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END PAGE	0781
INSTRUMENT #	11239

**FIRST AMENDMENT TO OPERATING AND EASEMENT AGREEMENT
AND DECLARATION OF COVENANTS FOR HORNER PLACE**

Prepared by and Mail to:
Williams Mullen Maupin Taylor (DRD)
P. O. Drawer 19764, Raleigh, NC 27619

NORTH CAROLINA – LEE COUNTY

THIS FIRST AMENDMENT TO OPERATING AND EASEMENT AGREEMENT AND DECLARATION OF COVENANTS FOR HORNER PLACE is made and entered into by **CAROLINA DH V, LLC**, a North Carolina limited liability company (“Declarant”), and **FIDELITY BANK**, a North Carolina banking corporation, and is made as of the 7th day of November, 2007.

RECITALS:

1. Declarant is the owner of Lots 1R and 2R as shown on that certain plat (the “Recombination Map”) entitled “KERR DRUG RECOMBINATION PLAT”, dated October 22, 2007, prepared by Commercial Site Design and recorded in Plat Cabinet 2007, Slide 247, Lee County Registry.
2. Fidelity Bank is the owner of Lot 3 as shown on that certain plat recorded in Plat Cabinet 2007, Slide 138, Lee County Registry.
3. Declarant and Fidelity Bank desire to amend that certain Operating and Easement Agreement and Declaration of Covenants for Horner Place recorded in Book 1084, Page 611, Lee County Registry (“OEA”) as set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and conditions contained herein, and other good and valuable consideration, the legal

sufficiency of which is hereby acknowledged, Declarant and Fidelity do hereby agree to amend the OEA as follows:

1. Each reference to Lot 1 and Lot 2 in the OEA are hereby amended such that they refer respectively to Lot 1R and Lot 2R as shown on the Recombination Map.

2. Section 6.05 is hereby amended by adding the following language:

This sign shall not exceed five (5) feet in height and eight (8) feet in width. Prior to construction (or any changes to the sign) the design, colors, locations and materials of the sign must be approved in writing by the Declarant.

3. Section 11.01 is hereby amended by adding the following language:

Notwithstanding any language in this OEA to the contrary, the areas (the "Reserved Lot 1R Parking Areas") designated on the Recombination Map as "Reserved Parking for Lot 1R" shall be reserved for the exclusive use of the owner and any tenant from time to time of Lot 1R and shall not be subject to any parking easements granted herein for the benefit of Lots 2R and 3. The owner and any tenant occupying Lot 1R may erect signs on Lot 1R indicating that the parking spaces within the Reserved Lot 1R Parking Areas are reserved for the exclusive use of employees and customers of the owner or tenant occupying Lot 1R.

4. Section 11.02 is hereby deleted in its entirety and the following Section 11.02 is hereby inserted in its stead:

11.02 Waste Container Easement. The owner of Lot 1R hereby grants to the owner of Lot 2R a perpetual non-exclusive easement over that certain portion of Lot 1R as depicted on the Site Plan for the placement and use of a waste container and associated improvements, including without limitation pads and screening ("Waste Container Easement"). The owner of Lot 1R also grants to the owner of Lot 2R the right to ingress and egress across Lot 1R to access the Waste Container Easement. The owner of Lot 1R shall also have the right to use the area subject to the Waste Container Easement for the placement and use of a waste container. Each of the record owners of Lots 1R and 2R shall pay the costs associated with the maintenance of its waste container and the pickup of its own trash from the waste container. The record owners of Lot 1R and Lot 2R shall share equally the costs of maintenance of the concrete pad on which the waste containers shall be located and the fencing which provides a visual barrier around the waste containers; provided, however, each of the record owners of Lots 1R and 2R shall be responsible for any costs and expenses caused by its own negligence or willful misconduct or the negligence or willful misconduct of its own employees, agents, or contractors.

5. Article 12 is hereby amended by adding the following language at the end of the first paragraph of Article 12:

Provided, however, if there is damage or injury not resulting from the negligence, omission or intentional act of one or more of the Record Owners or their respective successors, devisees, assignees, agents, tenants, licensees or invitees, that results in liability to any Record Owner or a Record Owner's tenant because the Record Owner owns property or a portion of property that is subject to the Shared Use Area, or in the case of a tenant of a Record owner because the tenant has a leasehold interest in property or a portion of property that is subject to the Shared use Area, then any such liability shall be apportioned among the Record Owners by multiplying the total amount of the liability, less any insurance proceeds paid toward the liability, by that fraction which has as its numerator the acreage of that Record Owner's Tract and has as its denominator the total acreage of the Entire Tract.

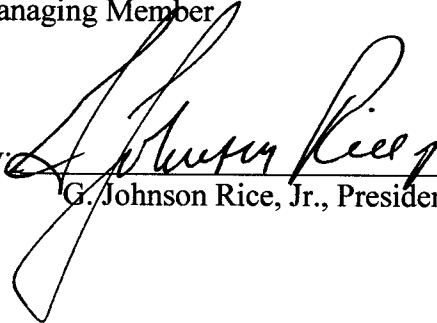
6. Except as specifically amended herein, the OEA shall remain in full force and effect. This amendment may be signed in counterparts, all of which when taken together shall constitute one agreement.

(See attached signature and acknowledgement pages)

IN WITNESS WHEREOF, Declarant and Fidelity Bank have caused this First Amendment to be duly executed as of the date first above written.

DECLARANT:

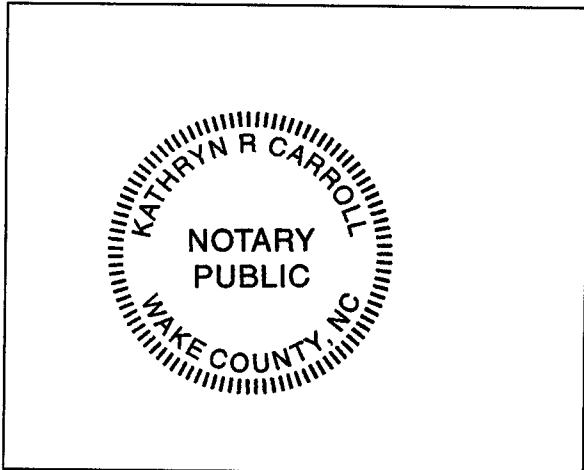
CAROLINA DH V, LLC,
a North Carolina limited liability company
By: Carolina Development Holdings, Inc.,
A North Carolina corporation,
Managing Member

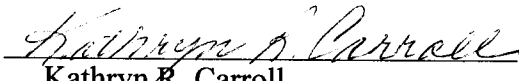
By: 
G. Johnson Rice, Jr., President

NORTH CAROLINA, WAKE COUNTY

I certify that the following person personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: **G. JOHNSON RICE, JR.**

Date: November 7, 2007




Kathryn R. Carroll, Notary Public
(Print or Type Name of Notary Public)

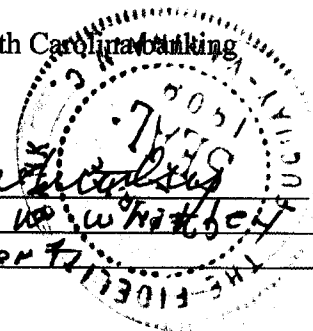
My commission expires: November 19, 2007

(affix Official Seal to fit completely within the above box)

IN WITNESS WHEREOF, Declarant and Fidelity Bank have caused this First Amendment to be duly executed as of the date first above written.

FIDELITY BANK, a North Carolina banking corporation

By: Ernest W. Whitley
Name: ERNEST W. WHITLEY
Title: PRESIDENT

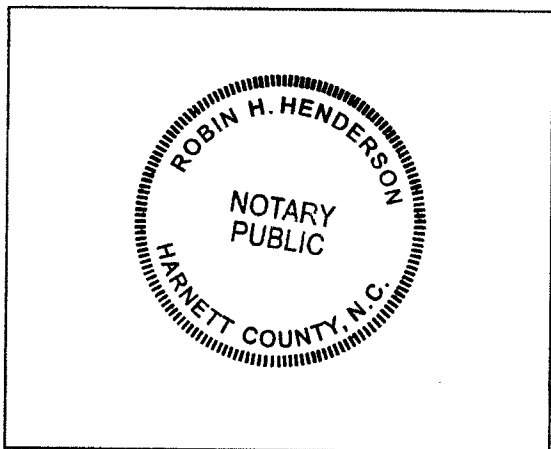


NORTH CAROLINA, Wake COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

Ernest W. Whitley (insert name).

Date: November 13, 2007



Robin H. Henderson, Notary Public
Robin H. Henderson
(Print or Type Name of Notary Public)

My commission expires: Sept. 11, 2011

(affix Official Seal to fit completely within the above box)