

AMENDMENT TO DEVELOPER'S AGREEMENT

THIS AGREEMENT made this 18th day of July, 2001 by and between THE VILLAGE AT OLD TAPPAN, LLC, a New Jersey limited liability company, and KALIAN COMPANIES, a New Jersey corporation, both maintaining offices at 225 Highway 35, Navesink North, Red Bank, New Jersey (hereinafter collectively referred to as "Developer"); THE VILLAGE AT OLD TAPPAN HOMEOWNER'S ASSOCIATION, maintaining offices at 223 Orangeburg Road, Old Tappan, New Jersey (hereinafter referred to as "Association"); THE BOROUGH OF OLD TAPPAN, a municipal corporation of the State of New Jersey, maintaining offices at 227 Old Tappan Road, Old Tappan, New Jersey (hereinafter referred to as "Borough"); and THE PLANNING BOARD OF THE BOROUGH OF OLD TAPPAN, a municipal corporation of the State of New Jersey, maintaining offices at 227 Old Tappan Road, Old Tappan, New Jersey (hereinafter referred to as "Planning Board").

W I T N E S S E T H:

WHEREAS, by resolution dated December 1, 1993, the Planning Board granted preliminary site plan approval and PRD conditional use approval to The Village, Inc., the predecessor in interest to the Developer, so as to permit the construction of 7 one-family dwellings and 133 townhouse units on premises known and designated as Block 303, Lot 8, Block 603, Lot 9, and Block 603, Lots 1 and 2 (hereinafter referred to as "the Property" or "the Development") as depicted on the tax assessment map; and

WHEREAS, the Planning Board granted amended preliminary site

plan approval and PRD conditional use approval by resolution dated September 21, 1994 and

WHEREAS, a Developer's Agreement was entered into on or about November 28, 1994 between The Village, Inc., the Borough and the Planning Board which details the obligation of The Village, Inc. in connection with the Development and the construction of various site improvements; and

WHEREAS, a performance bond issued by First Indemnity of America being designated as Bond No. S03390 was posted on or about March 14, 1996 to secure the performance by the Developer of the obligations under the aforementioned resolutions and Developer's Agreement; and

WHEREAS, on or about August 19, 1996 an Assignment of Developer's Agreement was executed by The Village, Inc., the Developer, the Borough, and the Planning Board whereby The Village, Inc. assigned and transferred unto the Developer all of its right, title and interest under the Developer's Agreement and the aforementioned resolutions of approval; and

WHEREAS, Developer and the Association have requested that the Borough and Planning Board modify and amend the Developer's Agreement in connection with certain obligations to be performed as required by such Agreement and the above-described approving resolutions.

NOW THEREFORE in consideration of the mutual covenants, conditions and agreements contained herein, it is hereby agreed as follows:

1. Trees and Landscaping.

All obligations of the Developer relating to trees and landscaping, including the obligations referenced in paragraph 9 of the Developer's Agreement shall, upon the execution of the within Agreement, be assumed by the Association. In connection therewith, the Association shall be obligated to replace at its cost and expense all missing or dead shrubs and previously existing deciduous trees. The Association shall be required to complete aquatic plantings, complete the construction of a landscaped swale adjacent to Sherwood Court, and complete the grading and seeding between the sodded and seeded portions of lawns. The Association shall be required to comply with all requirements of the landscaping plan as previously approved, as well as such requirements previously imposed between Borough Shade Tree Commission and Borough Environmental Commission.

2. Additional Obligations of Developer To Be Assumed by Association.

The Association expressly agrees to be responsible to perform the following work, previously the responsibility of the Developer, in accordance with the conditions of approval, the Developer's Agreement, and applicable Borough standards and regulations:

- A. Any and all soil deficiencies;
- B. Any and all irrigation system deficiencies;
- C. Completion of all recreational facilities applicable to the Development;
- D. All work related to the detention basin, including but not limited to, any aerator or circulating

pumps;

E. The construction of the gravel path *or concrete or brick pavement path*

F. Repair and replacement of any sump pumps, provided however that the Developer shall continue to be responsible to repair and/or replace the storm leader and gutter and subground connections related to storm, sewer and drainage facilities.

3. Undertaking By Association.

The Association expressly recognizes, understands and confirms that the obligations it is assuming hereunder originally constituted obligations to be performed by the Developer. The Borough and Planning Board have agreed to enter into this amendatory Agreement based upon the joint request of the Association and the Developer and the entering into of this Agreement by these governmental entities is intended to accommodate said joint request.

4. Continuing Liability.

Except as otherwise provided herein, Developer hereby acknowledges its continuing responsibility in connection with the Developer's Agreement and the approving resolutions and its responsibility for the payment of all moneys and performance of all conditions and obligations as detailed therein.

5. Survival of Performance.

All of the terms and conditions contained in the Developer's Agreement and approving resolutions shall continue in force and in effect and except as expressly provided herein, shall not be deemed to be modified by the within Agreement.

6. Severability.

The performance of this Agreement shall be deemed

severable and should any provision be deemed unenforceable, such determination shall have no effect on the balance of the provisions hereof which shall remain in force and in effect.

7. Modification In Writing.

This Agreement may only be changed, modified or amended by a written instrument signed by all the parties hereto.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be signed by their proper officers and their corporate seals to be affixed the day and year first above written.

ATTEST:

Laurie Palmeri
Laurie Palmeri

ATTEST:

DP
Louis Bianchini

ATTEST:

Gregory C. Hart
Gregory C. Hart, Borough Clerk

ATTEST:

John F. Ten Broeck
John F. Ten Broeck, Secretary

THE VILLAGE AT OLD TAPPAN, LLC
By Kallian At Old Tappan, LLC, Member
By Kallian Associates, Member
By Kallian Corporation, Inc.,
General Partner

By: Mazin A. Kallian
Mazin A. Kallian, President

THE VILLAGE AT OLD TAPPAN
HOMEOWNER'S ASSOCIATION

By: Burt P. Augustensen
Burt P. Augustensen, President

THE BOROUGH OF OLD TAPPAN

By: Victor Polce
Victor Polce, Mayor

THE PLANNING BOARD OF THE BOROUGH
OF OLD TAPPAN

By: Richard J. Toniolo
Richard J. Toniolo, Chairman