

Mail to: First-Citizens Bank and Trust Company, Attn: David Mancuso,
P.O. Box 5537, Winston-Salem, NC 27113-5537
STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

ASSIGNMENT OF LEASES RENTS AND PROFITS
K 1870 P 1553

THIS ASSIGNMENT OF LEASES, RENTS AND PROFITS (the "Assignment"), made and entered into as of the 1st day of September, 19 95, by and between E & I INVESTMENT PARTNERSHIP, a NC General Partnership (hereinafter referred to as "Assignor") and FIRST-CITIZENS BANK & TRUST COMPANY, a North Carolina banking corporation (hereinafter referred to as "Bank");

WITNESSETH:

WHEREAS, Assignor is indebted or is to be indebted to Bank in the principal sum of Forty-Seven Thousand Two Hundred & no/100 Dollars (\$ 47,200.00), such indebtedness being evidenced by a Note, payable with interest as specified therein, and secured by a Deed of Trust, said Note and Deed of Trust being dated September 1, 1995, or if date omitted, of even date herewith, and being due or having a final payment due on September 1, ~~19~~ 2000 and,

WHEREAS, this Assignment is made to secure further the obligations of Assignor under the Note, Deed of Trust, and any other instruments and documents related thereto.

NOW, THEREFORE, in consideration of the indebtedness now or hereafter to be secured hereby, and in consideration of the sum of \$1.00 and other good and valuable considerations paid to Assignor by Bank, the receipt and sufficiency of which hereby are acknowledged, Assignor hereby assigns, transfers, conveys and sets over to Bank, its successors and assigns, all estate, right, title and interest of Assignor in and to all rents, issues, profits, revenues, royalties, licenses, permits, rights and benefits from the following described property (said property being hereinafter referred to as the "Premises"), to wit:

BEING KNOWN AND DESIGNATED as Condominium Unit No. 2102 as described in the plans of Aspen Park Condominium, Phase III, Section 8, which are recorded in Condominium Book 3 at pages 95 through 98, inclusive, in the Office of the Register of Deeds of Forsyth County, North Carolina; and

TOGETHER WITH all rights and easements appurtenant to said Unit as specifically enumerated in the "Declaration of Condominium" issued by John N. Davis, III, et al., and recorded in Book 1516 at pages 537 through 549 (plus exhibits), et seq., on the 22nd day of November, 1985; and pursuant thereto, membership in Aspen Park Recreational Corporation, a North Carolina non-profit corporation; and

TOGETHER WITH all rights of Grantor in and to the limited common areas and facilities appurtenant to said Unit; and

SUBJECT TO the said Declaration of Condominium and the By-Laws annexed thereto which, with all attachments therein, are incorporated herein as if set forth in their entirety.

And Assignor hereby assigns, transfers, conveys and sets over to Bank, its successors and assigns, all right, title and interest of Assignor in and to all of the rents, issues, profits, revenues, royalties, licenses, permits, rights and benefits (hereinafter referred to collectively as the "Rents") of and from the Premises, and to that end Assignor hereby assigns, transfers, conveys and sets over to Bank, its successors and assigns, all leases and rental agreements covering all or any part of the Premises, now existing or hereafter made, executed, or delivered, whether written or verbal, together with all extensions, renewals, modifications or replacements thereof, all guaranties of performance or payment thereunder, and all security deposits held in connection therewith, including, without limitation, the following described leases (any such lease or leases being hereinafter referred to collectively as the "Lease" and any tenant or tenants of the Premises being hereinafter referred to collectively as the "Tenant"), to wit:

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TO HAVE AND TO HOLD the same unto Bank, its successors and assigns, upon the terms and conditions hereinafter set forth;

1. Warranties of Assignor. Assignor hereby warrants that:

- (a) The Lease is valid, enforceable and in full force and effect, and a complete copy of the Lease, together with any and all modifications or amendments thereto, has heretofore been delivered to Bank.
- (b) Assignor is the sole holder of the landlord's interest under the Lease, is entitled to receive the Rents, and has good right to assign, transfer, convey and set over the same and to grant to and confer upon Bank the rights, interest, powers and authorities herein granted and conferred;
- (c) Assignor has made no assignment other than this Assignment of any of the rights of Assignor under the Lease or with respect to any of the Rents;
- (d) Assignor has neither done any act nor omitted to do any act which might prevent Bank from, or limit Bank in, acting under any of the provisions of this Assignment;
- (e) The Lease provides for rent to be paid monthly, in advance, and Assignor has not accepted payment of rent under the Lease for more than one (1) month in advance of the due date thereof;
- (f) There exists no default or event of default or any state of facts which would, with the passage of time or the giving of notice, or both, constitute a default or event of default on the part of Assignor or, so far as is known to Assignor, by any tenant under the terms of the Lease;
- (g) Neither the execution and delivery of this Assignment or the Lease, nor the performance of each and every covenant of Assignor under this Assignment and the Lease, nor the meeting of each and every condition contained in this Assignment, conflicts with or constitutes a breach or default under any agreement, indenture or other instrument to which Assignor is a party, or any law, ordinance, administrative regulation or court decree which is applicable to Assignor; and,
- (h) No action has been brought or, so far as is known to Assignor, is threatened, which would interfere in any way with the right of Assignor to execute this Assignment and perform all of Assignor's obligations contained in this Assignment and in the Lease.

2. Covenants of Assignor. Assignor hereby covenants and agrees that:

- (a) Assignor shall, at no cost or expense to Bank, (i) fulfill, perform and observe each and every condition and covenant of landlord or lessor contained in the Lease; (ii) give prompt notice to Bank of any claim of default under the Lease, whether given by Tenant to Assignor, or given by Assignor to Tenant, together with a complete copy of any such notice; (iii) enforce, short of termination, the performance and observance of each and every covenant and condition of the Lease to be performed or observed by Tenant thereunder; and (iv) appear in and defend any action arising out of, or in any manner connected with, the Lease, or the obligations or liabilities of Assignor as the landlord thereunder, or of Tenant or any guarantor thereunder;
- (b) Assignor shall not, without the prior written consent of Bank, (i) modify or amend the Lease or grant any concession to Tenant or release any party to the Lease (whether as Tenant or a guarantor) of and from their obligations thereunder, or otherwise discharge or compromise, directly or indirectly, any rent or payments in lieu thereof under the Lease; (ii) terminate the term or accept the surrender of the Lease; (iii) waive or release Tenant from the performance or observance by Tenant of any obligation or condition of the Lease; (iv) permit the prepayment of any rents under the Lease for more than one (1) month prior to the accrual thereof; (v) consent to any assignment or sublease by Tenant under the Lease; or (vi) assign its interest in, to or under the Lease or the Rents to any person or entity other than Bank;
- (c) Assignor shall take no action which would cause or permit the estate of Tenant under the Lease to merge with the interest of Assignor in the Premises or any portion thereof;

(d) Assignor shall protect, indemnify and save harmless Bank from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by Bank by reason of this Assignment and any claim or demand whatsoever which may be asserted against Bank by reason of any alleged obligation or undertaking to be performed or discharged by Bank under this Assignment. In the event Bank incurs any expense, liability, loss or damage by reason of this Assignment, or in the investigation or defense of any claim or demand arising out of or in connection with this Assignment, the amount of such expense, liability, loss or damage shall be added to the indebtedness evidenced by the Note, shall bear interest at the rate specified in the Note from the date incurred until paid and shall be payable on demand; and,

(e) Assignor shall authorize and direct, and does hereby authorize and direct each and every present and future Tenant of the whole or any part of the Premises to pay all Rents to Bank upon receipt of written demand from Bank to so pay the same.

3. **Rights Assigned.** Assignor hereby assigns, transfers, conveys and sets over to Bank all rights, powers, privileges, options and other benefits of the landlord under the Lease, including, but not by way of limitation, the immediate and continuing right to receive and collect all Rents, to give and receive all notices, consents and releases, to take such action upon the happening of a default under the Lease, including the commencement, conduct and consummation of proceedings at law or in equity as shall be permitted under any provision of the Lease or by law, and to do any and all other things whatsoever which Assignor is or may become entitled to do under the Lease.

4. **Assignment as Security.** This Assignment is executed as collateral security for the obligations of Assignor under the Note, Deed of Trust and any other security documents and instruments related thereto, and the execution and delivery hereof shall not in any way impair or diminish the obligations of Assignor under the provisions of the Lease nor shall any of the obligations contained in the Lease be imposed upon Bank as a result of the execution of this Assignment. Although this Assignment constitutes a present and current assignment of all Rents, so long as there shall exist no Event of Default, as defined in Paragraph 6 below, on the part of Assignor, Bank shall not demand that the Rents be paid directly to Bank, and Assignor shall have the right to collect the Rents, but not more than one (1) month prior to accrual. When the Note and Deed of Trust shall have been paid and satisfied in full, this Assignment and all rights herein assigned to Bank shall cease and terminate and shall thereupon be of no further force or effect.

5. **Relationship to Note and Other Security.** Assignor hereby agrees that none of the rights or remedies of Bank under the Note, the Deed of Trust or any other instrument or document related thereto shall be delayed or in any way prejudiced by this Assignment. Notwithstanding any variation in the terms of the Note, Deed of Trust or any other instrument or document related thereto, any extension of time for payment thereunder or the release of any collateral, obligor or guarantor, this Assignment shall continue in full force and effect in accordance with the terms hereof.

6. **Events of Default.** The term "Event of Default" wherever used in this Assignment shall mean any one or more of the following events:

- (a) The occurrence of any default or event of default under the Note, the Deed of Trust or any other instrument securing the Note;
- (b) The failure by Assignor duly and fully to comply with any covenant, condition or agreement of this Assignment; or
- (c) The breach by Assignor of any warranty contained in this Assignment.

7. **Remedies Upon Default.** Upon the occurrence of any Event of Default, Bank may at its option, with or without notice or demand of any kind and without regard to the adequacy of security for the Note, exercise any or all of the following remedies:

- (a) Declare the Note to be due and payable, whereupon the entire principal balance, all interest accrued thereon and all sums otherwise due to Bank thereunder, or under any instrument or document related thereto, shall immediately become due and payable;
- (b) Perform any and all obligations of Assignor under the Lease or this Assignment and exercise any and all rights of Assignor hereunder or thereunder, including, without limitation: (i) enforcing, modifying, extending or terminating the Lease; (ii) collecting, modifying, compromising, waiving or increasing any or all of the Rents; and (iii) obtaining new tenants and entering into new leases of the Premises on any terms and conditions deemed desirable by Bank, and, to the extent Bank shall incur any costs in connection with the performance of any such obligations of Assignor, including costs of litigation, all such costs shall become a part of the Note, shall bear interest at the rate specified in the Note from the date incurred until paid and shall be due and payable on demand;
- (c) In Assignor's or Bank's name, institute any legal or equitable action which Bank in its sole discretion deems desirable to collect and receive any or all of the Rents;
- (d) Collect the Rents and apply the same in such order as Bank in its sole discretion may elect against (i) all costs and expenses, including reasonable attorneys' fees, incurred in connection with the operation of the Premises, the performance of Assignor's obligations under the Lease and collection of the Rents; (ii) all the costs and expenses, including reasonable attorneys' fees, incurred in the collection of the Note, including all costs, expenses and attorneys' fees incurred in seeking to realize on or to protect or preserve Bank's interest in any collateral securing the Note; and
- (e) Take such other actions or commence such proceedings as Bank shall deem necessary or advisable to protect its interest in the Premises, the Lease and the Rents.

8. **Remedies Cumulative.** The remedies herein provided shall be in addition to and not in substitution of the rights and remedies vested in Bank by the Note, Deed of Trust and any other instrument or document related thereto or otherwise at law or in equity, all of which rights and remedies are specifically reserved by Bank. The remedies herein provided or otherwise available to Bank shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the remedies herein provided prevent the subsequent or concurrent resort to any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to Bank shall continue and be each and all available to Bank until the Note shall have been paid in full.

9. **Accounting for Rents.** Nothing herein contained shall be construed as making Bank, its successors or assigns, a mortgagee in possession, nor shall Bank be liable for laches for failure to collect Rents, and it is understood and agreed that Bank is to account for such sums as are actually received by Bank.

10. **Applicable Law.** Bank and Assignor agree, notwithstanding the principles of conflicts of laws, that the internal laws of the State of North Carolina shall govern and control the validity, interpretation, performance and enforcement of the Assignment. Bank and Assignor further agree that any action relating to this Assignment and the transactions contemplated hereby shall be instituted and prosecuted in the courts of the State of North Carolina, and each party hereby consents to the jurisdiction of said courts.

11. **No Third Party Beneficiaries.** This Assignment is made solely for the benefit of Bank and its assigns. No Tenant or any other person shall have standing to bring any action against Bank as the result of this Assignment, or to assume that Bank will exercise any remedies provided herein, and no person other than Bank shall under any circumstances be deemed to be a beneficiary of any provision of this Assignment.

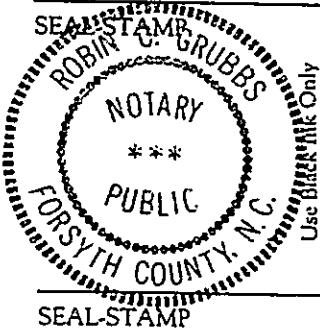
12. **Terminology.** All personal pronouns used in this Assignment, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural, and vice versa. Paragraph headings are convenience only and neither limit or amplify the provisions of this Assignment.

13. **Severability.** If any provision of this Assignment or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

14. **Successors and Assigns.** This Assignment shall inure to the benefit of and be binding upon Assignor and Bank and their respective heirs, executors, legal representatives, successors and assigns.

IN TESTIMONY WHEREOF, Assignor has caused this instrument to be executed in its corporate name by its _____ Secretary, and its corporate seal to be hereto affixed, all by order of its Board of Directors duly given, this the day and year first above written.

Name of Corporation _____
By: _____ President
ATTEST: _____ Secretary



STATE OF NORTH CAROLINA, COUNTY OF FORSYTH
I, Robin C. Grubbs, a Notary Public in and for said County and State, do hereby certify that James H. Perkins and Christopher D. Thomas, General Partners of E & I Investment Partnership personally appeared before me this day and acknowledged the due execution of the foregoing instrument.
WITNESS my hand and notarial seal, this the 1st day of September, 19 95.
My Commission expires: 10/27/96 Robin C. Grubbs Notary Public

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IN TESTIMONY WHEREOF, each individual Assignor has set his hand hereto and has adopted as his seal the word "SEAL" appearing beside his name, this the day and year first above written, and/or each partnership Assignor has caused this instrument to be executed in its partnership name and under seal by its duly authorized partners, this the day and year first above written.

(SEAL) _____
(SEAL) _____
E & I INVESTMENT PARTNERSHIP (SEAL) _____
(By:) James H. Perkins, General Partner (SEAL) _____
(By:) Christopher D. Thomas, General Partner (SEAL) _____

STATE OF NORTH CAROLINA, COUNTY OF _____
I, _____, a Notary Public in and for said County and State, do hereby certify that _____ before me this day personally appeared, who being by me first duly sworn, says that he/she is a general partner(s) of _____, the partnership described in and which executed the foregoing instrument; that he/she executed said instrument in the partnership name by subscribing his/her name(s) thereto; and that the instrument is the act and deed of said partnership.
WITNESS my hand and notarial seal, this the _____ day of _____, 19 _____.
My Commission expires: _____ Notary Public

STATE OF NORTH CAROLINA, COUNTY OF _____
I, _____, a Notary Public in and for said County and State, do hereby certify that on the _____ day of _____, 19 _____, before me personally came _____ with whom I am personally acquainted, who, being by me duly sworn, says that _____ is the _____ President and that _____ is the _____ Secretary of _____, the corporation described in and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal; and that the name of the corporation was subscribed thereto by _____ President and that said _____ President and _____ Secretary subscribed their names

STATE OF NORTH CAROLINA-Forsyth County

The foregoing (or annexed) certificate of Robin C. Grubbs NP
(there give name and official title of the officer signing the certificate _____ passed upon)

Is (are) certified to be correct. This the 1st day of Sept, 19 95.

John Holleman, Register of Deeds

By Hilda J. Green Deputy Assistant

Probate and Filing Fee \$ _____ paid

RECORDED
SEP - 1 AM 11:52
John Holleman
Register of Deeds
Forsyth Co. N.C.