BVP

This instrument drawn by Steven D. Smith, Attorney BK1701 P2568

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DEED OF TRUST
PEOPLES BANK OF THE TRIAD
(Construction)

THIS DEED OF TRUST AND SECURITY AGREEMENT, made and entered into this the 25th day of September, 19 90, by and between I-40 Realty, LTD.

whose address is P. O. Box 5566, Winston-Salem, North Carolina 27113-5566, hereinafter called the Grantors, and Mark S. Harden Trustee, of Forsyth County, State of North Carolina, hereinafter called the Trustee, and PEOPLES BANK OF THE TRIAD, a North Carolina banking corporation having its registered office in the City of Winston-Salem, Forsyth County, North Carolina with a mailing address of P. O. Box 5039, Winston-Salem, North Carolina 27113-5039, hereinafter called the Beneficiary;

WITNESSETH, THAT WHEREAS, the Beneficiary is obligated to lend to the Grantors the sum of Three Hundred Eighty-Seven Thousand and no/100---------- Dollars ($ 387,000.00), being the maximum amount of present and future obligations secured by this deed of trust and to be incurred from time to time through the periodic disbursement of proceeds of the note hereby secured in accordance with the loan agreement and other agreements between the Grantors and the Beneficiary for the purpose of constructing improvements on the premises hereinbelow described; all such advances to be incurred on or before the 26th day of Sept., 1991. The amount of present obligations secured by this deed of trust is zero Dollars ($ -0-).

AND WHEREAS, the Grantors agree to accept any and all disbursements and proceeds advanced by the Beneficiary up to the full amount stated above;

AND WHEREAS, the Grantors are thereby indebted to the Beneficiary in the said sum of Three Hundred Eighty-Seven Thousand and no/100---------- Dollars ($ 387,000.00), with interest payable in the manner and at the rate specified in the note evidencing such indebtedness, dated September 26, 1990, which note may contain provisions for adjustment of the interest rate, adjustment in the payments due thereunder, extension or renewal of the term and other things, the provisions of which are incorporated herein by reference, with a final due date for payment of said note, if not sooner paid, extended or renewed, being September 26, 1991;

AND WHEREAS, the Grantors desire to secure the payment of said note with interest and any extensions, renewals, modifications or amendments thereof, in whole or in part, and of the additional payments hereinafter agreed to be made, by a conveyance of the lands and a grant of the security interests hereinafter described;

NOW, THEREFORE, in consideration of the premises and for the purposes aforesaid, and in further consideration of the sum of One Dollar ($1) paid to the Grantors by the Trustee, receipt of which is hereby acknowledged, the Grantors have given, granted, bargained and sold, and by these presents do give, grant, bargain, sell and convey unto the said Trustee, his heirs, successors and assigns the following described property lying and being in the County of Forsyth, and State of North Carolina, and more particularly described as follows:

BEING KNOWN AND DESIGNATED as Lot 15 as shown on the Plat of Shamrock Country Estates, Phase One, recorded in Plat Book 27 at pages 189, 190 and 191 in the Office of the Register of Deeds of Forsyth County, North Carolina, to which Plat reference is hereby made for a more particular description.

5630 Fox Glen Trail, Lewisville, North Carolina

COLLATERAL IS OR INCLUDES FIXTURES

Together with all and singular buildings located on and improvements now or hereafter made to the property, and all fixtures, equipment and other articles of personal property now owned by the Grantors and located upon the above described property, or hereafter acquired and located thereon and used in connection with the property.

TO HAVE AND TO HOLD, the said land and premises, including all houses, buildings, improvements and fixtures thereon, with all the rights, privileges, and appurtenances thereunto belonging or appertaining to the Trustee, his heirs, successors and assigns, in fee simple forever, upon the trusts and for the uses and purposes hereinafter set out;

And the Grantors convenant with the Trustee that they are seized of said land and premises in fee and have the right to convey the same in fee simple; that the same are free and clear of all encumbrances, and that they will warrant and defend the title to the same against the lawful claims of all persons whomsoever, except for the exceptions stated hereinabove.

THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST, that if the Grantors shall pay the note secured hereby in accordance with its terms, together with interest thereon, and any extensions, renewals, modifications or amendments thereof, in whole or in part, and shall comply with all the covenants, terms and conditions of this deed of trust, then this conveyance shall be null and void and may be cancelled of record at the request and at the cost of the Grantors. If, however, there shall be any default in any of the terms or conditions of the note secured hereby, or of the terms, conditions or covenants contained in this deed of trust, or in the event of actual or threatened demolition or injury or waste to the premises which may impair the value of the property hereby conveyed, or if a receiver should be appointed for, or a petition in bankruptcy filed by or against the Grantors, or either of them, then and in any of such events, the note shall, at the option of the Beneficiary, become at once due and payable, regardless of the maturity date thereof, and on the application of the Beneficiary it shall be lawful for and the duty of the Trustee, and he is hereby authorized and empowered to expose to sale and to sell all or any part of the hereinbefore described premises and personal property, if any, at public auction for cash, after having first complied with all applicable requirements of North Carolina law with respect to the exercise of powers of sale contained in deeds of trust and upon such sale, the Trustee shall convey title to the purchaser in fee simple. After retaining from the proceeds of such sale just compensation for his services and all expenses incurred by him, including reasonable attorney's fees for legal services actually performed, the Trustee shall apply the residue of the proceeds first to the payment of all sums expended by the Beneficiary under the terms of this deed of trust; second, to the payment of the note and interest thereon secured hereby; and the balance, if any, shall be paid to the person or entity legally entitled thereto. The Grantors agree that in the event of a sale hereunder, the Beneficiary shall have the right to bid thereat. The Trustee may require the successful bidder at any sale to deposit immediately with the Trustee cash or certified check in an amount not to exceed twenty-five percent (25%) of the bid, provided notice of such requirement is contained in the advertisement of the sale. The bid may be rejected if the deposit is not immediately made and thereupon the next highest bidder may be declared to be the purchaser. Such deposit shall be refunded in case a resale is had; otherwise, it shall be applied to the purchase price. If personal property is sold hereunder, it need not be at the place of sale. The published notice, however, shall state the time and place where such property may be inspected prior to sale.

The Grantors covenant and agree that the funds secured hereby are to be used solely in accordance with a loan agreement of even date herewith between the Grantors and the Beneficiary which loan agreement is incorporated herein by reference to the same extent and effect as if fully set forth herein and made a part of this deed of trust and a default therein shall for all purposes constitute a default hereunder and under the note thereby secured.

In the event of any default in any of the covenants or agreements contained in this deed of trust, the Beneficiary may, at its option, defer application by it to the Trustee to sell the premises and may take action under and invoke such other rights and remedies as may be provided in the loan agreement or in this deed of trust, including, at its option and without limiting any of its other rights and remedies, taking possession of the property described herein for the purpose of completing construction of the planned improvements and Beneficiary shall have the right to withhold amounts otherwise to be advanced to Grantors and to apply the same directly to the completion of the construction of the improvements, in each case without demanding payment in full of the note. All funds so advanced by Beneficiary (including its reasonable expenses) shall be added to the principal indebtedness evidenced by the note and shall be secured by this deed of trust.

The Grantors covenant and agree that they will:

1. furnish to the Beneficiary without cost to the Beneficiary an annual statement, in form and certified in a manner satisfactory to the Beneficiary, setting forth all income and expenses derived or incurred from the operation of the Grantors' business conducted upon said property and the operation of the improvements situate thereon within ninety (90) days from the end of the calendar or fiscal year of such operations;

2. pay the indebtedness as hereinbefore provided;

3. pay when due, all taxes, assessments, levies and charges upon or against the property herein described, of every character which are now due or which may hereafter become liens on said premises, including all taxes assessed in North Carolina against the Trustee or the Beneficiary on this instrument or the sum hereby secured or evidenced by said note, provided the amount of such latter taxes with interest on the sum hereby secured does not exceed the maximum contract rate permitted by law, but if it does, the excess to be paid by the Beneficiary; and will immediately deliver to the Beneficiary official receipts therefor;

4. keep the buildings now or hereafter on said premises insured against loss and damage by fire, tornado and windstorm, and against such other hazards as the Beneficiary may require, including business interruption, in amounts satisfactory to the Beneficiary which amounts shall at no time be less than the outstanding indebtedness secured by the deed of trust, plus an amount sufficient to prevent any co-insurance liability of the owner of the property or the Beneficiary, for the benefit of the Beneficiary, loss, if any, to be made payable in the policy or policies of insurance to the Beneficiary as its interest may appear, the loss payable clauses to be in such form as the Beneficiary may require. All insurance shall be in companies approved by the Beneficiary and the policies and renewals thereof shall, when issued, be immediately delivered to the Beneficiary to be held by it; the Grantors will pay all premiums or such insurance when due and immediately deliver to the Beneficiary official receipts therefor, and if the Grantors fail or refuse to keep said premises so insured the Beneficiary may obtain such insurance without prejudice to its right to foreclose hereunder by reason of such default. In the event of loss the Grantors will give immediate notice by mail to the Beneficiary who may make proof of loss if not made promptly by the Grantors, and each insurance company concerned is hereby authorized and directed to make payment of such loss directly to the Beneficiary instead of to the Grantors and the Beneficiary jointly. The proceeds of any insurance, or any part thereof, may be applied by the Beneficiary, at its option, either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. The Beneficiary may, at its option, pay any such insurance premiums, taxes, assessments, levies, or charges against the premises of which payment, amount and validity thereof the official receipt shall be conclusive evidence and any amounts so expended shall immediately become debts due by the Grantors, shall bear interest at the rate specified in the note secured hereby, and their payment shall be secured by this deed of trust;

5. keep the premises herein conveyed in as good order, repair, and condition as they are now, reasonable wear and tear excepted;

6. not commit or permit any waste; and the Beneficiary shall have the right to inspect the premises at all reasonable times, and access thereto shall be permitted for that purpose to it or its authorized agents;

7. furnish to the Beneficiary within ninety (90) days of the end of each fiscal year the financial statements (in form satisfactory to the Beneficiary) of the Grantors, and each of them, and of each of the guarantors or endorsers, if any, of the indebtedness hereby secured;

8. perform all of Grantors' obligations under all leases in effect if this deed of trust is on a leashold estate with Grantors as lessees and perform all Grantors' obligations under any declaration of condominium or master deed, the by-laws and regulations of the condominium project and constituent documents if this deed of trust is on a condominium unit or project; and

9. not initiate, join in, or consent to, either through action or inaction, any change in any private restrictive covenant, private restrictions, by-laws and regulations of any condominium project, limiting or defining uses which may be made of the premises or any part thereof, without the prior written consent of Beneficiary.

Any Grantor who executes this deed of trust but does not execute the note hereby secured has executed this deed of trust only to subject whatever interest, if any, such Grantor has or may hereafter have in the said premises and land, together with all buildings and improvements thereon, to the lien of this deed of trust, has no personal liability on the note hereby secured or under this deed of trust (nothing herein limits or affects such Grantor's liability to the Beneficiary under any separate guaranty or any other instrument), and agrees that the Beneficiary and any other Grantor hereunder may extend, modify, forbear, or make any other accommodations with regard to the terms of this deed of trust or the note hereby secured without such Grantor's consent and without releasing such Grantor hereunder or modifying or affecting this deed of trust as to such Grantor's interest in said premises and land, together with the buildings and improvements thereon.

As further security for the payment of the note hereinabove mentioned and for the faithful performance of all the covenants, agreements, terms and provisions of this deed of trust, the Grantors hereby sell, transfer and assign unto the Beneficiary all the right, title and interest of the Grantors in and to the rents, issues, profits, revenues, royalties, rights and benefits from the above described property, and to that end of the Grantors hereby assign and set over unto the Beneficiary all leases of said premises now made, executed or delivered, whether written or verbal, or to be hereafter made, be the same written or verbal, and the Grantors do hereby authorize and empower the Beneficiary to collect said rents, issues, profits, revenues, royalties, rights and benefits as they shall become due and do hereby direct each and all of the tenants of the aforesaid premises to pay such rents, as they may now be due or shall hereafter become due to the Beneficiary, upon demand for payment thereof by the Beneficiary; it being understood and agreed, however, that no such demand shall be made unless and until there has been a default in the payment of the indebtedness secured hereby or in the faithful performance of all the covenants, agreements, terms and provisions of this deed of trust or the note secured hereby; and until such demand is made, the Grantors are authorized to collect or continue collecting such rents, issues, profits, revenues, royalties, rights and benefits; but that such privilege to collect or continue collecting, as aforesaid, by the Grantors shall not operate to permit the collection of any rents in advance of the date same is due under the terms and provisions of said lease or leases.

The Grantors covenant and agree: (i) that they will promptly and fully keep, perform and comply with all the terms, provisions, covenants, conditions and agreements imposed upon or assumed by them as Landlord (or similar designation) under any lease now or hereinafter in effect, covering all or any part of the above described property, whether one or more, hereinafter referred to individually and collectively as "Tenants' Leases," (ii) that they will not do, permit anything to be done, or omit or refrain from doing anything, the doing or omission of which will give any tenant a right to terminate any of the Tenants' Leases, and (iii) that they will give the Beneficiary immediate notice by certified mail of any notice of default or notice of cancellation received from any tenant under any of the Tenants' Leases.

Any default in any of the terms, conditions, covenants or agreements contained in any separate assignment of interest in leases given as additional security for this loan shall constitute an event of default under this deed of trust

If the Grantors shall, in any manner, default in the performance of or compliance with any of their covenants or obligations under this deed of trust, the Beneficiary may (but shall not be obligated to) take any action the Beneficiary deems necessary or desirable to prevent or cure any such default in performance or compliance under this deed of trust. The Beneficiary shall have the right to enter upon the herein described property to such extent and as often as the Beneficiary, in its sole discretion, deems necessary or desirable in order to prevent or cure any such default by the Grantors. The Beneficiary may expend such sums of money as the Beneficiary, in its sole discretion, deems necessary for any such purpose, and the Grantors hereby agree to pay to the Beneficiary, immediately upon demand, all sums so expended by the Beneficiary, together with interest thereon from the date of each such payment at the rate provided for in the note secured hereby and all reasonable attorney's fees incurred by Beneficiary in connection therewith. All such sums shall be added to and secured by the lien of this instrument.

Upon the condemnation of the premises or improvements or any part thereof, the entire unpaid balance of the note secured hereby shall, at the option of the Beneficiary, at once become due and payable, and any award paid for such taking is hereby assigned to the Beneficiary to further secure the above referred to indebtedness, and the Beneficiary is hereby authorized and empowered (but not required) to collect and receive such award and is authorized to apply it in whole or in part in reduction of the then outstanding debt secured by this deed of trust, notwithstanding the fact that the same may not then be due and payable. Any amounts so applied to principal shall be applied to the principal last maturing hereon. The Grantors agree to execute such further assignments of any such awards as the Beneficiary may require.

In the event of the passage after the date of this instrument of any law of the State of North Carolina deducting from the value of the land for the purposes of taxation any lien thereon, or providing or changing in any way the laws now in force for the taxation of deeds of trust or debts secured thereby, for state or local purposes or, the manner of the collection of any such taxes so as to affect the interest of the Beneficiary, the whole sum secured by this instrument with interest thereon, at the option of the Beneficiary, shall immediately become due, payable and collectible without notice to any party.

The Beneficiary shall have the right, after default in any of the terms, covenants or agreements herein contained, or contained in the aforesaid note, to the appointment of a receiver to collect the rents and profits from the premises hereinbefore described without consideration of the value of the premises or the solvency of any person liable for the payment of the amounts then owing, and all amounts collected by the receiver shall, after expenses of the receivership, be applied to the payment of the indebtedness hereby secured and the Beneficiary, at its option, in lieu of an appointment of a receiver, shall have the right to do the same. If such receiver should be appointed, or if there should be a sale of the said premises, as provided above, the Grantors or any person in possession of the premises thereunder, as tenant or otherwise, shall become a tenant at will of the receiver or of the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

No delay or forbearance by the Beneficiary in exercising any or all of its rights hereunder or rights otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default as set forth herein or in the event of any subsequent default hereunder, and all rights shall be cumulative. In case the Beneficiary or the Trustee voluntarily or otherwise shall become a party to any suit or legal proceeding to protect the property herein conveyed or to protect the lien of this deed of trust, the Trustee and the Beneficiary shall be saved harmless and shall be reimbursed by the Grantors for any amounts paid, including all reasonable costs, charges and attorney's fees incurred in any such suit or proceeding, and the same shall be secured by this deed of trust and its payment enforced as if it were a part of the original debt.

It is specifically agreed that the parties hereto shall in no event be deemed to have contracted for a greater rate of interest than the maximum rate permitted by law. Should a greater amount be collected, it shall be construed as a mutual mistake of the parties and the excess shall be returned to the party paying same.

The Grantors, in order to more fully protect the security of this deed of trust, agree that at any time upon demand by Beneficiary, Grantors will deposit with Beneficiary the pro rata portion of estimated annual assessments, taxes, insurance premiums, including but not limited to mortgage insurance premiums, if any, and other charges for the period which shall have elapsed since such items were last paid as related to the period for which such charges are levied or payable; and that, in addition, Grantors will thereafter, until excused in writing by Beneficiary, pay on the first day of each month, or on the due date of monthly payments of principal under the note secured hereby, to the Beneficiary or to its duly authorized agent a sum equal to one-twelfth of the known or estimated (by the Beneficiary) yearly taxes, assessments and insurance premiums on or against the mortgaged premises. The Beneficiary shall hold such payments, and the Grantors do hereby expressly agree that the Beneficiary shall be under no obligation to pay interest thereon, and shall apply the same to the payment of taxes, assessments and insurance premiums as and when due. If the total of such monthly payments shall exceed the amount needed, the excess shall be held for future needs; but, should such monthly payments at any time fail to provide sufficient funds to pay taxes, assessments and insurance premiums when due, then the Grantors shall, upon demand, pay to the Beneficiary the amount necessary to cover the deficiency. When the Grantors shall have paid the note secured by this deed of trust, the Beneficiary shall refund to the Grantors any excess funds accumulated hereunder. In the event of a foreclosure sale of the mortgaged premises, the Beneficiary may apply any balance remaining of the funds accumulated for the above purposes to the payment of the said note.

The Beneficiary shall at any time have the irrevocable right to remove the Trustee herein named without notice or cause and to appoint his successor by an instrument in writing, duly acknowledged, in such form as to entitle such written instrument to be recorded in this State, and in the event of the death or resignation of the Trustee herein named, the Beneficiary shall have the right to appoint his successor by such written instrument, and any Trustee so appointed shall be vested with the title to the property hereinbefore described, and shall possess all the powers, duties and obligations herein conferred on the Trustee in the same manner and to the same extent as though he were named herein as Trustee.

All the terms and conditions of the Commitment, if any, upon which the loan hereby secured was predicted are incorporated by this reference and made a part hereof and should the Grantors default with respect to any term or provision thereof, such default shall constitute a default hereunder and under the note hereby secured.

This deed of trust shall constitute a security agreement with respect to all equipment and fixtures and all other items and types of personal property (hereinafter called the Personal Property) of the Grantors now owned or hereafter acquired and located upon the herein described property and the Grantors hereby grant to the Beneficiary a security interest in the Personal Property including, without limitation, all boilers, all heating, air conditioning and ventilating components and systems, all lighting, electrical power, plumbing, sprinkler and water components and systems, all carpets, wall coverings, screens and drapes and all mechanical and hydraulic components and systems located on used in connection with the property described herein.

With respect to those items of the Personal Property which are or are to become fixtures related to the herein described real estate, this deed of trust shall constitute a financing statement filed as a fixture filing. The lien upon fixtures granted herein and perfected hereby shall be in addition to and not in lieu of any lien upon fixtures acquired under real property law. Grantors grant Beneficiary full and irrevocable power of attorney to file appropriate financing statements in the name of Grantors by Beneficiary as attorney-in-fact.

The covenants, terms and conditions herein contained shall bind, and the benefits and powers shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used herein, the singular number shall include the plural, the plural the singular, masculine shall equally include feminine or neuter, and the term "Beneficiary" shall include any payee of the indebtedness hereby secured and any transferee or assignee thereof, whether by operation of law or otherwise.

Any person, firm or corporation taking a junior mortgage, or other lien, upon the herein described property, shall take the said lien subject to the rights of Beneficiary to extend, renew, modify or amend the note herein secured and to make further advances, from time to time, as herein provided, such further advances to be secured hereby and have the same priority of security as the original advances, without obtaining the consent of the holder of said junior lien and without the lien of this deed of trust losing its priority over any such junior lien.

NONE OF THE PROPERTY HEREINABOVE DESCRIBED NOR ANY INTEREST THEREIN (INCLUDING ANY LEASEHOLD ESTATE) SHALL BE CONVEYED, TRANSFERRED OR FURTHER ENCUMBERED WHILE THIS DEED OF TRUST IS IN EFFECT, UNLESS THE BENEFICIARY SHALL HAVE GIVEN ITS PRIOR CONSENT IN WRITING THERETO. ANY SUCH CONVEYANCE, TRANSFER OR FURTHER ENCUMBRANCE WHILE THIS DEED OF TRUST IS IN EFFECT, WITHOUT SAID PRIOR CONSENT, SHALL, AT THE OPTION OF BENEFICIARY, CONSTITUTE A DEFAULT UNDER THIS DEED OF TRUST.

IN WITNESS WHEREOF, the Grantors have caused this deed of trust to be executed under seal the day and year first above written.

I-40 Realty, LTD.
(Name of Corporation)

By: H. Curt Hege, Sr. President

Attest: Margaret Byrd
Secretary

(CORPORATE SEAL)

I-40 REALTY, LTD. SEAL NORTH CAROLINA

H. Curt Hege, Sr. (SEAL)

(SEAL)

Patricia S. Hege (SEAL)

(SEAL)

BK1701 PG570

STATE OF NORTH CAROLINA, COUNTY OF Forsyth

I, Carolyn M. Hankins, a Notary Public of Forsyth County, N.C.

do hereby certify that H. Curt Nege, Sr. and Patricia S. Nege personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this 25th day of September, 1990.

My commission expires: August 28, 1994

OFFICIAL SEAL
NOTARY PUBLIC, NORTH CAROLINA
CAROLYN M. HANKINS
COUNTY OF FORSYTH
My Commission Expires: Aug 28 1994

Carolyn M. Hankins
Notary Public

STATE OF NORTH CAROLINA, COUNTY OF Forsyth

I, Carolyn M. Hankins, Notary Public, certify that Margaret Byrd personally came before me this day and acknowledged that she is the Secretary of D-40 Realty, Ltd., a corporation, and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal, and attested by herself as its _____ Secretary.

Witness my hand and notarial seal, this 25th day of September, 1990.

My commission expires: August 28, 1994

OFFICIAL SEAL
NOTARY PUBLIC, NORTH CAROLINA
CAROLYN M. HANKINS
COUNTY OF FORSYTH
My Commission Expires: Aug 28, 1994

Carolyn M. Hankins
Notary Public

NORTH CAROLINA Forsyth County

The foregoing Certificate(s) of Carolyn M. Hankins, NP, Forsyth Co, NC

is/are certified to be correct. This instrument was presented for registration and recorded in this office in Book _____, Page _____.

L. E. SPEAS, REGISTER OF DEEDS
Register of Deeds

By: Deborah Riddle Deputy
Register of Deeds

STATE OF NORTH CAROLINA

DEED OF TRUST
AND
SECURITY AGREEMENT

TO _____, Trustee for

Peoples Bank of the Triad

PRESENTED FOR REGISTRATION AND RECORDED
SEP 25 3 42 PM '90
L. E. SPEAS
REGISTER OF DEEDS
FORSYTH CTY, N.C.

RETURN TO:

$12.00pd KK

WS-45 (Rev. 11/89)