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WAKE COUNTY, NC 132
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
07/12/2005 AT 10:58:15

BOOK:011462 PAGE:01761 - 01769

Prepared by and mail after recording to:
Susan Ellinger
Nelson Mullins Riley & Scarborough, L.L.P.
GlenLake One, Suite 200
4140 Parklake Avenue
Raleigh, NC 27612

The collateral includes fixtures.

COUNTY DEED OF TRUST, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND PROFITS

(Real Property, Improvements and Other Property)

THIS COUNTY DEED OF TRUST (the "County Deed of Trust") made this 1st day of July, 2005, by and between **PASSAGE HOME, INC.**, a North Carolina non-profit corporation (hereinafter referred to as "Borrower") and **SUSAN Y. ELLINGER** (hereinafter "Trustee") and the owner and holder of a promissory note, the **COUNTY OF WAKE, NORTH CAROLINA**, a body corporate and politic (hereinafter "County");

WHEREAS, Borrower is indebted to County for money advanced and/or to be advanced pursuant to a Loan Agreement of even date between Borrower and Lender (hereinafter called the "County Loan Agreement"), as evidenced by that certain promissory note of even date by Borrower in the principal amount of **Six Hundred Fifty Seven Thousand Seven Hundred Sixty-Six and No/100 Dollars (\$657,766.00)** bearing interest and being payable as set forth therein (hereinafter called the "County Note");

WHEREAS, to induce County to make said loan, Borrower agreed to execute this County Deed of Trust as security for the full and punctual payment of said County Note and of the indebtedness evidenced thereby and the interest thereon, and of any renewal, refinancing, extension, amendment, replacement or substitution of said County Note, and the full performance of all the provisions, agreements and covenants therein and herein contained and contained in the County Loan Documents;

WHEREAS, this County Deed of Trust is given to secure present and/or future obligations of the Borrower as more particularly described below;

NOW, THEREFORE, in consideration of the debt and trust herein mentioned and created and in further consideration of the sum of One Dollar (\$1.00) paid by the Trustee to Borrower, receipt of which is hereby acknowledged, the Borrower has granted, bargained, sold, assigned, and conveyed and does by these presents grant, bargain, sell, assign, and convey unto the said Trustee, his heirs, successors and assigns, with power of sale, Interest, Improvements, Fixtures and Personality and Other Rights and Property (all of which are hereinafter sometimes referred to collectively as the "Premises"), more particularly described as follows:

1. all that certain parcel of land more particularly described within Exhibit A hereto, together with any and all privileges and appurtenances thereto (the "Land");

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2. all buildings, structures and other improvements of every nature whatsoever now or hereafter situated on the Land (the "Improvements"); and

3. all fixtures, equipment, general intangibles, inventory and personal property of every kind and nature whatsoever, now or hereafter owned by Borrower and/or located in, on, about or attached to the Improvements or used or intended to be used with or in connection with the construction, use, operation, maintenance or enjoyment of the Improvements or relating or appertaining thereto, and all extensions, additions, improvements, betterments, renewals, replacements or proceeds (including, but not limited to, insurance and condemnation proceeds) of the foregoing, including, but not limited to, all goods, furniture, appliances, furnishings, apparatus, machinery, equipment, motors, fittings, ranges, refrigerators, awnings, shades, screens, blinds, carpeting, office equipment and other furnishings and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment, telephone systems, television and television systems, computer systems and appurtenances thereto and all renewals or replacements thereof or articles in substitution thereof, all of which are hereby declared and shall be deemed to be accessions and a part of the Improvements as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein mentioned and to be covered by this County Deed of Trust (the "Fixtures and Personalty"); and

4. all articles of personal property (including software embedded therein) now owned or hereafter acquired by Borrower and attached to, placed upon for an indefinite term, or used in connection with the Land and/or Improvements, together with all goods and other property that are, or at any time become, so related to the Property that an interest in them arises under real estate law, or they are otherwise adjudged to be a "fixture" under applicable law (each a "Fixture," collectively "Fixtures");

5. all easements, rights-of-way, gores of land, utility vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating to or appertaining to the Premises, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Borrower, and the reversion and reversions, remainder and remainders, and all Reserves, rents, issues, profits, revenues thereof (including, but not limited to, all condemnation payments, insurance proceeds, payments under leases and tenancies, sale proceeds, purchase deposits, tenant security deposits and escrow funds), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Borrower of, in and to the same (the "Other Rights and Property").

TO HAVE AND TO HOLD, the Premises, with all rights, privileges and appurtenances thereunto belonging to Trustee, upon the Trusts and for the uses and purposes hereinafter set out.

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

1. **County Note Payments.** Borrower shall make timely payments of principal and interest, if any, on the above-mentioned County Note in the amounts, in the manner, and at the place set forth therein. This County Deed of Trust secures payment of said County Note as well as any amounts advanced or paid by the County pursuant to any of the County Loan Documents, according to the terms of each, each of which are incorporated herein by reference.

2. **Taxes and Charges.** 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 promptly deliver to County official receipts evidencing payment thereof. Borrower shall pay all recording fees, filing fees and documentary stamp taxes associated with the recording of this County Deed of Trust and any modifications, extensions or amendments thereto.

3. **Insurance.** Borrower shall continually maintain insurance against loss by fire, hazards included in the term "extended coverage" and such other hazards including flood as County may require in such a manner and in such companies as County may from time to time require on the improvements now or hereafter located on the Premises and shall promptly pay all premiums, therefore, when due.

4. **Care of Premises.** Borrower will keep the Premises in good order and repair and will not commit or permit any waste, deterioration, impairment or any other thing whereby the value of the Premises might be impaired. Borrower will not remove or demolish any building or materially alter any part or all of the Premises without the written consent of County.

5. **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.

6. **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 County who, after deducting its expenses, including attorney's fees, may apply the sums so received to the portion of the County Note hereby secured last falling due or in such other manner as County may desire. Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as County may require.

7. **Payments by County.** If Borrower shall be in default in the timely payment or performance of any obligation under this County Deed of Trust or the County Note or any of the County Loan Documents hereby secured, County, at its option and without any obligation on its part to determine the validity or necessity thereof, may pay the sums for which Borrower is obligated. Further, County, 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, liens, and/or encumbrances, to maintain insurance (including title insurance), to make repairs, to provide security guards, or to intervene in any condemnation proceedings or foreclosures or other proceedings or disputes affecting the Premises or as may otherwise be permitted by any of the County Loan Documents. Any amounts so advanced, paid or expended shall be deemed principal advances secured by this County Deed of Trust (even though when added to other advances the sum thereof may exceed the face amount of the County Note), shall bear interest from the time advanced, paid or expended at the rate prescribed in the County Note secured hereby and be secured by this County Deed of Trust and its payment enforced as if it were part of the original debt. Any sum expended, paid or advanced under this paragraph shall be at County'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 County Note or any of the County Loan Documents.

8. **Rents and Profits.** Borrower hereby assigns to County all leases, income, rents, issues and profits, including tenant security deposits (whether held by Borrower or others or in a trust account), from the Premises as additional security for the payment of the indebtedness hereby secured and full performance of the undertakings of the Borrower hereunder. County is given a prior and continuing lien thereon, and Borrower hereby appoints County as its attorney-in-fact to collect such rents and profits with or without suit and apply the same (less expenses of collection) to said indebtedness and the performance of said undertakings in such manner as County may desire. However, until default hereunder or under the County Note or any of the County Loan Documents secured hereby, Borrower may continue to collect and enjoy such rents and profits without accountability to County, except as provided in the County Loan Agreement, the County Note and in the other County Loan Documents. 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 by County independently of or concurrently with any of said remedies.

9. **Substitute Trustees.** County 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 County Deed of Trust is recorded. Any such removal or appointment may be made 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. The necessity of the Trustee herein named, or any successor in trust, making oath or giving bond is expressly waived.

10. **Attorneys' Fees.** In the event that Borrower shall default in its obligations hereunder and in the opinion of Trustee it becomes necessary or proper to employ an attorney to enforce compliance by Borrower with any of the provisions herein contained, or in the event the Trustee voluntarily or otherwise shall become a party to any suit or legal proceeding (including a proceeding conducted under the Bankruptcy Code) to protect the Premises herein conveyed or to protect the lien of the County Deed of Trust, Borrower agrees to pay reasonable attorney's fees and all of the costs that may reasonably be incurred and such fees and costs shall be secured by this County Deed of Trust and its payment enforced as if it were a part of the County Note. Borrower shall be liable for such reasonable attorney's fees and costs of Trustee whether or not any suit or proceeding is commenced.

11. **Anti-Marshalling Provision.** The right is hereby given by Borrower to Trustee and County to make a partial release or releases of security hereunder provided Borrower is not in default under the County Note or other County Loan Documents, (whether or not such releases are required by agreement among the parties) agreeable to Trustee and County without notice to, or the consent, approval or agreement of other parties in interest, 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 County Deed of Trust on the Premises remaining hereunder. Notwithstanding the existence of any other security interests in the Premises held by County or by any other party, County shall have the right to determine the order in which any or all of the Premises shall be subjected to the remedies provided herein. County 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, any party who consents to this or who has actual or

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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.

12. **Notice to Borrower.** All notices required to be given to Borrower shall be mailed or delivered to Borrower at the address stated herein or such other address as given in writing to County.

13. **Notice to County.** All notices required to be given to County by Borrower or any intervening lienor or encumbrancer shall be mailed or delivered to County, at the address stated herein or at such other address given to Borrower in writing.

14. **Transfer of Premises.** If all or any part of the Premises or any interest therein is sold, leased or otherwise transferred by deed, land sales contract or any other means including the execution or enforcement of any lien, security interest or other right whether subordinate, superior or equal to this County Deed of Trust, without County's prior written consent, County may, at County's option, declare all sums secured by this County Deed of Trust to be immediately due and payable.

15. **Uniform Commercial Code Security Agreement.** This County Deed of Trust constitutes a security agreement with respect to property referred to herein which may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants County a security interest in said property (and the proceeds thereof) included in the Premises which might be deemed "personal property". If there is any conflict between this security agreement and another security agreement to County, this security agreement will control as to fixtures and the other security agreement(s) will control as to non-fixtures. Borrower agrees that this County Deed of Trust is a financing statement filed as a fixture filing for the goods described herein which are or are to become fixtures. At County's request, Borrower agrees to execute such other financing statements, extensions or amendments or other security agreements as County may require to perfect a security interest with respect to the Premises or other property. In the event of default, County shall have, in addition to its other remedies, all rights and remedies provided for in the Uniform Commercial Code as enacted in North Carolina.

16. **Appointment of Receiver.** County may immediately, after any default, under the terms and conditions of the County Deed of Trust, apply for the appointment of a Receiver of the rents, income and profits from said premises, without notice, and County shall be entitled to the appointment of such Receiver as a matter of right, without consideration to the value of the mortgage premises as security for the amounts due or the solvency of any person or persons liable for the payment of such amounts.

17. **Use of Premises.** Unless required by applicable law or unless County has otherwise agreed in writing, Borrower shall not allow changes in the designated use of the Premises as disclosed to County at the time of the Loan. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Premises without County's prior written consent.

18. **Books and Records.** Borrower shall keep and maintain at all times at Borrower's address as set forth herein, or such other place as County 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, rent schedules 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 County. Upon County's request, Borrower shall furnish to County 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 County shall require, by an independent certified public accountant. Additionally, quarterly internally prepared financial statements are required within 45 days of each quarter end from Borrower. If Borrower is an individual, Borrower shall furnish such financial information as County may request in a form satisfactory to County.

19. **Inspection.** County may make or cause to be made reasonable entries upon and inspection of the Premises and Borrower agrees to pay all costs incurred by County in said inspection.

20. **Definitions.** The term "Borrower", as used herein, shall include all parties hereinabove named as Borrower, his heirs, legal representatives, successors and assigns, and subsequent owners of the Premises hereby conveyed; the term "County", as used herein, shall include any lawful owner or holder of the indebtedness secured hereby; the term "Trustee" shall include any subsequent or successor trustee or trustees hereunder; any other capitalized terms herein shall have the same meaning as set forth in the County Loan Agreement unless the context clearly implies otherwise; the singular as used herein shall include the plural; and the use of one gender shall include all genders.

21. **Remedies.** All remedies provided in this County Deed of Trust to County are cumulative to any other right or remedy under this County Deed of Trust or, the County Loan Agreement or afforded by law or equity, and may be exercised concurrently, independently or successively and any costs, expenses or monetary rights (including rights of the County to attorneys'

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fees) associated with the exercise of such remedy or remedies shall be secured by this County Deed of Trust in addition to all other obligations herein provided for.

It is expressly understood and agreed that any limitation on liability shall in no way affect or apply to the Borrower's continued liability for the payment to County of condemnation proceeds or hazard insurance proceeds which the Borrower may receive and to which the County is entitled pursuant to the terms of this County Deed of Trust, the County Security Agreement, the Intercreditor and Standstill Agreement and any other County Loan Documents, and that the foregoing limitation shall not apply to any indemnities or guaranties, if any, which are delivered by the Borrower.

It is specifically understood and agreed that the Department of Community Development and all other departments and divisions of the County of Wake, in the exercise of their governmental and police powers or by separate agreement or contract, may require or contract for actions, approvals or consents which are in addition to those provided herein, and that any such other contracts or agreements as well as the exercise of governmental and police powers, to the extent otherwise valid, are not hereby limited in any respect.

No agreement herein made by or on behalf of the County shall reduce or alter any requirement that the Borrower comply with any other contracts or agreements to which Borrower is a party or with any and all rules, regulations or laws of the County of Wake to the same extent as if the loan hereby made were made by a lender other than the County of Wake.

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 above-mentioned County Note and each of the County Loan Documents and this County Deed of Trust, this conveyance shall be null and void and may be canceled of record at the request and cost of the Borrower and title shall revert as provided by law. If, however, there shall be a default in any of the terms and conditions of this County Deed of Trust, the County Note, County Loan Agreement, the Intercreditor and Standstill Agreement, any of the County Loan Documents, any other instrument securing the County Note or any advance secured hereby, all sums owing to County thereunder regardless of maturity and without notice shall immediately become due and payable at the option of County; and, on application of County, Trustee shall foreclose this County Deed of Trust by Judicial Proceedings or at County'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 applicable North Carolina laws relating to foreclosure sales under power of sale and shall execute a conveyance to the successful purchaser at said sale. 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 Premises, whether or not, in the judgment of the Trustee or Trustees, the proceeds of the parcel sold will be sufficient to satisfy the County Note and any and all other obligations of Borrower to County secured hereby, and this provision shall govern the sale or sales of the parcels of Premises. The proceeds of the Sale shall after the Trustee retains his commission, together with reasonable attorneys fees incurred by the Trustee in such proceedings, 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 County according to the provisions hereof and otherwise as required by the then existing law relating to foreclosures. The Trustee's commission shall be one percent (1%) of the gross sales price or the minimum sum of \$5,000.00 whichever is greater, for a completed foreclosure. In the event foreclosure is commenced, but not completed, the Borrower shall pay all expenses incurred by Trustee, including reasonable attorneys fees, and a partial commission computed on five per cent (5%) of the outstanding indebtedness or the above stated minimum sum, whichever is greater, in accordance with the following schedule, to-wit: one-fourth (¼) thereof before the Trustee issues a notice of hearing on the right to foreclosure; one-half (½) thereof after issuance of said notice, three-fourths (¾) thereof after such hearing; and the greater of the full commission or minimum sum after the initial sale. County may bid and become the purchaser at any sale under this County 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.

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IN WITNESS WHEREOF, Borrower has caused this County Deed of Trust to be executed in its corporate name by its duly authorized officers and its seal to be hereunto affixed, the day and year first above written.

BORROWER:

PASSAGE HOME, INC.,
a North Carolina non-profit corporation (SEAL)

By: Jeanne Tedrow
Its Executive Director

Address for Borrower:

Passage Home, Inc.
P.O. Box 10347
Raleigh, NC 27605
Attn.: Jeanne Tedrow

Address for County:

County of Wake
P.O. Box 550
Raleigh, NC 27602
Attn: _____

NORTH CAROLINA
WAKE COUNTY

I, the undersigned, a Notary Public for the state and county aforesaid, certify that Jeanne C. Tedrow personally appeared before me this day and acknowledged that he is the Executive Director of Passage Home, Inc., a North Carolina non-profit corporation, and that he/she as Executive Director, by the authority duly given and as the act of the corporation, executed the foregoing on behalf of the corporation. Witness my hand and official stamp or seal this the 1st day of July, 2005.

My commission expires:
Jan. 8, 2006

Paula P. Smith
Notary Public

PAULA P. SMITH
Notary Public
WAKE COUNTY, N.C.
My Commission Expires _____

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EXHIBIT A

ALL THAT CERTAIN lot, piece or parcel of land lying and being in Wake County, City of Raleigh, North Carolina, known as "New Lot 2" Hollenden Place, containing 1.6230 acres, and is more particularly shown and described on subdivision map entitled "SUBDIVISION PLAT FOR HOLLENDEN PLACE LOTS 1 & 2", prepared by Bass, Nixon & Kenney, Inc. Consulting Engineers, dated April 26, 2005 and recorded in Book of Maps 2005, Page 1332, Wake County Registry.

Exhibit B

RESOLUTIONS
OF
BOARD OF DIRECTORS
OF
PASSAGE HOME, INC.

WHEREAS, Passage Home, Inc. (the "Corporation") entered into a Purchase and Sale Agreement to purchase the property and 24 unit apartment building located at 4801 Avenida Del Sol, Raleigh, North Carolina, further known as the Hollenden Place Apartments (the "Property"). In order to purchase the Property, the Corporation desires to enter into and accept loans with the NC Housing Finance Agency, Wake County, and the City of Raleigh (collectively, the "Lenders"), each of which public agency has provided \$657,766.00 fully deferred loans at 0% interest for thirty (30) years for the purpose of providing permanent affordable housing for families at and below 40% of the Wake County median family income (HUD standards) (collectively, the "Loans").

NOW, THEREFORE, BE IT RESOLVED, that Jeanne C. Tedrow, as Executive Director of the Corporation, be, and hereby is, authorized, directed and empowered in the name and on behalf of the Corporation, to do all acts necessary and to execute, perform and deliver to the all necessary documents, notes, mortgages, loan agreements, security agreements, UCC financing statements, indemnities, contracts, applications, assignments and any other instruments as may be necessary in connection with the acquisition of the Property and the closing of the Loans, the execution thereof to be conclusive evidence of such necessity, appropriateness or advisability; and

RESOLVED FURTHER, that all documents and acts in connection with the Loans and the purchase of the Property heretofore executed, performed and delivered for and on behalf of the Corporation are hereby ratified, adopted and confirmed.

The undersigned Secretary of the Corporation hereby certifies that the above resolutions were duly adopted by the Board of Directors of the Corporation on June 23, 2005, have not been amended or rescinded, and are in full force and effect as of June 23, 2005.

By: 

Lehn Cooke

Secretary

Passage Home, Inc.



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Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.



Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

North Carolina – Wake County

The foregoing certificate___ of Paula P. Smith

____ Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By: *Heather S. Gordon*
Assistant/Deputy Register of Deeds

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
9 # of Pages