

Prepared by and return to: Nathaniel C. Smith, Bagwell, Holt & Smith, P. A
111 Cloister Ct., Ste. 200, Chapel Hill, NC 27517

NORTH CAROLINA
ORANGE COUNTY

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR RUSCH HOLLOW SUBDIVISION**

This Declaration is made on this _____ day of _____, 200____,
by HABITAT FOR HUMANITY, ORANGE COUNTY, N. C., INC., hereinafter referred to as
“Declarant.”

W I T N E S S E T H:

WHEREAS, Declarant is the owner of three (3) tracts of real property located in Chapel Hill Township, Orange County, North Carolina, which are more particularly described in Exhibit A hereto (hereinafter referred to collectively as, “the Property” or the “Lots”); and

WHEREAS, it is the desire and intent of the Declarant to create a Homeowners Association to serve the purposes and perform the duties set forth in Section 2 below, and thereby to promote and to protect the enjoyment and the beneficial use and ownership of the Property.

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

1. Creation of and Membership in Rusch Hollow Homeowners Association, Inc.
Every person or entity who is an owner of a fee or undivided fee interest in any of the Lots shall be a member of Rusch Hollow Homeowners Association, Inc. (the Association), a nonprofit corporation. Ownership of such interest shall be the sole qualification for membership, and membership shall be appurtenant to and shall not be separated from such ownership.

2. Purposes and Duties. The purposes and duties of the Association shall be:

A. To maintain and preserve all parcels of land, rights-of-way and easements owned by the Association at any time, and all roads, streets, decorative and protective structures (including but not limited to buffer walls), ponds, lakes, utilities, landscaped areas and other improvements located thereon, including, but not limited to, the sidewalk along Rogers Road and the interior roadway(s) within the subdivision until such time as the subdivision is annexed by the Town of Chapel Hill and the Town assumes their maintenance; provided, however, that Declarant shall initially be responsible for maintaining and preserving the common areas, including, but not limited to, the bio-retention basin and

recreation area, for a period of twenty (20) years commencing with the date this Declaration is recorded in the Orange County Registry;

B. To enforce the provisions of this Declaration of Covenants, Conditions and Restrictions for Rusch Hollow (hereinafter, the “Restrictive Covenants” or the “Declaration”), and of any bylaws and rules and regulations promulgated by the Association;

C. To have all rights and powers and to perform all duties and obligations under this Declaration that may be assigned to it by Declarant;

D. To promote and to protect the enjoyment and beneficial use and ownership of the Lots;

E. To arrange for annual inspections of all facilities by an appropriately certified engineer, and to comply with the recommendations of the inspection report(s) in a timely fashion, in accordance with Section 16 of the Special Use Permit issued by the Town of Chapel Hill (the “SUP”); and

F. To ensure that all building within the Subdivision is in compliance with the Steep Slopes Regulations as contained in the Town’s Land Use Management Ordinance, and as cited in Section 17 of the SUP.

3. Voting Rights and Meetings. On matters of Association business submitted to vote of the membership, there shall be one (1) vote per Lot, regardless of the number of owners of a Lot; provided, however, that for so long as the Declarant owns at least one (1) Lot, it shall be entitled to three (3) votes per Lot owned. Unless otherwise provided herein or in the Restrictive Covenants, all voting matters shall be decided by a simple majority vote. Requirements for a quorum shall be as provided by the bylaws of the Association. The members of the Association shall meet as provided by the bylaws of the Association.

4. Costs and Assessments. All costs of the Association in fulfilling the above stated purposes shall be shared equally among the owners of all of the Lots on a per Lot basis. The Association shall have the power to assess each Lot for its share of the aforesaid costs, which assessment, together with interest thereon and the costs of collection thereof, including reasonable attorney’s fees, shall be a lien upon each Lot and the personal obligation of all the owners of each Lot. The Association shall have the power to take whatever action is necessary, at law or in equity, to enforce this Declaration and to collect the assessment, interest and costs of collection, including but not limited to the Association’s reasonable attorney’s fees. If the assessment remains unpaid for a period of thirty (30) days after the date of mailing of notice that it is due, interest shall accrue on any unpaid portion of the assessment from the date of mailing of the notice at the legal rate of interest. If the assessment against any Lot remains unpaid for a period of thirty (30) days after the date of mailing of a request for payment thereof to the owner(s) of the Lot at their then current address of record with the Orange County Tax Collector, the lien created hereunder may be filed against the delinquent Lot by the Association in the Office of the Clerk of Superior Court of Orange County. Any lien so filed may be foreclosed in the same manner as provided for foreclosure of a deed of trust pursuant to a power of sale. Such lien shall be subordinate to any first mortgage lien placed on a Lot by its owner(s).

5. Bylaws, Rules and Regulations. The initial directors and/or the members of the Association shall enact and adopt all and any bylaws, rules and regulations that they deem necessary for the operation of the Association, which bylaws, rules and regulations shall be binding upon all members of the Association, their mortgagees, lessees, agents and invitees. The Association shall have the power to enforce such reasonable rules and regulations by action at law or in equity.

6. Duration. All covenants, conditions, restrictions and obligations set forth in this Declaration shall run with the lots and shall be binding on all persons and entities claiming any interest in any of the Lots until such time as this Declaration may be rescinded by a written instrument executed by the Association and authorized by the affirmative vote of at least two-thirds (2/3) of all the Lots, cast in person or by proxy at a meeting duly held in accordance with the bylaws of the Association. No such rescission shall be effective until recorded in the Orange County Registry.

7. Restrictions:

(a) It shall be the responsibility of each Lot owner to prevent the development of any unclean, unsightly or unkempt condition of buildings or grounds which shall tend to decrease the beauty of the neighborhood as a whole or the specific area.

(b) No noxious or offensive activity shall be carried on in or upon any Lot or any portion of the Property, nor shall anything be done therein tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood or to other Lot owners. There shall not be maintained in or upon any Lot any plants or animals, other than household pets as hereinafter specified and allowed, or device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the other Lot owners thereof.

(c) Household pets may be maintained in or upon any unit in accordance with the Rules and Regulations as adopted by the Association. Household pets are permitted outside the pet owner's Lot only if leashed.

(d) No commercial signs (including "for rent," "for sale," and other similar signs) or property identification signs shall be erected or maintained on any unit except with the written permission of the Board of Directors, or except as may be required by legal proceedings, it being understood that the Board of Directors will not grant permission for said signs unless their erection is reasonably necessary.

(e) Garbage and trash shall be disposed of promptly and periodically at the Lot Owner's expense; provided, however, that Declarant shall for an initial period of time contract with a third party to pick up Lot Owners' properly garbage provided same is properly bagged, placed within an acceptable container and placed at the curb or other suitable location. Lot Owners shall not allow garbage or waste to accumulate on any Lot or any portion of the Property or any Lot. No burning of trash, leaves or yard waste shall be allowed on any portion of the Property or any Lot.

(f) No structure of any temporary character shall be placed upon a Lot at any time.

(g) No tent, barn, storage shed (except for a shed approved in advance by the Declarant), garage, tree house or other similar outbuilding or structure shall be placed on the Property or any Lot at any time, either temporarily or permanently.

(h) No junked or wrecked vehicle shall be kept on any Lot for more than seven (7) consecutive days, nor shall any vehicle remain in or on any portion of the Property on blocks or jacks for more than seven consecutive (7) days. For the purposes of this paragraph, "junked or wrecked vehicle" shall include, but not be limited to, any vehicle which cannot for any period of more than seven (7) consecutive days move under its own power, any car with obvious and serious damage, and any car that does not have a current license plate and sticker.

(i) No Lot or residence located thereon shall be used for any commercial or professional purpose, and no professional person shall maintain a public office in any unit, or on any Lot; provided however, that this restriction shall not prevent the use of any unit by a professional person for his own private office not connected with visits from patients, clients or members of the public.

(j) All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them for a period of thirty (30) years from the date of recordation of the Declaration, after which time said covenants shall be extended automatically for successive periods of ten (10) years unless an instrument signed by the unit owners owning at least 75% in common interest of the units affected by such covenants has been recorded agreeing to revise or amend or rescind said covenants in whole or in part.

(k) In the event of a violation or breach of any of these restrictions contained in this Paragraph or of any other restrictions or covenants of this Declaration by any property owner or guest, invitee, or agent of such owner, the owners of Lots, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing and in the event there shall have been any violation of any provision of this Declaration, for so long as Declarant has any legal or equitable interest in any Lot, Declarant shall have the right to bring an action at law or in equity to enforce these Covenants. In addition thereto, for so long as Declarant has any legal or equitable interest in any Lot, Declarant shall have the authority to enter upon the property where any violation of this Declaration exists and summarily abate or remove the same at the expense of the offending owner if after thirty (30) days written notice of such violation it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior thereto or subsequent thereto, and shall not bar or affect its enforcement.

(l) Lot owners shall be bound by the provisions of any governmental regulations or zoning provisions relating to their Lots.

(m) All clotheslines shall be located so as to not be visible from the front of the house.

8. Declarant shall have the right to approve or disapprove the design of any proposed house or structure to be constructed upon a Lot. No structure shall be constructed upon any Lot until the plans for same have been submitted to, and approved in writing by, Declarant.

9. Lots and Owners Subject to Declaration, Bylaws, Rules and Regulations: All present and future owners, tenants and occupants of Lots shall be subject to and shall comply with the provisions of this Declaration, the Bylaws and any Rules and Regulations that may be adopted in accordance with the Bylaws, as said Declaration, Bylaws, Rules and Regulations may be amended from time to time. The acceptance of deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, Bylaws, and any Rules and Regulations which may be adopted are accepted and ratified by such owner, tenant or occupant and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit as though such provisions were made a part of each and every deed or conveyance or lease.

10. Enforcement: The Association, or any Lot owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, and liens now or hereafter imposed by the provisions of this Declaration, the Bylaws of the Association, and any Rule(s) adopted by the Association relating to the use of any portion of the Property. In addition thereto, Declarant shall, for so long as it holds any legal or equitable interest in any Lot, have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, and liens now or hereafter imposed by the provisions of this Declaration.

11. Attorney's Fees: In the event the Association or the Declarant brings an action to enforce any provision of this Declaration, it shall be entitled to recover its costs, including its reasonable attorney's fees, in said action.

12. Amendment to Declaration: This Declaration may be amended by the vote of at least 75% in common interest of all Lot owners, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws. No such amendment shall be effective until recorded in the Office of the Register of Deeds of Orange County.

13. Invalidity: The invalidity of any provision of the Declaration shall not be deemed to impair or affect in any manner the validity or enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision never had been included herein.

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

15. Captions: The captions herein are inserted only as a matter of convenience and for reference and such shall not be construed to define, limit or describe the scope of this Declaration not the intent of any provision hereof.

16. Law Controlling: This Declaration and the Bylaws attached hereto shall be construed and controlled by and under the laws of the State of North Carolina.

17. Maintenance of Common Areas: All common areas owned by the Association shall be maintained by the Declarant for a period of twenty (20) years from the date of recordation of this Declaration at the Orange County Registry, at which time maintenance responsibility shall automatically turn over to the Association.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized officers and its corporate seal to be hereunto affixed all by order of its Board of Directors, this the _____ day of _____, 200____.

HABITAT FOR HUMANITY,
ORANGE COUNTY, N. C., INC.

By: _____
_____, President

ATTEST:

Secretary

NORTH CAROLINA
ORANGE COUNTY

I, _____, a Notary Public, certify that
_____ personally appeared before me this day and acknowledged
that (s)he is the Secretary of HABITAT FOR HUMANITY, ORANGE COUNTY, N. C., INC., a
corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument
was signed in its name by its President, sealed with its corporate seal, and attested by himself/herself as
its Secretary.

Witness my hand and notarial seal, this the _____ day of _____, 200 ____.

Notary Public
My Commission Expires:

EXHIBIT A

TRACT 1: BEGINNING at an iron pin in the northern right of way of Rusch Road, the southeastern corner of the property of David L. Caldwell and Sarah Caldwell as described in the deed recorded at Deed Book 834, Page 254, Orange County Registry; thence along the eastern line of the aforesaid Caldwell tract north 4 degrees 48 minutes 32 seconds east 200.37 feet to an iron pin; thence along the northern lines of Caldwell north 85 degrees 29 minutes 45 seconds west 90.09 feet; thence north 85 degrees 07 minutes 15 seconds west 179.94 feet to an iron pin; thence south 71 degrees 20 minutes 00 seconds west 202.87 feet to an iron pin; thence north 28 degrees 47 minutes 00 seconds west 68.84 feet to an iron pin; thence north 55 degrees 4 minutes 00 seconds east 318.10 feet to an iron pin; thence south 86 degrees 15 minutes 00 seconds east 300.12 feet to an iron pin in the line of the property of Margaret Ann Purefoy as described in the deed recorded at Book 1459, Page 396, Orange County Registry, thence along Purefoy's western line south 4 degrees 05 minutes 24 seconds west 445.25 feet to an iron pin; thence north 85 degrees 11 minutes 31 seconds west 56.05 feet to the point and place of beginning and being 2.246 acres and being the same property described in the plat entitled "Boundary Survey for

Orange County Habitat for Humanity, Inc.” dated November 17, 2000 and prepared by Freehold Land Surveys, Inc.

TRACT 2: BEGINNING at a stake on the north side of Allen Street 430 feet in a northeast and eastern direction from the northeast side of Rogers Road, at the southeast corner of Lot #5 in Block A as shown on the plat hereinafter referred to, and running thence North 4° 53' East 200 feet to a stake; thence South 85° 07' West 90 feet to a stake; thence South 4° 53' West 200 feet to a stake on the north side of Allen Street; thence along and with the north side of Allen Street North 85° 07' West 90 feet to a stake, the point of beginning and being Lot #6 in Block A of the PROPERTY OF ROBERTS CONSTRUCTION COMPANY, INC. as per plat and survey of Credle Engineering Company, dated February 1962. Also being the property of Robert J. Edwards and wife, Bell N. Edwards as per plat and survey of Credle Engineering Company, dated March 16, 1973.

TRACT 3: Being known and designated as Lot No. 1, Block “A” according to survey and plat of Credle Engineering Company, dated February, 1962, and more particularly described as BEGINNING at an iron stake on the East side of Rogers Road, said Road designated to be 60 feet wide, said point also being the southwest corner of Lot No. 8 of the James Purefoy Estate; running thence with the South property line of said Lot No. 8, North 55° 04' East 176.20 feet to an iron stake in said South line; running thence South 28° 47' East 128.50 feet to an iron stake, the Northeast corner of Lot No. 2, Block A; running thence with the North line of said North property line, South 54° 44' West 167.18 feet to an iron stake in the East property line of said Rogers Road, the Northwest corner of said Lot No. 2A; running thence with the East property line of said Rogers Road, North 33° 53' West 125 feet to the place and point of BEGINNING.