

**NORTH CAROLINA
DURHAM COUNTY**

DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants (hereinafter "Declaration") is made this _____ day of _____, 2015 by Whitted School Redevelopment, LLC, a Georgia limited liability company.

Definitions

"Agreement" means a certain HOME Investment Partnership Agreement between the City and the Declarant, dated. An executed original of the Agreement is on file in the office of the City Clerk and available for public review.

"City" means the City of Durham, a North Carolina municipal corporation.

"Declarant" means Whitted School Redevelopment, LLC, its successors, successors in title and assigns, and any and all persons and entities having any right, title or interest in the Property.

"Dwelling Unit" shall be defined as provided in the Agreement.

"Period of Affordability" means the period beginning on the date specified in the Loan Agreement and ending on the date that is twenty (20) years from the date of commencement of the Permanent Term, but in no event ending later than November 30, 2037.

"Property" means all and any part of the real property more particularly described in Exhibit A of this Declaration and known as 200 East Umstead Street, Durham, NC.

Recitals

The Agreement provides, among other things, for the City to provide one or more loan(s) to the Declarant to acquire and/or construct improvements on the Property. A source of funding is a grant to the City from the United States Department of Housing and Urban Development (hereinafter "HUD") under the HOME Investments Partnership Program (hereinafter the "HOME Program").

HUD requires as a condition precedent to the awarding of HOME funds that the Declarant execute, deliver and record this Declaration on the official land records of the municipality in which the Property is located in order to create certain covenants running with the land for the purpose of enforcing the requirements of 24 CFR 92.252 and the use restrictions found in Section 3 hereof by regulating and restricting the use, occupancy and transfer of the Property as set forth herein.

The Declarant expressly acknowledges and recognizes the City's reliance upon this commitment by the Declarant in the City's decision to enter into the Agreement and loan funds to the Declarant. The purpose of this Declaration is to set forth certain covenants, restrictions and requirements pertaining to the Property and to give to the City and HUD, and their successors and assigns, the right to enforce this Declaration.

Covenants, Restrictions and Requirements

From and after the date of this Declaration, the Property shall be held, sold, transferred and conveyed subject to the covenants, restrictions and requirements hereinafter set forth:

1. The Declarant shall not convey, transfer, sell or encumber all or any portion of the Development, or permit the same, without the prior written consent of the City.

2. Subject to the requirements of 24 CFR Part 92, and this Declaration; and with the prior approval of the City, the Declarant may sell, transfer, or exchange the entire Project at any time, but the Declarant shall notify in writing any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Declaration and to the requirements of 24 CFR Part 92 and other applicable regulations. This provision shall not act to waive any other restriction on sale, transfer, or exchange of the Project or any HOME-assisted portion of the Project. The Declarant agrees that the City may void any sale, transfer, or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Declaration and the requirements of 24 CFR Part 92.

3. During the Period of Affordability, the determination of whether a tenant meets the income requirement for HOME-assisted units shall be made by the Declarant or his designated agent at least annually on the basis of the current income of said tenant, not to exceed 60% of Area Median Family Income. The Declarant represents, warrants, and covenants throughout the Period of Affordability and in order to satisfy the requirements of 24 CFR 92.252 HOME-assisted units that:

(a) All units are initially occupied by low-income families whose income is below 60% of the median income for the area as determined by HUD.

(c) During the Period of Affordability, and at the time of initial occupancy, any units receiving HOME assistance shall be leased, rented or made available to members of the general public who have incomes below 60% of Area Median Family Income and rental charges including utilities shall not exceed the Low HOME Rents or Fair Market Rents, whichever is lower for 16 HOME assisted units.

4. This Declaration is made for the benefit of the City and HUD, and confers upon the City, HUD, and their respective successors and assigns the right, without limitation, to enforce the provisions of this Declaration.

5. This Declaration may not be amended in any manner whatsoever without the prior written consent of the City and HUD. It shall be within the sole discretion of the City and HUD whether to give such consent. The Declarant shall record any such amendment with the Durham County Register of Deeds, and provide contemporaneous written notice to the City.

6. The covenants, restrictions and requirements of this Declaration shall run with the Property and, except to the limited extent provided in Paragraph 1 of this Declaration, continue in full force and effect until expiration of the Period of Affordability. Except to the limited extent provided in Paragraph 1 of this Declaration, the covenants, restrictions and requirements shall pass to and be binding upon the Declarant's assigns, successors and successors in title to all and any portion of the Property. Except to the limited extent provided in Paragraph 1 of this Declaration, each and every contract, deed or other instrument hereafter executed covering or conveying all or any portion of the Property shall conclusively be held to have been executed, delivered and accepted subject to such covenants, restrictions and requirements regardless of whether the same are set forth in such contract, deed or other instrument. If a portion or portions of the Property are conveyed, all of such covenants, restrictions and requirements shall run to each portion of the Property.

7. Upon expiration of the Period of Affordability, this Declaration shall automatically terminate and be of no further force or effect. The Declarant may record with the Durham County Register of Deeds a written instrument approved by the City further evidencing the

termination of this Declaration. The City shall be entitled to thirty (30) days' written notice prior to the recording of any such instrument.

8. If a violation of any of the provisions of this Declaration occurs or is attempted, the City, HUD and their successors and assigns may institute and prosecute any proceeding at law or in equity to: abate, prevent or enjoin any such violation or attempted violation; compel specific performance of this Declaration; and recover monetary damages caused by the violation or attempted violation. Any such violation or attempted violation shall also be an event of default under the Agreement and shall entitle the City and its successors and assigns, among other remedies, to accelerate and declare due and payable in full the outstanding balance of any loans made by the City pursuant to the Agreement.

9. Any failure by the City or HUD to insist upon a strict performance of any covenants, restriction or requirement of this Declaration, or to exercise any option, right or remedy contained or created in this Declaration, shall not be construed as a waiver or relinquishment for the future of such covenant, restriction or requirement; rather, the same shall continue and remain in full force and effect.

10. If a court of competent jurisdiction determines that any of the provisions of this Declaration are void or unenforceable, the remainder of the provisions of this Declaration shall continue in full force and effect.

11. This Declaration shall be duly recorded in of the office of the Register of Deeds for Durham County immediately following its execution.

IN WITNESS WHEREOF, _____ has executed this instrument under seal on the date and year first above written.

Whitted School Redevelopment, LLC
a Georgia limited liability company

By: _____
Managing Member

GEORGIA
COUNTY OF

ACKNOWLEDGMENT BY
LIMITED LIABILITY COMPANY

I, a Notary Public in and for said county and state, certify that _____ personally (1) appeared before me this day, (2) stated that he or she is a manager of the Whitted School Redevelopment, LLC, a limited liability company organized under the laws of the State of Georgia, (3) acknowledged that the foregoing contract or agreement with the City of Durham carries on the company's business in the usual way, and (4) acknowledged the due execution, under seal, of the contract on behalf of the company. This the _____ day of _____, 2015.

Notary Public

My Commission Expires
