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NCHFA
DRAWN BY/AND MAIL TO:
PERRY PATRICK FARMER & MICHAUX, P.A.
2200 THE CARILLON
227 W. TRADE ST.
CHARLOTTE, N.C. 28202
ATTACHMENT 1

7.27.B.3
9799-59-4073
NORTH CAROLINA

ORANGE COUNTY

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DECLARATION OF DEED RESTRICTIONS

THIS DECLARATION OF DEED RESTRICTIONS (this "Declaration"), made and entered into as of June 30, 1995 by and between DOBBINS HILL APARTMENTS LIMITED PARTNERSHIP, a North Carolina limited partnership (the "Owner") and NORTH CAROLINA HOUSING FINANCE AGENCY (the "Lender");

W I T N E S S E T H

In consideration of the mutual covenants and understandings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Owner and the Lender hereby agree as follows:

Section 1. Definitions and Interpretation. The following terms shall have the respective meanings set forth below:

"Deed of Trust" means the mortgage or deed of trust that secures the Mortgage Loan and constitutes a lien on a fee simple interest in the Development and the Land.

"Development" means the residential housing unit(s) to be acquired, constructed or rehabilitated with the proceeds of the Mortgage Loan and to be located on the Land.

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"Land" means the real property described in Exhibit A attached hereto.

"Low-Income Requirement" means the requirement that tenants of units have incomes not exceeding the maximum income set out in Section 2(a) of this Declaration and made applicable by the Project Occupancy Restriction.

"Low-Income Tenant" means an individual or family whose income satisfies the Low-Income Requirement.

"Mortgage Loan" means the loan made to the Owner by the Lender to finance the acquisition, construction or rehabilitation of the Development.

"Note" means the instrument that contains the promise of the Owner to pay the sum of money stated therein at the time stated therein and that evidences the obligation of the Owner to repay the Mortgage Loan.

"Period of Affordability" means the period beginning on the Conversion Date as defined in the Note (the "Commencement Date") and ending on the date that is 20 years after the Commencement Date.

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"Project Occupancy Restriction" means the obligation of the Owner that rents charged Low-Income Tenants shall not exceed the maximum rent that may be imposed on occupancy of such Unit, pursuant to 24 CFR Section 92.252.

"Regulations" means the rules and regulations promulgated by the Department of Housing and Urban Development in 24 CFR Part 92.

"State" means the state of North Carolina.

Unless the context clearly requires otherwise, as used in this Agreement, words of the masculine, feminine or neuter gender shall be construed to include any other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The titles and headings of the sections of this Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

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Section 2. Residential Property. The Owner hereby represents, covenants, warrants and agrees that:

(a) The Development will be acquired, constructed or rehabilitated for the purpose of providing "affordable housing" (i) as prescribed in 24 CFR Part 92.252 in the event the Owner uses the Project for rental purposes, or (ii) as prescribed in 24 CFR Part 92.254 in the event the Owner occupies the Project as its residence, and furthermore one hundred percent (100%) of the units must be rented to families whose income does not exceed fifty percent (50%) of the area median income at the time of each such tenants' initial occupancy as calculated periodically by the U. S. Department of Housing and Urban Development ("HUD");

(b) The determination of whether a Low-Income Tenant meets the Low-Income Requirement shall be made by the Owner at least annually on the basis of the then current income of such Low-Income Tenant and the guidelines established by the HOME Program; and

(c) Subject to the provisions of Section 4 below, the Project shall continue as affordable housing for the full Period of Affordability.

Section 3. Covenants to Run With the Land. The covenants, reservations and restrictions set forth herein shall be deemed covenants running with the Land and, except as provided in Section 4 hereof, shall pass to and be binding upon the Owner's heirs, assigns and successors in title to the Land or the Development; provided, however, that upon the termination of this Agreement in accordance with the terms hereof, said covenants, reservations and

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restrictions shall expire. Except as provided in Section 4 hereof, each and every contract, deed or other instrument hereafter executed covering or conveying the Land or the Development or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Development are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Development.

Section 4. Term. This Agreement shall remain in full force and effect until the expiration of the Period of Affordability; provided, however, that this Agreement shall automatically terminate in the event of foreclosure or transfer of title by deed in lieu of foreclosure. In the case of foreclosure or transfer of title by deed in lieu of foreclosure or similar event, such termination will cease to be in effect if, at any time during the remainder of the Period of Affordability, the owner of record immediately prior to the foreclosure or deed in lieu of foreclosure, or any newly formed entity that includes such former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Development or the Land.

Section 5. Correction of Noncompliance. The failure of the Owner to comply with any of the provisions of Section 2 of this Agreement shall not be deemed a default hereunder unless such

failure has not been corrected within a period of 60 days following the date that any of the parties hereto learned of such failure or should have learned of such failure by the exercise of reasonable diligence.

Section 6. Remedies; Enforceability. If a violation of any of the provisions hereof occurs or is attempted, the Lender and its 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, to compel specific performance hereunder, or to recover monetary damages caused by such violation or attempted violation. The provisions hereof are imposed upon and made applicable to the Land and shall run with the Land and shall be enforceable against the Owner or any other person or entity that has or had an ownership interest in the Development at the time of such violation or attempted violation. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation hereof at any later time or times.

Section 7. Filing. This Agreement shall be duly recorded in the office of the Register of Deeds for the county in which the Land is located within ten days following its execution.

Section 8. Governing Law. This Agreement shall be governed by the laws of the State.

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Section 9. Amendments. Except as provided in Section 4, this Agreement shall not be amended, revised, or terminated except by a written instrument, executed by the parties hereto or their successors in title, and duly recorded in the office of the Register of Deeds for the county in which the Land is located.

Section 10. Notice. Any notice required to be given hereunder shall be given by certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

Lender: North Carolina Housing Finance Agency
P.O. Box 28066, 3300 Drake Circle, Suite 200
Raleigh, N. C. 27607

Owner: Dobbins Hill Apartments Limited Partnership
135 Scaleybark Road
Charlotte, N.C. 28209
Attention: Ms. Donna Dyer

Notice shall be deemed given on the third business day after the date of mailing.

Section 11. Severability. If any provision hereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

Section 12. Multiple Counterparts. This Agreement may be simultaneously executed in multiple counterparts, all of which

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shall constitute one and the same instrument, and each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the Lender and the Owner have executed this Agreement by duly authorized representatives, all on the date first written hereinabove.

LENDER

NORTH CAROLINA HOUSING FINANCE AGENCY

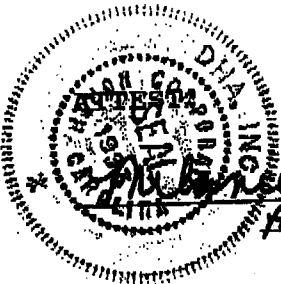
By: A. Robert Kucab
A. Robert Kucab, Executive Director

OWNER

DOBBINS HILL APARTMENTS LIMITED PARTNERSHIP,
a North Carolina limited partnership (SEAL)

By: DHA, INC., General Partner

By: Justin F. Little
Vice President



Justin F. Little
ASST. Secretary

(corporate seal)

STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg

THIS 25th day of June, 1995, personally came before me, a Notary Public in and for the said County and State, Justin F. Little, who, being by me duly sworn, says that he is the Vice President of DHA, INC., a North Carolina corporation, general partner of Dobbins Hill Apartments Limited Partnership, a North Carolina 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

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signed and sealed by him in behalf of said corporation by its authority duly given, and the said Viv 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 28th day of June, 1995.

Phyllis Dale Bowen
Notary Public

My Commission Expires: My Commission Expires October 4, 1999.



[notary seal]

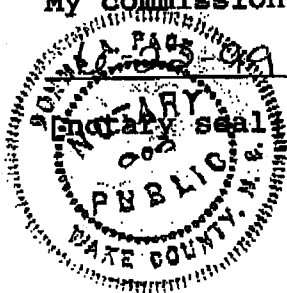
NORTH CAROLINA
WAKE COUNTY

I, Donna A. Pace, a Notary Public in and for the County and State aforesaid, do hereby certify that A. Robert Kucab, Executive Director of the North Carolina Housing Finance Agency, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this 5th day of July, 1995.

Donna A. Pace
Notary Public

My commission expires:



State of North Carolina-Orange County
The foregoing certificate(s) of Phyllis Dale Bowen and Donna A. Pace

A. Notary (Notaries) Public for the Designated Governmental units is-(are) certified to be correct. See Filing certificate herein.
This the 13th day of July A.D. 19 95

Betty June Hayes
Register of Deeds

Johi M. Oberbauer
By: Assistant Deputy
Register of Deeds

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EXHIBIT A

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

BEING all of that 7.36 acre tract shown as Lot 1 on map entitled HESTER AND GARRARD PROPERTY, recorded in Plat Book 70 at Page 70 in the Orange County Public Registry.

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Prepared by: Poyner & Spruill, L.L.P.
3600 Glenwood Avenue
Raleigh, NC 27612

Return to: Robert W. Wilson, Jr.
Poyner & Spruill
P. O. Box 10096
Raleigh NC 27605-0096

NORTH CAROLINA
ORANGE COUNTY

DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES
AND SECURITY AGREEMENT
MULTI-FAMILY

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (the "Deed of Trust") is made as of this 30th day of June, 1995 by and among DOBBINS HILL APARTMENTS LIMITED PARTNERSHIP, a North Carolina limited partnership whose address is 135 Scaleybark Road, Charlotte, N.C. 28209 (hereinafter referred to as "Borrower"), A. ROBERT KUCAB, whose address is P. O. Box 28066, Raleigh, N. C. 27611 (hereinafter referred to as "Trustee"), and NORTH CAROLINA HOUSING FINANCE AGENCY whose principal address is 3300 Drake Circle, Suite 200, P. O. Box 28066, Raleigh, N.C. 27607 (hereinafter referred to as "Lender").

WITNESSETH:

WHEREAS, Borrower is indebted to Lender for money to be loaned pursuant to: (i) the National Affordable Housing Act, HOME Improvement Partnerships Program (HOME); and (ii) a Commitment Letter dated March 28, 1994 and amended by letter dated March 28, 1995 from Lender to Borrower, collectively (the "Loan Commitment") the provisions of which are incorporated herein by reference as fully and to the same extent as if recited herein in full; and

WHEREAS, Borrower has executed and delivered to Lender a Promissory Note of even date herewith in the principal sum of One Million Two Hundred Seventy-Six Thousand Four Hundred Thirty-One and No/100 Dollars (\$1,276,431.00) (the "Note"), the final payment of which is due, together with interest thereon, as provided in the Note; and

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WHEREAS, this Deed of Trust is given wholly or partially to secure future obligations which may be incurred hereunder pursuant to the provisions of Sections 45-67 et seq. of the North Carolina General Statutes; the amount of present obligations secured hereunder is One Million Two Hundred Thirty-Nine Thousand Nine Hundred Fifty-Four (\$ 1,239,954.00); the maximum amount (including present as well as future advances) to be advanced hereunder shall not exceed the face amount of the Note provided such future obligations are incurred not later than fifteen (15) years after the date of the Note; and no execution of a written instrument or notation shall be necessary to evidence or secure any future advances made hereunder; and

WHEREAS, to induce the making of the loan secured hereby (the "Loan"), Borrower has agreed to secure the Note and interest thereon (together with any future advances) and the undertakings described in the Note, Loan Commitment, and this Deed of Trust by the conveyance of the premises hereinafter described.

NOW, THEREFORE, in consideration of the loan evidenced by the Note, Borrower hereby grants and conveys to Trustee, his successors and assigns, the following described premises located in Orange County, North Carolina, more particularly described on Exhibit A, attached hereto and made a part hereof, together with all improvements, fixtures, equipment and all other real and personal property of every kind and nature now or hereafter attached to or used in connection with the premises (hereinafter collectively referred to as "Premises").

TO HAVE AND TO HOLD the same with all privileges and appurtenances thereunto belonging to Trustee, his successors and assigns, upon the trusts and for the purposes hereinafter set out. Borrower covenants with Trustee that Borrower is seized of, and has the right to convey, the Premises, in fee simple; that the Premises are free and clear of all encumbrances, except as described on Exhibit B, attached hereto and made a part hereof; and that Borrower will warrant and defend title to the Premises against the lawful claims of all persons whomsoever.

BORROWER COVENANTS with Trustee and Lender (and their respective heirs, successors and assigns) as follows:

1. **Note Payments.** Borrower shall make timely payments of principal and interest on the Note in the amounts, in the manner and at the place set forth therein. This Deed of Trust secures payment of the Note according to its terms, which are incorporated herein by reference.

2. **Taxes.** Borrower shall pay all taxes, charges and assessments which may become a lien upon the Premises hereby conveyed before any penalty or interest accrues thereon and shall

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promptly deliver to Lender official receipts evidencing payment thereof.

3. **Insurance.** Unless waived in writing by Lender, Borrower shall continually maintain insurance against loss by fire, with special causes of loss, and such other hazards as Lender may require in such a manner and in such companies as Lender may from time to time require on the improvements now or hereafter located on the Premises and shall promptly pay all premiums, therefor, when due. All insurance policies and renewals thereof shall be held by Lender and have attached thereto a loss payable clause in favor of and in a form acceptable to Lender, and provide that no such policy can be canceled without ten days prior notice to Lender. In the event of loss Borrower shall give immediate notice by mail to Lender, who may make proof of loss. Each insurance company is hereby directed to make payment for such loss directly to Lender (instead of to Borrower and Lender jointly), and the insurance proceeds or any part thereof: (a) shall at Borrower's request, and provided no default shall then exist, be made available to Borrower for the repair and restoration of the Premises (the "Restoration"); and (b) in the event a default shall then exist, at Lender's sole option, applied to the debt hereby secured or for the Restoration. If the insurance proceeds are applied to the debt, it may be applied upon the portion last falling due or in such other manner as Lender may desire. In the event of foreclosure of this Deed of Trust or other transfer of title to the Premises in extinguishment of the indebtedness secured hereby, all right, title and interest of Lender in any such insurance policies then in force shall pass to the grantee.

4. **Escrow Deposits.** After an event of default, upon demand of Lender, Borrower shall add to each monthly or other periodic payment required under the Note secured hereby the amount estimated by Lender to be sufficient to enable Lender to pay, as they come due, all taxes, charges, assessments, and insurance premiums (the "Impositions") which Borrower is required to pay hereunder. Any deficiency occasioned by an insufficiency of such additional payments shall be forthwith deposited by Borrower with Lender upon demand; provided, however, so long as Borrower pays such Impositions in a timely manner, no demand shall be made pursuant to this paragraph.

5. **Repairs.** Borrower will keep the Premises in good order and repair (reasonable wear and tear excepted) and will not commit or permit any waste or other loss whereby the value of the Premises might be impaired.

6. **Compliance with Laws.** Borrower shall promptly comply with any applicable legal requirements of the State of North Carolina or other governmental entity, agency or instrumentality relating to the use or condition of the Premises.

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7. **Condemnation Award.** Any award for the taking of, or damages to, all or any part of the Premises or any interest therein upon the lawful exercise of power of eminent domain shall be payable to Lender who may apply the sums so received to the portion of the debt hereby secured last falling due or in such other manner as Lender may desire, subject to applicable law.

8. **Payments by Lender.** If Borrower shall be in default in the timely payment or performance of any obligation under this Deed of Trust, the Loan Commitment or the Note, Lender, at its option may pay the sums for which Borrower is obligated. Further, Lender, at its option, may advance, pay or expend such sums as may be proper and necessary for the protection of the Premises and the maintenance of this trust including but not limited to sums to satisfy taxes or other levies, and assessments and/or liens, to maintain insurance (including title insurance), to make repairs and to provide security guards. Any amounts so advanced, paid or expended shall be deemed principal advances secured by this Deed of Trust (even though when added to other advances the sum thereof may exceed the face amount of the Note), shall bear interest from the time advanced, paid or expended at the rate prescribed in the Note and be secured by this Deed of Trust and its payment enforced as if it were a part of the original debt. Any sum expended, paid or advanced under this paragraph shall be at Lender's sole option and shall not constitute a waiver of any default or right arising from the breach by Borrower of any covenant or agreement contained herein or in the Note or Loan Commitment.

9. **Rents and Profits.** Borrower hereby assigns to Lender all rents and profits from the Premises as additional security for the payment of the indebtedness hereby secured and full performance of the undertakings of Borrower hereunder. Lender is given a prior and continuing lien thereon, and Borrower hereby appoints Lender his attorney to collect such rents and profits with or without suit and apply the same (less expenses of collection) to the indebtedness secured hereby and the performance of the undertakings provided herein in such manner as Lender may desire. However, until default hereunder or under the Note, Borrower may continue to collect and enjoy such rents and profits without accountability to Lender. This assignment shall be irrevocable and shall be in addition to other remedies herein provided for in event of default and may be put into effect independently of or concurrently with any of said remedies.

10. **Borrower's Continuing Obligation.** As provided in the Note, the Borrower's obligation to pay principal and interest and to perform the other terms hereof is nonrecourse and Lender's remedies are limited solely to the security for the indebtedness under the Note. However, at the option of Lender, Borrower shall remain liable to the extent limited herein and in the Note for all obligations evidenced by the Note (or any advancement or obligation), notwithstanding any of the following:

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(a) The sale of all or a part of the Premises other than a Qualified Transfer as defined in the Note;

(b) the assumption by another party of the Borrower's obligations hereunder other than in connection with a Qualified Transfer;

(c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Borrower or a subsequent owner of the Premises; and

(d) the release of all or any part of the Premises securing said obligations or the release of any party who assumes payment of the same.

None of the foregoing shall in any way affect the full force and effect of the lien of this Deed of Trust or impair Lender's right to a judgment (in the event of foreclosure) against Borrower or any party assuming the obligations hereunder, to the extent of the obligations evidenced by the Note as limited therein.

11. **Substitute Trustees.** Lender shall have the unqualified right to remove the Trustee and to appoint one or more substitute or successor trustees by instruments filed for registration in the Office of the Register of Deeds where this Deed of Trust is recorded. Any such removal or appointment may be made at any time without notice, without specifying any reason therefor and without any court approval. Any such appointee shall become vested with title to the Premises and with all rights, powers and duties conferred upon the Trustee herein in the same manner and to the same effect as though he were named herein as the original Trustee.

12. **Late Charge.** None.

13. **Attorney's Fees.** In the event that Borrower shall default in its obligations hereunder and in the opinion of Lender it becomes necessary or proper to employ an attorney to assist in the enforcement of collection of the indebtedness owed by Borrower to Lender or to enforce compliance by Borrower with any of the provisions of the Loan Commitment, the Note, or those herein contained, or in the event the Lender or the Trustee voluntarily or otherwise shall become a party or parties to any suit or legal proceeding (including a proceeding conducted under the Bankruptcy Act) to protect the Premises herein conveyed, to protect the lien of this Deed of Trust, to enforce collection of the indebtedness owed by Borrower to Lender, or to enforce compliance by Borrower with any of the provisions of the Loan Commitment, the Note, or those herein contained, Borrower agrees to pay a reasonable attorney's fee at the attorney's normal hourly rate and all of the costs that may reasonably be incurred and such fees and costs shall be secured by this Deed of Trust and its payment enforced as if it were a part of the original debt. Borrower shall be liable for

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such reasonable attorney's fees and costs whether or not any suit or proceeding is commenced.

14. **Anti-Marshalling Provision.** The right is hereby given by Borrower to Trustee and Lender to make partial releases or releases of security hereunder (whether or not such releases are required by agreement among the parties) agreeable to Trustee and Lender without notice to, or the consent, approval or agreement of other parties and interests, including junior lienors and purchasers subject to this lien, which partial release or releases shall not impair in any manner the validity of or priority of this Deed of Trust on the Premises remaining hereunder, nor release Borrower from liability for the indebtedness hereby secured. Notwithstanding the existence of any other security interests in the Premises held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Premises shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower and any party who consents to this who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

15. **Sale by Parcels.** Pursuant to the provisions of North Carolina General Statute 45-21.8, the Trustee or Trustees are hereby empowered to sell any parcel of the real property described herein whether or not, in the judgment of the Trustee or Trustees, the proceeds of the parcel sold will be sufficient to satisfy the indebtedness secured hereby, and this provision shall govern the sale or sales of the parcels of real property herein described.

16. **Notice to Borrower and Trustee.** All notices required to be given to Borrower including the notice required to be served by North Carolina General Statute 45-21.16 shall be mailed to Borrower and Trustee at the addresses set out on Page 1.

17. **Notice to Lender and Trustee.** All notices required to be given to Lender by Borrower or by an intervening lienor or encumbrancer pursuant to North Carolina General Statute 45-70(b) shall be mailed to Lender and Trustee at the addresses set out on Page 1.

18. **Additional Financing Prohibited.** Borrower may not pledge or encumber the Premises herein conveyed without first obtaining Lender's written consent. Lender hereby consents to a loan from Central Carolina Bank and Trust Company in an amount not to exceed \$952,000.00 secured by a deed of trust, the lien of which the lien of this deed of trust is subject (the "First Deed of Trust") and provided no default then exists, Lender agrees to subordinate the

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lien of this Deed of Trust to the lien of deed(s) of trust securing replacement financing up to \$952,000.00.

19. **Transfer of Premises.** If all or any part of the Premises or an interest therein is sold or transferred by Borrower (other than a Qualified Transfer as defined in the Note) without Lender's prior written consent, Lender may, at Lender's option, declare all sums secured by this Deed of Trust to be immediately due and payable.

20. **Uniform Commercial Code Security Agreement.** This Deed of Trust is intended to be a security agreement with respect to items referred to herein which may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants Lender a security interest in said items. Borrower agrees that Lender may file this Deed of Trust as a financing statement, or at Borrower's request agrees to execute such financing statements, extensions or amendments as Lender may require to perfect a security interest with respect to said items. In the event of default, Lender shall have, in addition to its other remedies, all rights and remedies provided for in the Uniform Commercial Code as enacted in North Carolina.

21. **Acceleration in Case of Borrower's Insolvency.** If Borrower shall voluntarily file a petition under the Federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar or successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower, or if Borrower shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Borrower or Borrower's property, or if the property shall become subject to the jurisdiction of a Federal bankruptcy court or similar State court or if Borrower shall make an assignment for the benefit of Borrower's creditors, or if there is an attachment, execution of other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within ten days, then Lender may, at Lender's option, declare all of the sums secured by this instrument to be immediately due and payable without prior notice to Borrower. Any attorney's fees and other expenses incurred by Lender in connection with Borrower's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Borrower secured by this Deed of Trust pursuant to paragraph 13 hereof.

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22. **Events of Default.** Any of the following shall constitute an "Event of Default" hereunder:

(a) the failure to make when due any payment described herein, whether of principal or interest under the Note, or otherwise;

(b) the failure of Borrower to perform any of the terms and conditions of the Note, Deed of Trust, Loan Commitment or any other document evidencing or securing the Loan;

(c) the death, dissolution, merger, consolidation or termination of existence of Borrower or any guarantor hereof;

(d) the application for the appointment of a receiver for any party hereto or the filing of a petition under any provisions of the Bankruptcy Code or Act by or against any party hereto, or any assignment for the benefit of creditors by or against any party hereto;

(e) the failure of any party to furnish from time to time, at Lender's request, financial information with respect to such party; or

(f) the failure of any party hereto to perform any other obligation to Lender provided herein, in the Note or any other document or instrument evidencing or securing the Loan.

Upon any default in the payment of any installment of interest, principal, or any other sum when due under the Note, the entire principal sum evidenced by the Note and accrued but unpaid interest hereon may, at the sole option of Lender, be declared at once due and payable, time being of the essence of this obligation. Failure of Lender to exercise this option in the event of any such default or Event of Default shall not constitute a waiver of the right of Lender to exercise the same in the event of a subsequent default or Event of Default.

Notwithstanding any provision in this Deed of Trust or the Note secured hereby to the contrary, Borrower shall not be deemed in default until the elapse of five (5) days after notice to Borrower by Lender with respect to the payment of money or until the elapse of ninety (90) days after the notice to Borrower by Lender with respect to any other obligation.

23. **Use of Premises.** Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Premises was intended at the time this Deed of Trust was executed. Borrower shall not initiate or acquiesce in a change in the zoning

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classification of the Premises without Lender's prior written consent.

24. **Books and Records.** Borrower shall keep and maintain at all times at Borrower's address stated above at the location of the security property, or such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly Borrower's financial condition and copies of all the written contracts, leases and other instruments which may affect the Premises. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender. Upon Lender's request, Borrower shall furnish to Lender within 120 days after the end of each fiscal year of Borrower, a balance sheet, a statement of income and expenses and a statement of changes in financial position, each in reasonable detail and certified by Borrower and, if Lender shall require, by an independent certified public accountant.

25. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspection of the Premises, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Premises.

26. **Application of Payments.** All payments and other sums of money received by Lender shall be applied by Lender first to amounts due Lender pursuant to paragraph 8 hereof, then to interest payable of the Note, then to the principal of the Note.

27. **Environmental Issues.** Borrower for itself, its successors and assigns represents, warrants and agrees that to the best of Borrower's knowledge: (a) neither Borrower nor any other person has, in violation of any Environmental Law, used or installed any Hazardous Material (as hereinafter defined) on the Premises or received any notice from any governmental agency, entity or other person with regard to Hazardous Materials on, from or affecting the Premises; (b) neither Borrower nor any other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Premises in violation of applicable law, and (c) the Premises are presently in compliance with all Environmental Laws; there are no circumstances presently existing upon or under the Premises, or relating to the Premises which may violate any applicable Environmental Laws, and there is not now pending, or threatened, any action, suit, investigation or proceeding against Borrower relating to the Premises (or against any other party relating to the Premises) seeking to enforce any right or remedy under any of the Environmental Laws. Borrower for itself, its successors and assigns further represents, warrants and agrees that (a) the Premises shall be kept free of Hazardous Materials except as may be used for cleaning purposes or in the ordinary course of Borrower's business in compliance with all applicable Environmental

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Laws, and shall not be used to generate, manufacture, transport, treat, dispose or process Hazardous Materials; (b) Borrower shall not cause nor permit the installation of Hazardous Materials in the Premises nor a release of Hazardous Materials on the Premises; (c) Borrower shall at all times comply with and ensure compliance by all other parties with all applicable Environmental Laws relating to or affecting the Premises and shall keep the Premises free and clear of any liens imposed pursuant to any applicable Environmental Laws; (d) the Borrower has obtained and will at all times continue to obtain and/or maintain all licenses, permits, and/or other governmental or regulatory actions necessary to comply with Environmental Laws (the "Permits") and Borrower is in full compliance with the terms and provisions of the Permits and will continue to comply with the terms and provisions of the Permits; and (e) Borrower shall immediately give the Lender oral and written notice in the event that Borrower receives any notice from any governmental agency, entity, or any other party with regard to Hazardous Materials on, from or affecting the Premises and shall conduct and complete all investigations, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Premises in accordance with all applicable Environmental Laws. Borrower hereby agrees to indemnify the Lender and hold the Lender harmless from and against any and all losses, liabilities, damages, injuries (including, without limitation, attorneys' fees) and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Lender for, with respect to, or as a direct or indirect result of (a) the presence on or under, or the escape, spillage, emission or release from, the Premises prior to the cancellation of this Deed of Trust of any Hazardous Material regardless of whether or not caused by or within the control of Borrower, (b) the violation of any Environmental Laws prior to the cancellation of this Deed of Trust relating to or affecting the Premises, whether or not caused by or within the control of Borrower, (c) the failure by Borrower to comply fully with the terms and provisions of this paragraph, or (d) any warranty or representation made by Borrower in this paragraph 27 being false or untrue in any material respect. For purposes of this Deed of Trust, "Hazardous Material" means and includes petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, substance or material defined as such in (or for the purpose of) the Environmental Laws. For the purposes of this Deed of Trust, "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any "Superfund" or "Superlien" law, or any other federal, state, or local law, regulation or decree regulating, relating to or imposing liability or standards of conduct concerning any petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or hazardous, toxic or dangerous waste, substance or

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material, as may now or at any time hereafter be in effect. The obligations and liabilities of Borrower under this paragraph shall survive the foreclosure of the Deed of Trust, the delivery of a deed in lieu of foreclosure, the cancellation of the Note, or if otherwise expressly permitted in writing by the Lender, the sale or alienation of any part of the Premises.

28. **Appointment of a Receiver.** After an event of default, Lender shall have the absolute and unconditional right to apply for and to obtain the appointment of a receiver or similar official for all or a portion of the Premises, to among other things, manage and operate the Premises, or any part thereof, and to apply the net rents, issues, and profits therefrom to the payment of interest and principal of the Note and any other obligations of Borrower to Lender hereunder. In the event of such application, Borrower consents to the appointment of such receiver or similar official and agrees that such receiver or similar official may be appointed without notice to Borrower, without regard to the adequacy of any security for the debt and without regard to the solvency of Borrower or any other person, firm or corporation who or which may be liable for the payment of the Note or any other obligation of Borrower hereunder.

29. **Statute Inapplicable.** The provisions of N.C. Gen. Stat. Sec. 45-45.1 or any similar statute hereafter enacted in replacement or substitution thereof shall be inapplicable to this Deed of Trust.

30. **Definitions.** As used herein the terms "Borrower", "Trustee", "Lender" and other terms shall refer to the singular, plural, neuter, masculine and feminine as the context may require and shall include, be binding upon and inure to the benefit of their respective heirs, successors, legal representatives and assigns.

BUT THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST: If the total amount of the debt, interest, advances and other sums secured hereby are paid in full in accordance with the terms of the Note and this Deed of Trust, this conveyance shall be null and void and may be canceled of record at the request and cost of Borrower. If, however, there shall be a default in any of the terms and conditions of this Deed of Trust, the Loan Commitment, or under the Note or any advance secured hereby, all sums owing to Lender thereunder regardless of maturity and without notice shall immediately become due and payable at the option of Lender; and, on application of Lender, Trustee shall foreclose this Deed of Trust by judicial proceedings or, at Lender's election, Trustee shall sell (and is hereby empowered to sell) the Premises at public sale to the last and highest bidder for cash (free of any equity of redemption, homestead, dower, curtesy or other exemption, all of which are expressly waived by Borrower) after compliance with

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applicable North Carolina laws relating to foreclosure sales under power of sale and shall execute a conveyance in fee simple to the successful purchaser at said sale. The proceeds of any such sale shall be applied in the manner and in the order prescribed by applicable North Carolina laws, it being agreed that the expenses of any such sale shall include a commission of five percent of the gross sales price to Trustee for making such sale and for all services performed by him hereunder. Lender may bid and become the purchaser at any sale under this Deed of Trust. At any such sale Trustee may at its election require the successful bidder immediately to deposit with Trustee cash or certified check in an amount equal to all or any part of the successful bid, and notice of any such requirement need not be included in the advertisement of the notice of such sale.

IN WITNESS WHEREOF, this Deed of Trust has been duly signed, sealed and delivered by Borrower the day and year first above written.

DOBBINS HILL APARTMENTS LIMITED PARTNERSHIP,
a North Carolina limited partnership (SEAL)

By: DHA, INC., General Partner

By: Justin F. Little
Justin F. Little Vice President

ATTEST:

Melanie Mestalski
ASST. Secretary

(corporate seal)

STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg

THIS 28th day of June, 1995, personally came before me, a Notary Public in and for the said County and State, Justin F. Little, who, being by me duly sworn, says that he is the Vice President of DHA, INC., a North Carolina corporation, general partner of Dobbins Hill Apartments Limited Partnership, a North Carolina 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 Vice President acknowledged the said writing to be the act and deed of said corporation in its

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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 28th day of June, 1995.

Phyllis Dale Bowen

Notary Public

My Commission Expires: My Commission Expires October 4, 1999.

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EXHIBIT A

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

BEING all of that 7.36 acre tract shown as Lot 1 on map entitled HESTER AND GARRARD PROPERTY, recorded in Plat Book 70 at Page 70 in the Orange County Public Registry.

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EXHIBIT B**DOBBINS HILL APARTMENTS LIMITED PARTNERSHIP
PERMITTED EXCEPTIONS**

1. Taxes for the year 1995, and subsequent years, not yet due and payable.
2. Rights of Way to Duke Power Company recorded in Book 237 Page 632 and Book 1261 Page 104, Orange County Public Registry.
3. Subject property annexed to Town of Chapel Hill by ordinance recorded in Book 602 Page 566, aforesaid Public Registry.
4. Special Use Permit issued by Town of Chapel Hill, recorded in Book 1994 Page 113, aforesaid Public Registry.
5. Plat entitled "Right of Way and Easement Dedication Plat - Dobbins Hill", recorded in Plat Book 71 Page 28, aforesaid Public Registry.
6. Plat entitled "Right of Way Easement Amendment Plat - Dobbins Hill", recorded in Plat Book 72 Page 96, aforesaid Public Registry.
7. Deeds of Easement to Orange Water and Sewer Authority in Book 1299 at Pages 333 and 340, aforesaid Public Registry.
8. Declaration of Land Use Restrictive Covenants in Book 1315 Page 70, recorded in Book 1318 Page 227 and Declaration of Deed Restrictions between Dobbins Hill Apartments Limited Partnership and North Carolina Housing Finance Agency recorded immediately prior hereto, aforesaid Public Resigtry.
9. Deed of Trust in favor of Central Carolina Bank and Trust Company recorded in Book 1332 Page 271, aforesaid Public Registry and UCC-1 Financing Statement in favor of Central Carolina Bank and Trust Company bearing File No. 95/319.