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STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

Prepared by and return to:  
Goosmann Rose, P.A.  
Post Office Box 7436  
Asheville, NC 28802  
(File No. 07-0661 WKR)

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE VILLAGE AT WINDSTONE**

*Windstone Properties 20*

This First Amendment, entered into on the 2<sup>nd</sup> day of November, 2007, by and between: **Burney Mountain Associates, LLC.**, a North Carolina limited liability company, (the "Declarant"); **Burney Mountain One, Inc.** (Owner of Unit 14, Building 800); **Victoria Cherisa Hope** (Owner of Unit 28, Building 900 {a/k/a Unit 901}); **Suzanne J. Little** (Owner of Unit 68, Building 3200); **Wendell T. Howard and wife, Amy L. Howard** (Owners of Unit 38, Building 900); **Keith M. Maxwell** (Owner of Unit 48, Building 1000); **Douglas S. Morrison and wife, Caryn L. Morrison** (Owners of Unit 66, Building 3200); and all future owners of Lots or Units in the Community known as "The Village at Windstone" as identified on Plat Slides 6950A and 6950B, revised on Plat Slides 6999A; 6999B; and 6999C recorded in the Office of the Register of Deeds for Henderson County, North Carolina, references to which are hereby incorporated herein.

**WITNESSETH:**

**THAT WHEREAS**, the Declarant has established a Community comprised of that real property located in Henderson County, North Carolina and specifically identified on Plat Slides 6950A and 6950B, revised on Plat Slides 6999A; 6999B; and 6999C (the "Community Plats"); and

**WHEREAS**, the Declarant subjected portions of the Community to that Declaration of Covenants, Conditions, and Restrictions for the Village at Windstone by recording the same in Deed Book 1336, beginning on Page 734 of the records maintained by Office of the Register of Deeds for Henderson County, North Carolina the ("Declaration"); and

**WHEREAS**, Article II, Section 4(i) of the Declaration reserves unto the Declarant the right to amend the Declarations, without approval or joinder of any Owners, until ninety (90) percent of all Units are sold (and instruments of conveyance are recorded) by the Declarant; and

**WHEREAS**, the Declarant, as of the date of this First Amendment has not sold ninety (90) percent of the Units; and

**WHEREAS**, the Declarant has determined that certain amendments to the Declaration are required to clarify certain ambiguities therein, and to more effectively govern the Community.

**NOW, THEREFORE**, pursuant to the powers reserved unto the Declarant in the Declarations, and for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declarant, hereby amends the Declarations as follows:

1. The "Property" subject to the Declarations is hereby amended to include the following, all of which shall be subject to the terms and conditions of the Declaration, and the amendments thereto as set forth herein:
  - (a) All those individually numbered Lots as shown and identified on Plat Slides 6950A and 6950B; and on Plat Slides 6999A; 6999B; and 6999C; and
  - (b) All those areas labeled as "Common Area" or as "Common Elements" (being all that real property, other than the specifically numbered Units existing to the West of the areas identified as "Proposed Future Development") as shown and identified on Plat Slides 6950A and 6950B; and on Plat Slides 6999A; 6999B; and 6999C; and
  - (c) All those roads, driveways (which shall be Individual Limited Common Elements appurtenant to the Unit to which said driveway serves), and easements shown and identified on Plat Slides 6950A and 6950B; and on Plat Slides 6999A; 6999B; and 6999C; and
  - (d) All other easements and areas of the Community serving the Units or necessary for the reasonable use and enjoyment of the Units (whether or not the same shall be specifically identified on the Community Plats); provided that: (i) any easements not shown on the Community Plats shall be construed as being ten feet (10') in width and centered upon the utility line as the same shall exist; and (ii) any easements or Common Elements established hereunder and not specifically shown or identified on the Community Plats may be re-designated or relocated by the Declarant in its discretion, provided such shall not unreasonably diminish the use and enjoyment of any Unit owned by any party other than the Declarant.
  - (e) All un-designated, unlabeled, unmarked, or otherwise unspecified areas of the Community Plats; and all areas identified as future development shall be subject to re-designation, relocation, or withdrawal from the Community in the Declarant's discretion. Furthermore any proposed improvement to such area or proposed designation may be altered or withdrawn in the Declarant's discretion. The Declarant's rights to re-designate, relocate, or withdraw hereunder shall be limited such that it shall not unreasonably diminish the use and enjoyment of any Unit owned by any party other than the Declarant.
  
2. All references to "Plans" as the same is a defined term in the Declaration are hereby deleted. Other uses of the term "plans" where the same does not refer to such as a defined term shall not be deleted.

3. All instances in which the defined term "Unit" is defined as being designated, delineated, shown, or otherwise identified on any "Plans" shall be amended such that the term "Plans" shall be replaced with the term "Community Plats."
4. Article I, Section 4 is hereby amended to remove the requirement that the Common Elements and Common Areas shall be conveyed to the Association at the Developer's discretion. The last sentence of Article I, Section 4 is hereby revised to read as follows: "The Common Elements and Common Areas are designated as such upon filing of any Community Plats, subject to the Declarant's rights to re-designate, relocate, or withdraw the same, provided that such shall not unreasonably diminish the use and enjoyment of any Unit owned by any party other than the Declarant. The Declarant shall, no later than the end of the Declarant Control Period, convey title to all Common Areas and Common Elements to the Association."
5. Article IV, Section 3 is hereby deleted and replaced with the following: No portion of the Common Elements or Common Areas may, after expiration of the Declarant Control Period, be conveyed or encumbered without the unanimous and written consent of all the Unit Owners. During the Declarant Control Period, the Declarant may (without approval or joinder of any Unit Owners) convey, encumber, re-designate, relocate, or withdraw any portions of the Common Elements or Common Areas, provided that such action shall not unreasonably diminish the use and enjoyment of any Unit owned by any party other than the Declarant.
6. Article II, Section 4(b) is hereby amended to add the following language at the end of said Section: ", provided that such easements and rights of way shall not unreasonably diminish the use and enjoyment of any Unit owned by any party other than the Declarant."
7. Article II, Section 4(d) is hereby deleted and replaced with the following new Section 4(d):  

"(d) Declarant reserves the right to maintain sales offices, management offices and models in any Unit owned or leased by Declarant, upon Common Areas, or elsewhere upon the Property, provided such use shall not unreasonably diminish the use and enjoyment of any Unit owned by any party other than the Declarant."
8. Article II, Section 4(f) is hereby deleted and replaced with the following new Section 4(f):  

"(f) Declarant reserves the right to build additional Units, and to relocate the boundaries of any Unit, including the right to designate portions of the Common Area as additional Units or as part of an existing Unit; provided that such action shall not unreasonably diminish the use and enjoyment of any Unit owned by any party other than the Declarant. In any instance where the adjustment of boundaries of any Unit(s) not owned by the Declarant is desired, or where the use and enjoyment of such Unit(s) shall be unreasonably diminished, the written consent of all Unit Owners having an interest in such affected Unit(s) shall be required prior thereto."
9. Article II, Section 4(i) is hereby deleted and replaced with the following new Section 4(i):  

"(i) Declarant reserves the right to amend these Declarations, without approval or joinder of any Owners, until ninety (90) percent of all Units are sold (and instruments of conveyance are recorded) by the Declarant, provided such amendment shall not unreasonably diminish the use and enjoyment of any Unit owned by any party other than the Declarant."

10. Article II, Section 4(k) is hereby deleted and replaced with the following new Section 4(k):
- “(k) Declarant reserves the right not to be assessed or to be responsible for any fees or assessments from the Association or otherwise for Units or portions of the Property titled in the name of the Declarant unless such applicable Unit shall be Occupied as a residence. Declarant shall be obligated to pay a pro-rated, per Unit share (as determined by the total number of Units shown on the Plats) of: (i) expenses relating to the maintenance and insurance of improvements to any Common Element; (ii) expenses relating to insurance of Units owned by Declarant; and (iii) expenses relating to services provided by the Association used by Declarant. Declarant shall be required to maintain any areas owned by Declarant, including completed Units, Units under construction, and areas identified as future development, in a sanitary and reasonably clean condition. Developer shall not be obligated to pay any expenses relating to services provided by the Association primarily for the benefit of Units not owned by the Declarant or occupants thereof (including, without limitation, garbage collection, utility service to Common Elements not utilized by Declarant, and maintenance of completed landscaping).”
11. Article II, Section 4 is hereby amended to add the new Section 4(l):
- “(l) Any and all Declarant rights reserved in the Declaration and any amendments thereto, whereby the Declarant is empowered to take action without approval of the Owners of Units, such rights shall be qualified and limited to those which shall not unreasonably diminish the use and enjoyment of any Unit owned by any party other than the Declarant.”
12. Article IV, Section 1 is hereby amended to add the following new subsection:
- “(e) all easements and areas of the Community serving the Units or other Common Elements or necessary for the reasonable use and enjoyment of the Units or Common Elements (whether or not the same shall be specifically identified on the Community Plats); provided that: (i) any easements not shown on the Community Plats shall be construed as being ten feet (10') in width and centered upon the utility line as the same shall exist; and (ii) any easements or Common Elements established hereunder and not specifically shown or identified on the Community Plats may be re-designated or relocated by the Declarant in its discretion, provided such shall not unreasonably diminish the use and enjoyment of any Unit owned by any party other than the Declarant.”
13. Article VII, Section 3 is hereby amended to add the following at the end of such Section:
- “As of the recording of this Declaration and the First Amendment thereto, all Units shown on the Community Plats are substantially similar in size, therefore, all assessments relating thereto shall be equal. It is understood and agreed that in the event that Units created hereafter by the Declarant deviate substantially (by more than 25% from an average Unit size of 1,865 square feet) from the existing Units, then the rate of assessment for such Units may be adjusted by the Association proportionally.”
14. Article VII, Section 11 is hereby amended to add the following to the end of such Section:
- “Effective as of the date of recording this Declaration and the First Amendment thereto, the late payment charge shall be the sum of thirty five and no/100s dollars (\$35.00). Said late payment charge may be increased by the Board relative to inflation or in any amount permitted by law. Any payment of assessments shall be first credited to any past due

installments prior to any credit against current installments. A late payment charge may be assessed for each installment period in which an Owner is not current."

- 15. Article VII, Section 19(a) is hereby deleted and replaced with the following new Section 19(a):

"(a) The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the transferee of such Unit unless: (i) said transferee, its attorney or agent shall have been given notice of such delinquent assessments prior to acquiring title to such Unit; (ii) unless a lien for such assessments shall have been filed of record in accordance with the procedure set forth in Article VII, Section 16 of this Declaration; or (iii) said delinquent assessments are expressly assumed by said transferee."

- 16. Article IX, Section 16 is hereby amended to add the following at the end of such Section:

"The Association shall designate areas in which Unit Owners, their guest or invitees may park, and shall establish rules relating to such overflow parking. In any event, Unit Owners shall be permitted to park upon the driveway abutting their Unit."

- 17. Article X, Section 1 is hereby amended to add the following paragraph between the existing first and second paragraphs of such Section:

"The Association shall procure and maintain property and casualty insurance (at replacement cost) on all structural and exterior finish components of any improvements constructed upon any Unit. Such insurance provided by the Association shall not cover contents, or any interior components of such improvements (i.e. floor, ceiling and wall coverings; paint; interior non structural demising walls; cabinetry and fixtures attached by someone other than Declarant; or contents)."

- 18. Article IX is hereby amended to add a new Section 1(a) as follows:

"(a) Owners shall be permitted to lease or rent their Unit for a rental for any period greater than six (6) Months. Any Owner who endeavors to lease its Unit shall promptly notify the Association in writing of such intent and the intended term of such Lease. In no event shall any Unit be offered for weekly, nightly or weekend rental. No amendment to the Declaration, Bylaws, Rules or any other document shall be effective to restrict this right to lease or rent Units nor to create a quota on the number or percentage of Units within the Community which may be leased or rented without the unanimous consent of all Unit Owners."

- 19. In all instances where the Declaration or this First Amendment place any limitation on the Declarant's rights for the purpose of unreasonably diminishing the use and enjoyment of any Unit owned by any party other than the Declarant, such provision shall not be construed as unreasonably diminishing the use and enjoyment of any Unit in instance where the same shall result in the loss of views or other aesthetic elements or where Common Element square footage size is impacted.

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