

WAKE COUNTY, NC 1699  
LAURA M RIDDICK  
REGISTER OF DEEDS  
PRESENTED & RECORDED ON  
06/16/2003 AT 14:07:29

BOOK:010197 PAGE:00911 - 00919

SECOND LIEN LEASEHOLD  
DEED OF TRUST

①

DRAFTED BY: GEORGE E. HOLLODICK

RETURN TO: BLANCO TACKABERY COMBS & MATAMOROS, P.A.  
P. O. DRAWER 25008, WINSTON-SALEM, NC 27114-5008

12 THIS SECOND LIEN LEASEHOLD DEED OF TRUST (the "Deed of Trust") is made and entered into this day of June, 2003, by and between **COURTYARD COMMONS LIMITED PARTNERSHIP**, a North Carolina limited partnership (the "Grantor"); **E. RICHARD JONES, JR.**, as Trustee ("Trustee"); and **COUNTY OF WAKE** ("Beneficiary").

Statement of Purpose

Grantor is indebted to Beneficiary as evidenced by the Promissory Note ("Note") of even date from Grantor payable to the order of Beneficiary in the principal sum of Two Hundred Fifty Thousand Dollars (\$250,000.00).

Pursuant to that certain Amended and Restated Lease (the "Lease") dated September 9, 2002 between Grantor, as tenant, and Fuquay-Varina Community Development Corporation, a North Carolina nonprofit corporation, as landlord pursuant to which Grantor leases from landlord the Land and some or all of the remaining Premises; together with any extensions or renewals thereof, as such lease may be modified or amended from time to time.

Grantor has agreed to secure payment of the indebtedness evidenced by the Note by the conveyance of the real estate and other property described below.

Grant

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) paid by the Trustee to Grantor, receipt of which is hereby acknowledged, and in order to secure the payment of the indebtedness evidenced by the Note and the performance of all of the covenants, conditions and stipulations of this Deed of Trust and any other documents executed by Grantor evidencing and/or securing the Note, Grantor has granted,

bargained, sold and conveyed, and by these presents does hereby grant, bargain, sell and convey unto Trustee, its substitutes and successors in trust, all of Grantor's right, title and interest in and to the Lease and the real property located in Wake County, North Carolina, and being more particularly described on the attached **Exhibit A**, (the "Land") together with all buildings, structures and other improvements now or hereafter located thereon in or on the Land and together with all privileges, hereditaments and appurtenances relating to the above described real estate and all of the estate and right of Grantor in and to the land in the right-of-way of any streets or highways bordering or serving the above described real estate. (The foregoing are referred to as the "Real Property".)

TO HAVE AND TO HOLD the Real Property and all privileges, easements, hereditaments and appurtenances thereto belonging unto Trustee, his successors and assigns, forever upon the trusts and for the purposes hereinafter set forth.

#### Special Trust

THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST that if Grantor shall pay the Note secured by this Deed of Trust in accordance with its terms, together with all interest due on the Note, and all renewals and extensions of the Note, and shall faithfully comply with all of the covenants, stipulations and conditions of this Deed of Trust and any other documents evidencing or securing the Note, this Deed of Trust shall become null and void and may be canceled of record at the request and at the cost of Grantor. However, if Grantor defaults in the prompt payment of any installment of principal and/or interest under the Note when the same shall become due and payable or if Grantor defaults in any of the covenants, conditions and stipulations contained in this Deed of Trust, or if a petition in bankruptcy, either voluntary or involuntary, is filed on behalf of Grantor, if Grantor becomes insolvent, executes an assignment for the benefit of its creditors or if a receiver is appointed for Grantor, then and in any of such events, the entire principal sum secured by this Deed of Trust, together with all interest and charges thereon, shall, at the option of Beneficiary, become immediately due and payable; and upon application of Beneficiary, it shall be the duty of Trustee or its Successor or Substitute Trustee to sell the Real Property, or any part thereof, at public auction to the highest bidder for cash either on the Real Property or at the courthouse in the county in which the Real Property is located, after first giving notice of sale to Grantor and to the then record owner of the Real Property and to any other persons entitled by law to such notice, and after all hearings required by law are held and after first posting a notice of sale and publishing notice of sale containing the information required at the time of such sale as is required by the laws then in effect in North Carolina relating to foreclosure by power of sale of real property. Upon any such sale, Trustee shall execute and deliver to the purchaser a deed to the Real Property, or such part thereof as is sold; and after deducting five percent (5%) of the proceeds of such sale as compensation to Trustee, and after paying all expenses incurred by it, including reasonable attorneys' fees for legal services actually performed, Trustee shall apply the remaining proceeds of the sale first to the payment of all indebtedness secured by this Deed of Trust, and the balance, if any, shall be paid to Grantor or to such other persons as may be lawfully entitled thereto. Grantor agrees that Beneficiary shall have the right to bid at any sale conducted by Trustee under this Deed of Trust and shall have the right to purchase the Real Property, or such part thereof as is sold, at such sale.

#### Covenants, Stipulations and Conditions

This Deed of Trust is made subject to the following covenants, stipulations and conditions which shall be binding upon the parties hereto, their respective heirs, successors and assigns.

1. Payment. Grantor agrees to promptly pay, when due, all sums due under the Note, this Deed of Trust and any other document evidencing and/or securing the Note.

2. Taxes and Assessments. Grantor covenants and agrees to pay when due, all taxes and assessments, both general and special, that are or may become due and payable on or with respect to the Real Property under any law, ordinance or regulations, whether made by federal, state or municipal authority.

3. Waste. Grantor shall maintain the Real Property in good repair and condition and shall not permit, suffer or commit any waste, impairment or deterioration of the Real Property nor remove any portions of the Real Property or any part thereof without the prior written consent of Beneficiary.

4. Statutory Liens. Grantor shall keep the Real Property free from statutory liens of every kind, shall pay all taxes, assessments, general or special, utility bills, and any other charges that may be levied or assessed on or against the Real Property, and deliver official receipts showing such payment to Beneficiary on demand. Upon default in the payment of any such tax, fine, assessment, charge as they shall become due and payable, Beneficiary may, at its option, pay or cause to be paid such tax, fine, assessment or charge and such payments with any expenses and fees incurred shall be added to the Note secured by this Deed of Trust and shall bear interest as provided in the Note and until paid shall be secured by this Deed of Trust. No such right of payment by Beneficiary shall prevent it from exercising its option to cause the whole indebtedness secured by this Deed of Trust to become immediately due and payable for such default.

5. Care of Real Property. The Grantor will keep the Real Property in good condition and repair, will not commit or suffer any waste and will not do or suffer to be done anything which will reasonably increase the risk of fire or other hazard to the Real Property or any part hereof or which would or could result in the cancellation of any insurance policy carried with respect to the Real Property.

The Beneficiary is hereby authorized and empowered to enter and to authorize others to enter upon any or all of the Real Property, at any reasonable time during Grantor's normal business hours, and following reasonable notification to Grantor and from time to time, to inspect the same, to perform or observe any covenants, conditions or terms which the Grantor shall fail to perform, meet or comply with, or for any other purpose in connection with the protection or preservation of Beneficiary's security, without thereby becoming liable to Grantor or any person in possession holding under the Grantor. The Grantor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Real Property or any part thereof.

6. Further Assurances. At any time, and from time to time, upon request by the Beneficiary, Grantor will make, execute and deliver or cause to be made, executed or delivered to the Beneficiary and, where appropriate, cause to be recorded or rerecorded and/or filed or refiled at such time and from time to time, and in such offices and places as shall be reasonably necessary, any and all such other further deeds of trust, mortgages, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents in form mutually acceptable to Grantor and Beneficiary as are necessary to effectuate, complete, or perfect, or to continue and preserve (i) the obligations of the Grantor under the Note and this Deed of Trust, and (ii) the lien of this Deed of Trust as a second lien upon all of the Real Property (expressly subordinate to Grantor's first lien purchase money deed of trust in favor of Suntrust Community Development Corporation, recorded at Book 9778, Page 1713-1744).

7. Payments by Beneficiary. If Grantor fails to keep the Real Property and improvements in good repair, or if it fails to maintain the insurance coverage required hereunder, or if it fails to pay, when due, all taxes and assessments on the Real Property and improvements, the Beneficiary may, at its option, make such repairs, procure such insurance, pay such taxes and assessments or redeem the Real Property from tax sale if it has been sold or pay any other sum that is necessary to protect the security of this instrument, and any and all sums so paid by Beneficiary together with interest thereon as stipulated in this Deed of Trust from the date the same shall have

been paid shall be added to the indebtedness secured by this Deed of Trust and be due and payable on the date of the next principal and/or interest installments due under the Note. In the event Beneficiary elects to advance insurance premiums and/or taxes and assessments, the receipt of any agent of the insurance company or companies from which such insurance is procured shall, with respect to such insurance premiums, be conclusive evidence as between the parties to this Deed of Trust of the amount and fact of payment thereof, and the receipt of the proper public official shall, with respect to taxes and assessments, be conclusive evidence as between the parties to this Deed of Trust of the amount and validity of such taxes and assessments and the fact of the payment thereof. In the event it is necessary for Beneficiary to retain legal counsel in order to protect or preserve Beneficiary's interest in the Real Property, or to enforce or effect Beneficiary's rights under this Deed of Trust or the Note, Beneficiary shall be entitled to request reimbursement from Grantor reasonable attorneys' fees for legal services actually performed and Grantor shall immediately reimburse Beneficiary. In the event Grantor fails to immediately reimburse Beneficiary, Beneficiary may add such fees and expenses to the outstanding principal balance of the Note.

8. Condemnation. If all or any part of the Real Property shall be damaged or taken through condemnation (which term when used in this Deed of Trust shall include any damage or taking by any governmental authority or any entity having conferred upon it the power of condemnation and any transfer by private sale in lieu thereof) either temporarily or permanently, Beneficiary shall be entitled to all compensation and awards (up to the balance of the indebtedness secured by this Deed of Trust), and Beneficiary shall be entitled to any other payments or relief resulting from such condemnation, up to the balance owed on the indebtedness secured by this Deed of Trust, and Beneficiary is authorized, at its option, to commence, appear in and prosecute, in its own name or in Grantor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Grantor to Beneficiary who, after deducting therefrom all its expenses, including attorneys' fees, may release any sums received by it without affecting the lien of this Deed of Trust and may apply the same in such manner as Beneficiary shall determine to the reduction of the indebtedness secured by this Deed of Trust. Grantor agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as Beneficiary may require.

9. Assignment of Leases, Rents and Profits. As additional security for the payment of the Note, Grantor does hereby sell, transfer and assign to Beneficiary all leases, rents, issues and profits of all and every part of the Real Property; provided, however, that so long as Grantor complies with all of the terms and conditions of the Note, this Deed of Trust and any other instruments securing the Note, Grantor may collect and retain all such leases, rents, issues and profits, but if Grantor defaults, or there occurs an Event of Default, under the Note or under any of the covenants, conditions and stipulations of this Deed of Trust or any other instrument securing the Note or governing the Loan, including, without limitation, the Loan Agreement, Beneficiary shall have the right, at its option, to take possession of the Property and to collect the leases, rents, issues and profits therefrom and to apply such leases, rents, issues and profits to the payment of the indebtedness secured by this Deed of Trust after deducting therefrom all costs of collection and administration or Beneficiary shall, at its option, have the right to have a receiver appointed by any court of competent jurisdiction to collect such leases, rents, issues and profits without regard to the value of the Property or the solvency of any party liable for the indebtedness secured by this Deed of Trust, and after paying the expenses of such receivership, the receiver shall apply the balance thereof to the payment of the indebtedness secured by this Deed of Trust.

10. Compliance with Laws. Grantor agrees to comply with all laws, ordinances, rules and regulations pertaining to the Real Property and Grantor's use thereof, now or hereafter enacted by any federal, state or local governmental agency.

11. Restriction on Transfer. Grantor shall not, without the prior written consent of Beneficiary, sell, assign, convey, further encumber or otherwise transfer in any manner, all or any part of the Real Property. Any violation of this provision shall be considered as an event of default under the terms and conditions of this Deed of Trust, and Beneficiary shall, at its option, be entitled to declare the entire sums secured hereby, together with any penalties or forfeitures thereon, to be immediately due and payable. The acceptance of installments by Beneficiary subject to any sale, conveyance, further encumbrance or transfer should not be considered as consent to, acquiescence in or ratification of such sale, conveyance, further conveyance or other transfer.

12. Indemnity. Grantor agrees to reimburse Beneficiary and/or Trustee, on demand, for any attorneys' fees or other costs and expenses reasonably incurred by Beneficiary or by Trustee in connection with any litigation or threatened litigation arising out of or in any way related to the validity of the lien of this Deed of Trust or the right of Beneficiary to enforce the terms and conditions of this Deed of Trust including, but not limited to, the right of Beneficiary to enforce the terms and conditions of this Deed of Trust in any bankruptcy, insolvency or receivership proceedings.

13. Grantor Not Released. Grantor agrees that the extension of time for payment or the modification of the terms of payment of any sums secured by this Deed of Trust granted by Beneficiary to any successor in interest of Grantor shall not operate to release, in any manner, the liability of the original Grantor and Grantor's successor in interest. Beneficiary shall not be required to commence proceedings against such successor or refuse to extend the time for payment or otherwise modify the terms of payment of the sums secured by this Deed of Trust by reason of any demand made by the original Grantor and Grantor's successor in interest.

14. Substitution of Trustee. Beneficiary shall have the continuing, irrevocable right and power, from time to time, without notice to Grantor and without specifying any reason therefor, to remove the Trustee named herein and any successor Trustee and to appoint a Substitute Trustee by filing for record in the office of the Register of Deeds in the county in which the Real Property is located an instrument duly acknowledged appointing such Substitute Trustee, and the Substitute Trustee shall thereupon become the successor to the title to the Real Property and the same shall be vested in him in trust for the objects and purposes set forth in this Deed of Trust as if such Substitute Trustee had originally been named Trustee herein.

15. Waiver. The exercise by Beneficiary of any right or option given under this Deed of Trust shall not constitute a waiver of the right to exercise any other right or option given hereunder. Likewise, the failure of Beneficiary to exercise any right or option shall not constitute a waiver of such right or option or any other right or option under this Deed of Trust.

16. Right of Beneficiary to Enter and Take Possession.

(a) If Grantor defaults, under the Note or this Deed of Trust, upon demand of the Beneficiary, Grantor shall forthwith surrender to Beneficiary the actual possession of the Real Property, and Beneficiary may enter and take possession of the Real Property and may exclude the Grantor and the Grantor's agents and employees wholly therefrom.

(b) Upon every such entering and taking of possession, Beneficiary may hold, store, use, operate, manage, control, and maintain the Real Property and conduct the business thereof, and, from time to time (i) make or perform all necessary and proper construction, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Real Property insured; (iii) manage and operate the Real Property and exercise all the rights and powers of the Grantor in its name or otherwise with respect to the same; and (iv) enter into any and all agreements with respect to the exercise

by others of any of the powers herein granted Beneficiary, all as the Beneficiary may from time to time determine to be to its best interest. Beneficiary may collect and receive all of the income, rents, profits, issues and revenues of the Real Property, including the past due as well as those accruing thereafter, and Beneficiary may apply any moneys and proceeds received by Beneficiary in such order and priority as Beneficiary in its sole discretion may determine, to (i) all expenses of taking, holding, managing and operating the Real Property (including compensation for the services of all persons employed for such purposes); (ii) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases, and acquisitions; (iii) the cost of such insurance; (iv) such taxes, assessments and other charges as the Beneficiary may determine to pay; (v) other proper charges upon the Real Property or any part thereof; (vi) the reasonable compensation and expenses of attorneys and agents of the Beneficiary; (vii) accrued interest; (viii) deposits for taxes, insurance and similar items required hereunder; or (ix) overdue installments of principal.

17. Binding Effect. All of the covenants, stipulations and conditions contained in this Deed of Trust shall be binding upon and inure to the benefit of Grantor and Beneficiary, their respective heirs, executors, administrators and assigns.

18. Invalid Provisions to Affect No Others. If fulfillment of any provision hereof or any transaction related thereto or to the Note, at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provisions herein contained operates or would prospectively operate to invalidate this Deed of Trust in whole or in part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Deed of Trust shall remain operative and in full force and effect.

19. Leasehold Obligations. Grantor will at all times fully perform and comply in all material respects with all agreements, covenants, terms and conditions imposed upon or assumed by it as lessee under the Lease, and if Grantor shall fail so to do, Beneficiary may (but shall not be obligated to), upon notice to Grantor of its intention to do so, take any action Beneficiary deems reasonably necessary or desirable to prevent or to cure any material default by Grantor in the performance of or compliance with any of Grantor's covenants or obligations under the Lease. Grantor hereby expressly grants to Beneficiary, and agrees that Beneficiary shall have, upon giving to Grantor the notice provided in the preceding sentence, the absolute and immediate right to enter in and upon the Land or any part thereof to such extent and as often as Beneficiary in its sole discretion deems necessary or desirable in order to prevent or to cure any such default by Grantor. Beneficiary may pay and expend such sums of money as Beneficiary in its sole discretion deems necessary for any such purpose, and Grantor hereby agrees to pay to Beneficiary, immediately and without demand, all such sums so paid and expended by Beneficiary, together with interest thereon from the date of each such payment at the highest default rate of interest. All sums so paid and expended by Beneficiary and the interest thereon shall be added to and be secured by the lien of this Deed of Trust.

**[SEPARATE SIGNATURE PAGE FOLLOWS]**



[SIGNATURE PAGE TO DEED OF TRUST]

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust by its duly authorized general partner the day and year first above written.

GRANTOR:

COURTYARD COMMONS LIMITED PARTNERSHIP,  
a North Carolina limited partnership

By: Regency Investment Associates, Inc.,  
general partner

By: Gordon L. Blackwell  
Gordon L. Blackwell President

STATE OF NORTH CAROLINA }  
COUNTY OF WAKE }

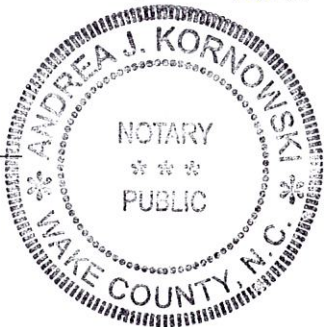
\*\*\*\*\*  
L. Blackwell Andrea J. Kornowski, a Notary Public of the aforesaid County and State, certify that Gordon personally appeared before me this day and acknowledged that he is the President of REGENCY INVESTMENT ASSOCIATES INC., a North Carolina corporation, General Partner of COURTYARD COMMONS LIMITED PARTNERSHIP, a North Carolina limited partnership, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by him as its President, and that the foregoing instrument was executed by the corporation as General Partner for and on behalf of the limited partnership.

WITNESS my hand and official seal, this the 12<sup>th</sup> day of June, 2003.

My Commission Expires:

June 27, 2007

NOTARIAL SEAL/STAMP:



Andrea J. Kornowski  
Notary Public

**EXHIBIT A**

**LYING AND BEING IN WAKE COUNTY, NORTH CAROLINA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

BEING all of Tract No. 2 on that certain plat entitled "Minor Subdivision Plat Prepared for Fuquay-Varina Community Development Corporation" recoded at Plat Book 2002, Page 1453, Wake County Registry, reference to which is hereby made for a more particular description.

TOGETHER with a 30-foot non-exclusive 30-foot easement for access and utilities, such easement located in the area identified as "(Easement Area 5,720 Sq. Ft. 0.13 acres)" as shown on that certain plat entitled "Minor Subdivision Plat Prepared for Fuquay-Varina Community Development Corporation" recorded at Plat Book 2002, Page 1453, Wake County Registry, reference to which is hereby made for a more particular description.



## PROMISSORY NOTE

\$250,000.00

Fuquay-Varina, North Carolina

June 12, 2003

FOR VALUE RECEIVED, the undersigned COURTYARD COMMONS LIMITED PARTNERSHIP, a North Carolina limited partnership ("Maker"), promises to pay to the order of COUNTY OF WAKE ("Holder"), at Waverly Akins Bldg., 336 Fayetteville St. Mall, 7<sup>th</sup> Floor, Raleigh, North Carolina, 27602, or at such other place or to such other person as the Holder may, from time to time, designate in writing, the principal sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) without interest. Maker shall be allowed to utilize the proceeds of such loan for any purpose in connection with the development of the project located on the real property secured by the Deed of Trust (as defined below), including, without limitation, hard and soft costs.

Loan payments are due beginning on January 15<sup>th</sup>, 2005 and due each subsequent January 15<sup>th</sup>. Payments are to be made to Wake County in the amounts as set forth in **Exhibit A**.

This Note may be prepaid in whole or in part at any time without incurring penalty.

If there is a default in the payment of any part of the principal due under this Note as the same becomes due and payable, then, in any such event, the Holder shall have the option of declaring the entire unpaid principal balance of this Note immediately due and payable. If, after a default under this Note, it becomes necessary for Holder to place this Note in the hands of an attorney for collection, Maker agrees to pay reasonable attorneys' fees and all other costs that may be reasonably incurred by Holder in the collection of sums due under this Note, including any costs incurred by Holder in connection with the filing by Maker of a petition under the United States Bankruptcy Code.

This Note is secured by a second lien deed of trust (the "Deed of Trust"). Notwithstanding anything herein to the contrary, in the event of a default, Holder's sole remedy shall be to exercise its right to foreclosure by power of sale under the Deed of Trust and in no event shall Maker or any general partner of Maker have any personal liability hereunder.

The Maker hereby waives grace, notice, protest, demand, presentment for payment and diligence in the collection of this Note and agrees that its liability for the payment of this Note shall not be affected or impaired by any release or change in the security or by any extension of time for the payment of all or any part of the principal due under this Note.

Whenever used in this Note, the words "Maker" and "Holder" shall be deemed to include their respective heirs, personal representatives, successors and assigns.



IN WITNESS WHEREOF, the undersigned Maker has caused this Note to be executed by its duly authorized general partner affixed as of the date first above written.

COURTYARD COMMONS LIMITED  
PARTNERSHIP

By: Regency Investment Associates, Inc.,  
general partner

By: Gordon L. Blackwell  
Name: Gordon L. Blackwell  
Its: President

**EXHIBIT A**  
**Repayment Schedule**

DATE	PAYMENT
JANUARY 15, 2005	\$9,450
JANUARY 15, 2006	9,450
JANUARY 15, 2007	9,450
JANUARY 15, 2008	10,500
JANUARY 15, 2009	10,500
JANUARY 15, 2010	10,500
JANUARY 15, 2011	11,250
JANUARY 15, 2012	11,250
JANUARY 15, 2013	11,250
JANUARY 15, 2014	12,000
JANUARY 15, 2015	12,000
JANUARY 15, 2016	12,000
JANUARY 15, 2017	12,700
JANUARY 15, 2018	12,700
JANUARY 15, 2019	12,700
JANUARY 15, 2020	13,000
JANUARY 15, 2021	13,000
JANUARY 15, 2022	13,000
JANUARY 15, 2023	13,000
JANUARY 15, 2024	12,750
JANUARY 15, 2025	3,510
JANUARY 15, 2026	3,510
JANUARY 15, 2027	3,510
JANUARY 15, 2028	3,510
JANUARY 15, 2029	3,510
	\$250,000