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FOR REGISTRATION REGISTER OF DEEDS  
REBECCA T CHRISTIAN  
NEW HANOVER COUNTY NC  
2003 AUG 14 04 30 38 PM  
BK 3955 PG 964-972 FEE \$35 00  
NS \$25 00  
INSTRUMENT # 2003052455

Prepared by Mark Shelburne  
Mail after recording to NCHFA, Attn Rental Investment, PO Box 28066, Raleigh, NC 27611-8066

TC1593

DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR LOW-INCOME HOUSING TAX CREDITS

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW-INCOME HOUSING TAX CREDITS (the "AGREEMENT"), dated as of Apr. 11, 2003, by NEW DAWSON LIMITED PARTNERSHIP, and its successors and assigns (the "Owner") is given as a condition to the allocation of low-income housing credits by the North Carolina Federal Tax Reform Allocation Committee, an instrumentality of the State of North Carolina (together with any successor to its rights, duties and obligations, the "NCTRAC")

**WITNESSETH:**

WHEREAS, the Owner is the owner of a 100 unit rental housing development located on lands in the City of WILMINGTON, County of NEW HANOVER, State of North Carolina, more particularly described in Exhibit A attached hereto and incorporated herein by reference, known as or to be known as ROBERT S JERVAY PLACE (the "Project"), and

WHEREAS, NCTRAC has been designated by the State of North Carolina as the housing credit agency for the State of North Carolina for the allocation of low-income housing credits (the "Credit"), and

WHEREAS, Owner has applied to NCTRAC for an allocation of Credit to the Project in an annual amount not to exceed \$980,163 00 of low-income housing credits, and

WHEREAS, the Owner recognizes that it must covenant to maintain certain rent and income restrictions under Section 42 of the Code for the Extended Use Period as defined in the Code and has represented to NCTRAC in the Application that it will impose additional rent restrictions and/or will not apply for relief under Section 42(h)(6)(E)(i)(II) of the Code for a minimum period of fifteen (15) years after the close of the initial 15-year Compliance Period as defined in Section 42(i)(1) of the code, and

WHEREAS, Section 42 of the Code requires as a condition for allowance of the Credit that the Owner execute and deliver this Agreement and record this Agreement in the Office of the Register of Deeds of the county in which the Project is located in order to create certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the Code and the occupancy restrictions found in Sections 4 and 5 hereof by regulating and restricting the use, occupancy and transfer of the Project as set forth herein, and

WHEREAS, the Owner, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project for the term stated herein and binding upon all subsequent owners of the Project for such term, and are not merely personal covenants of the Owner

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner agrees as follows

**SECTION 1 - DEFINITIONS**

All words and phrases defined in the relevant Qualified Allocation Plan, Section 42 of the Code and all applicable rules, rulings, policies, proceedings, regulations, or other official statements promulgated or proposed by the United States Department of the Treasury, or the Internal Revenue Service, or the United States Department of Housing and Urban Development or the United States Department of Agriculture pertaining thereto shall have the same meanings in this Agreement

MTSG

## **SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND**

- (a) Upon execution, acknowledgement, and delivery by the Owner, the Owner shall cause this Agreement and all amendments hereto to be recorded and filed in the office of the Register of Deeds of the county in which the Project is located, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to NCTRAC a certified copy of the recorded Agreement showing the date, deed book and page numbers of record. The original recorded executed Agreement shall be transmitted to NCTRAC as soon as it is available from the Register of Deeds. The Owner agrees that NCTRAC will not issue the Internal Revenue Service Form(s) 8609 constituting final allocation of the Credit unless and until NCTRAC has received the recorded executed original of the Agreement. The owner will cause this Agreement to be recorded as provided hereunder by the end of the first taxable year in which Credits allocated to this Project are taken.
- (b) The Owner intends, declares and covenants, on behalf of itself and all future owners and operators of the Project during the term of this Agreement, that this Agreement and the covenants and restrictions set forth in this Agreement (i) shall be and are covenants running with the Project, encumbering the Project for the term of this Agreement, binding upon the Owner, the Owner's successors in title and all subsequent owners and operators of the Project, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner and its respective successors and assigns, and the benefits shall inure to NCTRAC and any former, present or prospective tenant of the Project during the term of this Agreement. The Owner hereby agrees that any and all requirements of the laws of the State of North Carolina to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the Project and which touch and concern the Project shall be deemed to be satisfied in full, that any requirements of privity of estate are intended to be satisfied, and that an equitable servitude in the form of a negative easement has been created to insure that these restrictions run with the land. For the longer of the period this Credit is claimed or the term of this Agreement, each and every contract, option, memorandum of option, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, option, memorandum of option, deed or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Agreement.
- (c) The Owner covenants to obtain the consent of any prior recorded lienholder on the Project to be bound by the terms of this Agreement, and such consent shall be a condition precedent to the issuance of Internal Revenue Service Form(s) 8609 constituting final allocation of the Credit.

## **SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER**

The Owner hereby represents, covenants and warrants as follows

- (a) The Owner (i) is duly organized under the laws of the State of North Carolina, and is qualified to transact business under the laws of North Carolina, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.
- (b) The execution and performance of this Agreement by the Owner (i) will not violate or, as applicable, have not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note, partnership agreement, operating agreement, corporate charter, corporate resolution, bylaws, or other instrument to which the Owner is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) The Owner will, at the time of execution, acknowledgement, and delivery of this Agreement, have good and marketable title to the Project free and clear of any lien or encumbrance (other than an encumbrance created pursuant to this Agreement, relating to any financing of the construction of the Project that by its terms will be cancelled within one year of the last building in the project being placed in service, or for which consent is obtained as provided under Section 2 (c) above).
- (d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now

contemplated by this Agreement) or would materially adversely affect its financial condition or which would impair the use of the Project as contemplated by this Agreement

- (e) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in Section 42 of the Code and applicable regulations
- (f) Each unit in the Project contains or will contain upon completion of construction, complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless) which are to be used on other than a transient basis
- (g) During the term of this Agreement, all units subject to the Credit shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in Section 42(g) (1) of the Code
- (h) The Owner agrees to comply fully with the requirements of federal, state and local laws and regulations, not limited to the Fair Housing Act as it may from time to time be amended
- (i) During the term of this Agreement, the Owner covenants, agrees and warrants that each low-income unit is and will remain suitable for occupancy
- (j) Subject to the requirements of Section 42 of the Code and this Agreement, the Owner may not sell, transfer or exchange the Project or any material portion at any time without the approval of NCTRAC. The Owner shall notify in writing and obtain and submit to NCTRAC the written agreement of any buyer or successor or other person acquiring the Project that such acquisition is subject to the requirements of this Agreement and to the requirements of Section 42 of the Code and applicable regulations. The Owner shall notify NCTRAC in writing at least 30 days in advance of any sale, transfer or exchange permitted under this agreement of the entire Project or any low-income portion of the Project. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project or any low-income portion of the Project, including, but not limited to, the restriction under Section 42(h)(6)(B) of the Code that no portion of any building in the Project may be sold, transferred or exchanged unless all of the building is sold, transferred or exchanged to the transferee. Within thirty (30) days of the closing of such sale, transfer or exchange, the Owner shall provide NCTRAC a complete copy of all the closing documents
- (k) The Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Agreement unless required by law
- (l) The Owner represents, warrants and agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or condemnation, and thereafter to operate the Project in accordance with the terms of this Agreement
- (m) The Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith
- (n) During the term of this Agreement, the Owner shall not refuse to lease any residential unit in the Project to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder
- (o) During the term of this agreement, the Owner will construct and maintain the unit amenities represented in the Application
- (p) During the term of this agreement, the Owner fulfill and abide by all representations made in the Application, including but not limited to the provision of on-site support services for the benefit of the low income tenants

#### SECTION 4 - INCOME RESTRICTIONS; RENTAL RESTRICTION

The Owner represents, warrants and covenants to NCTRAC throughout the term of this Agreement and in order to satisfy the requirements of the occupancy restrictions of Section 42 of the Code ("Section 42 Occupancy Restrictions") that

- (a)  At least 20 % or more of the residential units in the Project are both rent-restricted and occupied (or if unoccupied, held for occupancy only) by individuals whose income is 50% or less of area median gross income (subject to any exceptions permitted under Section 42 of the Code for tenants whose income increases after initially meeting such restriction)
- (b)  At least 40 % or more of the residential units in the Project are both rent-restricted and occupied (or if unoccupied, held for occupancy only) by individuals whose income is 60% or less of area median gross income (subject to any exceptions permitted under Section 42 of the Code for tenants whose income increases after initially meeting such restriction)

#### Projects with RPP funds must choose this set aside

- 40% of the qualified units are occupied by households with incomes less than 50% of median income. The remaining units must be occupied by households with incomes of less than 60% of median income
- (c) Except as may be otherwise provided under Section 42 of the Code or by the Internal Revenue Service, the determination of whether a tenant meets the low-income requirement shall be made by the Owner at least annually on the basis of the current income of such Low-Income Tenant
- (d) Except as may be permitted under Section 6 of this Agreement, the Owner will extend the tenant income and rental restrictions set forth in this Agreement for 15 years after the close of the "compliance period" as defined in Section 42 of the Code (the "Compliance Period")

#### SECTION 5 - NCTRAC OCCUPANCY RESTRICTIONS (this section shall not apply unless one or more of the blanks is (are) checked and information filed in)

**This Section is intended to enforce the deeper targeting covenants that the Owner represented to NCTRAC in its Application Part B (Minimum Set Asides to Receive Points).**

The Owner represents, warrants and covenants to NCTRAC throughout the term of this Agreement that Owner will satisfy NCTRAC occupancy restrictions (the "NCTRAC Occupancy Restrictions") that (Check all applicable items )

- (a)  40% of the units are rent restricted and occupied by households with less than 35% of median income adjusted for family size
- (b)  100% of the qualified units are rent restricted and affordable to households with incomes of less than 50% of median income adjusted for family size
- (c)  100% of the qualified units are rent restricted and occupied by households with incomes of less than 60% of median income adjusted for family size
- (d)  50% of the qualified units are rent restricted and affordable to by households with incomes less than 50% of median income. The remaining units must be rent restricted and occupied by households with incomes of less than 60% of median income
- (e) The applicable fraction for the project as defined in Section 42 (c) (1) for each taxable year of the Extended Use Period will be no less than 40%

Regardless of any provision in Section 6 of this Agreement to the contrary, the Section 42 Occupancy Restrictions and NCTRAC Occupancy Restrictions provided by this Section shall remain in place until the later of the end of the Restriction Period or the time otherwise applicable under Section 6 of this Agreement, except in the case of foreclosure or instrument in lieu of foreclosure, in which case the Section 42 Occupancy Restrictions and NCTRAC Occupancy Restrictions shall terminate as provided in Section 6(c) of this Agreement. The Restriction Period shall commence with the first day on which any building which is part of the Project is placed in service and shall end on the date which is 15 years after the end of the Compliance Period

## **SECTION 6 - TERM OF AGREEMENT**

- (a) Except as hereinafter provided, this Agreement and the Section 42 Occupancy Restrictions and any NCTRAC Occupancy Restrictions specified herein shall commence with the first day on which any building which is part of the Project is placed in service and shall end on the date which is 15 years after the end of the Compliance Period. The period from the beginning of the Compliance Period until 15 years after the end of the Compliance Period (or such earlier date as may be determined under subsection (b) below) is the extended use period (the "Extended Use Period")
- (b) For the purposes of this Agreement the term "Compliance Period" means, with respect to any building, the period of 15 taxable years beginning with the first taxable year of the credit period with respect thereto as defined in Section 42(f) of the Code
- (c) The Extended Use Period for any building which is part of this Project shall terminate, if earlier than 15 years after the end of the Compliance Period as set forth below
  - (1) On the date the Project is acquired by foreclosure or instrument in lieu of foreclosure, unless the Internal Revenue Service determines that such acquisition is part of an arrangement with the Owner in which a purpose of such arrangement is the termination of the Extended Use Period, or
  - (2) On the date which is one year after the date the Owner has properly requested in writing that NCTRAC assist in procuring a qualified contract for the acquisition of the low-income portion of any building which is a part of the Project if NCTRAC was unable to present a qualified contract as defined in Section 42 of the Code ("Qualified Contract") during such one-year period, provided, however, this subsection (b)(2) shall apply only if such request by the Owner was not in violation of any restriction imposed under Section 5 of this Agreement. Furthermore, the Owner agrees that it will not apply for relief under Section 42(h)(6)(E)(i)(II) of the Code for a minimum period of fifteen (15) years after the close of the initial 15-year Compliance Period as defined in Section 42(i)(1) of the code
- (d) Notwithstanding subsection (b) above, for the purposes of the covenant made in Section 3(g) of this Agreement, the term of this Agreement shall continue for a period of three years following any termination of the Extended Use Period pursuant to the procedures specified in subsection (b) above. During such three-year period, the Owner shall not evict or terminate the tenancy of an existing tenant of any low-income unit other than for good cause and shall not increase the gross rent above the maximum allowed under Section 42 of the Code with respect to such low-income unit
- (e) If the Owner has agreed to NCTRAC Occupancy Restrictions as reflected in Section 5 of this Agreement, this Agreement shall not terminate before the time period for compliance with such NCTRAC Occupancy Restrictions has expired

## **SECTION 7 - ENFORCEMENT**

- (a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of NCTRAC to inspect any books and records of the Owner regarding the Project with respect to the incomes, rent levels, and housing costs of Low-Income Tenants which pertain to compliance with this Agreement
- (b) The Owner shall submit any other information, documents or certifications requested by NCTRAC which NCTRAC shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the Section 42 Occupancy Restrictions specified in this Agreement
- (c) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code and applicable regulations or this Agreement. Moreover, Owner covenants and agrees to take any lawful action (including amendment of this Agreement as may be necessary, in the opinion of NCTRAC) to comply fully with Section 42 of the Code and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, or the Internal Revenue Service, or the United States Department of Housing and Urban Development or the United States Department of Agriculture from time to time pertaining to Owner's obligations under Section 42 of the Code and affecting the Project
- (d) The Owner and NCTRAC acknowledge that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Agreement is to assure compliance of the Project and the Owner with Section 42 of the Code and applicable

regulations BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING CREDITS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT NCTRAC AND ANY LOW INCOME TENANT (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT OF THE PROJECT) SHALL BE ENTITLED, TO OBTAIN SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN ANY COURT OF COMPETENT JURISDICTION HEREOF, IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, The Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder

- (e) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by NCTRAC and all persons interested in Project compliance under Section 42 of the Code and the applicable regulations
- (f) The Owner acknowledges that Section 42 of the Code and regulations implementing said Section require NCTRAC (or an agent or other contractor of NCTRAC) to monitor the Section 42 Occupancy Restrictions, and the Owner hereby agrees to take any and all actions reasonably necessary and required by NCTRAC (or any agent of, or other contractor hired by, NCTRAC) to substantiate the Owner's compliance with the Section 42 Occupancy Restrictions or NCTRAC Occupancy Restrictions

#### SECTION 8 - MISCELLANEOUS

- (a) Severability The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof
- (b) Notices All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing

**To the North Carolina Federal Tax Reform Allocation Committee  
c/o North Carolina Housing Finance Agency  
PO Box 28066  
Raleigh, NC 27611-8066**

**To the Owner:**

**GREGORY HYSON  
NEW DAWSON LIMITED PARTNERSHIP  
C/O HOUSING AUTHORITY OF WILMINGTON  
508 SOUTH FRONT STREET  
WILMINGTON, NC 28401-**

The North Carolina Federal Tax Reform Allocation Committee and the Owner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent

- (c) Amendment The Owner agrees that it will take all actions necessary to effect amendment of this Agreement as may be necessary to comply with Section 42 of the Code (or any other applicable provisions of the Internal Revenue Code of 1986) and any and all applicable rules, regulations, policies, procedures, rulings or other official statements pertaining to the Credit Upon proper recordation of this Agreement in the county registry, the Owner agrees that no amendment(s) to the terms or conditions of this Agreement shall apply or have effect unless the written consent to or acknowledgement of such amendment(s) shall have been given on behalf of NCTRAC
- (d) Governing Law This Agreement shall be governed by the laws of the State of North Carolina and, where applicable, the laws of the United States of America
- (e) Survival of Obligations The obligations of the Owner as set forth herein and in the Application shall survive the allocation of the Credit and shall not be deemed to terminate or merge with the awarding of the allocation

- (f) Recovery of Attorney's Fees If NCTRAC shall incur legal fees or other expenses in enforcing its rights and/or remedies, or the Owner's obligation, under this Agreement, the Owner shall reimburse NCTRAC for those fees and other expenses within a reasonable time after receipt of written demand therefor
- (g) Successors and Assigns This Agreement shall be binding upon and inure to the benefit of the successors and assigns of NCTRAC and the successors and assigns of the Owner
- (h) Successor Statutes and Agencies Any references in this Agreement to specific statutory provisions, specific regulatory provisions or specific governmental agencies or entities shall include any successor statutory provision, regulatory provision or governmental agency or entity, as the case may be

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Deputy/Assistant-Register of Deeds

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NEW DAWSON LIMITED PARTNERSHIP, a North Carolina limited partnership

By NEW DAWSON LLC, a Delaware limited liability company, its Managing General Partner

By NEW DAWSON, INC, a Delaware corporation, its Manager

By Gregory A. Hyson  
Name Gregory A. Hyson  
Title Vice President

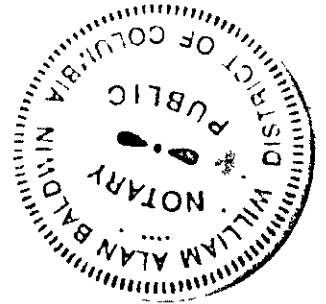
DISTRICT OF COLUMBIA

I, William Alan Baldwin, a Notary Public of the State and County aforesaid, certify that Gregory A. Hyson, Vice President of NEW DAWSON, INC, a Delaware corporation, the Manager of NEW DAWSON, LLC, a Delaware limited liability company, which is the Managing General Partner of NEW DAWSON LIMITED PARTNERSHIP, a North Carolina limited partnership, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said corporation, in its capacity as the manager of the LLC which is the Managing General Partner of NEW DAWSON LIMITED PARTNERSHIP

WITNESS my hand and official seal this 4th day of April, 2003

William Alan Baldwin  
Notary Public

My Commission Expires  
**William Alan Baldwin**  
Notary Public, District of Columbia  
My Commission Expires 06-30-2006





REBECCA T CHRISTIAN  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

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Filed For Registration 08/14/2003 04:30:38 PM  
Book: RE 3955 Page: 964-972  
Document No.: 2003052455  
DECL 9 PGS \$35.00  
NS: \$25.00  
Recorder: MARVIS ANN STORER

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State of North Carolina, County of New Hanover

The foregoing certificate of WILLIAM ALAN BALDWIN Notary is certified to be correct. This 14TH of August 2003

REBECCA T CHRISTIAN , REGISTER OF DEEDS

By: *Marvis Ann Storer*  
Deputy/Assistant Register of Deeds

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YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.  
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.

**\*2003052455\***

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