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FILED Joyce H. Pearson
Register of Deeds Orange COUNTY, NC
BY: *Wendy R. Dix*
Deputy

9798.64.4799ms (2)

Prepared by and return to: Geoffrey E. Gledhill, P.O. Drawer 1529, Hillsborough, NC
27278

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (Declaration), dated December 15, 2003 by Orange Community Housing and Land Trust, Inc, and its successors and assigns (Owner), is given as a condition precedent to the award of Federal HOME Investment Partnership Program funds by Orange County, North Carolina, a body politic and corporate, a political subdivision of the State of North Carolina, (hereafter "the County") together with any successor to its rights, duties, and obligations.

RECITALS:

WHEREAS, the Orange County HOME Consortium has designated \$100,000 in FY 2003 HOME funds for the purpose of acquiring and reselling 10 condominiums units in the Greenway Condominiums complex in the Meadowmont Community of Chapel Hill for resale to eligible first-time homebuyers, hereinafter referred to as the "Project" or the "Project dwelling units," the property for which is more particularly described in Exhibit A attached hereto and made a part of this Agreement (hereinafter referred to as the "Property"); and

WHEREAS, the County is the lead entity of the Orange HOME Consortium, so designated in an agreement dated July 1, 2002 and as such is the lead entity in a representative capacity for all members of the Orange HOME Consortium for the purposes of carrying out the HOME Program in accordance with the Title II of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625), (42 U.S.C. 3535(d.) et. seq.) (hereinafter referred to as the "Act"), and as further defined in the Federal Program Requirements provided by the U.S. Department of Housing and Urban Development; and

WHEREAS, Orange Community Housing and Land Trust (OCHLT) is a designated Community Housing Development Corporation (CHDO) as defined in 24 CCR Part 92, Subpart A, Section 92.2 interested in serving as sponsor, developer, and/or advocate for potential first-time homebuyers; and

WHEREAS, a first-time homebuyer for the purposes of this program is defined as any household earning up to 80% of HUD area median income that has not owned a home within the past three (3) years including households living in manufactured housing not permanently affixed to a foundation, or owner-occupants of homes not feasible for rehabilitation; and

WHEREAS, OCHLT intends to purchase the Project dwelling units and make them available for sale to families earning up to 80% of HUD area median income as described in the OCHLT HOME Program Application dated February 20, 2003, which Application is incorporated by reference into this Agreement. The February 20, 2003 HOME Program Application is on file in the office of the Orange County Department of Housing and Community Development; and

WHEREAS, as particularly described herein, the Property will be held by OCHLT, ensuring affordability of the homes for at least 99 years; and

WHEREAS, OCHLT has signed this Declaration agreeing to the terms of this Declaration, its obligations pursuant to this Declaration and agreeing to the terms of the Development Agreement between the County and OCHLT of even date; and

WHEREAS, OCHLT has borrowed money from Central Carolina Bank (lender) and Rene Langford, Inc. (lender) for the purchase of the Property which loans are secured by deeds of trust which are recorded prior in time to the recording of this Declaration; and

WHEREAS, lenders have agreed to subordinate their liens in the Property to this Declaration to enable its long term affordability covenants to be effective and have therefore signed this Declaration for the sole purpose of subordinating their liens on the Property to this Declaration.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein, it is agreed between the parties hereto as follows:

SECTION 1 REPRESENTATIONS, COVENANTS AND WARRANTIES OF OWNER

OCHLT hereby represents, covenants and warrants as follows:

a. Subject to the requirements of the DEVELOPMENT AGREEMENT, an unsigned copy of which is Exhibit B hereto, and this Declaration, OCHLT may sell, transfer, or exchange the Property to a non-profit fund, foundation, or corporation of like purpose which is organized and operated exclusively for charitable and educational purposes and which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code, or to the County, but Owner shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Property or any interest therein, that such acquisition is subject to the requirements of this Declaration and to the requirements of the DEVELOPMENT AGREEMENT and the Federal HOME Investment Partnership Program. OCHLT agrees that County may void any sale, transfer, or exchange of the Property or any portion of the Property if the buyer or successor or other person fails to assume in writing the requirements of this

Declaration and the requirements of the DEVELOPMENT AGREEMENT.

- b. Contemporaneously with the execution, delivery and recording of this Declaration, OCHLT will acquire good and marketable title to the Property, free and clear of any lien or encumbrance (except encumbrances created pursuant to this Declaration or other encumbrances permitted by Orange County).
- c. OCHLT warrants that it will not accept title to the Property subject to and will not execute any other declaration with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

SECTION 2 TERM OF DECLARATION

- a. This Declaration (and the terms of affordability specified herein) applies to the Property immediately upon the recordation of this Declaration. OCHLT and all subsequent owners of the Property shall comply with all covenants herein. This Declaration shall terminate ninety-nine years after the Project completion date as specified in the DEVELOPMENT AGREEMENT.

SECTION 3 RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND

- a. OCHLT shall cause this declaration and all amendments hereto to be recorded and filed in the Office of the Register of Deeds of Orange County upon its execution. OCHLT shall pay all fees and charges incurred in connection therewith.
- b. OCHLT intends, declares and covenants, on behalf of itself and all future owners of the Property during the term of this Declaration, that this Declaration and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Property (1) shall be and are covenants running with the land, encumbering the Property for the term of this Declaration, binding upon all present and future owners of the Property; (2) are not personal covenants of Declarant; and (3) shall bind all present and future owners (and the benefits shall inure to the County and any prospective owner of the Property) and its respective successors and assigns during the term of this Declaration. 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. It is further the responsibility OCHLT to rerecord this Declaration periodically and no less often than one day less than every 30 years from the date hereof for the purpose of renewing the rights of first refusal in the Property or portion thereof including any leasehold interest in the Property or portion thereof. The County retains the right to, periodically and every 30 years after the first recording of the ground lease created in Exhibit C hereof, register, with the Register of Deeds of Orange County, a notice of preservation of the Restrictive Covenants on the Property as provided

in North Carolina General Statute § 47B-4 or any comparable preservation law in effect at the time of the recording of the notice of preservation. It is the intent of this Section 3 of this Declaration that the 99 year duration of this Declaration of Restrictive Covenants be accomplished and that any future owner of the Property, OCHLT and Orange County will do what is necessary to ensure that the same is not extinguished by N.C. Gen. Stat. § 41-29 or any comparable law purporting to extinguish, by the passage of time, preemptive rights in the Property and by the Real Property Marketable Title Act or any comparable law purporting to extinguish, by the passage of time, non possessory interests in real property. Any future owner of the Property , OCHLT and Orange County will to do what each must do to accomplish the 99 year duration of this Declaration of Restrictive Covenants.

SECTION 4 ENFORCEMENT OF AFFORDABLE HOUSING REQUIREMENTS

a. Upon completion of construction of the Project, OCHLT will convey a housing unit to each of ten (10) qualified homeowners. Each housing unit will consist of a 99 year ground lease (renewable for an additional 99 years) to the housing unit and a warranty deed to the improvements on the leased premises. The ground lease, the form of which is Exhibit C hereto, provides for the long term affordability (at least 99 years) of the housing unit and provides remedies to insure the long term affordability of the housing unit. OCHLT hereby declares and covenants, on behalf of itself and all future owners of the Property, that, during the term of this Declaration, the County is a third party beneficiary of and successor to each and every remedy intended to insure the long term affordability of the housing unit that is provided for in the ground lease and may, in the event of the failure or default of the Lessor in the ground lease to insure the long term affordability of the housing unit as provided for in the ground lease, exercise all rights and remedies available to the Lessor in the ground lease for that purpose.

b. OCHLT covenants that it will not knowingly take or permit any action that would result in a violation of the affordability requirements of the DEVELOPMENT AGREEMENT. Orange County, together with any future owner of the Property may execute and record any amendment or modification of this Declaration necessary to insure the successful completion of the Project and the long term affordability (at least 99 years) of the housing units on the Property and such amendment or modification shall, to the extent permitted by law, either relate back to the date of recording of this Declaration or not as necessary to carry out the intent of this Declaration, and be binding on third parties granted rights under this Declaration. OCHLT expressly covenants and agrees to rerecord this Declaration periodically and no less often than one day less than every 30 years from the date hereof for the purpose of renewing the Lessor's option to purchase and right of first refusal, that are contained in the Exhibit C ground lease, in the Property or portion thereof including any leasehold interest in the Property or portion thereof.

c. OCHLT acknowledges that the primary purpose for requiring compliance by OCHLT with restrictions provided in this Declaration is to assure compliance with the long term affordability requirements of the HOME Investment Partnership Program, AND BY REASON THEREOF, OCHLT, IN CONSIDERATION FOR RECEIVING HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS FOR THE PROPERTY, HEREBY AGREES AND CONSENTS THAT THE COUNTY SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREIN, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY

LAW OR IN EQUITY, TO ENFORCE BY SPECIFIC PERFORMANCE OCHLT'S OBLIGATIONS UNDER THIS DECLARATION IN A STATE COURT OF COMPETENT JURISDICTION, WITH VENUE IN ORANGE COUNTY. OCHLT hereby further specifically acknowledges that the beneficiaries of OCHLT's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. If legal costs are incurred by the County, such legal costs, including attorney fees and court costs (including costs of appeal), are the responsibility of, and may be recovered from the OCHLT.

SECTION 5 LIEN PRIORITY

The Land and the Buildings are currently encumbered by the lien of a Deed of Trust and Security Agreement dated May 5, 2003 and recorded at Book 3004, Page 1, Orange County Registry executed and delivered for the benefit of Central Carolina Bank and by a Deed of Trust dated December 15, 2003 and recorded at Book _____, Page _____, Orange County Registry executed and delivered for the benefit of Rene Langford, Inc. Central Carolina Bank and Rene Langford, Inc. join in this Declaration for the sole purpose of subordinating the lien of their respective deeds of trust to the terms of this Declaration.

SECTION 6 MISCELLANEOUS

a. Severability. The invalidity of any clause, part, or provision of this Declaration shall not affect the validity of the remaining portions thereof.

b. Notices. Any Notice shall be in writing and shall be given by depositing the same in the United States mail, post-paid and registered or certified, and addressed to the party to be notified, with return-receipt requested, or by delivering the same in person to an officer or principal of such party. Notice deposited in the mail in the manner herein above described shall be effective upon mailing. For purposes of Notice, the addresses of the parties shall, unless changed as hereinafter provided, be as follows:

i. To the County: Orange County
c/o Housing and Community Development Department
P.O. Box 8181
Hillsborough, NC 27278
ATTN: Director

ii. To Declarant: To OCHLT:
Orange Community Housing and Land Trust
P.O. Box 307
Carrboro, NC 27510
ATTN: Executive Director

c. Governing Law. This Declaration shall be governed by the laws of the State of North Carolina and, where applicable, the laws of the United States of America.

IN WITNESS WHEREOF, OCHLT has caused this Declaration to be signed by its duly authorized representative, on the day and year first above written.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

Orange Community Housing and Land Trust, Inc.

By: Chris [Signature]
President

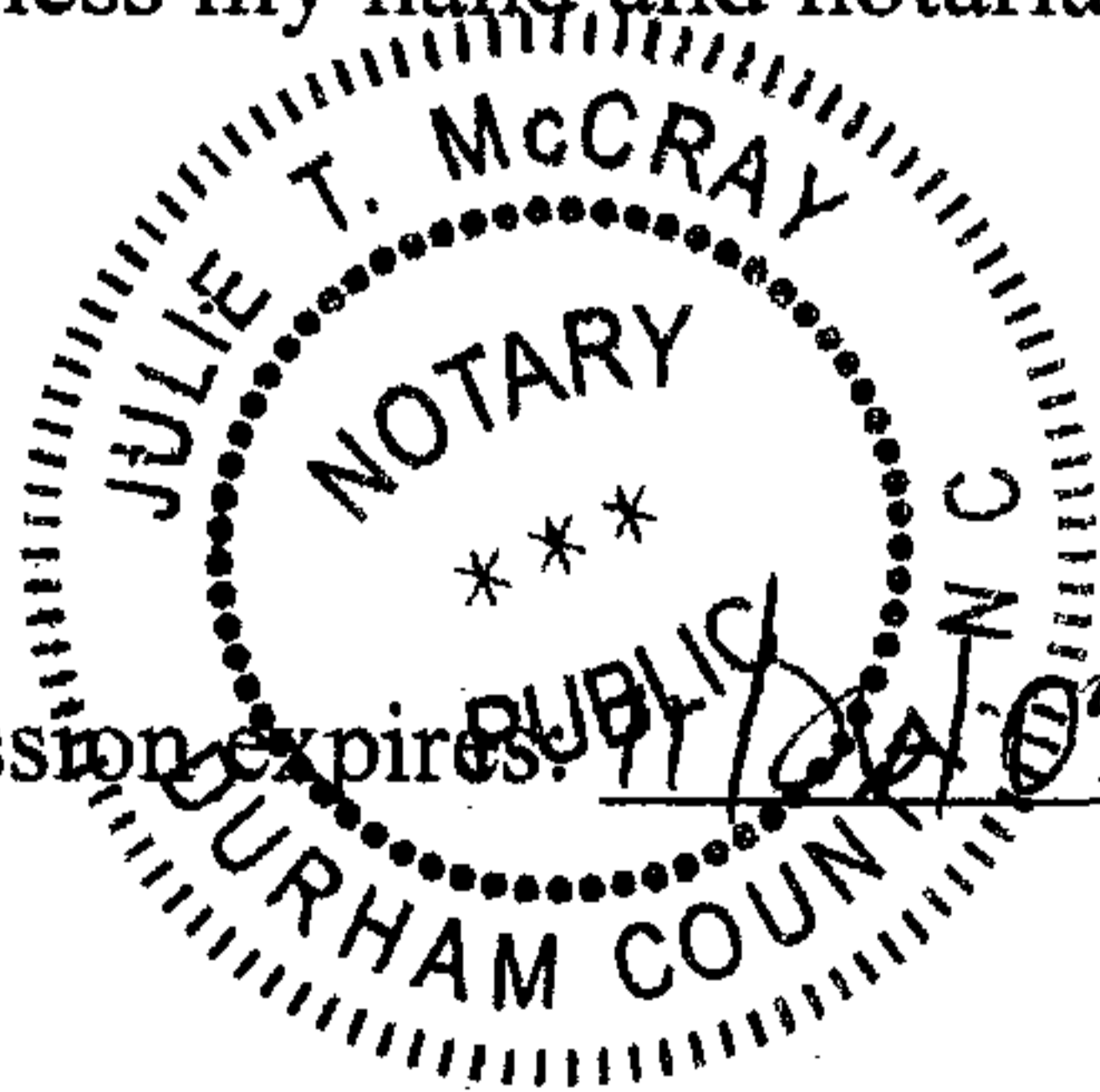
Central Carolina Bank
By: [Signature]
Sr. Vice President

Rene Langford, Inc.
By: [Signature]
President

NORTH CAROLINA
ORANGE COUNTY

I, Julie T. McCray, Notary Public in and for the ^{Durham} ~~above named~~ County and State, do hereby certify that on this day personally appeared before me Chris [Signature] with whom I am personally acquainted, who, being by me duly sworn, says that he is President of Orange Community Housing and Land Trust, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed by him on behalf of the corporation.

Witness my hand and notarial seal, this the 15th day of December, 2003.



Julie T. McCray
Notary Public

My commission expires

11/26/05

NORTH CAROLINA
Wake COUNTY

I, Julia C. Dixon, a Notary Public of the County and State aforesaid, certify that Randy Powell personally appeared before me this day and acknowledged that he/she is Sr. Vice President Central Carolina Bank, a corporation, and that he/she as Sr. Vice President, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official stamp or seal this 15th day of December, 2003.

Julia C. Dixon
Notary Public

My commission expires: 12-18-06

NORTH CAROLINA
Orange COUNTY

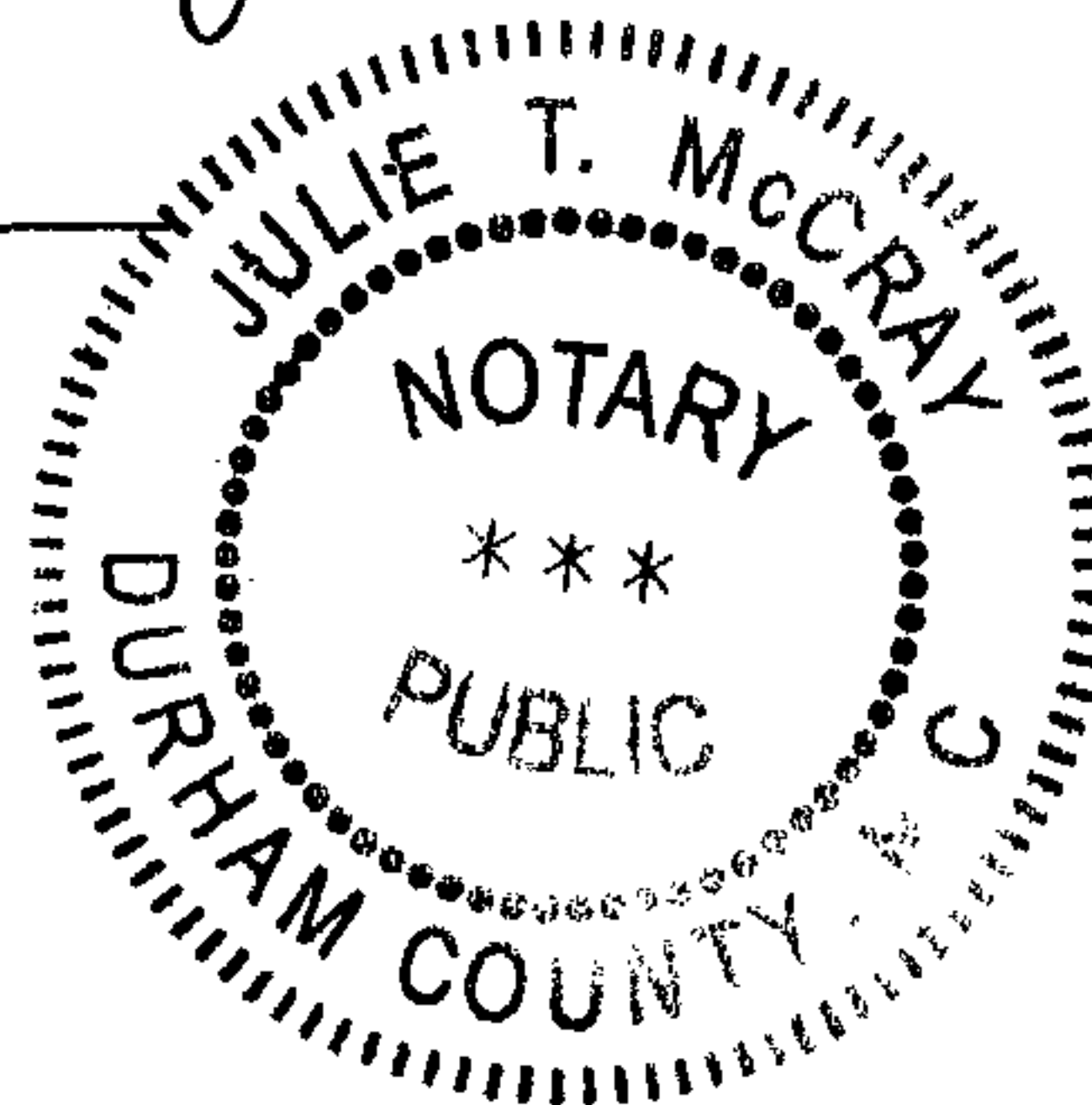
I, Julie T. McCray, a Notary Public of the County and State aforesaid, certify that Rene Langford personally appeared before me this day and acknowledged that he/she is Pres. of Rene Langford, Inc., a corporation, and that he/she as Pres., being authorized to do so, executed the foregoing instrument on behalf of the corporation.

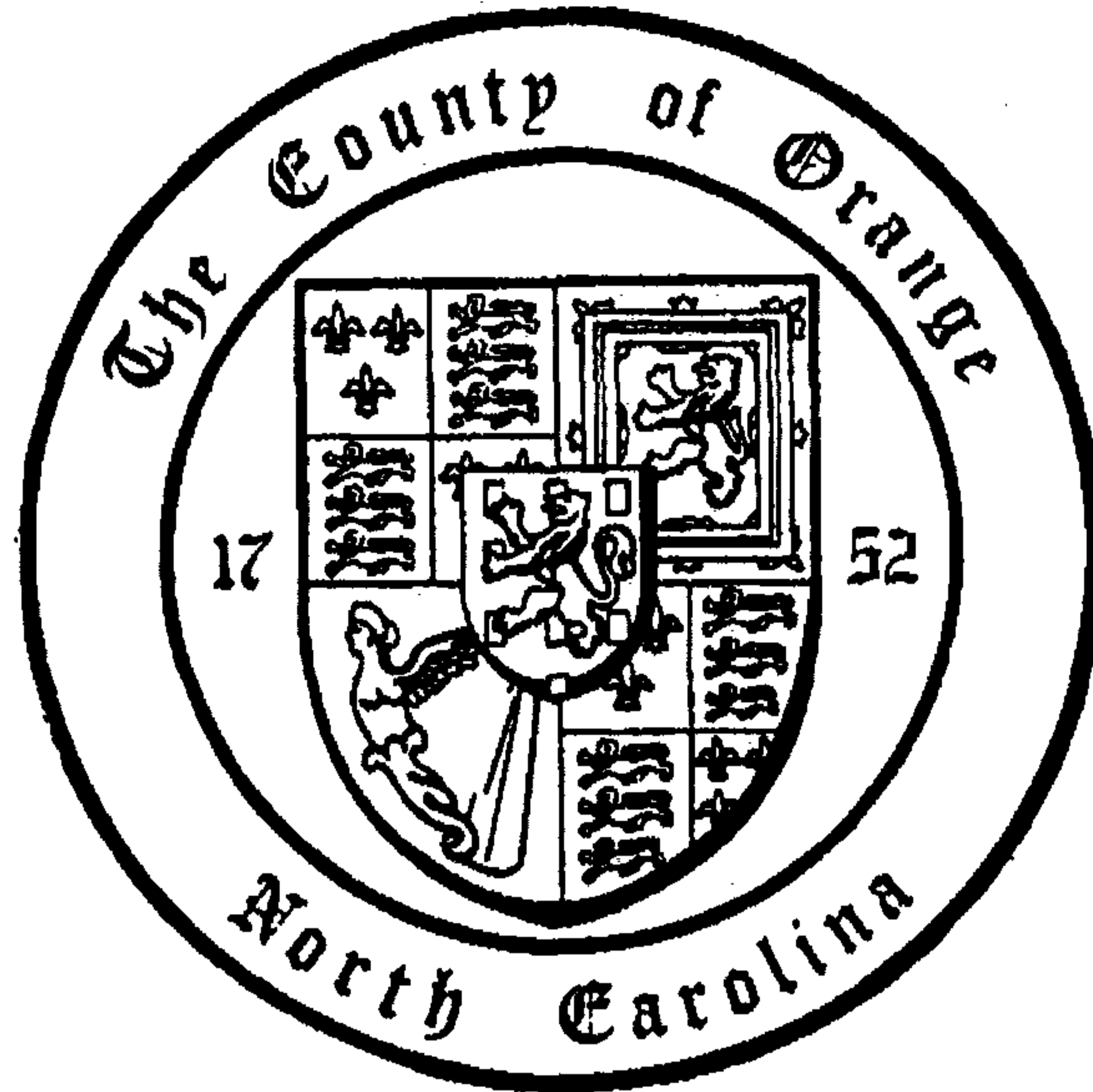
Witness my hand and official stamp or seal this 15th day of December, 2003.

Julie T. McCray
Notary Public

My commission expires: 11/20/05

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Joyce H. Pearson
Register of Deeds
Orange County
North Carolina

State of North Carolina, County of Orange

The foregoing certificate(s) of JULIA C. DIXON, NOTARY PUBLIC, JULIE T. McCRAY, NOTARY PUBLIC for the Designated Governmental units is/are certified to be correct. See filing certificate herein.

This day December 16, 2003.

Joyce H. Pearson, Register of Deeds

BY: Wendy R. Dixon
Deputy / Assistant Register of Deeds

Exhibit A

Being all of Parcel 12A, Meadowmont, containing .69 acres as shown in Plat Book 91, Pages 175 and 176, Orange County Registry to which plat reference is made for a more particular description.

NORTH CAROLINA

ORANGE COUNTY

DEVELOPMENT AGREEMENT

This is an AGREEMENT between **ORANGE COUNTY, NORTH CAROLINA**, a general local governmental unit of the State of North Carolina, (hereinafter referred to as the "County") and **Orange Community Housing and Land Trust, Inc.**, a North Carolina non-profit corporation (hereinafter referred to as "OCHLT"). The effective date of this agreement is _____.

WITNESSTH

WHEREAS, the Orange County HOME Consortium has designated \$100,000 in FY 2003 HOME funds for the purpose of acquiring and reselling 10 condominium units in the Greenway Condominiums complex in the Meadowmont Community of Chapel Hill for resale to eligible first-time homebuyers, hereinafter referred to as the "Project" or the "project dwelling units," the property for which is more particularly described in Exhibit A attached hereto and made a part of this Agreement (hereinafter referred to as the "Property"); and

WHEREAS, the County is the lead entity of the Orange HOME Consortium, so designated in an agreement dated July 1, 2002 and as such is the lead entity in a representative capacity for all members of the Orange HOME Consortium for the purposes of carrying out the HOME Program in accordance with the Title II of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625), (42 U.S.C. 3535(d.) *et. seq.*) (hereinafter referred to as the "Act"), and as further defined in the Federal Program Requirements provided by the U.S. Department of Housing and Urban Development; and

WHEREAS, Orange Community Housing and Land Trust (OCHLT) is a designated Community Housing Development Corporation (CHDO) as defined in 24 CCR Part 92, Subpart A, Section 92.2 interested in serving as sponsor, developer, and/or advocate for potential first-time homebuyers; and

WHEREAS, a first-time homebuyer for the purposes of this program is defined as any household earning up to 80% of HUD area median income that has not owned a home within the past three (3) years including households living in manufactured housing not permanently affixed to a foundation, or owner-occupants of homes not feasible for rehabilitation; and

WHEREAS, OCHLT intends to purchase the Project dwelling units and make them available for sale to families earning up to 80% of HUD area median income as described in the OCHLT HOME Program Application dated February 20, 2003, which Application is incorporated by reference into this Agreement. The February 20, 2003 HOME Program Application is on file in the office of the Orange County Department of Housing and Community Development.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein, it is agreed between the parties hereto as follows:

1. OCHLT agrees to acquire and resale the Project dwelling units in the following manner.
 - a. The 10 prospective condominiums (dwellings) to be purchased have obtained a Certificate of Occupancy.
 - b. If any of the Project dwelling units fail to meet Section 8 Housing Quality Standards (HQS) and repairs are necessary, OCHLT is responsible that the work is done properly and in accordance with all applicable laws and local ordinances. Before resale, each Project dwelling unit must meet the Section 8 Housing Quality Standards and local Minimum Housing Code at a minimum.
 - c. OCHLT will sell the one bedroom condominiums for the following prices. Two (2) condominiums will sell for \$90,000 and eight (8) condominiums will sell for \$80,000.
 - d. Upon resale, OCHLT must provide to the Orange County Housing and Community Development Office certification that the property was sold to a family whose income does not exceed 80% of area median income and provide information regarding family characteristics as requested.
2. OCHLT shall convey each of the Project dwelling units to a first-time homebuyer with income 80% or less of the area median household income by family size, as determined by the U.S. Department of Housing and Urban Development at the time of the sale. A housing unit will consist of a 99-year ground lease (renewable for an additional 99 years) to the housing unit and a warranty deed to the improvements on the leased premises.
3. The period of affordability will be 99 years and will be secured by an OCHLT Ground Lease with restrictions to ensure compliance. Further security shall be in the form of a Declaration of Restrictive Covenants that will make the County a third party beneficiary of and successor to the long term affordability remedies in the Ground Lease in the event of a failure of or inability of OCHLT to enforce the long-term affordability remedies in the Ground Lease.
4. OCHLT is responsible for soliciting buyers for the Project dwelling units constructed on the Property. OCHLT and/or its buyers shall be responsible for securing permanent mortgage financing for the homes built on the Property.
5. OCHLT is responsible for verifying the income of the homebuyers and explaining the OCHLT Ground Lease to potential homebuyers and certifying by written documentation signed by the homebuyer that the HOME program requirements have been fully explained. OCHLT shall maintain purchaser files as part of its Books and Records as required and for the period of time required by Section 10.c. of this Agreement.
6. The property must have a value that does not exceed 95% of the area median purchase price for that type of housing.

Value must be established by one of the following methods:

- i. An appraisal by a qualified appraiser.
- ii. Tax assessments may be used to establish value, but only if they are current and can be computed at 100% of market value.

7. **Time for Commencement and Completion.** The Project must begin within one (1) year of the date of this Agreement. OCHLT will be responsible for providing status reports to the County quarterly detailing the project activities until project completion. In addition, OCHLT agrees to furnish to the County a copy of its annual audit performed by a certified public accountant within 90 days of the end of each fiscal year until the Project is complete.

The Project completion date is the closing date of the purchase by a qualified buyer of the last of the Project dwelling units. In the event that OCHLT is unable to proceed with any aspect of the project in a timely manner, and County and OCHLT determine that reasonable extension(s) for completion will not remedy the situation, then the Termination of Agreement provisions of this Agreement (Section 10.a.) shall pertain. OCHLT may, at its option, submit a written request for a delay of completion for County approval. The County may, at its option, approve any delay in the completion date or declare OCHLT in default.

OCHLT shall monitor the dwelling units for affordability for the period of affordability – ninety-nine (99) years. Final contract completion date shall be the end date of the last affordability period.

8. **Affordability Requirement.** Each of the Project dwelling units must remain affordable for a period of ninety-nine years. OCHLT retains full responsibility for compliance with the affordability requirement for each of the dwelling units, unless affordability restrictions are terminated due to the sale of the Property to a non-qualified buyer in which event the Resale Provisions of Section 9 of this Agreement pertain. OCHLT shall assure compliance with affordability of each of the dwelling units by having recorded a "Declaration of Restrictive Covenants" (EXHIBIT B) on the Property. This Declaration shall constitute and remain a first lien on the Property during the period of affordability.

It is further the responsibility of OCHLT to rerecord the Declaration of Restrictive Covenants no later than one day before the expiration of 30 years of the date of the purchase of the Property in the event that OCHLT is still the owner of the Project dwelling units at the time of the rerecording. County retains the right to periodically and every 30 years after the first recording of the Declaration of Restrictive Covenants on the Property to register, with the Register of Deeds of Orange County, a notice of preservation of the Restrictive Covenants on the Property as provided in North Carolina General Statute § 47B-4 or any comparable preservation law in effect at the time of the recording of the notice of preservation. It is the intent of this Section of this Agreement that the 99 year affordability requirement contained herein be accomplished and that OCHLT and the County will do what is necessary to ensure that the same is not extinguished by N.C. Gen. Stat. § 41-29 or any comparable law purporting to extinguish,

by the passage of time, preemptive rights in the Property and by the Real Property Marketable Title Act or any comparable law purporting to extinguish, by the passage of time, non possessory interests in real property. Both OCHLT and County agree to do what each must do to accomplish the 99-year affordability requirement.

9. **Resale Provisions.** OCHLT shall assure compliance with affordability of dwelling unit through the Declaration of Restrictive Covenants and the Ground Lease.

10. **Miscellaneous Provisions.**

a. **Termination of Agreement.** The full benefit of the Project will be realized only after the completion of the affordability periods for all dwelling units purchased under this Agreement. It is the County's intention that the full public benefit of the Project shall be completed under the auspices of OCHLT for the assisted units as follows:

- i. In the event that OCHLT is unable to proceed with any aspect of the Project in a timely manner, and County and OCHLT determine that reasonable extension(s) for completion will not remedy the situation, then OCHLT will retain responsibility for requirements for any dwelling units assisted and County will make no further payments to OCHLT.
- ii. In the event that OCHLT, prior to the contract completion date, is unable to continue to function due to, but, not limited to, dissolution or insolvency of the organization, its filing a petition for bankruptcy or similar proceedings, or is adjudged bankrupt or fails to comply or perform with provisions of this agreement, then OCHLT shall, upon the County's request, convey to the County the Property assisted with funds. Conveyance shall be at the sole discretion of County and on a dwelling unit by dwelling unit basis.

Conveyance shall be on the terms set forth herein:

Conveyance shall occur within thirty (30) days of County and OCHLT' agreement of OCHLT' inability to continue as a viable organization. OCHLT shall convey the Property to the County by general warranty deed, free and clear of all liens and encumbrances of record except those which create a beneficial interest in County (Declaration of Restrictive Covenants) and any other agreed to by County in writing.

b. **Default, Remedies.** This Agreement may be terminated by a non-defaulting party upon an event of default hereunder, after written notice thereof and thirty (30) days grace period in which the defaulting party may act to cure. As used herein, the term "an event of default" shall mean and refer to a failure or act of omission by either party with respect to any undertaking, obligation, covenant or condition as set forth in this Agreement. With respect to any event of default, the non-defaulting party may exercise any right available to it at law or in equity with respect to such default.

c. **Books and Records.** OCHLT shall maintain records of its grant requirements under this contract for a period of not less than five (5) full fiscal years following the contract completion date.

i. OCHLT shall ensure access to records and financial statements, as necessary, to provide effective monitoring and evaluation of project performance. Additionally, OCHLT shall submit a copy of its annual audit to the County.

Upon reasonable advance notice, County or its authorized representatives may from time to time inspect, audit, and make copies of any of OCHLT' records that relate to this contract. If any audit by County discloses that payments to OCHLT were in excess of the amount to which OCHLT was entitled under this contract, OCHLT shall promptly pay to County the amount of such excess. If the excess is greater than 1% of the contract amount, OCHLT shall also reimburse County its reasonable costs incurred in performing the audit.

ii. OCHLT shall maintain files of all purchasers residing in assisted units. Documentation shall verify eligibility for federal assisted housing at the initial occupancy. Information maintained shall include: tenant income level; name of family members; ethnic data; family type – e.g. female head of household and disability status.

iii. OCHLT shall maintain records verifying the affordability of the dwelling units.

d. **Notices.** Any Notice shall be in writing and shall be given by depositing the same in the United States mail, post-paid and registered or certified, and addressed to the party to be notified, with return-receipt requested, or by delivering the same in person to an officer or principal of such party. Notice deposited in the mail in the manner here in above described shall be effective upon mailing. For purposes of Notice, the addresses of the parties shall, unless changed as hereinafter provided, be as follows:

i. To the County: Orange County
c/o Housing and Community Development
Department
P.O. Box 8181
Hillsborough, NC 27278
ATTN: Director

ii. To OCHLT: Orange Community Housing and Land Trust
P.O. Box 307
Carrboro, NC 27510
ATTN: Executive Director

Either the County or OCHLT may change the person or address to which any future Notice shall be given as herein provided.

e. **No Assignment.** No transfer or assignment of the interest of OCHLT in this Agreement shall occur without the prior written consent of the County; neither may OCHLT assign this Agreement without the prior written consent of County.

f. **Conflict of Interest.** OCHLT agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall acquire no financial interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement. OCHLT further covenants that in performance of this Agreement no person having such a financial interest shall be employed or retained by OCHLT hereunder. These conflicts of interest provisions apply to any person who is an employee, agent, consultant, or elected official or appointed official of the County, or any designated public agencies or subrecipients that are receiving funds under the HOME Investment Partnership Program.

f. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

g. **Indemnification.** To the extent legally possible, OCHLT shall indemnify and hold County, its officers, agents, and employees, harmless from and against any and all claims, actions, liabilities, costs, including attorney fees and other costs of defense, arising out of or in any way related to any act or failure to act by OCHLT, its employees, agents, officers, and contractors in connection with this contract. In the event any such action or claim is brought against County, OCHLT shall, upon County's tender, defend the same at OCHLT' sole cost and expense, promptly satisfy any judgment adverse to County or to County and OCHLT jointly, and reimburse County for any loss, cost, damage, or expense, including attorney fees suffered or incurred by County.

h. **Subcontracting.** OCHLT shall not subcontract work under this Agreement, in whole or in part, without the County's prior written approval. OCHLT shall require any approved subcontractor to agree, as to the portion subcontracted, to comply with all applicable federal, state, and local laws, rules, ordinances, and regulations at all times and in the performance of the work and to comply with all applicable obligations of OCHLT specified in this contract. Notwithstanding County's approval of a subcontractor, OCHLT shall remain obligated for full performance of this contract and County shall incur no obligation to any subcontractor OCHLT shall indemnify, defend, and hold County harmless from all claims of its contractors.

i. **No Joint Venture or Agency.** The County and OCHLT each agree and acknowledge that nothing contained herein or otherwise, including, without limitation, any act of the County or OCHLT under this Agreement, shall be deemed or construed to create any relationship of joint venture, partnership or agency between the parties.

j. **Effect of Waiver or Forbearance.** No failure by the County to insist upon the strict performance of any term or condition of this Agreement, or to exercise any right or remedy upon the breach by OCHLT of any of its obligations, agreements, or covenants hereunder, shall be a waiver of such affected term or condition or of such breach; nor shall any forbearance by the

County to seek a remedy for any breach by OCHLT be a waiver by the County of its rights and remedies with respect to that or any other breach.

k. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of North Carolina. Any litigation arising out of this Agreement shall be brought in courts sitting in North Carolina, with venue in Orange County.

l. **Severability.** The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by the fact that for any reason any other provision may be invalid or unenforceable in whole or in part. If any provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be or become invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. The County and OCHLT agree to substitute for such provision of this Agreement or the application thereof determined to be invalid or unenforceable, such other provision as most closely approximates, in a lawful manner, such invalid, illegal or unenforceable provision. If the County and OCHLT cannot agree, they shall apply to a court of competent jurisdiction to substitute such provision as the court deems reasonable and judicially valid, legal and enforceable. Such provision determined by the court shall automatically be deemed part of this Agreement ab initio.

m. **Equal Opportunity.** OCHLT shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, handicap, or familial status in the implementation of the Project.

n. **Headings.** Headings are for convenience only and shall not be used to interpret or construe its provision.

o. **Gender; Singular and Plural.** As used herein, the neuter gender includes the feminine and masculine. The masculine includes the feminine and neuter, and the feminine includes the masculine and neuter and each includes a corporation, partnership or other legal entity when the context so requires. The singular number includes the plural and vice versa, whenever the context so requires.

p. **Recording.** The parties hereto agree that upon notice to the other and at its own cost and expense, a party may record this Agreement in the Office of Register of Deeds for Orange County.

q. **Compliance with Laws.** To the extent applicable, each party hereto agrees to comply with all laws, ordinances and regulations affecting the Property from and after the date hereof. Without limiting the generality of the foregoing, OCHLT shall comply with all federal, state and local laws, regulations and ordinances applicable to the expenditure of funds provided by the County, to purchase and develop the Property.

r. **Publicity; Signage.** OCHLT agrees to provide such publicity with respect to the County's participation in the Project, as the County shall reasonably require. Any signage at the dwelling unit shall acknowledge the County's role and contribution.

s. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute on and the same instrument.

t. **No Third Party Rights.** The parties hereto covenant and agree that nothing contained in this Agreement or any act by the County or OCHLT shall be deemed or construed by the parties or any third party to create any relationship of third party beneficiary, including third party principal or agent, or to create any right, claim or cause of action against the County, OCHLT or any of their respective officers, agents or employees by any third party.

u. **Performance of Government Functions.** Notwithstanding anything in this Agreement which may be to the contrary, nothing contained in this Agreement shall in any way stop, limit or impair the County from exercising or performing any regulatory, policing or governmental powers or functions with respect to the Property including, without limitation, inspection of the Property in the performance of such functions.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have set their hands and seals on the day and year first above written.

ORANGE COUNTY, NORTH CAROLINA

(COUNTY SEAL)

John M. Link, Jr., County Manager

ATTEST:

Donna Baker
Clerk to the Board of Commissioners

Approved as to form and legality

Geoffrey Gledhill, County Attorney

This document has been preaudited in accordance with the N.C. Local Government and Fiscal Control Act.

_____, Kenneth Chavious, Finance Director

NORTH CAROLINA
ORANGE COUNTY

This is to certify that on this day personally came before me Donna Baker, with whom I am personally acquainted, and being by me duly sworn, says that John M. Link, Jr. is the County Manager of Orange County, North Carolina, and that she is the Clerk to the Board of Commissioners of Orange County, North Carolina, the body politic and corporate named within and which executed the foregoing instrument; that she knows the common seal of said County; that the seal affixed to said instrument is said common seal; that the name of Orange County, North Carolina was subscribed thereto by the said County Manager of Orange County, North Carolina and said Donna Baker subscribed their names hereto and said common seal was affixed, all by order of the Board of County Commissioners of Orange County and that said instrument is the act and deed of Orange County.

Witness my hand and notarial seal, this the _____ day of _____ 20__.

Notary Public

My commission expires: _____

Exhibit A

Being all of Units #102, 103, 104, 105, 106, 108, 203, 204, 205, 206, Greenway Condominiums as described in the Declaration of Unit Ownership recorded at Book ____, Page ____, Orange County Registry and the Plat and condominium plans recorded at Plat Book ____, Pages ____ through ____, Orange County Registry together with an undivided interest in the common areas as described in the Declaration of Unit Ownership.

This conveyance is made and accepted subject to the Declaration of Unit Ownership recorded at Book ____, Page ____, Orange County Registry; the Declaration of Rights, Restrictions, Affirmative Obligations and Conditions Applicable to All Property in Meadowmont recorded at Book 1919, Page 87, Orange County Registry; to the Declaration of Restrictions of the Meadowmont Community Association and Meadowmont Development Company recorded at Book 1919, Page 121 Orange County Registry and to the Declaration of Protective Restrictions recorded at Book ____, Page ____, Orange County Registry

Exhibit C

(Place Ground Lease here)

GROUND LEASE

THIS LEASE ("this Lease" or "the Lease") made and entered into this _____ day of _____, 20____, by and between ORANGE COMMUNITY HOUSING AND LAND TRUST ("the OCHLT" or "Lessor" or "the Lessor") and _____ "Lessee" or "the Lessee").

WHEREAS, OCHLT is organized for the purpose of developing and preserving decent, affordable housing opportunities for low and moderate income people who might otherwise not be able to afford to own a home; and

WHEREAS, OCHLT uses long term land leases as a tool to provide and preserve affordable housing; and

WHEREAS, the Lessee enters into this Lease to obtain those benefits to which the Lessee is entitled under the Lease and to further the charitable purposes of the Lessor; and

WHEREAS, Lessor and Lessee recognize the special nature of the terms and conditions of this Lease, and each of them, with the independent and informed advice of legal counsel, freely accepts these terms and conditions, including those terms and conditions that may affect the marketing and resale price of the Leasehold Estate;

NOW THEREFORE, in consideration of the foregoing recitals, of mutual promises of Lessor and Lessee, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

ARTICLE 1: Letters of Stipulation and Acknowledgment

1.1 LETTERS: In order to assure that Lessee fully understands and accepts the unique nature of this Lease, Lessor requires that Lessee and Lessee's Counsel review and sign the Lessee's Letter of Stipulation and Lessee's Attorney's Letter of Acknowledgement in the form attached to this lease.

ARTICLE 2: Demise of Leased Premises

2.1 LEASED PREMISES: Lessor leases to Lessee and Lessee hires from Lessor, the Land and any Improvements thereon (referred to in this Lease as the "Leased Premises") described in the attached Exhibit LEASED PREMISES. Lessee takes the Leased Premises "as is" as of the date of this Lease.

ARTICLE 3: Duration of Lease

3.1 TERM: The term of this Lease will be 99 years, commencing on _____, 20____, and terminating on _____, 2____, unless terminated sooner or extended as provided below.

3.2 LESSEE'S OPTION TO EXTEND: Lessee may extend the term of this Lease for one (1) additional period of 99 years upon the following conditions:

a. This Lease must be in effect at the time notice of exercise is given and on the last day of the term.

b. Lessee must not be in default on any term of this Lease or on any term of a Permitted Mortgage (as hereinafter defined).

c. Not more than 365 nor less than 180 days before the last day of the current term, Lessor will give Lessee written notice, stating the date of expiration of the Lease, describing any changes that Lessor intends to make to the terms of the Lease as permitted above, and reiterating the conditions for renewal as set forth immediately below ("the Expiration Notice").

d. The parties will execute a memorandum of lease in recordable form, acknowledging the fact that the option has been exercised and otherwise complying with the requirements of law for an effective memorandum of lease.

Lessor may amend the lease for the renewal so long as the amended lease does not make any material change in the rights and obligations of the parties.

3.3 CHANGE OF LESSOR; LESSEE'S RIGHT TO PURCHASE: This Lease will continue in effect regardless of any change in the ownership of the Leased Premises. However, if Lessor attempts to convey the Leased Premises to any person or entity other than a nonprofit corporation, charitable trust, governmental agency or other similar entity sharing the goals described in the Recitals above (or as security for a mortgage loan), the Lessee will have a right of first refusal to purchase the Leased Premises. This right will be as specified in the attached exhibit FIRST REFUSAL. Any sale or other transfer contrary to this section 3.3 will be null and void.

ARTICLE 4: Use of Leased Premises

4.1 RESIDENTIAL USE ONLY: Lessee and any person occupying the Leased Premises will use the Leased Premises only for residential purposes and the accessory uses permitted under the applicable zoning regulations and will abide by any applicable declaration of restrictions described in the attached EXHIBIT RESTRICTIONS.

4.2 RESPONSIBLE USE AND COMPLIANCE WITH LAW: Lessee will maintain the Leased Premises in good, safe, and habitable condition in all respects, except for normal wear and tear, in full compliance with all applicable laws and regulations.

4.3 RESPONSIBLE FOR OTHERS: Lessee will be responsible for the use of the Leased Premises by all residents and their families, friends and visitors and anyone else using the Leased Premises with their consent and will make all such people aware of the spirit, intent and appropriate terms of this Lease.

4.4 OCCUPANCY: Lessee will occupy the Leased Premises for at least eight (8) months of each year of this Lease, unless otherwise agreed by Lessor. Occupancy by domestic partners, children or other immediate family members or dependents of Lessee will be deemed occupancy by Lessee.

4.5 INSPECTION: Lessor may inspect the Land not more than once a year at any reasonable time and in a reasonable manner upon at least twenty-four hours oral notice to Lessee. Lessor may inspect the Improvements located on the Land only if in its sole discretion, it determines there is evidence that Lessee has violated his/her obligations

under Section 4.2 of this Lease. Lessor may inspect any portion of the Leased Premises at any time without notice to Lessee in the event of an emergency.

4.6 LESSEE'S RIGHT TO PEACEFUL ENJOYMENT: So long as Lessee fulfills his/her obligations under this Lease, he/she will have the peaceful and undisturbed enjoyment of the Leased Premises.

ARTICLE 5: Ground Lease Fee

5.1 GROUND LEASE FEE: Lessee will pay to Lessor a monthly ground lease fee ("the Ground Lease Fee") of _____ dollars (\$_____).

5.2 PAYMENT OF GROUND LEASE FEE: The Ground Lease Fee will be due on the first day of each month. With Lessor's consent, a Permitted Mortgagee may require that the Ground Lease Fee be escrowed, in which case payment will be made as specified by the Mortgagee. If the Lease commences on a day other than the first of the month, a pro-rata portion of the Ground Lease Fee will be paid for the balance of the month at the time the Lease is executed.

If there are any unpaid Ground Lease Fees at the time this Lease is terminated or assigned, the Lessee will pay Lessor the unpaid balance out of Lessee's proceeds, if any, from the sale of the improvements.

5.3 REDUCTION, DELAY OR WAIVER OF GROUND LEASE FEE: Lessor may reduce, delay or waive entirely the Ground Lease Fee from time to time for the purpose of ensuring affordable monthly housing costs for the Lessee. Any the reduction, delay, or waiver must be in writing and signed by Lessor before being effective.

5.4 ADJUSTMENT OF GROUND LEASE FEE: If the provisions of Article 10 or Article 11 regarding transfers of the Lessee's interest in the Leased Premises or Section 4.4 regarding occupancy are suspended or invalidated for any period of time, then during that time the Ground Lease Fee will be increased to the fair rental value of the Leased Premises as determined by independent appraisal for use not restricted by the provisions of the suspended portions of the Lease.

The Ground Lease Fee will be recalculated every 3rd year, beginning in 2006, such that increases will occur in 2006, 2009, 2012, and every 3rd year thereafter during the term of the Lease. The recalculation will take into account inflation and other factors as Lessor may reasonably choose. The maximum increase that may be imposed at any one time is 15 %

ARTICLE 6: Taxes and Assessments

6.1 TAXES AND ASSESSMENTS: Lessee will be responsible for payment of all taxes, utility charges, homeowner's association assessments and governmental assessments that relate to the Leased Premises even if the bills are issued in the name of Lessor.

6.2 LESSEE'S RIGHT TO CONTEST: Lessee may contest the amount or validity of any taxes relating to the Leased Premises. Lessor will, upon written request by

Lessee, join in the proceedings if Lessor determines it is necessary for Lessee to raise a valid objection to the tax in question. Lessee will bear all costs of the tax contest proceeding.

6.3 PAYMENTS IN EVENT OF DELINQUENCY: If Lessee fails to pay the taxes or other charges specified in section 6.1 above when due, Lessor may but is not obligated to pay taxes or charges and increase the Ground Lease Fee by the amount of the taxes or charges paid.

6.4 PROOF OF COMPLIANCE: If requested by the other party, the party paying any tax, assessment or charge required or permitted under this lease will provide the other with copies of receipts documenting payment.

ARTICLE 7: Ownership Rights

7.1 EXCLUSIVE RIGHTS TO LEASED PREMISES: Lessee will have the "Ownership Interest" in the Leased Premises, defined as the exclusive right during the term of this Lease to occupy and possess the land, buildings, structures, and other Improvements, and fixtures attached to any improvements located on the Leased Premises, at the time of the execution of this Lease or constructed by Lessee during the term of this lease. Lessee will not sever or remove the Improvements from the Leased Premises.

7.2 CONVEYANCE OF RIGHTS TO IMPROVEMENTS: Lessor will transfer its rights to the possession and use of the Improvements during the term of this Lease to Lessee by deed using the form annexed to this Lease as the exhibit DEED.

7.3 CONSTRUCTION AND ALTERATION: Any construction in connection with an existing or new Improvement is subject to the following conditions:

- (a) Lessee will bear all costs of construction;
- (b) All construction will be performed in a worker like manner in compliance with all applicable laws and regulations;
- (c) All construction will be consistent with the permitted uses set forth in Article 4;
- (d) Lessee will furnish to Lessor a copy of any plans and all building permits for the construction prior to commencing construction.
- (e) Lessee may not change the exterior building envelope of the Improvements without the prior written consent of Lessor.

7.4 PROHIBITION OF LIENS: Lessee will procure the record discharge of any mechanic's or materialman's claim of lien which might be filed against the Leased Premises within sixty (60) days of its filing. If Lessee fails to procure the record discharge of a claim of lien within the time allowed, Lessor may, but is not obligated to, discharge the same by paying the amount in question. Lessee may contest the validity of any lien asserted so long as Lessee furnishes a bond in an amount sufficient to release the Leased Premises from the lien. Any amounts paid by Lessor hereunder in respect of the liens will be deemed an additional Ground Lease Fee payable by Lessee upon demand.

7.5 MAINTENANCE AND SERVICES: Lessee will, at Lessee's sole expense, maintain the Leased Premises as required by section 4.2 above. Lessor will not be required to furnish any services or facilities, including but not limited to heat, electricity, air conditioning, or water, or to make any repairs to the Leased Premises, and Lessee hereby assumes the sole responsibility for furnishing all services or facilities.

7.6 DISPOSITION OF LEASED PREMISES UPON EXPIRATION OF LEASE TERM: Upon the expiration of the term of this Lease as such term may be extended or terminated in accordance with this Lease, Lessee will surrender the Leased Premises to the Lessor. The exclusive right to possess the Leased Premises will thereupon revert to Lessor, provided, however, that Lessor will promptly pay to Lessee as consideration for the Leased Premises an amount equal to Lessor's Resale Formula Price calculated in accordance with Article 10 below, as of the time of reversion of ownership, less the total amount of any unpaid Ground Lease Fee including any charges that may have been added to the Ground Lease Fee in accordance with this Lease.

ARTICLE 8: Financing

8.1 PERMITTED MORTGAGE: Lessee may mortgage his or her interest in the Leased Premises with the written consent of Lessor. Lessor will be required to consent to a proposed mortgage only if:

- (a) All mortgage documents, which must be submitted to Lessor ten (10) days in advance of closing, are in a form acceptable to Lessor;
- (b) Lessee is not in default on any obligation under this Lease;
- (c) The proposed loan documents comply with the requirements for a Permitted Mortgage set out in the attached exhibit PERMITTED MORTGAGES.

Lessee will pay to Lessor at Lessor's option, as additional Ground Lease Fee, all fees, costs, and expenses, including, without limitation, reasonable attorneys' fees, incurred by Lessor in connection with any Permitted Mortgage.

8.2 REMOVAL OF CERTAIN PROVISIONS PURSUANT TO FORECLOSURE: In the event of foreclosure sale by a Permitted Mortgagee or the delivery of a deed to a Permitted Mortgagee in lieu of foreclosure in accordance with the provisions of the Lease, at the election of the Permitted Mortgagee the provisions of Article 10, sections 10.1 through 10.11 will be deleted and thereupon will be of no further force or effect as to only so much of the Security so foreclosed upon or transferred.

8.3 LESSOR'S RIGHT TO PROCEEDS IN EXCESS OF RESALE FORMULA PRICE: Lessee acknowledges that it would defeat Lessor's goal of providing affordable housing for the long term if Lessee could realize more than the Resale Formula Price established in Article 10 as the result the foreclosure of a Permitted Mortgage. Accordingly, Lessee irrevocably assigns to Lessor any and all rights Lessee might have in the proceeds of a foreclosure sale of the Leasehold Interest in excess of the Resale Formula Price after satisfaction of the lien of any Permitted Mortgagee. Lessee instructs the Permitted Mortgagee or any party conducting any sale to pay the amount of said excess proceeds directly to Lessor. If, for any reason, the excess proceeds are paid to Lessee, Lessee agrees to pay the amount of the excess proceeds to Lessor promptly.

ARTICLE 9: Liability, Insurance, Damage and Destruction, Eminent Domain

9.1 LESSEE'S LIABILITY: Lessee assumes sole responsibility and liability to all persons and authorities related to the possession, occupancy, and use of the Leased Premises and will defend, indemnify, and hold Lessor harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Premises. Lessee waives all claims against Lessor for injury or damage arising from the Leased Premises except for claims arising out of Lessor's gross negligence or intentional wrongdoing.

9.2 PAYMENT BY LESSOR: If Lessor is required to pay any sum that is the Lessee's responsibility or liability, the Lessee will reimburse the Lessor for the payment and for reasonable expenses caused thereby.

9.3 INSURANCE: Lessee will keep all Improvements continuously insured against loss or damage by fire and other hazards for the full replacement value of the Improvements and will maintain premises liability insurance covering the Land and Improvements insuring Lessee against all liability assumed under this Lease, as well as all liability imposed by law. Both the hazard and liability insurance policies will name Lessor as an additional insured so as to create the same liability on the part of insurer as though separate policies had been written for Lessor and Lessee.

Lessee will provide Lessor with copies of all policies and renewals of policies. All policies will also contain endorsements providing that they will not be cancelled, reduced in amount or coverage or otherwise modified by the insurance carrier without at least thirty (30) days' prior written notice to Lessor. Lessor will be entitled to participate in the settlement or adjustment of any losses covered by the policies of insurance.

9.4 DAMAGE OR DESTRUCTION: Subject to the insurance provisions of any declaration of covenants or unit ownership which will control over this lease, if the Improvements are damaged or destroyed by fire or other casualty, Lessee will promptly restore the Improvements to their condition preceding the damage and continue to pay the Ground Lease Fee unless

- a. The full repair or restoration is not reasonably practicable or
- b. The available insurance proceeds of the insurance policies maintained in accordance with Section 9.3 are less than eighty percent (80%) of the cost of the repair or restoration.

In either event, Lessee may terminate this lease after giving Lessor written notice within sixty (60) days of the loss and allowing Lessor sixty (60) days from the receipt of the notice to either

- a. Seek an adjustment from the insurer to increase the amount of insurance proceeds to cover at least eighty percent (80%) of the cost of the repairs or restoration ,
or
- b. Make arrangements to use the available proceeds to restore or replace the damaged Improvements with Improvements of reasonably equivalent quality with a floor area of at least eighty percent (80%) of the damaged Improvements.

If Lessor fails, within sixty days of receipt of Lessee's notice, to give Lessee notice that it has made arrangements to increase the insurance proceeds or restore or replace the Improvements as specified above, this Lease will terminate and the proceeds of the insurance maintained by Lessee will be paid in the following priority:

- a. To the payment of the expenses of collection of the proceeds;
- b. To the Lessee (or its Permitted Mortgagee if required by the Permitted Mortgage) up to the then applicable Resale Formula Price as of immediately prior to the casualty calculated pursuant to Article 10.
- c. The balance of the proceeds, if any, to Lessor.

9.5 EMINENT DOMAIN AND PUBLIC DEDICATION: If the entire Leased Premises are taken by eminent domain, this lease will terminate as of the date the Lessee is required to surrender possession of the Leased Premises, and the condemnation award will be allocated in the same manner as a casualty loss as set out in Section 9.4.

If less than the entire Leased Premises are taken, Lessor will in its discretion allocate some or all of the proceeds to enable Lessee to repair and restore that which may remain thereof while retaining the balance of the award. If the Lessor determines that the Leased Premises cannot be restored to a residential use consistent with this Ground Lease, the award will be distributed in accordance with Section 9.4. The prosecution or defense of any proceedings in which a party to this lease seeks damages for a taking will be at the expense of the party asserting the claim or defense. The parties agree to be named as a party to these proceedings if necessary for the other to assert a claim or defense so long as the party asserting the claim or defense agrees to reimburse the other for any costs it might incur as a first charge against any award.

9.6 RELOCATION OF LESSEE: If this Lease is terminated as the result of damage, casualty or taking, Lessor will take reasonable steps to grant Lessee a leasehold interest in other tracts it might own, if any, and Lessee agrees to contribute any proceeds or award received by Lessee to purchase or develop the other property and enter a Lease substantially similar to this one. In no event will Lessor be required to terminate the tenancy of any other lessee or withhold any property from development or rental in order to accommodate lessee and Lessor's failure to supply similar leasehold premises or any premises whatsoever will not give rise to any cause of action by Lessee against Lessor for damages, specific performance or other remedy.

ARTICLE 10: Transfer, Sale, or Disposition of Leasehold and Improvements

10.1 INTENT: Lessee acknowledges that the terms of this Lease, and in particular of this Article 10, are intended to preserve the affordability of the Leasehold for lower and moderate income households.

10.2 TRANSFERS TO QUALIFIED BUYERS: While living, Lessee may transfer its interest in the Leased Premises only to

- a. Lessor or
- b. a Qualified Buyer as defined below or
- c. a Permitted Mortgage Holder in lieu of foreclosure.

All such transfers will be subject to Lessor's review and purchase option rights set forth in this Article 10. Any attempted transfer not authorized under this Article 10 will be null and void.

A "Qualified Buyer" will mean a person or group of persons who meet the resident selection requirements of OCHLT and/or those of any governmental entity providing funding for OCHLT as described in the attached Exhibit Resident Selection Requirements and whose household income does not exceed _____ percent (____%) of the median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor.

10.3 TRANSFER TO LESSEE'S HEIRS: So long as the recipient is willing to assume the Lessee's obligations under this lease and sign a Letter of Stipulation and a Letter of Acknowledgment of legal counsel (similar to those described in Article 1 of this Lease), Lessee may leave his or her interest in the Leasehold Estate by will or intestate succession to the following:

- a. The spouse of the Lessee; or
- b. The child or children of the Lessee; or
- c. Member(s) of the Lessee's household, including a domestic partner, who resided upon the Leased Premises for at least one year prior to the Lessee's death.

Any other heirs, legatees or devisees of Lessee must, in addition to submitting Letters of Stipulation and Acknowledgment as provided above, meet the definition of a Qualified Buyer. If unable to do so, they will not be entitled to possession of the Leased Premises but must transfer their interest in the Leased Premises in accordance with the provisions hereof.

10.4 LESSEE'S NOTICE OF INTENT TO SELL: Lessee will notify Lessor in writing of his/her desire to sell his/her interest in the Leased Premises and the name of any potential buyer, if any, Lessee wishes to recommend (the "Intent-To-Sell Notice").

10.5 APPRAISAL: Lessor will commission an appraisal of the Leased Premises within ten (10) days of the receipt of Lessee's Intent-To-Sell Notice. Lessor will pay for the appraisal. The appraisal will be performed by a licensed appraiser acceptable to Lessor and Lessee. The appraisal will be conducted by analysis of comparable properties, but the valuation of the leasehold estate will be adjusted to take into account the restrictions of this Lease on the use of the Land and the transfer of the leasehold interest. In other words, it will be a "leasehold appraisal". The Appraisal will state the values contributed by the Land and by the Improvements as separate amounts. Copies of the appraisal are to be provided to both Lessor and Lessee.

10.6 LESSOR'S PURCHASE OPTION. Upon receipt of an Intent to Sell Notice from Lessee, Lessor will have the option to purchase Lessee's interest in the Leased Premises ("the Purchase Option") at the Resale Formula Price calculated as set forth below.

The Purchase Option is designed to further the purpose of preserving the affordability of the Leasehold Estate for succeeding Qualified Buyers while taking fair account of the investment by the Lessee.

Lessor may exercise the Purchase Option upon giving Lessee written notice of the election ("the Notice of Exercise of Option") within forty-five (45) days of the receipt of the Appraisal. Lessor, or any Qualified Buyer to whom Lessor may assign the Purchase Option, will have sixty days from the exercise of the Purchase Option in which to close the purchase of Lessee's interest in the Leased Premises. Unless Lessor and Lessee agree to extend either deadline, Lessee will be free to sell his/her interest in the Leased Premises in accordance with Section 10.7 if Lessor or its assignee fails to exercise the option or close the purchase within the time allowed.

Lessee may recommend a Qualified Buyer as prospective buyer. Lessor will make reasonable efforts to arrange for the assignment of the Purchase Option to the person, unless Lessor determines that its charitable mission is better served by retention of the interest in the Leased Premises for another purpose, or transfer of the interest in the Leased Premises to another party.

10.7 IF PURCHASE OPTION EXPIRES: If the Purchase Option expires and Lessor fails to complete the purchase within the 60-day period allowed by section 10.6 above, Lessee may sell his or her interest in the Leased Premises through Lessor to any Qualified Buyer, for not more than the then applicable Resale Formula Price plus Lessor's developer fee.

10.8 CALCULATION OF THE RESALE FORMULA PRICE: In no event may the interest in the Leased Premises be sold for a price that exceeds the Resale Formula Price plus Lessor's developer fee. The Resale Formula Price will be calculated as follows:

1. *Summary of the Resale Formula Price:* The Resale Formula Price equals the Lessee's Purchase Price plus the Lessee's Share of Appreciation or Share of Depreciation in the appraised value of the Property. Property is defined as the Land and the Improvements combined as if owned in fee simple.
2. *Lessee's Purchase Price:* The parties agree that the Lessee's Purchase Price for the interest in the Leased Premises as of the commencement of the term of this Lease is \$_____.
3. *Initial Appraised Value:* The parties agree that the appraised value of the leasehold estate at the time of Lessee's purchase (the Initial Appraised Value) is \$_____, as documented by the portion of the appraiser's report attached to this Lease as the exhibit INITIAL APPRAISAL.
4. *Investment Ratio:* The Parties agree that Lessee's Purchase Price plus Closing Costs represents _____% of the Initial Appraised Value (the Lessee's Investment Ratio).

5. *Market Appreciation or Depreciation:* To determine Market Appreciation or Depreciation, subtract the Initial Appraised Value of the Property from the current appraised value of the Property as determined pursuant to Section 10.5

6. *Lessee's Share of Appreciation or Depreciation:* To determine the Lessee's Share of Appreciation or Depreciation, multiply the Lessee's Investment Ratio by the Market Appreciation or Depreciation, then multiply the result by the percentage set out in the table below.

Years From Initial Sale	Percentage to Be Applied
0 through 4	30%
more than 4 through 8	35%
more than 8 and thereafter	40%

In the case of appreciation, The Lessee's Share of Appreciation will be the greater of either:

- a. The result of the calculation above in Section 6
- b. 20% of the Market Appreciation (if the property appreciates, the lessee is guaranteed 20% of that appreciation.)

In the case of depreciation, the Lessee's Share of Depreciation will be the lesser of either:

- a. The result of the calculation above in Section 6
- b. 20% of the Market Depreciation (if the Property depreciates, the lessee will take no more than 20% of that loss).

10.9 RIGHT OF FIRST REFUSAL IN LIEU OF OPTION: If the provisions of the purchase option set forth in this Article 10 become unenforceable for any reason, Lessor will nevertheless have a right of first refusal to purchase the interest in the Leased Premises at the highest documented bona fide purchase price offer made to Lessee as specified in the exhibit FIRST REFUSAL. Any sale or transfer contrary to this section, when applicable, will be null and void.

ARTICLE 11: Assignment and Sublease

11.1 Except as otherwise provided in Article 8 (including the exhibit PERMITTED MORTGAGES) and Article 10, Lessee will not assign, sublease, sell, or otherwise convey any of Lessee's rights under this Lease without the prior written consent of the Lessor.

In the case of an approved sublease, the rental or occupancy fee charged the sub lessee will not be more than that amount charged the Lessee by the Lessor, plus an amount approved by Lessor to cover costs to Lessee for the Improvements.

In the case of an assignment, the total consideration for the assignment will not exceed the Resale Formula Price as calculated in accordance with Article 10 above.

ARTICLE 12: Default

12.1 MONETARY DEFAULT BY LESSEE: It will be an event of default if Lessee fails to pay the Ground Lease Fee or other charges required by the terms of this Lease and the failure is not cured by Lessee or a Permitted Mortgagee within one hundred and eighty (180) days after notice of the failure is given by Lessor to Lessee and Permitted Mortgagee.

Lessee will be assessed a late fee for any payment Lessor does not receive within thirty days of its due date. The late fee will be \$10.00 for each thirty day period during which the default is not cured. Lessor may adjust the late fee every 3 years using the same formula as specified in Article 5, section 5.4, for the adjustment of the Ground Lease Fee.

12.2 NONMONETARY DEFAULT BY LESSEE: It will be an event of default if Lessee fails to abide by any other material term or condition in this Lease, and the failure is not cured by Lessee or a Permitted Mortgagee within sixty (60) days after notice of the failure is given by Lessor to Lessee and Permitted Mortgagee.

12.3 TERMINATION: In the case of any of the events of default described above, Lessor may terminate this Lease and initiate summary ejectment proceedings allowing Lessor to enter and repossess the entire Leased Premises. If this Lease is terminated by Lessor, or if Lessor reenters the Leased Premises after an Event of Default, the Lessee agrees to pay and be liable for any unpaid Ground Lease Fee, damages which may be due or sustained prior to or in connection with the termination or reentry, and all reasonable costs, fees and expenses (including, without limitation, reasonable attorneys' fees) incurred by Lessor in pursuit of its remedies under this Lease.

If Lessor elects to terminate the Lease, the Permitted Mortgagee will have the right (subject to Article 8 above) to postpone and extend the specified date for the termination of the Lease for a period sufficient to enable the Permitted Mortgagee or its designee to acquire Lessee's interest in the Leased Premises by foreclosure of its mortgage or otherwise.

12.4 DEFAULT BY LESSOR: Lessor will in no event be in default in the performance of any of its obligations under the Lease unless and until Lessor has failed to perform the obligations within sixty (60) days, or the additional time as is reasonably required to correct any default, after notice by Lessee to Lessor properly specifying Lessor's failure to perform any the obligation.

ARTICLE 13: Arbitration

13.1 ARBITRATION PROCESS: Should any grievance or dispute arise between Lessor and Lessee concerning the terms of this Lease that cannot be resolved by normal interaction, the following arbitration procedure will be used.

Lessor or Lessee will give written notice to the other of its selection of a disinterested arbitrator. Within fifteen (15) days of the receipt of this written notice, the other party may give written notice to the first party appointing a disinterested arbitrator of its own choice. These two arbitrators will select a third arbitrator. If the other party fails to name an arbitrator within 15 days of receiving the notice from the first party, the arbitrator selected by the first party will be the sole arbitrator.

The arbitrator or arbitrators will hold a hearing within thirty (30) days after the initial written notice by the initiator of the arbitration process. At the hearing Lessor and Lessee

will have an opportunity to present evidence and question witnesses in the presence of each other. As soon as reasonably possible, and in no event later than fifteen (15) days after the hearing, the arbitration panel will make a written report to the Lessor and Lessee of its findings and decisions, including a personal statement by each arbitrator of his/her decision and the reasons for it. The arbitrators will decide the dispute or claim in accordance with the substantive law of North Carolina and what is just and equitable under the circumstances. The decision and award of the majority of the arbitration panel will be binding and final.

ARTICLE 14: General Provisions

14.1 LESSEE'S MEMBERSHIP IN OCHLT: The Lessee under this Lease will automatically be a regular voting member of the OCHLT.

14.2 NOTICES: Whenever this Lease requires either party to give notice to the other, the notice will be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or the other address designated by like written notice:

If to Lessor: Orange Community Housing and Land Trust, President
 PO Box 307
 Carrboro, NC 27510

With copies to: David M. Rooks, III
 PO Box 2208
 Chapel Hill, NC 27515-2208

If to Lessee:

All notices, demands and requests will be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

14.3 NO BROKERAGE: Lessee warrants that it has not dealt with any broker other than _____ in connection with the consummation of this Lease, and in the event any claim is made against Lessor relative to dealings with brokers other than _____, Lessee will defend the claim against Lessor with counsel of

Lessor's selection and save harmless and indemnify Lessor on account of loss, cost or damage which may arise by reason of any the claim.

14.4 SEVERABILITY AND DURATION : If any part of this Lease is declared unenforceable or invalid, the material will be read out of this Lease and will not affect the validity of any other part of this Lease or give rise to any cause of action of Lessee or Lessor against the other, and the remainder of this Lease will be valid and enforced to the fullest extent permitted by law. It is the intention of the parties that their respective options to purchase and all other rights under this Lease will continue in effect for the full term of this Lease and any renewal thereof, and the options and other rights will be considered to be coupled with an interest. In the event any the option or right will be construed to be subject to any rule of law limiting the duration of the option or right, the time period for the exercising of the option or right will be construed to expire ninety (90) years from the creation of the option or right in question.

14.5 WAIVER: The waiver by Lessor at any given time of any term or condition of this Lease, or the failure of Lessor to take action with respect to any breach of any the term or condition, will not be deemed to be a waiver of the term or condition with regard to any subsequent breach of the term or condition, or of any other term or condition of the Lease. Lessor may grant waivers in the terms of this Lease, but the waivers must be in writing and signed by Lessor before being effective.

The subsequent acceptance of Ground Lease Fee payments by Lessor will not be deemed to be a waiver of any preceding breach by Lessee of any term or condition of this Lease, other than the failure of the Lessee to pay the particular Ground Lease Fee so accepted, regardless of Lessor's knowledge of the preceding breach at the time of acceptance of the Ground Lease Fee payment.

14.6 LESSOR'S RIGHT TO PROSECUTE OR DEFEND: Lessor will have the right, but will be under no obligation, to prosecute or defend, in its own or the Lessee's name, any actions or proceedings appropriate to the protection of its title to, and Lessee's interest in, the Leased Premises. Whenever requested by Lessor, Lessee will give Lessor all reasonable aid in any the action or proceeding.

14.7 CONSTRUCTION: Whenever in this Lease a pronoun is used it will be construed to represent either the singular or the plural, masculine or feminine, as the case will demand.

14.8 CAPTIONS AND TABLE OF CONTENTS: The captions and table of contents appearing in this Lease are for convenience only, and are not a part of this Lease and do not in any way limit or amplify the terms or conditions of this Lease.

14.9 PARTIES BOUND: This Lease sets forth the entire agreement between Lessor and Lessee with respect to the leasing of the Leased Premises. It is binding upon and inures to the benefit of these parties and, in accordance with the provisions of this Lease, their respective successors in interest. This Lease may be altered or amended only by written notice executed by Lessor and Lessee or their legal representatives or, in accordance with the provisions of this Lease, their successors in interest.

14.10 GOVERNING LAW: This Lease will be interpreted in accordance with and governed by the laws of North Carolina. The language in all parts of this Lease will be, in all cases, construed according to its fair meaning and not strictly for or against Lessor or Lessee.

14.11 RECORDING: The parties agree to execute a Memorandum of Lease in the form of the Exhibit Memorandum of Lease attached hereto. The Memorandum of Lease will not set forth the rent or other charges payable by Lessee under this Lease and will the expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease.

IN WITNESS WHEREOF, the parties have executed this lease at Chapel Hill, NC, on the day and year first above written.

ORANGE COMMUNITY HOUSING AND LAND TRUST

By: _____
President

Lessee: _____

Lessee: _____

NORTH CAROLINA
ORANGE COUNTY

I, _____, Notary Public for said County and State, certify that _____, personally came before me this day and acknowledged that he/ she is _____ of Orange Community Housing and Land Trust, a corporation, and that he/she signed this instrument by authority duly given and as the act of the corporation.

Witness my hand and official stamp\seal, this the _____ day of _____, 200__.

Notary Public _____ My Commission Expires: _____

NORTH CAROLINA

ORANGE COUNTY

I, _____, Notary Public for said County and State, certify that
_____, personally came before me this day and
acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp\seal, this the _____ day of _____,
200_.

Notary Public _____ My Commission Expires: _____

■ Exhibit: LETTERS OF STIPULATION AND ACKNOWLEDGMENT

Letter of Stipulation

To: ORANGE COMMUNITY HOUSING AND LAND TRUST ("the OCHLT")

Date: _____

This letter is given to OCHLT to become an exhibit to a Lease between the OCHLT and me. I will be leasing a parcel of land and the home located on that parcel of land from OCHLT for the term of the lease, which will give me an "ownership interest" in the property. I will therefore become what is described here as a "OCHLT homeowner."

My legal counsel, _____, has explained to me the terms and conditions of the Lease and other legal documents that are part of this transaction. I understand the way these terms and conditions will affect my rights as a OCHLT homeowner, now and in the future.

In particular I understand and agree with the following points.

- One of the goals of the OCHLT is to keep OCHLT homes affordable for lower-income households from one OCHLT homeowner to the next. I support this goal as a OCHLT homeowner and as a member of the OCHLT.
- The terms and conditions of my Lease will keep my home affordable for future "Qualified Buyers" (as defined in the lease). If and when I want to sell my home, the lease requires that I sell it either to the OCHLT or to another Qualified Buyer. The terms and conditions of the lease also limit the price for which I can sell the home, in order to keep it affordable for the Qualified Buyers.
- It is also a goal of the OCHLT to promote resident ownership of OCHLT homes. For this reason, my Lease requires that if I and my family move out of our home permanently, we must sell it. We cannot continue to own it as absentee owners.
- I understand that I can leave my home to my child or children or other members of my household and that, after my death, they can own the home for as long as they want to live in it and abide by the terms of the Lease, or they can sell it on the terms permitted by the Lease.
- As a OCHLT homeowner and a member of the OCHLT, it is my desire to see the terms of the Lease and related documents honored. I consider these terms fair to me and others.

Sincerely,

Letter of Acknowledgment

I, _____, have been independently employed by
_____ (hereinafter "the Client") who intends to enter into a long term
ground lease with Orange Community Housing and Land Trust for the land and home located at

_____.

In connection with the contemplated transaction I reviewed with the Client the following documents relating to the transaction:

- a. this Letter of Acknowledgment and a Letter of Stipulation from the Client
- b. a proposed Ground Lease conveying the "Leased Premises" to the Client
- c. other written materials provided by the OCHLT.

The Client has received full and complete information and advice regarding this conveyance and the foregoing documents. My advice and review has been given to reasonably inform the Client of the present and foreseeable risks and legal consequences of the contemplated transaction.

The Client is entering the aforesaid transaction in reliance on her own judgment and upon her investigation of the facts. The full and complete advice and information provided by me was an integral element of the investigation.

Name _____ Date _____

Title _____

Firm/Address _____

OCHLT Ground Lease 4/9/03

only all improvements on that certain lot or parcel of land situated in the City of Chapel Hill, Chapel Hill Township, Orange County, North Carolina and more particularly described as follows:

The property hereinabove described was acquired by Grantor by instrument recorded in Book Page .

A map showing the above described property is recorded in Plat Book Page .

TO HAVE AND TO HOLD the aforesaid **improvements** on the above described parcel of land and all privileges and appurtenances thereto belonging to the Grantee for the term of the Ground Lease.

And the Grantor covenants with the Grantee, that the Grantor is seized of the **improvements**, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

1. All right title and interest to the real property upon which the improvements are located which is retained by Grantor.
2. The terms of the Ground Lease for the real property between Grantor and Grantee dated _____.
3. Declaration of Covenants and Restrictions recorded at Book _____, Page _____, Orange County Registry.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

Orange Community Housing and Land Trust

By: _____
President

NORTH CAROLINA, _____ COUNTY

I, _____, a Notary Public of the State and County aforesaid, certify that personally appeared before me this day and acknowledged that he/she is President of Orange Community Housing and Land Trust _____ a corporation, and that he/she as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and seal this the _____ day of _____, 2003.

Notary Public

My Commission Expires: _____

The foregoing Certificate of _____ is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

REGISTER OF DEEDS FOR ORANGE COUNTY

By: _____ Deputy/Assistant - Register of D

■ Exhibit: PERMITTED MORTGAGES

The provisions set forth in this Exhibit are understood to be provisions of Article 8 of the Lease to which the Exhibit is attached and in which the Exhibit is referenced. All terminology used in this Exhibit will have the meaning assigned to it in the Lease.

1. A "Permitted Mortgage" as the term is used in Section 8.1 is a mortgage which is approved in advance by Lessor and:

a. Runs in favor of either (1) an institutional lender such as, but not limited to, a federal, state, or local housing finance agency, bank, savings and loan association, insured credit union, an insurance company, a pension and/or profit-sharing fund or trust, or any combination of the foregoing, the policies and procedures of which institutional lender are subject to direct governmental supervision, or (2) a "community development financial institution", or similar nonprofit lender to housing projects for low and moderate income persons (as defined by reference to the membership criteria for the National Association of Community Development Loan Funds, a nonprofit corporation with its principal office located in Philadelphia, Pennsylvania); and

b. Is a first lien on Lessee's Leasehold Estate (Lessor may, but is not obligated to, approve a second lien on the Leasehold Estate); and

c. Provides that prior to accelerating the note secured by the mortgage and commencing foreclosure proceedings, the Permitted Mortgage holder will give Lessor notice of a default in any of the mortgagor's obligations and the right but not the obligation to cure the default within 120 days after its receipt of the notice, provided that current payments due to the holder are made during this period.

d. Provides that if after the cure period the holder intends to accelerate the note secured by the Permitted Mortgage and/or initiate foreclosure proceedings under the Permitted Mortgage, the holder will first notify Lessor of its intention to do so and Lessor will have the right, but not the obligation, to pay off or purchase the indebtedness secured by the Permitted Mortgage and acquire the security interest within 30 days of the receipt of the notice; and

e. Provides that in the event of foreclosure sale by a Permitted Mortgagee or the delivery of a deed to a Permitted Mortgagee in lieu of foreclosure, upon acquisition of the Lessee's interest in the Leased Premises by the Permitted Mortgagee, the Permitted Mortgagee will give the Lessor written notice of such acquisition and the Lessor will have an option to purchase the Lessee's interest in the Leased Premises from the Permitted Mortgagee for the full amount owing to the Permitted Mortgagee under the Permitted Mortgage; provided, however, that the Lessor gives written notice to the Permitted Mortgagee of the Lessor's intent to purchase the Lessee's interest in the Leased Premises within thirty (30) days following the Lessor's receipt of the Permitted Mortgagee's notice of such acquisition of the Lessee's interest; further provided that Lessor will complete the purchase of the Lessee's interest in the Leased Premises within sixty (60) days of having given written notice of its intent to purchase; and provided that, if the Lessor does not complete the purchase within such period, the Permitted Mortgagee will be free to sell the Lessee's interest in the Leased Premises to another person;

2. LESSOR'S CONSENT TO PERMITTED MORTGAGE: Lessee must obtain Lessor's consent to a mortgage in advance and will give Lessor copies of all proposed loan documents at least

10 days prior to Lessee's intended closing date. If the proposed mortgage fully complies with the requirements of Section 8.1, Lessor must consent to the mortgage if:

- a. Lessee is not in default on this Lease or to any creditor;
- b. The Permitted Mortgage and related documentation contain no terms other than provisions generally contained in mortgages used for similar transactions in the Orange County, North Carolina area by institutional mortgagees;
- c. The Permitted Mortgage and related documentation do not contain any provisions which could be construed as rendering Lessor or any subsequent holder of the Lessor's interest in the Leased Premises liable for the payment of the debt evidenced by the note and Permitted Mortgage or expose Lessor or Lessor's interest in the Leased Premises to and deficiency judgment;
- d. The Permitted Mortgage provides that the holder's rights to Lessee's share of any condemnation award will attach only to that share of the award allocated to the Lessee in accordance with Section 9.6 of this Lease;
- e. Nothing in the Permitted Mortgage or related documentation obligates Lessor to execute an assignment of the Ground Lease Fee or other rent payable by Lessee under the terms of this Lease.

3. RIGHTS OF PERMITTED MORTGAGEE: Any Permitted Mortgagee will without the requirement of consent by the Lessor have the right, but not the obligation, to:

- a. Cure any default under this Lease, and perform any obligation required hereunder, the cure or performance by a Permitted Mortgagee being effective as if the same had been undertaken and performed by Lessee. In the event that Lessor sends a notice of default under the Lease to Lessee, Lessor shall also send a notice of Lessee's default to Permitted Mortgagee.
- b. Acquire and convey, assign, transfer and exercise any right, remedy or privilege granted to Lessee by this Lease or otherwise by law, subject to the provisions, if any, in said Permitted Mortgage, which may limit any exercise of any the right, remedy or privilege; and
- c. Rely upon and enforce any provisions of this Lease to the extent that the provisions are for the benefit of a Permitted Mortgagee.

Permitted Mortgagee will not, as a condition to the exercise of its rights, be required to assume liability for the performance of the obligations of the Lessee under this lease. Any payment or performance or other act by Permitted Mortgagee hereunder will not be construed as an agreement by Permitted Mortgagee to assume liability except to the extent Permitted Mortgagee actually takes possession of the Security and the Leased Premises or collects fees or rentals from occupants. If Permitted Mortgagee does take possession of the Security and thereupon transfers the Security, any the transferee will be required to enter into a written agreement assuming liability under this Lease and upon any the assumption the Permitted Mortgagee will automatically be released from liability hereunder.

So long as Permitted Mortgagee has a security interest in the ground leasehold or the Improvements, there will be no merger of the leasehold and fee estates even if both are owned by the same person or entity unless Permitted Mortgagee consents to the merger. If the estate of Lessor is owned at any time by Lessee (regardless of a merger), or by any person in which Lessee has a direct or indirect interest, Permitted Mortgagee will not be obligated to cure any default of Lessee hereunder as condition to the forbearance by Lessor in the exercise of Lessor's remedies as herein provided.

4. **APPROVAL OF AMENDMENTS:** Any amendments to this Lease will be subject to the written approval of Permitted Mortgagee, which approval will not be unreasonably withheld or delayed. The passage of thirty (30) days after submittal to Permitted Mortgagee of a proposed amendment without approval or disapproval by Permitted Mortgagee will be deemed approval thereof.

5 **NEW LEASE TO PERMITTED MORTGAGEE:** Upon written request of the Permitted Mortgagee made within sixty (60) days of the termination of this Lease or upon its rejection or disaffirmance under bankruptcy law or other law affecting creditors' rights, Lessor will enter into a new lease of the Leased Premises with the Permitted Mortgagee (or with any party designated by the Permitted Mortgagee, subject to Lessor's approval, which approval will not be unreasonably withheld). The lease term will be for the remainder of the term of the Lease, effective as of the date of the termination, rejection or disaffirmance, and upon all the terms and provisions contained in the Lease. The written request will be accompanied by a copy of the new lease, duly executed and acknowledged by the Permitted Mortgagee or the party designated by the Permitted Mortgagee to be the Lessee and the Permitted Mortgagee will have cured all defaults under the Lease which can be cured by the payment of money. Any new lease made pursuant to this Section will have the same priority with respect to other interests in the Leased Premises as this Lease. The provisions of this Section will survive the termination, rejection or disaffirmance of the Lease and will continue in full effect thereafter to the same extent as if this Section were an independent contract made by Lessor, Lessee and the Permitted Mortgagee.

6. **NO TERMINATION DURING FORECLOSURE:** The Lessor will have no right to terminate this Lease once Permitted Mortgagee commences foreclosure in accordance with the provisions hereof and is diligently pursuing the same.

7. **PROVISIONS SUBJECT TO FORECLOSURE:** In the event of foreclosure sale by a Permitted Mortgagee or the delivery of a deed to a Permitted Mortgagee in lieu of foreclosure in accordance with the provisions hereof, at the election of the Permitted Mortgagee, the provisions of Sections 10.1 through 10.6 will be deleted and thereupon will be of no further force or effect as to only so much of the Security so foreclosed upon or transferred.

8. **NOTICE:** Whenever in this Article notice is to be given to Permitted Mortgagee, the notice will be given in the manner set forth in Section 14.2 at the address which has been given by the Permitted Mortgagee to Lessor.

9. **COSTS OF PERMITTED MORTGAGE:** Lessee will pay to Lessor at Lessor's option, as additional rent hereunder, all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by Lessor in connection with any Permitted Mortgage.

■ Exhibit: FIRST REFUSAL

Whenever any party under the Ground Lease will have a right of first refusal as to certain property, the following procedures will apply. If the owner of the property offering it for sale ("Offering Party") will within the term of the Ground Lease receive a bona fide, third-party offer to purchase the property that the Offering Party is willing to accept, the holder of the right of first refusal (the "Holder") will have the following rights:

- a. Offering Party will give written notice of the offer ("the Notice of Offer") to Holder setting forth (a) the name and address of the prospective purchaser of the property, (b) the purchase price offered by the prospective purchaser and (c) all other terms and conditions of the sale. Holder will have a period of forty-five (45) days after the receipt of the Notice of Offer ("the Election Period") within which to exercise the right of first refusal by giving notice of intent to purchase the property ("the Notice of Intent to Purchase") for the same price and on the same terms and conditions set forth in the Notice of Offer. the Notice of Intent to Purchase will be given in writing to the Offering Party within the Election Period.
- b. If Holder exercises the right to purchase the property, the purchase will be completed within sixty (60) days after the Notice of Intent to Purchase is given by Holder (or if the Notice of Offer will specify a later date for closing, the date) by performance of the terms and conditions of the Notice of Offer, including payment of the purchase price provided therein.
- c. Should Holder fail to exercise the right of first refusal within the Election Period, then the Offering Party will have the right (subject to any other applicable restrictions in the Ground Lease) to go forward with the sale which the Offering Party desires to accept, and to sell the property within one (1) year following the expiration of the Election Period on terms and conditions which are not materially more favorable to the purchaser than those set forth in the Notice. If the sale is not consummated within the one-year period, the Offering Party's right so to sell will end, and all the foregoing provisions of this section will be applied again to any future offer, all as aforesaid. If a sale is consummated within the one-year period, the purchaser will purchase subject to a renewed right of first refusal in said property.

Exhibit OCHLT Resident Selection Policy

The following selection criteria will be applied to OCHLT homebuyers in addition to the buyer qualifications required by the subsidy programs that fund OCHLT developments.

Criteria Applicants Must Meet When Buying Homes Not Currently Owned By A Land Trust Homeowner:

1. **Subsidy Rules:** If a home is subsidized, all subsidy rules apply.
2. **Maximum income:** Emphasis is on households earning less than 80% of the area median income. However, incomes up to 100% of Area Median Income are allowable in some instances.
 - **Part-Time vs. Full-Time Workers:** In determining a household's income all adult wage earners under the age of 60 will be considered to have the earning potential of a full time worker, unless they are legally disabled, a single parent, or a student. In households with 2 wage earning adults, one adult may not be considered to have full-time earning potential if he/she is the designated caretaker of dependent(s). If an adult is considered to have full-time wage earning potential, OCHLT will estimate their income as if they worked 32 hours a week, even if they work part-time. OCHLT considers full-time work to be a minimum of 32 hours a week.
3. **First-Time homebuyers:** applicant must be a first time homebuyer according to HUD's HOME rules definition, unless he/she is moving from residency in a CLT home and it is permissible by subsidy regulations.
 - **CLT membership:** in order to provide mobility for owners of "resale restricted" CLT homes, OCHLT may sell homes to applicants who have moved from prior CLT residency in a different community (only where permissible). In addition, current OCHLT homeowners will be considered for more appropriately sized homes if there is a compelling need (and it is permissible).
4. **Assets:** Maximum permissible levels of financial assets are as follows:
 - 29 years of age or younger - \$30,000
 - 30-34 years of age - \$35,000
 - 35-39 years of age - \$45,000
 - Over 40 years of age - No asset limit
5. **Length of residency:** Applicants must live or work in Orange County before they purchase an OCHLT home.
6. **Student Status:** OCHLT defines a student as someone who works less than 32 hours a week and is enrolled in an undergraduate, graduate, community college or other educational program, or someone whose employment is related to their educational program, such as a post-doc or medical resident.

Students (both single and married) are considered to have “temporarily reduced” income and may therefore only purchase OCHLT homes when certain conditions exist:

- **In the case of new homes under construction:** students are not eligible to reserve or buy homes until certificates of occupancy are obtained on the homes. After this point, students are eligible to purchase 15% of the total units in the development (for example 5 units in a 32 unit development.)
- **With regard to existing homes:** students are not eligible to purchase a house until OCHLT has marketed it for 45 days and been unable to sell it.

7. **Appropriate Unit Size:** OCHLT will attempt to match household size to unit size, prioritizing larger units for larger households. In general, the minimum household size considered appropriate for each unit size will be as follows:

Unit Size	Preferred Minimum Household Size
0 BR	1
1-BR	1
2-BR	1
3-BR	2
4-BR	3
5-BR	4

In determining the maximum number of persons that may occupy a unit, OCHLT will use the occupancy ordinances of the municipality in which the unit is located.

- **In the case of new homes under construction:** Buyers who do not meet or exceed the minimum household size for a unit will not be eligible to reserve or buy it until two months before it is scheduled to be completed.
- **With regard to existing homes:** Buyers who do not meet or exceed the minimum household size for a unit will not be eligible to purchase it until OCHLT has marketed the home for 45 days and been unable to sell it.

Criteria Applicants Must Meet When Buying Homes For Sale By a Land Trust Homeowner

1. **Subsidy Rules:** If a home is subsidized, all subsidy rules apply.
2. **Student Status:** “Student Status” is defined in the previous section of the Policy. Students may not purchase a house until 45 days after a homeowner gives OCHLT notice of intent to sell their house. However, they may apply to buy the home during this period, and if they are qualified in other respects and another qualified buyer is not found during the period, they may buy the house after the 45 day period has expired (assuming the Land Trust has not exercised its option to purchase the home).
3. **First-Time homebuyers:** During the first 45 days after a homeowner gives OCHLT notice of intent to sell their house, buyers must be a first time homebuyer according to HUD’s HOME rules definition,

unless they are moving from residency in a CLT home and it is permissible by subsidy regulations. After this 45-day period, non-first time homebuyers may purchase the house.

Other Policy Provisions:

OCHLT provides reasonable accommodations to persons with disabilities.

Application on file: Buyers who meet all of the resident selection criteria in the above sections will be prioritized chronologically based upon the date their completed application was received by OCHLT.

Citizen of USA or Registered Alien: Buyers must be either a citizen of the USA, or a registered alien.

Affordability: A buyer will be considered "able to afford" a home if they are approved for a mortgage by an OCHLT lender.

Precedence of Ground Lease over Resident Selection Policy: When Land Trust homeowners resell their homes, the requirements of the ground lease they signed with OCHLT will take precedence over the requirements of this resident selection policy if specific requirements of the two documents are determined to be in conflict.

Precedence of Subsidy Rules over Resident Selection Policy: When selling subsidized homes, a separate set of subsidy rules will be applied to applicants, in addition to the Resident Selection Policy. Subsidy rules will take precedence over the Resident Selection Policy if the two are determined to be in conflict.

Nondiscrimination: OCHLT does not discriminate on the basis of race, color, religion, sex, age, disability, familial status, national origin, marital status, sexual preference, or veteran status.

Renting Rooms: Renting rooms is permitted in homes that are not located in developments governed by a homeowner's association (HOA). In developments governed by an HOA, renting a room is acceptable if it is allowed by the HOA..

Co-signers: Co-signers are permitted as long as the buyer is a full-time worker.

Income Inclusions: For buyers of non-subsidized homes: when determining the applicant's household income, OCHLT will use the Income Inclusions required by HUD's HOME program, except that OCHLT will not include the income of co-signers or of persons unrelated to the owner who intend to rent rooms from the owner."

■ Other Exhibits To Be Attached as Appropriate

LEASED PREMISES

Correct legal description of area of Leased Premises and appurtenant title rights and obligations
Note: according to ICE, this exhibit should reference all easements, rights, utilities access etc.
associated with the Leased Premises

ZONING

Setting forth applicable zoning restrictions as of the commencement of the Lease

RESTRICTIONS

To be attached when necessary to stipulate use restrictions not included under Zoning

INITIAL APPRAISAL

To be attached if Lease contains an "appraisal-based" resale formula

MEMORANDUM OF LEASE