



Mail after recording to: Beneficiary, 3300 Drake Circle, Raleigh, N.C., 27611

This instrument prepared by Ann M. "Margie" Happel Humphreys

Brief Description for the index: Falcon Pointe Phase I

NORTH CAROLINA DEED OF TRUST  
AND ASSIGNMENT OF RENTS, PROFITS AND INCOME

THIS DEED OF TRUST made this 15th day of August,  
1991, by and between Falcon Pointe LIMITED  
PARTNERSHIP, Grantor; A. ROBERT KUCAB, Trustee; and NORTH  
CAROLINA HOUSING FINANCE AGENCY, 3300 Drake Circle, Raleigh, NC  
27611, Beneficiary.

The designation Grantor, Trustee and Beneficiary as used herein  
shall include said parties, their heirs, successors, and assigns,  
and shall include singular, plural, masculine, feminine or neuter  
as required by contest.

WITNESSETH, That whereas the Grantor is indebted to the  
Beneficiary in the principal sum of EIGHTEEN THOUSAND and  
00/100 ----- Dollars  
(\$18,000.00), as evidenced by a Promissory Note of  
even date herewith, the terms of which are incorporated herein by  
reference. The final due date for payment of said Promissory  
Note, if not sooner paid, is April 18, 2000.

NOW, THEREFORE, as security for said indebtedness, advancements  
and other sums expended by Beneficiary pursuant to this Deed of  
Trust and costs of collection (including attorneys fees as  
provided in the Promissory Note) and other valuable  
consideration, the receipt of which is hereby acknowledged, the  
Grantor has bargained, sold, given, granted and conveyed and does  
by these presents bargain, sell, give, grant and convey to said  
Trustee, his heirs, or successors, and assigns, the parcel(s) of  
land situate in the City of \_\_\_\_\_, South Fork  
Township, Forsyth County, North Carolina, (the  
"Premises"), and more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by  
reference.

TO HAVE AND TO HOLD said Premises with all privileges and  
appurtenances thereunto belonging, to said Trustee, his heirs,  
successors, and assigns forever, upon the trusts, terms and  
conditions, and for the uses hereinafter set forth.

If the Grantor shall pay the Note secured hereby in accordance  
with its terms, together with interest thereof, and any renewals  
or extensions thereof in whole or in part, all other sums secured  
hereby and shall comply with all of the covenants, terms and  
conditions of this Deed of Trust, then this conveyance shall be  
null and void and may be canceled of record at the request and

the expense of the Grantor. If, however, there shall be any default (a) in the payment of any sums due under the Note, this Deed of Trust or any other instrument securing the Note and such default is not cured within ten (10) days from the due date, or (b) if there shall be default in any of the other covenants, terms or conditions of the Note secured hereby, or any failure or neglect to comply with the covenants, terms or conditions contained in this Deed of Trust or any other instrument securing the Note and such default is not cured within fifteen (15) days after written notice, then and in any of such events, without further notice, it shall be lawful for and the duty of the Trustee, upon request of the Beneficiary, to sell the land herein conveyed at public auction for cash, after having first giving such notice of hearing as to commencement of foreclosure proceedings and obtained such findings or leave of court as may then be required by law and giving such notice and advertising the time and place of such sale in such manner as may then be provided by law, and upon such and any resales and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey title to the purchaser in as full and ample manner as the Trustee is empowered. The Trustee shall be authorized to retain an attorney to represent him in such proceedings.

The proceeds of the Sale shall after the Trustee retains his commission, together with reasonable attorneys fees incurred by the Trustee in such proceeding, be applied to the costs of sale, including, but not limited to, costs of collection, taxes, assessments, costs of recording, service fees and incidental expenditures, the amount due on the Note hereby secured and advancements and other sums expended by the Beneficiary according to the provisions hereof and otherwise as required by the then existing law relating to foreclosures. The Trustee's commission shall be five percent (5%) of the gross proceeds of the sale or the minimum sum of \$350.00, whichever is greater, for a completed foreclosure. In the event foreclosure is commenced, but not completed, the Grantor shall pay all expenses incurred by Trustee, including reasonable attorneys fees, and a partial commission computed on five percent (5%) of the outstanding indebtedness or the above stated minimum sum, whichever is greater, in accordance with the following schedule, to-wit: one-fourth (1/4) thereof before the Trustee issues a notice of hearing on the right to foreclose; one-half (1/2) thereof after issuance of said notice; three-fourths (3/4) thereof after such hearing; and the greater of the full commission or minimum sum after the initial sale.

And the said Grantor does hereby covenant and agree with the Trustee as follows:

1. INSURANCE. Grantor shall keep all improvements on said land, now or hereafter erected, constantly insured for the

benefit of the Beneficiary against loss by fire, windstorm and such other casualties and contingencies, in such manner and in such companies and for such amounts, not less than that amount necessary to pay the sum secured by this Deed of Trust, and as may be satisfactory to the Beneficiary, Grantor shall purchase such insurance, pay all premiums therefor, and shall deliver to Beneficiary such policies along with evidence of premium payment as long as the Note secured hereby remains unpaid. If Grantor fails to purchase such insurance, pay premiums therefor or deliver said policies along with evidence of payment of premiums thereon, then Beneficiary, at his option, may purchase such insurance. Such amounts paid by Beneficiary shall be added to the principal of the Note secured by this Deed of Trust, and shall be due and payable upon demand of Beneficiary. All proceeds from any insurance so maintained shall at the option of Beneficiary be applied to the debt secured hereby and if payable in installments, applied in the inverse order of maturity of such installments or to the repair or reconstruction of any improvements located upon the Property.

2. TAXES, ASSESSMENTS, CHARGES. Grantor shall pay all taxes, assessments and charges as may be lawfully levied against said Premises within thirty (30) days after the same shall become due, in the event that Grantor fails to so pay all taxes, assessments and charges as herein required, then Beneficiary, at his option, may pay the same and the amounts so paid shall be added to the principal of the Note secured by this Deed of Trust, and shall be due and payable upon demand of Beneficiary.

3. ASSIGNMENTS OF RENTS AND PROFITS. Grantor assigns to Beneficiary, in the event of default, all rents and profits from the land and any improvements thereon, and authorizes Beneficiary to enter upon and take possession of such land and improvements, to rent same, at any reasonable rate of rent determined by Beneficiary, and after deducting from any such rents the cost of reletting and collection, to apply the remainder to the debt secured hereby.

4. PARTIAL RELEASE. Grantor shall not be entitled to the partial release of any of the above described property unless a specific provision providing therefor is included in this Deed of Trust. In the event a partial release provision is included in this Deed of Trust, Grantor must strictly comply with the terms thereof. Notwithstanding anything herein contained, Grantor shall not be entitled to any release of property unless Grantor is not in default and is in full compliance with all of the terms and provisions of the Note, this Deed of Trust, and any other instrument that may be securing said Note.

5. WASTE. The Grantor covenants that he will keep the Premises herein conveyed in as good order, repair and condition as they are now, reasonable wear and tear excepted, and will comply with

all governmental requirements respecting the Premises or their use, and that he will not commit or permit any waste.

6. CONDEMNATION. In the event that any or all of the Premises shall be condemned and taken under the power of eminent domain, Grantor shall give immediate written notice to Beneficiary and Beneficiary shall have the right to receive and collect all damages awarded by reason of such taking, and the right to such damages hereby is assigned to Beneficiary who shall have the discretion to apply the amount so received, or any part thereof, to the indebtedness due hereunder and if payable in installments, applied in the inverse order of maturity of such installments, or to any alteration, repair or restoration of the Premises by Grantor.

7. WARRANTIES. Grantor covenants with Trustee and Beneficiary that he is seized of the Premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that he 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:

Deed of Trust and Assignment of Rents, Profits and Income recorded in Book 1565, Page 275, Forsyth County Registry;

Regulatory Agreement recorded in Book 1565, Page 281, Forsyth County Registry;

Agreement of Deed Restrictions recorded in Book 1567, Page 225, Forsyth County Registry;

Mortgage Assignment recorded in Book 1638 Page, 742, Forsyth County Registry;

Modification of Deed of Trust Note and Deed of Trust recorded in Book 1638, Page 1292, Forsyth County Registry;

Second Deed of Trust and Assignment of Rents, Profits and Income recorded in Book 1715, Page 1893, Forsyth County Registry;

Matters of survey shown on the plat and survey of the property described in Exhibit A prepared by J. Richard Howard, dated June 19, 1986, revised May 6, 1987.

8. SUBSTITUTION OF TRUSTEE. Grantor and Trustee covenant and agree to and with Beneficiary that in case the said Trustee, or any successor trustee, shall die, become incapable of acting, renounce his trust, or for any reason the holder of the Note desires to replace said Trustee, then the holder may appoint, in writing, a trustee to take the place of the Trustee; and upon the probate and registration of the same, the trustee thus appointed shall succeed to all rights, powers and duties of the Trustee.

9. SALE OF PREMISES. Grantor agrees that if the Premises or any part thereof or interest therein is sold, assigned, transferred, conveyed or otherwise alienated by Grantor, whether voluntarily or involuntarily or by operation of law (other than: (i) the creation of a lien or other encumbrance subordinate to this Deed of Trust which does not relate to a transfer of rights of occupancy in the Premises; (ii) the creation of a purchase money security interest for household appliances; (iii) a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety; (iv) the grant of a leasehold interest of three (3) years or less not containing an option to purchase; (v) a transfer to a relative resulting from the death of a Grantor; (vi) a transfer where the spouse or children of the Grantor become the owner of the Premises; (vii) a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the Grantor becomes an owner of the Premises; (viii) a transfer into an inter vivos trust in which the Grantor is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the Premises), without the prior written consent of Beneficiary, Beneficiary, at its own option, may declare the Note secured hereby and all other obligations hereunder to be forthwith due and payable. Any change in the legal or equitable title of the Premises or in the beneficial ownership of the Premises, including the sale, conveyance or disposition of a majority interest in the Grantor if a corporation or partnership, whether or not of record and whether or not for consideration, shall be deemed to be the transfer of an interest in the Premises.

10. ADVANCEMENTS. If Grantor shall fail to perform any of the covenants or obligations contained herein or in any other instrument given as additional security for the Note secured hereby, the Beneficiary may, but without obligation, make advances to perform such covenants or obligations, and all such sums so advanced shall be added to the principal sum, shall bear interest at the rate provided in the Note secured hereby for sums due after default and shall be due from Grantor on demand of the Beneficiary. No advancement or anything contained in this paragraph shall constitute a waiver by Beneficiary or prevent such failure to perform from constituting an event of default.

11. INDEMNITY. If any suit or proceeding be brought against the Trustee or Beneficiary or if any suit or proceeding be brought which may affect the value or title of the Premises, Grantor shall defend, indemnify and hold harmless and on demand reimburse Trustee or Beneficiary from any loss, cost, damage or expense and any sums expended by Trustee or Beneficiary shall bear interest as provided in the Note secured hereby for sums due after default and shall be due and payable on demand.

12. WAIVERS. Grantor waives all rights to require marshalling of assets by the Trustee or Beneficiary. No delay or omission of the Trustee or Beneficiary in the exercise of any right, power or remedy arising under the Note or this Deed of Trust shall be deemed a waiver of any default or acquiescence therein or shall impair or waive the exercise of such right, power or remedy by Trustee or Beneficiary at any other time.

13. CIVIL ACTION. In the event that the Trustee is named as a party to any civil action as Trustee in this Deed of Trust, the Trustee shall be entitled to employ an attorney at law, including himself if he is a licensed attorney, to represent him in said action and the reasonable attorney's fee of the Trustee in such action shall be paid by the Beneficiary and added to the principal of the Note secured by this Deed of Trust and bear interest at the rate provided in the Note for sums due after default.

14. PRIOR LIENS. Default under the terms of any instrument secured by a lien to which this Deed of Trust is subordinate shall constitute default hereunder.

15. OTHER TERMS.

15a. All rents, profits and income from the property described in this Deed of Trust are hereby assigned to the Beneficiary as additional collateral, subject to the prior assignment contained in that certain Deed of Trust and Assignment of Rents, Profits and Income, recorded in Book 1565, Page 275, Forsyth County Registry, and that certain Second Deed of Trust and Assignment of Rents, Profits and Income, recorded in Book 1715, Page 1893, Forsyth County Registry.

15b. Any default or failure to perform any covenant, condition, term, or agreement under that certain Deed of Trust Note, dated September 18, 1986, in the original principal amount of \$4,264,800.00 made by the undersigned and now held by North Carolina Housing Finance Agency, or under that certain Deed of Trust and Assignment of Rents, Profits and Income dated September 18, 1986, and recorded in Book 1565, Page 275, Forsyth County Registry, or under that certain Second Deed of Trust Note, dated May 14, 1991, in the original principal amount of \$1,242,639.91, made by the undersigned and held by the Secretary of Housing and Urban Development, or under that certain Second Deed of Trust and Assignment of Rents, Profits and Income dated May 14, 1991, and recorded in Book 1715, Page 1893, Forsyth County Registry, shall automatically be and constitute a default under the terms of this Deed of Trust and the Promissory Note.

15c. The covenants of the Grantor to pay principal and interest are included in the Promissory Note which is secured by this Deed

of Trust for the purposes of establishing and continuing the indebtedness. Anything in this Deed of Trust or in the Promissory Note to the contrary notwithstanding, in the event of a default under the terms of this Deed of Trust or the Promissory Note, neither the Grantor nor any general or limited partner of the Grantor shall have personal liability for the payment of any principal or interest due under the Promissory Note incurred in connection with its enforcement of the Promissory Note or the foreclosure of this Deed of Trust, and the Beneficiary shall not seek deficiency judgment against the Grantor or any general or limited partner of the Grantor. The provisions of this paragraph shall not: (i) limit the Grantor's personal liability for the payment for maintenance, taxes, assessments, insurance and such like and similar obligations imposed upon the Grantor by the Promissory Note or this Deed of Trust; (ii) limit or impair the lien or enforcement of this Deed of Trust or the right of the Beneficiary to collect all sums due hereunder or thereunder except as expressly limited by this paragraph; (iii) cause or excuse the failure of the Grantor to make the payments or to perform any obligation under the Promissory Note or this Deed of Trust.

15d. This Deed of Trust is to secure either partly or wholly a Promissory Note for present and future obligations from the Grantor to the Beneficiary, and this Deed of Trust is executed to secure all such obligations.

The total amount of present obligations secured is \$5,307.00.

The maximum principal amount, including present and future obligations, which may be secured hereby at any one time is \$18,000.00.

The period within which such future obligations may be incurred is from the date hereof through and including April 18, 1995, plus such extensions thereunder as may be given by the Beneficiary, but provided that in any event such extensions shall be not more than fifteen (15) years from the date of said Promissory Note.

15e. Beneficiary, for itself and its successors and assigns, covenants and agrees that all of its rights and powers under this Deed of Trust are subordinate and subject to the rights of North Carolina Housing Finance Agency under that certain deed of trust dated September 18, 1986 and recorded on September 18, 1986 in the Register of Deeds of Forsyth County, the rights of the Secretary of the Department of Housing and Urban Development of the United States under that certain deed of trust dated May 14, 1991 and recorded on May 14, 1991 in the Register of Deeds of Forsyth County, and under that certain Security Agreement dated May 14, 1991,

and the rights of the Secretary of Housing and Urban Development under that certain Regulatory Agreement dated September 18, 1986 and incorporated by reference in the above described first deed of trust.

15f. In the event the Secretary acquires title to the project by a deed-in-lieu of foreclosure, the lien of this Deed of Trust will automatically terminate subject to the conditions hereinafter described. The Beneficiary of this Deed of Trust may cure a default under the first deed of trust prior to a conveyance by deed-in-lieu of foreclosure. The Secretary shall give written notice to the Beneficiary of this Deed of Trust of a proposed tender of title in the event (1) the Secretary decides to accept a deed-in-lieu of foreclosure or (2) the Secretary receives notice from the holder of the HUD-insured deed of trust of its election to accept a deed-in-lieu of foreclosure. The Secretary will give such written notice if, at the time of recording of this Deed of Trust, the Secretary receives a copy of an endorsement to the title policy of the grantor or holder of the HUD deed of trust which indicates that (1) this Deed of Trust has been recorded; and (2) the Secretary is required to give notice of any proposed election to or tender of a deed-in-lieu of foreclosure. Such notice shall be given at the address stated herein or such other address as may subsequently, upon written notice to the Secretary, be designated by the Beneficiary of this Deed of Trust at its legal business address. The Beneficiary of this Deed of Trust shall have thirty (30) days to cure the default after the notice of intent to accept a deed-in-lieu of foreclosure is mailed.

15g. Beneficiary, for itself and its successors and assigns, further covenants and agrees that in the event of the appointment of a receiver or of the appointment of the Beneficiary as mortgagee-in-possession, in any action by the Beneficiary, its successors or assigns, to foreclose this Deed of Trust, no rents, revenue or other income of the project collected by the receiver or by the mortgagee-in-possession shall be utilized for the payment of interest, principal or any other charges due and payable under this Deed of Trust, except from surplus cash available for distribution, if any, as the term is defined in the Regulatory Agreement; and further, the receiver or mortgagee-in-possession shall operate the project in accordance with all the provisions of the first deed of trust and the Regulatory Agreement.

15h. As long as the Secretary of Housing and Urban Development, or its successors or assigns, is the insurer or holder of the mortgage on Falcon Pointe Project, FHA Project Number 053-35540-PM, any payments due from project income under the Note secured by this Deed of Trust shall be payable only from surplus cash of said project, as that term is defined in the Regulatory Agreement dated September 18, 1986, between the Secretary of



BK1725 P3849

Housing and Urban Development and the undersigned. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the maker to pay the indebtedness evidenced by the Note secured by this Deed of Trust.

15i. Should any of the terms, conditions, provisions, paragraphs, or clauses of the Note secured by this Deed of Trust conflict with any HUD regulations or procedures, the HUD regulations or procedures shall control unless the HUD regulations or procedures permit the Note to override any such regulations or procedures, in which event the Note shall control.

BK1725 P3850

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal the day and year first above written.

FALCON POINTE LIMITED PARTNERSHIP

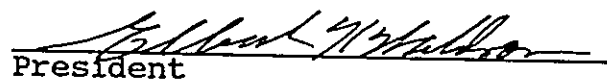
by Horace G. Fralin, General Partner

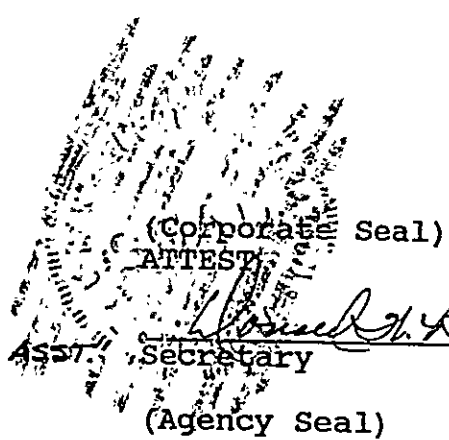
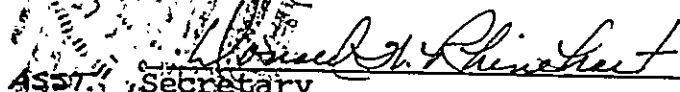
 (SEAL)

By Elbert H. Waldron, General Partner

 (SEAL)

By F & W Management Corporation  
General Partner

  
President

  
(Corporate Seal)  
ATTEST  
  
Asst. Secretary  
(Agency Seal)

STATE OF VIRGINIACOUNTY OF ROANOKE

I, Mary J. Snider, a Notary Public of said state and county certify that Elbert H. Waldron personally appeared before me this day and acknowledged that he is President of F & W Management Corporation, a Virginia corporation as General Partner in ~~Horace G. Fralin~~ Falcon Pointe Limited Partnership and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President and attested by its Assistant Secretary.

Witness my hand and notarial seal, this the 15th day of August, 1991.

(Notary Seal)

Mary J. Snider  
Notary Public

My Commission Expires:

December 8, 1992STATE OF VIRGINIACOUNTY OF ROANOKE

I, Mary J. Snider, a Notary Public of said County and State do hereby certify that Horace G. Fralin personally appeared before me this day and acknowledged that he is a General Partner in ~~Horace G. Fralin~~ Falcon Pointe Limited Partnership and that as such General Partner he freely executed the foregoing instrument.

Witness my hand and notarial seal, this day 15th day of August, 1991.

(Notary Seal)

Mary J. Snider  
Notary Public

My Commission Expires:

December 8, 1992

BK1725 P3852

STATE OF VIRGINIA

COUNTY OF ROANOKE

I, Mary J. Snider, a Notary Public of said County and State do hereby certify that Elbert H. Waldron personally appeared before me this day and acknowledged that he is a General Partner in ~~Waldron~~ <sup>FALCON POLICE</sup> Limited Partnership and that as such General Partner he freely executed the foregoing instrument.

Witness my hand and notarial seal, this the 15th day of August, 1991.

(Notary Seal)

My Commission Expires:

December 8, 1992

Mary J. Snider  
Notary Public

STATE OF NORTH CAROLINA—Forsyth County

The foregoing (or annexed) certificate of Mary J. Snider N.P.  
(here give name and official title of the officer signing the certificate passed upon)

Roanoke Co. Va.

is ~~not~~ certified to be correct. This the 4 day of Oct, 1991.

PRESENTED FOR  
REGISTER OF DEEDS

By James Golden Deputy-Asst.

Probate and Filing Fee \$ 30.00 paid.

PT -1 P2:14

RECEIVED  
REGISTER OF DEEDS

SC

BK1725 P3853

EXHIBIT A TO NORTH CAROLINA DEED OF TRUST AND  
ASSIGNMENT OF RENTS, PROFITS AND INCOME  
DATED August 15, 1991, BETWEEN  
FALCON POINTE LIMITED PARTNERSHIP, GRANTOR,  
A. ROBERT KUCAB, TRUSTEE, AND  
NORTH CAROLINA HOUSING FINANCE AGENCY, BENEFICIARY

Situated in the South Fork Township, County of Forsyth, State of  
North Carolina, to-wit:

All those two certain tracts or parcels of land located at the  
intersection of Penny Lane and Falcon Point Drive, one tract  
containing 4.7624 acres, and one tract containing 14.2762 acres,  
all as more fully shown on a "Revised Map for Falcon Point Phase  
One" prepared by Richard Howard, dated June 19, 1986, Revised May  
6, 1987, and recorded in Plat Book 21, page 10, in the office of  
the Register of Deeds for Forsyth County, North Carolina.