

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
Please cross-reference to Amended and Restated Supplemental Declaration at Book 17244, Page 1326

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**SECOND AMENDED AND RESTATED
SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WENDELL FALLS**

(PHASES 5C, 5D, 5E, COMMON AREAS #37, #38, #41, #43, #44, #45, #46 AND R/W)

This Second Amended and Restated 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 ("**ROD Office**"), which has been amended by that instrument recorded

November 29, 2016 at Book 16618, Page 1624, *et seq.* (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 imposing on the property described therein 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 that portion of the Additional Property described in Exhibit "A" attached hereto as "Phase 5C" and "Phase 5D," the Declarant previously executed and filed that Supplemental Declaration of Covenants, Conditions and Restrictions for Wendell Falls recorded in the ROD Office on February 8, 2018 in Book 17040, Page 769, which was amended and restated by that instrument recorded August 27, 2018 in Book 17225, Pages 1874-1886 and re-recorded September 18, 2018 at Book 17244, Pages 1326-1339 (as amended, the "**Prior Supplement**"), submitting Phase 5C and Phase 5D to the terms of the Declaration and the Prior Supplement and reserving the right to amend the Prior Supplement for any reason 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 again amend and restate Exhibit "A" to the Prior Supplement to include, as part of the Additional Property, that real property described in Exhibit "A" attached hereto as "Phase 5E," to submit such property to the terms of the Declaration and this Supplement, and to assign certain Units within Phase 5E to a Service Area as designated in Exhibit "A".

NOW, THEREFORE, the Declarant hereby amends and restates the Prior Supplement as set forth herein. All of the real property described on Exhibit "A" of this Supplement is now subject to the provisions of the Declaration and this Supplement, which shall encumber the title to such property and shall be binding upon and inure to the benefit of 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 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.

[continued on next page]

In witness of the foregoing, the Declarant has executed this Second Amended and Restated Supplement on the 5th day of November, 2018.

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

By: 

Name: Mike Scisciani

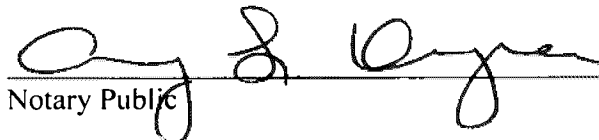
Its: Authorized Signatory

STATE OF NORTH CAROLINA)

COUNTY OF Chatham)

I, Amy L. Kingrea, a Notary Public in and for Durham County, North Carolina, certify that Mike Scisciani personally came before me this day and acknowledged that he 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, he executed the foregoing instrument on behalf of said limited liability company.

Witness my hand and official stamp or seal, this 5 day of November 2018.


Notary Public

My Commission Expires:

10/23/2020

[NOTARY SEAL]

530410/cadocs/ Supp Decl - Ph 5C,D,E/101618/jps

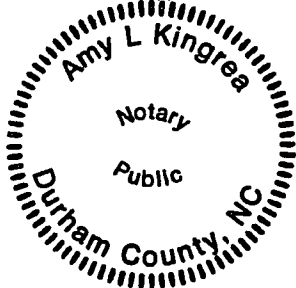


EXHIBIT "A"

Additional Property

Phase 5C:

ALL THOSE TRACTS OR PARCELS 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 PHASE 5C recorded on February 8, 2018, in Book of Maps 2018, Pages 281-284, 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 5C Plat**");

TOGETHER WITH:

Phase 5D:

ALL THOSE TRACTS OR PARCELS 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 PHASE 5D recorded in the office of the Register of Deeds of Wake County, North Carolina on August 22, 2018, in Book of Maps 2018, Pages 1655-1658, as revised by that correction plat recorded in Book of Maps 2018, Pages 1770 and 1771, and as such plat may be further revised from time to time (the "**Phase 5D Plat**");

TOGETHER WITH:

Phase 5E:

ALL THOSE TRACTS OR PARCELS 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 PHASE 5E recorded in the office of the Register of Deeds of Wake County, North Carolina on November 8, 2018, in Book of Maps 2018, Pages 2244 - 2247, as such plat may be revised from time to time (the "**Phase 5E Plat**").

Service Area Assignments:

Lots 722 through 732 shown on the Phase 5C Plat are hereby assigned to Service Area No. 3 for the purposes described in Exhibit "B".

Lots 733 through 765 shown on the Phase 5C Plat, Lots 799 through 809 shown on the Phase 5D Plat, and Lots 865-877 shown on the Phase 5E Plat are hereby assigned to Service Area No. 2 (with certain lots in Phase 5A assigned thereto by separate Supplemental Declaration) for the purposes described in Exhibit "B".

EXHIBIT "B"**Additional Covenants, Restrictions, and Easements****1. Private Drainage Easements.**

(a) The Declarant hereby reserves, establishes and grants a perpetual, nonexclusive easement over those portions of the Additional Property shown on the recorded plats described in Exhibit "A" as a private drainage easement, for the benefit of each of those properties on which any portion of such private drainage easement is depicted, for the 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.

2. Service Area No. 3: Landscape Maintenance.

(a) Maintenance Responsibilities. Pursuant to Sections 7.3(a) and 8.2(c) of the Declaration, the Association shall be responsible for performing, or causing to be performed, on behalf of the Owners of Units within Service Area No. 3 as identified on Exhibit "A" to this Supplement (but subject to subsection (b) below), the following services on Units within Service Area No. 3 and, to the extent that the Owners of such Units would otherwise be responsible for such maintenance pursuant to Section 5.1 of the Declaration, on property adjacent to the Units:

(i) mowing and fertilizing of lawns (including both front and rear yards of the Units), and application of weed control and fertilizer to such lawns on such schedule as the Board deems appropriate to maintain turf in a healthy condition;

(ii) weeding and mulching of planting beds;

(iii) edging of curbs, walks, and planting beds;

EXHIBIT "B"**Additional Covenants, Restrictions, and Easements**

(continued)

(iv) removal of fallen leaves from lawns, planting beds, and sidewalks at least twice per year;

(v) such other maintenance of landscaping and hardscaping on Units as the Board may determine appropriate and able to be funded under the Service Area budget for Service Area No. 3 adopted from time to time in accordance with the Declaration.

Notwithstanding the above, each Owner shall be responsible for any landscaping and improvements installed by the Owners or occupants of any Unit after issuance of a certificate of occupancy for the dwelling on the Unit, including any irrigation system installed on the Unit. Each Owner shall also be responsible for all maintenance of the Unit other than that maintenance which the Association is to provide pursuant to this Section 2(a). If an Owner undertakes to perform maintenance which would otherwise be performed by the Association under this Section, there shall be no reduction or abatement in the Service Area Assessments due on such Unit hereunder by reason of the Owner providing such maintenance. All maintenance on Units shall be performed in a manner and on a schedule consistent with the Community-Wide Standard.

(b) Commencement of Association's Maintenance Responsibilities. All maintenance on a Unit within Service Area No. 3 shall be the responsibility of the Builder or Owner until such time as the Association's responsibilities commence hereunder. The Association's responsibilities under Section 2(a) shall commence as to each Unit within Service Area No. 3 upon satisfaction of the following requirements:

(i) completion of construction of a dwelling and all related improvements on the Unit in accordance with the plans approved pursuant to Article IV of the Declaration (the "**Approved Plans**"); and

(ii) issuance of a certificate of occupancy for such dwelling and related improvements from the Town of Wendell, North Carolina; and

(iii) completion of installation of landscaping on the Unit in accordance with the Approved Plans, as verified by a post-construction compliance inspection conducted by the Declarant's or the Association's designee;

provided, nothing herein shall relieve the Builder of responsibility for removing and replacing any landscaping installed on a Unit by the Builder or its subcontractors which dies within one year after the date of the Builder's conveyance to a homeowner, to the extent required under any contract or warranty relating to the Unit.

EXHIBIT "B"**Additional Covenants, Restrictions, and Easements**

(continued)

(c) Service Area Expenses. The estimated expenses to be incurred by the Association for providing services to the Units within Service Area No. 3 pursuant to this Section 2, including any reasonable reserve established pursuant to Section 8.2(c) of the Declaration for repairs and replacements, and a reasonable administrative charge, shall be allocated equally among all Units within Service Area No. 3 as to which the Association's responsibilities have commenced under Section 2(b) and levied as a Service Area Assessment, except that if any maintenance or repair to be performed by the Association hereunder is necessitated by the negligence or other actions of any Owner or occupant of a Unit, or their respective contractors, guests, or invitees, the Association may assess the cost of such maintenance or repair solely against such Unit and the Owner thereof as a Specific Assessment.

Notwithstanding any later commencement date specified in the Declaration, the Owner of each Unit, including any Builder which owns a Unit, shall pay such Service Area Assessments from the date the Association commences maintenance on such Unit as provided in Section 2(b) above. If an Owner undertakes to perform maintenance which would otherwise be performed by the Association under this Section 3, there shall be no reduction or abatement in the Service Area Assessment levied on such Unit hereunder by reason of the Owner providing such maintenance.

(d) Easement for Maintenance. The Association shall have a perpetual, non-exclusive easement over the Units in Service Area No. 3 for the purpose of performing its maintenance responsibilities hereunder and under the Declaration, which easement may be exercised by the Association, its officers, directors, employees, agents and contractors, and entry upon any Unit for such purpose shall not be deemed a trespass. Each Owner shall clear yards and sidewalks on such Owner's Unit and adjacent rights-of-way of personal property (e.g., chairs, tables, garbage cans, hoses, toys, sports and play equipment, etc.) and obstructions, remove pets, provide gates with at least 48" of clearance to access any fenced area or courtyard, and leave such gates unlocked to permit unfettered access to fenced areas and courtyards, in order to enable maintenance personnel to perform the services to be provided by the Association hereunder. An Owner's failure to comply with this subsection (d) shall relieve the Association of its responsibility under this Section 2 with respect to such Owner's Unit to the extent that the Association or maintenance personnel determine that such noncompliance interferes with their ability to provide the required services, in which case the Owner shall perform such maintenance and repairs, at such Owner's expense, in a timely manner and in accordance with the Community-Wide Standard, without deduction from or offset against Service Area Assessments due hereunder.

3. Service Area No.2: Townhome Maintenance.

(a) Maintenance Responsibilities. Pursuant to Sections 7.3(a) and 8.2(c) of the Declaration, the Association shall be responsible for performing, or causing to be performed, on behalf of the Owners of Units within Service Area No. 2 as identified in Exhibit "A" to this

EXHIBIT "B"**Additional Covenants, Restrictions, and Easements**

(continued)

Supplement (but subject to subsection (b) below), the following, on such schedule as the Board determines appropriate consistent with the Community-Wide Standard:

(i) painting or staining, as applicable, of all exterior painted or stained surfaces of the dwelling and any garage on the Unit, including exterior doors, door trim, and window trim;

(ii) recaulking of the exterior portions of all windows (but not skylights, if any) and exterior doors, but only at such time as the Association or its contractor undertakes painting of all exterior painted surfaces (it shall have no responsibility for reglazing windows at any time or for maintaining caulking between paintings, which shall be the Owner's responsibility, nor shall it have any liability for air, water, or moisture leaks or damage resulting from the need to reglaze or recaulk windows and doors);

(iii) pressure washing of front sidewalks, exterior front steps, driveways, and the exterior walls of dwellings and garages on Units;

(iv) maintenance of a termite bond or service contract providing for annual inspection of the dwellings on the Units for the presence of termites and treatment if termites are found. The Board may, but shall not be obligated to, obtain a bond or contract providing protection for additional types of wood-destroying organisms and providing assurances relating to repair of any termite damage which may occur; and

(v) the following landscaping services on Units and on property adjacent to Units to the extent that the Owners would otherwise be responsible pursuant to Section 5.1 of the Declaration:

(A) mowing and fertilizing of lawns (including both front and rear yards of the Units), and application of weed control and fertilizer to lawns on such schedule as the Board deems appropriate to maintain turf in a healthy condition;

(B) weeding and mulching of planting beds,

(C) edging along curbs, sidewalks, driveways, and planting beds;

(D) fertilizing and pruning of shrubbery and treating shrubbery for disease and insects as the Board deems appropriate;

(E) removal of fallen leaves from lawns, planting beds, driveways and sidewalks at least twice per year; and

EXHIBIT "B"**Additional Covenants, Restrictions, and Easements**

(continued)

(F) such other maintenance of landscaping and hardscaping on Units as may be funded under the Service Area budget for Service Area No. 2 adopted from time to time in accordance with the Declaration;

except that the Association shall have no responsibility for lawns, shrubbery, or other landscaping located within any patio or courtyard area of the Unit, removal or replacement of dead or diseased trees, lawns and other plant material on such Owner's Unit, or improvements or modifications added or made by anyone other than the Association after conveyance of the Unit by the Builder, all of which shall be the Owner's responsibility unless the Association expressly assumes such responsibility in writing. No Person shall remove or modify existing landscaping on a Unit without prior approval of the Association and such approval as required under Article IV of the Declaration.

Each Owner of a Unit in Service Area No. 2 shall be responsible for performing all maintenance required on the Unit except that which is the Association's responsibility hereunder, including maintenance of any landscaping and improvements installed by the Owners or occupants of any Unit after conveyance by the Builder and maintenance of any irrigation system located on such Owner's Unit in proper working order. Each Owner shall irrigate the landscaping on such Owner's Unit as needed to keep it in a healthy, attractive condition, subject to any local ordinances that may from time to time restrict outside use of water.

(b) Commencement of Association's Responsibilities. The Association's responsibilities under this Section 3 shall commence as to each Unit in Service Area No. 2 upon completion of and issuance of a certificate of occupancy for a dwelling on the Unit in accordance with the plans approved pursuant to Article IV of the Declaration and conveyance of such Unit by the Builder. Until such time, the Builder shall be responsible for all maintenance on the Unit. Notwithstanding anything to the contrary herein or in the Declaration, the Association shall have no responsibility for: (i) any maintenance, repair, or replacement necessitated by defects in a Unit to the extent that the defect is within the scope of the Builder's warranty; or (ii) maintenance of a termite bond during any period in which any bond or contract obtained by the Builder is in effect. Nothing herein shall be construed to relieve the Builder of liability under any implied or express warranties applicable to any Unit constructed by such Builder. The Owner of each Unit shall be responsible for filing and pursuing in a timely manner any and all claims under any such warranty related to matters which are the Association's responsibilities hereunder, and upon failure to do so after a written request from the Association, the Association may levy a Specific Assessment against the Owner and the Unit for any costs which the Association incurs to correct defects or perform maintenance, repairs, or replacements within the scope of warranties provided by the Builder.

EXHIBIT "B"**Additional Covenants, Restrictions, and Easements**
(continued)

(c) Service Area Expenses. The estimated expenses to be incurred by the Association for providing services to the Units within Service Area No. 2 pursuant to this Section 3, including any reasonable reserve established pursuant to Section 8.2(c) of the Declaration for repairs and replacements, and such reasonable administrative charge as the Board may determine appropriate, shall be allocated equally among all Units within Service Area No. 2 as to which the Association's responsibilities have commenced under subsection (b) and levied as a Service Area Assessment, except that if any maintenance or repair to be performed by the Association hereunder is necessitated by the negligence or other actions of any Owner or occupant of a Unit, or their respective contractors, guests, or invitees, the Association may assess the cost of such maintenance or repair solely against such Unit and the Owner thereof as a Specific Assessment. If an Owner undertakes to perform maintenance which would otherwise be performed by the Association under this Section 3, there shall be no reduction or abatement in the Service Area Assessment levied on such Unit hereunder by reason of the Owner providing such maintenance.

(d) Easement for Maintenance. The Association shall have a perpetual, non-exclusive easement over the Units in Service Area No. 2 for the purpose of performing its maintenance responsibilities hereunder and under the Declaration, which easement may be exercised by the Association, its officers, directors, employees, agents and contractors, and entry upon any Unit for such purpose shall not be deemed a trespass. Each Owner shall clear the yard and sidewalks on such Owner's Unit and adjacent rights-of-way of personal property (e.g., chairs, tables, garbage cans, hoses, toys, sports and play equipment, etc.) and obstructions, remove pets, and provide access through an unlocked gate into any fenced area and courtyard, on days when landscape maintenance is scheduled to be performed (as the Board may determine and announce from time to time), to enable the Association's personnel or contractors to perform such maintenance. An Owner's failure to comply with this subsection (d) shall relieve the Association of its responsibility under this Section 3 with respect to such Owner's Unit to the extent that the Association or maintenance personnel determine that such noncompliance interferes with their ability to provide the required services, in which case the Owner shall perform such maintenance and repairs, at such Owner's expense, in a timely manner and in accordance with the Community-Wide Standard, without deduction from or offset against Service Area Assessments due hereunder.