

DECLARATION OF THE COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR WEATHERHILL POINTS

THIS DECLARATION, made this ____ day of _____, ____ by **WEATHERHILL POINT LIMITED PARTNERSHIP**, by and through its General Partner, **WELLS MANAGEMENT GROUP, INC.**, a North Carolina Corporation, with offices at 101 Beechwood Drive, Carrboro, North Carolina 27510, hereinafter referred to as “Declarant”.

WITNESSETH:

WHEREAS, Declarant is the owner of certain properties in Chapel Hill Township, Orange County, State of North Carolina, which properties are more particularly described in Appendix “A” hereto and which description is incorporated herein by reference thereto; and,

WHEREAS, Declarant will convey lots from such properties subject to certain protective covenants, conditions, restrictions, and easements as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all such properties shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of enhancing and protecting the value and desirability of the properties and which shall be binding on all parties having any right, title or interest in the described properties or any part thereof, including, but not by way of limitation, their heirs, successors and assigns. It is the express intent of the Declarant that such easements, restrictions, covenants, and conditions shall run with the properties and shall inure to the benefit of each owner.

ARTICLE I

DEFINITIONS

Section 1. “ASSOCIATION” shall mean and refer to Weatherhill Pointe Homeowners’ Association. Inc., its successors, and assigns.

Section 2. “OWNER” shall mean and refer to the record owner, whether one or more persons or entities of the fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. “PROPERTIES” shall mean and refer to that certain real property more particularly described in Appendix “A” attached hereto and incorporated herein by this reference.

Section 4. “PHASE” shall mean those construction subsections of the “PROPERTIES” designated on any recorded plat of the “PROPERTIES” in Phase 1, Phase 2, and Phase 3.

Section 5. “COMMON AREA” shall mean a certain portion of the properties (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of conveyance of the first lot is described with greater particularity of the Plat of Weatherhill Pointe, Phase 1 and 2 recorded in Book ____, Page ____, Orange County Registry, Hillsborough, North Carolina.

Section 6. "LOT" shall mean and refer to any plot of land shown upon any recorded plot of the Properties with the exception of the Common Area.

Section 7. "DWELLING STRUCTURE" shall mean and refer to any house or residence located on any lot, including garages, stoops, decks, and patios.

Section 8. "APRON" shall mean and refer to that portion of every lot lying and situated between each exterior lot line and the dwelling structure erected on each lot. Sidewalks and driveways shall be considered part of the Apron. Where Dwelling Units are constructed without garages, the Apron shall include all area between the side lot line and the dwelling structure; however, should the owner later construct a garage or other addition, the Apron shall be displaced and reduced in size by the erection of such garage. In that event, the Apron shall include all areas between the exterior lot line and the dwelling structure as augmented and extended by the garage or addition.

Section 9. "MEMBER" shall mean and refer to every person or entity who holds membership in the Association.

Section 10. "DECLARANT" shall mean and refer to Weatherhill Point Limited Partnership, a North Carolina Limited Partnership of which Wells Management Group, Inc., a North Carolina Corporation is the sole general partner, its successors, and assigns.

ARTICLE II

PROPERTY RIGHTS

SECTION 1. OWNERS' EASEMENTS OF ENJOYMENT. Every Owner shall have the right and easement of enjoyment in and to the Common Area in conjunction with every other lot Owner in Weatherhill Pointe which easement right shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- A. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- B. The right of the Association to suspend the voting rights and/or the right of an Owner to use the recreational facility by an Owner for any period during which any assessment against the Owner's lot remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- C. The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and its facilities, and in aid thereof, to encumber the Common Area with a deed of trust;
- D. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds ($\frac{2}{3}$) of each class of Members has been recorded in the Office of the Orange County Register of Deeds in Hillsborough, North Carolina.

SECTION 2. DELEGATION OF USE. In accordance with the By-Laws, any Owner may delegate his rights of enjoyment to the Common area and facilities to the members of his family, his tenants, agent, invitees, guests, or contract purchasers who reside on such Owner's lot.

SECTION 3. EASEMENT FOR ACCESS. Every lot shall have an access easement to be used for ingress, egress, and regress between the public right-of-way and such lot over those portions of the Common Area shown on any recorded plat of the properties as a private drive which access easement shall be appurtenant to and shall pass with the title to every lot.

SECTION 4. GENERAL EASEMENTS. All of the properties, including lots and Common Area, shall be subject to such easements for private drives, streets, walkways, waterlines, drainage facilities, gas lines, telephone, television lines, electric power lines, and other public utilities as shall be established by the Declarant or by his predecessor in title, prior to the subjecting of the properties to this Declaration. The Association shall have the power and authority to grant and establish upon, over, under, and across the Common Area conveyed to it, such further easements, permits, or licenses as are requisite for the convenient maintenance, use, and enjoyment of the properties.

An easement is hereby established for the benefit of the Town of Carrboro and Orange Water and Sewer Authority over all Common Area hereby or hereafter established for the setting, removal, and reading of water meters; the maintenance and replacement of water, sewer and drainage facilities, the fighting of fires, collection of garbage and police protection. Furthermore, a general utility easement is reserved, conveyed, and established in favor of any and all utility companies from time to time providing water, sewer, gas, telephone, and cable services to any lot in the properties. This general utility easement shall extend into each lot a depth of twelve (12) feet on all sides, but in no event:

- (a) Shall any general utility line or service conduit of any kind pass under any dwelling unit.
- (b) Any general utility line or service conduit passing over or under any portion of any lot on which a garage could be built.
- (c) Any general utility line or service conduit of any kind unreasonably interrupts or interferes with any Owner's beneficial use and enjoyment of his/her lot.

SECTION 5. APRON EASEMENT FOR MAINTENANCE. An easement is hereafter reserved, conveyed, and established for the benefit of the Association to be used for purposes of ingress, egress and regress upon, to and from the Apron of every lot for the purpose of maintenance of the area within each such lot by the Association as if such area were part of the Common Area.

SECTION 6. TEMPORARY CONSTRUCTION ACCESS; DISTURBANCE EASEMENT. An easement over, through, and to the Common Area is hereby reserved, conveyed, and established in favor of Declarant and all Owners to be used for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials, the necessary disturbance of land for construction on any lot, and installation of a driveway, sidewalks, underground drainage, and utility conduits and hookups. This easement shall be used only as and when necessary to facilitate the construction of improvements at any time on a lot by the Declarant or Owner as well as the extension of driveways, sidewalks, underground drainage, and utility conduit and hookups to any dwelling structure situated on a lot.

All lots shall be subject to easements for encroachment of initial improvements constructed on adjacent lots or the Common Area to the extent that such initial improvements actually encroach,

including, but not limited to, such items as overhanging eaves, gutters and downspouts, steps, porches, decks, mechanical equipment, and walls.

In using and taking the benefits of such easement, the Declarant and Owners shall use their best efforts to minimize any soil or land disturbance activities, and shall restore the land to its pre-disturbance condition. The declarant or Owner shall indemnify the Association for the reasonable expense incurred in performing such restoration. Where any Owner shall seek to take advantage of the easement herein conveyed, such Owner's rights of use shall be restricted to that Common Area which shall be reasonably servient approximate to his/her lot. Anything in the foregoing to the contrary notwithstanding the Owner shall obtain the approval of the Association before commencing any construction as required in Article VI of this Declaration.

SECTION 7. PARKING RIGHTS. Subject to Article VIII, ownership of each lot shall entitle the Owner thereof, and those to whom such Owner may choose to delegate, to the use of not more than two automobile parking spaces, which shall adjoin the Owner's lot, together with the right of ingress and egress in, to and upon such parking areas. The Association may regulate or wholly prohibit the parking of boats, trailers, and other such items on the Common Area. Unless prohibited by subsequent action of the Association, boats, campers, trailers, and commercial vehicles shall be parked only in the Common Area in spaces designated by the Association. No disabled vehicle whether temporarily or permanently disabled shall be parked in any parking space or parking area.

SECTION 8. TITLE TO THE COMMON AREA. The Declarant hereby covenants for itself, its successors, and assigns that it will convey simple title to the Common Area to the Association, free and clear of all encumbrances and liens, except street right-of-way, easements for private drives, streets, walkways, parking areas, future parking areas, and utility easements prior to the conveyance of the first lot.

SECTION 9. WEATHERHILL POINTE LAKE. The use of Weatherhill Pointe Lake shall be limited to fishing by the Owners, their families, guests, invitees, and tenants. The Association shall make such rules and establish such regulations governing the use of Weatherhill Pointe Lake as they may from time to time determine to be in the best interests of the Association. Such rules and regulations may include, but not by way of limitation, regulations governing fishing and boating, including limitations as to the hours and seasons in which such use is permitted.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

SECTION 1. MEMBERSHIP. Every Owner of a lot that is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

SECTION 2. CLASSES OF SHARES. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot.

Class B. The Class B Member (s) shall be the Declarant and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership and the Declarant shall transfer control of the Association to the Class A Members upon the occurrence of the earlier of the following events:

- a) Four (4) months after the conveyance of the 42nd lot to an individual purchaser;
- b) Five years after the conveyance of the first lot in Phase 1 of Weatherhill Pointe.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENT.

The Declarant for each lot owned within the properties, herby covenants, and each Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessment or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to successors in title unless expressly assumed by them.

SECTION 2. PURPOSE OF ASSESSMENT. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners, for the improvement and maintenance of the Common Area, including, but not by way of limitation, landscape maintenance, routine apron maintenance: for payment of premiums for contract of hazard, liability and fidelity insurance, including, but not by way of limitation any liability associated with the recreational amenities (i.e. the water amenities, the fit trail amenity, and the picnic amenities), for payment of local ad valorem taxes, if any, on the Common Area; and for the provision of adequate reserves for the repair and replacement of any capital improvements, including, but not by way of limitation, the maintenance and repair of the private roadway system located in the subdivision, the maintenance and repair of, and if required, the dredging of the water amenities, and the maintenance and repair of the dam.

SECTION 3. MAXIMUM ANNUAL ASSESSMENT. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment shall be Seven Hundred Twenty and No/100 dollars (\$720.00) per lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased each year no more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by the vote of two-thirds ($\frac{2}{3}$) of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds ($\frac{2}{3}$) of the votes of each class of members who are voting in person or by proxy at the meeting duly called for this purpose.

SECTION 5. NOTICE AND QUORUM. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

SECTION 6. UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all lots and annual assessments shall be due and payable and collected on a monthly basis.

SECTION 7. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. The Annual Assessments provided for herein shall commence and shall be due and payable as to all lots on the first day of the month following the conveyance of the Common Area and on the first day of each consecutive month thereafter. Such amount due and payable on the first day of each month shall be equal to one-twelfth ($\frac{1}{12}$) of the annual assessment as set forth and established pursuant to Section 3. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

Notwithstanding the above, the initial Buyer shall pay at the time of the initial closing on each lot an amount equal to two months' assessment in order to provide a working capital fund for the initial months of the Association's operation. Funds paid at the time of initial closing shall not be considered as advance payment of the regular monthly assessment.

The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be as previously set forth herein, unless otherwise established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

SECTION 8. EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall be subject to a late payment penalty of ten dollars (\$10.00) per month together with interest from the due date at the rate of eight percent (8.0 %) per annum, or at such other rate of interest as the Association's Board of

Directors may from time to time establish. The Association shall bring an action at law against the Owner personally obligated to pay such delinquent assessment claiming an amount equal to the amount of the delinquency plus interest costs, and reasonable attorney's fees necessitated by such action at law, and shall, if necessary, foreclose the lien against the property. For purposes of this Section, the amount of the delinquent assessment, plus accrued interest, shall be considered evidenced by this paragraph and shall constitute evidence of indebtedness. No Owner may waive or otherwise escape liability for the assessments by non-use of the Common Area or abdomen of his/her lot.

SECTION 9. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments that became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

INSURANCE

SECTION 1. OWNERSHIP OF POLICIES. Contracts of insurance upon the Common Area shall be purchased by the Association for the benefit of the Association and its mortgagees if any, as their interests may appear. The Association may re-evaluate its insurance coverage from time to time and may provide for such insurance coverage as it seems appropriate.

SECTION 2. COVERAGE OF POLICIES.

(a) Hazard and Liability Coverage. All improvements and personal property included in Common Area shall be insured in an amount equal to at least one hundred percent (100%) of their insurable replacement value as determined annually by the Association with the assistance of the insurance company underwriting coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement and such other risks covered by the standard "all-risk" endorsements. The maximum deductible amount permitted under any such policy shall not exceed the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1.0%) of the face amount of the policy. The Association shall retain sufficient funds in its reserve account to cover the stated deductible.

In the event the following endorsements are available to the Association, such endorsements shall be included in any coverage secured by the Association.

- i) Agreed Amount and Inflation Guard Endorsement;
- ii) Construction Code Endorsement; including, Demolition Cost Endorsement, Contingent Liability from Operation of Building Laws Endorsement, and Increase Cost of Construction Endorsement.

Such policies shall contain clauses providing for waiver of subrogation, if possible. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover the liability of the Owners as a group to a single Owner. There shall also be obtained such other

insurance coverages as the Association shall determine from time to time to be desirable and necessary.

b) Fidelity Coverage. The Association shall require that all persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association shall first be bonded by fidelity insurance to indemnify the Association from any loss by reason of default in the performance of their duties. Unless the Association elects to contract for the services of an independent management agent or firm, such fidelity insurance or bond shall be obtained at the expense of the Association.

c) Special Flood Hazard Coverage. The Association shall maintain a “master” policy of flood insurance covering all Association improvements located in common areas, if any, which may be designated as “special flood hazard areas” by the National Flood Insurance Administration. Such coverage shall be equal to the lesser of one hundred percent (100.0%) of the insurable value or the maximum coverage available.

SECTION 3. PREMIUMS. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and charged ratably to the Owner as an assessment according to the provisions of Article IV above.

SECTION 4. PROCEEDS. All contracts of insurance purchased by the Association shall be for the benefit of the Association, its mortgagees, and their successors and assigns if any, as their interests may appear, and the Owners, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein.

SECTION 5. DISTRIBUTION OF INSURANCE PROCEEDS. Proceeds of contracts of insurance received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficiary or beneficiaries thereof in the following manner:

- a) The proceeds shall be paid first to defray the cost of reconstruction and repair of casualty and liability so covered.
- b) Any expenses of the insurance trustee may be paid from proceeds after payment of reconstruction or repair expenses and liability. Any proceeds remaining thereafter shall be distributed to the beneficiary or beneficiaries of the trust.

SECTION 6. CANCELLATION OR MODIFICATION OF INSURANCE. All policies obtained by the Association must contain a provision calling for notice to the Association or the insurance trustee at least ten (10) days prior to any cancellation or substantial modification of the policy or any aspect of the coverage under such policy.

ARTICLE VI

ARCHITECTURAL CONTROL

ARCHITECTURAL REVIEW. Except for the initial residential structure constructed on a lot by Declarant or WMG Construction Company, Inc., in accordance with Declarant’s general plan of development, no building, fence, wall, or other structure shall be commenced, erected, or maintained

upon the properties. No exterior addition to or change or alteration shall be made, including expansions of the initial residential structure constructed or changes to the original exterior color of the residential structure, until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representative appointed by the board.

CONSTRUCTION BY DECLARANT. Initial residential structures constructed by Declarant or WMG Construction Company, Inc., shall be exempt from the foregoing approval process, so long as the plans and specifications therefore are in strict conformity with any plan previously approved by the Federal Housing Authority, Veterans Administration, or Federal National Mortgage Association. In the event the Board or its designated committee fails to approve or disapprove such design and location within thirty (30) days after plans and specifications have been submitted to it approval will not be required and this Article will be deemed to have been complied with.

ARTICLE VII

LANDSCAPING AND MAINTENANCE

SECTION 1. APRON MAINTENANCE. The Apron of each lot will, with the exception of those areas of the Apron covered by any driveway or sidewalk, shall be landscaped and maintained by the Association. No member shall be permitted to store equipment, unstacked firewood, gardening implements, or other unsightly materials or debris on any portion of the Apron.

In the event that any maintenance or repair to any Common Area or structure is necessitated by or through the negligent or willful act of the Owner, the Owner's family, guests, invitees, or tenants, the cost of such maintenance or repair shall be added to and become part of the regular monthly assessment to which such lot is subject pursuant to Article IV.

SECTION 2. INDIVIDUAL COMMON AREA LANDSCAPING. If approved by the Board of Directors of the Association, or by a Landscaping Committee composed of three (3) or more representatives appointed by the Board, an Owner may, at his own expense, landscape, maintain and improve the portion of the Common Area, as well as the Apron, immediately surrounding his lot. Such landscaping maintenance and improvement shall include but is not limited to, the planting of harmonious trees, shrubs, flowers, and grass, however, the Association does not assume any liability for the replacement of or guarantee the survival of any trees, shrubs, or other plantings planted by individual members.

ARTICLE VIII

USE RESTRICTIONS

SECTION 1. RULES AND REGULATIONS. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Apron, the rear yard space of each lot, and the Common Area.

SECTION 2. USE OF PROPERTIES. No portion of the properties except for a temporary office of the Declarant or model used by the Declarant shall be used except for residential purposes and purposes incidental or accessory thereto.

- (a) Outside clotheslines will not be permitted.
- (b) No commercial, sales, or rental signs shall be erected or maintained on any lot or within the Common Areas. However, Declarant shall be allowed to erect and maintain such signs as it deems necessary in the marketing and sales of lots and homes.
Notwithstanding the foregoing, individual owners may permit the erection and display of a single sign on their lot, but not within the Common Areas, for the express purpose of selling or renting their dwelling unit. All signs permitted under this subparagraph must meet the requirements of all local sign ordinances as to size composition.
- (c) No house trailers shall be permitted on any lot. Boats, trailers, campers, tents, or temporary buildings shall not be permitted on any lot except in areas approved by the Association. However, house trailers, temporary buildings, and the like shall be permitted for construction purposes during the construction period of residential structures. No garage, outbuilding, or other appurtenant structure shall be used for residential purposes.
- (d) No lumber, brick, stone, cinder block, concrete or any other building materials, scaffolding, mechanical devices, or any other thing used for building purposes shall be stored on any lot except for the purpose of construction on such lot and shall not be stored on such lot for longer than the length of time reasonably necessary for the construction in which same is to be used.
- (e) No exposed above-ground tanks will be permitted for the storage of fuel or water or any other substance.
- (f) Except with the express written permission of the Association first had and obtained, no water well shall be sunk or drilled on any lot. However, Declarant reserves the right to locate wells and pumping stations within residential areas on any open space, or on any residential lot.
- (g) No trees, shrubs, bushes, or other vegetation having a diameter of four inches or more shall be cut, destroyed, or mutilated except with the express written permission of the Association first had and obtained, provided, however, that dead or diseased trees, shrubs, bushes or other vegetation shall be cut and removed promptly from any lot by the Owner thereof after such dead or diseased condition is first brought to the attention of the Association and permission for such cutting and removal has been obtained.
- (h) Without prior approval of the Board of Directors or the Architectural Committee as to location, style, type, size, and composition, no antennae, aerials, poles, towers, or similar structures shall be placed on any lot or in the Common Areas.

SECTION 3. HOBBIES AND ACTIVITIES. The pursuit of hobbies and other activities including specifically, but without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of any lot or Common Area.

SECTION 4. ANIMALS AND PETS.

- (a) No stable, poultry house or yard, rabbit hutch, or other similar structure shall be constructed or allowed to remain on any lot, nor shall livestock of any nature or classification whatsoever be kept or maintained on any lot. However, household pets shall be permitted, provided they are not raised for commercial purposes and provided that the regulations and ordinances of all state and local governing bodies and agencies are complied with.
- (b) Notwithstanding anything in Section 4(a) of this Article to the contrary, no dogs of the breed commonly known as “Pit Bull” or “Pit Bull Terrier” shall be maintained, permitted, or allowed to remain on any lot or in any residential unit.

ARTICLE IX

PHASING AND ANNEXATION

SECTION 1. CONSTRUCTION PHASES. The Weatherhill Pointe project has been approved by the Town of Carrboro in three (3) construction and approval phases. Phases 1 and 2 shall be created in a combined manner and built as a single phase, consisting of thirty-one (31) lots. The recording of the plat in the Orange County Registry and the simultaneous recording of this instrument shall be deemed conclusive evidence that Phases 1 and 2 have been created. Declarant’s intent is that Phase 3 shall consist of twenty-five (25) lots. The creation of Phase 3 shall be evidenced by the recording of a plat in the Orange County Registry showing the lots to be included in Phase 3. No other document shall be necessary to subject the lots in Phase 3 to the Covenants, Conditions, & Restrictions of this Declaration. The plat for Weatherhill Pointe, Phase 3, shall be recorded at such time as Declarant determines that Phases 1 and 2 are substantially complete, but in no event later than seven (7) years from the recording of this Declaration.

SECTION 2. ANNEXATION. The Association shall have the right to annex additional property and incorporate such property into the Association provided that the Owners of any property so annexed shall agree to adopt the Articles, By-Laws, and Declarations of this Association without substantial modification. Any property proposed for annexation shall not be annexed unless and until it meets all current Federal National Mortgage Association (FNMA) requirements for Planned Unit Development (PUD) projects. The ownership rights of the membership of this Association and of the owners of any annexed property in common areas shall be an undivided interest in the whole of all common areas owned or to be annexed by the Association.

ARTICLE X

GENERAL PROVISIONS

SECTION 1. ENFORCEMENT. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 2. SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

SECTION 3. AMENDMENT. The covenants, conditions, and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the lot Owner's. No amendment shall take effect or be enforceable until it is duly recorded in the office of the Orange County Register of Deeds in Hillsborough, North Carolina.

SECTION 4. AMENDMENT FORM. If any amendment to these covenants, conditions, and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall within thirty (30) days do the following:

- (a) Reasonably assure itself that the amendment has been validly executed by the Owners of the required number of lots. For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any lot to be examined.
- (b) Attach to the amendment a certification as to its validity which certification shall be executed by the Association in the same manner that deeds are executed. The form of certification attached hereto as Exhibit "A" is suggested.
- (c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the office of the Orange County Register of Deeds in Hillsborough, North Carolina.

All amendments shall be effective from the date of their recordation in the Orange County Registry, provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association. When any instrument purporting to amend the covenants, conditions, and restrictions has been certified by the Board of Directors, recorded, and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any lots.

SECTION 5. ADDITION OF RECREATIONAL FACILITIES. The Declarant shall not add any recreational facilities as amenities for the Association without first obtaining the written consent of a majority of the Class A Members.

SECTION 6. FHA/VA/FNMA APPROVAL. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration, the Veterans Administration, and the Federal National Mortgage Association; annexation of additional properties into the property; mortgaging of the Common Areas; or any material amendment to the Declaration. In addition, any material amendment of the By-Laws or the Declaration shall require the approval of the eligible mortgage holders representing at least fifty-one percent (51%) of the votes of eligible members.

Material amendments for the purpose of this Section include changes to any of the following:

- (a) Voting rights;
- (b) Assessments, assessment liens, or subordination of assessments;
- (c) Reserves for maintenance, repair, and replacement of common areas;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the general or limited common areas, or rights to their use;

- (f) Changes in the boundaries of any lot;
- (g) Expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the property;
- (h) Insurance or fidelity bonds;
- (i) Imposition of any restrictions on an Owner's right to sell or transfer lot ownership;
- (j) A decision by the Association to establish self-management when professional management had been required previously by an eligible mortgage holder;
- (k) Restoration or repair of the project in a manner other than specified herein;
- (l) Any action to terminate the legal status of the project after substantial condemnation occurs;
- (m) Any provisions that expressly benefit mortgage holders, insurers, or guarantor; or
- (n) In the event the Owners' vote to terminate the project for any reason other than substantial destruction or condemnation of the properties, such amendment shall require the written agreement of at least two-thirds of the first mortgagees.

Notwithstanding the definition of "material amendment" as defined in this section. In the event a non-material amendment is proposed by the Owners, a notice of such amendment must be provided to all first mortgage holders. Such mortgage holders shall then have a period of thirty (30) days to protest or otherwise respond to such amendment. If no response has been given within the thirty (30) day period, then the such amendment shall be deemed accepted by the mortgagee.

SECTION 7. CONTRACT RIGHTS OF ASSOCIATION. Any contract or lease entered into by the Association while there is Class B membership shall contain a provision giving the Association the right to terminate such contract or lease, with or without cause and without penalty, upon the giving of not more than ninety (90) days written notice to the other party.

SECTION 8. LENDER'S NOTICES. Upon written request to the Association, identifying the name and address of the holder, insurer, or guarantor and the lot number or address any mortgage holder, insurer, or guarantor will be entitled to:

- (a) Timely written notice of any condemnation or casualty loss that affects either a material portion of the project or the lot securing its mortgage;
- (b) Timely written notice of any sixty (60) day delinquency in the payment of assessments owed by the Owner of the lot on which it holds the mortgage;
- (c) Timely written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) Timely written notice of any proposed action that requires the consent of a specified percentage of mortgage holders;
- (e) Copies of the Association's financial statement for the immediately preceding fiscal year;
- (f) Copies of this Declaration, the By-Laws, the Articles of Incorporation;
- (g) The right to inspect the books and records of the Association at all reasonable times and circumstances;
- (h) Written notice of meetings of the Association and to designate a representative to attend such meeting;

SECTION 9. DECLARANT'S RIGHT TO AMEND DECLARATION. In the event Declarant shall seek to obtain approval of these covenants and the plan of the development for the properties in order that the Dwelling Units, lots, and improvements constructed on such lots will

be eligible for loans approved or guaranteed by the Federal Housing Administration (FHA), the Veteran's Administration (VA), the Federal National Mortgage Association (FNMA or Fannie Mae), the Federal National Mortgage and Urban Development (HUD), or the Federal Home Loan Mortgage Corporation (Freddie Mac), it is possible that FHA, VA, FNMA, HUD, or Freddie Mac will require changes in this Declaration in order to make the lots and improvements thereon eligible for loan guarantee or approval. In which event, the Declarant shall have the right to amend this Declaration, without the consent or approval of any Owner. When this Declaration, the By-Laws, and the Articles of Incorporation have been approved and accepted by the aforementioned agencies, this paragraph shall be rendered null and void and Declarant shall have no further right to unilaterally amend this Declaration.

SECTION 10. RESERVED RIGHTS OF LOT OWNERS. No lot Owner shall be subject to a restraint imposed by the Association upon his right to sell, transfer, or otherwise convey his lot. Under no circumstance shall the Association have a right of first refusal upon the sale or conveyance of any lot. No lot Owner shall be subject to any restraint imposed by the Association upon his right to mortgage his lot with whomever or whatever institution and upon those terms and conditions which the lot Owner is willing to accept. Each lot Owner is entitled to inspect the books, records, and related documents of the Association during normal business hours or under other reasonable circumstances.

IN WITNESS WHEREOF the Declarant, by and through Wells Management Group, INC., its General Partner, has this date set its hand and seal.