

Rec. 11/13

**SETTLEMENT AGREEMENT**

**AGREEMENT** entered into this \_\_\_\_\_ day of November, 2012, by, between, and among Wykeham Rise, LLC, acting herein by Matthew Klauer, its Member and Manager (herein "Wykeham"), Wendy R. Federer and Eric A. Federer ("Federer"), Teresa Rosen Peacocke ("Peacocke"), and the Zoning Commission of the Town of Washington ("Commission"):

**WHEREAS**, Wykeham is the owner of a certain piece or parcel of land located at and known as 101 Wykeham Road in the Town of Washington, County of Litchfield, and State of Connecticut, referred to hereafter as the "Property," and

**WHEREAS**, Wykeham desires to construct and operate an inn ("Inn") on said Property; and

**WHEREAS**, Wykeham's application for a special permit for an inn on the Property was denied by the Commission on December 15, 2008; and

**WHEREAS**, on December 29, 2008, Wykeham filed an appeal ("Appeal") of the Commission's denial in the Litchfield Superior Court, which Appeal was dismissed on October 11, 2011, followed by Wykeham's petition for Certification to the Appellate Court, which granted said Petition on March 21, 2012; and

**WHEREAS**, Federer owns property that abuts the Property, and Peacocke owns property that is in close proximity to the Property, and both Federer and Peacocke ("Intervenors") intervened in the Appeal; and

**WHEREAS**, Wykeham, Federer, Peacocke, and the Commission (the "Parties") desire to avoid further litigation and enter into this Settlement Agreement specifying the terms and conditions by and under which neither Federer nor Peacocke would oppose Wykeham in its efforts to obtain Commission approval and for the Commission to approve an Inn on the Property.

**NOW THEREFORE**, in consideration of One Dollar (\$1.00) and other valuable consideration, including the mutual promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the undersigned Parties hereby agree that the following covenants and restrictions become binding and legally valid if and when the Property is approved for use as an Inn by the Zoning Commission and the Connecticut Superior Court pursuant to Section 8-8(n) of the Connecticut General Statutes, (the "Approval") and no appeal, validly maintained or otherwise, of the Approval is pending.

1. The Inn's complete site plan is represented in the attached document as Overall Site Plan for Applicant Matthew & Erika Klauer Development: Wykeham Project Date: July 8, 2011 Scale 1" = 60' SHEET 050.1 Revised to 11/19/12, Prepared by Arthur H. Howland & Associates P.C. ("Site Plan").
2. The Inn will contain a maximum of fifty-four (54) guest room units ("Units").
3. There will be a maximum of one hundred (100) parking spaces provides on the Property. There will be no "overflow" parking.

4. The Inn's restaurant shall be open to the public but shall have a total maximum seating capacity of sixty-eight (68) seats during normal operations, excluding weddings, or "paid for events." Of the maximum seating capacity, no more than thirty (30) seats shall be outdoor seating.
5. The Inn's spa and fitness center will be limited to the area within the building that is labeled "Fitness Building" on the Site Plan and cannot exceed floor area totaling more than 11,400 square feet **SAVE THAT** a single exercise room no larger than 3,800 square feet and containing only exercise equipment may be located within the "Main Building," labeled as such as depicted on the Site Plan. If the single exercise room is located in the Main Building, the size of the Fitness Building would then be reduced by the same amount so that the combined floor area devoted to spa and fitness facilities in the Fitness Building and Main Building cannot exceed 11,400 square feet in total. There shall be no treatment rooms in the Main Building under any circumstances and treatment rooms in the Fitness Building may not be used for overnight stays. Wykeham will not issue "day passes" for the spa and fitness center or for any such exercise room.
6. The existing driveway of the Property that intersects Bell Hill Road will be permanently abandoned.
7. There will be no amplified sound on the grounds or outside the footprints of all fully constructed and enclosed buildings at any time. Non-amplified sound is allowed; however, non-amplified music must cease 30 minutes after local sunset.
8. The pool house shall be permitted to serve alcohol but will not have any grill or cooking equipment. There shall be no outside grill on the Property. The pool house and pool shall open no earlier than 8:00 AM and close no later than at 8:00 PM each day. Wykeham shall use best efforts to minimize noise or raucous behavior at the pool house or pool. All exterior lights shall be subject to the lighting standards of the Washington Zoning Regulations in effect at the time this Agreement is fully executed by the parties herein.
9. There shall be no more than twenty-four (24) tented events between and only during the period from May 1 through October 31 of each calendar year and no more than one (1) tented event may be held per day. Tented events may be held in two general locations, the first being north of the Main Building (as those specific locations are depicted on the Site Plan) and the second being south of the Main Building (the specific south side locations are as depicted on the Site Plan.) Of the twenty-four (24) tented events, up to but no more than twelve (12) tented events may occur on the south side of the Main Building during any one calendar year. The balance of the twenty-four (24) total number of tented events that may be held in a calendar year, less the actual number of tented events not to exceed twelve (12) that occur on the south side in any calendar year, shall be allowed on the north side. No buildings, tents or other structures shall be constructed, placed or erected above, or on the ground in the Restricted Area as depicted on the Site Plan. No permanent or temporary parking is permitted in the Restricted Area. No food or beverages, including but not limited to, alcoholic beverages, shall be prepared or served in the Restricted Area.

10. A separate "Stipulated Judgment" by and between Wykeham and Federer relating to *Wykeham Rise LLC v. Eric A. Federer, et ux.*, Docket No. LLI-CV-08-4007541-S, J.D. of Litchfield at Litchfield, will be signed by the parties therein and filed with the court for approval contemporaneously with the submission for approval of this Agreement by the court.
11. Any amendments to this Settlement Agreement must be consented to by all the parties herein or their heirs, successors or assigns.
12. If any provision of this settlement agreement is deemed unenforceable or against public policy by a court of competent jurisdiction, such provision shall be deemed severable from the remainder of the Agreement and shall not affect any other provision or, if such provision should not be wholly severable then, to the maximum extent possible, the remainder of this Agreement shall be modified so as to maintain the original intent and remain in full force and effect.
13. Each of the parties represent that he, she or it has the complete authorization and power to execute this Agreement in an individual capacity, on behalf of an LLC, or Commission as the case may be and that all necessary approvals, signatures or consents of any other person or entity has been obtained and that this Agreement is a valid and binding obligation of the individuals, Wykeham Rise, LLC and the Commission and such Agreement does not violate any law, rule, regulation, contract or agreement otherwise enforceable against the respective parties.
14. This settlement agreement shall be construed in accordance with the laws of the State of Connecticut.
15. Once this Settlement Agreement has its Approval, Wykeham shall give up and surrender its two existing approvals for a school granted by the Commission on December 27, 2010 and February 14, 2012.
16. This Settlement Agreement may be signed in counterparts and the parties may rely on facsimile or email copies provided to each as long as the originals are thereafter provided so that an original composed of all original counterparts may be presented to the Court for approval.

The foregoing covenants and restrictions are binding on and enforceable against Wykeham and its successors and assigns by Federer, the Commission, and Peacocke, and their respective heirs, successors, and assigns.

Upon Court approval pursuant to an § 8-8(n) hearing, this settlement agreement shall be in full force and effect but in the event that the Parties fail to achieve an agreement and execute this Settlement Agreement, or this Agreement is not approved by the Court, none of its provisions shall be admissible in any judicial proceeding, nor shall any oral or written negotiations between or among the Parties in furtherance of this Agreement be admissible in any judicial proceeding.

[The next page is the signature page.]

WYKEHAM RISE, LLC

Matthew Klauer  
By: Matthew Klauer, Manager/Member

Robert L. Fisher Jr.

Cramer & Anderson, LLP

By: Robert L. Fisher Jr., Esq.

WENDY R. FEDERER

ERIC A. FEDERER

Robinson & Cole LLP

By \_\_\_\_\_, Esq.

TERESA ROSEN PEACOCKE

\_\_\_\_\_  
L.S.

ZONING COMMISSION OF THE TOWN OF WASHINGTON

By \_\_\_\_\_ Its Chairman

By \_\_\_\_\_

Murtha Cullina

By \_\_\_\_\_, Esq.