



2018 TOWN OF WENDELL ZONING TEXT AMENDMENT PACKET



Town of Wendell Planning Department
15 E. Fourth St.
Wendell, NC 27591

Phone: 919.365.4448
Fax: 919.366.1462
www.townofwendell.com

Acknowledgement of Zoning Text Amendment Information

I, Nicolas P. Robinson, acknowledge the receipt of the following items for the Zoning Text Amendment request to amend section Development Agreement of the Wendell Unified Development Ordinance pertaining to Wendell Falls PUD.

- X Application
- X Submittal Schedule
- X Amendment Procedures
- X District Use Matrices

Submittal Deadline Date: August 10, 2018

NASH Wendell Falls, LLC
Applicant

August 9, 2018
Date

Petition To Amend The Zoning Text

To be reviewed by both the Planning Board and the Town Board of Commissioners

Form last updated 11/30/09

PETITION# ZT-

Date: August 9, 2018

Applicant's Name: NASH Wendell Falls, LLC Phone: 919-951-0710 Fax: 919-24--4962

Mailing Address: 6133 Taylor Rd., Wendell, NC 27591

This petition is a request to amend Section Development Agreement of the Wendell Unified Development Ordinance to allow **Seventh Amendment to Wendell Falls Development Agreement**

- As a Permitted Use Special Use Permitted with additional Standards in the
- RR – Rural Residential Zoning District
 - RA – Residential Agricultural
 - OSP – Open Space Preserve
 - R2 – Residential, (15,000 sq. ft min. lot size)
 - R3 – Residential (10,000 sq. ft min. lot size)
 - R4 – Residential (6,000 sq. ft min. lot size)
 - R7 – Residential (3,500 sq. ft min. lot size)
- DMX – Downtown Mixed Use Zoning District
 - CH – Highway Commercial Zoning District
 - M&I – Manufacturing & Industrial Zoning District
 - MH – Manufactured Home Zoning District
 - CC – Community Center Zoning District
 - CMX – Corridor Mixed Use Zoning District
 - NC – Neighborhood Center Zoning District

A brief description of the proposed text amendment is: **Amendment to (i) modify term of Development Agreement; (ii) modify Exhibit C to Development Agreement to match new term of Agreement; (iii) modify Exhibit D to update Memorandum of Agreement regarding Martin Pond Roadway Improvements; and (iv) modify Section 4.5(b) of Development Agreement to address partial payments for water/sewer capacity under Schedule C.**

The amendment is necessary because: **In order to better match the terms of the Development Agreement with the current progress of this long-term development.**

August 9, 2018

Applicant's Signature **Nicolas P. Robinson, agent for Applicant**

Date

OFFICE USE ONLY Fee Paid: _____ Date Paid: _____

PLANNING BOARD Date Petition Was Reviewed: _____ Recommendation: Approval Denial

The decision was consistent with the Comprehensive Plan: Yes No

The decision of the Planning Board was based on the following considerations: _____

TOWN BOARD OF COMMISSIONERS Date Public Hearing Scheduled: _____

Dates Public Hearing Advertised: (#1): _____ in _____ AND (#2): _____ in _____

Town Board Recommendation: Approval Denial

The decision was consistent with the Comprehensive Plan: Yes No

Town Clerk's Signature

Date

Mayor's Signature

Date

Excise Tax: N/A
Prepared By and After Recording Return to:
BRADSHAW ROBINSON SLAWTER LLP
P.O. Box 607, Pittsboro, NC 27312

STATE OF NORTH CAROLINA

**SEVENTH AMENDMENT TO
DEVELOPMENT AGREEMENT**

COUNTY OF WAKE

THIS SEVENTH AMENDMENT TO DEVELOPMENT AGREEMENT (the "Seventh Amendment") is made this __ day of _____, 2018 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, 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”), on November 9, 2015 the Town and Wendell Falls entered into that certain Fifth Amendment to Development Agreement (the “Fifth Amendment”), which Fifth Amendment is recorded at Book 016215, Page 0666, Wake County Registry, and on July 11, 2016 the Town and Wendell Falls entered into that Certain Sixth Amendment to Development Agreement which is recorded at Book 16473, Page 00427 (the “Sixth Amendment,” together with the Original Agreement, First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, and Sixth Amendment, the “Development Agreement”);

WHEREAS, the amendments and modifications contemplated by this Seventh 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, pursuant to the First Amendment, Section 6 (which amended Paragraph 4.5 of the original Development Agreement) a schedule of water and sewer capacity payments in subsequent years by Wendell Falls to the Town was established and set out in Exhibit C, attached to the First Amendment;

WHEREAS, the schedule of payments set out in Exhibit C was modified as part of the Sixth Amendment

WHEREAS, the current term of the Development Agreement runs through August 31, 2029;

WHEREAS, Exhibit D to the Development Agreement (as attached to the Sixth Amendment) establishes a schedule for certain roadway improvements to martin Pond Road;

WHEREAS, among other things set out below, Wendell Falls desires to modify Exhibit C, to modify Exhibit D and also to extend the term of the Development Agreement; 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 Seventh Amendment.
- (2) Amendment of the Development Agreement. The terms and provisions of the Development Agreement are modified and amended as provided in this Seventh 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 Seventh Amendment and the PUD Plan document are inconsistent, this Seventh Amendment shall control.
- (3) Amendment of Section 1.2 of the Agreement. The Term of this Agreement shall be extended through August 31, 2035.
- (4) Development Schedule and Water and Sewer Capacity Purchase Schedule – New Exhibit C. Exhibit C of the Agreement (as previously amended in the Sixth Amendment) is hereby deleted in its entirety and a new Exhibit C, a copy of which is attached hereto, shall be substituted in lieu thereof. The purpose of the Amendment to Schedule C is merely to extend the Calendar Years referenced in the Exhibit through the proposed new term of the Development Agreement. Exhibit C establishes an estimated development schedule with the understanding of the parties, however, that the timing and pace of actual development construction shall be based on market conditions. In addition, Exhibit C establishes a schedule of required minimum purchases by Wendell Falls from the Town of water and sewer capacity.
- (5) Exhibit D to the Development Agreement (referred to in Section 4.2(b) of the Development Agreement), which sets out, among other things, the agreement with respect to certain “Town Road Improvements,” is hereby modified to add the Revised Memorandum of Agreement attached hereto. Upon approval of this Seventh Amendment, the attached Revised Memorandum of Agreement (regarding Martin Pond Road Improvements) shall be deemed a part of Exhibit D of the Development Agreement.
- (6) Section 4.5(b) of the Agreement (previously modified by the First Amendment and the Sixth Amendment) is deleted in its entirety and the following is substituted in lieu thereof. This change is implemented in order to clarify the effect of any partial payment for the purchase of water and sewer capacity under the Development Agreement (changes are underlined/stricken):
 - (b) Purchase in Subsequent Years. In each of the years listed in the revised Exhibit C, at a minimum, Wendell Falls shall purchase from the Town water and sewer capacity for the number of residential units listed for the respective year under

the column of Exhibit C entitled “Residential Units.” The purchase shall be made prior to August 31, in each respective year. In years where the number of residential units is zero, no purchase shall be required. In any year, Wendell Falls may choose, in its discretion, to purchase, and the Town shall make available for purchase, more capacity than the minimum required by Exhibit C, if the Town has such water and sewer capacity available. Subsequent to any capacity purchase by Wendell Falls, the Town shall reserve the purchased capacity for Wendell Falls until the earlier to occur of (i) the utilization of such capacity incident to development of the Project; or (ii) September 1, 2032, which will enable use of such capacity until the end of a period three years following the schedule of capacity purchases set forth in the new Exhibit C. Subject to the notice and cure provisions below, if Wendell Falls fails to make all or a portion of any required minimum purchase in a timely manner, the Town may, in its discretion, make the corresponding (unpaid for) such capacity available to another purchaser. Any such failure by Wendell Falls shall not constitute a material breach of this Agreement and shall not otherwise affect the rights and obligations of the parties under this Agreement. In the event of such a failure of timely full or partial payment by Wendell Falls, prior to making the commensurate capacity available to another purchaser (in the case of a partial payment by Wendell Falls, prior to making the pro-rated unpaid-for capacity available to another purchaser), the Town shall give Wendell Falls thirty (30) days written notice to cure the total or partial payment deficiency.

- (7) Except as specifically modified by this Seventh Amendment, the terms and provisions of the Development Agreement are hereby affirmed and shall remain in full force and effect.
- (8) Public Hearing. The Board of Commissioners provided public notice and conducted a public hearing on _____ to consider approval and execution of this Seventh Amendment. The Board of Commissioners approved this Seventh 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 Seventh 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.
- (9) No Pledge of Taxing Power or Governmental Authority. No provision of this Seventh 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 Seventh 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 Seventh Amendment, this section shall take priority.

[Signature Pages to Follow.]

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

NASH WENDELL FALLS, LLC

By: _____
Print Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of _____ County, State of North Carolina, do hereby certify that _____, the _____ 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 _____ day of _____, 2018.

Notary Public

My Commission Expires:

[NOTARY SEAL]

THE TOWN OF WENDELL

By: _____
_____, Mayor

ATTEST:

_____, Town Clerk

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public of _____ County, State of North Carolina, do hereby certify that _____, 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 _____ day of _____, 2018.

Notary Public

My Commission Expires:

[NOTARY SEAL]

EXHIBIT C

Restated and Amended

Calendar Year	Residential Units	Residential/Commercial Equitable Flow (GPD)**
2011	412	103,000
2012	0	0
2013	225	56,250
2014	135	33,750
2015	150	37,500
2016	0	0
2017	200	50,000
2018	200	50,000
2019	225	56,250
2020	0	0
2021	250	62,500
2022	250	62,500
2023	250	62,500
2024	0	0
2025	250	62,500
2026	250	62,500
2027	250	62,500
2028	250	62,500
2029	303	75,750
2030		0
2031		0
2032		0
2033		0
2034		0
2035		0
	3600*	900,000*

***It should be noted that the Wendell Falls project is approved for up to 4,000 dwelling units and 2,000,000 sf of commercial space. It is possible that 100% of this allowance could be built at some point in time. In the event that more than 3,600 residential units or 1,600,000 sf of commercial development is needed, NASH Wendell Falls LLC, its successor, or assignee shall purchase water and sewer capacity therefore on the same basis and in the same manner as other purchases of such capacity hereunder.**

**** NASH Wendell Falls, LLC, its successors and assigns, may allocate purchased water and sewer capacity, past or future, for residential or commercial use within the Property in its sole discretion; provided, however, that purchased allocation may only be assigned to commercial use if doing so results in sufficient purchased and unused allocation remaining available to serve all Wendell Falls residential units that have construction plan approval but as to which final plats have not yet been approved or recorded**



July 20, 2018

MEMORANDUM OF AGREEMENT

To: David Bergmark, Planning Director Town of Wendell

Subj: MARTIN POND ROAD/POOLE ROAD IMPROVEMENTS

1. Background. The original development concept for Wendell Falls had two phases of major associated road improvements: Phase 1 consisted of improvements required to construct Wendell Falls Parkway, limited road widening along portions of the intersection of Martin Pond Road and Wendell Falls Parkway, and road improvements along Richardson Road (now Wendell Falls Parkway) and the intersection of Richardson and Poole Roads. Those improvements were constructed, in part, by the previous developer. NASH Wendell Falls, LLC completed those improvements that were not yet completed. Additionally, the second phase consisted of road widening along Martin Pond Road, construction of intersections to connect the SF-13 and SF-15 parcels to Martin Pond Road, and a reconfiguration of the intersection of Martin Pond and Poole Roads. Those plans, titled *Wendell Falls Phase 2 Roadway Improvements, Poole Road and Martin Pond Road Realignment*, dated July 2008, and designed by Withers & Ravenel, were originally considered for use by NASH Wendell Falls, LLC for the required road improvements for development along Martin Pond Road. Due to changes in the development concept, and in conjunction with planned changes to the Town of Wendell's *Transportation Plan*, the concept of improvements required to support the development of Wendell Falls was modified by a Memorandum of Agreement dated July 11, 2016 and incorporated into the Sixth Amendment to Development Agreement between the Town of Wendell and NASH Wendell Falls, LLC. As a result of the CORPUD waterline project along Martin Pond Road right of way, the parties agree that the timing schedule of improvements should be modified as set forth below. It is expected that the plans referenced in the July 11, 2016 Memorandum of Agreement will be modified, or new plans will be created that will accommodate the improvements necessary, and will conform to the phases described and the schedule created in the following paragraphs below.
2. Agreement. NASH Wendell Falls, LLC shall make required road improvements along Martin Pond Road and Poole Road (MPR) according to the following schedule, and revised or new plans:
 - a. MPR Phase A, These improvements have been completed. These improvements involved left turn lane road improvements required to construct the intersection of Rhodeschool Drive and existing Martin Pond Road, with the minimum associated utility improvements necessary when SF Phase 4B is tied to Martin Pond Road.
 - b. MPR Phase B, to coincide with the construction of Wendell Falls Phase 5 (Formerly SF14 & SF15) with subsequent sub-sections as shown on attached map. **These improvements will be completed on or prior to December 31, 2019.** The intent of this phase is to make the left turn lane road improvements required to construct the

intersection of future Big Falls Drive and existing Poole Road, with the minimum associated utility improvements necessary when SF Phase 5F is connected to Poole Road. NASH Wendell Falls, LLC will bond any of the MPR Phase B improvements that are not completed prior to recording the plat for SF Phase 5F.

- c. **MPR Phase C**, consisting of all remaining widening improvements (including the sidewalk adjacent to SF 1), will be completed no later than eighteen (18) months after CORPUD completes the waterline improvement project along Poole/Martin Pond Road. The intent of this phase is to make all remaining road improvements, sidewalks, bike lanes, and street trees, including the realignment of the Poole Road and Martin Pond Road intersection, re-grading and repaving of Martin Pond Road, as required, and any remaining associated utility improvements necessary. NASH Wendell Falls, LLC will bond any of the MPR Phase C improvements that are not completed prior to recording the plat for Phase 7.
3. The Wendell Falls Phase 2 Roadway Improvement Plans, with the passage of time, need updating to conform to the 2015 PUD approved typical cross-sections and to align with the physical layout of the nearby components of the Wendell Falls development. NASH Wendell Falls, LLC and the Town have been reviewing ongoing revisions to the plans. Some of these revisions are incorporated in to the Phase 5F turn lane improvements that are currently under review. As the design process for these improvements and the balance of the MPR Phase C improvements continues, construction drawings will be submitted to NCDOT and the Town.

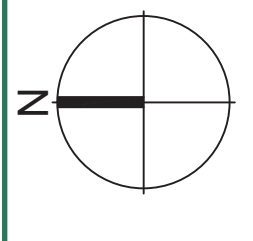
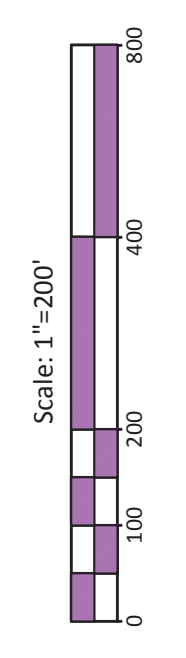
NASH Wendell Falls, LLC

By: _____
Its: _____



REFERENCE MAP FOR MEMORANDUM OF AGREEMENT

Map is for illustration purposes only, based upon current development concepts, which are subject to change without notice. No guarantee can be made that development of the Wendell Falls Community ("Community") will proceed as described.



WENDELL FALLS

Martin Pond Road and Poole Road Improvements
Phases A, B, and C



June 21, 2016

