parcel of the Owner to whom the vehicles operator is visiting, or in areas so designated by the Association, and not on any street. In addition, should any Owner have any motor home, recreational vehicle, boat or other similar large object (other than a regular, family-size van or automobile), the same must be stored inside the garage of the Home, or in such other area as is designated by the Association. All garages must have the doors thereof kept in closed condition at all times, except during the time a vehicle is entering or exiting. All vehicle parking and operation within the Development is subject to the regulation and control of the Association.

f. The provisions of this Section 9 may be amended, in the manner set forth elsewhere in the Declaration, from time to time.

g. No sign of any kind shall be displayed to the public view on any Residential Land Parcel except one (1) sign of no more than five (5) square feet which may advertise, in a tasteful way, such property is for sale or rent, and signs used by a building contractor or lender during the construction and sales period of a Home or Commercial Unit. Notwithstanding the foregoing, Developer and/or McClinton and/or other Owners of Commercial Units may, at any time and from time to time, place signs on Land Parcels owned by them, or as otherwise permitted within the Commercial Tract; and as approved by the Developer and McClinton prior to the Release Date and the Architectural Review Committee, thereafter, so long as the same do not violate any laws or ordinances.

h. No clotheslines or drying yards shall be placed within the Development so as to be visible from any Common element or any adjacent Unit.

i. No firearms, weapons or fireworks of any variety shall be discharged or set off within the Development. Without limiting the foregoing, firearms include BB guns and pellet guns.

10. **Bylaws:** The present Bylaws of the Association are as set forth below:

**Bylaws of
Village Park Development Association, Inc.**

**Article I
Plan of Unit Ownership**

Section 1: All terms defined in the Declaration of Village Park Development Planned Community, to which these Bylaws are attached, shall be deemed so defined herein and shall be used without further definition. The Association is incorporated.

Section 2: The Development is located in Buncombe County, North Carolina and has been restricted as a Planned Community, as set forth in the Declaration.

Section 3: The provisions of these Bylaws are applicable to the Units and the occupancy and use thereof.

Section 4: All Owners, tenants, future tenants, or their employees or any other person that might occupy and/or use a Unit in any manner, are subject to the provisions of these Bylaws and to any Rules and Regulations adopted, from time to time, pursuant to the Declaration.

Section 5: The acquisition or occupancy of any of the Property hereafter shall constitute acceptance of these Bylaws, the Declaration, the Rules and Regulations and amendments thereto and an agreement to comply therewith.

Article II
Voting, Majority of Owners, Quorum, Proxies

Section 1: Except as otherwise set forth below, each Unit shall have one vote in all matters to be considered by the Owners. Where a Unit is owned by more than one person or entity, such persons or entities shall designate, by agreement in writing filed with the Board, the person entitled to cast the vote for the Unit. Notwithstanding the foregoing, prior to the Release Date, Developer shall have the Control Rights and McClinton shall have the McClinton Rights. If an issue is determined by the Board to only affect certain types of Units (e.g. Twinplexes, Commercial Units, etc.) the Owners voting thereon may be limited to only the Owners of such Unit type. Further, as per the Declaration, a Majority of the votes of both Residential Unit Owners and Commercial Unit Owners shall be required on matters affecting both types.

Section 2: Except as otherwise provided in these Bylaws, the presence in person or by proxy of a Majority of Owners at any meeting shall constitute a quorum. Prior to the Release Date, Developer must be present at any meeting.

Section 3: Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary before the appointed time of any meeting.

Section 4: Subsequent to the Release Date, in the event of deadlock between conflicting interests, the same shall first sought to be resolved by mediation. Prior to the Release Date, since Developer and McClinton have a majority of the votes, no deadlock is possible.

Section 5: In lieu of formal meetings, all actions of the Association and the Board may be taken by unanimous consent of the Association, its Board or Owners, as applicable, with written evidence thereof to be filed with the Association. It is the intention of both Developer and McClinton that matters which primarily concern the Commercial Tract, even if the same will have some (minor) effect upon the Residential Land Parcels, shall be determined, in the event of a dispute between the Residential Unit Owners and the Commercial Unit Owners, by the affirmative vote a Majority of the Commercial Unit Owners (or Directors if a Board matter), rather than being subject to the affirmative vote of both a Majority of the Commercial Unit Owners (or Commercial Directors if a Board matter) and a Majority of the

Residential Unit Owners (and Residential Directors if a Board matter).

**Article III
Administration**

Section 1: The Association, generally acting through the Board, will have the responsibility of administering the Development, approving its annual budget, establishing and collecting monthly assessments, and arranging for the management of the Development, which may be pursuant to an agreement containing provisions relating to the duties, obligations, removal and compensation of a management agent. Except as otherwise provided, decisions and resolutions of the Association shall require approval by a Majority of Owners. The Association shall have all powers necessary to administer the Development and provided for a non-profit corporation pursuant to the laws of North Carolina.

Section 2: Meetings of the Association shall be held at the principal office of the Development or such other suitable place convenient to the Owners as may be designated by the Board.

Section 3: The first annual meeting of the Association shall be held on the 1st day of December 2006. Thereafter, the annual meetings of the Association shall be held on the first day of December of each succeeding year, unless this shall be a Sunday or legal holiday, in which case the meeting shall be held on the next business day. At such meetings, the Board shall be elected by ballot of the Owners in accordance with the requirements of these Bylaws. The Owners may also transact such other business of the Association as may properly come before them.

Section 4: The President shall call a special meeting of the Owners if so directed by a resolution of the Board, or if requested on a petition signed by Owners entitled to cast one-third of the outstanding votes and presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice thereof, unless consented to by Owners having the right to cast three fourths of the then outstanding votes.

Section 5: The Secretary shall mail 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 or mailed, postage prepaid, to the Owner's address within the Development or at such other address, as an Owner shall have specified to the Association in writing. A notice mailed shall be deemed delivered the third day following mailing.

Section 6: If any meeting of Owners does not have a quorum present, the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight hours from the time the original meeting was called, notice of which shall be provided to all Owners not then present.

Section 7: The order of business at all meetings of the Owners shall be as follows, unless otherwise agreed:

- a. Roll Call
- b. Proof of Notice of Meeting or Waiver of Notice
- c. Reading of minutes of preceding meeting
- d. Reports of Officers
- e. Reports of Committees
- f. Election of Directors (when so required)

- g. Unfinished business
- h. New business.

Section 8: The Association shall make available, within a reasonable time, upon reasonable request therefor, copies of the Declaration, these Bylaws, the Rules and Regulations and the books, records and financial statements of the Association to Unit Owners and Holders. In addition, if called upon to do so, the Association shall, within a reasonable time of request therefor, verify Assessments due and reasonably aid in the transfer of ownership. The Association may charge, and every requesting party shall pay, a reasonable amount to compensate it for the copying costs, assessment verification and aid in transfer.

Section 9: The Association shall represent the Unit Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common elements, or part thereof and each Owner appoints the Association as the Owner's attorney-in-fact for such purposes. In the event of a taking or acquisition of part of all the Common elements by a condemning authority, the award or proceeds of settlement shall be payable to the Association, for the use and benefit of the Owners as required by the Declaration.

**Article IV
Board of Directors**

Section 1: The affairs of the Association shall be governed by the Board. The Board shall be composed of five (5) persons (or votes as set forth herein), the three Residential Directors, and the two Commercial Directors. Prior to the Release Date, Developer shall appoint two of the Residential Directors and McClinton shall appoint both Commercial Directors. The remaining Residential Director, prior to the Release Date, shall be selected by the majority vote of the Residential Unit Owners, other than Developer (if any exist). Each member of the Board shall be either the owner of a Unit, have an interest therein, or be proposed by one of the foregoing. Subsequent to the Release Date, Developer and McClinton shall have no extraordinary voting rights or appointment rights, and at that time the Residential Directors shall be elected by the majority vote of the Owners of Residential Units, including Developer, and the Commercial Directors by the majority vote of the Owners of Commercial Units, including McClinton.

Section 2: The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law prohibited or by these Bylaws directed to be done by the Owners. Since there are a majority of Residential Directors, and since it is not the intent of Developer in the preparation hereof to permit the Board to ever have the power to act in a manner that would substantially interfere with a Commercial Unit Owner's ability to operate a Permitted Commercial Enterprise in a reasonable commercial manner, the affirmative vote of at least four Directors shall be required to adopt any proposal that would substantially affect a Commercial Unit; and unless both Commercial Directors vote that a matter does not substantially affect a Commercial Unit, it shall be deemed that a matter does so substantially affect.

Section 3: In addition to the duties elsewhere imposed by these Bylaws or by resolutions of the Association, the Board shall be responsible for overseeing the following:

- (a) Care, upkeep and protection of the Development in the manner provided herein, including but not limited to the repair, maintenance, replacement, paving, striping, landscaping, mowing, street snow removal, liability insuring, lighting and otherwise keeping in reasonably good and slightly condition, all Common elements, as is required herein. It is the intention of Developer and all Owners that the obligations of Owners to pay the Assessments should never fail for lack of a standard to measure or for a

lack of clarity as to what is to be maintained. By acceptance hereof and of a deed to a Unit or a Subdivision Lot, all Owners waive any and all right to claim the non-enforceability of Assessments for lack of a standard or clarity. Owners shall have the right to receive information as to such matters, but not to claim any lack of enforceability;

(b) Hiring and firing of personnel for the maintenance and operation of the Development and the Common elements;

(c) Fiscal management of the Association, including but not limited to the determination of and collection of all Assessments in accordance with the Declaration and these Bylaws;

(d) Borrowing money for the purpose of improving the Common elements; and in aid thereof, to mortgage and grant liens secured by the Common elements, but subject to the Declaration, the Easement and the Developer's (McClinton) Reservation, with no such mortgage to be granted without the affirmative vote of at least four directors.

Section 4: The Board may contract with or employ any person, firm or corporation, including the Developer, McClinton or an affiliate of the Developer or McClinton, to serve as management agent for the Development and the Association, at a reasonable compensation established by the Board.

Section 5: The Developer and McClinton shall have the right to designate all members of the Board prior to the first annual meeting of members. Notwithstanding anything to the contrary elsewhere herein, at the first annual meeting following the Release Date, the term of office of one (1) Residential Director shall be fixed to expire upon the date of the second annual meeting of the Association thereafter, the term of one Residential Director shall be fixed to expire upon the date of the third annual meeting and the term of one Residential Director shall be fixed to expire upon the date of the fourth annual meeting of the Association thereafter. No Director shall be elected for longer term than three (3) years (but Director's may serve consecutive terms). At the expiration of the initial term of office of each respective Director, his successor shall be elected to serve a term of three (3) years. The Directors shall hold office until their successors have been elected and hold their first meeting. Prior to the Release Date, Developer need not appoint more than one (1) Residential Director who shall have two (2) votes on the Board; and the third Residential Director shall have a term of three (3) years. Prior to the Release Date, McClinton need not appoint more than one (1) Director who shall have two (2) votes. The Commercial Directors shall serve three (3) year terms.

Section 6: Vacancies on the Board caused by any reason other than the removal of a Director by a vote a Majority of Owners shall be filled by vote of the majority of the then remaining Directors of the type of Director (Residential or Commercial) who has left the Board, even though they may constitute less than a quorum; and even though a Commercial Director vacancy will be filled by the selection of the remaining Commercial Director. Each person so elected shall be Director until a successor is elected at the next annual meeting of the Association.

Section 7: At any regular or special meeting of the Association duly called, any one or more of the Directors previously elected by the Owners may be removed, with or without cause, by a Majority of Owners; and their successors may then and there be elected by the affirmative majority vote of those Owners of the type of Director represented (Residential or Commercial) to fill the vacancy thus created. Any Director whose removal has been proposed shall be given an opportunity to be heard at the meeting.

Section 8: The first meeting of a newly elected Board shall be held within five (5) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no

notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, providing a majority of the Board shall be present.

Section 9: Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of Directors. Notice of regular meetings of the Board shall be given to each Director, personally or by mail, email, telephone or telegraph, at least ten (10) days prior to the date named for such meeting.

Section 10: Special meetings of the Board may be called by the President on three (3) days' notice to each Director given personally or by mail, email, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice on the written request of a majority of the Directors.

Section 11: Before or at any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by such Director of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 12: At all meetings of the Board, a majority of the Directors then in office shall constitute a quorum for the transaction of business and acts of the majority of the Directors present at a meeting at which a quorum is present shall be acts of the Board, except as provided hereafter. If at any meeting of the Board there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, and business which might have been transacted at the meeting as originally called may be transacted without further notice, but notice of the adjourned meeting shall be provided to the directors not present. Notwithstanding the foregoing, a quorum shall not be deemed to exist unless at least one Residential and one Commercial Director are present. If any matter of a material nature, which will substantially affect the Owners is being considered, then the affirmative vote of at least four (4) Directors shall be required to adopt it.

Section 13: The Board shall require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds; provided, however, that this provision shall not require that the Treasurer be bonded if, under the terms of any management agreement in effect from time to time, the person, firm or corporation serving as management agent is responsible for collecting and disbursing Assessment funds and is required to account to the Association for said funds at least annually. The premiums on necessary fidelity bonds shall be paid by the Association.

Section 14: No member of the Board shall receive any compensation for serving in said capacity, nor shall the expenses of meeting be borne by the Association.

**Article V
Officers**

Section 1: The principal officers of the Association shall be a President, a Vice President, a Secretary and Treasurer, all of whom shall be elected by the Board. The directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary.

Section 2: The officers of the Association shall be elected annually by the Board at the organization

meeting of each new board, and they shall hold office at the pleasure of the Board.

Section 3: Upon affirmative vote of a majority of the members of the Board, any officer may be removed, with or without cause, and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 4: The President shall be the Chief Executive Officer of the Association. The President shall preside at all meetings of the Association and of the Board and shall have all of the general powers and duties which are usually vested in the office of President of an association, including but not limited to the powers to appoint committees from among the Unit Owners and Subdivision Lot Owners from time to time.

Section 5: The Vice President shall take the place of the President and perform such duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other members of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be delegated by the Board.

Section 6: The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association; shall have charge of such books and papers as the Board may direct; and shall, in general, perform all the duties incident to the Office of Secretary.

Section 7: The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association, and shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Association, in such depositories as may from time to time be designated by the Board; provided, however, that the Treasurer shall not be responsible for such of the foregoing matters as have been delegated to the management agent pursuant to the provisions hereof.

Section 8: All agreements, contracts, deeds, leases, checks, notices and other instruments to be executed on behalf of the of the Association shall be executed by any two officers (for the purposes hereof, an attesting officer shall be deemed an executing officer) of the Association or by such other person(s), firm(s) or corporation(s), including the management agent, as may be designated by the Board. In no event shall any such document only be signed by one signatory.

Section 9: No officer shall receive any compensation for serving in said capacity, nor shall the expenses of meeting be borne by the Association.

**Article VI
Fiscal Management of the Association**

Section 1: The Board shall use the following guidelines in the fiscal management of the Association:

(a) Receipts and disbursements of the Association shall be credited and charged to accounts under the following classifications as shall be appropriate:

(i) Current maintenance and administrative expenses, including a reasonable allowance for current contingencies and working funds other than expenditures chargeable to reserves, and amounts necessary to make up any deficiencies in expenses for any prior year. Any balance in this fund at the end of each year shall be applied to reduce the Assessments for current expenses for the succeeding year

or shall be transferred to the appropriate reserve fund or general operating reserve, hereinafter provided for, as determined by the Board.

(ii) A general reserve fund for the purpose of performing periodic maintenance, replacement and repair of the Common expense elements and for such other purposes as may, from time to time, appear to be necessary or appropriate.

(iii) Three (3) reserve funds, each for the purpose of performing periodic maintenance, replacement and repair of the Residential, Commercial and Twinplex expense elements respectively, and for such other purposes as may, from time to time, appear to be necessary or appropriate. Should any reserve fund prove insufficient to satisfy the obligation against it, a special assessment shall be levied against the Owner of the type of property involved to satisfy such shortfall. There shall be no use of the funds in one reserve fund for the payment of Common costs of a different type.

(iv) A general operating reserve for the purpose of providing a measure of financial stability during periods of special financial stress, which may be used to meet deficiencies from time to time as a result of delinquent payment of Assessments by Owners and other contingencies, may be established, from time to time, if so desired by the Board.

(v) The amounts to pay the premiums of insurance policies obtained and maintained pursuant to other portions hereof.

(vi) Repayment of any loans to the Association, the proceeds of which were used to improve Common elements.

(b) The Board shall adopt a budget for each calendar year that shall include the estimated funds required to provide and maintain funds for the foregoing accounts. Said budget shall be based upon the costs set forth in any management agreement in effect pursuant hereto to the extent that said agreement is applicable to the accounts established above. If no such agreement is in effect, the budget shall be determined by the Board, except that the amount for any budgeted item may not be increased by more than fifteen percent (15%) over the preceding year's amount unless approved by a Majority of Owners, or unless required to preserve the safety of the Development or any part thereof. Any special assessment required to repair or replace Twinplex expense elements shall only be levied against Twinplex Units and shall be a part of the Twinplex costs.

Section 2: Copies of the budget and proposed Assessments shall be transmitted to each Owner on or before November 1 preceding the calendar year for which the budget applies. If the budget is amended subsequently, a copy of the amended budget shall be furnished to each member.

Section 3: Assessments against the Owners for their shares of the items of the budget shall be made for the calendar year annually, at the annual meeting of the Association preceding the year for which the Assessments are being made. Such Assessments shall be due in twelve (or less if so voted by the Board) equal installments payable monthly (or quarterly or semi-annually if so voted by the Board) on the first day of each calendar month (quarter or semi-annual period, if so voted) during said year. In the event the annual Assessment proves to be insufficient, the budget and the amount of the Assessments may be amended at any time during the year by the Board; subject, however, to the limitations imposed above. The unpaid Assessment, as amended, for the remaining portion of the calendar year, shall be divided by the number of months remaining in the year and such necessary increased amount shall be payable monthly for the balance of the installments for the budgeted year.

Section 4: If an Owner shall fail to timely pay any installment of an Assessment, the Association may accelerate the remaining installments of the current year's Assessments, upon notice to such Owner, and then the unpaid balance of the current year's Assessment shall come due upon the date stated in the notice, but not less than ten (10) days after the forwarding of the notice to the Owner.

Section 5: Assessments for expenses that are not included in the budget shall be made only after notice of the need for such is given to the Owners. After such notice, and upon approval by the Board at its next meeting, the Assessment shall become effective, and it shall be due after thirty (30) days' notice, in such manner as the Board may require in the notice of Assessment.

Section 6: All unpaid Assessments shall bear a late charge computed at a rate of twelve percent (12%) per annum after thirty (30) days from the time the same are due. In addition, fines may be levied from the Assessment's original due date. In addition, delinquent Owners shall be liable for fines levied by the Association per the Act, the costs to the Association, including reasonable attorneys' fees, of collection of such unpaid Assessments. Unpaid Assessments may be collected by the Association in any manner permitted by law, and during the pendency of an action brought to foreclose a lien for an unpaid Assessment on a Unit or Subdivision Lot, the property's Owner shall be required to pay reasonable rental to the Association for such Owner's usage of the property, and the Association may obtain the appointment of a receiver to collect the same.

Section 7: The Board shall be required to obtain and maintain, to the extent obtainable, the insurance required by the Declaration or otherwise selected by the Board in its discretion. All such policies shall provide that adjustment of loss shall be made with the Board or its designated representatives. All policies of physical damage insurance shall contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured, and shall provide that such policies may not be canceled or substantially modified without at least ten (10) days' prior written notice to all of the insureds.

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 NAMING THE ASSOCIATION AS AN ADDED 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.

Article VII

Leasing and Time Sharing

Section 1: No tenant or other non-Owner occupant shall be allowed to enter into possession of any Residential Unit except pursuant to a written lease. Except for leases from Developer or McClinton, no lease shall be for a period of less than one (1) year. Copies of leases for the Residential Units (not the Commercial) shall be furnished to the Association at or prior to the time of the tenant's occupancy. McClinton may provide a memo of any lease for a Commercial Unit.

Section 2: No time sharing type occupancy, whether created by deed or otherwise, may be utilized in connection with any part of the Development.

Article VIII
Liability of Officer and Directors of the Association

The officers of the Association and members of the Board designated or elected as provided in these Bylaws, shall not be liable to Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the officers and members of the Board against all contractual liability to others arising out of contracts made by the officer and/or Board on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of these Bylaws. It is intended that the officers and members of the Board shall have no personal liability with respect to any contract made by them on behalf of the Development. It is also intended that the liability of any Owner arising out of any contract made by the officers and/or Board or out of the aforesaid indemnity in favor of the officers and/or members of the Board shall be limited to such proportion of the total liability thereunder as such Owner's property's value bears to all other such values. Every agreement made by the officers or members of the Board or the management agent or by the manager on behalf of the Development shall provide that the officers, members of the Board, management agent or manager, as the case may be, are acting only as agents for the Owners and shall have no personal liability thereunder (except as they may have as an Owner).

Article IX
Amendment

These Bylaws may be amended by the affirmative vote of a Majority of Owners and a majority of Holders. 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 the a Residential or Commercial Unit may be adopted without the affirmative vote of a Majority of Owners of that type Unit, as well as the majority vote of all Owners.

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IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year above written.

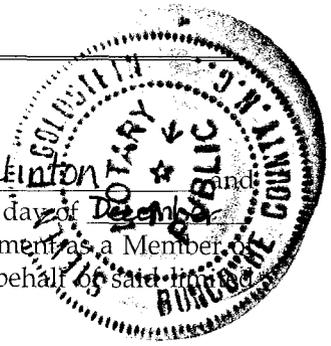
Village Park Development, LLC

By: [Signature]
Member
[Signature]
Raymond McClinton

By: [Signature]
Member
[Signature]
Susan H. McClinton

State of North Carolina - County of Buncombe

I a Notary Public of said County and State, certify that Raymond McClinton and Ronald S. Butler personally appeared before me on this 6 day of December, 2005, and personally acknowledged his/her due execution of the foregoing instrument as a Member, Village Park Development, LLC, a North Carolina limited liability company, on behalf of said limited liability company, by authority duly vested.



My Commission Expires: 9-15-2008

[Signature]
Notary Public STEVEN I Goldstein

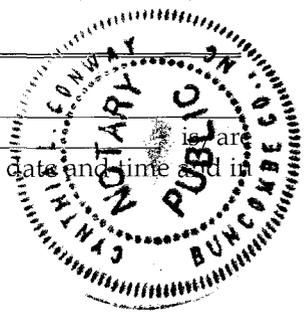
State of North Carolina - County of Buncombe

I, a Notary Public of said County and State, certify that Raymond McClinton and Susan H. McClinton, personally appeared before me this 6th day of December, 2005 and acknowledged the due execution of the foregoing instrument.

My Commission Expires: 11-22-2009

[Signature]
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