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Drafted by: George E. Hollodick
Return to: HOUSE & BLANCO BOX

R 1769 P 3249 ✓



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NORTH CAROLINA

GUILFORD COUNTY

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT, made this 29TH day of January, 1993, by and between J & H PROPERTY, A NC GENERAL PARTNERSHIP, Inc. (hereinafter "Assignor") to Branch Banking and Trust Company, 101 South Elm Street, Greensboro, North Carolina, 27401, Attention: Steven B. Wiggs, Senior Vice President (hereinafter "Assignee");

W I T N E S S E T H

Assignor, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby bargain, sell, transfer, assign, convey, set over and deliver to Assignee all right, title and interest of the Assignor in, to and under the leases and all future leases hereinafter entered into by Assignor relating to the premises described in Exhibit A attached hereto and made a part hereof (the "Premises"), and all amendments, extensions and renewals of said leases and any of them, all of which are hereinafter called the "Leases", and all rents, income and profits which may now or hereafter be or become due or owing under the Leases, and any of them, or on account of the use of the Premises.

This Assignment is made for the purpose of securing:

- A. The payment of the indebtedness (including any extensions of renewals thereof) evidenced by one (1) certain promissory note of even date herewith in the original principal amount of \$ FORTY-TWO THOUSAND DOLLARS AND 00/100 (\$42,000.00) (the "Note") secured by a certain Deed of Trust of even date herewith upon the Premises (the "Deed of Trust").
- B. The payment of any other indebtedness or liability of Assignor to Assignee, now or hereafter arising.
- C. The payment of all other sums with interest thereon becoming due and payable to Assignee under the provisions of the Deed of Trust, or any other instrument constituting security for the Note; and
- D. The performance and discharge of each and every term, covenant and condition of Assignor contained in the Note, Deed of Trust.

Assignor warrants, covenants and agrees with Assignee as follows:

1. That it is the sole owner of the entire lessor's interest in the Leases, that it has not and shall not execute any other assignment of any of the leases or the rents, income and profits accruing from the Premises, and that it has not and shall not perform any acts or execute any other instruments which might prevent Assignee from fully exercising its rights under any of the terms, covenants and conditions of this Assignment.
2. That the Leases are valid and enforceable in accordance with their terms and have not been altered, modified, amended, terminated, renewed nor have any of the terms and conditions thereof been waived in any manner whatsoever except as approved in writing by Assignee and shall not be altered, modified, amended, terminated, renewed or any term or condition thereof be waived without the prior written approval of Assignee.
3. That there are not defaults now existing under any of the Leases and there exists no state of facts which with the giving of notice or the lapse of time or both would constitute a default under any of the Leases; and that Assignor will fulfill or perform each and every condition and covenant of each of the Leases by lessor to be fulfilled or performed, give prompt notice to Assignee of any notice of default by Assignor under any of the Leases received by Assignor together with a complete copy of any such notice. Assignor shall, at the sole cost and expense of Assignor, enforce, short of termination of any Lease, the performance or observance of each and every covenant and condition of all such Leases by the Lessee(s) to be performed or observed.
4. That it has not collected and shall not collect, or accept payment of, rent under any of the Leases more than six months in advance.
5. That it shall and does hereby assign and transfer to the Assignee any and all subsequent leases upon all or any part of the Premises and shall execute and deliver at the request of Assignee all such further assurances and assignments as Assignee shall from time to time deem necessary.

The parties further agree as follows:

This Assignment is absolute and is effective immediately. Notwithstanding the foregoing until notified by the Assignee in writing that a default has occurred under the terms and conditions of the Note, Deed of Trust, or other instrument constituting additional security for the Note, Assignor may receive, collect and enjoy the rents, income and profits accruing from the Premises.

In the event of any default in the Note, Deed of Trust or any other instrument constituting additional security for the Note, Assignee may, at its option, receive and collect all such rents, income and profits as they become due, from such Premises and under any and all leases of all or any part of the Premises. Assignee shall thereafter continue to receive and collect all such rents, income and profits during the remainder of the loan term, during the pendency of any foreclosure proceedings, and if there is a deficiency during any redemption period.

Assignor hereby appoints Assignee its true and lawful attorney with full power of substitution and with power for Assignee in its own name and capacity, or in the name and capacity of Assignor, to demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the Premises, and at Assignee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of Assignor or otherwise, which Assignee may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits. Lessees of the Premises are hereby expressly authorized and directed to pay any and all amounts due Assignor pursuant to its respective Lease to Assignee or such nominee as Assignee may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to Assignor in respect of all payments so made.

Assignee is hereby vested with full power to use all measures, legal and equitable, deemed by it necessary or proper to enforce this Assignment and to collect the rents, income and profits assigned hereunder, including the right of Assignee or its designee, to enter upon the Premises or any part thereof with or without force and with or without process of law, and take possession of all or any part of the Premises, together with all personal property, fixtures, documents, books, records, papers and accounts of assignor relating thereto, and may exclude the Assignor, its agents or servants, wholly therefrom. Assignor hereby grants full power and authority to Assignee to exercise all rights, privileges and powers herein granted at any and all times hereafter, without notice to Assignor with full power to use

and apply all of the rents and other income herein assigned to the payment of the costs of managing and operating the Premises and of any indebtedness or liability of Assignor to Assignee, including but not limited to the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the improvements on the Premises or of making same rentable, attorneys' fees incurred in connection with the enforcement of this Assignment and of principal and interest payments due from Assignor to Assignee on the Note and the Deed of Trust, all in such order as Assignee may determine. Assignee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Assignor in the Leases. Assignor hereby agrees to indemnify Assignee and to hold it harmless from any liability, loss or damage, including without limitation reasonable attorneys' fees which may or might be incurred by it under the Leases or by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertakings on its part or perform or discharge any of the terms, covenants or agreements contained in any of the Leases. It is further understood that this Assignment shall not operate to make Assignee liable for the performance of any of the terms and conditions of any of the Leases or for any waste of the Premises by the lessee under any of the Leases or any other party, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any lessee, licensee, employee or stranger.

Assignee may take or release other security, may release any party primarily or secondarily liable for any indebtedness secured hereby, may grant extension, renewals, or indulgences with respect to such indebtedness and may apply any other security herefore held by it to the satisfaction of such indebtedness without prejudice to any of its rights hereunder.

Assignee may, at its option, although it shall not be obligated to do so, perform any lease covenant for and on behalf of the Assignor and any monies expended in so doing shall be chargeable with interest to the Assignor and added to the indebtedness secured hereby.

Waiver of or acquiescence by Assignee in any default by the Assignor, or failure of the Assignee to insist upon strict performance by the Assignor of any warranties or agreements in this Assignment, shall not constitute a waiver of any subsequent or other default or failure, whether similar or dissimilar.

The rights and remedies of Assignee under this Assignment are cumulative and are not in lieu of, but are in addition to, any other Deed of Trust, or any other instrument constituting security for the Note, or at law or in equity.

If any term of the Assignment or the application thereof to any person or circumstances shall, to any extent, be invalid or enforceable, the remainder of this Assignment or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

Whenever, pursuant to this Agreement, consent by Assignee is necessary for the taking of any action, such consent shall not be unreasonably withheld.

All notices to be given pursuant to this Assignment shall be sufficient if mailed, postage prepaid, certified or registered mail, return receipt requested, to the above addresses of the parties hereto, or to such other address as a party may request in writing. Any time period provided in the giving of any notice hereunder shall commence upon the date such notice is deposited in the mail.

The term "Assignor" and "Assignee" shall be construed to include the successors and assigns thereof. The gender and number used in this Agreement are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

This Assignment may not be amended, modified, or changed nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

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The term of this Assignment shall be until the Certain Note and Deed of Trust (or any extension or renewal thereof) dated January 29, 1993 made and executed and delivered by Assignor in favor of Assignee, secured by the premises described herein in the original principal amount of Forty-two Thousand Dollars and 00/100 (\$42,000.00) shall have been fully paid and satisfied.

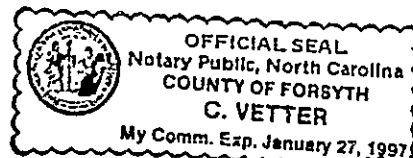
IN WITNESS WHEREOF, the Assignor has caused this instrument to be signed and sealed as of the date first above written.

J&H PROPERTY, A NC GENERAL PARTNERSHIP

Jerry D. Holmes Jr.
GENERAL PARTNER
Jeanne K. Holmes
GENERAL PARTNER

G. M. Todd Jackson
GENERAL PARTNER
Lana B. Jackson
GENERAL PARTNER

NORTH CAROLINA
Forsyth
GUILFORD COUNTY



I, C. Vetter, a Notary Public of
Forsyth County, do hereby certify that
Jerry D. Holmes Jr., G. M. Todd Jackson, Lana B. Jackson (name, title, company) General Partners
personally appeared before me this day and acknowledged the
due execution of the foregoing instrument in writing as an
act of said instrument.

Jeanne
K. Holmes

Witness my hand and notarial seal this the 29 day of
January, 1993.

C. Vetter
Notary Public

My Commission Expires: 1 27 97
NORTH CAROLINA

STATE OF NORTH CAROLINA—Forsyth County

The foregoing (or annexed) certificate of C. Vetter NP Forsyth Co NC
(here give name and official title of the officer signing the certificate passed upon)

is (are) certified to be correct. This the 29 day of Jan 19 93.

PRESENTED FOR
REGISTRATION
AND

L. E. Speas, Register of Deeds

By Patsy Davis Deputy Assistant

Probate and Filing Fee \$ 18 00 paid.

93 JUN 23 12:58
L. E. SPEAS
REG. CLERK OF DEEDS
FORSYTH CO. NC

Jeri Hagger

EXHIBIT A

BEING KNOWN AND DESIGNATED as Unit No. 322 as shown on a plat or plats entitled "FOREST OAKS, PHASE THREE-A" recorded in Condominium and Unit Ownership Book 2, at pages 103, through 105, in the Office of the Register of Deeds of Forsyth County, North Carolina; reference to which is hereby made for a more particular description; and an undivided fee simple interest, which is subject to reduction, as hereinafter stated, in and to the common area shown on the referenced recorded plat and the plats of "FOREST OAKS, PHASE ONE" recorded in Condominium and Unit Ownership Book 1, pages 131 through 134, "FOREST OAKS, Amenities Area" recorded in Unit Ownership Book 2, pages 10 through 11, "FOREST OAKS, PHASE TWO," recorded in Condominium and Unit Ownership Book 1, at pages 138 through 142, and revised in Book 2, page 9, and "FOREST OAKS, PHASE THREE," recorded in Condominium and Unit Ownership Book 2 at pages 77 and 78.

TOGETHER with all rights and easements appurtenant to said unit as specifically enumerated in the "Declaration of Condominium" issued by Forest Oaks Associates recorded in the Office of the Register of Deeds of Forsyth County, in Book 1358, page 1391, et seq., as amended in Book 1362, page 948, et seq., amended by Shugart Enterprises, Inc. in Book 1398, page 113, et seq. and re-recorded in Book 1398, page 1090, et seq., and amended by Shugart Development Company, Inc., in Book 1447, page 311 et seq., and Book 1462, page 810 and pursuant thereto membership in Forest Oaks Homeowners Association, Inc., a North Carolina Non-Profit Corporation, recorded with the Declaration of Condominium as Exhibit "D".

TOGETHER with all rights in and to the limited common areas and facilities, if any, appurtenant to said unit; and

TOGETHER with a non-exclusive easement for ingress, egress and regress with all 25-foot wide roadways as shown on the Condominium Plats of Phase One, Phase Two, Phase Three, Amenities Area and Phase Three-A above referred to; and

Subject to the said Declaration of Condominium, amendments thereto and the Exhibits annexed thereto, which are incorporated herein as if set forth in their entirety, and by way of illustration and not by way of limitation, provide for:

- (1) 1.2253% as the percentage of undivided fee simple interest appertaining to the above unit in the common areas and facilities, which percentage may be reduced as provided therein; (2) Use and restriction of use of unit for residential and lodging accommodation purposes, and other uses reasonably incidental thereto; (3) Property rights of Purchaser, in and to the Common Area; (4) Obligations and responsibility of the Purchaser for regular monthly assessments and special assessments and the effect of non-payment thereof as set forth in said Declaration and By-Laws annexed thereto; (5) Limitations upon use of Common Areas; (6) Obligations of Purchaser and the Association for maintenance; (7) Restrictions upon use of the unit ownership in real property conveyed hereby; and (8) Retention of interest in Forest View Drive and Winding Forest Drive by Seller and Lender for access to adjoining property.