

Prepared by and Return to: Paul Messick, Jr., P.O. Box 880, Pittsboro, NC 27312

NORTH CAROLINA  
CHATHAM COUNTY

**DECLARATION OF AFFORDABLE HOUSING COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR CHATHAM OAK SUBDIVISION**

This Declaration is made on this 13<sup>th</sup> day of November 2008, by CHATHAM HABITAT FOR HUMANITY, a North Carolina non-profit corporation, whose address is 467 West Street, Pittsboro, NC 27312, hereinafter referred to as Declarant;

WITNESSETH:

WHEREAS, Declarant is the Owner of certain real property located in Pittsboro, Center Township, North Carolina, which is more particularly described on Exhibit A attached hereto and incorporated herein by reference, (the "Properties"); and

WHEREAS, pursuant to a contract with Chatham County dated November 15, 2007 the "Contract"), Declarant has agreed to provide certain affordable housing opportunities (the "Affordable Housing Obligations") within the proposed development project to be constructed on the Property (the "Property") also known as the Chatham Oak Planned Unit Development (the "Community"). This Declaration is intended to set forth Declarant's agreement regarding how the Affordable Housing Obligations will be satisfied and pursuant to which the dwelling units to be constructed upon the Lots will be maintained as affordable housing; and

WHEREAS, it is contemplated that the Property and the Community will be used, during the term hereof, for owner-occupied housing to households with annual gross income less than 80% of median income as established by HUD for the Durham NC HUD FMR Area; and

WHEREAS, this Declaration shall apply to and be enforceable against Declarant and all current and future Lot Owners, as applicable, during the term of this Declaration, and shall restrict the sale, resale, and use of the applicable Lots(s) as provided herein.

NOW, THEREFORE, the Declarant does hereby publish and declare that all of the Lots shall be held, conveyed, encumbered, used, occupied and transferred, subject to the following covenants, conditions, restrictions and obligations, all of which are declared to be in furtherance of a common plan for the improvement, enjoyment and use of the Lots, and all of which shall run with the Lots and shall be binding on any person or entity acquiring or owning ("Owner") any interest in any of them, their personal representatives, heirs, successors and assigns for the term stated herein.

**I. DEFINITIONS.**

a. "Affordable Dwelling Unit" and/or "Affordable Dwelling" and/or shall mean a building designed for, or used for, human occupancy on a permanent basis by an eligible household on an individual Lot.

b. "Affordable Housing" means housing with a sales price within the means of an eligible household that may occupy moderate- and low-income housing. In the case of dwelling units for sale, affordable means housing in which mortgage, amortization, taxes, insurance, utilities and condominium or association fees, if any, constitute no more than 30 percent of such gross annual household income for a household of the size that may occupy the unit in question.

c. "Declarant" shall mean and refer to Chatham Habitat for Humanity, a North Carolina corporation, its successors and assigns as a Declarant

d. "Eligible households" shall mean those qualifying households with members who have lived or worked in Chatham County for at least one year.

e. "Lot" shall mean and refer to any numbered plot of land in single ownership shown upon any recorded subdivision plat of the properties.

f. "Low-Income Housing" means housing that is affordable, according to the U.S. Department of Housing and Urban Development, for home ownership, and that is occupied, reserved, or marketed for occupancy by eligible households with a gross household income that does not exceed 80 percent of the median family income for households of the same size within the Durham, NC HUD FMR Area in which the housing is located.

g. "Median Income" means the median income limit for the Durham, NC HUD FMR Area as established and defined in the annual schedule published by the Secretary of the U.S. Department of Housing and Urban Development, adjusted for household size. If HUD discontinues publication of median income statistics, then the Declarant shall designate another measure of eligible income. To be considered an Eligible Household purchaser, the individual(s) or household must meet all qualifications set forth in this Declaration, as amended from time to time; intend to occupy and thereafter occupy the Property as his, her or their principal residence; and must provide to the Declarant such certifications as to residency, income and other information as the Declarant may require to justify designation as an Eligible Household purchaser.

h. "Moderate-Income Housing" means housing that is affordable, according to the federal Department of Housing and Urban Development, for home ownership and that is occupied, reserved, or marketed for occupancy by eligible households with an annual gross income that is greater than 80 percent but does not exceed 120 percent of the median income for households of the same size within the Durham, NC HUD FMR Area in which the housing is located.

i. "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, excluding those having such interest merely as security for the performance of an obligation

j. "Property" shall mean and refer to all that certain real property described above, and such additions thereto as may hereafter be made subject to this Declaration which shall be evidenced by a written document by the Declarant and filed in the Chatham County Registry.

## II. RESTRICTIONS ON TRANSFERS

In the event Declarant shall sell, transfer or exchange the Property or any portion of the Property, the following shall pertain:

a. Declarant may sell, transfer, or exchange the Property, or any lot thereof, to an entity of like purpose that builds or enables affordable housing or sells to low and moderate income buyers.

b. Declarant may otherwise sell, transfer, or exchange the Property, or any lot thereof, to an eligible qualifying household as defined herein for purposes of Low and Moderate Income Housing.

c. Any Affordable Dwelling Unit constructed upon any lot may not be subsequently conveyed except to an eligible qualifying household as defined herein for purposes of Low and Moderate Income Housing who has been approved in advance and in writing by the Declarant or its assigns.

d. An Affordable Dwelling Unit shall be occupied and used by the initial owner and any subsequent eligible household purchaser as his principal residence. Any use of the Property or activity thereon which is inconsistent with the purpose of this Declaration is expressly prohibited.

e. At no time shall the owner of the Affordable Dwelling Unit lease or rent the Affordable Dwelling Unit to any person or persons.

f. Any good faith purchaser of a Lot or Affordable Dwelling Unit, any lender or other party taking a security interest in such Property and any other third party may rely upon a Certificate by the Declarant or its assigns evidencing compliance as conclusive evidence of the matters stated therein and may record such certificate in connection with a conveyance of the Lot or Affordable Dwelling Unit.

g. For the term of this Declaration, each and every contract, deed or other instrument hereafter executed conveying the Property or portion thereof shall expressly provide that such conveyance is subject to this Declaration, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contracts, deed, or other instrument hereafter executed conveying the Property or portion thereof provides that such conveyance is subject to this Declaration.

h. The following transfers are exempted from the above restriction:

1. A transfer resulting from the death of an owner where the transfer is to such owner's spouse or co-owner who is also an owner.

2. A transfer to an owner's estate following such owner's death for the purpose of administering the estate and distributing the assets thereof during a limited period of time.

3. A transfer by an owner where the spouse of such owner becomes a co-owner of the applicable lot.

4. A transfer resulting from a decree of dissolution of the marriage or legal separation or from a property settlement agreement incidental to such a decree, by which a spouse who is an owner becomes the sole owner of the applicable Unit.

5. A transfer resulting from a foreclosure of a valid deed of trust or sale upon execution of a valid judgment, assessment, or lien.

### **III. ENFORCEMENT.**

The rights hereby granted shall include the right of the Declarant to enforce this Declaration independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief against any violations (it being agreed that there shall be no adequate remedy at law for such violation), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Declarant.

a. Without limitation of any other rights or remedies of the Declarant, or its successors and assigns, in the event of any sale, conveyance or other transfer or occupancy of the Property in violation of the provisions of this Declaration, the Declarant shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

1. specific performance of the provisions of this Declaration including the right to void any contract for sale or any sale, conveyance or other transfer of the Property in violation of the provisions of this Declaration; and

2. money damages for the cost of creating or obtaining a comparable dwelling unit for an eligible household purchaser.

b. In addition to the foregoing, in the event of a violation of the provisions of this Declaration, the Declarant may take appropriate enforcement action against the owner or the owner's successors in title, including, without limitation, legal action to compel the owner to comply with the requirements of this Declaration. The owners shall pay all fees and expenses (including legal fees) of the Declarant in the event successful enforcement action is taken against the Initial Owner hereunder.

c. The Declarant for itself and its successors and assigns, reserves the right to enter upon the Property for the purpose of enforcing the restrictions herein contained, or of taking all actions with respect to the Property which the Declarant may determine to be necessary or appropriate pursuant to court order, or with the consent of the owner to prevent, remedy or abate any violation of this Declaration.

IV. **DURATION.** This Declaration shall be binding for a period of thirty years (30) from the date hereof, and shall be automatically extended for successive periods of thirty (30) years each if re-recorded periodically and not less often than one day less than every thirty years from the date hereof.

V. **SEVERABILITY.** If any provisions hereof or the application thereof to any person or circumstance shall come, to any extent, to be invalid or unenforceable, the remainder hereof, or the application of such provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and enforced to the fullest extent permitted by law.

VI. **WAIVER.** No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

VII. **CAPTIONS.** The captions herein are inserted only as a matter of convenience and for reference and such shall not be construed to define, limit or describe the scope of this Declaration nor the intent of any provision hereof.

VIII. **LAW CONTROLLING:** This Declaration hereto shall be construed and controlled by and under the laws of the State of North Carolina.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized officers and its corporate seal to be hereunto affixed all by order of its Board of Directors, as of this 13<sup>th</sup> day of November, 2008.

CHATHAM HABITAT FOR HUMANITY,  
a North Carolina non-profit corporation

By: *Jim Alcock*  
Name:  
Title: President

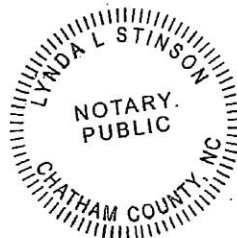
STATE OF NORTH CAROLINA  
COUNTY OF Chatham

I, Lynda L. Stinson, a Notary Public of Chatham County and the State aforesaid, do hereby certify that Jim Alcock personally came before me this day and acknowledged that he/she is President of Chatham Habitat for Humanity, a North Carolina non-profit corporation, and that he/she as President being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal or stamp, this the 13<sup>th</sup> day of November, 2008

My Commission Expires: 3/25/2012

Lynda L. Stinson  
Notary Public



“EXHIBIT A”

ALL of Lots 1 and 2 according to a plat entitled “Subdivision Plat of the Leach Property for Chatham Habitat for Humanity” prepared by Elingburg Land Survey Co., P.A., dated June 13, 2007 and recorded in Plat Slide 2007-279 of the Chatham County Registry, reference to which is hereby made for a more particular description.