

RETURN TO BLANCO BOX(SCG)

BK1897 P3447

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Prepared By and
When Recorded Return to:
Robert W. Wilson, Jr.
Poyner & Spruill, L.L.P.
3600 Glenwood Avenue
Raleigh, NC 27612-4953

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

Third Modification of Deed of Trust
Deed of Trust Note and Deed
Restrictions
Falcon Pointe
Winston-Salem, North Carolina
FHA Project No. 053-35540-PM

THIRD MODIFICATION OF DEED OF TRUST, DEED OF TRUST NOTE
AND DEED RESTRICTIONS

THIS THIRD MODIFICATION OF DEED OF TRUST, DEED OF TRUST NOTE AND DEED RESTRICTIONS (this "Agreement") is made as of the ___ day of April, 1996, by and among (i) FALCON POINTE LIMITED PARTNERSHIP (formerly Falcon Pointe), a limited partnership organized and existing under the laws of the State of Virginia ("Grantor"), (ii) NORTH CAROLINA HOUSING FINANCE AGENCY, a public agency and instrumentality of the State of North Carolina ("Beneficiary"), (iii) A. Robert Kucab ("Substitute Trustee"), and (iv) FIRST UNION NATIONAL BANK OF NORTH CAROLINA, a national banking association, as trustee pursuant to the Bond Resolution of the Beneficiary adopted on May 24, 1984, authorizing and securing the Beneficiary's Multi-Family Revenue Bonds (FHA-Insured Mortgage Loans) (the "Bond Trustee").

RECITALS:

A. Grantor has executed and delivered to its initial mortgagee lender (the "Original Mortgagee") that certain Deed of Trust Note, dated September 18, 1986 (the "Note"), in the original principal amount of Four Million Two Hundred Sixty-Four Thousand Eight Hundred and No/100 Dollars (\$4,264,800.00) which Note is secured by a certain Deed of Trust and Assignment of Rents, Profits and Income (Multifamily), dated September 18, 1986 (the "Deed of Trust"), recorded on September 22, 1986 in Book 1565, Page 275, in the Office of the Register of Deeds, Forsyth County, North Carolina (the "Land Records").

B. The Deed of Trust encumbers certain real property and the

improvements located thereon located in Forsyth County, North Carolina, as more particularly described in the Deed of Trust and on Exhibit "A" attached hereto (the "Property").

C. The Note and Deed of Trust were purchased from and assigned by the Original Mortgagee to the Beneficiary pursuant to that certain Mortgage Assignment, dated April 18, 1988, recorded April 18, 1988, in the Land Records in Book 1638, Page 1742, (the "Purchase and Assignment").

D. A. Robert Kucab was substituted as trustee by Agreement recorded in Book 1891, Page 2769 of the Land Records; and

E. The Purchase and Assignment was financed by the Beneficiary with the proceeds of the Beneficiary's bonds issued under the May 24, 1984 resolution hereinabove referenced (the "Prior Bonds") and in connection therewith, Beneficiary, Grantor and Bond Trustee entered into an Agreement of Deed Restrictions, dated as of September 23, 1986 recorded in the Land Records in Book 1567, Page 225 and amended by Amendment to Agreement of Deed Restrictions dated April 15, 1988 and recorded in the Land Records in Book 1638, Page 3111 (the "Deed Restrictions").

F. Concurrently herewith the Beneficiary has entered into arrangements to issue, pursuant to said May 24, 1984 Resolution, its Multifamily Revenue Refunding Bonds (1984 FHA-Insured Mortgage Loan Resolution), Series H and I-Taxable (the "Refunding Bonds"), the proceeds of which will be used, among other purposes, to refund the Prior Bonds issued to finance the Purchase and Assignment.

G. The Note and Deed of Trust are insured by the Department of Housing and Urban Development ("HUD") pursuant to Section 221(d)(4) of the National Housing Act, as amended.

H. The Beneficiary is now the holder of the Note and beneficiary under the Deed of Trust.

I. The parties hereto wish to amend and modify the Note, Deed of Trust and Deed Restrictions as hereinafter provided.

J. The Note and Deed of Trust were previously modified by Agreement dated March 28, 1988 and recorded in the Land Records in Book 1638, Page 1291 and by Agreement dated May 14, 1991 and recorded in the Land Records in Book 1715, Page 1902.

NOW THEREFORE, in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

NOTE AND DEED OF TRUST

1. The payment terms of the Note are hereby amended as

follows:

a. As of the date of this Agreement, the outstanding principal balance of the Note is Two Million Nine Hundred Forty-Four Thousand Four Hundred Eighty-Three and 90/100 Dollars (\$2,944,483.90) and such principal balance shall be fully amortized over the remaining term of the Note.

b. Effective as of April 25, 1996, interest shall accrue and be payable at the rate of Seven and Sixty One-Hundredths percent (7.60%) per annum on the unpaid principal balance until the outstanding principal balance of the Note is paid in full.

c. On May 1, 1996, a payment of principal and interest on the Note shall be payable in the amount of \$23,809.54. Thereafter, commencing on June 1, 1996, installments of interest and principal shall be paid in the amount of Twenty Thousand Four Hundred Seventy-Two and 45/100 Dollars (\$20,472.45), such payments to continue monthly thereafter on the first day of each succeeding month until the entire indebtedness has been paid. In any event, the balance of the principal, if any, remaining unpaid, plus accrued interest, shall be due and payable on March 1, 2028. The installments of principal and interest shall be applied first to interest at the rate of Seven and Sixty One-Hundredths percent (7.60%) per annum upon the principal sum or so much thereof as shall from time to time remain unpaid, and the balance thereof shall be applied on account of principal.

2. The Note is further amended by deleting the paragraph that restricts and prohibits the prepayment thereof and substituting therefor the following:

Except as provided below, the principal amount outstanding under this Note may not be prepaid, in whole or in part, prior to January 1, 2006, without the consent of the Holder, which consent is conditioned upon the ability of the Holder to redeem the principal amount of its bonds issued to provide long term financing for the Project (including a pro rata portion of any bonds issued to fund capitalized interest, costs of issuance and underwriters' discount with respect to the Project) (such bonds, whether the initial bonds issued by the Holder or bonds issued to refund bonds, the "Bonds"), together with any interest and premium due on the Bonds and the bonds issued to fund reserves in connection with the Bonds through the date of redemption.

On or after January 1, 2006, prepayment shall be permitted in whole or in part in any whole multiple of \$5,000.00 and except as provided below, in the

event that any prepayment is made, the Maker shall pay to the Holder a premium or charge in an amount sufficient to pay any premium or interest due on the Bonds and the bonds issued to fund reserves in connection with the Bonds through the date of redemption, provided that in no event shall such premium or charge exceed the amount permitted by HUD pursuant to its Mortgagee Letter 87-9 dated February 20, 1987.

Any such prepayment shall be made upon not less than thirty (30) days' prior written notice to the Holder, which notice shall specify the date of prepayment and the amount of principal, premium and interest to be prepaid, provided that, in the case of a prepayment at a premium either (a) the amount of the premium shall be delivered at least ninety-one (91) days prior to the date of such prepayment, but shall not be credited as a payment on this Note until the prepayment date specified in the written notice of prepayment delivered to the Holder as described above, and, in addition, the Maker shall deliver to the Holder a certificate signed by the general partners of the Maker dated, signed and delivered not less than ninety-one (91) days after the deposit of the prepayment premium stating that neither the Maker nor any general partner of the Maker is insolvent and that no bankruptcy or insolvency proceedings have been commenced by or against the Maker or any general partner of the Maker, and that no threat has been made concerning the commencement of such proceedings; or (b) the Maker shall deliver to the Holder an opinion or opinions of counsel with expertise in bankruptcy matters in form and substance satisfactory to the Holder to the effect that the amounts paid by the Maker or held by the Holder as payments from the Maker will not constitute a voidable preference or be subject to the automatic stay or transfer provisions of Section 547(b) or 362(a), or 550(a), respectively, of the U.S. Bankruptcy Code, in the event that a case in bankruptcy is commenced by or against the Maker or any of its general partners.

Notwithstanding the prepayment prohibition imposed hereby, this Note may be prepaid in whole or in part at redemption price of par plus interest accrued to the date of prepayment to the extent that the net proceeds of any condemnation award or casualty insurance recovery are permitted by the Holder to be applied to prepayment of this Note.

Notwithstanding any prepayment prohibition imposed and/or premium required by this Note, the indebtedness may be prepaid in whole or in part without the consent of the Holder and without prepayment premium if HUD determines that prepayment will avoid a mortgage insurance claim and is therefore in the best interest of the federal government.

3. HUD acknowledges that the FHA mortgage insurance on the Note remains in full force and effect pursuant to Section 221(d)(4) of the National Housing Act, as amended. HUD's acknowledgment is evidenced by the Secretary of HUD's approving and countersigning a copy of this Agreement at the place provided below.

DEED RESTRICTIONS

1. Section 1 of the Deed Restrictions is hereby amended by inserting the following at the end of the definition of "Bonds":

"prior to the issuance of the Agency's Multifamily Revenue Refunding Bonds (1984 FHA-Insured Mortgage Loan Resolution), Series H and I- Taxable, and thereafter, shall refer to the Multifamily Revenue Refunding Bonds (1984 FHA-Insured Mortgage Resolution), Series H and I- Taxable, or any Agency Bonds issued to refund the Multifamily Revenue Refunding Bonds (1984 FHA-Insured Mortgage Resolution), Series H and I- Taxable."

2. The definition of "Qualified Project Period" is hereby amended by deleting "in accordance with Section 211 of the Resolution" in the second sentence.

3. This amendment to the Deed Restrictions is being entered pursuant to the provisions of Section 15 of the Deed Restrictions and HUD's approval is evidenced by the Secretary of HUD's countersigning a copy of this Agreement at the place provided below.

CONTINUING DISCLOSURE

In addition to any other information the Grantor may be required to file with the Beneficiary under any existing agreement or arrangement, the Grantor shall provide to the Beneficiary such information as shall be necessary for the Beneficiary to meet the requirements of its undertaking set forth in the Series Resolution and Official Statement of the Beneficiary related to the offering and sale of the Refunding Bonds to file certain information with certain nationally recognized municipal securities repositories pursuant to Rule 15c2-12 of the Securities and Exchange Commission.

COVENANTS RELATED TO CERTAIN FEDERAL TAX MATTERS

1. The Grantor has no plan or intention to change the ownership of the Property including, but not limited to, the withdrawal of or substitution of any general or limited partner of the Grantor as a condition to, or in connection with, the issuance by the Beneficiary of the Bonds.

2. There has been no change in the ownership with respect to the Property including, but not limited to, any withdrawal of or substitution of any general or limited partner of the Grantor during the six-month period ending on the date hereof.

3. During the period beginning on the date hereof and ending six months from the date hereof, the Grantor will not undertake, or consent to, any change in ownership (including any change that is proposed to take place after expiration of the six-month period specified herein) with respect to the Property including, but not limited to, the withdrawal of or substitution of any general or limited partner of the Grantor without obtaining the prior written consent of the Beneficiary to any such change, which consent may be withheld in the sole discretion of the Beneficiary.

4. The right vested in the Beneficiary to consent to any change in ownership of the Property during the time periods set forth above are in addition to, and not in substitution for, the right of the Beneficiary to consent to any transfer of the Property pursuant to; (a) the Deed of Trust, and (b) the rights vested in the Beneficiary by the Mortgage Purchase Agreement, entered into among the Beneficiary, the Grantor and the Original Mortgagee relating to the Beneficiary's initial purchase of the Mortgage Loan.

5. The Grantor has heretofore complied with and is at this time in compliance with all covenants and deed restrictions concerning the use and occupancy of the Property set forth in the Deed Restrictions.

MISCELLANEOUS

1. Nothing in this Agreement shall in any way impair the Note, Deed of Trust, Deed Restrictions or other security now held for such indebtedness, or alter, waive, compromise, annul, impair or prejudice any provision, condition or covenant therein, except as provided herein, it being the intent of the parties that the terms and provisions of the Note, Deed of Trust and Deed Restrictions shall continue in full force except as expressly modified hereby.

2. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3. This modification of the Deed of Trust and Note shall not be a novation of the Deed of Trust or the Note, and the Deed of Trust and Note, as hereby amended, remain in full force and effect in accordance with their terms, Grantor and Beneficiary hereby ratifying and affirming the same.

4. The representations and warranties of the Grantor set forth in the Letter of Representations, dated March 29, 1996, from the Grantor to the Beneficiary and the Beneficiary's underwriters named therein are true and correct on and as of the date hereof with the same effect as if made on the date hereof.

5. Substitute Trustee joins in the execution of this Agreement to acknowledge the Substitute Trustee's consent hereto, and Substitute Trustee agrees to act in such capacity under the terms of the Deed of Trust, as amended.

6. Bond Trustee joins in the execution of this Agreement to acknowledge the Bond Trustee's consent hereto, and Bond Trustee agrees to act in such capacity under the terms of the Deed Restrictions, as amended.

*

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IN WITNESS WHEREOF, the parties have executed this Modification of Deed of Trust, Deed of Trust Note and Deed Restrictions as of the date first above written.

GRANTOR:

FALCON POINTE LIMITED PARTNERSHIP,
a Virginia limited partnership (SEAL)

By: F & W MANAGEMENT CORPORATION,
General Partner

By: [Signature] President (SEAL)

ATTEST:

[Signature]
Secretary

COMMONWEALTH OF VIRGINIA
COUNTY OF ROANOKE

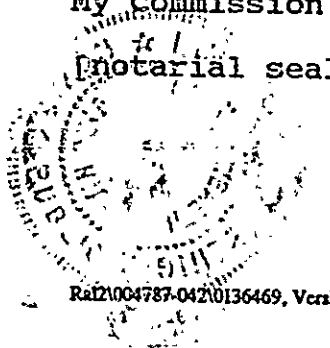
THIS 16th day of April, 1996, personally came before me, a Notary Public in and for the said County and State, Charles C. Nimmo, who, being by me duly sworn, says that he is the President of F & W Management Corporation, a Virginia corporation, general partner of FALCON POINTE LIMITED PARTNERSHIP, a Virginia limited partnership and that the seal affixed to the foregoing instrument in writing is the official corporate seal of said corporation, and that the said writing was signed and sealed by him in behalf of said corporation by its authority duly given, and the said President acknowledged the said writing to be the act and deed of said corporation in its capacity as general partner of said limited partnership and as the act and deed of said limited partnership.

WITNESS my hand and notarial seal, this 16th day of April, 1996.

[Signature]
Notary Public

My Commission Expires: Nov. 30, 1996

[Notarial seal]



SUBSTITUTE TRUSTEE:

A. Robert Kucab (SEAL)
A. Robert Kucab., Substitute Trustee

STATE OF NORTH CAROLINA

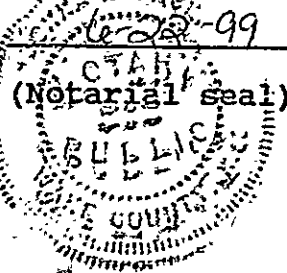
COUNTY OF WAKE

I Donna A. Pace, a Notary Public for said State and County, do hereby certify that A. Robert Kucab, Substitute Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument in his capacity as Substitute Trustee.

WITNESS my hand and notarial seal this 16th day of April, 1996.

Donna A. Pace
Notary Public

My commission expires:



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BENEFICIARY:

NORTH CAROLINA HOUSING FINANCE
AGENCY, a public agency and
instrumentality of the State of
North Carolina

By:

A. Robert Kucab
Name: A. Robert Kucab
Title: Executive Director

STATE OF NORTH CAROLINA

COUNTY OF WAKE

This 16th day of April, 1996, personally came before me A.
Robert Kucab, Executive Director of the NORTH CAROLINA HOUSING
FINANCE AGENCY, a public agency and instrumentality of the State of
North Carolina, and acknowledged the due execution of the foregoing
instrument.

WITNESS my hand and notarial seal this 16th day of April,
1996.

Donna A. Pace
Notary Public

My commission expires:

06-22-99
(Notarial Seal)

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BOND TRUSTEE:

FIRST UNION NATIONAL BANK
OF NORTH CAROLINA

ATTEST:

By: *P. de la Canal*
Name: PABLO de la CANAL
Title: ASSISTANT VICE PRESIDENT

By: *D. Ober*
Name: DANIEL I OBER
Title: VICE PRESIDENT

Assistant Secretary
[CORPORATE SEAL]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBERG Union

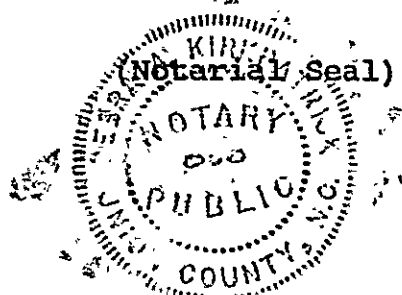
I, Debra A Kirkpatrick, a Notary Public of the County and State aforesaid, certify that Pablo de la Canal personally came before me this day and acknowledged that he/she is an Assistant Secretary of FIRST UNION NATIONAL BANK OF NORTH CAROLINA, a national banking association duly organized and existing under the laws of the United States of America, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by him/her as its Assistant Secretary.

WITNESS my hand and notarial seal this 15th day of April, 1996.

Debra A. Kirkpatrick
Notary Public

My Commission Expires:

3-6-2000



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The undersigned Secretary of Housing and Urban Development executes this instrument for the purposes of approving the agreements contained herein.

SECRETARY OF HOUSING AND URBAN DEVELOPMENT

By: *Dan McCannless, Jr.*
Director, Multifamily Division
North Carolina State Office

Date: April 16, 1996

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

On April 16, 1996, before me personally appeared Dan McCannless, Jr., who is personally well known to me and known to be the duly appointed Director, Multifamily Division, North Carolina State Office, Department of Housing and Urban Development, and the person who executed the foregoing instrument by virtue of the authority vested in him by 59 FR 62739, and acknowledged to me that he executed it as Director, Multifamily Division, North Carolina State Office, Department of Housing and Urban Development, for and on behalf of the Secretary of Housing and Urban Development.

Witness my hand and official seal.

SHIRLEY S. LONG
NOTARY PUBLIC
GUILFORD COUNTY, NC
COMM. EXPIRES 11/7/99

Shirley S. Long
Notary Public

My Commission Expires: Nov. 7, 1999

STATE OF NORTH CAROLINA-Forsyth County

The foregoing (or annexed) certificate of Linda C. Wheeling NP, Donna A. Pace, NP
(there give name and official title of the officer signing the certificate passed upon)
Donna A. Pace NP, Patrick NP, Shirley S. Long NP
is (are) certified to be correct. This the 25 day of April 19 96.

FOR
RECORD
AND
96 APR 25 11047

John
Register
Forsyth

John Holleman, Register of Deeds

By *R. S. ...* Deputy Assistant

Probate and Filing Fee \$ 320 paid

EXHIBIT A

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 Pointe Drive, one tract containing 4.7624 acres, and one tract containing 14.2672 acres, all as more fully shown on a "Revised Map for Falcon Pointe Phase One", prepared by Richard Howard, dated June 19, 1986, revised May 6, 1987 and recorded in Plat Book 32, Page 20 in the Office of the Register of Deeds for Forsyth County, North Carolina.