WAKE COUNTY, NC 97
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
08/26/2014 AT 09:42:50

BOOK:015762 PAGE:00644 - 00650

Excise Tax: N/A
Prepared By and After Recording Return to:
Lee Law Firm, PLLC
803 Shelley Road Raleigh NC 27609

STATE OF NORTH CAROLINA

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

COUNTY OF WAKE

This SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (the "Second Amendment") is made this 17th day of June, 2014 by and between the TOWN OF WENDELL, a municipal corporation existing under the laws of the State of North Carolina (the "Town"), and NASH Wendell Falls, LLC, a Delaware limited liability company authorized to transact business in North Carolina ("Wendell Falls").

WITNESSETH:

WHEREAS, on or about June 26, 2006, the Town and Wendell Falls Development, LLC ("WFD") entered into a Development Agreement (the "Original Agreement") with regard to multiple tracts of land comprising approximately 1,200 acres within the jurisdiction of the Town, described in Exhibit A attached to the Original Agreement (collectively, the "Property");

WHEREAS, on or about October 9, 2006 and July 14, 2008, the Town approved development of the Property as a Planned Unit Development (the "PUD Approval");

WHEREAS, on or about July 27, 2011, the Town, REDUS Raleigh Housing, LLC, a North Carolina limited liability company ("REDUS"), and successor-in-interest to WFD, and the City of Raleigh, a municipal corporation existing under the laws of the State of North Carolina (as a party only to certain limited provisions not amended hereby, the "City") entered into that certain Amendment to Development Agreement (the "First Amendment" and together with the Original Agreement amended thereby, the "Development Agreement"), which First Amendment is recorded at Book 14422, Page 1679 of the Wake County Register of Deeds;

WHEREAS, the amendments and modifications contemplated by this Second Amendment do not amend any provision of the Development Agreement with respect to which the City is a party;

WHEREAS, Wendell Falls acquired rights as the "Developer" party as successor-in-interest to REDUS, itself the successor-in-interest to WFD, under the Development Agreement pursuant to, *inter alia*, that certain Assignment and Assumption of Development Agreement, dated October 21, 2013, and recorded at Book 15478, Page 1664 of the Wake County Register of Deeds;

WHEREAS, Wendell Falls believes that changes in the housing market require an update to previously approved development plans;

WHEREAS, Wendell Falls has recognized the additional flexibility in design allowed under the Town's new UDO (as defined herein);

WHEREAS, Wendell Falls now requests that the Town apply its UDO requirements for certain proposed development in lieu of the requirements provided in the PUD Approval;

WHEREAS, North Carolina General Statute §§ 160A-400.26 and 160A- 385.1(e)(1)a. allow the Town to apply newer regulation to approved development plans with the written consent of the landowner;

WHEREAS, modification of the Development Agreement is permitted under North Carolina General Statute §§ 160A-400.28 and Section 5.6 of said Development Agreement by a written instrument signed by both parties;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

(1) Defined Terms. Unless otherwise defined herein, terms defined in the Development Agreement shall have the same meaning in this Amendment.

(2) Amendment of the Development Agreement. The terms and provisions of the Development Agreement are modified and amended as provided in this Second Amendment. Except as modified herein, the terms and provisions of the Development Agreement shall remain in full force and effect. If, and to the extent that this Second Amendment and the PUD Approval are inconsistent, this Second Amendment shall control.

(3) Amendment of Section 3.4 of the Development Agreement. Section 3.4 of the Development Agreement is amended by adding the following four (4) new paragraphs between paragraph (c) and paragraph (d):

(c1) The Town of Wendell Unified Development Ordinance, as adopted on July 26, 2010 (together with amendments thereto, the "UDO") shall be the applicable code for determining the zoning requirements of the portion of the Project identified as pods SF-1, SF-2 and SF-3 of the approved PUD Application, except that the combined maximum units for pods SF-1, SF-2, and SF-3 shall not exceed 405, which is roughly equivalent to 3 units per acre. The residential units constructed in pods SF-1, SF-2, and SF-3 combined with total number of units constructed under the PUD shall not exceed 4,000 units.

(c2) The UDO shall be the applicable code for determining the landscaping requirements for the Project and shall be followed in lieu of any landscaping provisions found in the Town of Wendell Zoning Code.

(c3) For purposes of clarity, notwithstanding any portions of the open space requirements set forth in Section 7 of the UDO that may be incorporated into any other part of the UDO made applicable to SF-1, SF-2 and SF-3, the overall Project open space requirements set forth in the approved PUD Application and Development Agreement shall continue to apply with respect to pods SF-1, SF-2 and SF-3 as a portion of the overall Project, such that the open space made available within Project, inclusive of the portion of the Project encompassed by SF-1, SF-2 and SF-3, shall meet or exceed the minimum Project open space requirements set forth in the Development Agreement and approved PUD Application.

(c4) All subdivision approvals for the Project will follow the applicable approval process outlined in Chapter 16 of the UDO rather than those listed in Chapter 36 of the Town of Wendell Zoning Code. However, this procedural change shall not abrogate any non-procedural requirement found in the approved PUD Application for any parcel of land still governed by the approved PUD Application.

(4) Amendment of Article 4 of the Development Agreement. Article 4 of the Development Agreement is amended by adding the following new paragraph:

Section 4.6 Bonding In lieu of requiring the completion, installation and inspection of all or any part of required improvements prior to a Final Plat approval, the Town may approve a financial guarantee whereby the developer shall agree to complete all required improvements. A bond in an amount equal to 125 percent of the estimated cost of outstanding improvements will suffice to meet the requirements of UDO § 17.17(A)(1) and Town of Wendell Zoning Code § 36-175(1), where applicable.

(5) Public Hearing. The Board of Commissioners provided public notice and conducted a public hearing on May 27, 2014 to consider approval and execution of this

Second Amendment. The Board of Commissioners approved this Second Amendment and the Town's execution of the same. After careful review and deliberation, the Board of Commissioners of the Town has determined that the Project, as amended by this Second Amendment, is consistent with the Town's comprehensive plan pertaining to future land use, and will further the Town's land use planning objectives and policies as articulated in the comprehensive plan, as well as enhance and secure the health, safety, welfare and economic well being of residents of and visitors to the Town.

(6) No Change in Term. Subject to any subsequent agreements extending the original duration, as extended by the First Amendment and as provided by N.C. Gen. Stat. Section 160A-400.25, the Term of the Development Agreement shall remain as set forth in Section 1.2 of the Development Agreement as amended by the First Amendment.

(7) No Pledge of Taxing Power or Governmental Authority. No provision of this Second Amendment shall be construed or interpreted as (1) creating a pledge of the faith and credit of the Town within the meaning of any constitutional debt limitation, (2) delegating governmental powers, or (3) a donation or a lending of the credit of the Town within the meaning of the Constitution of the State of North Carolina. No provision of this Second Amendment shall be construed to pledge or to create a lien on any class or source of Town monies, or operate beyond its intended scope so as to restrict, to any extent prohibited by law, any future action or right of action on the part of the Board of Commissioners. To the extent of any conflict between this section and any other provision of this Second Amendment, this section shall take priority.

[Signature Pages to Follow.]

IN WITNESS WHEREOF, the Town and Wendell Falls have caused this Second Amendment to be duly executes and sealed pursuant to proper authority as of the day and year first written above.

NASH WENDELL FALLS, LLC

By: Laurie H. Ford
Print Name: Laurie H. FORD
Title: VICE PRESIDENT

STATE OF North Carolina
COUNTY OF Chatham

I, Selina R Day, a Notary Public of Durham County, State of North Carolina, do hereby certify that Laurie Ford, the Vice President of NASH Wendell Falls, LLC, a Delaware limited liability company, either being [√] personally known to me or [ ] proven by satisfactory evidence (such evidence being________________), personally appeared before me this day and acknowledged the above execution of the foregoing instrument on behalf of NASH Wendell Falls, LLC.

Witness my hand and seal, this 17 day of June, 2014.

Selina R Day
Notary Public

My Commission Expires:
August 30, 2014
[NOTARY SEAL]

SELINA R. DAY
NOTARY
PUBLIC
DURHAM COUNTY, N.C.

BK015762PG00649

THE TOWN OF WENDELL

By: ____________________

____________________, Mayor

ATTEST:

Jonnie S. Driver
Wendell, Town Clerk

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, Melia D. Edwards a Notary Public of Wake County, State of North Carolina, do hereby certify that Jonnie S. Driver, either being [✓] personally known to me or [ ] proven by satisfactory evidence (such evidence being ____________________), personally appeared before me this day and acknowledged that she is the Clerk of the TOWN OF WENDELL, a North Carolina municipal corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument was voluntarily signed in its name by the its Mayor, sealed with its municipal seal and voluntarily attested by her as its Clerk for the purposes stated herein on behalf of the TOWN OF WENDELL.

Witness my hand and seal, this 5th day of June, 2014.

Melia D. Edwards
Notary Public

My Commission Expires:
8-19-2014
[NOTARY SEAL]

MELIA D. EDWARDS
NOTARY
PUBLIC
WAKE COUNTY, N.C.

BOOK:015762 PAGE:00644 - 00650

WAKE
COUNTY
NORTH CAROLINA

Please retain yellow trailer page

It is part of the recorded document and must be submitted with the original for re-recording.

Laura M. Riddick
Register of Deeds

Wake County Justice Center
300 South Salisbury Street, Suite 1700
Raleigh, NC 27601

☐ New Time Stamp
☐ $25 Non-Standard Fee
☐ Additional Document Fee
☐ Additional Reference Fee

This Customer Group

____# of Time Stamps Needed

This Document

7 # of Pages LG

Upon recording, please return to:

NASH Wendell Falls, LLC
c/o Newland
16 Windy Knoll Circle
Chapel Hill, NC 27516

INDEXING NOTE TO CLERK'S OFFICE:
Please index in Grantor index under "NASH Wendell Falls, LLC"
Please index in Grantee index under "Wendell Falls," and "Wendell Falls Community Association, Inc."

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

WENDELL FALLS

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA.

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.

EXCEPT AS EXPRESSLY PERMITTED IN SECTION 3.4 OR APPROVED PURSUANT TO ARTICLE IV OF THIS DECLARATION, NO PERSON SHALL DISPLAY ANY FLAG (INCLUDING THE FLAG OF THE UNITED STATES OR THE STATE OF NORTH CAROLINA) OR ANY SIGN OF ANY KIND (INCLUDING, WITHOUT LIMITATION, POLITICAL SIGNS) ON ANY LOT.

- TABLE OF CONTENTS -

- TABLE OF EXHIBITS -

Exhibit	Subject Matter
"A"	Land Initially Submitted
"B"	Potential Expansion Property
"C"	Initial Rules
"D"	By-Laws of Wendell Falls Community Association, Inc.

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

WENDELL FALLS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made by NASH WENDELL FALLS, LLC, a Delaware limited liability company authorized to do business in North Carolina, on behalf of itself, its successors, and assigns ("**Declarant**").

PART ONE: INTRODUCTION TO THE COMMUNITY

NASH Wendell Falls, LLC, as the developer of Wendell Falls, has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance and preservation of residential properties within Wendell Falls.

Article I Creation of the Community

1.1. Purpose and Intent.

Declarant, as the owner of the real property described in Exhibit "A," intends by this Declaration to establish a general plan of development for the residential properties within the master planned community known as Wendell Falls. An integral part of the development plan is the creation of Wendell Falls Community Association, Inc., a mandatory membership owners association, to own, operate and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

This document establishes a residential planned community under the North Carolina Planned Community Act, N.C.G.S. § 47F-1-101, *et seq.* (as it may be amended, the "**Act**").

1.2. Binding Effect.

All property described in Exhibit "A," and any additional property which is submitted to this Declaration in the future by amendment to this Declaration or by recording one or more Supplemental Declarations in accordance with Article IX hereof (collectively, the "**Community**"), shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Community, their heirs, successors, successors-in-title, and assigns.

This Declaration, as it may be amended, is intended to have perpetual duration, subject to the right of the Owners to terminate this Declaration and the planned community established by this Declaration in accordance with the procedures set forth in Article XX.

1.3. <u>Governing Documents.</u>

The governing documents for the Community consist of:

- this Declaration and such Supplemental Declarations as may be recorded from time to time;
- the Association's Articles of Incorporation and By-Laws;
- the Design Guidelines described in Article IV; and
- the Rules described in Article III;
- such resolutions as the Association's Board of Directors may adopt;

all as they may be amended (**"Governing Documents"**). In the event of a conflict between or among any of the Governing Documents, the documents shall be given priority in the order listed above. For purposes of this provision, a "conflict" shall exist when requirements of two or more documents or laws are inconsistent and mutually exclusive, making compliance with all such requirements impossible. If two or more of the foregoing impose requirements that address the same matter, but are not inconsistent or mutually exclusive, both shall be complied with, it being the intent that the Governing Documents shall supplement, and may be more restrictive or expansive than, applicable law to the extent permitted by applicable law, and that one Governing Document may be more restrictive or detailed than another so long as not in conflict with the document that would control under this paragraph in the event of a conflict.

Some areas within the Community may be subject to additional covenants, restrictions and easements. If there is a conflict between the Governing Documents and any such additional covenants or restrictions, the Governing Documents shall control, however, if one document is simply more restrictive than another, the more restrictive shall control.

The Governing Documents apply to all Owners and occupants of property within the Community, as well as to their respective tenants, guests and invitees. If a Unit is leased, the tenant and all occupants of the leased premises are bound by and obligated to comply with the Governing Documents and the lease shall so provide.

The Association, the Declarant, and every Owner shall have the right to take legal action to enforce the Governing Documents. The Association shall have the specific enforcement powers and remedies described in Section 7.5 and elsewhere in the Governing Documents.

If any court should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

Throughout the Governing Documents there are diagrams to illustrate the concepts discussed and aid in the reader's comprehension. Such diagrams are for illustrative purposes only. In the event of a conflict between any diagram and the text of the Governing Documents, the text shall control.

Diagram 1.1 identifies the various Governing Documents and their functions.

GOVERNING DOCUMENTS	
Articles of Incorporation → (filed with the Secretary of State)	establishes the Association as a nonprofit corporation under North Carolina law
By-Laws → (Board of Directors adopts; initial By-Laws attached as Exhibit "D")	governs the Association's internal affairs, such as voting, elections, meetings, etc
Declaration → (recorded)	creates obligations which are binding upon the Association and all present and future owners of property in the Community
Supplemental Declaration → (recorded)	expands the Community and/or creates additional obligations, restrictions and easements on a portion of the Community
Design Guidelines → (Declarant adopts, unrecorded)	establish standards and guidelines for improvements and modifications to Units, including structures, landscaping and other items on Units
Rules → (Initial Rules attached as Exhibit "C")	govern use of property, activities, and conduct within the Community
Board Resolutions → (Board adopts)	establish rules, policies and procedures for internal governance; interpret Governing Documents, and regulate operation and use of Common Area, among other things

Diagram 1.1 - Governing Documents

Article II Concepts and Definitions

2.1 Defined Terms

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

"Additional Association": A condominium association or other owners association, if any, having jurisdiction over any portion of the Community concurrent with (but subject to) the jurisdiction of Wendell Falls Community Association, Inc. Nothing in this Declaration shall require the creation of any Additional Associations.

"Act": The North Carolina Planned Community Act, N.C.G.S. § 47F-2-101, *et seq.*, as it may be amended.

"Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

"Articles": the Articles of Incorporation of Wendell Falls Community Association, Inc., filed with the Office of the Secretary of State, State of North Carolina, as they may be amended.

"Association": Wendell Falls Community Association, Inc., a North Carolina non-profit corporation, its successors or assigns.

"Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under North Carolina corporate law.

"Builder": Any Person who purchases one or more Units from the Declarant or a Builder for the purpose of constructing a dwelling thereon for later sale to consumers, or who purchases one or more parcels of land within Wendell Falls from the Declarant for further subdivision, development, and/or resale in the ordinary course of its business, and is designated a "Builder" hereunder in a written instrument executed by the Declarant.

"By-Laws": The By-Laws of Wendell Falls Community Association, Inc., as they may be amended. A copy of the initial By-Laws is attached to this Declaration as Exhibit "D."

"Class "B" Control Period": The period of time during which the Declarant, as the Class "B" Member, is entitled to appoint a majority of the members of the Board, as provided in Article III of the By-Laws. The Class "B" Control Period shall terminate no later than 90 days after the first to occur of the following:

(a) the date that 80% of the total number of Units permitted by the Master Plan for the property described in Exhibits "A" and "B" have certificates of occupancy issued thereon and have been conveyed to Class "A" Members other than Builders; or

(b) 20 years from the date of recording of this Declaration; or

(c) such earlier date as the Class "B" Member, in its sole discretion, executes and records a written notice voluntarily terminating the Class "B" Control Period.

Temporary suspension of the Class "B" Membership pursuant to Section 6.2(a) shall not affect the Class "B" Control Period.

"Commercial Association": Wendell Falls Commercial Association, Inc., a North Carolina nonprofit corporation, established to administer covenants and restrictions applicable to properties in Wendell Falls intended for office, retail, institutional, and other nonresidential uses, as well as multi-family rental apartments, if any.

"Commercial Declaration": A declaration of covenants, conditions and restrictions recorded or to be recorded by the Declarant and applicable to various nonresidential properties within Wendell Falls.

"Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term shall include the Limited Common Area, as defined below.

"Common Expenses": The actual and estimated expenses which the Association incurs, or expects to incur, for the general benefit of all Owners in performing its responsibilities and exercising its rights and powers under the Governing Documents, including any reasonable reserves, as the Board may find necessary or appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development or other original construction costs unless approved by Members representing a majority of the total Class "A" votes in the Association and by the Class "B" Member, except payments due under leases of capital improvements such as street lights, and costs of purchasing or installing capital improvements such as street lights or an irrigation well, if the Board determines such purchase to be in the best interests of the Association, shall not be considered an initial development expense or original construction cost subject to this limitation.

"Community": The real property described on Exhibit "A" together with such additional property as is submitted to this Declaration pursuant to Article IX.

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing in the Community, or the minimum standards established pursuant to the Design Guidelines, Rules, and Board resolutions, whichever is the highest standard. Declarant initially shall establish such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within the Community change.

COMMUNITY-WIDE STANDARD
The higher of:

MINIMUM STANDARDS *Design Guidelines* *Rules* *Resolutions of Board* *Example set by Declarant, Board*	**OR**	**PREVAILING STANDARD**

Diagram 1.2 Community-Wide Standard

"Covenant to Share Costs": any declaration of easements and/or covenant to share costs which Declarant executes and records that creates certain easements for the benefit of the Association or the present and future owners of the real property described therein, and/or that obligates the Association and such owners to share the costs of maintaining certain mutually beneficial property or providing mutually beneficial services, as described in such Covenant to Share Costs.

"Declarant": NASH Wendell Falls, LLC. a Delaware limited liability company, or any successor or assign who takes title to any portion of the property described in Exhibits "A" or "B" for the purpose of development and/or sale and who the immediately preceding Declarant designates as Declarant in a recorded instrument.

"Declarant Affiliate". Any Person that controls, is controlled by, or is under common control with the Declarant. and any Person that is an owner, a member, a partner, or a shareholder of the Declarant.

"Design Guidelines": The guidelines and standards for design, construction, landscaping, and exterior items placed on Units adopted pursuant to Article IV, as they may be amended.

"Development and Sale Period": The period of time between the recording of this Declaration and the date as of which (i) the Declarant, any Declarant Affiliate, and Builders cease to own any property subject to this Declaration; (ii) the Declarant's right to unilaterally expand the Community pursuant to Section 9.1 has expired; and (iii) every Unit has become an Improved Unit.

"General Assessment": Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as determined in accordance with Section 8.2.

"Governing Documents": This Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, the Design Guidelines, the Rules, and Board resolutions, all as they may be amended.

"Improved Unit": A Unit (as defined herein) which has been improved with a dwelling that either (i) has been issued a certificate of occupancy by the applicable governmental authority and is owned by a Person other than a Builder; or (ii) is or has been occupied for residential purposes. For purposes of this definition, use of a dwelling by Declarant or a Builder as a sales office, business office, and/or model home shall not constitute use for residential purposes.

"Limited Common Area": A portion of the Common Area assigned, pursuant to Article XII, for the primary benefit or use of one or more, but less than all, Units.

"Master Plan": The land plan for the development of Wendell Falls approved by the Town of Wendell, North Carolina, as it may be supplemented or amended. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to submit such property to this Declaration, nor shall the omission of any property from the Master Plan bar its later submission to this Declaration as provided in Article IX.

"Member": A Person subject to membership in the Association pursuant to Section 6.2.

"Mortgage": A mortgage, a security deed, a deed of trust, or any other form of security instrument affecting title to any Unit. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

"Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

"Person": A natural person, a corporation, a partnership, a limited liability company, a trust, or any other legal entity.

"Rules": The initial Rules set forth in Exhibit "C," as they may be supplemented, modified and repealed pursuant to Article III.

"Service Area" A group of Units designated as a separate Service Area pursuant to this Declaration for purposes of sharing Limited Common Areas and/or receiving other benefits or services from the Association which are not provided to all Units. For example, all Units served by alleys, if any, shall be assigned to an "Alley Service Area" for purposes of sharing the benefits provided and expenses incurred by the Association in connection with the ownership, maintenance, repair, and servicing of such alleys. Other Service Areas may be established as described in Section 7.3. A Service Area may be comprised of more than one housing type and may include noncontiguous parcels of property. A Unit may be assigned to more than one Service Area. Where the context permits or requires, the term "Service Area" shall also refer to any Service Area Committee established in accordance with the By-Laws to represent the interests of Owners of Units within a Service Area.

"Service Area Assessments": Assessments levied against the Units in a particular Service Area to fund Service Area Expenses, as described in Section 8.2.

"Service Area Expenses": The actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Service Area, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Service Area.

"Special Assessment" Assessments levied in accordance with Section 8.3.

"Specific Assessment": Assessments levied in accordance with Section 8.4.

"Supplemental Declaration": An instrument recorded pursuant to Article IX which subjects additional property to this Declaration, designates Service Areas, and/or creates or imposes additional easements, restrictions and obligations on the land described in such instrument.

"Unit": A portion of the Community, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a structure containing multiple dwellings which has been submitted to a condominium regime with the Declarant's approval, each "unit" as defined by state law and/or the recorded condominium instruments shall constitute a separate "Unit" hereunder.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or Declarant's site plan, whichever is more recent, until such time as a subdivision plat is recorded subdividing all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and the number of Units in any remaining portion shall continue to be calculated in accordance with this paragraph.

Units may be combined or further subdivided, and boundary lines of Units may be changed, only by recording of a plat or other legal instrument further subdividing or resubdividing the parcel of property (which subdivision shall be subject to such other restrictions as may be set forth in this Declaration or the Rules). In the absence of recording such a legal instrument, ownership of adjacent Units by the same Owner shall not permit such Units to be treated as a single Unit for purposes of voting and assessment, notwithstanding that such Units may be improved with a single dwelling.

"Wendell Falls": all of the real property described or depicted on the Master Plan, whether or not it has been made subject to this Declaration.

2.2. Interpretation of Certain References.

(a) Consent or Approval. All references in the Governing Documents to "consent" or "approval" shall refer to permission or approval that, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

(b) Discretion and Determinations. All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall refer to the sole and absolute power or right to decide or act and, unless otherwise expressly limited in the Governing Documents, a Person entitled to exercise discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction.

(c) Recording. All references in the Governing Documents to a "recorded" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed, or the filing of a legal instrument, in the office of the Register of Deeds for Wake County, North Carolina, or such other place as may be designated as the official location for filing documents affecting title to real estate in Wake County, North Carolina in order to make them a matter of public record.

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for use and conduct, maintenance, architecture, landscaping and other aesthetic matters at Wendell Falls are what give Wendell Falls its identity and make it special. Each Owner and resident participates in upholding such standards and can take pride in the results of that common effort. This Declaration establishes procedures for adopting, modifying, applying and enforcing such standards while providing the flexibility for the community standards to evolve over time.

Article III Use and Conduct

3.1. Framework for Regulation.

The Governing Documents establish, as part of the general plan of development for Wendell Falls, a framework of affirmative and negative covenants, easements and restrictions that govern the Community. The initial Rules attached as Exhibit "C" are a part of that framework. However, within that framework, the Declarant and the Association must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, and trends. Therefore, this Article establishes rulemaking authority and procedures for modifying and expanding the initial Rules set forth in Exhibit "C." This Article is not intended to apply to rules and regulations relating to use and operation of the Common Area, which the Board may adopt by resolution pursuant to Section 7.1(c), nor to administrative policies which the Board may adopt by resolution to interpret, define or implement the Rules.

3.2. Rule Making Authority.

(a) Declarant Authority. So long as the Declarant has the right unilaterally to amend this Declaration pursuant to Section 19.1, the Declarant may unilaterally amend the Rules to add new Rules or to modify or rescind existing Rules.

(b) Board Authority. Subject to the terms of this Article and the Board's duty to exercise its powers in a reasonable, fair and nondiscriminatory manner, the Board may modify, cancel, limit, create exceptions to, or expand the Rules by majority vote of the directors at any meeting. However, during the Development and Sale Period, any such action shall also be subject to the Declarant's approval.

(c) Member Authority. Subject to the terms of this Article, Members may, at an Association meeting duly called for such purpose, modify, cancel, limit, create exceptions to, or expand the Rules then in effect upon approval of persons entitled to cast more than 50% of the total Class "A" votes in the Association. In addition, during the Development and Sale Period, any such action shall require the written consent of Declarant.

(d) Notice of Proposed Rule Change. The Board shall send notice to all Owners or publish notice in a community newsletter or on a community intranet or website concerning any Rule change proposed under subsections (b) or (c) above at least five business days prior to the meeting of the Board or Members at which such action is to be considered. At any such meeting, Members shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

(e) Effective Date. Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Rules to each Owner. The effective date shall be no less than 30 days following distribution to Owners. The Association shall provide, without cost, a copy of the Rules then in effect to any requesting Member or Mortgagee.

(f) Limitation. No action taken under this Article shall have the effect of modifying, repealing or expanding the Design Guidelines or any provision of this Declaration other than the initial Rules set forth in Exhibit "C."

3.3. Owners' Acknowledgment and Notice to Purchasers.

ALL OWNERS ARE GIVEN NOTICE THAT USE OF THEIR UNITS AND THE COMMON AREA IS LIMITED BY THE RULES AS AMENDED, EXPANDED AND OTHERWISE MODIFIED FROM TIME TO TIME. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Rules may change from time to time. All purchasers of Units are on notice that the Association may have adopted changes. Copies of the current Rules may be obtained from the Association.

3.4. Protection of Owners and Others.

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Rules set forth in Exhibit "C," all Rules shall comply with the following provisions:

(a) Similar Treatment. Similarly situated Owners shall be treated similarly; however, the Rules may vary by housing type or area.

(b) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in dwellings located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling.

(c) Flags. No rule shall regulate or prohibit the display on a Unit of the flag of the United States of America or the flag of the State of North Carolina, of a size no greater than four feet by six feet, by the Owner or occupant of such Unit, provided the flag is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. Sections 5-10, as amended, governing the display and use of the flag of the United States.

(d) Political Signs. No rule shall regulate or prohibit the indoor or outdoor display of a political sign on a Unit by the Owner or occupant of the Unit, except that the Association may adopt rules (i) prohibiting the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day, and (ii) regulating the size and number of political signs that may be placed on a Unit, subject to the limitations set forth in Section 47F-3-121 of the Act. For the purposes of this subsection (d), "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot.

(e) Household Composition. No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(f) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, to the extent in compliance with local laws and ordinances, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive odor, noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance to persons outside the Unit.

(g) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(h) Alienation. No rule shall prohibit the transfer of any Unit, or require consent of the Association or Board for the transfer of any Unit.

(i) Abridging Existing Rights. No rule shall require an Owner to dispose of personal property that was in or on a Unit prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Unit, and shall not apply to subsequent Owners who take title to the Unit after adoption of the rule.

(j) Reasonable Rights to Develop and Sell. No rule or action by the Association or Board shall impede Declarant's right to develop Wendell Falls, nor restrict Declarant or such Builders as Declarant may so authorize from maintaining upon Common Areas and Units which they own any facilities necessary or incidental to construction or sale of Units. By way of example and not limitation, no rule shall prohibit Declarant or such Builders as Declarant may so authorize from maintaining temporary structures for use during construction on a Unit or from using any home as a sales office.

The limitations in subsections (a) through (i) of this Section 3.4 shall only limit rulemaking authority exercised under Section 3.2; they shall not apply to amendments to this

Declaration adopted in accordance with Article XIX provided such amendments are not inconsistent with the Act.

3.5. Restriction on Occupancy.

Occupancy of each Unit shall be limited to that number of persons equal to twice the number of bedrooms shown on the plans for the Unit approved pursuant to Article IV or, alternatively, up to two adults and all children under the age of 18 for whom either or both of such adults are the parent, legal custodian, or designee authorized in writing by the child's parent or legal custodian to care for the child. For purposes of this Section, a person shall be deemed to be in "occupancy" if they stay overnight in the Unit more than 7 nights, consecutive or nonconsecutive, in any 30-day period or more than 14 nights in any 6-month period.

3.6. Leasing of Units.

(a) Definition. "Leasing," as used in this Declaration, refers to occupancy of a Unit (as defined in Section 3.6) by any person other than an Owner of the Unit, the Owner's parent or adult child, or the beneficiary of an Owner which is a trust (any of which shall be an "**Owner Substitute**") when the Owner or an Owner Substitute is not occupying the Unit. For purposes of this Section 3.5, an Owner or Owner Substitute shall be considered to be occupying the Unit only if they furnish and maintain the Unit as their principal residence and regularly reside in the Unit except during occasional brief periods of travel out of town.

(b) Restriction on Leasing. In order to maintain the predominantly owner-occupied character of the Community and facilitate the financing of Unit purchases, leasing of Units shall be prohibited except as specifically authorized in Section 3.6(c) and (d), and then subject to the conditions set forth in Section 3.6(e). Any leasing transaction which is not authorized under Section 3.6(c) or (d) shall be voidable at the option of the Board.

(c) Exemptions.

(i) Hardship Exemption. The Board may (but shall not be obligated to) allow leasing of a Unit not otherwise exempt under this Section 3.6(c) or authorized to lease under Section 3.6(d), if the Board deems it appropriate to avoid undue hardship to the Owner, including, but not limited to, a situation in which:

(A) the Owner who has been occupying the Unit must relocate his or her residence more than 30 miles from the Community and has been unable, within six months from the date that the Unit was placed on the market, to sell the Unit for a price no greater than the current appraised market value, after having made reasonable efforts to do so;

(B) the Owner who has been occupying the Unit dies and the Unit is being administered by his or her estate; or

(C) the Owner who has been occupying the Unit temporarily relocates and intends to return to reside in the Unit

Any Owner who believes that he or she must lease his or her Unit to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing and such other information as the Board may reasonably require. Upon the Board's written approval of such application, the Owner may lease the Unit for such duration as the Board reasonably determines necessary to prevent undue hardship. Upon expiration of such authorized period, any lease of the Unit shall terminate unless the Owner has applied for and been granted an extension of the hardship exception, which may be granted or withheld in the Board's sole discretion.

(ii) Exemptions for Builders' Models. Any Unit which a Builder sells and leases back for the Builder's use as a model home shall be exempt from the restriction on leasing under Section 3.6(b) during the term of the Builder's lease or such period as the Builder continues to be engaged in construction and sale of homes in the Community, whichever is shorter (the "**Exemption Period**"), provided the Unit is maintained and used as the Builder's model home and is not occupied for residential purposes during such Exemption Period.

(iii) Exemption for Institutional Lenders. An institutional lender which acquires title to a Unit upon foreclosure of its first priority deed of trust on the Unit or by a deed in lieu of such a foreclosure may lease the Unit so long as owned by such lender; however, this subsection (c)(iii) shall not permit leasing by any Owner, other than such lender, who purchases the Unit at a foreclosure sale or acquires title to the Unit from the lender subsequent to the foreclosure of a deed of trust or granting of a deed in lieu of foreclosure.

(d) Permission to Lease. Subject to the limitation set forth in Section 3.6(c)(xi), an Owner of a Unit which does not qualify for an exemption under subsection (c) and which is improved with a dwelling for which a certificate of occupancy has been issued ("**Non-Exempt Unit**") may submit a written request to the Board for permission to lease. The Board shall grant such request unless, at the time such request is considered, ten percent (10%) or more of the Non-Exempt Units in the Community have permission to lease pursuant to this subsection (d), in which case the Board shall deny such request and place the Unit on a waiting list for permission to lease. Such waiting list shall be maintained in the order in which the Association receives the Owners' applications for permission to lease hereunder.

At such time as the percentage of Non-Exempt Units which have permission to lease pursuant to this subsection (d) drops below 10%, the Board shall notify the Owner of the Unit at the top of the waiting list that such Owner has been granted permission to lease. The Owner shall have 90 days after the date of such notice within which to enter into a written lease agreement and provide a copy to the Board or the permission to lease shall expire. If a lease is executed within such initial 90-day period and, at any time thereafter, there is a period of more than 90 consecutive days in which the Unit is not occupied by a tenant pursuant to a lease which complies with this Section 3.6, permission to lease shall expire.

If the Board fails to respond to a written request for permission to lease within 30 days after receipt of such request, the Owner may give written notice to the Board by certified mail, return receipt requested, that the Owner intends to lease the Unit and, if such lease would not result in Owners of more than ten percent (10%) of the Non-Exempt Units in the Community having permission to lease pursuant to this subsection (d), then permission to lease shall be deemed granted effective as of the fifth (5th) day following the Board's receipt of such notice.

(e) Permitted Leasing. To the extent that leasing of a Unit is permitted under this Section 3.6, the leasing activity shall be subject to the following

(i) No signs advertising the Unit for rent or lease or otherwise indicating that the Unit is available for rent or lease shall be permitted within the Community or on public rights-of-way adjacent to the Community.

(ii) All leases shall be in writing and shall be in a form specified or approved in advance by the Board. All leases shall have an initial term of at least 12 months, unless the Unit is being leased pursuant to an exemption under Section 3.6(c), in which case the term of the lease shall expire no later than termination of the exemption. If the lease is terminated or the persons occupying the Unit under the lease vacate the Unit within the initial term required hereunder, the Unit may not be leased or subleased to another lessee until expiration of such minimum initial term, unless otherwise approved in advance by the Board.

(iii) Units may be leased only in their entirety; no fraction, portion, or rooms constituting less than the entire Unit may be leased.

(iv) At least 14 days prior to the effective date of a lease, the Owner of the Unit to be leased shall deliver to the Association written notice of intent to lease, together with a copy of the proposed lease, the name of the lessee and all other people occupying the Unit, and such additional information as the Board may require. The Board may reject the proposed lease by written notice to the Owner within 10 days after receipt of the Owner's notice of intent to lease, if the Board or its designee determines that the Unit is not eligible to be leased under this Section 3.6 or the proposed lease is not in an acceptable form. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee. If the Board does not reject the proposed lease by written notice to the Owner within such 10 day period, the lease shall be deemed acceptable.

The notice of any lease shall also be accompanied by a fee (**"Administrative Lease Fee"**) in such reasonable amount as the Board may establish from time to time, to help fund anticipated costs of processing lease applications, updating resident records, issuing identification cards to the occupants of leased Units, and other administrative burdens associated with leasing. The Board may also require payment of (A) a deposit for each identification card, key or other form of pass issued to the occupants of the leased Unit to permit access to recreational facilities, which deposit shall be refunded if the item is returned in usable condition upon termination of the lease; and (B) a security deposit which the Association shall hold in escrow and may draw upon to reimburse the Association for any reasonable expenses which the Association incurs to repair damages or cure any violation of the Declaration or Association rules which it determines, after notice and an opportunity for a hearing pursuant to the By-Laws, to have been caused by the acts or omissions of the occupant of the leased Unit, or to exercise any rights or remedies under this Section 3.6. If the Board draws upon such security deposit, it shall notify the Owner and the Owner shall restore the security deposit to 100% of the original amount within 10 days after the date of such notice, unless the Unit is no longer being leased.

(v) There shall be no subleasing of Units or assignment of leases without prior written approval of the Board

(vi) The Owner of a leased Unit shall provide to the lessee copies of the Declaration, By-Laws, and the Rules prior to the lessee entering into any agreement to lease a Unit.

(vii) Every lease of a Unit shall be deemed to contain the following provisions, whether or not expressly stated therein:

> <u>Contingency for Board Verification</u>. The lessee acknowledges that notwithstanding the effective date or lease term set forth in this lease, this lease shall not take effect unless and until submitted to the board of directors of Wendell Falls Community Association, Inc. for verification of the lessor's eligibility to lease the premises and that the lease is in an acceptable form.
>
> <u>Compliance With Governing Documents</u>. The lessee acknowledges receipt of a copy of the Declaration of Covenants, Conditions, and Restrictions for Wendell Falls and the other governing documents referenced therein ("Governing Documents") and agrees to comply with the Governing Documents and to control the conduct of all other occupants and guests of the leased premises in order to ensure their compliance. Any violation of the Governing Documents by the lessee, any person residing in the Unit, or any guest of the lessee or other members of the lessee's household shall constitute a default under the terms of the lease and shall authorize the Owner to terminate the lease without liability and to evict the lessee in accordance with North Carolina law. The Owner hereby delegates and assigns to Wendell Falls Community Association, Inc., acting through its board of directors, the power and authority to enforce this provision against the lessee, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof.

(viii) Notwithstanding its rights under this Section 3.6, the Association shall have no duty to take action to evict the occupants of a leased Unit and no liability to any Person for not exercising its rights hereunder. However, in the event the Association proceeds to evict a lessee pursuant to the foregoing provision, the Association may apply any security deposit required under clause (iv) of this subsection (c) toward payment of any costs, including attorney's fees and court costs, associated with the eviction and any costs not covered by such security deposit shall be an assessment against the Unit, secured by the Association's lien under Section 8.6 of this Declaration.

(ix) The Owner of a leased Unit shall be responsible for any violations of the Governing Documents by the lessee or other occupants of the Unit, notwithstanding that the lessee and occupants are fully liable and may be sanctioned for their violations. In the event that the Association imposes a fine for violation of the Governing Documents by the lessee or occupants of the leased Unit, the Association shall give notice to the Owner and the lessee and the Owner shall be responsible for payment if the lessee fails to pay the fine. Unpaid fines shall constitute a lien against the Unit.

(x) When an Owner who is leasing his or her Unit is more than 30 days delinquent in paying any assessment or other charge due to the Association, then the delinquent Owner shall be deemed to have assigned to the Association the right, at the Association's option, to collect any rents due from the lessee during the period of such delinquency, and, upon the Board's written request to the lessee, the lessee shall pay to the Association all rents otherwise payable under the lease up to the amount of such delinquency. The lessee need not make such payments to the Association in excess of, or prior to the due dates for, periodic rental payments unpaid at the time of the Board's request. Notwithstanding anything to the contrary in the lease, all such payments made by the lessee shall reduce, by the same amount, the lessee's obligation to make monthly rental payments to the lessor. The Association may, but shall have no duty to, exercise its rights under this subparagraph (x) or take legal action to collect rents from any lessee pursuant to this subparagraph, and nothing in this subparagraph shall be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she is otherwise responsible.

(xi) The leasing of multiple Units by a single Owner, or the leasing of multiple Units by two or more Owners related by blood, adoption, or marriage, or by Owners with a common ownership interest, or by a group of Owners under the control or direction of a single Owner, shall be prohibited, except that this prohibition shall not apply to restrict the leasing of two or more Units by an institutional lender pursuant to Section 3.6(c)(iii) following foreclosure of such Unit(s).

(x) Upon a determination, after notice and a hearing in accordance with the By-Laws, that the Owner of a leased Unit has failed to comply with the provisions of this Section 3.6 and, if capable of being cured, has failed to cure such non-compliance within 10 days after the date of written notice from the Association of such non-compliance, the Board may terminate such Owner's eligibility to lease the Unit and prohibit such Owner from leasing any Unit in the future.

Article IV Architecture and Landscaping

4.1. <u>General</u>.

No structure or thing shall be placed, erected, or installed upon any Unit and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Community, except in compliance with this Article and the Design Guidelines. This Article and the Design Guidelines shall not be construed to regulate or prohibit those flags or political signs permitted under Section 3.4(c) or (d), or those antennae and other Permitted Devices described in Exhibit "C," provided they are installed in compliance with those sections and such rules as are specifically authorized in those sections.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of his or her Unit without approval. However, portions of window treatments, coatings, or coverings visible from outside the Unit which are not white, beige, light gray, or natural wood colors, and modifications to the interior of screened porches, patios, and other portions of a Unit visible from outside the structure, shall be subject to approval.

All construction on Units shall comply with all applicable building codes and requirements.

This Article shall not apply to structures in existence on the date of recording of this Declaration, or to Declarant's activities during the Development and Sale Period, nor to activities of the Association during the Class "B" Control Period.

4.2. Design Review.

(a) By Declarant. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, acknowledges that Declarant has a substantial interest in ensuring that the structures, landscaping and other improvements within the Community enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property in, or in the vicinity of, Wendell Falls. Therefore, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner's Unit unless and until Declarant or its designee, or the Design Review Committee established pursuant to subsection (b), as applicable (the entity having authority hereunder in a particular case being referred to as the "**Reviewer**"), has given its prior written approval for such activity, which approval may be granted or withheld in the Reviewer's sole discretion, subject to the Declarant's veto rights under Section 4.3(b).

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article shall continue until termination of the Development and Sale Period, unless earlier terminated in a written instrument that Declarant executes and records.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to (i) a design review committee appointed by the Board of Directors (the "DRC"), or (ii) a committee comprised of architects, engineers or other persons who may or may not be Members of the Association. Any such delegation shall be in writing specifying the scope of responsibilities delegated. It shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates to them.

(b) Design Review Committee. Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the DRC, shall assume jurisdiction over architectural matters. The DRC, when appointed, shall consist of at least three, but not more than five, persons who shall serve and may be removed and replaced in the Board's discretion. At least a majority of the members of the DRC shall be Members of the Association, spouses of Members, or representatives of Members which are legal entities. The Board may, in its discretion, appoint architects, engineers or similar design professionals who are not Members or representatives of Members to fill a minority of the seats on the DRC, and may compensate such individuals for their service in such manner and amount if any, as the Board may establish.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the DRC or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) Review Fees; Assistance. The Reviewer may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget.

(d) Construction Deposit. As a condition of approval of any application hereunder, the Reviewer may require that the Owner post a construction deposit (**"Construction Deposit"**) in such amount as the Reviewer determines reasonable in light of the nature and scope of the proposed Work, which construction deposit shall be posted with the Association prior to commencing any work on the Unit. All Construction Deposits collected hereunder shall be placed in a segregated account maintained by and in the name of the Association. The Association shall be entitled to draw upon the construction deposit, after notice and an opportunity for a hearing as may be required by Section 7.5, to cover costs which it incurs:

(i) to clean up dirt or debris and/or repair damage to any subdivision improvements or Common Areas, or any portion of Wendell Falls outside of the Community, which the Board determines, after notice to the Owner and an opportunity for a hearing in accordance with the By-Laws, is attributable to the construction activities of the Owner or its contractors, subcontractors, suppliers, or others providing goods or services in conjunction with the construction activities on the Owner's Unit; and

(ii) to complete any improvements or landscaping on the Owner's Unit which are not completed in accordance with the approved plans or to the Community-Wide Standard, or to correct or cure any conditions on the Owner's Unit that the Reviewer determines necessary to conform the Unit to the approved plans or to correct drainage or other conditions on the Unit which fail to meet the Community-Wide Standard or which cause or are likely to cause damage to property outside the Unit, if the Owner fails to do so within a reasonable period of time as set forth in written notice from the Association specifying the action required.

The Owner shall provide funds to restore the Construction Deposit to its original amount within 10 days after written request from the Association notifying the Owner of the amount of any disbursement from the Owner's Construction Deposit. Upon final inspection and approval of the completed construction, the Association shall refund to the Owner or applicant who originally paid the construction deposit the amount of such construction deposit, less any funds expended by the Association pursuant to this subsection (d) and not restored by the applicant.

Nothing in this subsection (ii) shall be construed as limiting the Association's right to seek reimbursement from the Owner for the total amount expended on the Owner's behalf in the event the amount expended exceeds the amount of the Construction Deposit, nor shall anything in this Section be construed to limit any of the rights or remedies granted to the Association by others provisions of this Declaration.

4.3. Guidelines and Procedures.

(a) Design Guidelines. Declarant may prepare the initial Design Guidelines, which may contain general provisions applicable to all of the Community as well as specific provisions that vary by housing type and from one area to another within the Community. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The Design Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Design Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Design Guidelines so long as it has any rights under this Article, as described in Section 4.2(a), notwithstanding a delegation of reviewing authority to the DRC, unless Declarant also delegates the power to amend to the DRC. Upon termination or delegation of Declarant's right to amend, the DRC shall have the authority to amend the Design Guidelines with the consent of the Board.

Any amendments to the Design Guidelines apply prospectively only, and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive; provided, no amendment shall be consistent with applicable law or ordinances.

The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Community.

(b) Procedures. Except as otherwise specifically provided in this Declaration or the Design Guidelines, no activities shall commence on any Unit until an application for approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable ("Plans"). The Design Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with the procedures set forth herein.

The Reviewer shall make a determination on each application within 45 days after receipt of a completed application and all required information. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

Until expiration of Declarant's rights under this Article, the DRC shall notify Declarant in writing within three business days after the DRC has approved any application within the scope of matters delegated to the DRC by Declarant. The notice shall be accompanied by a copy of the application and any additional information that Declarant may require. Declarant shall have 10 days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the DRC.

The Reviewer shall notify the applicant in writing of the final determination on any application within five days thereafter or, with respect to any determination by the DRC subject to Declarant's veto right, within five days after the earlier of: (i) receipt of notice of Declarant's veto or waiver thereof; or (ii) expiration of the 10-day period for exercise of Declarant's veto. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections. Notice shall be deemed given when deposited in the U.S. Mail, certified mail, return receipt requested, properly addressed to the applicant at the address stated in such applicant's notice, or upon receipt if given by any other means.

In the event that the Reviewer fails to give notice of its approval or disapproval of any application within the time period required above, the applicant may notify the Reviewer by certified mail, return receipt requested, at the address for such notices set forth in the current edition of the Design Guidelines, stating that no response has been received and that unless a written response is given at the address set forth in such notice within 15 days of the Reviewer's receipt of the applicant's notice, as evidenced by the return receipt, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 4.5.

If construction does not commence on a project for which Plans have been approved within nine months after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities, except that this shall not apply to Builders' Plans which have been pre-approved by the Reviewer as provided below. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner.

The Reviewer may (i) pre-approve Plans for Builders and excuse such Builders from all or a portion of the application and review procedures set forth in this Section with respect to construction undertaken in accordance with such pre-approved Plans; and (ii) by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case the Reviewer may elect not to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

4.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) preclude the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

4.6. Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

Neither Declarant, the Association, the Board, any committee, nor any member of any of the foregoing, shall be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder in the Community; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Board, the DRC, and the members of each shall be defended and indemnified by the Association as provided in Article VI of the By-Laws.

4.7. Certificate of Compliance.

Any Owner may request that the Reviewer issue a certificate of compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall preclude the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

Article V Maintenance and Repair of Units

5.1. Maintenance by Owners.

Except to the extent that such maintenance responsibility is otherwise assigned to or assumed by the Association pursuant to Section 7.2 or any Supplemental Declaration applicable to the Unit, each Owner shall maintain:

(a) his or her Unit and all landscaping and improvements comprising the Unit; and

(b) the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the Unit boundary and any wall, fence or curb located on the Common Area or public right-of-way within 15 feet of the Unit boundary;

all in a manner consistent with the Governing Documents, the Community-Wide Standard and all applicable covenants, except that there shall be no right to remove trees, shrubs or similar vegetation without prior approval pursuant to Article IV other than removal of a diseased or dead shrub from the Owner's Unit, in which case the removed shrub shall be replaced with another plant of the same variety within seven days after such removal. Nothing in this Declaration shall be construed to require irrigation of landscaping to the extent such irrigation would otherwise be prohibited during any period in which the Governor of the State of North Carolina, any agency of the State of North Carolina, or any unit of local government having jurisdiction over any portion of the Community, has imposed water conservation measures.

5.2. Maintenance of Additional Association's Property.

Any Additional Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard and all applicable covenants.

Any Additional Association shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the boundary of its common property and any wall, fence or curb located on the Common Area or public right-of-way within 15 feet of its boundary; provided, there shall be no right to remove trees, shrubs or similar vegetation from this area without prior approval pursuant to Article IV.

The Association may assume maintenance responsibility for property within the jurisdiction of any Additional Association, either upon designation of the area as a Service Area pursuant to Section 7.3 or upon the Board's determination, pursuant to Section 7.5(d), that the level and quality of maintenance then being provided is not consistent with the Community-Wide Standard. The provision of services in accordance with this Section shall not constitute discrimination within a class.

5.3. Responsibility for Repair and Replacement; Insurance by Owners.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless the Association is obligated to carry such insurance pursuant to any Supplemental Declaration or other covenants applicable to the Unit, or unless the Association otherwise notifies the Owner in writing that it is carrying such insurance on the Unit (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner.

In the event of damage to or destruction of structures on or comprising a Unit, the Owner shall, within 180 days thereafter, complete the repair or reconstruction of the damaged structures in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV. Alternatively, the Owner shall clear the Unit and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

This Section shall also apply to any Additional Association responsible for common property within its jurisdiction in the same manner as if the Additional Association were an Owner and the common property were a Unit. Additional covenants applicable to any area of the Community may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such area and for clearing and maintaining the Unit in the event the structures are not rebuilt or reconstructed.

Neither the Association nor Declarant shall bear any responsibility for the maintenance or safekeeping of personal property of any Owner or occupant of a Unit, their family, guests or invitees, nor shall the Association or Declarant be held liable for the condition of, or any loss or damage to, any such personal property except to the extent directly attributable to the willful misconduct of the Association, Declarant or their respective agents or employees.

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

This Declaration establishes the Association as a mechanism by which each Owner is able to participate in the governance and administration of the Community. While many powers and responsibilities are vested in the Association's board of directors in order to facilitate day to day management and operation, some decisions are considered of such importance that they are reserved for the Association's membership -- the owners of property in the Community.

Article VI The Association and its Members

6.1. Function of Association.

The Association has been established to administer the Community in accordance with the Governing Documents. Its responsibilities include, but are not limited to:

(a) management, maintenance, operation and control of the Area of Common Responsibility, and

(b) interpretation and enforcement of the Governing Documents; and

(c) establishing and upholding the Community-Wide Standard; and

(d) upon delegation or termination of Declarant's authority under Article IV, administering the design review process for the Community, as provided in that Article

6.2. Membership.

(a) Classes of Membership. The Association initially shall have two classes of membership, Class "A" and Class "B". Class "A" Members shall be all Owners, including the Declarant as to any Unit which it owns. The sole Class "B" Member shall be the Declarant. The Class "B" membership shall be temporarily suspended during any period that the Declarant does not own a Unit, subject to automatic reinstatement upon Declarant's acquisition of any Unit or annexation of additional property pursuant to Article IX; however, such temporary suspension shall not suspend, terminate, or otherwise affect the Class "B" Control Period. The Class "B" membership shall terminate upon the earlier of:

(i) the date that certificates of occupancy have been issued for 75% of the total number of dwelling units permitted by applicable zoning for the property subject to this

Declaration and any additional property specifically described in Exhibit "B" or encompassed by the Master Plan and the Units on which they are constructed have been conveyed to Class "A" Members other than Builders; or

(ii) 20 years from the date of recording of this Declaration; or

(iii) such earlier date as the Class "B" Member, in its sole discretion, executes and records a written notice voluntarily terminating the Class "B" membership.

Declarant shall hold a Class "A" membership for each Unit that it owns, notwithstanding the termination of the Class "B" Membership.

(b) Automatic Membership, Exercise of Privileges. Every Owner automatically becomes a Member of the Association upon taking title to a Unit and remains a Member as long as the Owner holds title to such Unit. Acceptance of a deed to any Unit shall be deemed consent to membership in the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3 and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner that is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

6.3 Voting

The voting rights of each class of membership shall be as follows

(a) Class "A". Each Unit owned by a Class "A" Member is assigned one vote equal to that of every other Unit owned by a Class "A" Member. If there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it. Voting rights shall be subject to suspension for nonpayment of assessments or other charges owed the Association as provided in Section 7.5(h)(ii).

No vote shall be exercised for any property that is exempt from assessment under Section 8.7.

(b) Class "B". The Class "B" Member shall have Class "A" voting rights with respect to any Units that it owns and, in addition, the consent of the Class "B" Member shall be required for various actions of the Board, the membership and committees, as specifically provided elsewhere in the Governing Documents. In addition, the Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Article III of the By-Laws. Additional rights of the Class "B" Member are specified in the relevent sections of the Governing Documents. In addition, the Class "B"

Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws.

Article VII Association Powers and Responsibilities

7.1. Acceptance and Control of Association Property.

(a) The Association, through action of its Board, may acquire, hold, lease (as lessor or lessee), operate and dispose of tangible and intangible personal property and real property, subject to the provisions of Article XVIII. The Association may enter into leases, licenses or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by community organizations and by others, whether nonprofit or for profit, for the provision of goods or services for the general benefit or convenience of owners, occupants and residents of the Community.

(b) During the Development and Sale Period, the Declarant, any Declarant Affiliate, and their respective designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold or other property interests in any real property, improved or unimproved, which has been made subject to this Declaration. Declarant may convey Common Area to the Association in one or more transactions. Each conveyance of Common Area shall be free and clear of all liens and encumbrances of a monetary nature. Upon Declarant's written request, the Association shall convey or reconvey to Declarant (or quitclaim any interest in) any portions of the Common Area which do not contain structures or facilities for common use, if conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines, subject to such membership approval as may be required by the Act.

(c) The Association shall be responsible for management, operation and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate. The Association may permit use of the Common Area facilities by persons other than Owners and occupants of Units and may charge use fees, in such amount as the Board may establish, for such use.

7.2 Maintenance of Area of Common Responsibility.

(a) Except as otherwise provided in this Section 7.2, the Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility shall include, but need not be limited to:

(i) all portions of and structures situated on the Common Area; and

(ii) all streets and alleys within the Community unless and until such time as they are accepted by a public body for perpetual maintenance; provided, the Association shall have no responsibility for removal of snow or ice on streets or alleys; and

(iii) any landscaping, signage, and sidewalks within public rights-of-way or sidewalk easements lying within or abutting the property subject to this Declaration, except to the extent that such responsibility is otherwise assigned to Owners pursuant to Section 5.1 or assumed by a governmental body or utility provider; provided, the Association shall have no responsibility for removal of snow or ice from sidewalks or other walkways; and

(iv) streetlights and light poles along streets and alleys within the Community, unless such streetlights are leased from and maintained by the utility provider pursuant to the terms of any lease.

(v) all culverts, pipes, ponds, and other stormwater management facilities located within the Common Area, rights-of-way, or easements granted to the Association, and

(vi) any pipes, lines, pumps, or other apparatus comprising any irrigation system serving the Common Area, to the extent located within the Common Area, rights-of-way, or easements granted to the Association; and

(vi) the community signage and entry features located at vehicular entrances to the Community from public streets or highways;

(vii) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association; and

(viii) any property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property that it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. However, nothing herein shall be construed to make the Association liable for any damage or injury occurring on or arising out of the condition of property that it does not own. The Association shall specifically be authorized to enter into agreements with the Commercial Association, the Town of Wendell, and other owners of property in or near Wendell Falls for the sharing of maintenance responsibility and/or costs associated with any property or services which the Board deems to benefit the Association and its members.

(b) The community trail system may contain different types of trails with different levels of improvement varying from earthen paths which depend on foot and bicycle traffic to keep the trail clear of undergrowth, to mulch, gravel, or asphalt and other hard surfaces. Portions of the trail system may be maintained by one or more third parties pursuant to an agreement or easement relating to construction and use of the trails by persons other than

Owners and occupants of Units. Neither the Association nor any such third party shall have any obligation to improve or maintain all portions of the trail to the same standard.

(c) Some portions of the Area of Common Responsibility may consist of open space or conservancy areas intentionally left in a natural or relatively undisturbed state. The level of maintenance that the Association provides to the Area of Common Responsibility may vary from a high level of landscaping and regular, weekly maintenance to intermittent or no maintenance, depending on the nature and intended use of the particular open space area. Open space, wetlands, or other natural areas may serve as habitats for a variety of native plant, animal, and insect species, and may contain creeks, fallen trees and other naturally occurring conditions, some of which may pose hazards to persons or pets coming in contact with them. Neither the Association, the Declarant, nor any Builder shall have any responsibility for providing maintenance in such areas or taking action to abate such conditions, and any maintenance provided shall be consistent with the terms of any recorded restrictions or easements affecting such property, including any conservation easement or covenants and restrictions recorded by the Declarant as part of a final compensatory mitigation plan required by the U.S. Army Corps of Engineers or the State of North Carolina.

(d) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members entitled to cast at least 75% of the total Class "A" votes in the Association and, during the Development and Sale Period, the Declarant, agree in writing to discontinue such operation. Notwithstanding this, the Association may, but shall not be obligated to, maintain any lake or pond which has formed or forms within the Common Area as a result of stream blockage and no Member approval shall be required for the Declarant or the Association to remove debris blocking streams or breach any beaver or other dams that may be blocking streams, notwithstanding that doing so may result in drainage of lakes, ponds, or other bodies of water within the Community formed as a result of such blockage.

Except as provided above, the Area of Common Responsibility shall not be reduced during the Development and Sale Period without Declarant's prior written approval.

(e) Except as otherwise specifically provided in this Declaration or any applicable Supplemental Declaration, the costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense, subject to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof. The costs that the Association incurs or expects to incur for maintenance, repair and replacement of Limited Common Areas and alleys shall be a Service Area Expense assessed against the Units within the Service Area to which the Limited Common Areas or alleys are assigned.

7.3. Provision of Benefits and Services to Service Areas

(a) All Units served by alleys are hereby assigned to an "Alley Service Area." In addition, the Declarant, on Exhibit "A" to this Declaration and/or by Supplemental Declaration submitting additional property to this Declaration, may assign the property submitted thereby to one or more Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to such Units in addition to those which the Association generally provides to all Units. So long as it has the right to subject additional property to this Declaration pursuant to Section 9.1, Declarant may unilaterally amend this Declaration or any Supplemental Declaration to redesignate Service Area boundaries; provided, nothing in this Section shall authorize the Declarant to assign property owned by a Builder to a Service Area without the consent of the Builder. All costs associated with the provision of services or benefits to a Service Area shall be assessed against the Units within the Service Area as a Service Area Assessment.

(b) In addition to Service Areas which Declarant may designate, any group of Owners may petition the Board to designate their Units as a Service Area for the purpose of receiving from the Association: (i) special benefits or services which are not provided to all Units, or (ii) a higher level of service than the Association otherwise provides. Upon receipt of such petition signed by Owners of a majority of the Units within the proposed Service Area, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the charge to be made therefor, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit among all Service Areas receiving the same service). Upon written approval of the proposal by Owners of at least 67% of the Units within the proposed Service Area, the Association shall provide the requested benefits or services on the terms set forth in the proposal. The cost and administrative charges associated with such benefits or services shall be assessed against the Units within such Service Area as a Service Area Assessment, subject to the right of the Owners of Units within the Service Area to veto the budget for their Service Area as provided in Section 8.2.

7.4. Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Property insurance for all insurable improvements on the Common Area (and within the Area of Common Responsibility, if and to the extent that Association has assumed responsibility in the event of a casualty, regardless of ownership) insuring against all risks of direct physical loss commonly insured against. The total amount of such insurance after application of any deductibles shall be not less than 80% of the replacement cost of the insured improvements under current building ordinances and codes at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least $1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; and

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law; and

(iv) Directors and officers liability coverage; and

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual General Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

In addition, the Association shall, if and to the extent specified in a Supplemental Declaration applicable to any Service Area, obtain and maintain property insurance on the insurable improvements within such Service Area, which insurance shall comply with the requirements of Section 7.4(a)(i). Any such policies shall provide for a certificate of insurance to be furnished upon request to the Owner of each Unit insured.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses, except that (i) premiums for property insurance on Units within a Service Area shall be a Service Area Expense; and (ii) premiums for insurance on Limited Common Areas shall be a Service Area Expense of the Service Area to which such Limited Common Areas are assigned, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

If the insurance described in clauses (i) or (ii) of this subsection (a) is not reasonable available, the Association shall promptly cause notice of that fact to be hand-delivered or sent via U.S. Mail, postage prepaid, to all Owners.

(b) Policy Requirements. The Association shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Raleigh, North Carolina area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.4(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in North Carolina which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate; and

(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Service Area shall be for the benefit of the Owners within the Service Area and their Mortgagees, as their interests may appear; and

(iii) be primary and not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually; and

(iv) provide that each Owner is an insured person under the policy to the extent of the Owner's insurable interest and with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member); and

(v) provide a waiver of the insurer's right to subrogation under the policy against any Owner or member of the Owner's household; and

(vi) include an endorsement precluding denial of coverage under the policy on account of any act or omission of any one or more individual Owners or members of their households, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies that list the Owners as additional insureds and provide an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes. Insurance proceeds shall be paid to the Association to be held in trust for the benefit of Owners and Mortgagees as their interests may appear.

The Association shall cause damaged improvements on the Common Area to be repaired or reconstructed unless a decision not to repair or reconstruct is approved within 60 days after the loss or damage by Owners of at least 80% of the Units, including 100% of the Units to which any Limited Common Area is assigned, if the damaged improvements are Limited Common Area, and during the Development and Sale Period, by the Declarant. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be distributed as follows: (i) to the extent that the excess insurance proceeds are attributable to damaged improvements on Limited Common Area that are not rebuilt, they shall be distributed to the Owners of Units to which such Limited Common Area was assigned or to their Mortgagees, as their interests may appear; and (ii) the remainder shall be distributed to all of the Owners or their Mortgagees, as their interests may appear, at an equal rate per Unit or credited against their future assessment liability.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.4(a).

7.5. Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents. The Association, the Commercial Association, the Declarant during the Development and Sale Period, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents, subject to the provisions of Article XIV. In addition, the Board may impose sanctions for violation of the Governing Documents as set forth in this Section 7.5 and elsewhere in the Governing Documents.

(b) The Board may impose the following sanctions only after notice and a hearing in accordance with the procedures set forth in Article VIII of the By-Laws:

(i) imposing reasonable monetary fines (subject to the limitations set forth in Section 47F-3-107 of the Act), which shall constitute a lien upon the violator's Unit (In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board), and

(ii) suspending the vote attributable to a violating Owner's Unit, suspending the privilege of using any recreational facilities within the Common Area, and suspending any services which the Association provides to an Owner or the Owner's Unit, during any period that the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association or for a reasonable period for other violations of the Governing Documents; and

(iii) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Design Guidelines from continuing or performing any further activities in the Community; and

(iv) levying Specific Assessments pursuant to Section 8.4 to cover costs which the Association incurs to bring a Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of an Owner or occupant of a Unit, their guests or invitees.

(c) In addition, the Association, acting through the Board or its designee, may take the following action to enforce the Governing Documents without the necessity of compliance with the procedures set forth in Article VIII of the By-Laws:

(i) requiring an Owner, at the Owner's expense, to perform maintenance on such Owner's Unit, or to remove any structure, item or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition; or

(ii) entering the property and exercising self-help to remove or cure a violating condition upon failure of an Owner to take action as required pursuant to subsection (i) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(iii) exercising self-help in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules); and/or

(iv) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both, subject to the procedures set forth in Article XIV, if applicable.

(d) The Association also shall have the power to require specific action to be taken by any Additional Association in connection with its obligations and responsibilities under this Declaration, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor. An Additional Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Additional Association fails to comply, the Association shall have the right to effect such action on behalf of the Additional Association and levy Specific Assessments to cover the costs, as well as an administrative charge and sanctions.

(e) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any situation in which the Association incurs legal fees and/or costs to enforce the Governing Documents, it shall be entitled to assess and recover from the violator or the Owner of the Unit in which the violator resides all costs reasonably incurred, including, without limitation, attorneys' fees and court costs, whether or not suit is filed.

(f) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action; or

(ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

(g) The Association, by contract or other agreement, may enforce applicable Town of Wendell ordinances.

7.6. <u>Implied Rights; Board Authority</u>

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board without a vote of the membership except to the extent that the Governing Documents or North Carolina law specifically require a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in Article VI of the By-Laws.

7.7. Provision of Services to Units.

The Association may provide, or provide for, services and facilities for the Owners and their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Association may enter into bulk service agreements by which a particular service is provided (a) to all Units, in which case it may include the costs of such services or facilities in the Association's budget as a Common Expense and assess it as part of the General Assessment; or (b) only to Improved Units or at the option of each Owner, in which case the cost may be levied against the Units receiving service as a Specific Assessment. By way of example, such services and facilities might include trash collection, recycling services, landscape maintenance; cable, digital, satellite or similar television service; telecommunication and internet connection services; security monitoring; utilities; and other services and facilities.

Any Association contract for services may provide for individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit as a Common Expense or Service Area Expense pursuant to this Article.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

7.8 Relationships with Other Properties.

The Association may enter into contractual agreements or cost-sharing arrangements with any neighboring property to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance. In addition, the Declarant may prepare, execute, and record a document (**"Covenant to Share Costs"**) providing for:

(a) the maintenance and operation of community infrastructure and improvements (**"Shared Properties"**) which benefit any portion of the Community and any other real property in or adjacent to Wendell Falls;

(b) the provision of services which benefit the Community and other real property in or adjacent to Wendell Falls (**"Shared Services"**);

(c) the sharing of costs incurred in maintaining, operating, and insuring such Shared Properties or the provision of Shared Services between the Commercial Association, the Residential Association, and/or any other Persons designated therein,

(d) easements over any portion of the Common Area, Shared Properties, or any other property (with the consent of the Owner thereof), for the benefit of any real property within or adjacent to Wendell Falls; and/or

(e) easements over any other property for the benefit of all of portions of the Community.

Any such Covenant to Share Costs shall be executed by the Declarant and the owner(s) of the property being submitted to such Covenant to Share Costs, if owned by someone other than the Declarant, and shall be binding upon the Association and the Owners of any portion of the Community submitted to such Covenant to Share Costs.

7.9. Safety and Security.

The Association may, but shall not be obligated to, maintain or support certain activities within Wendell Falls designed to enhance the level of safety or security that each person provides for himself and his property. However, in so doing, the Association assumes no responsibility for personal safety or security of any Persons or their property. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to Wendell Falls or any portion thereof, cannot be compromised or circumvented, nor that any such systems or measures undertaken will in all cases prevent loss or provide the detection or protection for which the system or measure is designed or intended. Neither the Association, the Declarant, the Builders, nor the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing, shall in any way be responsible for, or considered insurers or guarantors of, personal safety or safety or security of personal property of any Person within or outside of Wendell Falls, whether or Common Area, public or private property, or elsewhere, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Wendell Falls and each of them assumes all risks of personal injury and loss or damage to their property, including Units and their contents, resulting from acts of third parties.

Each person using any Common Area facilities does so at their own risk and assumes all risks of personal injury and loss or damage to their personal property while

using such facilities. The Association may require each person who desires to use Common Area facilities to have a waiver of liability and assumption of risk on file with the Association, signed by themselves or, in the case of a minor, by a parent or legal guardian, prior to entering or using such facilities. For safety reasons, the Association may deny access to Common Area facilities, to the extent not inconsistent with applicable law, to:

(i) any person who is unable to demonstrate that he or she can read and follow posted instructions and rules for use of the facility or equipment and understand the risks associated with such use, unless such person is accompanied by another person who has demonstrated such ability and assumes responsibility for informing them of the instructions and rules and ensuring their compliance; and

(ii) any person of a size or weight or with a health condition that subjects them to significant risk of personal injury to themselves or others in using the facility or equipment; and

(iii) any person who fails to comply with all posted instructions and rules for use of the Common Area facility.

Article VIII Association Finances

8.1. Authority to Levy Assessments for Association Expenses.

(a) Purposes. There are hereby created, and the Association is hereby authorized to levy, assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under this Declaration, any Supplemental Declaration, the Articles and the Bylaws, specifically including but not limited to: expenses of maintaining, repairing, replacing, improving, operating, and insuring the Area of Common Responsibility, including amounts due to third parties who perform such tasks on behalf of the Association, and the costs of labor, equipment, materials, management, supervision, and utilities; taxes, if any, imposed on the Association or the Common Area; the cost of insurance and fidelity bond coverage obtained pursuant to Section 7.4; the cost of water or other utilities provided to the Area of Common Responsibility; charges for services provided to Units pursuant to Section 7.7; expenses of monitoring and enforcing compliance with the provisions of the Governing Documents; expenses arising out of the Association's indemnification obligations, expenses arising out of any measure undertaken to enhance the safety of the Owners and occupants of Units and the Community; expenses incurred in exercising architectural control under Article IV; expenses of managing the Association, including compensation of management personnel, maintaining books and records, handling Association funds, providing financial reports, and corresponding with Members, administrative expenses such as postage, copying expense, office supplies and equipment; legal, accounting, and other professional fees; and such other expenses as the Board deems necessary or desirable to keep the Community in good, clean, and attractive condition and to maintain and enhance property values and marketability of Units within the Community.

(b) Types of Assessments. There shall be four types of assessments: (i) General Assessments; (ii) Service Area Assessments; (iii) Special Assessments as described in Section

8.3; and (iv) Specific Assessments as described in Section 8.4. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Community, is deemed to covenant and agree to pay these assessments. Such assessments shall commence at the time and in the manner set forth in Section 8.5.

(c) Personal Obligation and Lien. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Community, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish by resolution, not to exceed 18% per annum), late charges as determined by Board resolution (subject to the limitations of North Carolina law), costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner, and a charge and continuing lien upon each Unit as provided in Section 8.6, until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance, except that a Mortgagee or other purchaser who obtains title to a Unit upon the foreclosure of a first priority Mortgage of record shall not be liable for the assessments against the Unit which became due prior to such Mortgagee's or purchaser's acquisition of title to the Unit. For purposes of the foregoing sentence, "acquisition of title" shall be deemed to occur upon the earlier of: (i) the recording of a deed conveying title; or (ii) the time at which the rights of the parties are fixed following the foreclosure of such Mortgage.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments and Service Area Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Within 10 business days after receipt of a written request therefor, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer or duly authorized agent of the Association setting forth the amount of any unpaid assessments or other charges levied on the Unit. Such certificate shall be binding on the Association and every Owner. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(d) Declarant's Obligations for Assessments. Declarant shall be liable for assessments on its unsold Units in accordance with the applicable rate of assessment under Section 8.5; however, during the Development and Sale Period, Declarant may elect to satisfy its obligation to pay General Assessments on any Units that it owns either in the form of cash or by "in kind" contributions of services or materials, or by a combination of these, provided that the fair market value of any "in kind" contributions is fair and reasonable to the Association. The value of any "in kind" contributions shall be documented in the Association records

8.2. Adoption and Ratification of Budgets; Annual Assessment Rates.

(a) Preparation of Budgets. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. In addition, the Board shall prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses that the Association expects to incur for the benefit of such Service Area in the coming year.

The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Service Area Expense of the Service Area for whom the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected need by an annual contribution over the useful life of the asset.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of General Assessments or Service Area Assessments calculated in accordance with subsection (b) or (c), as applicable

Declarant may, but shall not be obligated to, reduce the amount of assessments that would otherwise be required to fund any budget by payment of a subsidy to the Association for any fiscal year. Payment of a subsidy in any fiscal year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant. Any such subsidy may be treated as a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion; provided, any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the applicable budget.

In addition, Declarant may loan funds to the Association to cover any budget shortfall or Common Expenses which are due prior to the due date of assessments under the applicable budget; provided, any such loans and the debt service shall also be disclosed in the applicable budget. The Declarant may charge and collect interest on the outstanding principal balance of any loan at a rate not to exceed the greater of 10% per annum or two percentage points over the prime rate published by the Wall Street Journal on the date of such loan, such interest rate to be set forth in a promissory note executed on behalf of the Association.

(b) Calculation of General Assessments. Upon determining the total amount of income required to be generated through the levy of General Assessments to fund the Common Expense budget, the Board shall establish the General Assessment at an equal rate per Improved Unit, and at a discounted rate as provided in Section 8.5 for Units which are not yet Improved

Units, sufficient to generate the required income. The Board shall give notice to the Owners of such budget and assessment as provided in Section 8.2(d).

(c) Calculation of Service Area Assessments. Upon determining the total amount of income required to be generated through the levy of Service Area Assessments to fund the budget for any Service Area, the Board shall establish the Service Area Assessment at an equal rate per Unit within the Service Area, except as may otherwise be provided in this Declaration or any applicable Supplemental Declaration. Unless otherwise specified in the applicable Supplemental Declaration, any portion of the Service Area Assessment levied for maintenance, repair or replacement of improvements or landscaping on Units or reserves related thereto, insurance on Units, or utilities or other services provided only to Improved Units, may be levied on each of the benefited Units in proportion to the benefit received, as the Board may reasonably determine.

All amounts that the Association collects as Service Area Assessments shall be held in trust for and expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Association's general funds.

(d) Notice of Budget and Assessment; Ratification. Within 30 days following the Board's adoption of any new or revised budget under Section 8.2(a) or (c), the Board shall send a summary of the applicable budget, together with notice of the amount of the General Assessment or Service Area Assessment to be levied pursuant to such budget, to each Owner to be assessed thereunder. The budget shall be accompanied by notice of the date, time and location of a meeting to consider ratification, which meeting shall be set by the Board to occur no less than 10 nor more than 60 days after mailing of the budget summary and notice. The notice shall include a statement that the meeting may be held and the budget may be ratified without a quorum being present.

The General Budget shall be deemed ratified unless rejected at the meeting by Owners of at least 75% of the total number of Units then subject to the Declaration. The Service Area Expense budget for each Service Area shall be deemed ratified unless rejected by Owners of at least 75% of the total number of Units in the Service Area to which the budget applies, except that the right to reject a Service Area budget shall apply only to those line items which are attributable to services or benefits requested by the Service Area and shall not apply to any item which the Governing Documents require to be assessed as a Service Area Expense.

If any proposed budget is rejected or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

(e) Budget Revisions. The Board may revise the budget and adjust the General Assessment or Service Area Assessments from time to time during the year, subject to the notice and ratification requirements set forth above.

8.3. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted under Section 8.2. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for general Common Expenses, or against the Units within any Service Area if such Special Assessment is for Service Area Expenses related to such Service Area. Except as otherwise specifically provided in Section 7.4(c) and as may be required to fund deficits under the General Budget due to delinquencies in payment of assessments, any Special Assessment shall require the affirmative vote or written consent of Members entitled to cast more than 50% of the total votes allocated to Units which will be subject to such Special Assessment, and during the Development and Sale Period, the written consent of Declarant. Except as otherwise provided in Section 8.5, Special Assessments shall be levied equally on all Units subject to such assessment.

8.4. Specific Assessments.

The Association shall have the power to levy Specific Assessments against a particular Unit or group of Units as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to such Unit(s) pursuant to Section 7.7, either under a bulk service contract entered into by the Association to provide services to less than all Units (for example, only to Improved Units) or upon request of the Owner pursuant to any menu of special services which the Association may offer (which might include the items identified in Section 7.7). Specific Assessments for special services may be levied in advance of the provision of the requested service;

(b) for monetary fines imposed pursuant to Section 7.5 and to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b); and

(c) pursuant to Section 8.8.

8.5. Payment of Assessments.

Except as otherwise provided herein, the obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later; provided, until the first day of the month in which the Unit becomes an Improved Unit or first day of the 18th month following the initial conveyance of the Unit by the Declarant, whichever is earlier, the Unit shall be assessed only 25% of the General Assessment rate applicable to Improved Units and shall pay any Special Assessment to which it is subject during such period at 25% of the rate that would apply if it were an Improved Unit, and shall not be assessed for any Service Area Expenses. The first annual General Assessment levied on each Unit, whether levied at the partial or full rate, shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on that Unit. During the year in which a Unit converts from a partial assessment rate to a full assessment rate hereunder, the full General Assessment shall be prorated based on the number of months remaining in the year on the date the Unit becomes subject to assessment as the full General Assessment rate.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the General Assessment and any Service Area Assessment shall be due and payable in advance on the first day of each fiscal year.

If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately or it may, in its discretion, permit payment of the outstanding balance in installments. Neither the Association nor the Owner is obligated to accept any proposed installment payment schedule. The Board may add reasonable administrative fees and costs for accepting and processing installments to the outstanding balance and include them in the installment payment schedule; however, such costs may include reasonable attorneys' fees only if the Owner has first been given notice of the Board's intention to recover attorneys' fees and court costs, as required by Section 47F-3-116 of the Act, and given 15 days from the mailing of the notice to pay the outstanding balance without attorneys' fees and court costs. The notice shall also provide the name and telephone number for a representative of the Association with whom the Owner may speak to discuss a payment schedule.

8.6. Lien for Assessments.

(a) Subject to North Carolina law, as it may be amended, if any assessment or installment thereof remains unpaid 30 days or more after the due date, the Association shall, upon filing a claim of lien in the office of the Register of Deeds of Wake County, North Carolina conforming to the requirements of Section 47F-3-116 of the Act, have a lien against each Unit in favor of the Association to secure payment of assessments and other fees and charges due to the Association as authorized by the Act or the Governing Documents or as the result of any arbitrator's, mediator's or judicial decision, as well as interest, late charges, and costs of collection (including attorneys' fees and court costs, if and to the extent authorized under Section 8.5 and the Act). Subject to the limitations of North Carolina law, such lien shall be superior to all other liens, except (i) the liens of all real estate taxes, governmental and other assessments and charges which by law would be superior, and (ii) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value and recorded prior to the filing of the claim of lien.

(b) If an assessment against a Unit remains unpaid for 90 days or more and the Board votes to proceed with foreclosure of the Association's lien on that particular Unit, the Association may foreclose its lien through judicial or non-judicial foreclosure proceedings in accordance with

North Carolina law, as it may be amended, except that any lien securing only fines and/or service or collection fees may be foreclosed only by judicial foreclosure.

(c) The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

(d) Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.5, including such acquirer, its successors and assigns.

8.7. Exempt Property.

(a) The following property shall be exempt from payment of General Assessments, Service Area Assessments, and Special Assessments

(i) all Common Area, streets, and alleys, and such portions of the property owned by Declarant as are included in the Area of Common Responsibility;

(ii) any property owned by any Additional Association for the common use and enjoyment of its members, or owned by the members of an Additional Association as tenants-in-common

(b) In addition, the Declarant or the Association may, but shall not be obligated to, grant a full or partial exemption from assessments for:

(i) any property owned by a governmental authority or public utility for public purposes, including, without limitation, schools, public safety facilities, parks, and utility infrastructure; and

(ii) any property owned by Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code, so long as such Persons own the property for purposes listed in Section 501(c) of the Internal Revenue Code.

Any exemption granted pursuant to this subsection (b) shall be set forth in writing, signed by the Declarant or the Association, and a copy shall be filed in the records of the Association.

8.8. Capitalization of Association.

At the time of first occupancy of the dwelling on an Improved Unit for residential purposes, the Owner thereof shall make a contribution to the working capital of the Association in an amount equal to one-sixth of the General Assessment levied by the Association against Units subject to full assessment for the year in which such first occupancy occurs. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessments, but rather shall be considered a Specific Assessment secured by the Association's lien for assessments under Section 8.6. This amount may be used by the Association for operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws, or for funding of reserves as the Board may determine in its discretion

8.9. Use and Consumption Fees.

The Board may charge use, consumption, or activity fees to any Person using Association services or facilities or participating in Association-sponsored activities. The Board may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (e.g., Owners and non-Owners).

PART FOUR: COMMUNITY DEVELOPMENT

The Declaration reserves various rights to the developer in order to facilitate the smooth and orderly development of Wendell Falls and to accommodate changes in the master plan that inevitably occur as a community such as Wendell Falls is developed.

Article IX Expansion of the Community

9.1. Expansion by Declarant.

Declarant may from time to time expand the Community to include all or any portion of the property described in Exhibit "B," and/or any property lying within a 2-mile radius of the perimeter boundaries of the property described in Exhibits "A" or "B," by recording a Supplemental Declaration describing the additional property and stating the intent to submit it to the provisions of this Declaration. A Supplemental Declaration recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to expand the Community pursuant to this Section shall expire 20 years after this Declaration is recorded. Until then, Declarant may transfer, assign, or otherwise permit this right to be exercised by any Person or Persons who are the developers of at least a portion of the real property described in which is subject to, or may be made subject to, this Declaration. Any such transfer, assignment or permission shall be memorialized in a written, recorded instrument executed by Declarant and the Person to whom it is assigned.

Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

9.2. Expansion by the Association.

The Association may also expand the Community to include additional property by recording a Supplemental Declaration describing the additional property and the intent to submit it to the provisions of this Declaration. Any such Supplemental Declaration shall require the affirmative vote of persons entitled to cast more than 50% of the Class "A" votes in the Association represented at a meeting duly called for such purpose and the consent of the owner of the property. In addition, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's consent shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property and by Declarant, if Declarant's consent is necessary.

9.3. Additional Covenants and Easements.

Declarant may subject any portion of the Community to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Service Area Assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.4. Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

Article X Additional Rights Reserved to Declarant

10.1. Withdrawal of Property.

During the Development and Sale Period, Declarant reserves the right to amend this Declaration for the purpose of removing any portion of the real property which has not yet been improved with structures from the coverage of this Declaration, provided such withdrawal does not reduce the total number of Units then subject to the Declaration by more than 10%. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

10.2. Right to Veto Changes in Standards.

During the Development and Sale Period, the Declarant shall have the right to veto any amendment to or modification of the Rules or Design Guidelines.

10.3. Development and Sales Activities.

During the Development and Sale Period:

(a) Declarant and Builders whom the Declarant so authorizes in writing may construct and maintain upon portions of the Common Area such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units, and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities at no charge. Such right shall specifically include the right of Declarant and its designees to use Common Area facilities for an information center and/or for administrative, sales and business offices at no charge and to restrict use or access to such facilities by the Association, its members and others as long as Declarant is using them for such purposes, provided, Declarant shall be responsible for maintenance and operating costs associated with any portion of such Common Area facilities used exclusively by the Declarant during the period of such exclusive use.

(b) Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

10.4. Control of and Changes in Development Plan.

Every Person that acquires any interest in the Community acknowledges that Wendell Falls is a master planned community, the development of which is likely to extend over many years, and agrees that neither the Association nor any Additional Association shall engage in, or use Association funds to support, any protest, challenge or other form of objection to (a) changes in uses or density of property within or outside Wendell Falls, or (b) changes in the Master Plan without the prior written consent of Declarant, which consent may be granted or withheld in Declarant's sole discretion.

10.5. Special Declarant Rights.

Declarant may exercise any or all of the "Special Declarant Rights" described in N.C.G.S. Section 47F-1-103(28).

10.6. Additional Covenants.

No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Community without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and recorded by Declarant.

10.7. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and the transferee and recorded. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.8. Exclusive Rights To Use Name of Development.

No Person other than Declarant, its authorized agents, and Builders, shall use the name "Wendell Falls," any derivative of such names, or associated logos or depictions, in any electronic, printed or promotional media or material without Declarant's prior written consent. However, Owners may use the name "Wendell Falls" in printed or promotional matter where such term is used solely to specify that particular property is located within Wendell Falls. The Association shall also be entitled to use the words "Wendell Falls" in its name.

10.9. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand or litigation involving such design or construction unless Declarant, in the case of improvements to the Common Areas, and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection pursuant to the rights reserved in Section 11.7.

10.10. Right of Convert Unit to Common Area or Roadway.

Declarant reserves the right to convert any Unit which it owns to Common Area or to public right-of-way, or to a combination of Common Area and right-of-way. Such right shall include, without limitation, a right to convert a Unit to right-of-way for the purpose of providing permanent access to property adjacent to the Community, whether or not such property is made subject to this Declaration. Upon conveyance of any Unit by Declarant to the Association as Common Area, the Unit shall cease to be a Unit and shall thereafter be Common Area. Upon recordation by Declarant of a plat or other instrument establishing a public right-of-way over a Unit that Declarant owns, the Unit shall cease to be a Unit and shall thereafter be treated in the same manner as any other property in the Community that has been dedicated to the public.

10.11 Central Telecommunication, Receiving, and Distribution System.

To the extent permitted by applicable law, Declarant reserves for itself, its Affiliates, successors, and assignees, the exclusive and perpetual right and easement to operate within the Community, central telecommunication receiving and distribution systems (*e.g.* cable television, high speed data/Internet/intranet service, telephone, and security monitoring), including associated infrastructure, software, hardware, conduits, wires, amplifiers, towers, antennae, and other related apparatus and equipment (the "**Community System**") as Declarant, in its discretion, deems appropriate. Such exclusive and perpetual right shall include, without limitation, Declarant's right to select and contract with companies licensed to provide telecommunications and cable television service in the Wake County, North Carolina area, and to charge or authorize such provider to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of any relevant government authority, if applicable.

Declarant may enter into and assign to the Association, or cause the Association to enter into, a bulk rate service agreement providing for access to any Community Systems for all Units as a Common Expense. If particular services or benefits are provided to particular Owners or Units at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the charges as a General Assessment or Specific Assessment and pay such charges to the provider on behalf of the Owners, as the Board deems appropriate.

Further, if any such contract for a Community System is in effect prior to commencement of construction of the dwelling on any Unit, the Design Guidelines may require the dwelling to be pre-wired to connect to such Community System.

PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY

The nature of living in a planned community requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, the Association, and others within or adjacent to the community.

Article XI Easements

11.1. Easements in Common Area.

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) the Governing Documents and any other applicable covenants;

(b) any restrictions, limitations or easements contained in any deed conveying such property to the Association;

(c) the Board's right to:

(i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(ii) suspend the right of an Owner and the occupants of the Owner's Unit to use recreational facilities within the Common Area pursuant to Section 7.5;

(iii) designate portions of the Common Area for community gardens, a working farm, and other agricultural uses and for related activities (collectively, "**Farming and Related Uses**"), which may include, without limitation, planting, raising, and harvesting of crops; grazing and keeping of poultry, goats, and other livestock (excluding pigs and hogs); and the operation of farmers markets, produce stands, and similar community activities and events, all subject to applicable zoning and such Rules and policies as the Board may establish governing the operation thereof;

(iv) to enter into leases and operating agreements or grant licenses authorizing exclusive use of portions of the Common Areas for Farming and Related Uses, on such terms and conditions as the Board deems to benefit the Association and its members;

(v) dedicate or transfer all or any part of the Common Area, subject to Section 18.3;

(vi) impose reasonable membership requirements and charge reasonable initiation fees, admission or other use fees for the use of any recreational facility situated upon the Common Area;

(vii) permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board and designate other areas and facilities within the Area of Common Responsibility as open for the use and enjoyment of the public, with or without charge as the Board may determine, subject to any recorded easements affecting such property; and

(viii) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 18.3; and

(e) the rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in Article XII; and

(f) The right of Declarant, and its designees, including such Builders as Declarant may authorize, to use portions of the Common Area pursuant to Section 10.3.

Any Owner may extend his or her right of use and enjoyment to the occupants of his or her household and their guests, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

11.2. Easements of Encroachment.

(a) Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area or right-of-way and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

(b) Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area or right-of-way and between adjacent Units as reasonably necessary to install, maintain, repair and replace any fence constructed on or within one foot of the boundary line of any Unit.

11.3. Easements for Utilities, Etc.

(a) Installation and Maintenance. Declarant reserves for itself, during the Development and Sale Period, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout the Community (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve Wendell Falls, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, stormwater drainage systems, spray irrigation systems, and street lights and signage, on property which Declarant, the Association, or any Builder owns or within public rights-of-way or easements reserved for such purpose on recorded plats or in other recorded documents; and

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in Section 11.3(a)(i), and

(iii) access to read utility meters.

(b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property subject to this Declaration or which may be made subject to this Declaration. The Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.4 Right of Entry for Maintenance by Owners

If any dwelling is located within five (5) feet of the boundary of any Unit and such location conforms to all applicable laws, ordinances, and Design Guidelines, the Owner shall have a perpetual, nonexclusive easement over the Unit adjoining such boundary to the extent reasonably necessary to perform maintenance and repairs on such Owner's dwelling. All work shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Unit to as nearly the same condition as that which existed prior to such entry as reasonably practicable.

11.5 Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any property which has been submitted to this Declaration or may be submitted to this Declaration pursuant to Article IX. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

11.6. Easements for Maintenance, Emergency and Enforcement.

Declarant grants to the Association easements over the Community as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2 and otherwise exercise its authority and fulfill its duties under the Governing Documents. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and designees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry onto an occupied Unit for any purpose other than performing, during daylight hours, exterior maintenance which is the Association's responsibility under this Declaration or any Supplemental Declaration, shall only be during reasonable hours and after notice to the Owner.

11.7. <u>Easement to Inspect and Right to Correct</u>

Declarant reserves for itself, the Builders, and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within the Community, including Units, and a perpetual, nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

11.8. <u>Landscaping and Signage Easements</u>

Declarant and its designees and the Association shall have perpetual, nonexclusive easements exercisable by their respective employees, agents, and contractors over areas within the rights-of-way of streets within the Community and those portions of Units, if any, designated as landscaping and signage easements, landscape buffers, or by similar name ("**Landscaping and Signage Easement**") on the recorded subdivision plats relating to the Community for the purpose of installation, maintenance, repair, and replacement of lot bollards, neighborhood entrance monuments, signs, fences, lighting, irrigation systems, and landscaping within the easement area. Nothing herein shall obligate Declarant or the Association to exercise such easements or to construct or install any of the foregoing within any right-of-way or Landscaping and Signage Easement. No fences, structures, driveways, plantings, swings, wood piles, dog runs, or any other objects, temporary or permanent, shall be permitted in such easement areas without the Association's prior written approval, other than those installed by Declarant or its designees.

No person shall interfere with the exercise of this easement by Declarant, its designees, or the Association, by removing, defacing, or otherwise vandalizing any signs (temporary or permanent) or other improvements placed within such easement area by Declarant, its designees, or the Association, or otherwise. The Declarant, its designees and the Association, respectively, may remove signs or other improvements which they have placed on the easement area.

11.9. <u>Easements for Storm Water Collection, Retention, and Irrigation Systems</u>.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement to enter upon any portion of the property within the Community, including Units, to (a) install, operate, maintain, and replace pumps and lines to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly return any property damaged as a result of such exercise to substantially the same condition as the property existed prior to the exercise of the easement.

11.10. Facilities and Services Accessible by the Public.

Certain areas within or adjacent to Wendell Falls, including Common Areas, although intended for the use and benefit of residents of Wendell Falls, may be accessible by the general public from neighboring properties or public streets and it may not be practical or cost-effective for the Association to limit or restrict such unauthorized access. The Association may, but shall have no duty to, monitor or restrict unauthorized access to such areas or to take action to remove unauthorized persons from such areas.

11.11. Easements for Maintenance of Water Bodies.

The Declarant reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement of access over the lakes, detention ponds or other bodies of water and wetlands within Wendell Falls, and over the Common Area and Units (but not the dwellings thereon) adjacent to or within 25 feet of such lakes, detention ponds or other bodies of water and wetlands, in order to perform such maintenance and repair as the Board may deem appropriate, which may include maintenance of shorelines, bulkheads, and water quality, algae control, removal of silt and debris, breaching of dams, removal of dead or diseased trees, shrubs, and plants, all subject to the conditions of any conservation easement applicable to the property. All persons entitled to exercise this easement shall use reasonable care in and repair any damage resulting from the intentional exercise of such easement. Nothing in this Section shall be construed to make the Declarant, the Association, or any other Person responsible for maintaining any dam, lake, or pond or liable for any damage resulting from flooding due to weather events or other natural occurrences.

Article XII Limited Common Areas

12.1. Purpose.

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of particular Units. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped areas and other portions of the Common Area primarily serving a limited number of Units. All costs associated with ownership, maintenance, repair, replacement, management, operation and insurance of a Limited Common Area shall be a Service Area Expense allocated among the Owners in the Service Area to which the Limited Common Area is assigned.

12.2. Designation.

Initially, any Limited Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area; provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Units, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1

Thereafter, a portion of the Common Area may be assigned as Limited Common Area upon approval of (a) the Board, (b) persons entitled to cast a majority of the total Class "A" votes in the Association, and (c) persons entitled to cast a majority of the Class "A" votes attributable to Units to which the Limited Common Area is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassignment shall also require Declarant's written consent.

12.3. Use by Others.

Upon approval of a majority of Owners of Units to which any Limited Common Area is assigned, the Association may permit Owners of other Units to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Service Area Expenses attributable to such Limited Common Area.

Article XIII Party Walls and Other Shared Structures

13.1. General Rules of Law to Apply.

Each wall, fence, driveway or similar structure which (i) serves and/or separates any two adjoining Units, and (ii) is required by the Design Guidelines or built as a part of the original construction on the Units, and any replacement of such a structure, shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIV.

13.2. Maintenance; Damage and Destruction.

Except to the extent that a party structure is designated Limited Common Area or responsibility for maintenance or repair is otherwise assigned to or assumed by the Association or any Additional Association pursuant to this Declaration, any applicable Supplemental Declaration, or other covenants or written agreement:

(a) the Owners of the Units separated by a fence that constitutes a party structure shall each be responsible for maintaining that side of the fence facing such Owner's Unit; and

(b) to the extent that any necessary repair or replacement of a party structure affects both sides of the structure, it shall be the joint responsibility of the Owners of the Units served or separated thereby ("**Benefited Units**"). Upon not less than 10 days prior written notice to the Owner(s) of each other Benefitted Unit specifying the need for maintenance or repairs to such Party Structure and the estimated cost thereof, the Owner giving such notice may perform any necessary maintenance or repair. Maintenance or repair specified in such notice shall be presumed "necessary" unless an Owner of a Benefitted Unit gives written notice within such 10-day period to the Owners of each other Benefitted Unit and to the Board, challenging the necessity of such maintenance or repair, in which case the Board may determine whether the maintenance or repair is necessary and appropriate and the Board's determination shall be final and binding. Within 30 days after receipt of a written request for reimbursement for any necessary maintenance or repair, accompanied by written evidence of the total cost incurred, the Owner(s) of the other Benefited Units shall reimburse the Owner who has incurred such cost for their pro rata share of the reasonable cost he or she has incurred in performing such maintenance or repair. If an Owner responsible for reimbursement fails to pay the amount due within 30 days after receipt of such request, the Owner who has incurred the cost shall have the right to file a lien against the Benefitted Unit of the Owner from whom the reimbursement is due to secure the amounts due plus interest at the lesser of 10% per annum or the highest rate allowed by North Carolina law from the 30th day after the date of such request, which lien may be filed in the same manner as a mechanics or materialmen's lien under North Carolina law and subject to the same notice requirements.

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title

(c) Notwithstanding the above, if maintenance or repairs to a party structure are necessitated by the conduct of the Owners, occupants or guests of only one of the Units that share such party structure, then the above procedures shall apply but the Owner of the Unit whose conduct (or occupant's or guest's conduct) necessitated the maintenance or repairs shall be liable for the full cost of any necessary maintenance or repairs.

(d) In the event that any Owner installs, constructs, or erects a fence on the common boundary line such Owner's Unit and an adjacent Unit, and the owner of the adjacent Unit thereafter attaches another section of fence to it or otherwise makes use of such fence for the purpose of enclosing all or a portion of the adjacent Unit, then such fence shall become a party fence for the purpose of each Owner's responsibility for contributing to the maintenance, repair, and replacement of such fence. However, nothing herein shall confer any ownership interest in or right to remove any such fence on the Owner of the adjacent Unit.

(e) In the event that either Owner fails to provide necessary maintenance or repairs to a party structure within 10 days after the date of written notice from the Association advising of the need for such maintenance or repairs, the Association or any Additional Association having jurisdiction over the Units shall have the right to provide the necessary maintenance or repairs and assess the costs incurred against the responsible Owner(s) and his (or their) Unit(s).

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

The success of Wendell Falls as a community in which people enjoy living and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and with our neighbors, and protection of the rights of others who have an interest in the community.

Article XIV Dispute Resolution and Limitation on Litigation

14.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving Wendell Falls without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 14.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "**Claim**" shall refer to any claim, grievance or dispute arising out of or relating to

(i) the interpretation, application, or enforcement of the Governing Documents; or

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within Wendell Falls, other than matters of aesthetic judgment under Article IV, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner; and

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards), and any suit by the Association to enforce the Governing Documents if the Association has already complied with the notice and hearing procedures set forth in the By-Laws; and

(iii) any suit which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

14.2. Dispute Resolution Procedures.

(a) <u>Notice</u>. The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice ("**Notice**") to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim; and

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); and

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

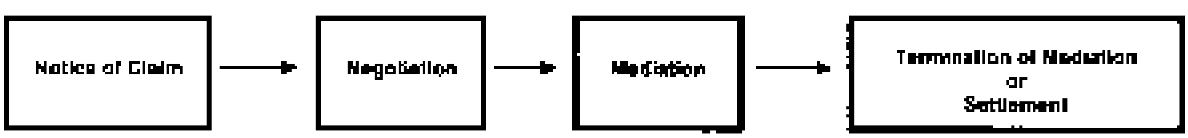
(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 14.2(a) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Raleigh, North Carolina metropolitan area. The mediator shall notify the parties in writing of the date, time and location of the mediation, which shall be within 25 days after the mediator receives the written request from the Claimant. The provisions of N.C.G.S. 7A-38.3F(d), (h), and (i) shall apply to any mediation hereunder.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

Alternative Dispute Resolution Process



(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

14.3. Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of persons entitled to cast 75% of the total Class "A" votes in the Association, except that no such approval shall be required for actions or proceedings:

(a) initiated during the Class "B" Control Period; or

(b) initiated to enforce the provisions of the Governing Documents, including collection of assessments and foreclosure of liens; or

(c) initiated to challenge *ad valorem* taxation or condemnation proceedings; or

(d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

Article XV Mortgagee Provisions

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Community. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

15.1. Notices of Delinquency.

Upon written request of an institutional holder, insurer, or guarantor of a first Mortgage (**"Mortgagee"**) stating the name and address of such Mortgagee and the street address of the Unit to which its Mortgage relates, the Association shall provide a statement of any delinquency in the payment of assessments or charges owed for such Unit or any other violation of the Governing Documents relating to such Unit or the Owner or occupant thereof which has not been cured.

15.2. Right to Examine Books and Records.

Subject to the provisions of the Act, upon written request of any Mortgagee stating the name and address of such Mortgagee and the street address of the Unit to which its Mortgage relates, the Association shall provide the Mortgagee with a copy of the Association's most recent financial statement and shall permit such Mortgagee or its agent to inspect the books and records of the Association during normal business hours, subject to the terms of the By-laws.

15.3. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

14.4. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

Article XVI Additional Relationships and Disclosures

16.1. Irrigation Using Non-Potable Water.

Each Owner and occupant of a Unit, and their respective guests and invitees, are hereby advised that non-potable water may be used to irrigate property within or adjacent to the Community, including the Area of Common Responsibility. Although non-potable water is considered safe for irrigation and limited contact, it is not suitable for human or animal consumption.

16.2. High Voltage Power Lines; Radio and Telecommunication Towers.

Every Owner and occupant of a Unit is hereby advised that there are high voltage power transmission lines and radio towers located within or in the vicinity of Wendell Falls. While various studies have failed to establish any causal relationship between living in proximity to high voltage power transmission lines or radio towers and cancer or other diseases, there remains some speculation that such a relationship may exist. Every Owner and occupant of a Unit must evaluate such risk for themselves prior to making a decision to purchase or occupy a Unit. Neither Declarant, Builders, the Association, nor the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing, shall be liable for any damage or injury to any Person or any property arising out of or related to proximity to high voltage power transmission lines and/or radio towers.

Every Owner and occupant of a Unit is further advised that telecommunication towers and related equipment may also be built within or in the vicinity of Wendell Falls. Neither Declarant, Builders, the Association, nor the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing shall be liable for any damage or injury to any Person or any property arising out of or related to the construction, installation, maintenance and operation of any such towers that may now or hereafter be located in or in the vicinity of Wendell Falls.

16.2. Public Safety Facilities.

The Declarant reserves the right to designate and convey sites anywhere within the Community, subject to local government approvals, for use as a fire station, police station, or other facility which may involve emergency or public safety vehicles entering, leaving, and passing through the Community and alarms and sirens audible within the Community at any time of day or night. The Declarant has no obligation to locate any such facility away from dwellings or to take any other action to minimize the disturbance of residents as a result of such alarms and sirens.

16.3. Stormwater Facilities.

Some Units may be located adjacent to Common Area containing lakes, ponds or stormwater detention or retention facilities that may from time to time contain water. Owners and occupants of such Units have no right to erect fences, attach docks, build retaining walls, anchor or store boats or other watercraft, or landscape, clear, or otherwise disturb vegetation within natural areas located within the Common Area between the boundary of the Unit and the water's edge, or within the nondisturbance buffer on any Unit.

16.4. Notices and Disclaimers as to Community Systems.

In recognition of the fact that interruptions in service provided by any Community System may occur from time to time, neither the Association, the Declarant, nor any Declarant Affiliate shall be held liable for any interruption in Community Systems services.

16.5. Nonresidential Uses.

Wendell Falls is a planned unit development in which zoning permits a mix of land uses, including a variety of residential neighborhood businesses, office and institutional, civic and other nonresidential uses in close proximity to residential uses. The development of such nonresidential uses is subject to market conditions and the Declarant makes no representations or guarantees that any particular nonresidential uses will be developed, nor is any builder, broker, managing agent, or other person authorized to make any such representations. The Declarant anticipates that properties developed for nonresidential uses within Wendell Falls will be made subject to a Commercial Declaration and the jurisdiction of the Commercial Association, which shall be responsible for administering and enforcing the Commercial Declaration in the same manner as the Association administers and enforces this Declaration. The Declarant intends for the Association and the Commercial Association to cooperate in the administration of the property within their respective jurisdictions and in the enforcement of their respective governing documents to establish and maintain consistent standards of operation, maintenance, architecture and use throughout Wendell Falls. This may include, without limitation, entering into agreements for common management or maintenance.

16.6. Other Uses in Vicinity of Wendell Falls.

In addition to the specific matters described above, the Declarant, the Association and the Builders have no ability to control the general use, maintenance or appearance of, or noise, odors, and emissions emanating from, nearby expressways, highways, and property owned by third parties adjacent to or in the vicinity of the Community which is not subject to this Declaration. All purchasers of Units should conduct their own diligence with respect to adjacent landowners, land uses, and potential uses of land in the vicinity of the Community which may have an impact on the purchasers' use and enjoyment of their Units.

PART SEVEN: CHANGES IN THE COMMUNITY

Communities such as Wendell Falls are dynamic and need the ability to monitor and adjust as circumstances, technology, needs and desires, and applicable laws change over time

Article XVII Changes in Ownership of Units

17.1. Notice of Transfer.

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall make such disclosure as required by N.C.G.S. Section 47E-1, *et seq.*, and in addition shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

17.2. Administrative Fee.

The Association may charge a reasonable administrative fee for preparation of a statement of unpaid assessments pursuant to N.C.G.S. Section 47F-3-102(13) and may require that such fee be paid in advance.

Article XVIII Changes in Common Area

18.1. Condemnation.

If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award. Any condemnation award shall be payable to the Association and shall be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking Declarant, during the Development and Sale Period, and Members entitled to cast at least 75% of the total Class "A" votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.4(c) regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as if proceeds from the sale of Common Area pursuant to Section 18.3.

18.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action seeking the partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration, subject to such approval as may be required under Section 18.3.

18.3. Mortgaging, Conveyance or Dedication of Common Area.

The Association may dedicate portions of the Common Area to the Town of Wendell or the State of North Carolina, or to any other local, state, or federal governmental or quasi-governmental entity, or may subject Common Area to a security interest, or may transfer or convey Common Area as follows:

(a) if Common Area other than Limited Common Area, upon the written direction of Members entitled to cast at least 80% of the total Class "A" votes in the Association and the Declarant during the Development and Sale Period; and

(b) if Limited Common Area, upon written agreement of all Owners of Units to which the Limited Common Area is assigned;

except that no conveyance of Common Area shall reduce the total area comprising the Common Area below that required by applicable governmental authorities as a condition of development or subdivision approvals, and no sale or encumbrance of Common Area may deprive any Unit of rights of access or support. Nothing herein shall require membership approval for the Board to grant easements over the Common Area for public utilities or for other purposes which are not inconsistent with the use and enjoyment of the Common Area by the Owners for its intended purpose.

The proceeds from the sale or financing of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines. The proceeds from the sale or financing of Limited Common Area shall be disbursed as provided by the agreement authorizing such sale or security interest.

Article XIX Amendment of Declaration

19.1. <u>By Declarant.</u>

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, until termination of the Development and Sale Period, Declarant may unilaterally amend this Declaration for the purpose of (a) bringing any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) enabling any reputable title insurance company to issue title insurance coverage on the Units; (c) enabling any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans to make, purchase, insure or guarantee mortgage loans on the Units; or (d) complying with the requirements of any state or federal law or any local, state or federal governmental agency. However, any unilateral amendment by Declarant pursuant to this Section shall not materially adversely affect the allocation of voting rights or assessment burdens among the Units or title to any Unit unless the Owner shall consent in writing.

19.2. <u>By Members.</u>

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Persons entitled to cast at least 67% of the total Class "A" votes in the Association, and during the Development and Sale Period, the Declarant's consent.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

19.3. <u>Validity and Effective</u> Date

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one year of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Amendments shall be indexed in the Grantee index under the names "Wendell Falls" and "Wendell Falls Community Association, Inc." and in the Grantor index under the name "NASH Wendell Falls, LLC."

19.4. Exhibits.

Exhibits "A" and "B" to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article except as otherwise provided in Article IX. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration that refer to such exhibits.

Article XX Termination of Declaration

This Declaration may be terminated only upon recording a termination agreement signed by the then Owners of at least 80% of the Units. In addition, during the Development and Sale Period, the written consent of the Declarant shall be required. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

* * *

[continued on next page]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this the 5th day of November, 2014.

DECLARANT: NASH WENDELL FALLS, LLC, a Delaware limited liability company

By:
Name: Laurie H. Ford
Its: Vice President

STATE OF NORTH CAROLINA)
)
COUNTY OF Wake)

I, Megan E. Lighthall a Notary Public in and for Durham County, North Carolina, certify that Laurie Ford personally came before me this day and acknowledged that s/he is an Vice President of NASH WENDELL FALLS, LLC, a Delaware limited liability company, and that by authority duly given and as a fact of said limited liability company, the foregoing instrument was signed in its name by Laurie Ford, as Vice President, on behalf of said limited liability company.

Witness my hand and official stamp or seal, this 5th day of November, 2014.

Megan E. Lighthall
Notary Public

My Commission Expires:
09/01/19

[NOTARY SEAL]

MEGAN E. LIGHTHALL
NOTARY
PUBLIC
DURHAM COUNTY, NC

5034 19 CA Docs CCR Wendell Falls (10) 14.grs

JOINDER, CONSENT AND SUBORDINATION

The undersigned, as holder of that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated October 21, 2013 and recorded October 21, 2013 in Book 15478, Pages 1630-1654 in the office of the Register of Deeds for Wake County, North Carolina (**"Deed of Trust"**), which encumbers the real property described on Exhibit "A" to the foregoing Declaration of Covenants, Conditions and Restrictions for Wendell Falls (**"Declaration"**), hereby joins in execution of such Declaration to evidence its consent and subordinate its interest under the Deed of Trust to such Declaration.

IN WITNESS WHEREOF, the undersigned has duly executed this Joinder, Consent and Subordination by and through its authorized representative this 5 day of November 2014.

WITNESSES:

Signed, sealed and delivered
in the presence of:

Signature of Witness #1
Dary Lynn Burke
Typed/Printed Name of Witness #1

Signature of Witness #2
Nadine Saia
Typed/Printed Name of Witness #2

MORTGAGEE:

NASH FINANCING, LLC,
a Delaware limited liability company

By:
Michiko Fujiwara
Authorized Signatory

Address:
c/o North America Sekisui House, LLC
2101 Wilson Boulevard, Suite 1004
Arlington, Virginia 22201

STATE OF CALIFORNIA)
)
COUNTY OF)

On this 5 day of November, 2014, before me K. Paxton (notary public), personally appeared Michiko Fujiwara (print name), who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that ~~he~~/she executed the same in ~~his~~/her authorized capacity, and that by ~~his~~/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ______________ (notary public)

K. PAXTON
Comm. # 2051148
Notary Public - California
San Diego County
My Comm. Exp. Mar. 31, 2018

(NOTARY SEAL)

EXHIBIT "A"

Land Initially Submitted

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Wake County, North Carolina, and being more particularly described as follows:

Wendell Falls Development SF-1, Section 1

BEING all that tract of land containing a gross area of +/- 31.898 acres (1,389,456 square feet) located in Marks Creek Township, Wake County, North Carolina; said tract being out of a parcel of land conveyed to Nash Wendell Falls, LLC by deed recorded under DB 15478, Pg 1623 of the Wake County Registry and being more particularly described by courses based on North Carolina Grid Coordinate System (NAD83/2011) and distances according to a survey entitled "Final Subdivision, Easement and Right-of-Way Dedication Plat of Wendell Falls Development SF-1, Section 1 for Nash Wendell Falls, LLC" prepared by McKim & Creed, Inc. dated October 27, 2014 and being more particularly described as follows:

COMMENCING at a nail found having NC Grid (NAD83/11) coordinates of Northing = 736,277.97 feet, Easting = 2,170,181.64 feet; thence a tie line south 47 deg. 38 min. 53 sec. east 1018.18 feet to an iron rod found on the southern right-of-way line of Wendell Falls Parkway (SR 2502) (BM 2008, Pg. 1929), the POINT OF BEGINNING; thence with southern right-of-way lines of Wendell Falls Parkway south 57 deg. 54 min. 07 sec. east 17.66 feet to a right-of-way monument; thence south 55 deg. 13 min. 40 sec. east 93.47 feet to a right-of-way monument; thence a curve to the left having a radius of 1070.00 feet and a chord bearing and distance of south 65 deg. 54 min. 18 sec. east 224.55 feet to an iron rod set; thence a curve to the left having a radius of 1070.00 feet and a chord bearing and distance of south 72 deg. 11 min. 08 sec. east 9.62 feet to a right-of-way monument; thence south 80 deg. 28 min. 06 sec. east 117.52 feet to a right-of-way monument; thence a curve to the left having a radius of 1059.94 feet and a chord bearing and distance of south 79 deg. 01 min. 38 sec. east 10.43 feet to an iron rod set; thence a curve to the left having a radius of 1059.94 feet and a chord bearing and distance of south 83 deg. 54 min. 20 sec. east 169.88 feet to a right-of-way monument; thence south 88 deg. 30 min. 07 sec. east 689.72 feet to a right-of-way monument; thence south 81 deg. 22 min. 37 sec. east 201.56 feet to a right-of-way monument; thence south 47 deg. 29 min. 06 sec. east 23.16 feet to a right-of-way monument; thence leaving the southern right of way line of Wendell Falls Parkway and with western right-of-way lines of Martin Pond Road (SR 2503) south 05 deg. 33 min. 58 sec. west 403.32 feet to a right-of-way monument; thence a curve to the right having a radius of 1955.00 feet and a chord bearing and distance of south 08 deg. 26 min. 22 sec. west 195.99 feet to an iron rod set; thence south 11 deg. 43 min. 05 sec. west 0.96 feet to an iron rod set; thence south 12 deg. 47 min. 53 sec. west 101.33 feet to an iron rod set; thence a curve to the right having a radius of 1955.00 feet and a chord bearing and distance of south 15 deg. 32 min. 28 sec. west 85.85 feet to an iron rod set; thence leaving the western right-of-way line of Martin Pond Road with new lines in the Nash Wendell Falls, LLC property (DB 15478, Pg. 1623) north 72 deg. 14 min. 51 sec. west 123.72 feet to an iron road set; thence south 82 deg.

EXHIBIT "A"

Land Initially Submitted
(continued)

15 min. 54 sec west 56.61 feet to an iron rod set; thence north 72 deg. 52 min. 54 sec. west 474.28' feet to an iron rod set; thence south 88 deg. 27 min. 31 sec west 461.33 feet to an iron rod set; thence south 03 deg. 37 min. 22 sec. west 7.38 feet to an iron rod set; thence north 86 deg. 22 min. 38 sec west 50.00 feet to an iron rod set; thence north 03 deg. 37 min. 22 sec. east 19.62 feet to an iron rod set; thence north 85 deg. 08 min. 37 sec. west 386.15 feet to an iron rod set; thence south 55 deg. 01 min. 13 sec. west 75.30 feet to an iron rod set; thence south 70 deg. 20 min. 53 sec. west 92.52 feet to an iron rod set; thence north 77 deg. 22 min. 43 sec west 102.01 feet to an iron rod set; thence south 88 deg. 10 min. 51 sec. west 207.64 feet to an iron rod set; thence north 03 deg. 28 min. 16 sec. west 295.12 feet to an iron rod set; thence north 61 deg. 43 min. 08 sec. east 263.77 feet to an iron rod set; thence north 39 deg. 34 min. 59 sec. east 399.60 feet to an iron rod set; thence north 35 deg. 13 min. 02 sec. east 200.93 feet to an iron rod found, the POINT OF BEGINNING and containing +/- 38.898 acres (1,389,456 square feet).

AND:

Wendell Falls Development SF-2, Section 2:

BEING all those tracts of land containing a gross area of +/- 4.514 acres (196,611 square feet) located in Marks Creek Township, Wake County, North Carolina; said tract being out of a parcel of land conveyed to Nash Wendell Falls, LLC by deed recorded under DB 15478, Pg. 1623 of the Wake County Registry and being more particularly described by courses based on North Carolina Grid Coordinate System (NAD83/2011) and distances according to a survey entitled "Final Subdivision, Easement and Right-of-Way Dedication Plat of Wendell Falls Development SF-2, Section 2 for Nash Wendell Falls, LLC" prepared by McKim & Creed, Inc. dated October 28, 2014 and being more particularly described as follows:

Area 1:

COMMENCING at a nail found having NC Grid (NAD83/11) coordinates of Northing – 736,277.97 feet, Easting - 2,170,181.64 feet; thence a tie line south 25 deg. 03 min. 51 sec. west 990.07 feet to an iron rod found on the eastern right-of-way line of Daniel Ridge Road (BM 2014, Pg. 1267), the POINT OF BEGINNING, thence with new lines in the Nash Wendell Falls, LLC property (DB 15478, Pg. 1623) south 16 deg. 37 min. 41 sec. west 345.04 feet to an iron rod set; thence north 73 deg. 22 min. 19 sec west 60.00 feet to an iron rod set; thence north 16 deg. 37 min. 41 sec. east 5.00 feet to an iron rod set; thence north 73 deg. 22 min. 19 sec. west 439.65 feet to an iron rod set; thence with the eastern right-of-way line of Vintage Point Lane (BM 2014, Pg. 1264)north 16 deg. 37 min. 41 sec. east 340.07 feet to an iron rod set; thence south 73 deg. 22 min. 06 sec. east 499.65 feet to an iron rod found, the POINT OF BEGINNING and containing +/- 3.907 acres (170,207 square feet).

EXHIBIT "A"

Land Initially Submitted
(continued)

Area 2:

COMMENCING at a nail found having NC Grid (NAD83/11) coordinates of Northing = 736,277.97 feet, Easting = 2,170,181.64 feet; thence as tie lines south 25 deg. 03 min. 51 sec. west 990.07 feet to an iron rod found on the eastern right-of-way line of Daniel Ridge Road (BM 2014, Pg. 1267); north 73 deg. 22 min. 06 sec. west 60.00 feet to an iron rod found; continuing north 73 deg. 22 min. 06 sec. west 439.65 feet to an iron rod set on the eastern right-of-way line of Vintage Point Lane (BM 2014, Pg. 1264); thence crossing Vintage Point Lane and continuing north 73 deg. 22 min. 06 sec. west 50.00 feet to an iron rod found, the POINT OF BEGINNING; thence with the western right-of-way line of Vintage Point Lane south 16 deg. 37 min. 41 sec. west 220.03 feet to an iron road set; thence north 73 deg. 22 min. 19 sec west 120.00 feet to an iron rod set, thence north 16 deg. 37 min. 41 sec. east 220.04 feet to an iron rod set; thence south 73 deg. 22 min. 06 sec. east 120.00 an iron rod found, the POINT OF BEGINNING and containing +/- 0.606 acres (26,404 square feet).

AND:

Wendell Falls Development SF-3, Section 1

BEING all that tract of land containing a gross area of +/- 7.019 acres (305,741 square feet) located in Marks Creek Township, Wake County, North Carolina; said tract being out of a parcel of land conveyed to Nash Wendell Falls, LLC by deed recorded under DB 15478, Pg. 1623 of the Wake County Registry and being more particularly described by courses based on North Carolina Grid Coordinate System (NAD83/2011) and distances according to a survey entitled "Final Subdivision, Easement and Right-of-Way Dedication Plat of Wendell Falls Development SF-3, Section 1 for Nash Wendell Falls, LLC" prepared by McKim & Creed, Inc. dated October 28, 2014 and being more particularly described as follows:

COMMENCING at a nail found having NC Grid (NAD83/11) coordinates of Northing = 736,277.97 feet, Easting = 2,170,181.64 feet; thence a tie line north 69 deg. 52 min. 30 sec. west 849.60 feet to an iron rod found on the southern right-of-way line of Wendell Falls Parkway (BM 2008, Pg. 1929), the POINT OF BEGINNING, thence with a northwestern line of the Nash Wendell Falls property shown in BM 2014, Pg. 1266 south 45 deg. 43 min. 05 sec. west 288.14 feet to an iron rod set; thence with new lines in the Nash Wendell Falls, LLC property (DB 15478, Pg. 1623) north 82 deg. 17 min. 35 sec. west 185.05 feet to an iron rod set; thence with a curve to the right having a radius of 307.53 feet and a chord bearing and distance of south 14 deg. 11 min. 41 sec west 66.12 feet to an iron rod set; thence south 20 deg. 26 min. 25 sec. west 113.43 feet to an iron rod set; thence north 69 deg. 33 min. 35 sec. west 50.00 feet to an iron rod

EXHIBIT "A"

Land Initially Submitted
(continued)

set; thence with a curve to the left having a radius of 20.00 feet and a chord bearing and distance of north 24 deg. 33 min. 35 sec. west 28.28 feet to an iron rod set;
thence north 20 deg. 26 min. 25 sec. east 50.00 feet to an iron rod set;
thence north 69 deg. 33 min. 35 sec. west 114.82 feet to an iron rod set;
thence north 20 deg. 26 min. 25 sec. east 60.17 feet to an iron rod set;
thence north 00 deg. 53 min. 37 sec. west 45.27 feet to an iron rod set;
thence north 21 deg. 52 min. 59 sec. west 45.00 feet to an iron rod set;
thence north 44 deg. 20 min. 45 sec. west 45.02 feet to an iron rod set;
thence north 57 deg. 54 min. 06 sec. west 248.00 feet to an iron rod set;
thence north 32 deg. 05 min. 54 sec. east 135.35 feet to an iron rod set;
thence north 57 deg. 54 min. 06 sec. west 9.31 feet to an iron rod set;
thence with a curve to the left having a radius of 20.00 feet and a chord bearing and distance of south 80 deg. 59 min. 25 sec. west 26.31 feet to an iron rod set;
thence north 60 deg. 51 min. 36 sec. west 82.72 feet to an iron rod set;
thence with a curve to the left having a radius of 459.50 feet and a chord bearing and distance of north 38 deg. 01 min. 32 sec. east 61.06 feet to an iron rod set;
thence north 34 deg. 12 min. 57 sec. east 160.29 feet to an iron rod set;
thence a curve to the left having a radius of 35.00 feet and a chord bearing and distance of north 09 deg. 25 min. 40 sec. west 48.31 feet to an iron rod set on the southern right-of-way line of Wendell Falls Parkway; thence with the southern right-of-way line of Wendell Falls Parkway a curve to the left having a radius of 1560.00 feet and a chord bearing and distance of south 55 deg. 29 min. 29 sec. east 131.22 feet to an iron rod set; thence south 57 deg. 54 min. 07 sec. east 753.69 feet to an iron rod found, the POINT OF BEGINNING and containing +/- 7.019 acres (305,741 square feet).

AND:

Wendell Falls Development Amenity Center

BEING all of Amenity Area – Parcel A, Amenity Area – Parcel B, the 50' public right-of-way depicted as Vintage Point Lane, and the variable width public right-of-way depicted as Daniel Ridge Road, containing a gross area of +/- 19.978 acres (870,227 square feet) all as shown on that survey entitled "Subdivision, Easement and Right-of-Way Dedication Plat of Wendell Falls Development – Amenity Center for Nash Wendell Falls, LLC" prepared by McKim & Creed, Inc. dated September 18, 2014 and recorded under BM 2014, Pg. 1266 and BM 2014, Pg. 1267 of the Wake County Registry, the contiguous exterior boundary lines of which tracts are more particularly described as follows:

COMMENCING at a nail found having NC Grid (NAD83/11) coordinates of Northing = 736,277.97 feet, Easting = 2,170,181.64 feet; thence as tie lines north 72 deg. 00 min. 00 sec. west 721.62 feet to an iron rod set and north 58 deg. 06 min. 24 sec. west 131.23 feet to a rebar

EXHIBIT "A"

Land Initially Submitted
(continued)

and cap set on the southern right-of-way line of Wendell Falls Parkway (BM 2008, Pg. 1929), the POINT OF BEGINNING; thence with lines within the Nash Wendell Falls, LLC property (DB 15478, Pg. 1623) south 45 deg. 43 min. 05 sec. west 405.33 feet to an iron rod set; thence south 04 deg. 42 min. 33 sec. west 691.85 feet to an iron rod set; thence south 73 deg. 22 min. 06 sec. east 756.95 feet to an iron rod set; thence north 16 deg. 37 min. 41 sec. east 42.67 feet to an iron rod set; thence north 20 deg. 34 min. 23 sec. east 15.83 feet to an iron rod set; thence with a curve to the right having a radius of 463.20 feet and a chord bearing and distance of north 28 deg. 15 min. 17 sec. east 120.00 feet to an iron rod set; thence a curve to the right having a radius of 460.00 feet and a chord bearing and distance of north 41 deg. 27 min. 49 sec. east 160.27 feet to an iron rod set; thence north 51 deg. 29 min. 45 sec. east 151.45 feet to an iron rod set; thence a curve to the left having a radius of 440.00 feet and a chord bearing and distance of north 45 deg. 59 min. 40 sec. east 84.37 feet to an iron rod set at the existing termination of Daniel Ridge Road (BM 2014, Pg. 1264), thence with the existing right-of-way of Daniel Ridge Road north 49 deg. 30 min. 32 sec. west 80.00 feet to an iron rod set; thence a curve to the left having a radius of 360.00 feet and a chord bearing and distance of north 36 deg. 14 min. 40 sec. east 53.31 feet; thence north 32 deg. 05 min. 59 sec. east 22.23 feet to an iron rod set; thence north 32 deg. 05 min. 58 sec. east 125.03 feet to an iron rod set, thence a curve to the left having a radius of 35.00 feet and a chord bearing and distance of north 12 deg. 54 min. 06 sec. west 49.50 feet to an iron rod set on the southern right-of-way line of Wendell Falls Parkway (BM 2008, Pg. 1929); thence with the southern right-of-way line of Wendell Falls Parkway north 57 deg. 54 min. 06 sec. west 916.13 feet to an iron rod set, the POINT OF BEGINNING and containing +/- 19.978 acres (870,227 square feet).

EXHIBIT "B"

Potential Expansion Property

ALL THOSE CERTAIN PARCELS OR TRACTS OF LAND lying and being in Marks Creek Township, Wake County, North Carolina, and being more particularly described as follows:

All of "Tract 3" containing 725.41 acres, more or less, and all of "Tract 4" containing 51.51 acres, more or less, as shown on that plat recorded in Book of Maps 2007, Page 1098 through 1101, in the office of the Register of Deeds for Wake County, North Carolina ("Wake County Registry"); and

All of "Tract 6" containing 156.47 acres, more or less, all of "Tract 7" containing 62.94 acres, more or less, and all of "Tract 8" containing 55.95 acres, more or less, as shown on that plat recorded in Book of Maps 2007, Page 2484, Wake County Registry; and

All that tract or parcel of land being 23.9 acres, more or less, as described in a General Warranty Deed dated January 31, 2006 and recorded February 8, 2006 in Book 11810 at Page 226, Wake County Registry, and a Quitclaim Deed dated January 31, 2006 and recorded February 8, 2006 in Book 11810 at Page 243, Wake County Registry; and

All that tract or parcel of land being 5.91 acres, more or less, as described in a General Warranty Deed dated and recorded June 30, 2006 in Book 12038 at Page 2225, Wake County Registry; and

All that tract or parcel of land being 2.41 acres, more or less, as described in a Quitclaim Deed dated and recorded January 3, 2007 in Book 12343 at page 1763, Wake County Registry, being also described in a General Warranty Deed dated and recorded January 3, 2007 in Book 12343 at Page 1759, Wake County Registry; and

All that tract or parcel of land being 44.77 acres, more or less, as described in a Quitclaim Deed dated and recorded January 3, 2007 in Book 12343 at Page 2336, Wake County Registry, being also described in that General Warranty Deed dated and recorded January 3, 2007 in Book 12343 at Page 2331, Wake County Registry; and

All that tract or parcel of land identified as Lot No. 1, 23.95 acres, on a plat titled, "Map of the Division of the Lands of the Heirs of Isaiah Hall, deceased, Marks Creek Township, Wake County, NC," dated July 6, 1953 and recorded in Book of Maps 1959, Page 318, more particularly described in Deed Book 2110, Page 347, Wake County Registry; and

Any additional property located within a 2-mile radius of the perimeter boundaries of the above-described property.

LESS AND EXCEPT from the above-described property that property described on Exhibit "A" of this Declaration.

EXHIBIT "B"

Potential Expansion Property
(continued)

Note to clerk and title examiners:

This Declaration is not intended to create an encumbrance on title to the property described in this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplemental Declaration in accordance with Article IX.

EXHIBIT "C"

Initial Rules

The following restrictions shall apply to the Community until such time as they are amended, modified, repealed or limited pursuant to Article III of the Declaration.

1. General. The properties submitted to this Declaration shall be used only for residential, recreational, and related purposes consistent with this Declaration and any Supplemental Declaration. Such purposes may include, without limitation, an information center and/or a sales office for any real estate broker retained by Declarant to assist in the sale of property described in Exhibits "A" or "B," offices for any property manager retained by the Association, business offices for Declarant and the Association, and public facilities.

2. Restricted Activities. The following activities are prohibited within the Community unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Parking of automobiles, trucks, motorcycles, scooters, bicycles, trailers, or other vehicles of any kind (collectively, "**Vehicles**") on public or private streets or in alleys within the Community, except that public safety and emergency personnel may park their official Vehicles on streets while responding to an emergency or otherwise acting in the course of their official duties;

(b) Parking of Vehicles overnight on Common Areas except that occasional overnight guests of an Owner or occupant of a Unit may park their vehicles in such areas, if any, which the Board has designated for parking, but only while staying overnight in the Unit and only in places designated by signage or painted lines as parking spaces. Bicycles may be parked or left on the Common Area only in bike racks provided by the Association. Neither the Declarant nor the Association shall have any responsibility or liability for theft, vandalism, or other loss or damage to vehicles or contents of vehicles parked or left on Common Areas at any time;

(c) Parking of Vehicles on Units in places other than garages, carports, or driveways, except that commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable vehicles may be parked or stored only in enclosed garages except temporarily during loading and unloading; provided, construction, service and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area. For purposes of this provision, "commercial vehicles" shall be defined as trucks or vans with commercial writing on their exteriors or vehicles primarily used or designed for a commercial purpose, and vehicles with advertising signage attached or displayed on such vehicle's exterior, but shall not include passenger cars with identifying decals or painted lettering not exceeding a total area of one square foot in size or official vehicles owned by governmental or quasi-governmental bodies; and

(d) Raising, breeding or keeping animals, livestock, or poultry of any kind on or in a Unit, except that a reasonable number of dogs, cats, or other usual and common household pets

EXHIBIT "C"

Initial Rules
(continued)

may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law; and

(e) Any activity on a Unit or Common Area which emits foul or obnoxious odors outside a Unit or creates an unreasonable level of noise or other conditions which tend, in the Board's judgment, to unreasonably disturb the peace or threaten the safety of the occupants of other Units (this paragraph shall not restrict construction activities by Builders or the Declarant and their contractors and subcontractors during the Development and Sale Period, nor shall it preclude normal and customary use of power tools, lawn mowers, and other yard maintenance equipment, provided they are used only between the hours of 8:00 a.m. and 8:00 p.m.); and

(f) Any activity which violates local, state or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation; and

(g) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Unit; and

(h) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units; and

(i) Outside burning of trash, leaves, debris or other materials, except during the normal course of constructing a dwelling on a Unit; and

(j) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes; and

(k) Use and discharge of firecrackers and other fireworks; and

(l) Dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Community, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff; and

(m) Accumulation of rubbish, trash, or garbage except between regular garbage collection times, and then only in approved containers which must either be stored in an enclosed

EXHIBIT "C"

Initial Rules
(continued)

garage or in the rear yard of the Unit, screened from view of adjacent property in a manner approved pursuant to Article IV except on the day garbage is collected; and

(n) Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant, its designees, and the Association shall have such right, and Builders may alter drainage flow so long as the alteration does not adversely affect other Units; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent; and

(o) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and recorded, except that Declarant and Builders, with Declarant's written consent, shall be permitted to subdivide or replat Units which they own; and

(p) Construction, placement, improvement, or use of any garage, basement, or accessory structure on a Unit as separate, independent living quarters for one or more persons, whether or not related to the occupants of the main dwelling on the Unit, and whether on a temporary or permanent basis, or conversion of any garage to finished space for use as an integral part of the living area on any Unit, or use of any garage for storage or other purposes which preclude its use for parking of that number of vehicles for which it was originally designed, except with the prior written consent of the Declarant during the Development and Sale Period and the Board thereafter, and prior approval pursuant to Article IV; and

(q) Use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program with respect to Units which it owns, and

(r) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge; and

(s) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article IV; and

(t) Any yard sale, garage sale, moving sale, rummage sale, or similar activity, except on such dates as the Board may designate for such activities to be conducted on a community-wide basis; and

EXHIBIT "C"

Initial Rules
(continued)

(u) Swimming or use of personal flotation devices in any stream, pond, or other body of water (other than swimming pools) located within the Community, or fishing or boating in any such body of water except in accordance with such policies and rules as the Board may establish from time to time,

(v) Any business, trade, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Community; (iii) the business activity does not involve door-to-door solicitation of residents of the Community, (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Community which is noticeably greater than that which is typical of Units in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Community as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

Leasing of a Unit for residential purposes consistent with the Declaration and the Association's Rules shall not be considered a business or trade within the meaning of this subsection.

This subsection shall not apply to any activity conducted by Declarant or a Builder approved by Declarant with respect to its development and sale of Wendell Falls or its use of any Units which it owns within Wendell Falls including the operation of a timeshare or similar program; and

(w) Bullying, harassing, or intimidation, or other behavior which the Board determines to constitute verbal or physical abuse or threaten the safety or physical or emotional well-being of, or create a hostile work environment for, any employee, agent, contractor, or vendor of the Declarant or the Association, or the employees of any such contractor, vendor, or agent, whether conducted in person, by telephone, in writing, through the use of technology, electronic communication, social media, or by any other means. No person except a person whom the Board may designate to supervise an employee, contractor, vendor or agent, shall reprimand, give direction to, or criticize any Declarant or Association employee, contractor, vendor or agent,

EXHIBIT "C"

Initial Rules
(continued)

or any of their employees, except that Members who have constructive criticism, complaints, concerns, or suggestions of any kind relating to any Association operations, personnel, contractors, vendors, or agents, or their respective employees, may bring the same to the Board's attention in writing signed by the Member and detailing any incident giving rise to the specific complaint, concern or suggestion, the date and time thereof, the persons involved and/or affected, and the proposed course of action that the writer requests that Board take in response.

(x) Any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IV of the Declaration. This shall include, without limitation, signs and flags (except as otherwise provided in Section 3.4(c) and (d) and in Section 4.1), basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; swimming pools; docks, piers and similar structures; and hedges, walls, dog runs, animal pens, or fences of any kind; satellite dishes and antennas, except that:

(i) an antenna that is one meter or less in diameter and used to receive direct broadcast satellite services, including direct-to-home satellite services, or to receive or transmit fixed wireless signals via satellite; or

(ii) an antenna that is one meter or less in diameter or diagonal measurement and designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "**Permitted Antennas**") shall be permitted on Units without prior approval, provided they are installed in compliance with such requirements as to location and screening as may be set forth in the Design Guidelines in order to minimize obtrusiveness as viewed from streets and adjacent property, consistent with the Federal Communications Commission's Over-the-Air Reception Devices rule, 47 C.F.R. 1.4000 adopted pursuant to the Telecommunications Act of 1996, as amended from time to time. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of the Community, should any master system or systems be utilized by the Association and require such exterior apparatus.

Notwithstanding the above, nothing herein shall be construed to preclude farming, agricultural, or related activities which the Board specifically authorizes to be conducted on designated portions of the Common Areas, which may include, without limitation, planting,

EXHIBIT "C"

Initial Rules
(continued)

raising, and harvesting of crops; grazing and keeping of poultry, goats, and other livestock (excluding pigs and hogs); and the operation of farmers markets, produce stands, and similar community activities and events consistent with applicable zoning.

3. Prohibited Conditions. The following shall be prohibited in the Community:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community; and

(b) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair; and

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from ground or surface waters within Wendell Falls, except that Declarant, its designees, and the Association shall have the right to draw water from such sources.

EXHIBIT "D"

By-Laws of Wendell Falls Community Association, Inc.

[see attached]

BY-LAWS

OF

WENDELL FALLS COMMUNITY ASSOCIATION, INC.

TABLE OF CONTENTS

PAGE

BY-LAWS

OF

WENDELL FALLS COMMUNITY ASSOCIATION, INC.

Article I Name, Principal Office, and Definitions

1.1. Name.

The name of the corporation is Wendell Falls Community Association, Inc. (the "**Association**").

1.2. Principal Office.

The principal office of the Association shall be located in Chatham County or Wake County, North Carolina, or such other location within 90 miles of Wendell Falls as the Board may designate from time to time. The Association may have such other offices, either within or outside the state of North Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

1.3. Definitions.

Unless otherwise specified, the words used in these By-Laws shall be given their normal, commonly understood definitions except that, unless the context otherwise requires, capitalized terms used in these By-Laws shall have the same meaning as set forth in the Declaration of Covenants, Conditions, and Restrictions for Wendell Falls recorded by Nash Wendell Falls, LLC in the Office of the Register of Deeds of Wake County, North Carolina (as it may be amended and supplemented, the "**Declaration**"). The term "**majority**," as used in these By-Laws, means those votes, Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

Article II Membership: Meetings, Quorum, Voting, Proxies

2.1. Membership.

The Association initially shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration, the rights of which shall vary by class to the extent provided in the Articles of Incorporation, the Declaration, and/or these By-Laws. The Declarant, by recording of the Declaration, and each Owner of a Unit, by accepting record title to the Unit or recordation of a contract of sale, is deemed to consent to membership in the Association. Membership shall be resigned or transferred only upon transfer of title to the Unit as provided in the Declaration. The provisions of the Declaration pertaining to membership and the designations, qualifications, rights, privileges and obligations of each class of membership are incorporated by this reference.

2.2. Place of Meetings.

Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate.

2.3. Annual and Regular Meetings.

The first meeting of the Association, whether a regular or special meeting, shall be held within one year after the date of incorporation of the Association. The Board shall schedule subsequent regular annual meetings to occur during the fourth quarter of the Association's fiscal year, on such date and at such time and place as the Board shall determine. In the Board's discretion, additional regular meetings of the membership may be held in accordance with a schedule for regular meetings published by the Board.

2.4. Special Meetings.

The President or any two members of the Board may call special meetings of the membership. In addition, the President or Secretary shall call a special meeting if so directed by Board resolution or upon receipt of a petition, signed and dated by Members representing at least 10% of all votes entitled to be cast on any issue proposed to be considered, requesting that a special meeting be called and stating the purpose thereof. Notice of such meeting shall be given within 15 days after receipt of any such petition and shall call for such meeting to be held within 30 days after the date of such notice. If the President or Secretary fail to comply with this requirement, then any Owner who signed the petition may call such meeting by giving notice to the Owner of each Unit in accordance with Section 2.5 and Section 9.5.

2.5. Notice of Meetings.

(a) At least 10 days (or at least 30 days if notice is mailed by other than first class, registered or certified mail) but not more than 60 days before any membership meeting, the President, the Secretary, or the officers or other persons calling the meeting shall deliver or cause to be delivered to each Member a written notice stating the place, day, and hour of the meeting and the items on the agenda for such meeting, including a description of the general nature of any proposed amendment to the Declaration or By-Laws, any proposed budget changes, any proposal to remove a director, and any other matter to be put to a vote of the members. If proxies are permitted, the notice shall also state the procedures for appointing proxies. If the meeting is to be held solely by electronic communications or if participation in the meeting is permitted by electronic communications, as described in Section 2.11 below, the notice shall state the form of communications system to be used for the meeting and the means of accessing the communications system. No business shall be transacted at a special meeting except as stated in the notice. Such notice shall be delivered by such means as permitted under Section 9.5.

(b) The Board may set a record date for determining who is entitled to receive notice of a meeting, which shall be no earlier than 70 days before the meeting date. If no record date is fixed by the Board, Members as of the close of business on the business day preceding the day on which notice is given or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting and any person who is a Member on the date of such meeting shall be entitled to vote on any matter coming before the Members for a vote. If a record date is set, the Association shall prepare an alphabetical list of the names of all Members entitled to notice of the meeting, showing the address and number of votes each member is entitled to cast, and shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. Beginning two business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, the list of members shall be available at the Association's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held, for inspection by any Member for the purpose of communication with other Members concerning the meeting. The Association shall make the list of Members available at the meeting and any Member, personally or by or with his representatives, is entitled to inspect the list at any time during the meeting or any adjournment thereof.

2.6. Waiver of Notice.

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting and such waiver shall be filed with the minutes of the meeting in the Association's records. Attendance at a meeting by a Member or the Member's proxy shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless the Member or the Member's proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings.

If any meeting of the Members cannot be held because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time no fewer than 5 nor more than 30 days from the scheduled date of the original meeting. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the meeting when originally called, or if for any reason a new date is fixed for reconvening the meeting or a new record date is set after adjournment, the Board shall provide notice of the time and place for reconvening the meeting in the manner prescribed for regular meetings in Section 2.5(a).

Members or their proxies present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of a sufficient number of Members to leave less than a quorum; however, at least a majority of the votes required to constitute a quorum, or such larger percentage as may be required under the Declaration, these By-Laws, or applicable law for specific actions, must approve any action taken. Provisions of the Declaration regarding voting by co-Owners are incorporated herein by this reference.

2.8. Voting.

Members shall have such voting rights as are set forth in the Declaration, which provisions are specifically incorporated by this reference. To the extent permitted by North Carolina law, a membership vote on any matter may be conducted at a meeting or by ballot cast by mail, facsimile transmission, or electronic message as provided in Section 2.12, or by any combination of those methods, as the Board determines appropriate. The Board shall establish voting procedures to provide reasonable assurance that the person casting the vote is the Member or the Member's proxy appointed pursuant to Section 2.9.

2.9. Proxies.

Members may vote in person or by proxy, subject to the limitations of North Carolina law and subject to any specific provision to the contrary in the Declaration or these By-Laws. Every proxy shall be in writing, shall identify the Unit for which it is given, and shall be signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. The Board may, in its discretion, accept proxies filed in person, by mail, by facsimile transmission, or electronically, provided they are signed and the Board has no reason to question the validity of the proxy. The Association shall have no obligation to recognize any proxy that is not actually received prior to the deadline established by the Board for delivery of proxies (which deadline may be earlier for proxies sent via mail, facsimile or electronic transmission). Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable unless otherwise specifically stated in the proxy and coupled with an interest which has not been extinguished. A proxy shall automatically terminate upon: (a) transfer of title to any Unit for which it was given; (b) receipt by the Secretary of written notice of revocation of a revocable proxy or of the death or judicially declared incompetence of the Member who signed it; (c) attendance and voting by the Member at the meeting; or (c) 11 months from the date of the proxy, unless a different period is specified in the proxy, in which case the period specified in the proxy shall control, subject to termination due to other events specified in this paragraph.

2.10. Quorum.

Except as otherwise provided in these By-Laws or the Declaration, the presence, in person or by proxy, of persons entitled to cast 20% of the total Class "A" votes in the Association shall constitute a quorum at all meetings of the Association, and the casting of ballots representing at least 20% of the total Class "A" votes in the Association shall constitute a quorum for any membership vote conducted by means other than at a meeting; provided, if a quorum is not represented at any meeting when originally called, then the quorum for any subsequent attempt to convene such meeting shall be reduced to 10% of the total Class "A" votes in the Association. During the Class "B" Control Period and thereafter as long as there is a Class "B" Membership, the presence of a representative of the Declarant shall also be necessary to establish a quorum.

2.11. Conduct of Meetings.

The President shall preside over all meetings of the Association. The Secretary shall ensure that minutes of the meetings are prepared, reflecting all resolutions adopted and all other transactions occurring at such meetings. The minutes shall be kept with the Association's books and records.

The Association may hold membership meetings and/or allow Members or their proxies to participate in any membership meeting by conference telephone or similar communications equipment or another suitable electronic communications system, including videoconferencing technology or the Internet, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting. If voting is to take place at the meeting, the Association must implement measures to verify that every Member and proxy voting at the meeting by means of remote communication is sufficiently identified.

2.12. Action Without a Meeting; Voting by Written or Electronic Ballot.

(a) Any action that the North Carolina Nonprofit Corporation Act requires or permits to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if all Members entitled to vote on such matter sign and submit a written consent or consents specifically authorizing the proposed action. Such consents shall be signed by the Member (or, if the Member is not an individual, by an authorized signatory of the Member), dated, and delivered to the Association within 60 days after receipt of the earliest dated consent. Such consents shall be filed with the Association's minutes and shall have the same force and effect as a vote of the Members at a meeting. Written notice of any action taken pursuant to this section shall be sent to all Members and such action shall be effective 10 days after such notice is sent.

(b) Alternatively, any action that may be taken at a meeting of the Members may be taken without a meeting if (i) the Association delivers a written or electronic ballot to every Member entitled to vote on the action, setting forth the proposed action and providing an opportunity to approve or disapprove the proposed action; and (ii) the number of votes cast by written or electronic ballot equals or exceeds the quorum required for a meeting to consider such action; and (iii) the number of votes cast in favor of the proposed action equals or exceeds the number of votes that would be required to approve the action at a meeting if the total number of votes cast at such meeting were the same as the number of votes cast by written or electronic ballot.

(c) Voting instructions or solicitation materials in connection with any vote for which ballots are permitted to be cast outside of a meeting must provide instructions for casting the ballot or returning the consent in order to be counted, indicate the number of responses needed to satisfy the quorum requirement, the percentage of votes necessary to approve any action other than election of directors, a date and time within 60 days thereafter by which the ballot must be cast or consent returned in order to be counted, which deadline shall be not more than 60 days. A written or electronic ballot or signed consent, once cast or received by the Association, may not be revoked. The Board shall notify the Members of the results of any vote conducted pursuant to this Section 2.12 within 10 days after the expiration of the voting period. A written ballot or written consent may be submitted to the Association by electronic mail transmission, provided that such ballot is accompanied by information indicating that the Member, Member's agent or Member's attorney-in-fact authorized its electronic transmission. Such consents and ballots (or in the case of electronic balloting, a written record of the results of the balloting) shall be filed with the minutes of the membership and shall have the same force and effect as a vote of the Members at a meeting.

(d) Whenever the governing documents permit action to be taken by affirmative vote or written consent, a written consent or a written or electronic ballot received pursuant to either subsection (a) or subsection (b) above shall constitute written consent for purposes of such provision.

(e) Nothing in this Section shall authorize action without the approval of such persons or entities whose approval is specifically required for such action under the Governing Documents.

Article III Board of Directors: Selection, Meetings, Powers

A. Composition and Selection.

3.1. Governing Body; Qualifications.

The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one vote. Except with respect to directors appointed by the Declarant, directors shall be Owners or residents of Units. A "resident" shall be any natural person 18 years of age or older whose principal residence is a Unit. No more than one eligible person from any Unit may serve on the Board at any time. If an Owner is a legal entity, any officer, director, or partner, or other representative designated in writing by the Owner, shall be eligible to serve as a director unless the Owner otherwise specifies by written notice to the Association; provided, no Owner may have more than one such representative serving on the Board at a time, except in the case of directors appointed by the Declarant.

3.2. Number of Directors.

The Board shall consist of three to five directors, as provided in Section 3.3.

3.3. Selection of Directors; Term of Office.

(a) Initial Board. The initial Board shall consist of the three or four directors appointed by the Declarant, who shall serve until their successors are appointed or elected as provided in this Section 3.3. The Board shall automatically increase to five persons as necessary to accommodate the election of directors as provided in subsection (b) of this Section. The Board may, by majority vote, increase the number of directors earlier than required under subsection (b) but there shall be a maximum of five directors at any time.

(b) Directors During Class "B" Control Period. Except as otherwise provided in this Section 3.3(b), the Class "B" Member shall be entitled to appoint, remove and replace the members of the Board in its sole discretion until termination of the Class "B" Control Period. During such period, the Class "A" Members shall be entitled to elect a minority of the total number of directors according to the following schedule:

(i) Not later than the next annual meeting after the time that Class "A" Members other than Builders own 40% of the maximum number of Units permitted by applicable zoning for the property specifically described in Exhibits "A" and "B" to the Declaration ("**Permitted Units**"), or whenever the Class "B" Member earlier determines, the President shall call for an election by which the Class "A" Members shall be entitled to elect one director. The remaining three or four directors shall be appointees of the Class "B" Member. The director elected by the Class "A" Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of one year or until the happening of the event described in subsection (b)(ii) below, whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b)(ii), a successor shall be elected for a like term.

(ii) Not later than the next annual meeting after the time that Class "A" Members other than Builders own 60% of the Permitted Units, or whenever the Class "B" Member earlier determines, the President shall call for an election by which the Class "A" Members shall be entitled to elect two directors. The remaining three directors shall be appointees of the Class "B" Member. Directors elected by the Class "A" Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of one year or until the happening of the event described in subsection (c)(i) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c)(i) below, successors shall be elected for a like term.

(c) Directors After the Class "B" Control Period.

(i) Not later than 90 days after termination of the Class "B" Control Period, the President shall call for an election by which the Class "A" Members shall be entitled to elect three directors. Two directors shall serve a term expiring at the second annual meeting following the six-month anniversary of their election and one director shall serve a term expiring at the first annual meeting following the six-month anniversary of their election, as such directors determine among themselves at the time of their election.

(ii) The Declarant shall be entitled to appoint, remove, and replace two directors until termination of the Development and Sale Period, at which time the term of the directors appointed by the Declarant shall expire and the remaining directors shall be entitled to appoint successors to fill the vacancies until the next annual meeting, at which time the Class "A" Members shall elect a successor to serve a term of two years.

(iii) Upon expiration of the term of office of each director elected by the Class "A" Members, Class "A" Members shall be entitled to elect a successor to serve a term of two years. Directors elected by the Class "A" Members shall hold office until their respective successors have been elected. Directors may be elected to serve any number of consecutive terms.

Diagram 3.1 illustrates the concept of transition of control of the Board of Directors during and after the Class "B" Control Period.

TRANSITION OF CONTROL OF BOARD OF DIRECTORS				
Initial Board	40% of Permitted Units Conveyed	60% of Permitted Units Conveyed	90 Days After Termination of Class "B" Control Period	Termination of Development and Sale Period
Class B	Class A	Class A	Class A	Class A
Class B	Class B	Class A	Class A	Class A
Class B	Class B	Class B	Class A	Class A
	Class B	Class B	Class B	Class A
		Class B	Class B	Class A

Diagram 3.1 Transition of Control of Board

3.4. Nomination and Election Procedures.

(a) Nomination of Candidates. At least 30 days prior to any election of directors by the Class "A" Members, the Board shall appoint a Nominating Committee consisting of a chairman, who shall be a member of the Board of Directors, and three or more Class "A" Members (or representatives of Class "A" Members which are legal entities). The members of the Nominating Committee shall serve a term of one year or until their successors are appointed. The names of the members of the Nominating Committee shall be announced in the notice of each election.

In preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Class "A" Members at such election. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates. Nominations shall also be permitted from the floor at any meeting at which an election is held, or by write-in on any ballot. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) Election Procedures. At each election, voting shall be by written or electronic ballot in accordance with Section 2.12(c). Each Class "A" Member may cast all vote(s) assigned to its Unit(s) for each position to be filled by Class "A" votes. Cumulative voting shall be permitted, provided that either the meeting notice states that cumulative voting will take place or the procedures set forth in N.C.G.S. §55A-7-25 are followed. That number of candidates equal to the number of positions to be filled by Class "A" votes receiving the greatest number of votes shall be elected. The Association shall publish the names and addresses of all directors and officers within 30 days after any election of directors.

3.5. Removal of Directors and Vacancies.

Any director elected by Class "A" votes may be removed, with or without cause, by the vote of Members holding a majority of the Class "A" votes. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director by the Class "A" Members, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such director.

Any director elected by Class "A" votes who has three consecutive unexcused absences from Board meetings may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director elected by Class "A" votes, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next election of directors by the Class "A" Members, at which time the Class "A" Members may elect a successor for the remainder of the term.

Declarant, in its capacity as such, shall have no right unilaterally to remove or replace directors elected by the Class "A" Members (but may cast any Class "A" votes it holds for or against the removal of directors), and neither the Class "A" Members or the Board shall have any right to remove or replace directors appointed by the Class "B" Member or the Declarant. The Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by the Declarant.

B. Meetings.

3.6. Organizational Meetings.

The first meeting of the Board shall be held immediately following each annual meeting of the membership.

3.7. Regular Meetings.

Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter.

3.8. Special Meetings.

Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by 20% of the directors then in office.

3.9. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, computer, or other electronic mail, messaging or communication device, with printed confirmation of successful transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or mailing or physical address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or electronic communication shall be delivered or transmitted at least 48 hours before the time set for the meeting.

(b) To the extent practical, the Board shall communicate the date, time, and place of regularly scheduled Board meetings by publication in a community newsletter, on a community website, or by electronic mail or other means reasonably designed to make such information available to the Members.

(c) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10. Telephonic Participation in Meetings; Remote Meetings.

(a) Members of the Board or any committee that the Board appoints may participate in a meeting of the Board or committee by conference telephone, video conference, or similar communications equipment, provided all persons participating in the meeting can hear each other simultaneously.

(b) A meeting of the Board, or of any committee designated by the Board, may be held by means of a "virtual" or remote electronic communications system, including videoconferencing technology or the Internet, but only if (i) each person entitled to participate in the meeting consents to the meeting being held by means of that system; and (ii) the system permits each person participating in the meeting to communicate concurrently with each other participant.

(c) Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

3.11. Quorum of Board; Voting.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration or by North Carolina law.

A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of some directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

Board members may not vote by proxy. Voting may be conducted at a meeting or by written consents without a meeting in accordance with Section 3.14.

3.12. Conduct of Meetings.

The President shall preside over all meetings of the Board and the Secretary shall ensure that minutes are recorded in a minute book and that a record is made of all Board resolutions and all transactions and proceedings occurring at such meetings.

3.13. Open Meetings; Executive Session.

(a) At least once per calendar quarter the Board shall provide Members an opportunity to attend a portion of a Board meeting and speak to the Board about their issues and concerns. The Board may place reasonable restrictions on the number of persons who may speak on each side of an issue and reasonable time restrictions on the persons who speak.

(b) In any Board meeting, upon motion and affirmative vote of the Board, the Board may adjourn and reconvene in executive session, restricting attendance to directors and such other persons as the Board may specifically invite, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, and such other matters as the North Carolina Nonprofit Corporation Act may specifically authorize.

3.14. Action Without a Formal Meeting.

Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if all of the directors sign a written consent or consents setting forth the action so taken. Such consent(s) shall have the same force and effect as a unanimous vote at a meeting. Consents may be filed electronically in accordance with Section 2.12.

C. Powers and Duties.

3.15. Powers.

The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on behalf of the Association all acts and things except those which the Governing Documents or North Carolina law require to be done and exercised exclusively by the membership. Board determinations as to the meaning, scope, and application of Governing Document provisions shall be upheld and enforced so long as such determinations are reasonable.

3.16. Duties.

Duties of the Board shall include, without limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses; and

(b) levying and collecting such assessments from the Owners; and

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard; and

(d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties; and

(e) opening bank accounts on the Association's behalf and designating the authorized signatories;

(f) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's best judgment, in depositories other than banks; and

(g) making and amending Rules in accordance with the Declaration; and

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws; and

(i) determining when action to enforce the Governing Documents is appropriate and the nature of any sanctions to be imposed, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in Section 7.5(c) of the Declaration; and

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate; and

(k) paying the cost of all services rendered to the Association; and

(l) keeping books with detailed accounts of the Association's receipts and expenditures; and

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 9.4; and

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of Wendell Falls; and

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by North Carolina law, the Articles and these By-Laws,

(p) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration; and

(q) fulfilling its responsibilities under any Covenant to Share Costs.

Article IV Officers

4.1. Officers.

Officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. One person may hold two or more offices, except that the offices of President and Secretary shall be held by different persons.

4.2. Election and Term of Office.

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected. The Association shall give or publish notice to the Members of the names and addresses of all officers within 30 days after any election of directors or any change in officers of the Association.

4.3. Resignation, Removal and Filling of Vacancies.

(a) Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective

(b) The Board may remove any officer whenever in its judgment the best interests of the Association will be served.

(c) The Board may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Powers and Duties.

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the chief executive officer of the Association. The Secretary shall be responsible for preparation of minutes of the directors' and members' meetings and for authenticating records of the Association. The Treasurer shall have primary responsibility for preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Article V Committees

5.1. General.

The Board may appoint such other committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. Covenants Committee.

In addition to any other committees that the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than five Members who are neither officers nor directors of the Association, nor the spouse, parent, sibling, or child of any officer, director or employee. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article VIII of these By-Laws. The Covenants Committee shall have no responsibility for seeking out violations of the Governing Documents.

5.3. Service Area Committees.

In addition to any other committees appointed as provided above, each Service Area which has no formal organizational structure or association may elect a Service Area Committee to determine the nature and extent of services, if any, to be provided to the Service Area by the Association in addition to those dictated by any Supplemental Declaration and those provided to all Members of the Association in accordance with the Declaration. A Service Area Committee may advise the Board on any other issue but shall not have the authority to bind the Board. Any Service Area Committee shall consist of three Members, provided, if approved by the vote of at least 51% of the Owners of Units within the Service Area, the number may be increased to five.

The members of any Service Area Committee shall be elected for a term of one year or until their successors are elected. Any director elected to the Board from a Service Area shall be an ex officio member of the Service Area Committee. The members of the committee shall elect a chairperson from among themselves, who shall preside at its meetings and shall be responsible for transmitting any and all communications to the Board.

In the conduct of its duties and responsibilities, each Service Area Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.9, 3.10, and 3.11. Meetings of a Service Area Committee shall be open to all Owners of Units in the Service Area and their representatives. Members of a Service Area Committee may act by unanimous written consent in lieu of a meeting.

Article VI Standards of Conduct; Liability and Indemnification

6.1 Standards for Directors and Officers.

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under state law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in good faith, in a manner that the director or officer believes to be in, or not opposed to, the best interest of the corporation, and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under the North Carolina Nonprofit Corporation Act.

6.2. Liability.

The officers, directors, and committee members of the Association shall not be liable for any mistake of judgment, negligent or otherwise, or for any action taken or omitted in such capacities, except for their own individual willful or wanton misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

6.3. Indemnification.

Subject to the limitations of North Carolina law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under the North Carolina Nonprofit Corporation Act; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Association; or

(ii) intentional misconduct or knowing violation of the law; or

(iii) an unlawful distribution to members, directors or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6.4. Advancement of Expenses.

In accordance with the procedures and subject to the conditions and limitations set forth in the North Carolina Nonprofit Corporation Act, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

6.5. Board and Officer Training.

The Board may, as a Common Expense, conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. The Board may apply for and maintain, as a Common Expense, membership for the Association, its officers and directors, in the Community Associations Institute or any similar nonprofit organization that provides educational opportunities for community association directors, officers and managers in operation and management of community associations.

6.6. Conflicts of Interest.

Unless otherwise approved by a majority of the other directors, no director may transact business with the Association or any Association contractor during his or her term as director or within two years after the term expires. A director shall promptly disclose to the Board any relationship that the director may have, financial or otherwise, with any contractor doing business or proposing to do business with the Association and any actual or potential conflict of interest affecting the director relative to his or her performance as a director.

Except as provided in Section 7.1, no financial payments or payments in the form of goods or services shall be made to any officer or director, or to any business, business associate, or relative of an officer or director, unless approved by a majority of the directors, excluding any director to whom such payment is proposed to be made or whose business, business associate or relative is proposed to receive such payment.

Nothing herein shall preclude directors appointed by the Declarant from being employed by or otherwise transacting business with the Declarant or its affiliates, or preclude the Declarant from transacting business with the Association or its contractors, notwithstanding the fact that the Board may include directors appointed by the Declarant.

Article VII Management and Accounting

7.1. Compensation of Directors and Officers.

Directors and officers shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association and, during the Development and

Sale Period, the written consent of the Declarant. Any director or officer may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies furnished to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association, provided that such director's or officer's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding any interested director.

7.2. Right of Class "B" Member to Disapprove Actions.

During the Class "B" Control Period and thereafter so long as the Class "B" Membership exists, the Declarant shall have a right to disapprove any action, policy, or program of the Association, the Board, and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of Declarant or Builders under the Declaration or these By-Laws, or interfere with development or construction of any portion of Wendell Falls, or diminish the level of services being provided by the Association. The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein unless and until the requirements of this Section have been met.

(a) Notice. The Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to Board meetings with Section 3.9, and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) Opportunity to be Heard. The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant or its representatives or agents shall make their concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

The Declarant, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, the Board, or the Association. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure or other action required to comply with applicable laws and regulations.

7.3. Managing Agent.

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.16. Declarant or its affiliate may be employed as managing agent or manager.

The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

No remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association. Any financial or other interest that the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board.

7.4. Accounts and Reports.

(a) The following accounting standards shall be followed unless the Board by resolution specifically determines otherwise

(i) cash or accrual accounting, as defined by generally accepted accounting principles, shall be employed; and

(ii) accounting and controls should conform to generally accepted accounting principles; and

(iii) cash accounts of the Association shall not be commingled with any other accounts.

(b) Commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis; and

(ii) a statement reflecting all cash receipts and disbursements for the preceding period; and

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format; and

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution).

(c) An annual report consisting of at least the following shall be made available to all Members within 75 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant; provided, upon a vote of the majority of the Board, or upon the affirmative vote of a majority of the Owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose, the Association shall provide an audited financial statement

7.5. Borrowing.

The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed the greater of $50,000 or 20% of the Association's budgeted gross expenses for that fiscal year. During the Class "B" Control Period, no Mortgage lien shall be placed on any portion of the Common Area without such approval as may be required under Article XVI of the Declaration.

7.6. Right to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts or other owners or residents associations, within and outside Wendell Falls. Any common management agreement shall require the consent of a majority of the total number of directors on the Board.

7.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

Article VIII Enforcement Procedures

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

8.1. Notice and Response.

The Board or its delegate shall serve the alleged violator with written notice, by certified mail, return receipt requested, (a) describing the alleged violation or property damage which is the basis of the proposed sanction or amount due to the Association, as applicable; (b) describing the proposed sanction to be imposed; and (c) informing the alleged violator that he or she has 21 days after receipt of the notice to present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Article 5; and (d) if the alleged violator fails to respond to the notice within the 21-day period, the Board may impose the proposed sanction. If the hearing is to be held before a Covenants Committee, the notice shall also state that the alleged violator has the right to appeal the decision of the Covenants Committee to the Board.

If the alleged violator cures the alleged violation and notifies the Board in writing within such 21-day period the Board may, but shall not be obligated to, waive the sanction. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

Prior to the effectiveness of sanctions imposed pursuant to this Article, proof of proper notice shall be placed in the minutes of the Board or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

8.2. Hearing.

If a hearing is requested within the allotted 21-day period, the hearing shall be held before the Covenants Committee, or if one has not been appointed, then before the Board in executive session within 30 days after receipt of the alleged violator's request. Either the Board or the alleged violator may request a postponement of up to 10 days and such postponement shall be granted. Additional postponements may be granted upon agreement of both the Association and the alleged violator. The Board shall notify the alleged violator at least 10 days prior to the hearing of the time, date, and place of the hearing. At the hearing, the alleged violator shall be afforded a reasonable opportunity to be heard and shall be entitled to make an audio recording of the hearing. The minutes of the meetings of the Board or Covenants Committee, as applicable, shall contain a written statement of the results of the hearing (i.e., the Board's or Committee's decision) and the sanction, if any, to be imposed. Written notice of the decision shall be mailed to the violator within three days after the hearing.

8.3. Appeal.

If a hearing is held before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, a written notice of appeal must be received by the Association's manager, President, or Secretary within 10 days after the date of the Covenants Committee's decision.

Article IX Miscellaneous

9.1. Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

9.2. Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law or the Governing Documents.

9.3. Conflicts.

If there are conflicts among the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

9.4. Books and Records.

(a) Maintenance of Books and Records. The Association shall maintain the following books and records, either in written form or in a form capable of conversion into written form within a reasonable time: appropriate accounting records; minutes of all meetings of the Members and the Board; a record of all actions taken by the Members and the Board without a meeting; a record of all actions taken by any committees appointed by the Board; a membership roster reflecting the name and mailing address of all members, in alphabetical order by class, along with the address of each Unit owned by the Member' and the number of votes allocated to each Member's Unit(s).

The Association shall maintain at its principal office copies of the following documents:

(i) its Articles and By-laws, and all amendments currently in effect;

(ii) Board resolutions relating to the rights, limitations, and obligations of Members;

(iii) the minutes of all Membership meetings records of all actions approved by the Members for the three most recent years;

(iv) all written communications directed to the Members generally during the preceding three years;

(v) copies of the financial statements for the three most recent years;

(vi) a list of the names and business or home addresses of its current directors and officers; and

(vii) its most recent annual report filed with the Secretary of State.

(b) Turnover of Books and Records. Within 60 days after termination of the Class "B" Control Period, the Declarant shall deliver to the Association all property, books and records of the Association in the Declarant's possession

(c) Inspection by Members and Mortgagees. Within five days after receipt of a written request to inspect the Association's books and records the Board shall make available for inspection and copying by any Member, any holder, insurer or guarantor of a first Mortgage on a Unit, or the duly appointed representative of any of the foregoing, at such reasonable time and location as the Board may specify, any of the books and records listed in subsection (a) of this Section and specified in such written request, provided that a Member shall only be entitled to inspect the books and records enumerated in clauses (i) through (vii) of subsection if the Member's demand is made in good faith and for a proper purpose; the member describes with reasonable particularity the purpose and the records the member desires to inspect; and the records are directly connected with this purpose.

(d) Rules for Inspection. The Board shall establish rules with respect to:

(i) notice to be given to the custodian of the records; and

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing documents requested.

(e) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties owned or controlled by the Association. A director's right of inspection includes the right to make a copy of relevant documents at the Association's expense

9.5. Notices.

(a) Form of Notice and Method of Delivery. Except as otherwise provided in the Declaration or these By-Laws or by law, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has given its prior written authorization to use such method of delivery, by telephone facsimile or electronic mail with written confirmation of transmission.

(b) Delivery Address. Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member, at the address, telephone facsimile number, or e-mail address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member;

(ii) if to the Association, the Board, or a committee of either, at the address, telephone facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the Members pursuant to this Section; or

(iii) if to the Declarant, at the principal address of the Declarant as it appears on the Secretary of State's records, or at such other address as the Declarant shall designate by notice in writing to the Association pursuant to this Section.

(c) Effective Date. Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery;

(iii) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

9.6. Amendment.

(a) By Board. Until termination of the Class "B" Control Period, the Board of Directors may amend these By-Laws for any reason upon majority vote of the Board and the written consent of the Declarant. Thereafter, the Board may unilaterally amend (i) to correct clerical, typographical or technical errors, (ii) to bring any provision into compliance comply with any applicable governmental statute, rule, regulation, or judicial determination; and (iii) to comply with the requirements, standards or guidelines of any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans; or (iv) to satisfy the requirements of any local, state, or federal governmental agency.

(b) By Members Generally. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members or their proxies representing 67% of the total Class "A" votes in the Association and, during the Development and Sale Period, the written consent of the Declarant. Any such amendment shall be subject to the veto right set forth in subsection (c), if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon Recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its Recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

WAKE COUNTY
NORTH CAROLINA

Please retain yellow trailer page

It is part of the recorded document and must be submitted with the original for re-recording.

Laura M. Riddick
Register of Deeds
Wake County Justice Center
300 South Salisbury Street, Suite 1700
Raleigh, NC 27601

☐ New Time Stamp ☐ $25 Non-Standard Fee

☐ Additional Document Fee ☐ Additional Reference Fee

This Customer Group

____# of Time Stamps Needed

This Document

112 # of Pages LG

BK015863PG02615

WAKE COUNTY, NC 211
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
12/11/2014 16:18:33
STATE OF NC REAL ESTATE
EXCISE TAX: $955.00
BOOK:015863 PAGE:02615 - 02632

This instrument prepared by:
Bradshaw & Robinson, LLP
Post Office Box 607
Pittsboro, NC 27312

Excise Tax: $955.00

REAL ESTATE ID NOS. 0425308, 0425309, 0425310, 0425383, 0425384, 0425385, 0425388, 0425390 and 0425399

Mail after recording to: Grantee

Brief description for the Index: Lots 110, 111 and 112, SF-1, Section 1 and Lots 120, 121, 122, 125, 127 and 136, SF-2, Section 2, Wendell Falls

NORTH CAROLINA SPECIAL WARRANTY DEED

STATE OF NORTH CAROLINA

COUNTY OF WAKE

THIS DEED made this 11th day of December, 2014, by and between:

NASH WENDELL FALLS, LLC,
a Delaware limited liability company
6133 Taylor Road
Wendell, North Carolina 27591
("Grantor")

and

GARMAN HOMES, LLC,
a North Carolina limited liability company
305 Harkness Circle
Durham, North Carolina 27705
("Grantee")

The designation, Grantor and Grantee as used herein, shall include said parties, their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that Grantor, for valuable consideration paid by Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto Grantee in fee simple, all that certain lot or parcel of land situated in Wake County, North Carolina, and more particularly described as follows (the "**Property**"):

BEING ALL of Lots numbered 110, 111 and 112, as shown and described upon the plat entitled, "*Final Subdivision, Easement and Right-of-Way Dedication Plat of Wendell Falls Development SF-1, Section 1*," dated October 27, 2014 by McKim & Creed, and recorded in Book of Maps 2014, at Pages 1563 through 1567, inclusive, Wake County Registry, reference to which is hereby made for greater certainty of description (collectively referred to, together with the plat references for the other lots conveyed herein, as the "Final Plat").

BEING ALL of Lots numbered 120, 121, 122, 125, 127 and 136, as shown and described upon the plat entitled, "*Final Subdivision, Easement and Right of Way Dedication Plat of Wendell Falls Development, SF-2, Section 2*," dated October 28, 2014 by McKim & Creed, and recorded in Book of Maps 2014, at Pages 1595 and 1596, Wake County Registry, reference to which is hereby made for greater certainty of description (collectively referred to, together with the plat references for the other lots conveyed herein, as the "Final Plat").

The Property described herein does not include the primary residence of the Grantor.

TO HAVE AND TO HOLD, the aforesaid Property and all privileges and appurtenances thereto belonging to Grantee in fee simple.

And Grantor covenants with Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, except for the exceptions hereinafter stated; provided, Grantor does not warrant the area of such parcels described above to be accurate. Title to the Property is conveyed subject to the following exceptions:

1. All restrictions and general notes contained on the Final Plat referenced above;
2. The Declaration of Covenants, Conditions, and Restrictions for Wendell Falls recorded in the Wake County, North Carolina Office of the Register of Deeds on November 10, 2014 in Book 15834, Page 1690, et seq., as it may be supplemented and amended (the "**Declaration**"), together with any subsequent declarations contemplated or permitted thereunder by any one or more Additional Associations (as defined in the Declaration);
3. The covenants, conditions and restrictions set forth in Exhibit 'A' attached hereto and incorporated by this reference;
4. The matters set forth in Exhibit 'B' attached hereto and incorporated by this reference, and any other easements, rights of way, limitations, conditions, covenants, restrictions and other matters of record;
5. Rights of upper and lower riparian owners in and to the waters of streams, creeks or branches crossing or adjoining the Property, and the natural flow thereof, free from diminution or pollution;
6. Matters that would be disclosed by an accurate survey of the Property; and
7. Ad valorem property taxes not yet due and payable.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its company name the day and year first above written.

NASH WENDELL FALLS, LLC,
a Delaware limited liability company

By: ______________________ (SEAL)
Laurie Ford, Vice President

STATE OF NORTH CAROLINA

COUNTY OF Durham

I, Megan E. Lighthall, a Notary Public of Durham County and State aforesaid do hereby certify that Laurie Ford, Vice President for NASH WENDELL FALLS, LLC, a Delaware limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company for the purposes therein expressed.

Witness my hand and official stamp or seal, this 9th day of December, 2014.

Megan E. Lighthall
Notary Public

My commission expires: 09/01/19

SEAL-STAMP

MEGAN E. LIGHTHALL
NOTARY
PUBLIC
DURHAM COUNTY, NC

Exhibit "A" to Deed

Agreement of Covenants, Conditions and Restrictions

This Agreement is made and entered into this 11th day of December, 2014, by and between the undersigned Grantor and Grantee.

For and in consideration of the conveyance of the Property by Grantor to Grantee and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and Grantee covenant and agree as follows (if the Property consists of more than one lot as shown on the Final Plat referenced in the foregoing deed, the term "Property," as used below, shall refer to each lot within the Property conveyed hereby):

1. **Obligation to Improve Property**. Grantee covenants and agrees to begin construction of a single-family dwelling on the Property within three hundred and sixty-five (365) days after the date hereof and to complete construction of a dwelling and all related improvements on the Property in accordance with plans approved by Grantor, its successors or assigns, within twelve (12) months after commencing construction, subject to such extensions, if any, as Grantor may give, in its sole discretion; provided, if Grantee or its predecessors in title have agreed in writing with Grantor to a shorter period for commencement or completion of construction on the Property, such shorter period shall apply. If construction on the Property shall not have been commenced in good faith by Grantee within the time period required hereunder, then at any time after the expiration of such period and prior to Grantee's good faith commencement of construction on the Property, Grantor shall have the right, by delivering to Grantee or the then owner of the Property written notice of its intent to repurchase, to require the conveyance of the Property to Grantor or any third party designated by Grantor by special warranty deed (subject to the same exceptions to title set forth in this deed of conveyance to Grantee and subject to standard and customary easements that do not hinder the use of, development of and/or construction of improvements upon the Property or any portion thereof) for a total consideration equal to the purchase price paid by Grantee to Grantor for the Property. The Property shall be conveyed to Grantor within thirty (30) days after the date of receipt of Grantor's notice and, upon conveyance, Grantor shall pay the transferor the repurchase price in funds readily available in Wake County, North Carolina. The transferor shall pay all closing costs. Ad valorem taxes and assessments shall be prorated as of 12:01 a.m. on the date of such reconveyance. If the title proposed to be conveyed to Grantor is subject to any lien, encumbrance or other defect which is not permitted hereunder, Grantor, in addition to all other rights and remedies which it may have at law or in equity, may remove any such lien, encumbrance or defect and deduct all costs and expenses incurred by Grantor (including, but not limited to, attorney's fees) from the amount of the purchase price otherwise payable as provided herein.

At the closing of the repurchase, the transferor shall execute and deliver to Grantor: (i) the special warranty deed referenced above; (ii) a non-foreign (FIRPTA) affidavit; (iii) an owner's no-lien affidavit; (iv) an affidavit representing and warranting to Seller that there has been no change in the environmental condition of the Property during Grantee's or any authorized successor's ownership thereof, and agreeing to indemnify, defend (with counsel acceptable to Grantor) and hold Grantor and its affiliates harmless from and against any and all claims, losses, liabilities, costs, damages, causes of action, demands, and proceedings arising out of, or directly or indirectly related to, any condition of the Property which is not in compliance with this provision; (v) a counterpart closing statement in form approved by Grantor; (vi) appropriate evidence to establish the authority of the transferor to enter into and close the transaction; (vii) in the event that any impact fee credits were assigned by Grantor to Grantee as to such Property, a re-assignment of such impact fee credits to Grantor executed by the tranferor; and (viii) any other documents reasonably necessary or appropriate to complete and evidence the transaction to take place at such repurchase closing.

Upon the good faith commencement of construction on the Property prior to written notice from Grantor of Grantor's intent to exercise its right to repurchase as provided herein, or three years from the date of the original conveyance of the Property by Grantor to Grantee, the right to repurchase herein provided for shall terminate. Construction shall be deemed to have commenced only upon (i) approval of plans for the dwelling in accordance with the Declaration of Covenants, Conditions and Restrictions for Wendell Falls recorded in the Wake County, North Carolina Office of the Register of Deeds on November 10, 2014 in Deed Book 15834, Page 1690, *et seq.*, as it may be supplemented and amended; and (ii) pouring of the foundation for a home on the Property. This right to repurchase shall be subordinate to the lien of any first priority mortgage or deed of trust securing a bona fide construction loan on the Property, all of the proceeds of which are used solely for the purchase or development of the Property and the construction and retail sale of a dwelling constructed on the Property, but any such lien shall be satisfied by Builder in connection with any repurchase of the Builder Lot hereunder.

2. **Right of First Refusal.**

(a) Until the good faith commencement of construction of a single family dwelling on the Property as described in Paragraph 1 above, neither Grantee nor any "Authorized Successor", as defined in subparagraph (d) below, may transfer or convey the Property to any third party without first offering to sell the Property to Grantor for the lesser of (i) the purchase price that Grantee paid to Grantor for the Property ("**Net Purchase Price**"), or (ii) the then-current fair market value of the Property, as determined by an appraisal prepared by an appraiser designated by Grantor, whose determination shall be final and binding on Grantee and Grantor (the lesser of (i) or (ii) in this subsection (a) is hereinafter referred to as the "**Repurchase Price**"). Grantee hereby grants to Grantor an exclusive option to purchase the Property on the terms and conditions set forth in this Paragraph 2. This Paragraph 2 shall not restrict Grantee's right to enter into a binding contract for the sale of the Property, provided (i) such contract obligates Grantee to construct a home on the Property; and (ii) such contract provides that the purchaser may not convey the Property to any third party until construction is completed in accordance with the approved Plans without giving Grantor the right of first refusal to repurchase the Property on the terms and conditions set forth herein.

(b) If Grantee or any Authorized Successor desires to sell or otherwise transfer the Property under circumstances triggering Grantor's rights hereunder, the party proposing to transfer shall deliver to Grantor notice of such intent by certified mail, return receipt requested, addressed to Grantor at 6133 Taylor Road, Wendell Falls, NC 27591, unless Grantor has given notice of a different address, in which case it shall be sent to such different address. Within ten (10) days after receipt of such notice from Grantee, Grantor may order an appraisal, the cost of which shall be borne by Grantee. Grantor shall have ten (10) days after receipt of such appraisal to elect whether to exercise its option to purchase the Property and, if it elects to proceed with the purchase, to deliver written notice of such election to Grantee or its Authorized Successor.

(c) If Grantor elects to exercise its option to repurchase hereunder, Grantee or its Authorized Successor shall convey the Property to Grantor by special warranty deed (subject to the same exceptions to title set forth in this deed of conveyance to Grantee and subject to standard and customary easements that do not hinder the use of, development of and/or the construction of improvements upon such undeveloped property or any portion thereof) within ten (10) days after the date of receipt of Grantor's notice of election (the exact date, time, and location of closing of the repurchase to be selected by Grantor), and Grantee shall pay the cost of obtaining a title report and all other closing costs. Grantor shall pay the Repurchase Price in funds immediately available in Wake County, North Carolina. If the title proposed to be conveyed is subject to any lien, encumbrance or defect which is not permitted in this Paragraph 2, Grantor, in addition to all other rights and remedies which it may have at law or in equity, may remove any such lien, encumbrance or defect and deduct all costs and expenses incurred by Grantor (including, but not limited to, attorney's fees) from the amount of the Repurchase Price otherwise payable as provided in this Paragraph 2. Ad valorem taxes and assessments shall be prorated as of the date of such reconveyance.

At the closing of the repurchase, the transferor shall execute and deliver to Grantor: (i) the special warranty deed referenced above; (ii) a non-foreign (FIRPTA) affidavit; (iii) an owner's no-lien affidavit; (iv) an affidavit representing and warranting to Seller that there has been no change in the environmental condition of the Property during Grantee's or any authorized successor's ownership thereof, and agreeing to indemnify, defend (with counsel acceptable to Grantor) and hold Grantor and its affiliates harmless from and against any and all claims, losses, liabilities, costs, damages, causes of action, demands, and proceedings arising out of, or directly or indirectly related to, any condition of the Property which is not in compliance with this provision; (v) a counterpart closing statement in form approved by Grantor; (vi) appropriate evidence to establish the authority of the transferor to enter into and close the transaction; (vii) in the event that any impact fee credits were assigned by Grantor to Grantee as to such Property, a re-assignment of such impact fee credits to Grantor executed by the tranferor; and (viii) any other documents reasonably necessary or appropriate to complete and evidence the transaction to take place at such repurchase closing.

Notwithstanding the above, Grantor retains the right, at any time prior to closing of such repurchase, to cancel such repurchase without explanation or liability to Grantee.

(d) In the event that Grantor does not exercise its option to purchase the Property, or cancels the repurchase prior to closing of the same:

(i) Grantee may thereafter sell the Property, prior to good faith commencement of construction of a home thereon, only to a homebuilder who is purchasing for the purpose of constructing a home on the Property for resale, and who meets Grantor's reasonable criteria with respect to financial wherewithal, homebuilding experience, compatibility of product line, intended development, and reputation, and who agrees to assume Grantee's obligations under that certain Wendell Falls Lot Purchase and Builder Participation Agreement dated October 27, 2014, between Grantor and Grantee with respect to such Property ("**Authorized Successor**"); and

(ii) Upon request of Grantee or the Authorized Successor, Grantor shall execute and deliver a written waiver of its option in recordable form to permit such sale to proceed.

In the event of any such sale, Grantee agrees to pay to Grantor the total consideration Grantee receives from such sale in excess of the sum of (i) the Net Purchase Price, plus (ii) the documented direct costs associated with Grantee's ownership of such Property, plus (iii) interest on such Net Purchase Price and costs equal to ten percent (10%) per annum from the date Grantee took title (such excess being referred to herein as the "**Excess Consideration**"), and Grantee shall instruct the closing agent for such transaction to remit any such Excess Consideration to Grantor immediately upon closing of such sale to the Authorized Successor.

(e) Upon good faith commencement of construction on the Property (as described in Paragraph 1 above), or three (3) years from the date of this conveyance, the right to repurchase herein provided for shall automatically terminate. If not earlier released in such manner, the option to repurchase shall automatically terminate upon issuance of a certificate of occupancy for a home on such Builder Lot.

3. **Release**. Upon written request of Grantee or its successor-in-title at any time after satisfaction of any of the foregoing covenants and restrictions, Grantor shall execute and deliver to Grantee a release of such covenant in recordable form.

4. **Amendment**. This Agreement may be amended only by a written instrument signed by Grantor, its successors or assigns, and by Grantee, its successors, assigns, or successor-in-title to the Property, referencing this instrument and recorded in the Office of the Register of Deeds for Wake County, North Carolina.

IN WITNESS WHEREOF, the parties have set their hands and seals as of the 11th day of December, 2014.

GRANTOR: **NASH WENDELL FALLS, LLC**, a Delaware limited liability company

By: [signature]

Name: Laurie M. Ford

Title: Vice President

STATE OF NORTH CAROLINA

COUNTY OF Durham

I, Megan E. Lighthall, a Notary Public of Durham County and State aforesaid do hereby certify that Laurie Ford, Vice President for NASH WENDELL FALLS, LLC, a Delaware limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company for the purposes therein expressed.

Witness my hand and official stamp or seal, this 9th day of December, 2014.

Megan E. Lighthall
Notary Public

My commission expires: 09/01/19

SEAL-STAMP

MEGAN E. LIGHTHALL
NOTARY
PUBLIC
DURHAM COUNTY, NC

[signatures continued on next page]

GRANTEE: **GARMAN HOMES, LLC**, a North Carolina limited liability company

By: ______________________

Name: James H. Garman

Title: Mgr.

STATE OF NORTH CAROLINA

COUNTY OF Durham

I, William A. Anderson III, a Notary Public in and for Durham County, North Carolina, certify that James H. Garman personally came before me this day and acknowledged that s/he is Manager of Garman Homes, LLC, a North Carolina limited liability company, and that by authority duly given and as a fact of such entity, the foregoing instrument was signed in its name by its Manager.

Witness my hand and official seal this 11th day of December, 2014.

____
Notary Public

My Commission Expires: 2/2/19, 20___

SEAL-STAMP

WILLIAM A. ANDERSON III
NOTARY
PUBLIC
DURHAM COUNTY, NC

Exhibit "B" to Deed

Permitted Exceptions

1. That certain Declaration of Builder Covenants attached as Exhibit "B-1" and incorporated by this reference.

Exhibit "B-1" to Deed

STATE OF NORTH CAROLINA

COUNTY OF WAKE

DECLARATION OF BUILDER COVENANTS

THIS DECLARATION OF BUILDER COVENANTS (**"Declaration"**) is made effective as of December 11, 2014, by **NASH Wendell Falls, LLC**, a Delaware limited liability company, on behalf of itself and its successors and assigns (**"Declarant"**), and is joined in by **Garman Homes, LLC**, a North Carolina limited liability company, on behalf of itself, its successors, assigns, and successors-in-title to the Builder Lots described herein (**"Builder"**), with reference to the following facts:

A. The Declarant is the developer of the planned community located in Town of Wendell, County of Wake, North Carolina known as Wendell Falls (the **"Development"**). The Declarant executed and filed that that certain Declaration of Covenants, Conditions, and Restrictions for Wendell Falls recorded November 10, 2014 in Deed Book 15834, Page 1690, *et seq.*, in the Office of the Register of Deeds of Wake County, North Carolina (as it may be amended and supplemented, the **"Community Declaration"**).

B. Declarant and Builder are parties to that certain Wendell Falls Lot Purchase and Builder Participation Agreement dated October 27, 2014, as same may have been and may be amended from time to time (the **"Builder Agreement"**).

C. Declarant is the owner of that certain real property located within the Development which is more particularly described on **Exhibit "A"** attached hereto and made a part hereof (the **"Property"**), which Declarant has agreed to convey to Builder pursuant to the terms of the Builder Agreement.

D. The Builder Agreement contemplates that certain commitments, covenants and obligations of Builder set forth therein (**"Builder Covenants"**) shall (i) survive the closing of the purchase and sale of the Property pursuant to the Builder Agreement and termination of the Builder Agreement, and (ii) be binding upon Builder's successors-in-title to the Property or any platted lot within the Property until issuance of a certificate of occupancy for a dwelling on each such platted lot (hereinafter, a **"Builder Lot"**). The purpose of this Declaration is to set forth and provide public record notice of certain Builder Covenants.

NOW, THEREFORE, Declarant, with the joinder and consent of Builder, hereby declares that each Builder Lot shall be held, conveyed, encumbered, used, occupied and improved subject to the Builder Covenants set forth herein, which shall encumber the title to the Builder Lot and shall be binding upon all persons now having or hereafter acquiring any right, title, or any interest in the Builder Lot, their respective heirs, legal representatives, successors, successors-in-title, and assigns, and shall inure to the benefit of Declarant, its successors and assigns.

1. Approved Builder. Construction of a dwelling and related improvements on each Builder Lot may be performed only by Builder or another home builder who meets the criteria established by, and is approved in writing by, the Developer and agrees to assume the obligations of Builder under the Builder Agreement, as such obligations relate to the Builder Lot.

2. Marketing Fee and Additional Purchase Price.

(a) Marketing Fee. Declarant has, for the purpose of promoting the Development for the benefit of Builder and other builders constructing homes in the Development, developed a marketing program, including advertising, an information center, promotional events, and collateral marketing literature, designed to address a broad range of potential buyer groups, and product segments represented in the Development, in a manner consistent with state and federal fair housing laws. Builder acknowledges that it will benefit from such marketing program and covenants and agrees to pay to Declarant for each Builder Lot a "Marketing Fee" in the amount of 1.5% of the gross sales price of the home and lot package (i.e., the total purchase price paid to Builder by the homebuyer, including all options, extras, upgrades, and lot premiums, but excluding discount points, normal and customary closing costs, and the Marketing Fee due to Declarant hereunder). Builder shall pay the Marketing Fee, less that portion of such fee paid at the closing of the purchase of the Builder Lot from Declarant pursuant to the terms of the Builder Agreement, to Declarant upon the conveyance of the Builder Lot to a third party, whether or not a home has been constructed thereon at the time of such conveyance, unless Declarant elects or otherwise agrees to defer receipt of such payment until a later time. Unless Seller has agreed in writing to defer payment, Builder shall direct the closing agent or title company who closes the sale of the Builder Lot from Builder to a third party to deduct the fee from Builder's proceeds at the closing and pay it directly to Declarant, but failure of the closing agent to do so shall not relieve Builder of the obligation to pay such fee upon demand from Declarant. Builder agrees to provide Declarant with a copy of the HUD-1 Settlement Statement for each such sale. In addition, Builder hereby authorizes Declarant to (i) contact the closing agent prior to closing with a third party in order to obtain the applicable HUD-1 Settlement Statement and confirm that the closing agent has been notified of Builder's payment obligation, and (ii) obtain from the closing agent or Builder's real estate broker or sales agent a copy of the executed contract or closing statement for each home constructed by Builder in the Development. All Marketing Fees paid by Builder shall be fully earned and nonrefundable under any and all circumstances. In the event that Builder fails to timely pay the Marketing Fee (or any portion thereof) to Declarant as set forth above, then in addition to (not in lieu of) all other rights and remedies available to Declarant on account of Builder's non-payment, such Marketing Fee (or portion thereof, as applicable) shall bear interest at the rate of ten percent (10%) per annum from the date due until the date paid, which interest shall be immediately due and payable.

(b) Additional Purchase Price. The Base Purchase Price, as increased from time to time pursuant to subparagraph 5(a) in the Specific Terms of Purchase (Exhibit A to the Builder Agreement), shall be paid at the Closing of each Builder Lot. Thereafter, upon the closing of Builder's sale of any Builder Lot and the home constructed thereon to a third party, Builder shall pay to Seller an additional amount ("Additional Purchase Price") as defined in Paragraph 5(b) of Exhibit A to the Builder Agreement.

3. Erosion Control. Builder agrees to comply with (a) the National Pollution Discharge Elimination System Permit for Storm Water Discharges from Construction Activities, Permit No. NCGO1000 and any substitute for or amendment to that permit (collectively, the "NPDES Permit"), and (b) the erosion, sedimentation, and pollution control plan required by the NPDES Permit, as approved by all appropriate agencies ("Erosion Control Plan") applicable to the Builder Lots and otherwise applicable to Builder's activities in the Development. In the event that Builder fails to comply, Declarant may enter upon the Builder Lots to cure such noncompliance and deduct all costs incurred from the Development Deposit paid by Builder pursuant to the Builder Agreement. Builder agrees to hold harmless Declarant from any cost, claim, damage, fine or expense, including, without limitation, attorney's fees and legal expense, arising out of Builder's failure to comply with the Erosion Control Plan or the NPDES Permit.

4. House Size. The improvements constructed on each Builder Lot shall comply with the applicable minimum and maximum finished area requirements for such Builder Lot set forth on Exhibit "A" to the Builder Agreement, except to the extent that Declarant has granted a variance for a particular Builder Lot due to the particular conditions on such Builder Lot.

5. Utilities and Impact Fees. Builder shall, at Builder's expense, tap into the central water and central sewer facilities to obtain water and sewer services to each Builder Lot. Builder shall be responsible for extending all utilities from at or near the lot boundary to the home constructed by Builder on the Builder Lot. Builder shall be responsible for and shall pay any impact fees, stand-by fees, tap and installation charges, or other fees, deposits, costs and expenses related to the hook-up and use of central water and central sewer services and all other utilities to serve the Builder Lot. At Closing, Builder shall sign and submit to Town of Wendell (City of Raleigh Utilities) the then current application for connection to the wastewater system and thereafter, until the account is transferred into the name of the 3rd Party Buyer, pay all accrued charges for wastewater service to said utility (or its successor). Builder agrees that Seller may reimburse itself from the Development Deposit for any amounts paid by Seller as a result of Builder's failure to comply with this requirement.

6. Sidewalks. Builder shall be responsible for constructing, at its sole cost and expense, (a) all sidewalks, ramps or walkways providing access to the dwelling on each Builder Lot as required to comply with the Americans with Disabilities Act ("**ADA**"), and (b) sidewalks and handicap ramps, as required to comply with the ADA, within the road right-of-way across the front, and side (if a corner lot), of each Builder Lot in accordance with the requirements of Wake County, North Carolina, which installation shall be completed prior to issuance of a certificate of occupancy for the dwelling on the Builder Lot. Builder shall use reasonable, good faith efforts to avoid causing any damage to sidewalks installed by or on behalf of the Declarant and shall promptly repair any damage to, or replace, such sidewalks caused by Builder, its subcontractors, and their respective employees and suppliers. Declarant may elect to install some sidewalks along any road within Wendell Falls and, in such case, Builder shall be relieved of its obligation to install sidewalks on a Builder Lot in any location where Declarant has elected to install them.

7. Project Name. The name and logo of the Development are proprietary to Declarant, and Declarant hereby claims and reserves unto itself all tradename, trademark and similar intangible rights and interests with respect thereto. Builder shall not use, nor shall Builder permit to be used on its behalf, the words "Wendell Falls" or any derivative or any logo thereof in any printed or promotional material without the prior written consent of Declarant.

8. Builder Agreement. Builder acknowledges that the Builder Agreement and each of the provisions thereof remain in full force and effect, and this Declaration shall not be deemed to modify the Builder Agreement or to limit in any way Builder's obligations or Declarant's rights thereunder. Builder acknowledges that this Declaration does not include all provisions of the Builder Agreement intended to survive the closings contemplated thereby and omission of any such provision from this Declaration shall not be construed as a limitation on survival of such provisions.

9. Enforcement. In the event of any breach or violation of this Declaration which Builder fails to cure within thirty (30) days after receipt of written notice thereof or, if such breach or violation is not capable of being cured within thirty (30) days, fails to commence steps to cure within thirty (30) days and thereafter to diligently prosecute such steps to cure and in any event to accomplish such cure within forty-five (45) days, Declarant shall be entitled to all rights and remedies available at law or in equity, including, without limitation, injunctive relief for the immediate and irreparable harm that would be caused by any act or omission by Builder or any other owner of a Builder Lot, to comply with the terms of this Declaration, except that nothing herein shall give the Declarant the right to take any action against a bona fide purchaser of the Builder Lot who takes title after issuance of a certificate of occupancy for a dwelling on the Builder Lot. Any damage award shall be

limited to actual damages plus attorneys' fees and costs to which Declarant may be entitled under this paragraph. In no event shall Builder be liable to Declarant for punitive, speculative, or consequential damages. In any action authorized under this Declaration, the prevailing party shall, in addition to all other relief granted or awarded by the court, be entitled to collect from the non-prevailing party its reasonable legal fees and costs actually incurred in the action, including all costs and fees incurred in preparation, filing, and prosecution of the action at the trial and appellate levels, in arbitration or bankruptcy proceedings, and in post-judgment collection proceedings.

10. No Third-Party Beneficiaries. Notwithstanding anything to the contrary set forth in this Declaration, this Declaration is for the benefit of Declarant only, and may not be relied upon, or enforced by, any party other than Declarant or a person or entity to which Declarant assigns in writing its rights hereunder.

11. Amendment; Waiver. This Declaration may be amended only by a written instrument signed by the Declarant and the record owner of the Builder Lot(s) affected by such amendment. Any such amendment shall be recorded in the office of the Register of Deeds of Wake County, North Carolina. The failure by the Declarant to enforce any covenant, condition, or restriction set forth herein shall in no event be deemed a waiver of the right to enforce the same or any other breach or violation thereof, and no waiver of any right or obligation hereunder shall be effective unless in writing signed by the party to be charged with such waiver.

12. Notices. Each notice or document (collectively, "**notice**") to be given hereunder shall be in writing and shall be delivered either personally, by overnight delivery or courier service, by electronic transmission via internet email with confirmation of receipt by all parties to whom it is directed, or by depositing it with the United States Postal Service or any official successor thereto, certified mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party (and marked to a particular individual's attention) at their addresses as set forth below, unless such party has given notice of a change of address in accordance with this section, in which case it shall be addressed to such party at the address given in such notice. If given by personal delivery or by overnight delivery or courier service, the notice shall be deemed to have been given and received upon receipt at the address to which it is delivered. If given by mail in accordance with this provision, the notice shall be deemed to have been given within a required time if deposited with the U.S. Postal Service within the time limit, and deemed received within three (3) business days following such deposit in the U.S. Postal Service. Rejection or other refusal by the addressee to accept delivery, or the inability to deliver any notice because of a change of address of the intended recipient without notice to the other, shall be deemed to be the receipt of the notice on the third day following the date postmarked or deposited with a courier service. If any party is represented by legal counsel, such legal counsel is authorized to give notice or make deliveries under this Declaration directly to the other party on behalf of his or her client, and the same shall be deemed proper notice or delivery hereunder if given or made in the manner hereinabove specified.

If to Builder:

Garman Homes, LLC
305 Harkness Circle
Durham, NC 27705
Attention: James H. Garman
jhgarman@garmanhomes.biz

(919) 452-9769- Telephone
(866) 286-4841- Facsimile

With a copy to:

William A. Anderson, III
Kennon Craver, PLLC
4011 University Drive, Suite 300
Durham, NC 27717-1579
wanderson@kennoncraver.com

(919) 490-0500 - Telephone
(919) 490-0873 - Facsimile

If to Declarant:

NASH Wendell Falls, LLC
Attention: Laurie Ford
c/o Newland Communities
6133 Taylor Road
Wendell, NC 27591
lford@newlandco.com

(919) 951-0700 – Telephone
(919) 951-0701 – Facsimile

With a copy to:

Mr. Robert B. McLeod, Chairman and CEO
Newland Communities
9820 Towne Centre Drive, Suite 100
San Diego, California 92121-1974
(858) 455-7503 –Telephone
(858) 455-5368 - Facsimile

and to:
Sharon W. Koplan, Esq.
Newland Communities
1700 Pacific Ave., Suite 3890
Dallas, Texas 75201
(214) 254-4738 - Telephone
(214)254-4734- Facsimile

Newland Communities
Attn: Legal Department Services
9820 Towne Centre Drive, Suite 100
San Diego, California 92121-1974
Tel (858) 455-7503
Fax (858) 455-6142

13. Governing Law and Venue. This Declaration shall be construed by and controlled under the laws of the State of North Carolina. Venue and jurisdiction for any dispute arising under this Declaration shall be exclusively in the courts located in Wake County, or the United States District Court for the Eastern District of North Carolina.

14. Severability. In the event any provisions hereof should be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason whatsoever, such illegality, unenforceability, or invalidity shall not affect the remainder of this Declaration.

15. Release. Upon written request of Builder or its successor-in-title at any time after satisfaction of any of the foregoing covenants and restrictions, Declarant shall execute and deliver to Builder a release of such covenant in recordable form.

[remainder of page intentionally left blank; signatures begin on the following page]

IN WITNESS WHEREOF, the Declarant and Builder have executed this Declaration by and through their undersigned representatives as of the day and year first above written.

DECLARANT: **NASH WENDELL FALLS, LLC**, a Delaware limited liability company

By: [signature]

Name: LAURIE H. FORD

Title: VICE PRESIDENT

STATE OF NORTH CAROLINA

COUNTY OF Durham

I, Megan E. Lighthall, a Notary Public of Durham County and State aforesaid do hereby certify that Laurie Ford, Vice President for NASH WENDELL FALLS, LLC, a Delaware limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company for the purposes therein expressed.

Witness my hand and official stamp or seal, this 9th day of December, 2014.

Megan E. Lighthall
Notary Public

My commission expires: 09/01/19

SEAL-STAMP

MEGAN E. LIGHTHALL NOTARY PUBLIC DURHAM COUNTY, NC

[signatures continued on next page]

JOINDER AND CONSENT OF BUILDER

BUILDER: **GARMAN HOMES, LLC**, a North Carolina limited liability company

By: ______________________

Name: James H. Garman

Title: Mgr.

STATE OF NORTH CAROLINA
COUNTY OF Durham

I, William A. Anderson III, a Notary Public in and for Durham County, North Carolina, certify that James H. Garman personally came before me this day and acknowledged that he is Manager of GARMAN HOMES, LLC, a North Carolina limited liability company, and that by authority duly given and as a fact of said company, he executed the foregoing instrument on behalf of said company.

Witness my hand and official stamp or seal, this 11th day of December, 2014.

____
Notary Public

My Commission Expires: 7/21/19

SEAL-STAMP

WILLIAM A. ANDERSON III
NOTARY
PUBLIC
DURHAM COUNTY, NC

Exhibit "A" to Declaration of Builder Covenants

Description of Property

BEING ALL of Lots numbered 110, 111 and 112, as shown and described upon the plat entitled, "*Final Subdivision, Easement and Right-of-Way Dedication Plat of Wendell Falls Development SF-1, Section 1*," dated October 27, 2014 by McKim & Creed, and recorded in Book of Maps 2014, at Pages 1563 through 1567, inclusive, Wake County Registry, reference to which is hereby made for greater certainty of description (collectively referred to, together with the plat references for the other lots conveyed herein, as the "Final Plat").

BEING ALL of Lots numbered 120, 121, 122, 125, 127 and 136, as shown and described upon the plat entitled, "*Final Subdivision, Easement and Right of Way Dedication Plat of Wendell Falls Development, SF-2, Section 2*," dated October 28, 2014 by McKim & Creed, and recorded in Book of Maps 2014, at Pages 1595 and 1596, Wake County Registry, reference to which is hereby made for greater certainty of description (collectively referred to, together with the plat references for the other lots conveyed herein, as the "Final Plat").

BOOK:015863 PAGE:02615 - 02632

WAKE COUNTY
NORTH CAROLINA

Please retain yellow trailer page

It is part of the recorded document and must be submitted with the original for re-recording.

Laura M. Riddick
Register of Deeds

Wake County Justice Center
300 South Salisbury Street, Suite 1700
Raleigh, NC 27601

☐ New Time Stamp ☐ $25 Non-Standard Fee

☐ Additional Document Fee ☐ Additional Reference Fee

This Customer Group

____# of Time Stamps Needed

This Document

18 # of Pages SC

WAKE COUNTY, NC 128
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
04/13/2015 12:23:55

BOOK:015978 PAGE:00995 - 01000

Excise Tax: N/A
Prepared By and After Recording Return to:
Lee Law Firm PLLC
803 Shelley Road, Raleigh, NC 27609

STATE OF NORTH CAROLINA

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

COUNTY OF WAKE

This THIRD AMENDMENT TO DEVELOPMENT AGREEMENT (the "Third Amendment") is made this 16th day of January, 2015 by and between the TOWN OF WENDELL, a municipal corporation existing under the laws of the State of North Carolina (the "Town"), and NASH WENDELL FALLS, LLC, a Delaware limited liability company authorized to transact business in North Carolina ("Wendell Falls").

WITNESSETH:

WHEREAS, on or about June 26, 2006, the Town and Wendell Falls Development, LLC ("WFD") entered into a Development Agreement (the "Original Agreement") with regard to multiple tracts of land comprising approximately 1,200 acres within the jurisdiction of the Town, described in Exhibit A attached to the Original Agreement (collectively, the "Property");

WHEREAS, on or about October 9, 2006 and July 14, 2008, the Town approved development of the Property as a Planned Unit Development (the "PUD Approval");

WHEREAS, on or about July 27, 2011, the Town, REDUS Raleigh Housing, LLC, a North Carolina limited liability company ("REDUS"), and successor-in-interest to WFD, and the City of Raleigh, a municipal corporation existing under the laws of the State of North Carolina (as a party only to certain limited provisions not amended hereby, the "City") entered into that certain Amendment to Development Agreement (the "First Amendment"), which First Amendment is recorded at Book 14422, Page 1679 of the Wake County Register of Deeds;

WHEREAS, on or about June 17, 2014, the Town and Wendell Falls, entered into that certain Second Amendment to Development Agreement (the "Second Amendment" and together with the Original Agreement and First Amendment amended thereby, the "Development Agreement"), which Second Amendment is recorded at Book 15762, Page 644 of the Wake County Register of Deeds;

WHEREAS, the amendments and modifications contemplated by this Third Amendment do not amend any provision of the Development Agreement with respect to which the City is a party;

WHEREAS, Wendell Falls acquired rights as the "Developer" party as successor-in-interest to REDUS, itself the successor-in-interest to WFD, under the Development Agreement pursuant to, *inter alia*, that certain Assignment and Assumption of Development Agreement, dated October 21, 2013, and recorded at Book 15478, Page 1664 of the Wake County Register of Deeds;

WHEREAS, Wendell Falls has recognized the additional flexibility in signage design allowed under the Town's new UDO (as defined herein);

WHEREAS, Wendell Falls now requests that the Town apply its UDO requirements for certain proposed signage in lieu of the requirements provided in the PUD Approval;

WHEREAS, North Carolina General Statute §§ 160A-400.26 and 160A- 385.1(e)(1)a. allow the Town to apply newer regulation to approved development plans with the written consent of the landowner; and

WHEREAS, modification of the Development Agreement is permitted under North Carolina General Statute §§ 160A-400.28 and Section 5.6 of said Development Agreement by a written instrument signed by both parties;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

(1) Defined Terms. Unless otherwise defined herein, terms defined in the Development Agreement shall have the same meaning in this Amendment.

(2) Amendment of the Development Agreement. The terms and provisions of the Development Agreement are modified and amended as provided in this Third Amendment. Except as modified herein, the terms and provisions of the Development Agreement shall remain in full force and effect. If, and to the extent that this Third Amendment and the PUD Approval are inconsistent, this Third Amendment shall control.

(3) Amendment of Section 3.4 of the Development Agreement. Section 3.4 of the Development Agreement is amended by adding the following two (2) new paragraphs between paragraph (c) and paragraph (d):

> (c5) The UDO shall be the applicable code for determining the sign requirements for the Project and shall be followed in lieu of any sign provisions found in the Town of Wendell Zoning Code.
>
> (c6) All sign approvals for the Project will follow the applicable sign permit and approval process outlined in the UDO rather than the sign permit and approval process of the Town of Wendell Zoning Code. However, this procedural change shall not abrogate any non-procedural requirement found in the approved PUD Application for any parcel of land still governed by the approved PUD Application.

(4) Public Hearing. The Board of Commissioners provided public notice and conducted a public hearing on January 12, 2015 to consider approval and execution of this Third Amendment. The Board of Commissioners approved this Third Amendment and the Town's execution of the same. After careful review and deliberation, the Board of Commissioners of the Town has determined that the Project, as amended by this Third Amendment, is consistent with the Town's comprehensive plan pertaining to future land use, and will further the Town's land use planning objectives and policies as articulated in the comprehensive plan, as well as enhance and secure the health, safety, welfare and economic well being of residents of and visitors to the Town.

(6) No Change in Term. Subject to any subsequent agreements extending the original duration, as extended by the First Amendment and as provided by N.C. Gen. Stat. Section 160A-400.25, the Term of the Development Agreement shall remain as set forth in Section 1.2 of the Development Agreement as amended by the First Amendment.

(7) No Pledge of Taxing Power or Governmental Authority. No provision of this Third Amendment shall be construed or interpreted as (1) creating a pledge of the faith and credit of the Town within the meaning of any constitutional debt limitation, (2) delegating governmental powers, or (3) a donation or a lending of the credit of the Town within the meaning of the Constitution of the State of North Carolina. No provision of this Third Amendment shall be construed to pledge or to create a lien on any class or source of Town monies, or operate beyond its intended scope so as to restrict, to any extent prohibited by law, any future action or right of action on the part of the Board of Commissioners. To the extent of any conflict between this section and any other provision of this Third Amendment, this section shall take priority.

[Signature Pages to Follow.]

IN WITNESS WHEREOF, the Town and Wendell Falls have caused this Third Amendment to be duly executes and sealed pursuant to proper authority as of the day and year first written above.

NASH WENDELL FALLS, LLC

By: [signature]
Print Name: LAURIE M. FORD
Title: VICE PRESIDENT

STATE OF North Carolina
COUNTY OF Wake

I, Selina R. Day, a Notary Public of Durham County, State of North Carolina, do hereby certify that Laurie Ford, the Vice President of NASH Wendell Falls, LLC, a Delaware limited liability company, either being [✓] personally known to me or [ ] proven by satisfactory evidence (such evidence being______________), personally appeared before me this day and acknowledged the above execution of the foregoing instrument on behalf of NASH Wendell Falls, LLC.

Witness my hand and seal, this 15 day of January, 2015.

Selina R. Day
Notary Public

My Commission Expires:
August 30, 2019
[NOTARY SEAL]

SELINA R. DAY
NOTARY
PUBLIC
DURHAM COUNTY, N.C.

THE TOWN OF WENDELL

By: ______________________, Mayor

ATTEST:

Jonnie Driver

Jonnie Driver, Town Clerk

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, Melia D Edwards a Notary Public of Wake County, State of North Carolina, do hereby certify that Jonnie Driver, either being [✓] personally known to me or [ ] proven by satisfactory evidence (such evidence being ____________), personally appeared before me this day and acknowledged that she is the Clerk of the TOWN OF WENDELL, a North Carolina municipal corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument was voluntarily signed in its name by the its Mayor, sealed with its municipal seal and voluntarily attested by her as its Clerk for the purposes stated herein on behalf of the TOWN OF WENDELL.

Witness my hand and seal, this 12th day of January, 2015.

Melia D. Edwards

Notary Public

My Commission Expires:
8-19-19

[NOTARY SEAL]

MELIA D. EDWARDS
NOTARY
PUBLIC
WAKE COUNTY, N.C.

BOOK:015978 PAGE:00995 - 01000

WAKE
COUNTY
NORTH CAROLINA

Please retain yellow trailer page

It is part of the recorded document and must be submitted with the original for re-recording.

Laura M. Riddick
Register of Deeds

Wake County Justice Center
300 South Salisbury Street, Suite 1700
Raleigh, NC 27601

☐ New Time Stamp ☐ $25 Non-Standard Fee

☐ Additional Document Fee ☐ Additional Reference Fee

This Customer Group

____# of Time Stamps Needed

This Document

6 # of Pages

6

BK016098PG00310

WAKE COUNTY, NC 165
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
07/27/2015 13:16:17

BOOK:016098 PAGE:00310 - 00318

Prepared by / Upon recording, please return to:
Jo Anne P. Stubblefield
Hyatt & Stubblefield, P.C
1200 Peachtree Center, Harris Tower
233 Peachtree Street, N.E.
Atlanta, GA 30303

INDEXING NOTE TO CLERK'S OFFICE:

Please index in Grantor index under "NASH Wendell Falls, LLC" and "Dan Ryan Builders-North Carolina, LLC"
Please index in Grantee index under "Wendell Falls," and "Wendell Falls Community Association, Inc."
Please cross-reference to Declaration at Book 15834, Page 1690

STATE OF NORTH CAROLINA

COUNTY OF WAKE

SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WENDELL FALLS (PHASE 2B)

This Supplemental Declaration of Covenants, Conditions and Restrictions for Wendell Falls ("**Supplement**") is made by NASH Wendell Falls, LLC, a Delaware limited liability company (the "**Declarant**"), with the joinder and consent of Dan Ryan Builders – North Carolina, LLC, a North Carolina limited liability company ("**Builder**").

Background Statement

The Declarant is the developer of the planned community located in Wake County, North Carolina known as Wendell Falls. The Declarant executed and filed that certain Declaration of Covenants, Conditions, and Restrictions for Wendell Falls recorded on November 10, 2014 in Deed Book 15834, Page 1690, *et seq.*, in the Office of the Register of Deeds of Wake County, North Carolina (as it may be amended and supplemented, the "**Declaration**").

Pursuant to Sections 9.1 and 9.3 of the Declaration, the Declarant reserved the right to expand the Wendell Falls residential community by recording one or more Supplemental Declarations submitting to the terms of the Declaration all or any portion of the property described on Exhibit "B" of the Declaration ("**Expansion Property**") and/or to impose on such property additional covenants and easements, with the consent of the owner of such property (if not the Declarant).

The property described on Exhibit "A" to this Supplement (the "**Additional Property**") is a portion of the Expansion Property described on Exhibit "B" to the Declaration.

As the owners of the Additional Property, the Declarant and Builder desire to submit the Additional Property to the terms of the Declaration and this Supplement.

NOW, THEREFORE, the Declarant, with the joinder and consent of Builder, hereby submits the real property described on Exhibit "A" of this Supplement to the provisions of the Declaration and this Supplement, which shall hereafter encumber the title to such property and shall be binding upon all persons having any right, title, or any interest in such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. The provisions of this Supplement shall also be binding upon Wendell Falls Community Association, Inc., a North Carolina nonprofit corporation (the "**Association**"), in accordance with the terms of the Declaration.

ARTICLE I
Definitions

The definitions set forth in Article II of the Declaration are incorporated by reference in this Supplement.

ARTICLE II
Designation of Service Areas

Pursuant to Section 7.3 of the Declaration, all or portions of the Additional Property have been assigned to the Service Area(s), if any, described on Exhibit "A" to this Supplement.

ARTICLE III
Additional Covenants, Restrictions and Easements

The additional covenants, restrictions and easements, if any, set forth in Exhibit "B" of this Supplement shall apply to the Additional Property and shall be binding upon the owners and occupants of Units within the Additional Property, their guests and invitees, in addition to the terms of the Declaration, except to the extent that applicability is limited by the express terms of Exhibit "B" to Units within any Service Area identified on Exhibit "A".

ARTICLE IV
Amendment

4.1 By the Declarant.

Until termination of the Class "B" Control Period, the Declarant may unilaterally amend this Supplement for any purpose. Thereafter, until termination of the Development and Sale Period, the Declarant may unilaterally amend this Supplement to reflect any revisions or amendments to any plats referenced on Exhibit "A," and, provided the amendment has no material adverse effect upon any right of any Owner without such Owner's consent in writing, for any other purpose.

Notwithstanding this reserved right, a revision or amendment to a plat shall not require an amendment to this Supplement so long as no property is added or excluded from the plat by the revision or amendment thereto. The Declarant reserves the right to record revised, amended, or additional plats that only affect internal boundaries between lots, combine lots, or subdivide lots shown on the original plat and, so long as they do not alter the overall property submitted to the Declaration by this Supplement, such revised, amended or additional plats shall not necessitate an amendment to this Supplement.

4.2. By Owners.

Except as otherwise specifically provided in this Article IV, any amendment to the provisions set forth on Exhibit "B" of this Supplement shall require the affirmative vote or written consent, or any combination thereof, of Owners of at least 67% of the Units within the Service Area to which such provisions apply, and the written consent of the Association, acting through its board of directors. Any other amendment to this Supplement may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners of at least 67% of the Units within the Additional Property and the written consent of the Association, acting through its board of directors. In addition, so long as the Declarant owns any Unit within the Additional Property, the consent of the Declarant shall be required to amend this Supplement in any manner.

4.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or without the written consent of the Declarant (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Supplement, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording, unless a later effective date is specified in the amendment. No action to challenge the validity of an amendment may be brought more than two years after its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Supplement.

In witness of the foregoing, the Declarant has executed this Supplemental Declaration on the 21st day of July, 2015.

DECLARANT: NASH WENDELL FALLS, LLC, a Delaware limited liability company

By:
Name: Lonnie H. Ford
Its: Vice President

STATE OF NORTH CAROLINA)
)
COUNTY OF Wake)

I, Selina R. Day, a Notary Public in and for Durham County, North Carolina, certify that Lonnie Ford personally came before me this day and acknowledged that s/he is Vice President of NASH WENDELL FALLS, LLC, a Delaware limited liability company, and that by authority duly given and as the act of said limited liability company, he executed the foregoing instrument on behalf of said limited liability company.

Witness my hand and official stamp or seal, this 21 day of July, 2015

Selina R. Day
Notary Public

My Commission Expires:
August 30 2019

[NOTARY SEAL]

SELINA R. DAY
NOTARY
PUBLIC
DURHAM COUNTY, N.C.

530410\wdocs\Supp Decl – Ph 2B\071515\jps

JOINDER AND CONSENT OF BUILDER

The Builder, as the record owner of a portion of the Additional Property, hereby joins in execution of this Supplemental Declaration of Covenants, Conditions and Restrictions for Wendell Falls by and through its authorized representatives to evidence its consent to the same and to the Declaration referenced therein, this 24th day of JULY, 2015.

BUILDER: **DAN RYAN BUILDERS – NORTH CAROLINA, LLC**, a North Carolina limited liability company

By: Paul S. Yeager
Name: Paul S. Yeager
Its: SVP & CFO

STATE OF Maryland ~~NORTH CAROLINA~~)

COUNTY OF Washington)

I, Mary M. Smith, a Notary Public in and for Washington County, Maryland ~~North Carolina~~, certify that Paul Yeager personally came before me this day and acknowledged that s/he is SVP and CFO of DAN RYAN BUILDERS-NORTH CAROLINA, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of said limited liability company, he executed the foregoing instrument on behalf of said limited liability company.

Witness my hand and official stamp or seal, this 24th day of July, 2015.

Notary Public

My Commission Expires:
5/30/16

[NOTARY SEAL]

MARY M. SMITH
NOTARY
PUBLIC
WASHINGTON COUNTY, MD

MY COMMISSION EXPIRES 5/30/16

EXHIBIT "A"

Additional Property

ALL THAT TRACT OR PARCEL OF LAND lying and being in Wake County, North Carolina, and being more particularly described on that certain Final Subdivision, Easement and Right-of-Way Dedication Plat of Wendell Falls Development SF-2B recorded on July 15, 2015, in Book of Maps 2015, Page 1104-1109, in the office of the Register of Deeds of Wake County, North Carolina, as such plat may be revised from time to time (the "**Phase 2B Plat**").

Service Area Assignment:
Lots 156 through 181 are hereby assigned to **Service Area No. 1** for the purposes set forth on Exhibit "B."

EXHIBIT "B"

Additional Covenants, Restrictions, and Easements

1. **Easements for Drainage, Access and Maintenance.** The Founder hereby reserves, establishes and grants:

(a) a perpetual, nonexclusive easement in favor of each Unit within Service Area No. 1 (as described on Exhibit "A"), for the natural flow of stormwater from each such Unit over other Units within Service Area No. 1 to that 20' private drainage easement ("20' PVTDE") over Lots 159, 160, 161, 162, Lots 171-181, and Common Area 12 as shown on the Phase 2B Plat ("Private Drainage Easement") and over and through such Private Drainage Easement; and

(b) a perpetual, nonexclusive easement in favor of Wendell Falls Community Association, Inc. over each Unit within Service Area No. 1 burdened by any portion of a Private Drainage Easement as reasonably necessary or convenient for access to and performance of its maintenance responsibilities hereunder.

Each Owner of a Unit burdened by any portion of a Private Drainage Easement shall be responsible for landscaping and maintaining landscaping within that portion of the easement which burdens such Owner's Unit, shall keep such portion free and clear of obstructions that interfere with the flow of stormwater through such easement, and, subject to such approval as required under Article IV of the Declaration, shall be responsible for taking such steps as the Owner may deem necessary to control erosion on its Unit and protect such Owner's personal property and improvements from damage due to stormwater flows resulting from storm events.

2. **Maintenance of Private Drainage Easements within Service Area No. 1:**

(a) Unless and until responsibility for maintenance of a Private Drainage Easement is accepted by a governmental body, the Association shall be responsible for maintaining any structures and improvements installed by the Founder within the Private Drainage Easement described in Paragraph 1 above and any replacements thereof so that they function in the manner and for the purpose for which they were designed and intended. The Association shall have the right to cut and clear any undergrowth and remove other obstructions within the Private Drainage Easement which may in any way endanger or interfere with the proper functioning of the same. All costs incurred by the Association in performing its responsibilities hereunder shall be a Service Area Expense to be allocated equally among the Units within Service Area No. 1 and levied as a Service Area Assessment pursuant to Article VIII of the Declaration.

(b) Each Owner acknowledges that severe weather events may occur from time to time which cause stormwater flows to exceed the capacity of the private drainage easements and the facilities and improvements therein. Nothing herein shall make the Association liable for any damage to personal property or improvements on any Unit resulting from stormwater flows that exceed the capacity of the stormwater facilities within the Private Drainage Easement.

3. **Maintenance of Slopes on Units**. In accordance with Section 5.1 of the Declaration, each Owner is responsible for maintaining such Owner's Unit in a manner consistent with the Governing Documents, the Community-Wide Standard and all applicable covenants. Such responsibility shall specifically include landscaping and maintenance of any natural areas and slopes on the Unit in a neat and attractive condition, whether located inside or outside of any fence or yard area on the Unit. In the event that any Owner fails to maintain any portion of his or her Unit as required hereunder, the Association shall have a right to enter upon the Unit and perform such maintenance and assess all costs incurred to the Owner of such Unit as a Specific Assessment. Furthermore, the Association shall have the right to assume responsibility for maintenance of the slope on any Unit served or burdened by the Private Drainage Easement described above if the Board determines that such assumption of responsibility is appropriate to maintain the Community-Wide Standard and, in such event, may allocate the costs of such slope maintenance equally among the Units on which the slope is located and levy a Specific Assessment against each such Unit for its share of such costs; however, it shall give written notice to the Owners of such Units prior to assuming such responsibility.

BOOK:016098 PAGE:00310 - 00318

WAKE COUNTY

NORTH CAROLINA

Please retain yellow trailer page

It is part of the recorded document and must be submitted with the original for re-recording.

Laura M. Riddick
Register of Deeds

Wake County Justice Center
300 South Salisbury Street, Suite 1700
Raleigh, NC 27601

☐ New Time Stamp ☐ $25 Non-Standard Fee

☐ Additional Document Fee ☐ Additional Reference Fee

This Customer Group

____# of Time Stamps Needed

This Document

9 # of Pages K

WAKE COUNTY, NC 65
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
10/27/2015 11:08:55

BOOK:016193 PAGE:01840 - 01846

Prepared by / Upon recording, please return to:
Jo Anne P. Stubblefield
Hyatt & Stubblefield, P.C.
1200 Peachtree Center, Harris Tower
233 Peachtree Street, N.E
Atlanta, GA 30303

INDEXING NOTE TO CLERK'S OFFICE:

Please index in Grantor index under "NASH Wendell Falls, LLC"
Please index in Grantee index under "Wendell Falls," and "Wendell Falls Community Association, Inc."
Please cross-reference to Declaration at Book 15834, Page 1690

STATE OF NORTH CAROLINA

COUNTY OF WAKE

SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WENDELL FALLS (PHASE 3B)

This Supplemental Declaration of Covenants, Conditions and Restrictions for Wendell Falls ("**Supplement**") is made by NASH Wendell Falls, LLC, a Delaware limited liability company (the "**Declarant**").

Background Statement

The Declarant is the developer of the planned community located in Wake County, North Carolina known as Wendell Falls. The Declarant executed and filed that certain Declaration of Covenants, Conditions, and Restrictions for Wendell Falls recorded on November 10, 2014 in Deed Book 15834, Page 1690, *et seq.*, in the Office of the Register of Deeds of Wake County, North Carolina (as it may be amended and supplemented, the "**Declaration**").

Pursuant to Sections 9.1 and 9.3 of the Declaration, the Declarant reserved the right to expand the Wendell Falls residential community by recording one or more Supplemental Declarations submitting to the terms of the Declaration all or any portion of the property described on Exhibit "B" of the Declaration (**"Expansion Property"**) and/or to impose on such property additional covenants and easements, with the consent of the owner of such property (if not the Declarant).

The property described on Exhibit "A" to this Supplement (the **"Additional Property"**) is a portion of the Expansion Property described on Exhibit "B" to the Declaration.

As the owner of the Additional Property, the Declarant desires to submit the Additional Property to the terms of the Declaration and this Supplement.

NOW, THEREFORE, the Declarant hereby submits the real property described on Exhibit "A" of this Supplement to the provisions of the Declaration and this Supplement, which shall hereafter encumber the title to such property and shall be binding upon all persons having any right, title, or any interest in such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. The provisions of this Supplement shall also be binding upon Wendell Falls Community Association, Inc., a North Carolina nonprofit corporation (the **"Association"**), in accordance with the terms of the Declaration.

ARTICLE I
Definitions

The definitions set forth in Article II of the Declaration are incorporated by reference in this Supplement.

ARTICLE II
Designation of Service Areas

Pursuant to Section 7.3 of the Declaration, all or portions of the Additional Property have been assigned to the Service Area(s), if any, described on Exhibit "A" to this Supplement.

ARTICLE III
Additional Covenants, Restrictions and Easements

The additional covenants, restrictions and easements, if any, set forth in Exhibit "B" of this Supplement shall apply to the Additional Property and shall be binding upon the owners and occupants of Units within the Additional Property, their guests and invitees, in addition to the terms of the Declaration, except to the extent that applicability is limited by the express terms of Exhibit "B" to Units within any Service Area identified on Exhibit "A".

ARTICLE IV
Amendment

4.1 By the Declarant.

Until termination of the Class "B" Control Period, the Declarant may unilaterally amend this Supplement for any purpose. Thereafter, until termination of the Development and Sale Period, the Declarant may unilaterally amend this Supplement to reflect any revisions or amendments to any plats referenced on Exhibit "A," and, provided the amendment has no material adverse effect upon any right of any Owner without such Owner's consent in writing, for any other purpose.

Notwithstanding this reserved right, a revision or amendment to a plat shall not require an amendment to this Supplement so long as no property is added or excluded from the plat by the revision or amendment thereto. The Declarant reserves the right to record revised, amended, or additional plats that only affect internal boundaries between lots, combine lots, or subdivide lots shown on the original plat and, so long as they do not alter the overall property submitted to the Declaration by this Supplement, such revised, amended or additional plats shall not necessitate an amendment to this Supplement.

4.2. By Owners.

Except as otherwise specifically provided in this Article IV, any amendment to the provisions set forth on Exhibit "B" of this Supplement shall require the affirmative vote or written consent, or any combination thereof, of Owners of at least 67% of the Units within the Service Area to which such provisions apply, and the written consent of the Association, acting through its board of directors. Any other amendment to this Supplement may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners of at least 67% of the Units within the Additional Property and the written consent of the Association, acting through its board of directors. In addition, so long as the Declarant owns any Unit within the Additional Property, the consent of the Declarant shall be required to amend this Supplement in any manner.

4.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or without the written consent of the Declarant (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Supplement, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording, unless a later effective date is specified in the amendment. No action to challenge the validity of an amendment may be brought more than two years after its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Supplement.

In witness of the foregoing, the Declarant has executed this Supplemental Declaration on the 26 day of October, 2015.

DECLARANT: NASH WENDELL FALLS, LLC, a Delaware limited liability company

By:
Name: Laurie A. Ford
Its: Vice President

STATE OF NORTH CAROLINA)
)
COUNTY OF Wake)

I, Amy L. Kingrea a Notary Public in and for Durham County, North Carolina, certify that Laurie Ford personally came before me this day and acknowledged that s/he is Vice President of NASH WENDELL FALLS, LLC, a Delaware limited liability company, and that by authority duly given and as the act of said limited liability company, he executed the foregoing instrument on behalf of said limited liability company.

Witness my hand and official stamp or seal, this 26 day of October 2015.

Notary Public

My Commission Expires:
6/23/2020

[NOTARY SEAL]

590410/exdocs/ Supp Decl – Ph 5B/102215/ps

Amy L Kingrea
Notary
Public
Durham County, NC

EXHIBIT "A"

<u>Additional Property</u>

ALL THAT TRACT OR PARCEL OF LAND lying and being in Wake County, North Carolina, and being more particularly described on that certain Final Subdivision, Easement and Right-of-Way Dedication Plat of Wendell Falls Development SF-3B recorded on October 16, 2015, in Book of Maps 2015, Page 1761-1766, in the office of the Register of Deeds of Wake County, North Carolina, as such plat may be revised from time to time (the "**Phase 3B Plat**").

EXHIBIT "B"

Additional Covenants, Restrictions, and Easements

1. **Private Drainage Easements.**

(a) The Founder hereby reserves, establishes and grants a perpetual, nonexclusive easement over each Unit shown on the Phase 3B Plat (as described in Exhibit "A") on which any portion of a private drainage easement is depicted, for the benefit of each other Unit on which any portion of such private drainage easement is depicted, for the natural flow of stormwater over and through such private drainage easement.

(b) Each Owner of a Unit burdened by any portion of a private drainage easement shall be responsible for installing and maintaining landscaping within that portion of the easement which burdens such Owner's Unit, shall keep such portion free and clear of obstructions that interfere with the flow of stormwater through such easement, and, subject to such approval as required under Article IV of the Declaration, shall be responsible for taking such steps as the Owner may deem necessary to control erosion on its Unit and protect such Owner's personal property and improvements from damage due to stormwater flows resulting from storm events.

(c) Each Owner, by acceptance of a deed to a Unit, acknowledges that severe weather events may occur from time to time which cause stormwater flows to exceed the capacity of the private drainage easements and any facilities and improvements therein. Neither the Founder nor the Association shall have any liability for any damage to personal property or improvements on any Unit resulting from such weather events resulting in stormwater flows that exceed the capacity of the stormwater facilities within any private drainage easement.

BOOK:016193 PAGE:01840 - 01846

WAKE
COUNTY
NORTH CAROLINA

Please retain yellow trailer page

It is part of the recorded document and must be submitted with the original for re-recording.

Laura M. Riddick
Register of Deeds

Wake County Justice Center
300 South Salisbury Street, Suite 1700
Raleigh, NC 27601

☐ New Time Stamp ☐ $25 Non-Standard Fee

☐ Additional Document Fee ☐ Additional Reference Fee

This Customer Group

_____ # of Excessive Entities

_____ # of Time Stamps Needed

This Document

7 # of Pages CW

WAKE COUNTY, NC
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
11-18-2015 AT 14:40:08

BOOK: 016215 PAGE: 00666 - 00685

Excise Tax: N/A
Prepared By and After Recording Return to:
BRADSHAW & ROBINSON, LLP
P.O. Box 607, Pittsboro, NC 27312

STATE OF NORTH CAROLINA

FIFTH AMENDMENT TO DEVELOPMENT AGREEMENT

COUNTY OF WAKE

THIS FIFTH AMENDMENT TO DEVELOPMENT AGREEMENT (the "Fifth Amendment") is made this 9th day of November, 2015 by and between the TOWN OF WENDELL, a municipal corporation existing under the laws of the State of North Carolina (the "Town"), and NASH WENDELL FALLS, LLC, a Delaware limited liability company authorized to transact business in North Carolina ("Wendell Falls").

WITNESSETH:

WHEREAS, on or about June 26, 2006, the Town and Wendell Falls Development, LLC ("WFD") entered into a Development Agreement (the "Original Agreement") with regard to multiple tracts of land comprising approximately 1,200 acres within the jurisdiction of the Town, described in Exhibit A attached to the Original Agreement (collectively, the "Property");

WHEREAS, on or about October 9, 2006 and July 14, 2008, the Town approved development of the Property as a Planned Unit Development (the "PUD Approval"), comprised in part of a maximum of 4,000 residential units and a maximum of 2,000,000 square feet of commercial development (the "Project");

WHEREAS, on or about July 27, 2011, the Town, REDUS Raleigh Housing, LLC, a North Carolina limited liability company ("REDUS"), and successor-in-interest to WFD, and the City of Raleigh, a municipal corporation existing under the laws of the State of North Carolina (as a party only to certain limited provisions not amended hereby, the "City") entered into that certain Amendment to Development Agreement (the "First Amendment"), which First Amendment is recorded at Book 14422, Page 1679 of the Wake County Register of Deeds;

WHEREAS, on or about June 17, 2014, the Town and Wendell Falls, entered into that certain Second Amendment to Development Agreement (the "Second Amendment") which Second Amendment is recorded at Book 15762, Page 644 of the Wake County Register of Deeds, on January 16, 2015, the Town and Wendell Falls entered into that certain Third Amendment to Development Agreement (the "Third Amendment"), which Third Amendment is recorded at Book 15978, Page 995 of the Wake County Register of Deeds, and on April 20, 2015 the Town and Wendell Falls entered into that certain Fourth Amendment to Development Agreement, which Fourth Amendment is recorded at Book 15996, Page 1725(the "Fourth Amendment," together with the Original Agreement, First Amendment, Second Amendment and Third Amendment, referred to hereinafter as the "Development Agreement");

WHEREAS, the amendments and modifications contemplated by this Fifth Amendment do not amend any provision of the Development Agreement with respect to which the City is a party;

WHEREAS, Wendell Falls acquired rights as the "Developer" party as successor-in-interest to REDUS, itself the successor-in-interest to WFD, under the Development Agreement pursuant to, *inter alia*, that certain Assignment and Assumption of Development Agreement, dated October 21, 2013, and recorded at Book 15478, Page 1664 of the Wake County Register of Deeds;

WHEREAS, the original PUD Approval was sought and obtained under the Zoning Code of Ordinances of the Town of Wendell, North Carolina, as adopted on January 14, 1980 and as subsequently amended (the "Old Zoning Ordinance");

WHEREAS, since the date of the PUD Approval, the Town has replaced the Old Zoning Ordinance with The Town of Wendell Unified Development Ordinance, as adopted on or about July 26, 2010 (together with amendments thereto, the "UDO");

WHEREAS, in an effort to commence the residential development in a manner and form consistent with the Town's current residential design standards under the UDO, prior amendments of this Development Agreement have allowed the Town to apply elements of the UDO requirements for certain residential components of the Project;

WHEREAS, with the residential development now taking hold, Wendell Falls now seeks to simultaneously progress with respect to the balance of the residential lands along with the commercial and mixed use components of the Project;

WHEREAS, the UDO envisions and includes zoning use categories which are more descriptive, inclusive and flexible than the Old Zoning Ordinance, which are more consistent with the regulatory scheme of the UDO and which are more functional for a large, master-planned community, such as the Project, that will include a diverse array of commercial and mixed-use components;

WHEREAS, although the UDO includes design flexibility and improved use descriptions conducive to development of a diverse master planned community, it does not currently include a planned unit development ("PUD") option for master planned communities larger than 200 acres in size;

WHEREAS, Wendell Falls has now sought to Amend the UDO to create a PUD option for master planned communities exceeding 200 acres in size and the Town has approved said amendment;

WHEREAS, Wendell Falls has sought to implement a revised Project map and design through the newly added PUD option under the UDO and has set forth certain parameters of the Project within the approved 2015 PUD Plan Document

WHEREAS, Wendell Falls now seeks to incorporate certain elements of the revised Project into the Development Agreement;

WHEREAS, North Carolina General Statute §§ 160A-400.26 and 160A- 385.1(e)(1)a. allow the Town to apply newer regulation to approved development plans with the written consent of the landowner; and

WHEREAS, modification of the Development Agreement is permitted under North Carolina General Statute §§ 160A-400.28 and Section 5.6 of said Development Agreement by a written instrument signed by both parties;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

(1) Defined Terms. Unless otherwise defined herein, terms defined in the Development Agreement shall have the same meaning in this Fifth Amendment.

(2) Amendment of the Development Agreement. The terms and provisions of the Development Agreement are modified and amended as provided in this Fifth Amendment. Except as modified herein, the terms and provisions of the Development Agreement shall remain in full force and effect. If, and to the extent that this Fifth Amendment and the 2015 PUD Plan Document are inconsistent, this Fifth Amendment shall control.

(3) Addition of Section 1.3. The following is added as Section 1.3 of the Development Agreement.

> Section 1.3 Wake County Park and Lake Myra Elementary School Properties. Although, at the time of this Amendment (happening concurrently with approval of the 2015 PUD Plan Document approval) the Wake County Park property (approximately 125.8 acres) and the Lake Myra Elementary School properties (17.6 acres) have already been dedicated and conveyed, the acreages continue to be included as part of the 2015 PUD Plan Document for all purposes, including without limitation, for the purposes of calculations of open space and density for the Project.

(4) Amendment of Section 3.4 of the Development Agreement. Section 3.4 of the Development Agreement is amended by adding the following seven (7) new subparagraphs between paragraph (c) and paragraph (d), after existing subparagraph (c8):

"(c9) The applicable minimum residential design guidelines for the Project shall be as set forth in Exhibit E, attached hereto and incorporated herein by reference (the "Residential Design Guidelines"). Additional detailed standards at least as restrictive as the Residential Design Guidelines will be adopted and incorporated into restrictive covenants to be recorded and made applicable to residential structures within the Project ("Covenants"). In the event of any conflict between design standards set forth in the UDO and either the Residential Design Guidelines or the Covenants, or both, the most restrictive of the standards as between those set forth in the Residential Guidelines and the Covenants shall apply. The Town may enforce the Residential Design Guidelines and any applicable UDO provisions. Nothing herein shall limit the authority of Wendell Falls or its successors and assigns to enforce the Residential Design Guidelines or any other provisions of the Covenants."

"(c10) The applicable minimum commercial design guidelines for the Project shall be as set forth in Exhibit F, attached hereto and incorporated herein by reference (the "Commercial Design Guidelines"). Additional detailed standards at least as restrictive as the Commercial Design Guidelines will be adopted and incorporated into restrictive covenants to be recorded and made applicable to commercial structures (including mixed – use structures) within the Project ("Covenants"). In the event of any conflict between design standards set forth in the UDO and either the Commercial Design Guidelines or the Covenants, or both, the most restrictive of the standards as between those set forth in the Commercial Guidelines and the Covenants shall apply. The Town may enforce the Commercial Design Guidelines and any applicable UDO provisions. Nothing herein shall limit the authority of Wendell Falls or its successors and assigns to enforce the Commercial Design Guidelines or any other provisions of the Covenants."

"(c11) Any and all references to the "PUD Application" in this Agreement, or any amendments thereto, shall mean and refer to the application and associated materials, maps and exhibits approved by the Town on or about November 9, 2015."

"(c12) Any plats, plans or permits approved or granted prior to the date of the Fifth Amendment hereof are not invalidated by the Fifth Amendment."

"(c13) The allowed number of residential units in the Project is 4,000. The allowed amount of commercial square footage in the Project is 2,000,000. The maximum density of the Project is 3.43 units per acre. For purposes of the maximum density calculation, any lands conveyed to third parties since the inception of the Project are included in the calculation. The uses allowed within the Project are as set forth in the 2015 PUD Plan Document approved contemporaneously with the Fifth Amendment hereto. The maximum number of multi-family and attached residential units within the Project shall be 1,400, which is derived from calculating 35% of the number of permitted dwelling units, 4,000. Any of the elements included within this sub paragraph (c13) (number of units, amount of square footage, maximum density, allowed uses maximum percentage of multi-family and attached residential) may be changed by amendment of this Agreement."

"(c14) Development of the Project shall not at any time require preparation, submission or approval of a Downstream Impact Analysis as that term is used in the Town of Wendell UDO. Further, to the extent of any conflict between Chapter 6 of the Town of Wendell UDO and this Development Agreement, the provisions of this Development Agreement shall apply."

"(c15) With respect to as-built plans for stormwater management facilities that may be required to be submitted under the Town of Wendell UDO, for phased development, where a stormwater management facility will continue to function in a pre-construction condition, the final as-built plans and certifications will not be required to be submitted until the drainage basin conveying to the stormwater management facility is fully developed and stabilized. Under such circumstances, certificates of occupancy shall be granted prior to final as-built plans and certifications being submitted, provided, however, that Wendell Falls shall be obligated to stabilize the incomplete portion of the applicable phase and the Town may require a bond for completion of the work necessary to fully develop and stabilize the stormwater facility. In addition, such as-built plans should display planted vegetation, but without necessity of an individual material survey."

(5) Amendment of Section 3.4(c) of the Development Agreement. Subsection (c) of Section 3.4 of the Development Agreement is deleted in its entirety and the following is substituted in lieu thereof:

(c) Phase I stormwater regulations will be applicable to Pods SF 1-5 and 15 (as shown on Exhibit A-2 of the 2015 PUD Plan Document). Phase II stormwater regulations will be applicable to the balance of the Project. If compliance with such regulations becomes impossible, materially impracticable or otherwise becomes a hardship under the Development Agreement or the 2015 PUD Plan Document, Wendell Falls, its successors or assigns, may submit revisions to this Development Agreement and/or the 2015 PUD Plan Document to accommodate the new stormwater requirements for the Town's approval, which approval shall not be unreasonably withheld. To the extent of any conflict between any provision of the Town of Wendell UDO and this Development Agreement, the provisions of this Development Agreement shall apply.

Except as specifically modified by this Fifth Amendment, the terms and provisions of the Development Agreement (including without limitation each other existing subparagraph of Section 3.4 of the Development Agreement) are hereby affirmed and shall remain in full force and effect.

(6) Public Hearing. The Board of Commissioners provided public notice and conducted a public hearing on October 12, 2015 to consider approval and execution of this Fifth Amendment. The Board of Commissioners approved this Fifth Amendment and the Town's execution of the same. After careful review and deliberation, the Board of Commissioners of the Town has determined that the Project, as amended by this Fifth Amendment, is consistent with the Town's comprehensive plan pertaining to future land use, and will further the Town's land use planning objectives and policies as articulated in the comprehensive plan, as well as enhance and secure the health, safety, welfare and economic well being of residents of and visitors to the Town.

(6) No Change in Term. Subject to any subsequent agreements extending the original duration, as extended by the First Amendment and as provided by N.C. Gen. Stat. Section 160A-400.25, the Term of the Development Agreement shall remain as set forth in Section 1.2 of the Development Agreement as amended by the First Amendment.

(7) No Pledge of Taxing Power or Governmental Authority. No provision of this Fifth Amendment shall be construed or interpreted as (1) creating a pledge of the faith and credit of the Town within the meaning of any constitutional debt limitation, (2) delegating governmental powers, or (3) a donation or a lending of the credit of the Town within the meaning of the Constitution of the State of North Carolina. No provision of this Fifth Amendment shall be construed to pledge or to create a lien on any class or source of Town monies, or operate beyond its intended scope so as to restrict, to any extent prohibited by law, any future action or right of action on the part of the Board of Commissioners. To the extent of any conflict between this section and any other provision of this Fifth Amendment, this section shall take priority.

[Signature Pages to Follow.]

IN WITNESS WHEREOF, the Town and Wendell Falls have caused this Fifth Amendment to be duly executes and sealed pursuant to proper authority as of the day and year first written above.

NASH WENDELL FALLS, LLC

By: [signature]
Print Name: LAURIE HIFORD
Title: VICE PRESIDENT

STATE OF North Carolina
COUNTY OF Wake

I, Amy L. Kingrea, a Notary Public of Durham County, State of North Carolina, do hereby certify that Laurie Ford, the Vice President of NASH Wendell Falls, LLC, a Delaware limited liability company, either being [X] personally known to me or [ ] proven by satisfactory evidence (such evidence being ________________), personally appeared before me this day and acknowledged the above execution of the foregoing instrument on behalf of NASH Wendell Falls, LLC.

Witness my hand and seal, this 12 day of November, 2015.

[signature]
Notary Public

My Commission Expires:
6/23/2020
[NOTARY SEAL]

Amy L Kingrea
Notary
Public
Durham County, NC

TOWN OF WENDELL INCORPORATED 1903 NORTH CAROLINA

THE TOWN OF WENDELL

By: [signature]

_______________, Mayor

ATTEST:

Jonnie S. Driver

Wendell, Town Clerk

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, Melia D. Edwards, a Notary Public of Wake County, State of North Carolina, do hereby certify that Jonnie S. Driver, either being [✓] personally known to me or [ ] proven by satisfactory evidence (such evidence being_______________), personally appeared before me this day and acknowledged that she is the Clerk of the TOWN OF WENDELL, a North Carolina municipal corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument was voluntarily signed in its name by the its Mayor, sealed with its municipal seal and voluntarily attested by her as its Clerk for the purposes stated herein on behalf of the TOWN OF WENDELL.

Witness my hand and seal, this 16th day of November, 2015.

Melia D. Edwards

Notary Public

My Commission Expires:

8-29-19

[NOTARY SEAL]

MELIA D. EDWARDS NOTARY PUBLIC WAKE COUNTY, NC

Wendell Falls Minimum Residential Design Standards

10/06/15

SINGLE FAMILY LOTS

Foundations

Foundations allowed will include:

- Crawlspace built to a minimum height of 12" and maximum height as defined by building code
- Slab with continuous stemwall built to a minimum height of 12" and maximum height as defined by building code
- Slab-on-grade (active adult housing, live-work, apartment/condominiums only)

Brick, stone or stucco will be required on each side that faces public street fronts on foundations with height of 12" or more.

Wall Material

Wall materials allowed will include: standard-size brick, natural stone and synthetic from designated manufacturers, wood clapboard and fiber cement siding (such as hardie siding). Vinyl siding will not be allowed. Other architectural accent features may be approved by staff.

Windows and Doors

Windows and doors are important design elements that shall be part of the overall architectural massing and style chosen. It will be important to consider these elements on all sides of the building. A minimum of one window or door is required on all side elevations. A side yard/zero lot line house will not require a window or door on the side of the home with the reduced setback.

Attached Front and Side Load Garages

The visual impact of the garage door should be minimized whenever possible. This could include placement on the side or rear of the house (if applicable to lot size), choosing doors that blend with the main cladding material, and staggering the bays to break the line of the wall. Divided garage doors are encouraged on frontage conditions.

Front load and side load garages shall have two-door appearance. Architectural details at a minimum will include window inserts. Additional features such as trellises, roof overhangs, etc. are encouraged to further deemphasize the garage.

Attached garages with front-loading bays are encouraged to be recessed from the front façade of the house. Front porches may be considered the front façade and be used as the point of measurement. Garages which extend beyond the front façade of the house (to a maximum of 6 feet beyond the front façade) may be constructed when the following additional design criteria are applied:

- No single garage door(s) greater than 12 feet in width.
- Utilize garage doors containing window inserts and/or utilize a carriage style or similarly stylistic garage door that is compatible with the housing style
- Incorporate a trellis, eyebrow roof, columned projection or other architectural element that is compatible with the housing style

Porches

Front porches are an important design element and are encouraged, where possible. Porches, when applicable, shall be a minimum 6' in depth (as measured at house entry). Stoops will be permitted on no more than 40% of such lots in each phase of development. Two-story porches are encouraged. Porches shall be constructed of concrete, wood, brick, etc. Porches shall not be constructed of mill-finished aluminum.

Roof Forms and Slopes

Architecturally appropriate principal roof forms such as hip and gable are encouraged, along with varying roof planes and wall plates. A minimum overhang of 6" for all roofs is required.

Roof Materials

Roof shingles will carry a 25-year warranty and come from a specified manufacturer. Standing seam metal roofing will be allowed as a secondary roofing material.

Accessory Structures

Accessory structures shall be located only in side or rear yards. Accessory structures shall be constructed with similar materials and colors as the main building and must be in scale with the size of the yard and existing buildings. The finished square footage of the accessory structure must not exceed 70% of the finished square footage of the principal structure on the lot. Accessory structures should be sited as close to the minimum setbacks as possible to maximize the yard area.

Fences and Walls

Fences and walls further define private areas around a residential structure. Fences shall be made of wood, brick, stone, aluminum or metal. Vinyl, chain link and roll wire fencing is not permitted on a residential lot. Front yard fences shall not exceed 3 feet in height. Rear yard fences shall not exceed 6 feet in height. Powder coated (green or black) chain link will be permitted in common areas.

TOWNHOME LOTS

The following design criteria shall apply:

- A variety of forms and materials is encouraged; the mixing of incompatible architectural elements or styles is not allowed.
- The overall streetscape (intersection to intersection) shall display massing and design continuity while also incorporating variety.
- Sufficient wall articulation is required to avoid large unbroken expanses of roof or wall planes including the stepping of units and the use of bays and gables where appropriate.
- Distinctive design features at end units are encouraged to create a sense of place, such as tower features, bay projections, second-story balconies, or other suitable feature is encouraged.
- Compatibility in height and massing between adjacent dwellings and dwellings on the opposite side of the street is required.
- Townhome buildings shall provide detailed design along all primary elevations and elevations facing a public street or open space. Detailed design shall be provided by using at least (3) of the following architectural features as appropriate for the proposed building type and style (may vary features on rear/side/front elevations): Dormers, gables, recessed entries, covered porch or stoop entry, cupolas or towers, pillars or posts, eaves (minimum 10" projection which may include

gutter), off-sets in building face or roof (minimum 12"), window trim, bay windows, balconies, and decorative patterns on exterior finish (e.g. scales/shingles, wainscoting, and similar features).

- All front entrances shall be raised from the finished grade (at the building line) a minimum of 12", except active adult housing, or live/work units, which may have entrances at grade.

- Maximum height 3 stories.

APARTMENTS / CONDOMINIUMS

The following design criteria shall apply:

- A variety of forms and materials is encouraged; the mixing of incompatible architectural elements or styles is not allowed.

- The overall streetscape (intersection to intersection) shall display massing and design continuity while also incorporating variety.

- Sufficient wall articulation is required to avoid large unbroken expanses of roof or wall planes. A minimum 30% of front elevations and a minimum of 15% of side and rear building elevations, shall provide doors, porches, balconies and/or windows.

- Front entrances may be slab on grade or with a raised foundation.

- Porches and stoops shall form a predominate motif of the building design. Porches are at least 6' deep.

- All buildings shall provide detailed design along all primary elevations and elevations facing a public street or open space. Detailed design shall be provided by using at least (3) of the following architectural features as appropriate for the proposed building type and style (may vary features on rear/side/front elevations): Dormers, gables, recessed entries, covered porch or stoop entry, cupolas or towers, pillars or posts, eaves (minimum 10" projection which may include gutter), off-sets in building face or roof (minimum 12"), window trim, bay windows, balconies, decorative patterns on exterior finish (e.g. scales/shingles, wainscoting, and similar features), decorative cornices and roof lines, or other architectural features appropriate to the architectural style of the unit.

- If pitched roofs are used, they shall be gables or hips with a pitch between 4:12 and 12:12 unless otherwise approved to remain consistent with the intended character of the building.

- All rooftop equipment shall be screened from view.

- Maximum height five stories.

LANDSCAPE DESIGN AND PLANTS

Shade/Street Trees

- Deciduous and evergreen shade trees shall be used in yards to create pockets of shade, screen southern/western building faces, and provide fall or year-round color.
- 2" caliper minimum install size for required shade trees.

Evergreen Trees

- Evergreen trees shall be used for visual screening, accents, and year round foliage.
- 6'0" minimum install height for required evergreen trees

Ornamental Trees

- Flowering trees used to provide seasonal color, primarily in spring and summer as well as to provide intermediate vertical scale.
- 1.5" caliper or 8'0" height minimum for required ornamental trees

Foundation Plantings

- Evergreen shrubs used primarily around the foundations of structures and porch skirting along street sides.
- Typical plantings shall be 18" minimum installed height and 5' on center spacing unless larger growing specimens are being utilized in which case spacing may be increased.
- Shrubs should be used to complement architectural features and not obstruct views from windows.

Shrub Plantings

- A variety of deciduous and evergreen shrubs and ornamental grasses used to create lush landscape beds.

Lawn Grasses

- Turf Types: front, side, and rear yard: warm season turf types.
- Warm season grasses
  - Hybridized Bermuda: seeded or vegetative cultivars (sprigs, plugs, or sod)
  - Zoysia grass: recommended cultivars include but are not limited to Cavalier, Emerald, Palisades, Zeon, and Zorro
- Grass located in the right-of-way shall remain Bermuda.
- Residential front yard grass shall be sod.

LANDSCAPING STANDARDS BY LOT SIZE

Overall

- Shade/Street trees per approved street tree plan
- Corner lots may require additional street trees per approved street tree plan
- Foundation plantings as required
- HVAC units/utilities shall be screened with a minimum of 2 shrubs to minimize impact to public view
- All front yards will be fully sodded

26' Lots

Rear Yard

- Five ornamental shrubs or one ornamental tree

30-49' Lots

Rear Yard

- One ornamental tree

50' – 59' Lots

Front Yard

- One ornamental tree

Rear Yard

- One ornamental tree

60' - 70' Lots

Front Yard

- One ornamental tree

Rear Yard

- One shade tree
- One ornamental tree

80' and Wider Lots

Front Yard

- One ornamental tree

Rear Yard

- One shade tree
- One ornamental tree

Additional Requirements

- One additional ornamental tree in front or rear yard
- One additional evergreen tree in front or rear yard

EXHIBIT F

Wendell Falls Minimum Commercial Design Standards
10/06/15

Design Principles

1. Sustainability

The implementation of sustainable building design strategies is strongly encouraged. Strategies that may be considered include but are not limited to the following:

- Provisions for sustainable means of transportation (convenient parking for bicycles, dedicated spaces for fuel efficient vehicles, charging stations for electric vehicles, etc.)
- Sustainable, regional, drought tolerant plant selection
- Rainwater collection
- Building materials with recycled content
- Regional building materials
- High performance glazing
- Low emitting materials
- Reflective roof materials (white membrane, for instance)
- Water use reduction
- Optimized building systems energy performance
- On site renewable energy and/or green power
- Construction waste management

The use of sustainable strategies is strongly encouraged, but no specific strategies are required by these guidelines. Developers and designers are encouraged to implement the right strategies that work for each project. Detailed information about specific strategies can be obtained through a variety of organizations including the U.S. Green Building Council and other sources.

2. Contextual Design

The design of the building(s) shall complement the surrounding architecture. This shall be achieved through the use of similar colors, materials, and building forms used in the rest of the existing development. Design features and architectural style shall be complementary of the existing development.

The goal of these guidelines is to promote quality architecture while providing design flexibility. These guidelines do not promote any one architectural style, but instead focus on fundamental design principles found in quality design.

3. Scale

The scale of all building elements shall be proportional to human scale. Large expanses of blank wall space are prohibited. Facades shall have articulation of details in the first 10 feet of facade height and be pedestrian friendly. This can be achieved through a variety of design elements including but not limited to the following:

EXHIBIT F

- Masonry accent courses below 10'
- Projecting details in materials below 10'
- Reveals
- Awnings and/or canopies
- Light fixtures
- Covered walkways or arcades
- Trellises

Facade details can vary in height and design across individual facades.

4. Color

The primary colors of building materials shall feature earth tones and/or neutral colors. Intensely bright colors are discouraged, but may be acceptable as an accent color for branding purposes to be reviewed on a case by case basis for quality of design and appropriateness. Contrast of building colors is encouraged for visual impact.

Building colors shall be complementary of surrounding buildings in the development, but are not required to match them. The proposed colors will be reviewed in conjunction with the proposed building materials for each project.

Designers are required to use at least 2 primary building colors and 1 secondary or accent color for each building. Architecture with rigidly uniform color is discouraged.

5. Materials

Building materials shall be similar to those of surrounding buildings in the development. A list of materials may be included in overall design guidelines for the development separate from the requirements listed here.

The majority of building cladding materials (50% or more) for facades visible from parking lots, public streets, sidewalks, pedestrian paths, and parks shall be of brick or glazed brick, wood, cementitious fiber board, stone, cast stone, stone masonry units, architectural concrete block, metal composite panels, glass, aluminum storefront glass, marble or similar material.

Additional materials for facades visible from parking lots, public streets, sidewalks, pedestrian paths, and parks may be used.
These materials may include the following:

- Exterior insulation finishing systems (EIFS)
- Awnings with fabric or metal panels
- A limited amount of up to 25% of a façade area may be; concrete masonry units, split face block, concrete (pre-cast or cast in place) or concrete block. Cinder block is not permitted.

For facades that are not visible from parking lots and public streets, the above restrictions are strongly encouraged but not specifically required. These facades will not be visible from primary vehicular or pedestrian circulation. Additional landscape screening requirements may be enforced for facades with otherwise prohibited materials.

EXHIBIT F

Roof systems may include single ply membrane roofs, standing seam metal, and architectural shingle roofs. Parapets shall be designed to minimize views of the backs of parapets not clad in wall cladding materials as much as possible (to minimize visibility of single ply membrane roofing and membrane flashing).

6. Composition and Proportion

Composition, for the purpose of these guidelines, is defined as the arrangement of building forms and openings of individual facades. The composition should have pleasing proportions with a good balance of forms and openings. Facades should incorporate multiple building forms and opening types to establish a variation of composition and proportion. Uniformly monolithic and/or highly repetitive designs are not permitted. Buildings shall have changes in roofline, wall depth, facade design, building materials, and/or color for walls over 100' in length.

Proportions of building elements may have either vertical or horizontal proportions, and be either symmetric or asymmetric in their organization. The emphasis for these guidelines is on the quality of the design as a whole. Projects that are extremely horizontal or vertical in proportion and composition are discouraged.

7. Lighting

General uplighting of commercial building features is encouraged. Design elements such as cornices, pilasters, towers, awnings, and storefronts should be considered as an integral feature of the architecture. These design elements are encouraged to be incorporated into the lighting design. The use of energy saving fixtures with a long bulb life is strongly encouraged.

8. Transparency

The appropriate and responsible use of windows is required for all building types. The amount of transparency desired varies based on the use of the building, as well as the visibility of each individual facade. In addition to the amount of transparency, the design of individual windows is encouraged to incorporate articulation of elements such as mullions and/or muntins to create interest. In lieu of this, smaller openings can be clustered together to create larger compositions of transparency. The use of a variety of sizes of windows, mullions, and groupings is encouraged to avoid a monolithic appearance.

The following minimum percentages of transparency are required for each type of use. These are minimums, so any increase of transparency above the percentages shown is encouraged.

A. Office:	30-50% of wall area for occupied tenant space facades
B. Retail Shops:	20-40% of wall area for front storefronts for first 15' of facade height
	15-20% of wall area for side storefronts for first 15' of facade height
C. Retail Anchors: **	20-30% of wall area for front storefronts for first 15' of facade height
(>15,000 sf)	

EXHIBIT F

** For Retail Anchors, the use of highly articulated, detailed facades of strong pedestrian character may be considered in exchange for lower transparency. This will be reviewed on a case-by-case basis and should be related to tenant functionality within the building. Exceptions would be reviewed and approved by Town Administrator on a case by case basis.

9. Trash Enclosures

All trash dumpsters and recycling bins are required to be carefully screened from view from any street right of way with screen wall enclosures. The construction of the enclosures shall match the design and quality of the surrounding buildings and will be at least 6' tall. These enclosures shall contain adjacent planting strips landscaped with evergreen shrubs along the side or rear of the enclosure.

10. Utilities and Mechanical Screening

All HVAC equipment must be adequately screened from view of the public right of way within each parcel with evergreen shrubs. All exterior mounted electrical, gas, telephone, and other utilities mounted to buildings shall be adequately screened from view when adjacent to parking lots, public streets, sidewalks, pedestrian paths, and parks. Screening for utilities for portions of buildings not facing parking lots, public streets, sidewalks, pedestrian paths, and parks is not required - utilities in these locations should be painted to match the building materials upon which they are mounted.

11. Service Areas

All service areas for loading/unloading, deliveries, etc. shall be labeled on the site plan. Service areas visible from parking lots, public streets, sidewalks, pedestrian paths, and parks will be screened with 4- 6 foot evergreen shrubs or 6 foot fencing with smaller shrubs to help break up the fence line. Service areas should be located to minimize disruption of pedestrian and vehicular circulation on the site, as well as the use of parks and outdoor gathering spaces.

12. Landscape

1. Landscaping Plan Application Requirements

A landscaping plan must be submitted for review for every commercial application. The plan is to indicate the following minimum information, as well as those items listed within the Submittal Checklist:

- Shall indicate all proposed topography, trees and planting (shrubs, ornamentals, perennials and turf areas). Any existing trees or vegetation that is to be preserved must be indicated.
- All required buffers per 2015 PUD Plan must be included.
- All required street trees per the PUD Plan.

2. Planting Configuration, Massing, Materials and Installation Standards

Planting should complement adjacent architecture, and preserve visibility from pedestrian and vehicular traffic areas. Trees, shrubs, ornamental grasses and groundcovers are planted in masses of appropriate size, scale and location. Significant massing of single species of plants is

EXHIBIT F

encouraged, often these will need to be located in front of walls or fences such that they provide a sufficient background for additional, lower plant material in the foreground. Landscape beds are required surrounding the entire perimeter of the building; where possible, these foundation beds are encouraged to extend outwards into the landscape. All planting is required to meet the minimum standards of the PUD Plan, as it relates to quantity, size, species and location on the site.

Areas of the commercial lot not occupied by structures, paving and walls are to be planted. Any highly visible turf areas are to be sodded. Any tree, shrub and groundcover areas, with the exception of beds consisting solely of groundcover, are to be mulched with shredded hardwood bark or pine straw.

All turf or lawn areas and planting beds in the commercial lots are to be irrigated. The use of native and adaptive xeriscape plant materials reduces irrigation demand

3. Plant List and Native Species Selection

The use of native and adaptive, drought tolerant plant species is required and should be considered in the preparation of any landscape plan.

Shade Trees – Locally adapted species with a mature height of 35' or greater and an expected mature crown spread of 30 feet or greater. Canopy trees, existing or planted, must be a minimum of 8' high and have a minimum caliper of 2 inches measure 6" above grade.

Understory Trees – Understory trees must be a minimum of 6' high and 1" in caliper, measured 6" above grade. When mature, the understory trees should have an expected height of 15-35 feet.

Shrubs – All shrubs shall be a minimum of 1-1/2 feet in height when planted and shall reach a height of 36 inches within two years of planting.

Ground Cover – All ground cover type plants must be a minimum of 1-1/2 to 2-1/2 inch pots with a 4 inch minimum length and shall be planted with on-center spacing equal to the average mature spread for each species.

4. Landscape Planting Requirements

a. Foundation Plantings

Foundation plantings shall be planted at a size that will provide impact upon installation and will serve as a framework for the building's border. To provide vertical layering and interest, shrubs should comprise a minimum of 25% of the foundation planting and groundcover, perennials, ornamentals, and annual beds should comprise of at least 15% of the landscape border.

b. Parking Lot Plantings

EXHIBIT F

Applicability: Interiors of all parking lots with more than 12 parking spaces.

Tree islands are to be a minimum of 8' x 18' and will be provided within the interior of the parking lot and are to be planted with a minimum of one shade tree and four shrubs per 12 spaces. For parking lots of 24 spaces or less, trees and shrubs may be planted at the end of the parking rows or in planting strips. The island shrubs may be transferred to use for the 3.5' semi-opaque parking lot screening from the public right of way or public views.

c. Street Trees

Street tree planting is required along all public streets, as well as any private drives within the commercial development areas as indicted per the PUD plan.

d. Parking Lot Screening

Parking lots visible from the public right of way shall be screened with a minimum of a 3.5 foot semi-opaque screen. This shall only be required along the parking area that fronts the public right-of-way or any side of a parking lot that is not protected by a buffer yard. The location of such yards shall be determined by the Administrator upon review. Effective screening devices may include solid decorative brick walls, wood fences, earth berms, and evergreen hedges which shall reach the required height within two years of planting, or any combination of the above. Groundcover, exclusively, shall be planted in the sight triangle on each side of drives or streets. A 6-foot opening shall be allowed every 100 feet to permit pedestrian passage where a formal connection to a sidewalk or pathway is provided.

5. Fencing and Railing

Fencing and railings are required to match the character and architectural style of Wendell Falls. All fencings and railings must be designed and installed to meet all height, structural and barrier requirements of all state and federal guidelines. Standard chain link fencing is not allowed. Black or green vinyl coating chain link can be used in rear yards or service areas that are not visible from public right of way. Fencing alternate and those in excess of 8' can be reviewed and approved by the Administrator.

6. Freestanding and Retaining Walls

All walls are required to complement the character and architectural style of Wendell Falls. Wall materials that may be used include brick, masonry, concrete, or natural stone. The height of walls should be considered on a case by case basis as it relates to their purpose and intent. All walls must be designed and installed to meet all local, state and federal guidelines.

EXHIBIT F

13. Industrial Building Design and Landscape Standards

With regard to Industrial building design and landscape standards applicable to Zone 5A, this document shall be amended prior to the issuance of any building permit in Zone 5A. Such standards shall be subject to review and approval of the Town Board.

WAKE COUNTY, NC 1
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
12/16/2015 08:45:36
STATE OF NC REAL ESTATE
EXCISE TAX: $271.00
BOOK:016240 PAGE:01972 - 01989

This instrument prepared by:
Bradshaw & Robinson, LLP
Post Office Box 607
Pittsboro, NC 27312

Excise Tax: $271.00

REAL ESTATE ID NOS. 0430983, 0433144 and 0433157
Mail after recording to: Grantee

Brief description for the Index: Lot 192 Phase SF-2B, Wendell Falls and Lots 324 and 337, Phase SF-3B, Wendell Falls

NORTH CAROLINA SPECIAL WARRANTY DEED

STATE OF NORTH CAROLINA

COUNTY OF WAKE

THIS DEED made this 15th day of December, 2015, by and between:

NASH WENDELL FALLS, LLC,
a Delaware limited liability company
6133 Taylor Road
Wendell, North Carolina 27591
("Grantor")

and

GARMAN HOMES, LLC,
a North Carolina limited liability company
305 Harkness Circle
Durham, North Carolina 27705
("Grantee")

The designation, Grantor and Grantee as used herein, shall include said parties, their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that Grantor, for valuable consideration paid by Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto Grantee in fee simple, all that certain lot or parcel of land situated in Wake County, North Carolina, and more particularly described as follows (the "**Property**"):

BEING ALL of Lot numbered 192, as shown and described upon the plat entitled, "*Final Subdivision, Easement and Right-of-Way Dedication Plat of Wendell Falls Development SF-2B,*" dated July 13, 2015 by McKim & Creed, and recorded in Book of Maps 2015, at Pages 1104 through 1109, inclusive, Wake County Registry, reference to which is hereby made for greater certainty of (collectively referred to, together with the plat references for the other lots conveyed herein, as the "Final Plat"); and

BEING ALL of Lots numbered 324 and 337, as shown and described upon the plat entitled, "*Final Subdivision, Easement and Right-of-Way Dedication Plat of Wendell Falls Development SF-3B,*" dated June 8, 2015 by McKim & Creed, and recorded in Book of Maps 2015, at Pages 1761 through 1766, inclusive, Wake County Registry, reference to which is hereby made for greater certainty of description (collectively referred to, together with the plat references for the other lots conveyed herein, as the "Final Plat").

The Property described herein does not include the primary residence of the Grantor.

TO HAVE AND TO HOLD, the aforesaid Property and all privileges and appurtenances thereto belonging to Grantee in fee simple.

And Grantor covenants with Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, except for the exceptions hereinafter stated; provided, Grantor does not warrant the area of such parcels described above to be accurate. Title to the Property is conveyed subject to the following exceptions:

1. All restrictions and general notes contained on the Final Plat referenced above;
2. The Declaration of Covenants, Conditions, and Restrictions for Wendell Falls recorded in the Wake County, North Carolina Office of the Register of Deeds on November 10, 2014 in Book 15834, Page 1690, et seq., as it may be supplemented and amended (the "**Declaration**"), together with any subsequent declarations contemplated or permitted thereunder by any one or more Additional Associations (as defined in the Declaration);
3. The covenants, conditions and restrictions set forth in Exhibit 'A' attached hereto and incorporated by this reference;
4. The matters set forth in Exhibit 'B' attached hereto and incorporated by this reference, and any other easements, rights of way, limitations, conditions, covenants, restrictions and other matters of record;
5. Rights of upper and lower riparian owners in and to the waters of streams, creeks or branches crossing or adjoining the Property, and the natural flow thereof, free from diminution or pollution;
6. Matters that would be disclosed by an accurate survey of the Property; and
7. Ad valorem property taxes not yet due and payable.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its company name the day and year first above written.

NASH WENDELL FALLS, LLC,
a Delaware limited liability company

By: ______________________ (SEAL)
Laurie Ford, Vice President

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, Amy L. Kingrea, a Notary Public of Durham County and State aforesaid do hereby certify that Laurie Ford, Vice President for NASH WENDELL FALLS, LLC, a Delaware limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company for the purposes therein expressed.

Witness my hand and official stamp or seal, this 14 day of December, 2015.

____
Notary Public

My commission expires: 6/23/2020

SEAL-STAMP

Amy L Kingrea
Notary
Public
Durham County, NC

Exhibit "A" to Deed

Agreement of Covenants, Conditions and Restrictions

This Agreement is made and entered into this 15th day of December, 2015, by and between the undersigned Grantor and Grantee.

For and in consideration of the conveyance of the Property by Grantor to Grantee and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and Grantee covenant and agree as follows (if the Property consists of more than one lot as shown on the Final Plat referenced in the foregoing deed, the term "Property," as used below, shall refer to each lot within the Property conveyed hereby):

1. **Obligation to Improve Property**. Grantee covenants and agrees to begin construction of a single-family dwelling on the Property within three hundred and sixty-five (365) days after the date hereof and to complete construction of a dwelling and all related improvements on the Property in accordance with plans approved by Grantor, its successors or assigns, within twelve (12) months after commencing construction, subject to such extensions, if any, as Grantor may give, in its sole discretion; provided, if Grantee or its predecessors in title have agreed in writing with Grantor to a shorter period for commencement or completion of construction on the Property, such shorter period shall apply. If construction on the Property shall not have been commenced in good faith by Grantee within the time period required hereunder, then at any time after the expiration of such period and prior to Grantee's good faith commencement of construction on the Property, Grantor shall have the right, by delivering to Grantee or the then owner of the Property written notice of its intent to repurchase, to require the conveyance of the Property to Grantor or any third party designated by Grantor by special warranty deed (subject to the same exceptions to title set forth in this deed of conveyance to Grantee and subject to standard and customary easements that do not hinder the use of, development of and/or construction of improvements upon the Property or any portion thereof) for a total consideration equal to the purchase price paid by Grantee to Grantor for the Property. The Property shall be conveyed to Grantor within thirty (30) days after the date of receipt of Grantor's notice and, upon conveyance, Grantor shall pay the transferor the repurchase price in funds readily available in Wake County, North Carolina. The transferor shall pay all closing costs. Ad valorem taxes and assessments shall be prorated as of 12:01 a.m. on the date of such reconveyance. If the title proposed to be conveyed to Grantor is subject to any lien, encumbrance or other defect which is not permitted hereunder, Grantor, in addition to all other rights and remedies which it may have at law or in equity, may remove any such lien, encumbrance or defect and deduct all costs and expenses incurred by Grantor (including, but not limited to, attorney's fees) from the amount of the purchase price otherwise payable as provided herein.

At the closing of the repurchase, the transferor shall execute and deliver to Grantor: (i) the special warranty deed referenced above; (ii) a non-foreign (FIRPTA) affidavit; (iii) an owner's no-lien affidavit; (iv) an affidavit representing and warranting to Seller that there has been no change in the environmental condition of the Property during Grantee's or any authorized successor's ownership thereof, and agreeing to indemnify, defend (with counsel acceptable to Grantor) and hold Grantor and its affiliates harmless from and against any and all claims, losses, liabilities, costs, damages, causes of action, demands, and proceedings arising out of, or directly or indirectly related to, any condition of the Property which is not in compliance with this provision; (v) a counterpart closing statement in form approved by Grantor; (vi) appropriate evidence to establish the authority of the transferor to enter into and close the transaction; (vii) in the event that any impact fee credits were assigned by Grantor to Grantee as to such Property, a re-assignment of such impact fee credits to Grantor executed by the tranferor; and (viii) any other documents reasonably necessary or appropriate to complete and evidence the transaction to take place at such repurchase closing.

Upon the good faith commencement of construction on the Property prior to written notice from Grantor of Grantor's intent to exercise its right to repurchase as provided herein, or three years from the date of the original conveyance of the Property by Grantor to Grantee, the right to repurchase herein provided for shall terminate. Construction shall be deemed to have commenced only upon (i) approval of plans for the dwelling in accordance with the Declaration of Covenants, Conditions and Restrictions for Wendell Falls recorded in the Wake County, North Carolina Office of the Register of Deeds on November 10, 2014 in Deed Book 15834, Page 1690, *et seq*., as it may be supplemented and amended; and (ii) pouring of the foundation for a home on the Property. This right to repurchase shall be subordinate to the lien of any first priority mortgage or deed of trust securing a bona fide construction loan on the Property, all of the proceeds of which are used solely for the purchase or development of the Property and the construction and retail sale of a dwelling constructed on the Property, but any such lien shall be satisfied by Builder in connection with any repurchase of the Builder Lot hereunder.

2. Right of First Refusal.

(a) Until the good faith commencement of construction of a single family dwelling on the Property as described in Paragraph 1 above, neither Grantee nor any "Authorized Successor", as defined in subparagraph (d) below, may transfer or convey the Property to any third party without first offering to sell the Property to Grantor for the lesser of (i) the purchase price that Grantee paid to Grantor for the Property ("**Net Purchase Price**"), or (ii) the then-current fair market value of the Property, as determined by an appraisal prepared by an appraiser designated by Grantor, whose determination shall be final and binding on Grantee and Grantor (the lesser of (i) or (ii) in this subsection (a) is hereinafter referred to as the "**Repurchase Price**"). Grantee hereby grants to Grantor an exclusive option to purchase the Property on the terms and conditions set forth in this Paragraph 2. This Paragraph 2 shall not restrict Grantee's right to enter into a binding contract for the sale of the Property, provided (i) such contract obligates Grantee to construct a home on the Property; and (ii) such contract provides that the purchaser may not convey the Property to any third party until construction is completed in accordance with the approved Plans without giving Grantor the right of first refusal to repurchase the Property on the terms and conditions set forth herein.

(b) If Grantee or any Authorized Successor desires to sell or otherwise transfer the Property under circumstances triggering Grantor's rights hereunder, the party proposing to transfer shall deliver to Grantor notice of such intent by certified mail, return receipt requested, addressed to Grantor at 6133 Taylor Road, Wendell Falls, NC 27591, unless Grantor has given notice of a different address, in which case it shall be sent to such different address. Within ten (10) days after receipt of such notice from Grantee, Grantor may order an appraisal, the cost of which shall be borne by Grantee. Grantor shall have ten (10) days after receipt of such appraisal to elect whether to exercise its option to purchase the Property and, if it elects to proceed with the purchase, to deliver written notice of such election to Grantee or its Authorized Successor.

(c) If Grantor elects to exercise its option to repurchase hereunder, Grantee or its Authorized Successor shall convey the Property to Grantor by special warranty deed (subject to the same exceptions to title set forth in this deed of conveyance to Grantee and subject to standard and customary easements that do not hinder the use of, development of and/or the construction of improvements upon such undeveloped property or any portion thereof) within ten (10) days after the date of receipt of Grantor's notice of election (the exact date, time, and location of closing of the repurchase to be selected by Grantor), and Grantee shall pay the cost of obtaining a title report and all other closing costs. Grantor shall pay the Repurchase Price in funds immediately available in Wake County, North Carolina. If the title proposed to be conveyed is subject to any lien, encumbrance or defect which is not permitted in this Paragraph 2, Grantor, in addition to all other rights and remedies which it may have at law or in equity, may remove any such lien, encumbrance or defect and deduct all costs and expenses incurred by Grantor (including, but not limited to, attorney's fees) from the amount of the Repurchase Price otherwise payable as provided in this Paragraph 2. Ad valorem taxes and assessments shall be prorated as of the date of such reconveyance.

At the closing of the repurchase, the transferor shall execute and deliver to Grantor: (i) the special warranty deed referenced above; (ii) a non-foreign (FIRPTA) affidavit; (iii) an owner's no-lien affidavit; (iv) an affidavit representing and warranting to Seller that there has been no change in the environmental condition of the Property during Grantee's or any authorized successor's ownership thereof, and agreeing to indemnify, defend (with counsel acceptable to Grantor) and hold Grantor and its affiliates harmless from and against any and all claims, losses, liabilities, costs, damages, causes of action, demands, and proceedings arising out of, or directly or indirectly related to, any condition of the Property which is not in compliance with this provision; (v) a counterpart closing statement in form approved by Grantor; (vi) appropriate evidence to establish the authority of the transferor to enter into and close the transaction; (vii) in the event that any impact fee credits were assigned by Grantor to Grantee as to such Property, a re-assignment of such impact fee credits to Grantor executed by the transferor; and (viii) any other documents reasonably necessary or appropriate to complete and evidence the transaction to take place at such repurchase closing.

Notwithstanding the above, Grantor retains the right, at any time prior to closing of such repurchase, to cancel such repurchase without explanation or liability to Grantee.

(d) In the event that Grantor does not exercise its option to purchase the Property, or cancels the repurchase prior to closing of the same:

(i) Grantee may thereafter sell the Property, prior to good faith commencement of construction of a home thereon, only to a homebuilder who is purchasing for the purpose of constructing a home on the Property for resale, and who meets Grantor's reasonable criteria with respect to financial wherewithal, homebuilding experience, compatibility of product line, intended development, and reputation, and who agrees to assume Grantee's obligations under that certain Wendell Falls Lot Purchase and Builder Participation Agreement dated October 27, 2014, between Grantor and Grantee with respect to such Property ("**Authorized Successor**"); and

(ii) Upon request of Grantee or the Authorized Successor, Grantor shall execute and deliver a written waiver of its option in recordable form to permit such sale to proceed.

In the event of any such sale, Grantee agrees to pay to Grantor the total consideration Grantee receives from such sale in excess of the sum of (i) the Net Purchase Price, plus (ii) the documented direct costs associated with Grantee's ownership of such Property, plus (iii) interest on such Net Purchase Price and costs equal to ten percent (10%) per annum from the date Grantee took title (such excess being referred to herein as the "**Excess Consideration**"), and Grantee shall instruct the closing agent for such transaction to remit any such Excess Consideration to Grantor immediately upon closing of such sale to the Authorized Successor.

(e) Upon good faith commencement of construction on the Property (as described in Paragraph 1 above), or three (3) years from the date of this conveyance, the right to repurchase herein provided for shall automatically terminate. If not earlier released in such manner, the option to repurchase shall automatically terminate upon issuance of a certificate of occupancy for a home on such Builder Lot.

3. **<u>Release</u>**. Upon written request of Grantee or its successor-in-title at any time after satisfaction of any of the foregoing covenants and restrictions, Grantor shall execute and deliver to Grantee a release of such covenant in recordable form.

4. **Amendment**. This Agreement may be amended only by a written instrument signed by Grantor, its successors or assigns, and by Grantee, its successors, assigns, or successor-in-title to the Property, referencing this instrument and recorded in the Office of the Register of Deeds for Wake County, North Carolina.

IN WITNESS WHEREOF, the parties have set their hands and seals as of the 15th day of December, 2015.

GRANTOR: **NASH WENDELL FALLS, LLC**, a Delaware limited liability company

By: [signature]

Name: Laurie H. Ford

Title: Vice President

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, Amy L. Kingrea, a Notary Public of Durham County and State aforesaid do hereby certify that Laurie Ford, Vice President for NASH WENDELL FALLS, LLC, a Delaware limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company for the purposes therein expressed.

Witness my hand and official stamp or seal, this 14 day of December, 2015.

[signature]

Notary Public

My commission expires: 6/23/2020

SEAL-STAMP

Amy L Kingrea
Notary
Public
Durham County, NC

[signatures continued on next page]

GRANTEE: GARMAN HOMES, LLC,
a North Carolina limited liability company

By: ______________________ (SEAL)

Name: James H. Garman

Title: Manager

STATE OF NORTH CAROLINA, COUNTY OF Durham

I, William A. Anderson III, a Notary Public of Durham County and State aforesaid do hereby certify that James H Garman personally came before me this day and acknowledged that s/he is Manager of GARMAN HOMES, LLC, a North Carolina limited liability company, and that by authority given and as a fact of such entity, the foregoing instrument was signed in its name by its Manager.

WITNESS my hand and official stamp or seal, this 15th day of December, 2015.

____
Notary Public

My commission expires: 02/02/2019

SEAL-STAMP WILLIAM A ANDERSON III NOTARY PUBLIC DURHAM COUNTY, NC

Exhibit "B" to Deed

Permitted Exceptions

1. That certain Declaration of Builder Covenants attached as Exhibit "B-1" and incorporated by this reference.

Exhibit "B-1" to Deed

STATE OF NORTH CAROLINA

COUNTY OF WAKE

DECLARATION OF BUILDER COVENANTS

THIS DECLARATION OF BUILDER COVENANTS ("**Declaration**") is made effective as of December 15, 2015, by **NASH Wendell Falls, LLC**, a Delaware limited liability company, on behalf of itself and its successors and assigns ("**Declarant**"), and is joined in by **Garman Homes, LLC**, a North Carolina limited liability company, on behalf of itself, its successors, assigns, and successors-in-title to the Builder Lots described herein ("**Builder**"), with reference to the following facts:

A. The Declarant is the developer of the planned community located in Town of Wendell, County of Wake, North Carolina known as Wendell Falls (the "**Development**"). The Declarant executed and filed that that certain Declaration of Covenants, Conditions, and Restrictions for Wendell Falls recorded November 10, 2014 in Deed Book 15834, Page 1690, *et seq.*, in the Office of the Register of Deeds of Wake County, North Carolina (as it may be amended and supplemented, the "**Community Declaration**").

B. Declarant and Builder are parties to that certain Wendell Falls Lot Purchase and Builder Participation Agreement dated October 27, 2014, as same may have been and may be amended from time to time (the "**Builder Agreement**").

C. Declarant is the owner of that certain real property located within the Development which is more particularly described on **Exhibit "A"** attached hereto and made a part hereof (the "**Property**"), which Declarant has agreed to convey to Builder pursuant to the terms of the Builder Agreement.

D. The Builder Agreement contemplates that certain commitments, covenants and obligations of Builder set forth therein ("**Builder Covenants**") shall (i) survive the closing of the purchase and sale of the Property pursuant to the Builder Agreement and termination of the Builder Agreement, and (ii) be binding upon Builder's successors-in-title to the Property or any platted lot within the Property until issuance of a certificate of occupancy for a dwelling on each such platted lot (hereinafter, a "**Builder Lot**"). The purpose of this Declaration is to set forth and provide public record notice of certain Builder Covenants.

NOW, THEREFORE, Declarant, with the joinder and consent of Builder, hereby declares that each Builder Lot shall be held, conveyed, encumbered, used, occupied and improved subject to the Builder Covenants set forth herein, which shall encumber the title to the Builder Lot and shall be binding upon all persons now having or hereafter acquiring any right, title, or any interest in the Builder Lot, their respective heirs, legal representatives, successors, successors-in-title, and assigns, and shall inure to the benefit of Declarant, its successors and assigns.

1. Approved Builder. Construction of a dwelling and related improvements on each Builder Lot may be performed only by Builder or another home builder who meets the criteria established by, and is approved in writing by, the Developer and agrees to assume the obligations of Builder under the Builder Agreement, as such obligations relate to the Builder Lot.

2. Marketing Fee and Additional Purchase Price.

(a) Marketing Fee. Declarant has, for the purpose of promoting the Development for the benefit of Builder and other builders constructing homes in the Development, developed a marketing program, including advertising, an information center, promotional events, and collateral marketing literature, designed to address a broad range of potential buyer groups, and product segments represented in the Development, in a manner consistent with state and federal fair housing laws. Builder acknowledges that it will benefit from such marketing program and covenants and agrees to pay to Declarant for each Builder Lot a "Marketing Fee" in the amount of 1.5% of the gross sales price of the home and lot package (i.e., the total purchase price paid to Builder by the homebuyer, including all options, extras, upgrades, and lot premiums, but excluding discount points, normal and customary closing costs, and the Marketing Fee due to Declarant hereunder). Builder shall pay the Marketing Fee, less that portion of such fee paid at the closing of the purchase of the Builder Lot from Declarant pursuant to the terms of the Builder Agreement, to Declarant upon the conveyance of the Builder Lot to a third party, whether or not a home has been constructed thereon at the time of such conveyance, unless Declarant elects or otherwise agrees to defer receipt of such payment until a later time. Unless Seller has agreed in writing to defer payment, Builder shall direct the closing agent or title company who closes the sale of the Builder Lot from Builder to a third party to deduct the fee from Builder's proceeds at the closing and pay it directly to Declarant, but failure of the closing agent to do so shall not relieve Builder of the obligation to pay such fee upon demand from Declarant. Builder agrees to provide Declarant with a copy of the HUD-1 Settlement Statement for each such sale. In addition, Builder hereby authorizes Declarant to (i) contact the closing agent prior to closing with a third party in order to obtain the applicable HUD-1 Settlement Statement and confirm that the closing agent has been notified of Builder's payment obligation, and (ii) obtain from the closing agent or Builder's real estate broker or sales agent a copy of the executed contract or closing statement for each home constructed by Builder in the Development. All Marketing Fees paid by Builder shall be fully earned and nonrefundable under any and all circumstances. In the event that Builder fails to timely pay the Marketing Fee (or any portion thereof) to Declarant as set forth above, then in addition to (not in lieu of) all other rights and remedies available to Declarant on account of Builder's non-payment, such Marketing Fee (or portion thereof, as applicable) shall bear interest at the rate of ten percent (10%) per annum from the date due until the date paid, which interest shall be immediately due and payable.

(b) Additional Purchase Price. The Base Purchase Price, as increased from time to time pursuant to subparagraph 5(a) in the Specific Terms of Purchase (Exhibit A to the Builder Agreement), shall be paid at the Closing of each Builder Lot. Thereafter, upon the closing of Builder's sale of any Builder Lot and the home constructed thereon to a third party, Builder shall pay to Seller an additional amount ("Additional Purchase Price") as defined in Paragraph 5(b) of Exhibit A to the Builder Agreement.

3. Erosion Control. Builder agrees to comply with (a) the National Pollution Discharge Elimination System Permit for Storm Water Discharges from Construction Activities, Permit No. NCGO1000 and any substitute for or amendment to that permit (collectively, the "NPDES Permit"), and (b) the erosion, sedimentation, and pollution control plan required by the NPDES Permit, as approved by all appropriate agencies ("Erosion Control Plan") applicable to the Builder Lots and otherwise applicable to Builder's activities in the Development. In the event that Builder fails to comply, Declarant may enter upon the Builder Lots to cure such noncompliance and deduct all costs incurred from the Development Deposit paid by Builder pursuant to the Builder Agreement. Builder agrees to hold harmless Declarant from any cost, claim, damage, fine or expense, including, without limitation, attorney's fees and legal expense, arising out of Builder's failure to comply with the Erosion Control Plan or the NPDES Permit.

4. House Size. The improvements constructed on each Builder Lot shall comply with the applicable minimum and maximum finished area requirements for such Builder Lot set forth on Exhibit "A" to the Builder Agreement, except to the extent that Declarant has granted a variance for a particular Builder Lot due to the particular conditions on such Builder Lot.

5. Utilities and Impact Fees. Builder shall, at Builder's expense, tap into the central water and central sewer facilities to obtain water and sewer services to each Builder Lot. Builder shall be responsible for extending all utilities from at or near the lot boundary to the home constructed by Builder on the Builder Lot. Builder shall be responsible for and shall pay any impact fees, stand-by fees, tap and installation charges, or other fees, deposits, costs and expenses related to the hook-up and use of central water and central sewer services and all other utilities to serve the Builder Lot. At Closing, Builder shall sign and submit to Town of Wendell (City of Raleigh Utilities) the then current application for connection to the wastewater system and thereafter, until the account is transferred into the name of the 3rd Party Buyer, pay all accrued charges for wastewater service to said utility (or its successor). Builder agrees that Seller may reimburse itself from the Development Deposit for any amounts paid by Seller as a result of Builder's failure to comply with this requirement.

6. Sidewalks. Builder shall be responsible for constructing, at its sole cost and expense, (a) all sidewalks, ramps or walkways providing access to the dwelling on each Builder Lot as required to comply with the Americans with Disabilities Act ("**ADA**"), and (b) sidewalks and handicap ramps, as required to comply with the ADA, within the road right-of-way across the front, and side (if a corner lot), of each Builder Lot in accordance with the requirements of Wake County, North Carolina, which installation shall be completed prior to issuance of a certificate of occupancy for the dwelling on the Builder Lot. Builder shall use reasonable, good faith efforts to avoid causing any damage to sidewalks installed by or on behalf of the Declarant and shall promptly repair any damage to, or replace, such sidewalks caused by Builder, its subcontractors, and their respective employees and suppliers. Declarant may elect to install some sidewalks along any road within Wendell Falls and, in such case, Builder shall be relieved of its obligation to install sidewalks on a Builder Lot in any location where Declarant has elected to install them.

7. Project Name. The name and logo of the Development are proprietary to Declarant, and Declarant hereby claims and reserves unto itself all tradename, trademark and similar intangible rights and interests with respect thereto. Builder shall not use, nor shall Builder permit to be used on its behalf, the words "Wendell Falls" or any derivative or any logo thereof in any printed or promotional material without the prior written consent of Declarant.

8. Builder Agreement. Builder acknowledges that the Builder Agreement and each of the provisions thereof remain in full force and effect, and this Declaration shall not be deemed to modify the Builder Agreement or to limit in any way Builder's obligations or Declarant's rights thereunder. Builder acknowledges that this Declaration does not include all provisions of the Builder Agreement intended to survive the closings contemplated thereby and omission of any such provision from this Declaration shall not be construed as a limitation on survival of such provisions.

9. Enforcement. In the event of any breach or violation of this Declaration which Builder fails to cure within thirty (30) days after receipt of written notice thereof or, if such breach or violation is not capable of being cured within thirty (30) days, fails to commence steps to cure within thirty (30) days and thereafter to diligently prosecute such steps to cure and in any event to accomplish such cure within forty-five (45) days, Declarant shall be entitled to all rights and remedies available at law or in equity, including, without limitation, injunctive relief for the immediate and irreparable harm that would be caused by any act or omission by Builder or any other owner of a Builder Lot, to comply with the terms of this Declaration, except that nothing herein shall give the Declarant the right to take any action against a bona fide purchaser of the Builder Lot who takes title after issuance of a certificate of occupancy for a dwelling on the Builder Lot. Any damage award shall be

limited to actual damages plus attorneys' fees and costs to which Declarant may be entitled under this paragraph. In no event shall Builder be liable to Declarant for punitive, speculative, or consequential damages. In any action authorized under this Declaration, the prevailing party shall, in addition to all other relief granted or awarded by the court, be entitled to collect from the non-prevailing party its reasonable legal fees and costs actually incurred in the action, including all costs and fees incurred in preparation, filing, and prosecution of the action at the trial and appellate levels, in arbitration or bankruptcy proceedings, and in post-judgment collection proceedings.

10. No Third-Party Beneficiaries. Notwithstanding anything to the contrary set forth in this Declaration, this Declaration is for the benefit of Declarant only, and may not be relied upon, or enforced by, any party other than Declarant or a person or entity to which Declarant assigns in writing its rights hereunder.

11. Amendment; Waiver. This Declaration may be amended only by a written instrument signed by the Declarant and the record owner of the Builder Lot(s) affected by such amendment. Any such amendment shall be recorded in the office of the Register of Deeds of Wake County, North Carolina. The failure by the Declarant to enforce any covenant, condition, or restriction set forth herein shall in no event be deemed a waiver of the right to enforce the same or any other breach or violation thereof, and no waiver of any right or obligation hereunder shall be effective unless in writing signed by the party to be charged with such waiver.

12. Notices. Each notice or document (collectively, "**notice**") to be given hereunder shall be in writing and shall be delivered either personally, by overnight delivery or courier service, by electronic transmission via internet email with confirmation of receipt by all parties to whom it is directed, or by depositing it with the United States Postal Service or any official successor thereto, certified mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party (and marked to a particular individual's attention) at their addresses as set forth below, unless such party has given notice of a change of address in accordance with this section, in which case it shall be addressed to such party at the address given in such notice. If given by personal delivery or by overnight delivery or courier service, the notice shall be deemed to have been given and received upon receipt at the address to which it is delivered. If given by mail in accordance with this provision, the notice shall be deemed to have been given within a required time if deposited with the U.S. Postal Service within the time limit, and deemed received within three (3) business days following such deposit in the U.S. Postal Service. Rejection or other refusal by the addressee to accept delivery, or the inability to deliver any notice because of a change of address of the intended recipient without notice to the other, shall be deemed to be the receipt of the notice on the third day following the date postmarked or deposited with a courier service. If any party is represented by legal counsel, such legal counsel is authorized to give notice or make deliveries under this Declaration directly to the other party on behalf of his or her client, and the same shall be deemed proper notice or delivery hereunder if given or made in the manner hereinabove specified.

If to Builder:

Garman Homes, LLC
305 Harkness Circle
Durham, NC 27705
Attention: James H. Garman
jhgarman@garmanhomes.biz

(919) 452-9769- Telephone
(866) 286-4841- Facsimile

With a copy to:

William A. Anderson, III
Kennon Craver, PLLC
4011 University Drive, Suite 300
Durham, NC 27717-1579
wanderson@kennoncraver.com

(919) 490-0500 - Telephone
(919) 490-0873 - Facsimile

If to Declarant:

NASH Wendell Falls, LLC
Attention: Laurie Ford
c/o Newland Communities
6133 Taylor Road
Wendell, NC 27591
lford@newlandco.com

(919) 951-0700 – Telephone
(919) 951-0701 – Facsimile

With a copy to:

Mr. Robert B. McLeod, Chairman and CEO
Newland Communities
9820 Towne Centre Drive, Suite 100
San Diego, California 92121-1974
(858) 455-7503 –Telephone
(858) 455-5368 - Facsimile

and to:

Newland Communities
Attn: Legal Department Services
9820 Towne Centre Drive, Suite 100
San Diego, California 92121-1974
Tel (858) 455-7503
Fax (858) 455-6142

13. Governing Law and Venue. This Declaration shall be construed by and controlled under the laws of the State of North Carolina. Venue and jurisdiction for any dispute arising under this Declaration shall be exclusively in the courts located in Wake County, or the United States District Court for the Eastern District of North Carolina.

14. Severability. In the event any provisions hereof should be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason whatsoever, such illegality, unenforceability, or invalidity shall not affect the remainder of this Declaration.

15. Release. Upon written request of Builder or its successor-in-title at any time after satisfaction of any of the foregoing covenants and restrictions, Declarant shall execute and deliver to Builder a release of such covenant in recordable form.

[remainder of page intentionally left blank; signatures begin on the following page]

IN WITNESS WHEREOF, the Declarant and Builder have executed this Declaration by and through their undersigned representatives as of the day and year first above written.

DECLARANT: **NASH WENDELL FALLS, LLC**, a Delaware limited liability company

By: [signature]

Name: Laurie M. Ford

Title: Vice President

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, Amy L. Kingrea, a Notary Public of Durham County and State aforesaid do hereby certify that Laurie Ford, Vice President for NASH WENDELL FALLS, LLC, a Delaware limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company for the purposes therein expressed.

Witness my hand and official stamp or seal, this 14 day of December, 2015.

[signature]
Notary Public

My commission expires: 6/23/2020

SEAL-STAMP

Amy L Kingrea
Notary
Public
Durham County, NC

[signatures continued on next page]

JOINDER AND CONSENT OF BUILDER

BUILDER: GARMAN HOMES, LLC,
a North Carolina limited liability company

By: ______________________

Name: James H. Garman

Its: Manager

STATE OF NORTH CAROLINA, COUNTY OF Durham

I, William A. Anderson III, a Notary Public of Durham County, North Carolina, certify that James H. Garman personally came before me this day and acknowledged that s/he is Manager of GARMAN HOMES, LLC, a North Carolina limited liability company, and that by authority duly given and as a fact of said company, he executed the foregoing instrument on behalf of said company.

Witness my hand and official stamp or seal, this 15TH day of December, 2015.

WILLIAM A. ANDERSON III
NOTARY PUBLIC
DURHAM COUNTY, NC

____
Notary Public

My Commission Expires: 02/02/2019

SEAL-STAMP

Exhibit "A" to Declaration of Builder Covenants

Description of Property

BEING ALL of Lot numbered 192, as shown and described upon the plat entitled, "*Final Subdivision, Easement and Right-of-Way Dedication Plat of Wendell Falls Development SF-2B*," dated July 13, 2015 by McKim & Creed, and recorded in Book of Maps 2015, at Pages 1104 through 1109, inclusive, Wake County Registry, reference to which is hereby made for greater certainty of (collectively referred to, together with the plat references for the other lots conveyed herein, as the "Final Plat"); and

BEING ALL of Lots numbered 324 and 337, as shown and described upon the plat entitled, "*Final Subdivision, Easement and Right-of-Way Dedication Plat of Wendell Falls Development SF-3B,*" dated June 8, 2015 by McKim & Creed, and recorded in Book of Maps 2015, at Pages 1761 through 1766, inclusive, Wake County Registry, reference to which is hereby made for greater certainty of description (collectively referred to, together with the plat references for the other lots conveyed herein, as the "Final Plat").

BOOK:016240 PAGE:01972 - 01989

WAKE COUNTY
NORTH CAROLINA

Please retain yellow trailer page

It is part of the recorded document and must be submitted with the original for re-recording.

Laura M. Riddick
Register of Deeds
Wake County Justice Center
300 South Salisbury Street, Suite 1700
Raleigh, NC 27601

- ☐ New Time Stamp
- ☐ $25 Non-Standard Fee
- ☐ Additional Document Fee
- ☐ Additional Reference Fee

This Customer Group

_______ # of Excessive Entities

_______ # of Time Stamps Needed

This Document

__18__ # of Pages

2

WAKE COUNTY, NC
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
11-15-2016 AT 13:14:45

BOOK: 016603 PAGE: 02576 - 02581

Prepared by / Upon recording, please return to:
Jo Anne P. Stubblefield
Hyatt & Stubblefield, P.C.
Peachtree Center, Harris Tower
233 Peachtree Street, N.E., Suite 1200
Atlanta, GA 30303

INDEXING NOTE TO CLERK'S OFFICE:
Please index in Grantor index under "NASH Wendell Falls, LLC"
Please index in Grantee index under "Wendell Falls," and "Wendell Falls Community Association, Inc."
Please cross-reference to Declaration at Book 15834, Page 1690

STATE OF NORTH CAROLINA

COUNTY OF WAKE

SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WENDELL FALLS
(SF-13, PHASE B)

This Supplemental Declaration of Covenants, Conditions and Restrictions for Wendell Falls ("**Supplement**") is made by NASH Wendell Falls, LLC, a Delaware limited liability company (the "**Declarant**").

Background Statement

The Declarant is the developer of the planned community located in Wake County, North Carolina known as Wendell Falls. The Declarant executed and filed that certain Declaration of Covenants, Conditions, and Restrictions for Wendell Falls recorded on November 10, 2014 in Deed Book 15834, Page 1690, *et seq.*, in the Office of the Register of Deeds of Wake County, North Carolina (as it may be amended and supplemented, the "**Declaration**").

Pursuant to Sections 9.1 and 9.3 of the Declaration, the Declarant reserved the right to expand the Wendell Falls residential community by recording one or more Supplemental

Declarations submitting to the terms of the Declaration all or any portion of the property described on Exhibit "B" of the Declaration ("**Expansion Property**") and/or to impose on such property additional covenants and easements, with the consent of the owner of such property (if not the Declarant).

The property described on Exhibit "A" to this Supplement (the "**Additional Property**") is a portion of the Expansion Property described on Exhibit "B" to the Declaration.

As the owner of the Additional Property, the Declarant desires to submit the Additional Property to the terms of the Declaration and this Supplement.

NOW, THEREFORE, the Declarant hereby submits the real property described on Exhibit "A" of this Supplement to the provisions of the Declaration and this Supplement, which shall hereafter encumber the title to such property and shall be binding upon all persons having any right, title, or any interest in such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. The provisions of this Supplement shall also be binding upon Wendell Falls Community Association, Inc., a North Carolina nonprofit corporation (the "**Association**"), in accordance with the terms of the Declaration.

ARTICLE I
Definitions

The definitions set forth in Article II of the Declaration are incorporated by reference in this Supplement.

ARTICLE II
Designation of Service Areas

Pursuant to Section 7.3 of the Declaration, all or portions of the Additional Property have been assigned to the Service Area(s), if any, described on Exhibit "A" to this Supplement.

ARTICLE III
Additional Covenants, Restrictions and Easements

The additional covenants, restrictions and easements, if any, set forth in Exhibit "B" of this Supplement shall apply to the Additional Property and shall be binding upon the owners and occupants of Units within the Additional Property, their guests and invitees, in addition to the terms of the Declaration, except to the extent that applicability is limited by the express terms of Exhibit "B" to Units within any Service Area identified on Exhibit "A".

ARTICLE IV
Amendment

4.1 By the Declarant.

Until termination of the Class "B" Control Period, the Declarant may unilaterally amend this Supplement for any purpose. Thereafter, until termination of the Development and Sale

Period, the Declarant may unilaterally amend this Supplement to reflect any revisions or amendments to any plats referenced on Exhibit "A," and, provided the amendment has no material adverse effect upon any right of any Owner without such Owner's consent in writing, for any other purpose.

Notwithstanding this reserved right, a revision or amendment to a plat shall not require an amendment to this Supplement so long as no property is added or excluded from the plat by the revision or amendment thereto. The Declarant reserves the right to record revised, amended, or additional plats that only affect internal boundaries between lots, combine lots, or subdivide lots shown on the original plat and, so long as they do not alter the overall property submitted to the Declaration by this Supplement, such revised, amended or additional plats shall not necessitate an amendment to this Supplement.

4.2. By Owners.

Except as otherwise specifically provided in this Article IV, any amendment to the provisions set forth on Exhibit "B" of this Supplement shall require the affirmative vote or written consent, or any combination thereof, of Owners of at least 67% of the Units within the Service Area to which such provisions apply, and the written consent of the Association, acting through its board of directors. Any other amendment to this Supplement may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners of at least 67% of the Units within the Additional Property and the written consent of the Association, acting through its board of directors. In addition, so long as the Declarant owns any Unit within the Additional Property, the consent of the Declarant shall be required to amend this Supplement in any manner.

4.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or without the written consent of the Declarant (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Supplement, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording, unless a later effective date is specified in the amendment. No action to challenge the validity of an amendment may be brought more than two years after its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Supplement.

In witness of the foregoing, the Declarant has executed this Supplemental Declaration on the 11th day of November, 2016.

DECLARANT: NASH WENDELL FALLS, LLC, a Delaware limited liability company

By: [signature]
Name: Laurie M. Ford
Its: Authorized Signatory

STATE OF NORTH CAROLINA)
)
COUNTY OF Chatham)

I, Amy L. Kingrea a Notary Public in and for Durham County, North Carolina, certify that Laurie M. Ford personally came before me this day and acknowledged that s/he is Authorized Signatory of NASH WENDELL FALLS, LLC, a Delaware limited liability company, and that by authority duly given and as the act of said limited liability company, he executed the foregoing instrument on behalf of said limited liability company.

Witness my hand and official stamp or seal, this 11 day of Nov, 2016.

[signature]
Notary Public

My Commission Expires:
10/22/2020

[NOTARY SEAL]

Amy L Kingrea
Notary
Public
Durham County, NC

5304100/cadocs/ Supp Decl - SF13, Ph B/102016/jps

EXHIBIT "A"

Additional Property

ALL THAT TRACT OR PARCEL OF LAND lying and being in Wake County, North Carolina, and being more particularly described on that certain Final Subdivision, Easement and Right-of-Way Dedication Plat of Wendell Falls Development SF13 - Phase B recorded on November 7, 2016, in Book of Maps 2016, Pages 1897-1901, in the office of the Register of Deeds of Wake County, North Carolina, as such plat may be revised from time to time (the **"Phase 13B Plat"**).

EXHIBIT "B"

Additional Covenants, Restrictions, and Easements

1. **Private Drainage Easements.**

(a) The Declarant hereby reserves, establishes and grants a perpetual, nonexclusive easement over each Unit shown on the Phase 13B Plat (as described in Exhibit "A") on which any portion of a private drainage easement is depicted, for the benefit of each other Unit on which any portion of such private drainage easement is depicted, for the natural flow of stormwater over and through such private drainage easement.

(b) Each Owner of a Unit burdened by any portion of a private drainage easement shall be responsible for installing and maintaining landscaping within that portion of the easement which burdens such Owner's Unit, shall keep such portion free and clear of obstructions that interfere with the flow of stormwater through such easement, and, subject to such approval as required under Article IV of the Declaration, shall be responsible for taking such steps as the Owner may deem necessary to control erosion on its Unit and protect such Owner's personal property and improvements from damage due to stormwater flows resulting from storm events.

(c) Each Owner, by acceptance of a deed to a Unit, acknowledges that severe weather events may occur from time to time which cause stormwater flows to exceed the capacity of the private drainage easements and any facilities and improvements therein. Neither the Declarant nor the Association shall have any liability for any damage to personal property or improvements on any Unit resulting from such weather events resulting in stormwater flows that exceed the capacity of the stormwater facilities within any private drainage easement.

WAKE COUNTY, NC
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
11-29-2016 AT 11:01:22

BOOK: 016618 PAGE: 01624 - 01627

Prepared by / Upon recording, please return to:
Jo Anne P. Stubblefield
Hyatt & Stubblefield, P.C.
1200 Peachtree Center, Harris Tower
233 Peachtree Street, N.E.
Atlanta, GA 30303

INDEXING NOTE TO CLERK'S OFFICE:
Please index in Grantor index under "NASH Wendell Falls, LLC"
Please index in Grantee index under "Wendell Falls," and "Wendell Falls Community Association, Inc."
Please cross-reference to Declaration at Book 15834, Page 1690

STATE OF NORTH CAROLINA

COUNTY OF WAKE

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WENDELL FALLS

This First Amendment to the Declaration of Covenants, Conditions and Restrictions for Wendell Falls ("**Amendment**") is made by NASH Wendell Falls, LLC, a Delaware limited liability company (the "**Declarant**").

Background Statement

The Declarant is the developer of the planned community located in Wake County, North Carolina known as Wendell Falls. The Declarant executed and filed that certain Declaration of Covenants, Conditions, and Restrictions for Wendell Falls recorded on November 10, 2014 in Deed Book 15834, Page 1690, *et seq.*, in the Office of the Register of Deeds of Wake County, North Carolina (as it may be amended and supplemented, the "**Declaration**").

The initial Rules of Wendell Falls Community Association, Inc., a North Carolina nonprofit corporation (the "**Association**") were attached as Exhibit "C" to the Declaration (the

"**Rules**"). Pursuant to Sections 3.2 and 19.1 of the Declaration, the Declarant reserved the right to unilaterally amend the Rules until termination of the Class "B" Control Period (as defined in the Declaration). The Class "B" Control Period has not terminated and the Declarant desires to amend the Rules as set forth herein.

NOW, THEREFORE, the Declarant hereby declares that the Rules attached as Exhibit "C" to the Declaration shall be amended as follows:

1.

Exhibit C, Section 2, Restricted Activities, is amended by deleting the lead-in sentence of that Section and replacing it with the following:

> 2. Restricted Activities. Unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board or the Declaration, the following activities are prohibited within the Community, except to the extent undertaken by the Declarant or its designees in the course of development, marketing and sale of the Community:

Exhibit C, Section 2 is further amended by deleting the words, "nothing herein" in the first line of the last paragraph of Section 2 and substituting in their place the words, "nothing in this Section 2".

2.

Exhibit C is further amended by adding the following new Section 4:

> 4. Restriction on Operation of Drones.
>
> (a) For purposes of this Section, a "drone" is an unmanned aircraft system which is controlled by an operator on the ground or from a remote location without physical contact with the aircraft. The term includes remote-controlled model airplanes and helicopters as well as other remote-controlled aircraft. The Board may, from time to time and at any time, modify and expand the definition of "drone" set forth herein.
>
> (b) Except as provided in subsection (d), no person may operate a drone within the Community until the drone is: (i) registered with the Association in accordance with such procedures as the Board may establish from time to time; and (ii) registered with the Federal Aviation Administration ("FAA"), if required by the FAA, and a copy of the certificate of FAA registration provided to the Association. Currently, the FAA requires registration of a drone if the drone exceeds 0.55 lbs. Information on registration of drones and additional Federal requirements for drones may be found at https://www.faa.gov/uas/.
>
> (c) Except as provided in subsection (d), the operator of a drone:

(i) may operate such drone within the Community only between the hours of 10:00 AM and 6:00 PM;

(ii) must not allow the drone to enter into the airspace above any Unit other than the Unit occupied by the operator or on which the operator has been expressly authorized by the Owner or occupant to operate such drone.

(iii) must not allow the drone to enter the airspace above any portion of the Common Area, Limited Common Area, or streets within the Community without the Board's prior written approval;

(iv) must not operate the drone in a manner which tends to harass or invade the privacy of, or be offensive or detrimental to, Owners or occupants of other Units, their guests or invitees, or persons using the public streets or Common Areas. The Board's judgment on such matters shall be determinative.

(d) This Section 4 shall not apply to the Declarant during the Development and Sale Period. The Declarant and its permittees may periodically utilize drones in the Community for sales and marketing purposes, and for other purposes associated with development of the Community. This Section 4 shall not apply to restrict operation of any drone within the Community by law enforcement or other public safety personnel acting in their official capacities, or by any governmental agency or utility provider or their employees or contractors for legitimate governmental or utility purposes, provided that the drone is used only to perform tasks within the scope of the operator's official capacity or duties and is operated in full compliance with all applicable laws and regulations. The Board may, in its discretion, grant exemptions for other categories of use subject to such conditions as the Board deems appropriate, provided that such exemptions are based on the nature of the drone use and operation within the Community and do not give preferential treatment to any particular business over its competitors.

(e) The Board may establish additional rules and/or policies to prohibit and/or regulate the use and operation of drones in the Community, which may include imposing conditions on registration.

[continued on next page]

In witness of the foregoing, the Declarant has executed this Amendment on the 21st day of November, 2016.

DECLARANT: NASH WENDELL FALLS, LLC, a Delaware limited liability company

By:
Name:
Its: Authorized Signatory

STATE OF NORTH CAROLINA)
)
COUNTY OF Chatham)

I, Amy L. Kingrea Notary Public in and for Durham County, North Carolina, certify that Lauren Ford personally came before me this day and acknowledged that s/he is Authorized Signatory of NASH WENDELL FALLS, LLC, a Delaware limited liability company, and that by authority duly given and as the act of said limited liability company, s/he executed the foregoing instrument on behalf of said limited liability company.

Witness my hand and official stamp or seal, this 21 day of November 2016.

Notary Public

My Commission Expires:
6/23/2020

[NOTARY SEAL]

Amy L Kingrea
Notary
Public
Durham County, NC

5304100adocs/ 1st Amend to Decl – 111616/jps

WAKE COUNTY, NC
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
12-20-2016 AT 12:47:31

BOOK: 016644 PAGE: 00416 - 00435

Prepared by / upon recording please return to:
Jo Anne P. Stubblefield
Hyatt & Stubblefield, P.C.
Peachtree Center South Tower
233 Peachtree Street, N.E., Suite 1200
Atlanta, Georgia 30303

INDEXING NOTE TO CLERK'S OFFICE:

Please index in Grantor index under "NASH Wendell Falls, LLC" and "NASH Financing, LLC"
Please index in Grantee index under "Wendell Falls" "Wendell Falls Residential Association, Inc.," and "Wendell Falls Commercial Association, Inc."

DECLARATION OF EASEMENTS AND COVENANT TO SHARE COSTS FOR WENDELL FALLS

TABLE OF CONTENTS

PAGE

DECLARATION OF EASEMENTS AND COVENANT TO SHARE COSTS FOR WENDELL FALLS

THIS DECLARATION OF EASEMENTS AND COVENANT TO SHARE COSTS FOR WENDELL FALLS (**"Covenant to Share Costs"**) is made as of the date set forth on the signature page by NASH Wendell Falls, LLC, a Delaware limited liability company (**"Declarant"**) with the joinder and consent of Wendell Falls Residential Association, Inc. (**"Residential Association"**), Wendell Falls Commercial Association, Inc. (**"Commercial Association"**), and NASH Financing, LLC (**"NASH"**).

BACKGROUND STATEMENT

The Declarant is the developer of Wendell Falls, a mixed-use master planned community located in Wake County, North Carolina (**"Wendell Falls"**). The master plan for Wendell Falls approved by the Town of Wendell, North Carolina, as it may be amended (**"Master Plan"**), contemplates various land uses within Wendell Falls, including residential neighborhoods, commercial parcels, open space, environmentally sensitive sites, and recreational properties.

Certain residential properties within Wendell Falls have been or shall be made subject to that certain Declaration of Covenants, Conditions and Restrictions for Wendell Falls, executed by the Declarant and recorded on November 10, 2014, in Deed Book 15834, Pages 1690-1801, in the Office of the Register of Deeds for Wake County, North Carolina (as it may be amended and supplemented from time to time, the **"Residential Declaration"**). The Declarant has established the Residential Association as a mandatory membership owners association comprised of all owners of property subject to the Residential Declaration, to administer the Residential Declaration and to maintain, operate and insure various properties described in the Residential Declaration. The real property now and hereafter made subject to the Residential Declaration is referred to herein as the **"Residential Properties."** Each "Unit," as defined in the Residential Declaration is referred to in this Covenant to Share Costs as a **"Residential Unit"** and each owner of a Residential Unit is referred to herein as a **"Residential Owner."**

Other properties described in or depicted on the Master Plan for Wendell Falls have been or will be made subject to that certain Declaration of Covenants, Conditions and Restrictions for Wendell Falls Commercial Properties, executed by the Declarant and recorded on December 20, 20 16 , in Deed Book 16644, Page 1 , *et seq.*, in the Office of the Register of Deeds for Wake County, North Carolina (as it may be amended and supplemented from time to time, the **"Commercial Declaration"**). The Declarant has established the Commercial Association as a mandatory membership owners association comprised of all owners of property subject to the Commercial Declaration, to administer the Commercial Declaration and to maintain, operate and insure various properties described in the Commercial Declaration. The real property now and hereafter made subject to the Commercial Declaration is referred to herein as the **"Commercial Properties."** Each "Unit" as defined in the Commercial Declaration is referred to in this Covenant to Share Costs as a **"Commercial Unit"** and each owner of a Commercial Unit is referred to herein as a **"Commercial Owner."**

By this Covenant to Share Costs, the Declarant desires to provide for (i) the maintenance of certain properties (**"Shared Areas"**) and the provision of certain services (**"Shared Services"**) which benefit the property subject to the Residential Declaration as well as the property subject to the Commercial Declaration, (ii) an equitable allocation of the costs incurred by the Residential Association with respect to such Shared Areas and Shared Services between the Residential Association and the Commercial Association, and (iii) easements relating to maintenance and use of, and access to, such Shared Areas.

DECLARATION OF INTENT AND BINDING EFFECT

NOW, THEREFORE, the Declarant hereby declares that the real property described on Exhibit "A" together with any and all additional property hereafter made subject to the Commercial Declaration (collectively, the **"Submitted Property"**), shall be held, sold, and conveyed subject to the covenants and conditions contained herein, which are made for the express benefit of the Declarant, the Residential Association and its members, and the Commercial Association and its members. The covenants and conditions contained herein shall run with the title to all property now or hereafter submitted to this Covenant to Share Costs and shall be binding upon all parties having any right, title, or interest therein, their heirs, successors, successors-in-title, and assigns, and upon the Residential Association and the Commercial Association.

Article I
Shared Areas and Shared Services; Easements

1.1. Shared Areas.

(a) The "Shared Areas" shall consist of:

(i) **"Entry and Signage Improvements,"** which consist of the community entry features for Wendell Falls, including landscaping and associated irrigation systems and lighting, if any, now or hereafter denoting the entries into Wendell Falls and located within the rights-of-way of Wendell Falls Parkway, Taylor Road, Wendell Valley Boulevard, Poole Road, and Martin Pond Road or within any "Common Area," as defined in the Residential Declaration or the Commercial Declaration (**"Common Area"**);

(ii) **"Streetscape Improvements,"** which consist of any sidewalks, community traffic and directional signage, streetlights, landscaping, and irrigation systems, decorative or privacy walls, and other streetscape improvements installed by the Declarant (and replacements thereof) within the rights-of-way of that portion of Wendell Falls Parkway, Poole Road, and Martin Pond Road abutting any portion of the Submitted Property or within any Common Area adjacent to and within 30 feet of such rights-of-way;

(iii) **"Open Space and Parks,"** which consist of all pathways, trails, open space and green space within the Common Area (but excluding any recreational facilities other than pathways and trails and any areas designated Limited Common Area pursuant to the Residential Declaration); and

(iv) **"Drainage Facilities,"** which consist of any pipes, lines, culverts, swales, detention and retention ponds, and other structures and facilities now or hereafter constructed or installed within the Submitted Property as part of the master drainage system serving Wendell Falls which are designed to direct, divert, capture, store, pump, transport and distribute storm water runoff and surface waters from portions of both the Residential Properties and Commercial Properties, whether located on Common Areas or within drainage easements depicted on recorded plats of any portion of Wendell Falls (**"Drainage Easements"**), but subject to Section 2.1 hereof.

(b) The **"Shared Services"** shall consist of any services that the Residential Association now or hereafter provides throughout the Submitted Property, which may include, but need not be limited to, courtesy patrols, mosquito abatement, snow removal, and similar services of a municipal nature, provided that the Residential Association shall not provide such services to the Commercial Properties without the prior approval of the board of directors of the Commercial Association.

1.2. Easements.

(a) Drainage and Detention Facilities.

(i) There are hereby established, for the benefit of the real property described in Exhibits "A" and "B" to the Residential Declaration and Exhibits "A" and "B" to the Commercial Declaration, respectively (**"Benefited Properties"**), perpetual, nonexclusive easements over and through the Drainage Facilities for the purposes of drainage of surface waters and storm water runoff from the Benefited Properties (**"Waters"**) and for capture and detention or retention of such Waters within those Drainage Facilities constructed for such purposes.

(ii) The Residential Association is hereby granted a perpetual, nonexclusive easement over and through the Drainage Facilities, which easement may be exercised by the Residential Association's employees, agents, contractors, and designees, for purposes of:

(A) pumping and flow of Waters over and through the Drainage Facilities; and

(B) inspecting, maintaining, repairing, replacing, and operating the Drainage Facilities and otherwise fulfilling its responsibilities relating to the Drainage Facilities under Section 2.1.

In addition, the Residential Association is hereby granted a perpetual, nonexclusive easement over the Drainage Easements as reasonably necessary to obtain pedestrian and vehicular access to such Drainage Facilities, and over all public and private roads, driveways and parking lots within the Submitted Property, as reasonably necessary or convenient to exercise the easements set forth above.

(b) Easements over Shared Areas. The Declarant hereby creates and grants to the Commercial Owners and occupants of all Commercial Units, a perpetual, non-exclusive easement for access, use and enjoyment of the Open Space and Parks within the Shared Areas for the purposes for which they are designed, subject to such reasonable rules as the Residential Association may adopt pursuant to the Residential Declaration and which are applicable to the Residential Association's members. The rights conferred by this easement are subject to suspension in the event of non-payment of amounts due to the Residential Association pursuant to Article III below, but shall not be subject to additional use or access fees.

The rights and easements granted and reserved under this Section 1.2(b) shall be subject to the following:

(i) the Residential Association's right to temporarily close all or portions of the Shared Areas in order to perform maintenance and repairs;

(ii) the Declarant's and the Residential Association's right to declare portions of the Shared Areas closed to access by persons other than maintenance or other personnel related to the operation of such areas; and

(iii) all other easements and restrictions of record.

(c) Easements over Commercial Properties and Shared Areas. The Declarant hereby reserves to itself and grants to the Residential Association, its agents and assigns, a perpetual, non-exclusive blanket easement over, under, and across the Commercial Properties and Shared Areas for the purpose of access, ingress, egress, use, maintenance, and repair to the extent reasonably necessary for the Residential Association to perform maintenance on the Shared Areas and to provide Shared Services within the Commercial Properties authorized pursuant to Section 1.1(b).

All work associated with the exercise of this easement shall be performed in such a manner as to avoid or, if not reasonably avoidable, to minimize, interference with the use and enjoyment of the Commercial Units. Upon completion of the work, the person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work.

Article II
Obligation to Maintain and Insure

2.1. Residential Association Responsibility.

The Residential Association shall maintain and operate the Shared Areas (regardless of ownership), and all landscaping and improvements thereon and related thereto, in good condition and repair, in a manner consistent with its obligation to maintain and operate "Common Areas" under the Residential Declaration, and in accordance with the Community-Wide Standard established pursuant to the Residential Declaration. The Residential Association shall also insure any insurable improvements on the Shared Areas, in the manner and to the extent that the Residential Association is responsible for insuring such improvements under the Residential Declaration; provided, in the event that the Residential Declaration is amended to reduce the Residential Association's obligations to maintain insurance thereunder, the insurance provisions in effect immediately prior to such amendment shall continue to apply to the Residential

Association's obligations hereunder unless the Commercial Association consents in writing to such amendment.

Maintenance, as referred to in this Covenant to Share Costs, shall include responsibility for repair and replacement as necessary to maintain the Shared Areas to a level consistent with the Community-Wide Standard, except that the Residential Association shall not be responsible for repair or replacement of improvements necessitated by damage or destruction of such improvements resulting from causes other than normal wear and tear, except to the extent that it is responsible for insuring such improvements pursuant to the Residential Declaration.

Notwithstanding the above, the Residential Association shall have no responsibility for maintenance of any Drainage Facilities constructed by any person other than the Declarant until such time as the Residential Association:

(a) has received written notice, accompanied by the certification of a North Carolina licensed engineer that construction or installation thereof is complete; and

(b) has been given at least 30 days after receipt of such notice within which to conduct such inspections of the Drainage Facilities as its board of directors deems appropriate to verify that they are complete and free from material defects; and

(c) has accepted maintenance responsibility for such item in writing or failed to notify the Owner of the underlying land in writing within such 30-day period of its rejection of such item and the reasons for such rejection, in which case it shall be deemed to have accepted the item. If the Residential Association notifies the Owner of its rejection of any portion of the Drainage Facilities within such 30-day period, that portion shall be deemed incomplete and the process shall be repeated until such portion is accepted or deemed accepted hereunder. The Residential Association shall not reject an item unless it determines, in good faith, that there are material defects in the construction or installation of the item or that it has not been completed in all material respects in accordance with the plans approved pursuant to the Residential Declaration or Commercial Declaration, as applicable.

In conducting inspections hereunder, the Residential Association shall be acting solely to protect its own interests and such right of inspection shall not create any duty to any other Person, including any purchaser or subsequent Owner of the underlying land, and no such purchaser or Owner have any right to rely upon the Residential Association's inspection for any purpose. Any dispute between the Residential Association and any Owner relating to the status of completion or acceptance shall be subject to the dispute resolution procedures set forth in the Residential Declaration.

The Residential Association's responsibilities with respect to maintenance of Drainage Facilities shall be limited to such activities as necessary to maintain their proper operation to capture, direct, divert, pump, transport, and distribute stormwater as designed and intended and shall specifically exclude any responsibility for maintenance of landscaping, fountains, retaining walls, bulkheads, basins, shorelines or aesthetic features or erosion of surrounding property resulting from weather events or stormwater flows which exceed those for which the facilities were designed, which responsibility shall rest with the owner of the underlying property.

2.2. Dispute Procedures.

(a) In the event that the Commercial Association or any Commercial Owner believes that the Residential Association is not maintaining the Shared Areas, or any portion thereof, to the Community-Wide Standard, such Commercial Owner ("**Complaining Party**") shall provide written notice ("**Notice**") to the Residential Association, which Notice shall state plainly and concisely:

(i) the nature of the deficiency, including any specific problems with the level, quality, or frequency of maintenance being performed, and examples of where maintenance of a similar nature, if any, is being performed within Wendell Falls to the Community-Wide Standard; and

(ii) what the Complaining Party wants the Residential Association to do to resolve or cure the maintenance deficiency.

(b) The Residential Association shall have 10 business days after receipt of the Notice to (i) respond to the Complaining Party by stating its opinion that the Community-Wide Standard is satisfied; (ii) cure the alleged deficiency; or (iii) if the deficiency is not capable of being cured within such period, provide the Complaining Party with a written explanation of the steps being taken to cure the deficiency, a good faith estimate of a reasonable date by which such deficiency shall be cured, and any other pertinent information.

(c) If the Residential Association contests any alleged deficiency or acknowledges the deficiency but fails to cure the deficiency within 10 business days after receipt of the Notice or such reasonable cure date as the Residential Association has specified in its response under subsection (b)(iii), the Complaining Party may file a "**Claim**" as provided in, and subject to the limitations on Claims set forth in, the alternative dispute resolution provisions in the Residential Declaration. In such case, the Complaining Party and the Residential Association shall be deemed "**Bound Parties**" and shall comply with the dispute resolution procedures set forth in the Residential Declaration, to the extent that the Claim would not be exempt thereunder, prior to filing any suit.

2.3. Limitation of Liability.

Notwithstanding anything contained herein to the contrary, the Residential Association shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own, unless and only to the extent that, it has been negligent in the performance of its maintenance responsibilities.

Article III
Obligation to Share Costs

3.1. Obligation for Assessments.

In consideration of the benefits derived from the Residential Association's performance of its responsibilities under this Covenant to Share Costs and provision of Shared Services, if any, each Commercial Unit shall be subject to assessment by the Residential Association for a share of the Residential Association's expenses associated with managing, maintaining, operating, and insuring the Shared Areas and providing Shared Services, including such amounts, if any, as the Residential Association's board of directors determines, in its discretion, should be placed in a reserve fund for capital repairs and replacements to the Shared Areas (collectively, the "**Shared Expenses**"), as more specifically provided in Section 3.2, such assessments to be collected and paid by the Commercial Association to the Residential Association on behalf of all Commercial Owners; provided, if the Commercial Association fails to pay any amount due to the Residential Association hereunder, the Residential Association may collect directly from the Commercial Owners as provided in this Article. That portion of the cost of maintaining the Shared Areas which is not allocated to the Commercial Units and the Commercial Association shall be a Common Expense of the Residential Association to be assessed against its members pursuant to the Residential Declaration.

The obligation of the Commercial Association and each Commercial Owner to pay assessments pursuant to this Covenant to Share Costs shall be mandatory and shall be a separate and independent covenant on the part of the Commercial Association and each Commercial Owner. No diminution or abatement of assessments or setoff shall be claimed or allowed by reason of any alleged failure of the Residential Association to perform its responsibilities hereunder, the Commercial Association's and a Commercial Owner's sole remedy for failure of the Residential Association to perform its responsibilities being to invoke the dispute procedures provided for in this Covenant to Share Costs.

The obligation to pay assessments hereunder shall commence as to each Commercial Unit upon conveyance of such Commercial Unit to a person other than the Declarant. No assessment shall be due prior to the time that the Residential Association's board of directors first determines a budget and levies assessments on its members.

Notwithstanding the above, any property dedicated or conveyed to and accepted by any governmental authority or public or private utility and any property that is subject to, but exempt from the payment of assessments under, the Residential Declaration or Commercial Declaration, respectively, shall be exempt from payment of assessments hereunder. In addition, the Declarant and/or the Residential Association may grant exemptions from payment of assessments hereunder to entities qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code, so long as the Commercial Unit owned by such entity is used for exempt purposes listed in Section 501(c).

3.2. Computation of Assessment.

On an annual basis, at least 60 days before the beginning of its fiscal year, the Residential Association's board of directors shall adopt an estimated budget of the Shared Expenses for the upcoming year. The budget shall be adjusted to reflect any excess or deficiency in the budget for the immediately preceding year as compared to actual expenses and contributions to reserves for that period, and any unreimbursed costs the Residential Association incurred during the previous fiscal year to collect amounts due hereunder. A copy of the proposed budget shall be provided to the Commercial Association at least 30 days prior to its adoption by the Residential Association's board of directors. During such 30-day period the Commercial Association's board of directors shall have the opportunity to provide input into such budget, which shall be considered by the Residential Association's board of directors before adoption of the final budget.

The estimated Shared Expenses set forth in such budget shall be allocated among the Residential Units and Commercial Units in the manner provided in Exhibit "B".

Within 30 days following the Board's adoption of any new or revised budget, the Board shall send a summary of the budget, together with notice of the amount of the assessment to be levied pursuant to such budget, to each Residential Owner and Commercial Owner to be assessed thereunder. The budget shall be accompanied by notice of the date, time and location of a meeting to consider ratification, which meeting shall be set by the Board to occur no less than 10 nor more than 60 days after mailing of the budget summary and notice. The notice shall include a statement that the meeting may be held and the budget may be ratified without a quorum being present.

The budget shall be deemed ratified unless rejected at the meeting by Owners of at least 75% of the total number of Residential Units and Commercial Units subject to assessment thereunder. If any proposed budget is rejected or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the assessments from time to time during the year, subject to the notice and ratification requirements set forth above.

3.3. Payment of Assessments.

Within 10 days after receipt of a written request from the Residential Association, the Commercial Association shall provide to the Residential Association a current list of the Commercial Owners and their mailing addresses as shown on the Commercial Association's records. The Residential Association shall send written notice of the assessments due for each Commercial Unit to the Commercial Association at least 30 days prior to the due date thereof. The Commercial Association shall pay to the Residential Association, on behalf of the Commercial Owners, the entire amount assessed against the Commercial Units ("**Commercial Assessment**") on or before the due date set forth in such notice; provided, the Residential Association may, in its discretion, permit such assessments to be paid in quarterly or other installments. Any assessment or portion thereof which remains due more than 30 days after the due date shall incur late charges (as determined by the Residential Association) and interest at a rate of 18% per annum (or, if lower, the highest rate allowed by North Carolina law) on the principal amount due until paid, and the Residential Association shall be entitled to collect from the Commercial Association or the responsible Commercial Owner(s) all costs of collection (including attorneys' fees), and any other amounts provided or permitted by law. All payments shall be applied first to costs and attorneys' fees, then to interest, and then to delinquent assessments. Any Commercial Owner may be excused from the obligation to pay its share of any delinquent amount by providing evidence satisfactory to the Residential Association's board of directors of its payment of the amount assessed against its Commercial Unit. The Commercial Association shall be personally obligated to pay to the Residential Association any amounts received from Commercial Owners in payment of their respective shares of the Commercial Assessment.

Subject to North Carolina law, as it may be amended, if any assessment or installment thereof remains unpaid 30 days or more after the due date, the Residential Association shall, upon filing a claim of lien in the office of the clerk of the Superior Court of Wake County, North Carolina conforming to the requirements of Section 47F-3-116 of the North Carolina Planned Community Act, N.C.G.S. § 47F-1-101, *et seq.* (as it may be amended, the "Act"), have a lien against each Commercial Unit in favor of the Residential Association to secure payment of assessments, as well as interest, late charges, and costs of collection (including attorneys' fees and court costs).expenses). The Residential Association's lien shall be superior to all other liens, except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (ii) the lien or charge of any recorded mortgage made in good faith and for value having first priority over any other mortgages on such Commercial Unit and recorded prior to the filing of the claim of lien) on such Commercial Unit.

In the event that any assessment or portion thereof remains unpaid 60 days after the due date, the Residential Association may institute suit to obtain a money judgment for such amounts, and/or to enforce its lien. If any such assessment or portion thereof remains unpaid 90 or more days after the due date and the Residential Association's board of directors votes to foreclose its lien, it may do so through judicial or, to the extent allowed by law, non-judicial foreclosure proceedings in accordance with North Carolina law, as it may be amended, except that any lien securing only fines and/or service or collection fees may be foreclosed only by judicial foreclosure.

The Residential Association may bid for the Commercial Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Commercial Unit. While a Commercial Unit is owned by the Residential Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Commercial Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Commercial Unit had it not been acquired by the Residential Association. The Residential Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

Sale or transfer of any Commercial Unit shall not affect the assessment lien or relieve such Commercial Unit from the lien for any subsequent assessments. However, the sale or transfer of any Commercial Unit pursuant to foreclosure of any first mortgage shall extinguish the lien as to any installments of such assessments due prior to such foreclosure. The subsequent Commercial Owner of the foreclosed Commercial Unit shall not be personally liable for assessments on such Unit that were due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Commercial Owners of all Commercial Units subject to assessment under Section 3.1, including such acquirer, its successors and assigns. Any Commercial Owner shall be entitled to a release of such lien against its Commercial Unit upon presentation of evidence satisfactory to the Residential Association's board of directors of its payment of the amount assessed against its Commercial Unit.

Disputes over the payment of assessments shall not be subject to the dispute resolution procedures set forth in Section 2.2 or in the Residential Declaration.

3.4. Recordkeeping.

The Residential Association shall maintain or cause to be maintained full and accurate books of account with respect to the performance of its responsibilities hereunder and shall retain copies of such books of account for a minimum period of seven years. The Residential Association shall make books, records, and related financial statements available for inspection and copying during normal business hours by an authorized representative of the Commercial Association or any Commercial Owner. The party requesting copies shall pay copying charges when requesting copies. If a party desires to have the records audited, it may do so at its expense, and the Residential Association shall cooperate by making available to the auditors the records, including all supporting material (*e.g.*, check copies, invoices, etc.), for the year in question.

If the amount of actual expenses for the year is disputed after the audit, the parties shall cause a second audit to be performed by a mutually acceptable auditor, and the decision of the second auditor shall be binding. If the amount as determined by the second auditor varies from the amount asserted by the Residential Association by 5% or more, the Residential Association shall pay the entire cost of the second auditor. If the amount as determined by the second auditor varies from the amount asserted by the Residential Association by less than 3%, the party requesting the audit shall pay the entire cost of the second auditor. Otherwise, the parties shall share equally the cost of the second auditor. Variances shall be taken into account in the following year's budget as provided in Section 3.2.

Article IV
<u>General</u>

4.1. Notice.

Any notice provided for in this Covenant to Share Costs shall be served personally or shall be mailed by registered or certified mail to the president or secretary of the Residential Association at its principal office or such other address as it designates in writing to the Commercial Association, and to the president or secretary of the Commercial Association at the address of its principal office or such other address as it designates in writing to the Residential Association. Notices to Commercial Owners shall be mailed to the address of their respective Commercial Units, or to such other address as it designates in writing to the other parties. All such notices shall, for all purposes, be deemed delivered (a) upon personal delivery to the party at the address specified above or (b) on the third day after mailing when mailed by registered, certified, or first class mail, postage prepaid, and properly addressed.

4.2. Enforcement.

The obligations created hereunder shall inure to the benefit of, and shall be enforceable by, the Declarant, the Residential Association, and each Commercial Owner; provided, any action to enforce the Residential Association's obligations under Section 2.1 shall be subject to the procedures outlined in Section 2.2.

4.3. Amendment.

Until expiration of the Development and Sale Period under both the Residential Declaration and the Commercial Declaration (**"Development and Sale Period"**), the Declarant may amend this Covenant to Share Costs unilaterally for any purpose, except that the Declarant shall not amend in a manner which increases the percentage share of assessments to be levied on any Commercial Unit in a manner other than as specifically contemplated by Exhibit "C" hereof without the written consent of the Commercial Owner of such Commercial Unit.

Alternatively, this Covenant to Share Costs may be amended upon the written consent of the Residential Association's board of directors and either (a) the written consent of the Commercial Association's board of directors; or (b) the affirmative vote or written consent of Commercial Owners responsible for payment of at least a majority of the total assessments charged to the Commercial Units in accordance with Exhibit "C." During the Development and Sale Period, any amendment to this Covenant to Share Costs also shall require the Declarant's written consent.

Amendments to this Covenant to Share Costs shall become effective upon recordation in the Office of the Register of Deeds for Wake County, North Carolina, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provision of this Covenant to Share Costs. If an individual or entity consents to any amendment to this Covenant to Share Costs, it will be conclusively presumed that such individual or entity has the authority to so consent, and no contrary provision in any mortgage or contract between such individual or entity and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the Declarant's written consent or that of the assignee of such right or privilege.

4.4. Duration.

Unless limited by North Carolina law, this Covenant to Share Costs shall run with and bind the Submitted Property for a period of 30 years and thereafter shall automatically be extended for successive periods of 10 years each, subject to the right to amend pursuant to Section 4.3. If North Carolina law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Covenant to Share Costs shall run with title to and bind the Submitted Property for the maximum period permitted under North Carolina law.

4.5. Interpretation.

This Covenant to Share Costs shall be governed by and construed under North Carolina law.

4.6. Waiver.

No failure of any party to exercise any power under this Covenant to Share Costs or insist upon strict compliance with this Covenant to Share Costs and no custom or practice at variance with the terms of this Covenant to Share Costs shall constitute a waiver of the right to demand exact compliance with the terms of this Covenant to Share Costs.

4.7. Severability.

Invalidation of any provision of this Covenant to Share Costs, in whole or in part, or any application of a provision of this Covenant to Share Costs by judgment or court order shall in no way affect other provisions or applications.

4.8. Captions.

The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

[continued on next page]

14th IN WITNESS WHEREOF, the Declarant has executed this Covenant to Share Costs this 14th day of December, 2016.

DECLARANT: **NASH WENDELL FALLS, LLC**, a Delaware limited liability company

By: [signature]
Name: Laurie M. Ford
Its: Authorized Signatory

STATE OF NORTH CAROLINA)
)
COUNTY OF WAKE)

I, DIANNE D. FULLER, a Notary Public in and for WAKE County, North Carolina, certify that LAURIE FORD personally came before me this day and acknowledged that s/he is LAURIE FORD of NASH WENDELL FALLS, LLC, a Delaware limited liability company, and that by authority duly given and as the act of said limited liability company, s/he executed the foregoing instrument on behalf of said limited liability company.

Witness my hand and official stamp or seal, this 14 day of DECEMBER 2016.

(Official Seal)

DIANNE D. FULLER
Notary Public, North Carolina
Wake County
My Commission Expires
June 07, 2021

Dianne D. Fuller
__________ __________, Notary Public

My Commission Expires: JUNE 7, 2021

5304HMCADocs/Cov to Share Costs 121316fps

JOINDER AND CONSENT OF RESIDENTIAL ASSOCIATION

By execution below, Wendell Falls Residential Association, Inc. does hereby acknowledge and consent to the foregoing Declaration of Easements and Covenant to Share Costs for Wendell Falls and agree to assume and fulfill its obligations thereunder.

RESIDENTIAL ASSOCIATION: **WENDELL FALLS RESIDENTIAL ASSOCIATION, INC.**, a North Carolina nonprofit corporation

By: Brad R

Name: BRAD RHINEHART

Its: President

Attest: DRK

Name: DANIEL B KLAUSNER

Its: ________

STATE OF NORTH CAROLINA)
)
COUNTY OF CHATHAM)

I, DIANNE D. FULLER, a Notary Public in and for WAKE County, North Carolina, certify that BRAD RHINEHART personally came before me this day and acknowledged that s/he is President of WENDELL FALLS RESIDENTIAL ASSOCIATION, INC., a North Carolina nonprofit corporation, and that by authority duly given and as the act of said corporation, s/he executed the foregoing instrument on behalf of said corporation.

Witness my hand and official stamp or seal, this 14 day of DECEMBER 2016.

(Official Seal)

DIANNE D. FULLER
Notary Public, North Carolina
Wake County
My Commission Expires
June 07, 2021

Dianne D. Fuller, Notary Public

My Commission Expires: JUNE 7, 2021

JOINDER AND CONSENT OF COMMERCIAL ASSOCIATION

By execution below, Wendell Falls Commercial Association, Inc. does hereby acknowledge and consent to the foregoing Declaration of Easements and Covenant to Share Costs for Wendell Falls and agree to assume and fulfill its obligations thereunder.

COMMERCIAL ASSOCIATION: **WENDELL FALLS COMMERCIAL ASSOCIATION, INC.**, a North Carolina nonprofit corporation

By: [signature]
Name: DANIEL R. KLAUSNER
Its: President

Attest: Brad R [signature]
Name: BRAD RAINEHALT
Its: VICE PRESIDENT

STATE OF NORTH CAROLINA)
)
COUNTY OF CHATHAM)

I, DIANNE D. FULLER, a Notary Public in and for WAKE County, North Carolina, certify that DANIEL KLAUSNER personally came before me this day and acknowledged that s/he is President of WENDELL FALLS COMMERCIAL ASSOCIATION, INC., a North Carolina nonprofit corporation, and that by authority duly given and as the act of said corporation, s/he executed the foregoing instrument on behalf of said corporation.

Witness my hand and official stamp or seal, this 14 day of DECEMBER 20 16

Dianne D. Fuller
________________, Notary Public

My Commission Expires: JUNE 7, 2021

(Official Seal)

DIANNE D. FULLER
Notary Public, North Carolina
Wake County
My Commission Expires
June 07, 2021

JOINDER, CONSENT AND SUBORDINATION

The undersigned, as holder of that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated October 21, 2013 and recorded October 21, 2013 in Book 15478, Pages 1630-1654 in the office of the Register of Deeds for Wake County, North Carolina ("**Deed of Trust**"), which encumbers the real property described on Exhibit "A" to the foregoing Declaration of Easements and Covenant to Share Costs for Wendell Falls ("**Covenant**"), hereby joins in execution of such Covenant to evidence its consent thereto and to subordinate its interest under the Deed of Trust to such Covenant.

IN WITNESS WHEREOF, the undersigned has duly executed this Joinder, Consent and Subordination by and through its authorized representative this 19th day of October, 2016.

WITNESSES:	MORTGAGEE:
Signed, sealed and delivered in the presence of:	**NASH FINANCING, LLC,** a Delaware limited liability company
______________________ Signature of Witness #1	By: Thomas B. McKay Authorized Signatory
______________________ Typed/Printed Name of Witness #1	
______________________ Signature of Witness #2	Address: c/o North America Sekisui House, LLC 2001 Jefferson Davis Highway, Suite 701 Arlington, Virginia 22202
______________________ Typed/Printed Name of Witness #2	

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF VIRGINIA)
) ss.
COUNTY OF ARLINGTON)

The foregoing instrument was acknowledged before me this 19th day of December, 2016, by Thomas B McKay, Authorized Signatory of North America Sekisui House, LLC, a Delaware limited liability company, the Sole Member of NASH Financing, LLC, a Delaware limited liability company, on behalf of the entities, who (check one) ✓ is personally known to me or ____ has produced a ______________________ as identification.

WITNESS my hand and official seal.

Terumi Kobayashi, Notary Public
My commission expires: 04-30 2020

[NOTARY SEAL]

TERUMI KOBAYASHI
NOTARY PUBLIC
REG #7515249
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES APRIL 30, 2020

EXHIBIT "A"

Submitted Property

ALL THAT TRACT OR PARCEL OF LAND lying and being in Wake County, North Carolina, and being more particularly described as "**Tract 4A** 221,028 SF 5.07 AC" on that Right-of-Way Dedication and Recombination Plat recorded in the office of the Register of Deeds for Wake County, North Carolina on October 7, 2008 in Book of Maps 2008, Page 1929-1931.

TOGETHER WITH:

Such additional property as is hereafter made subject to that certain Declaration of Covenants, Conditions and Restrictions for Wendell Falls Commercial Properties executed by the Declarant and recorded on December 20, 2016, in Book 16644, Page 1, *et seq.*, in the Office of the Register of Deeds for Wake County, North Carolina, as it may be amended and supplemented from time to time.

EXHIBIT "B"

Allocation of Expenses Related to Shared Areas and Shared Services

Expenses Associated with Shared Areas:

The portion of Shared Expenses associated with Shared Areas to be allocated to the Commercial Properties shall be calculated by multiplying the total of such Shared Expenses, as reflected in the budget adopted pursuant to Section 3.2, by a fraction, the numerator of which is the assessable acreage (as defined below) within the Commercial Properties as of the effective date of such budget and the denominator of which is that numerator plus the assessable acreage within the Residential Properties. All Shared Expenses except the portion allocated to the Commercial Properties hereunder shall be the responsibility of the Residential Association, to be included in its general budget as a common expense and allocated in accordance with the Residential Declaration.

For purposes of this calculation, "assessable acreage" shall refer to the acreage as shown on plats of the Commercial Properties or Residential Properties, as applicable, which is contained within Units which are subject to assessment under the Commercial Declaration or Residential Declaration, respectively.

Expenses Associated With Shared Services:

Shared Expenses associated with any Shared Services shall be allocated between the Residential Properties and the Commercial Properties by agreement of the Residential Association and the Commercial Association at such time as the Commercial Association agrees to have the Residential Association provide such services pursuant to Section 1.1(b).

BK019829PG00207

WAKE COUNTY, NC
TAMMY L. BRUNNER
REGISTER OF DEEDS
PRESENTED & RECORDED ON
02-12-2025 AT 16:54:06

BOOK: 019829 PAGE: 00207 - 00214

Prepared by:
Janet L. Bozeman
Williams Teusink, LLC
312 Sycamore Street
Decatur, GA 30030

Upon recording, please return to:
NASH Wendell Falls, LLC
4020 Westchase Blvd., Suite 150
Raleigh, NC 27607

NOTE TO CLERK: Please Cross-Reference to:
Declaration of Covenants at Book 16644, Page 1
Declaration of Easements at Book 16644, Page 416
Supplemental Declaration at Book 17064, Page 799
First Amendment to Supplemental Declaration at Book 18426, Page 196

INDEXING NOTE TO CLERK'S OFFICE:
Please index in Grantor index under "NASH Wendell Falls, LLC"
Please index in Grantee index under "Wendell Falls" and "Wendell Falls Commercial Association, Inc."

STATE OF NORTH CAROLINA

COUNTY OF WAKE

SECOND AMENDMENT TO SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WENDELL FALLS COMMERCIAL PROPERTIES AND AMENDMENT TO DECLARATION OF EASEMENTS AND COVENANT TO SHARE COSTS

(LOTS 8, 9A AND 9B)

This Second Amendment to the Supplemental Declaration of Covenants, Conditions and Restrictions for Wendell Falls Commercial Properties and Amendment to Declaration of Easements and Covenant to Share Costs ("**Amendment**") is made by NASH Wendell Falls, LLC, a Delaware limited liability company (the "**Declarant**"), with the joinder and consent of EIG14T RCCC 214 NC-WENDELL FALLS, LLC, a Michigan limited liability company ("**Lot 8 Owner**"), WF SBUX, LLC, a North Carolina limited liability company ("**Lot 9A Owner**"), TRI-ARC FOOD SYSTEMS, INC., a North Carolina corporation ("**Lot 9B Owner**"), and Wendell Falls Commercial Association, Inc., a North Carolina nonprofit corporation (the "**Association**").

Background Statement

The Declarant is the developer of the planned community located in Wake County, North Carolina known as Wendell Falls. The Declarant executed and filed that certain Declaration of Covenants, Conditions, and Restrictions for Wendell Falls Commercial Properties recorded in the Office of the Register of Deeds of Wake County, North Carolina ("**ROD Office**") on December 20, 2016 in Deed Book 16644, Pages 1 through 107, and amended by that First Amendment recorded in the ROD Office on February 27, 2018 in Deed Book 17055, Page 1098, *et seq.*, that Second Amendment recorded in the ROD Office on December 18, 2019 in Deed Book 17687, Page 1454, *et seq*., and that Third Amendment recorded in the ROD Office on June 29, 2020 in Deed Book 17939, Page 1747, *et seq.* (as now and hereafter amended and supplemented, the "**Declaration**"). The Declarant also executed and recorded that Declaration of Easements and Covenant to Share Costs for Wendell Falls recorded in the ROD Office on December 20, 2016 in Deed Book 16644, Pages 416 through 435, and amended by that First Amendment recorded in the ROD Office on July 16, 2018 in Deed Book 17185, Pages 1126-1129 (as now and hereafter amended and supplemented, the "**Covenant to Share Costs**").

Pursuant to Sections 9.1 and 9.3 of the Declaration, the Declarant reserved the right to record Supplemental Declarations from time to time, submitting any portion of the additional property described on Exhibit "B" of the Declaration ("**Expansion Property**") to the Declaration and/or imposing on such property or any property previously submitted to the Declaration additional covenants, restrictions, and easements, with the consent of the owner of such property (if not the Declarant). Pursuant to Section 4.3 and Exhibit "A" of the Covenant to Share Costs, the Declarant may amend the Covenant to Share Costs at any time during the Development and Sale Period, and any property submitted to the Declaration is automatically subject to the Covenant to Share Costs.

On March 8, 2018, the Declarant executed and filed that Supplemental Declaration of Covenants, Conditions and Restrictions for Wendell Falls Commercial Properties and Amendment to Declaration of Easements and to Covenant to Share Costs which was recorded in the ROD Office in Book 17064, Pages 799-813 (the "**Original Supplement**"), submitting to the terms of the Declaration a portion of the Expansion Property more particularly described in Exhibit "A" attached thereto (the "**Additional Property**"). The Original Supplement was amended by that First Amendment recorded in the ROD Office on March 30, 2021 in Book 18426, Pages 196-208. The Original Supplement, as now and hereafter amended, is referred to herein as the "**Supplement**").

Pursuant to Section 4.1 of the Supplement, the Declarant reserved the right to amend the Supplement for any purpose until termination of the Development and Sale Period; provided, if such amendment would have a material adverse effect on the rights or obligations of any Owner of a Unit within the Additional Property or the easement rights of the owner of any other property benefitted by an easement set forth in Exhibit "B" thereto, such amendment must requires the written consent of the Owner/owner, as evidenced by the Owner/owner's execution of the amendment or a written consent attached thereto.

That certain Recombination Plat of WENDELL FALLS TAYLOR ROAD COMMERCIAL AREA LOT 9, LOT 10, AND COMMON AREA #53 recorded in the ROD

Office on January 11, 2021 in Book of Maps 2021, Pages 0060 – 0061 (the "**Lot 9-10 Recombination Plat**") shows a "NEW 57' ACCESS EASEMENT" ("**New 57' Access Easement**") over Lot 10 extending from the "EXISTING 57' PRIVATE R/W". Section 2(a) of the Original Supplement defined "Private R/W" and the "Private R/W" is the subject of the easements described in Section 3(b) of the Supplement. The Declarant desires to amend the Supplement to make clear that the "Private R/W" does not include the New 57' Access Easement. The Declarant further intends to record a plat terminating or abandoning the New 57' Access Easement.

For the avoidance of doubt, the Lot 8 Owner, the Lot 9A Owner and the Lot 9B Owner hereby terminate any and all rights in and to the New 57' Access Easement and consent to Declarant recording a plat terminating or abandoning the New 57' Access Easement.

Lots 8, 9A, and 9B are the only Units within the Additional Property that are subject to the Supplement. Lot 8 Owner, Lot 9A Owner, Lot 9B Owner, and the Association desire to join in the execution of this Amendment to evidence their consent thereto out of an abundance of caution in the event this Amendment is construed as having a material adverse effect on any of their rights.

NOW, THEREFORE, the Declarant hereby amends the Supplement as follows:

1.

Section 2(a) of Exhibit "B" to the Supplement is amended by striking that subsection and replacing it with the following:

> (a) "**Private R/W**": that private right-of-way described as "57' Private R/W" on the Lot 8-9 Plat referenced in Exhibit "A" which is designed to provide vehicular and pedestrian access, ingress, and egress between Wendell Falls Parkway and the Units within Service Area No. 3, and all improvements now or hereafter constructed or installed within such private right-of-way.

[continued on next page]

In witness of the foregoing, the Declarant, Lot 8 Owner, Lot 9A Owner, Lot 9B Owner, and the Commercial Association have executed this Amendment on the 5th day of February, 2025.

DECLARANT: **NASH WENDELL FALLS, LLC**, a Delaware limited liability company

By: [signature]
Name: Tanya Matzen
Its: Authorized Signatory

STATE OF NORTH CAROLINA)
)
COUNTY OF CHATHAM)

I, Gabrielle Torre Pangelinan, a Notary Public in and for Wake County, North Carolina, certify that Tanya Matzen personally came before me this day and acknowledged that she is an Authorized Signatory of NASH WENDELL FALLS, LLC, a Delaware limited liability company, and that by authority duly given and as the act of said limited liability company, she executed the foregoing instrument on behalf of said limited liability company.

Witness my hand and official stamp or seal, this 28th day of January, 2025.

(Official Seal)
GABRIELLE TORRE PANGELINAN
My Commission Expires
NOTARY
PUBLIC
03/17/2029
WAKE COUNTY, NC

[signature]
Gabrielle Torre Pangelinan, Notary Public

My Commission Expires: 03/17/2029

LOT 8 OWNER: **EIG14T RCCC 214 NC-WENDELL FALLS, LLC**, a Michigan limited liability company

BY: Pat & Sons Consolidated, LLC, its Member

By: [signature]
Name: Patrick G. Fenton
Its: Manager

STATE OF MICHIGAN)
)
COUNTY OF Oakland)

I, Mary Jo Marchetti, a Notary Public in and for said County and State, certify that Patrick G. Fenton, Manager of Pat & Sons Consolidated, LLC, Member of EIG14T RCCC 214 NC-WENDELL FALLS, LLC, a Michigan limited liability company, personally came before me this day and acknowledged the due execution of the foregoing instrument in writing by himself on behalf of EIG14T RCCC 214 NC-WENDELL FALLS, LLC, a Michigan limited liability company, for the uses and purposes therein set forth.

Witness my hand and official stamp or seal, this 15th day of January, 2025.

(Official Seal)

Mary Jo Marchetti
Mary Jo Marchetti, Notary Public

My Commission Expires: 8-30-2026

Mary Jo Marchetti
Notary Public of Michigan
Oakland County
Expires 08/30/2026
Acting in the County of Oakland

LOT 9A OWNER: **WF SBUX, LLC**, a a North Carolina limited liability company
BY: DKNC Holdings LLC, its Manager

By: ____________________
Name: DANIEL R KLAUSNER
Its: MANAGER

STATE OF South Carolina)
)
COUNTY OF Laurens)

I, Debra C Wallace, a Notary Public in and for said County and State, certify that Daniel R Klausner, Manager of WF SBUX, LLC, a North Carolina limited liability company, personally came before me this day and acknowledged the due execution of the foregoing instrument in writing by himself on behalf of WF SBUX, a NC LLC, for the uses and purposes therein set forth.

Witness my hand and official stamp or seal, this 4th day of February 2025

(Official Seal)

DEBRA C. WALLACE
NOTARY
PUBLIC
SOUTH CAROLINA

Debra C Wallace
State of SC., Notary Public

My Commission Expires: June 15, 2031

LOT 9B OWNER: **TRI-ARC FOOD SYSTEMS, INC.**, a North Carolina corporation

By: Tommy L Haddock
Name: Tommy L. Haddock
Its: President

STATE OF North Carolina)
)
COUNTY OF Wake)

I, Betsy Cameron Kittrell, a Notary Public in and for said County and State, certify that Tommy L. Haddock, President of TRI-ARC FOOD SYSTEMS, INC., a North Carolina coporation, personally came before me this day and acknowledged the due execution of the foregoing instrument in writing by himself on behalf of Tri-Arc Food Systems, Inc, a N.C. Corporation, for the uses and purposes therein set forth.

Witness my hand and official stamp or seal, this 28th day of January, 20 25.

(Official Seal)

BETSY CAMERON KITTRELL
NOTARY
My Comm. Exp.
4-3-2027
PUBLIC
WAKE COUNTY, N.C.

Betsy Cameron Kittrell
, Notary Public

My Commission Expires: 4/3/2027

ASSOCIATION: **WENDELL FALLS COMMERCIAL ASSOCIATION, INC.**, a North Carolina nonprofit corporation

By: ______________________
Name: Tanya Matzen
Its: President

STATE OF North Carolina)
)
COUNTY OF Wake)

I, Gabrielle Torre Pangelinan, a Notary Public in and for said County and State, certify that Tanya Matzen, President of WENDELL FALLS COMMERCIAL ASSOCIATION, INC., a North Carolina nonprofit corporation, personally came before me this day and acknowledged the due execution of the foregoing instrument in writing by himself/herself on behalf of WENDELL FALLS COMMERCIAL ASSOCIATION, INC., a North Carolina nonprofit corporation, for the uses and purposes therein set forth.

Witness my hand and official stamp or seal, this 28th day of January, 2025.

(Official Seal)
GABRIELLE TORRE PANGELINAN
My Commission Expires
NOTARY PUBLIC
03/17/2029
WAKE COUNTY, NC

____
Gabrielle Torre Pangelinan, Notary Public

My Commission Expires: 03/17/2029

NASH Wendell Falls/cadocs/commer/2nd Amend Supp (Lots 8&9) 120424-jlb