

WAKE COUNTY, NC 211
LAURA M RIDDICK
REGISTER OF DEEDS
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Prepared By and Mail To: Kenneth L. Eagle, 2304 Wesvill Court, Suite 340, Raleigh, NC 27607
Type of Document: Second Amendment To Declaration For Woodcreek

NORTH CAROLINA
WAKE COUNTY

SECOND AMENDMENT TO DECLARATION OF
PROTECTIVE COVENANTS AND EASEMENTS FOR
WOODCREEK

THIS SECOND AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS AND EASEMENTS FOR WOODCREEK, also referred to herein as the "Second Amendment", is made and effective this 9th day of May, 2011 (the "date of execution"), by and between Holly Springs Residential Properties LLC, a North Carolina limited liability company, also referred to herein as "Declarant", and John Wieland Homes and Neighborhoods of the Carolinas, Inc., a Georgia corporation, also referred to herein as "Wieland".

BACKGROUND

1. Holly Springs Residential Properties LLC is the "Declarant" under the "Declaration Of Protective Covenants And Easements For Woodcreek" (the "Original Declaration") recorded in the Wake County, North Carolina Registry in Book 12453, Page 786, and re-recorded in the Wake County, North Carolina Registry in Book 12456, Page 852, as amended by a "First Amendment" recorded in the Wake County, North Carolina Registry in Book 12570, Page 481, and by an amendment also known as "Withdrawal Declaration 1" recorded in the Wake County, North Carolina Registry in Book 14278, Page 1242, the Original Declaration, First Amendment, and Withdrawal Declaration 1 being referred to herein together as the "Declaration" and being incorporated by reference as if fully set out herein.
2. Wieland is the sole "Approved Developer" as that term is defined in the Declaration.
3. Article XIII, Section 4 of the Declaration, after specifying certain matters with respect to which Declarant, with Wieland's consent in certain specified circumstances, has the right to amend the Declaration at any time and from time to time, states the following: "Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article X hereof, Declarant may, with the consent of Wieland so long as Wieland owns any property for development or sale in the Community or has the right unilaterally to annex additional property to the Community, amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Unit Owner hereunder, nor shall it adversely affect title to any Unit without the consent of the affected Unit Owner".
4. Article X, Section 1(a) of the Declaration provides that Declarant has the unilateral right, privilege and option from time to time at any time until fifteen (15) years after the recording of the Declaration to subject to the Declaration all or any portion of the real property described in Exhibit "C" to the Declaration.

5. Article X, Section 1(b) of the Declaration provides that Wieland has the unilateral right, privilege and option from time to time at any time until fifteen (15) years after the recording of the Wieland to subject to the Declaration all or any portion of the real property described in Exhibit "C" to the Declaration.
6. The Declaration first was recorded on March 20, 2007.
7. Declarant and Wieland desire to amend the Declaration as provided herein, which amendments do not materially adversely affect the substantive rights of any Unit Owner hereunder and do not adversely affect title to any Unit.

SECOND AMENDMENT

NOW, THEREFORE, by mutual desire and consent, Declarant and Wieland hereby amend the Declaration as follows:

1. Article IV, Section 6 is amended by deleting the words "the Office of the Register of Deeds of".
2. Article IV, Section 8(b) is rewritten in its entirety to read as follows:

“(b) After the commencement of assessment payments as to any Unit, Declarant and Approved Developer, and any affiliate of Declarant or Approved Developer, on behalf of themselves and their respective successors and assigns, covenant and agree to pay the full amount of the assessments provided herein for each Unit owned by Declarant, Approved Developer, or any affiliate of Declarant or Approved Developer containing an occupied residence; provided, however, to the extent permitted by law, and notwithstanding any contrary or conflicting provisions of the Declaration or this Second Amendment, each Unit owned by Declarant, Approved Developer, or any affiliate of Declarant or Approved Developer which does not contain an occupied residence shall not be subject to any assessment provided for herein.”
3. Article IV, Section 8 is amended by renumbering existing subsection (c) as subsection (d), and by adding a new subsection (c) as follows:

“(c) After the commencement of assessment payments as to any Unit, Approved Builder and its affiliates, on behalf of themselves and their respective successors and assigns, covenant and agree to pay assessments provided herein for each Unit owned by Approved Builder or its affiliates, as follows:

 - (i) Approved Builder or its affiliates shall pay the full amount of the assessments provided for herein for each Unit owned by Approved Builder or its affiliates that contains an occupied residence;
 - (ii) Approved Builder or its affiliates, unless a greater amount is required by applicable law, shall pay one-half (½) of the annual assessments and Neighborhood assessments provided for herein for each Unit that does not contain an occupied residence, except that model homes on Units owned by Approved Builder or its affiliates are subject to the provisions of the following subsection (d); and
 - (iii) Approved Builder or its affiliates shall pay the full amount of Special assessments and Specific assessments provided for herein for each Unit that is owned by Approved Builder or its affiliates, regardless of whether or not it is occupied or is a model home.”

4. Article IV, Section 10 is rewritten in its entirety as follows:

“Section 10. Budget Deficits. For so long as Declarant or Wieland, or any of their respective affiliates assigns, has the right to appoint a Director of the Association, Declarant, Wieland, or their respective affiliates and/or assigns shall advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including any allocation for capital reserves) and the sum of the annual, special and specific assessments collected by the Association in any fiscal year (an **“Operating Deficit”**). Each of Declarant and Wieland shall have the option to treat any such Operating Deficit payments to the Association as a loan to the Association (each, a **“Developer Loan”**), which shall be evidenced by such reasonable documentation as is required by Declarant and/or Wieland. Any such Developer Loan shall be repayable by the Association only at such time as the Association has sufficient contributions from Assessments collected from purchasers of Units sufficient to satisfy the ongoing annual expenses of the Association, and provided that at such time as Declarant turns over the management of the Association to the Owners of Units, then any balance owed by the Association with respect to such Developer Loans associated with the normal operating costs of the Association shall be forgiven.

The respective obligations of Declarant and Wieland to fund the Operating Deficits is sixty (60%) for Declarant and forty percent (40%) for Wieland, and each twenty percent (20%) of such obligations is assignable only with the right to appoint a Director of the Association as follows: each assignment of the right to appoint a Director of the Association as allowed by Article III, Section A.2. of the Bylaws of the Association shall include an assignment of the obligation to pay twenty percent (20%) of the Operating Deficit. Provided, however, any Person who assigns the right to appoint a Director of the Association and the corresponding 20% obligation to fund Operating Deficits remains liable for payment of the 20% obligation to fund Operating Deficits in the event that such Person’s assignee or any subsequent assignee defaults in such obligation to fund Operating Deficits, unless such assignee is Declarant, Wieland, or an affiliate of either Declarant or Wieland.”

5. The second paragraph of Article VI, Section 23 is amended by adding the following after the words “foregoing purposes” at the end of the first sentence thereof: “, except for residences or living space”.

6. The second paragraph of Article XIII, Section 4 is amended by adding the following after the word “Community” on the third line thereof and after the word “Community” on the fourth line from the end thereof: “or has the right unilaterally to annex additional property to the Community”.

7. The first paragraph of Article XIII, Section 8 is amended by adding the following after the word “Community” on the tenth line from the end thereof: “or has the right unilaterally to annex additional property to the Community”.

8. Article III. A., Section 2 of the Bylaws attached as “Exhibit D” to the Declaration is rewritten in its entirety as follows:

“Section 2. Directors Appointed by Declarant and Wieland. Members of the Board of Directors shall be appointed as follows:

(a) The Declarant shall have the right to appoint three (3) members of the Board of Directors of the Association until such time as the first of the following events shall occur: (i) December 31 of the year in which Declarant no longer owns any property for development and/or sale in the Community and no longer has the right to unilaterally annex additional property to the Community; or (ii) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association;

(b) Wieland shall have the right to appoint two (2) members of the Board of Directors of the Association until such time as the first of the following events shall occur: (i) December 31 of the year in which Wieland no longer owns any property for development and/or sale in the Community and no longer has the right to unilaterally annex additional property to the Community; or (ii) the surrender by Wieland in writing of the authority to appoint and remove directors and officers of the Association.

The Declarant and Wieland each have the right, in its sole discretion, to assign its right to appoint one or more members of the Board to any Person, such assignment to be in writing and acknowledged in writing by the assignee, and such assignment to be subject to all of the provisions of these Bylaws and the Declaration. The Declarant and Wieland intend to surrender such authority to appoint members of the Board on December 31 of the year in which ninety percent (90%) of the Units planned to be a part of the Community shall have been conveyed to Owners for occupancy as a residence. Each Owner, by acceptance of a deed to or other conveyance of a Unit, vests in Declarant and/or Wieland such authority to appoint and remove directors and officers of the Association. The directors appointed by the Declarant and/or Wieland need not be Owners or residents in the Community.

Notwithstanding anything herein to the contrary, Declarant's and Wieland's rights hereunder cannot be altered or deleted, by amendment or otherwise, except by an instrument agreeing to such alteration, deletion or amendment executed by Declarant or Wieland, as the case may be."

9. The first sentence of Article IV, Section 2 of the Bylaws attached as "Exhibit D" to the Declaration is rewritten to read as follows: "Except during the period in which the Declarant, Wieland, or their respective assigns have the right to appoint the directors of the Association under Article III, Section 2 of these Bylaws, the officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the members."

This Second Amendment shall be effective upon its recording in the Wake County, North Carolina Registry. Except as amended by this Second Amendment, the Declaration shall be and remain in full force and effect as written. The date of execution of this Second Amendment is the later of the dates on which it is executed by the parties.

(execution pages follow)

IN WITNESS WHEREOF, the parties have executed this Second Amendment in legal and binding form on the dates indicated in the respective acknowledgments of their executions.

Holly Springs Residential Properties LLC,
a North Carolina limited liability company

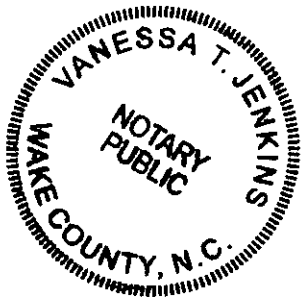
By: Timothy R. Smith
Printed Name: Timothy R. Smith
Title: Manager

State of North Carolina, County of Wake

I certify that the following person personally appeared before me this day and acknowledged to me that he executed the foregoing document in the capacity indicated: Timothy R. Smith

Date: May 9, 2011

(affix seal or stamp here)



Vanessa T. Jenkins
Notary Public
Printed/Typed Name: Vanessa T. Jenkins
My Commission Expires: 1-21-2013

John Wieland Homes and Neighborhoods Of the Carolinas, Inc.,
a Georgia Corporation

By: [Signature]
Printed Name: F. Robert Parker
Title: Vice President and General Counsel

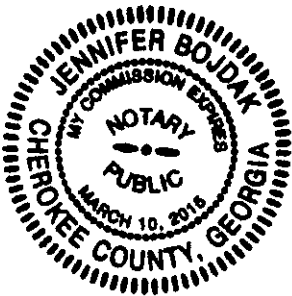
State of Georgia, County or City of Cobb

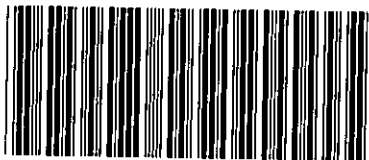
I certify that the following person personally appeared before me this day and acknowledged to me that he/she executed the foregoing document in the capacity indicated: F. Robert Parker

Date: May 6, 2011

(affix seal or stamp here)

[Signature]
Notary Public
Printed/Typed Name: Jennifer Bojdak
My Commission Expires: 3/10/15





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**Wake County Register of Deeds
Laura M. Riddick
Register of Deeds**

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