

Block 3461, Lots 16A, 16B, 16C
Drafted By: Ronald A. Matamoros
Return to: House, Blanco & Osborn Box

SOUTHERN NATIONAL BANK OF NORTH CAROLINA

12

STATE OF NORTH CAROLINA

COUNTY OF Forsyth

ASSIGNMENT OF LEASES, RENTS, AND PROFITS

THIS ASSIGNMENT, made this 16 day of September, 1986, by and between

Towergate Associates

(hereinafter called "Assignor")
to Southern National Bank of N.C., a national banking association with its principal office and place of business at Lumberton, North Carolina (hereinafter called "Assignee").

WITNESSETH: For value received and as additional security for the loan hereinafter mentioned, Assignor hereby sells, transfers and assigns unto Assignee, its successors and assigns all the right, title, and interest of Assignor in and to the rents, issues, profits, revenues, royalties, rights, and benefits, from the following described property:

(Insert below description of real estate appearing in deed of trust or mortgage)

See Exhibit A attached hereto and made a part hereof

And to that end Assignor hereby assigns and sets over unto Assignee, its successors and assigns, all leases of said premises now made, executed, or delivered, whether written or verbal, or to be hereafter made as said leases may have been, or may from time to time be hereafter modified, extended and renewed, be the same written or verbal, with all rents, income, and profits due and becoming due thereon and all security deposits held in connection therewith, including specifically, without limiting the generality hereof, the following leases:

All leases (written or oral) from the apartment units located in Towergate Apartments (Phase 4).

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And Assignor does hereby authorize and empower Assignee to collect the said rents, issues, profits, revenues, royalties, rights, and benefits, as they shall become due, and does hereby direct each and all of the tenants of the aforesaid premises to pay such rents, as may now be due or shall hereafter become due to Assignee, upon demand for payment thereof by Assignee. It is 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 by the deed of trust or mortgage herein mentioned, or default of the payment of any other sums secured by said deed of trust or mortgage, or default in meeting the terms and conditions appearing in said deed trust or mortgage, or after the filing of a petition against Assignor in receivership, bankruptcy or proceeding in arrangement, whether it be voluntary or involuntary, or upon adjudication of Assignor in receivership, bankruptcy or proceeding in arrangement; and until such demand is made, Assignor is authorized to collect or continue collecting said rents, issues, profits, revenues, royalties, rights, and benefits; but that such privilege to collect or continue collecting, as aforesaid by Assignor shall not operate to permit the collection by Assignor; his heirs, executors, administrators, or assigns, of any installment of rent in advance of the date prescribed in said lease or leases for the payment thereof, without the prior written consent of the Assignee. Anything to the contrary notwithstanding, Assignor hereby assigns to Assignee any award made hereafter to it in any court procedure involving any of the leases in bankruptcy, insolvency, or reorganization proceedings in any State or Federal court; and any and all payments made by lessees in lieu of rent. Assignor hereby appoints Assignee as its irrevocable attorney in fact to appear in any action and/or to collect any such award or payment.

The term of this assignment shall be until the certain note(s) and deed(s) of trust or mortgage(s) (or any extension or renewal thereof) dated

September 16, 1986

, made, executed, and delivered by

Towergate Associates

to Southern National Bank of N.C., covering the above described property for the sum of ONE MILLION FORTY-EIGHT THOUSAND

AND NO/100* * * * * Dollars (\$1,048,000.00)
shall have been fully paid and satisfied, or until the expiration of the period of redemption, if any, at which times this assignment is to be fully satisfied, cancelled and released, and the releasing of said deed of trust or mortgage shall constitute a release hereof.

This assignment is given as additional security for the performance of each and all of the obligations and covenants of the note and deed of trust or mortgage above described (or any extension or renewal thereof), and the amounts collected hereunder, less the expenses of collection, if any, shall be applied in reduction of the entire indebtedness from time to time outstanding and secured by said deed of trust or mortgage.

The Assignor, in the event of default in performance of any of the terms and conditions of said note and deed of trust or mortgage hereby authorizes the Assignee, at its option, to enter and take possession of the above described premises and the improvements situate thereon and to manage and operate the same, to collect all or any rents accruing therefrom and from said leases, to let or re-let said premises or any part thereof, to cancel and modify leases, evict tenants, bring or defend any suits in connection with possession of said premises in its own name or Assignor's name, make repairs as Assignee deems appropriate, and perform such other acts in connection with the management and operation of said premises as Assignee, in its discretion, may deem proper.

In the event (i) Assignee shall elect to exercise the right of entry granted herein or (ii) the premises herein described shall be sold through foreclosure, Assignor shall turn over to Assignee or the purchaser at any foreclosure sale the security deposits held by Assignor, its agents or employees, pursuant to the leases herein assigned. Provided, however, Assignor shall not be obligated to deliver the security deposits unless and until Assignor shall have received the written undertaking of Assignee or purchaser to apply the security deposits to the purposes specified in the leases, in accordance with the terms and conditions thereof, to the extent that funds sufficient for such purposes shall be turned over to Assignee or purchaser by Assignor.

The receipt by the Assignee of any rents, issues, or profits pursuant to this Instrument after the institution of foreclosure proceedings under said deed of trust or mortgage shall not cure such default nor affect such proceedings or any sale pursuant thereto.

Assignee shall not be liable for laches, or failure to collect said rents, issues, profits, revenues, royalties, rights, and benefits, and it is understood that said Assignee is to account only for such sums as are actually collected, and Assignee shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Assignor under any of said leases, and Assignor hereby agrees to indemnify Assignee for, and to save it harmless from, any and all liability arising from any of said leases or from this assignment, and this assignment shall not place responsibility for the control, care, management, or repair of said premises upon Assignee, or make Assignee responsible or liable for any negligence in the management, operation, upkeep, repair, or control of said premises resulting in loss or injury or death to any tenant, licensee, employee or stranger.

Assignor covenants and represents that:

- (i) Assignor has full right and title to assign said leases and the rents, issues, profits, revenues, royalties, and benefits due or to become due thereunder;
- (ii) the terms of said leases have not been changed from the terms in the copies of said leases submitted to Assignee for approval;
- (iii) no other assignment of any interest therein has been made;
- (iv) there are no existing defaults under the provisions thereof;
- (v) there has been no anticipation or prepayment of any rents by any tenants occupying the above described premises or by any of the lessees in any of the said leases;
- (vi) Assignor will not hereafter cancel, surrender, or terminate any of said leases, exercise any option which might lead to such termination, or change, amend, alter or modify them, or consent to the release of any party liable thereunder or to the assignment of the lessees' interest in them, without the prior written consent of Assignee; and
- (vii) security deposits made or to be made with respect to leases of the hereinabove described premises shall be deposited to and kept in a separate bank account maintained by Assignor for that purpose in the name of the project and designated as the account for the deposit of security deposits and Assignor shall provide to Assignee within 30 days of the end of Assignor's fiscal year a written verification of the amount of security deposits maintained in said account together with a list of the leases with respect to which said deposits are maintained.

Assignor hereby authorizes Assignee to give notice in writing of this assignment at any time to any tenant under any of said leases.

Violation of any of the covenants, representations, and provisions contained herein by Assignor shall be deemed a default under the terms of said note and deed of trust or mortgage.

Default by Assignor under any of the terms of the leases assigned herein shall be deemed a default under the terms of said note and deed of trust or mortgage. Any expenditures made by Assignee in curing such a default on the Assignor's behalf, with interest thereon at the rate provided for in said note and deed of trust or mortgage, shall become part of the debt secured by these presents.

IT IS UNDERSTOOD AND AGREED that neither the existence of this assignment nor the exercise of its privilege to collect said rents, issues, profits, revenues, royalties, rights, and benefits hereunder, shall be construed as a waiver by Assignee, or its successors and assigns, of the right to enforce payment of the debt hereinabove mentioned, in strict accordance with the terms and provisions of the note(s) and deed(s) of trust or mortgage(s) for which this assignment is given as additional security.

This assignment applies to and binds the parties hereto and their respective heirs, administrators, executors, successors, and assigns, as well as any subsequent owner of the real estate described herein and any assignee of the deed of trust or mortgage referred to herein.

IN WITNESS WHEREOF, Assignor has caused this instrument to be executed under the seal the day and year first above written.

ATTEST:

Secretary
[CORPORATE SEAL]

(Name of Corporation)

By: _____
President

Towergate Apartments

(Seal)

(Seal)

SEE SEPARATE SIGNATURE PAGES (Seal)

(Seal)

BOOK 1564 P 6519

EXHIBIT A

BEING all that property designated as "Section Four, Towergate," and being recorded in Plat Book 31, Page 56, Forsyth County Registry of Deeds.

There is further conveyed herewith a non-exclusive right of ingress and regress across those private access easements designated on the Plat of Towergate, as recorded in Plat Book 30, Page 27, Forsyth County Registry of Deeds.

SIGNATURES TO
THAT CERTAIN ASSIGNMENT OF LEASES, RENTS AND PROFITS
BETWEEN TOWERGATE ASSOCIATES
AND
SOUTHERN NATIONAL BANK OF NORTH CAROLINA
DATED SEPTEMBER 16, 1986

TOWERGATE ASSOCIATES, a Partnership

BY: S & A PARTNERSHIP, Partner

By: Larry C. Allen (SEAL)
Partner

By: Claude R. Horn, Jr. (SEAL)
Claude R. Horn, Jr. - Partner

By: Stephen H. Homer (SEAL)
Stephen H. Homer - Partner

By: William E. Lesha (SEAL)
William E. Lesha - Partner

By: Michael H. Rubin (SEAL)
Michael H. Rubin - Partner

By: Thomas J. Koontz (SEAL)
Thomas J. Koontz - Partner

By: Richard R. Guidetti (SEAL)
Richard R. Guidetti - Partner

By: Paul J. Beerman (SEAL)
Paul J. Beerman - Partner

By: John E. Phillips (SEAL)
John E. Phillips - Partner

By: Alonzo D. Kornegay (SEAL)
Alonzo D. Kornegay - Partner

BY: B & D INVESTMENTS, Partner

By: James S. Gibbs (SEAL)
Partner

By: James S. Gibbs (SEAL)
James S. Gibbs - Partner

By: Richard W. Adams (SEAL)
Richard W. Adams - Partner

By: Elms L. Allen (SEAL)
Elms L. Allen - Partner

(SIGNATURES CONTINUED ON FOLLOWING PAGE)

BY: FHS ASSOCIATES, Partner

By: Gully F. Shugart (SEAL)
Partner

By: Gary W. Elliott (SEAL)
Gary W. Elliott - Partner

By: Nancy Southard (SEAL)
Nancy Southard - Partner

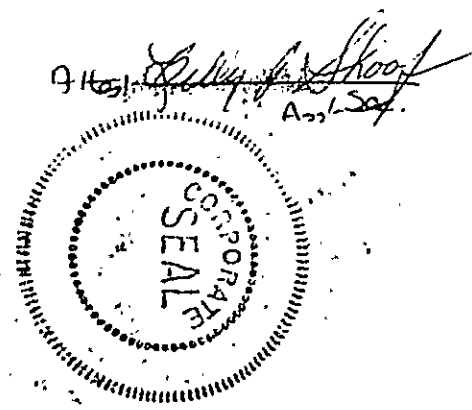
By: Philip McKinley (SEAL)
Philip McKinley - Partner

By: Raymond Marshall (SEAL)
Raymond Marshall - Partner

BY: ALL-SOUTH MANAGEMENT COMPANY,
Partner

By: Bill (SEAL)
Partner

Grover F. Shugart, Jr. (SEAL)
Grover F. Shugart, Jr. Partner



(SEE SEPARATE SIGNATURE PAGE FOR ADDITIONAL PARTNER)

TOWER7.RAM/hlm

STATE OF NORTH CAROLINA - COUNTY OF Forsyth

I, Holly M. McDevitt, a Notary Public of Forsyth County, North Carolina, certify that LARRY ALEXANDER, Partner of S & A PARTNERSHIP, a Partner of TOWERGATE ASSOCIATES, a partnership, personally appeared before me this day and acknowledged the execution of the foregoing instrument for and on behalf of said Partnership.

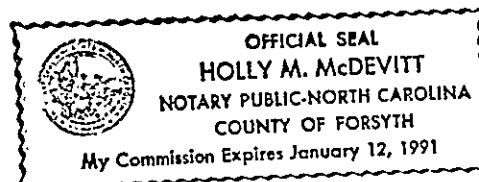
WITNESS my hand and notarial stamp or seal this the 11th day of September, 1986.

Holly M. McDevitt
Notary Public

My Commission Expires:

January 12, 1991

NOTARIAL STAMP/SEAL:



STATE OF NORTH CAROLINA - COUNTY OF Forsyth

I, Holly M. McDevitt, a Notary Public of Forsyth County, North Carolina, certify that CLAUDE R. HORN, JR., STEPHEN H. HOMER, WILLIAM ELESHA, MICHAEL H. RUBIN, THOMAS J. KOONTZ, RICHARD R. GUIDETTI, PAUL J. BEERMAN, JOHN E. PHILLIPS, ALONZO D. KORNEGAY, JAMES S. GIBBS, RICHARD W. ADAMS, ELMS L. ALLEN, GARY W. ELLIOTT, NANCY SOUTHARD, PHILIP H. MCKINLEY, RAYMOND MARSHALL, and GROVER F. SHUGART, JR., Partners of TOWERGATE ASSOCIATES, a partnership, personally appeared before me this day and acknowledged the execution of the foregoing instrument for and on behalf of said Partnership.

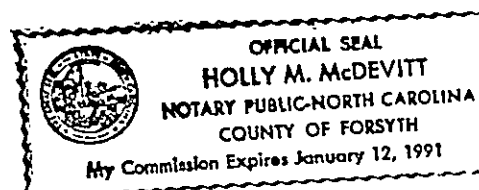
WITNESS my hand and notarial stamp or seal this 11th day of September, 1986.

Holly M. McDevitt
Notary Public

My Commission Expires:

January 12, 1991

NOTARIAL STAMP/SEAL:



STATE OF NORTH CAROLINA - COUNTY OF Forsyth

I, Holly M. McDevitt, a Notary Public of Forsyth County, North Carolina, certify that PAUL H. BAILEY, Partner of B & D INVESTMENTS, a Partner of TOWERGATE ASSOCIATES, a partnership, personally appeared before me this day and acknowledged the execution of the foregoing instrument for and on behalf of said Partnership.

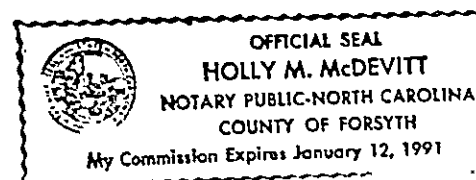
WITNESS my hand and official stamp or seal this 11th day of September, 1986.

Holly M. McDevitt
Notary Public

My Commission Expires:

January 12, 1991

NOTARIAL STAMP/SEAL:



STATE OF NORTH CAROLINA - COUNTY OF Forsyth

I, Holly M. McDevitt, a Notary Public of Forsyth County, North Carolina, certify that BILLY J. SHOAF, Partner of FHS ASSOCIATES, Partner of TOWERGATE ASSOCIATES, a partnership, personally appeared before me this day and acknowledged the execution of the foregoing instrument for and on behalf of said Partnership.

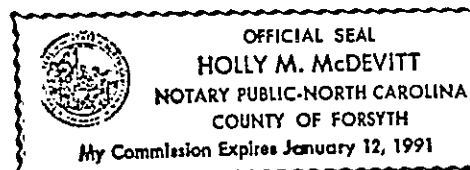
WITNESS my hand and notarial stamp or seal this 11th day of September, 1986.

Holly M. McDevitt
Notary Public

My Commission Expires:

January 12, 1991

NOTARIAL STAMP/SEAL:



STATE OF NORTH CAROLINA - COUNTY OF Forsyth

I, Holly M. McDevitt, a Notary Public of Forsyth County, North Carolina, certify that BILLY J. SHOAF personally appeared before me this day and acknowledged that he is the Assistant Secretary of ALL-SOUTH MANAGEMENT COMPANY, a corporation and a Partner of TOWERGATE ASSOCIATES, a Partnership, and that by authority duly given and as the act of the corporation on behalf of the Partnership, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by BILLY J. SHOAF as its Assistant Secretary.

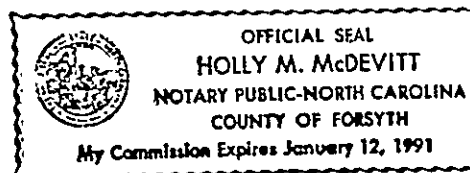
WITNESS my hand and notarial stamp or seal this 11th day of September, 1986.

Holly M. McDevitt
Notary Public

My Commission Expires:

January 12, 1991

NOTARIAL STAMP/SEAL:



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SEPARATE SIGNATURE PAGE
TO THAT CERTAIN ASSIGNMENT OF LEASES, RENTS AND PROFITS
BETWEEN TOWERGATE ASSOCIATES
AND
SOUTHERN NATIONAL BANK OF NORTH CAROLINA
DATED SEPTEMBER 16, 1986

Towergate Associates, a Partnership
By: Brady Warner (SEAL)
Brady Warner - Partner

STATE OF CALIFORNIA - COUNTY OF Santa Barbara

I, Mollie Patricia Buchert, a Notary Public of
Santa Barbara County, State of California, certify that BRADY
WARNER, Partner of TOWERGATE ASSOCIATES, a Partnership, personally
appeared before me this day and acknowledged the execution of the
foregoing instrument for and on behalf of said Partnership.

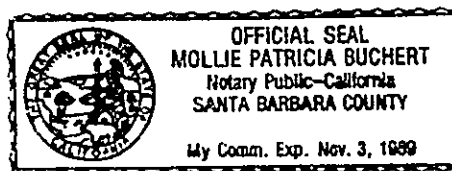
WITNESS my hand and official stamp or seal, this 11th day of
September, 1986.

Mollie Patricia Buchert
Notary Public

My Commission Expires:

November 3, 1989

NOTARIAL STAMP/SEAL:



STATE OF NORTH CAROLINA - Forsyth County

The foregoing (or annexed) certificate of Holly M. McDermott N.P. Forsyth Co. N.C.
(here give name and official title of the officer signing the certificate passed upon)
by Mollie Patricia Buchert N.P. Santa Barbara Co. Calif.
is (are) certified to be correct. This the 16 day of June, 1986.

L. E. Speas, Register of Deeds

By Jessie Holden Deputy

SEP 16 9 45 AM '86

Probate and Filing Fee \$ 17.00
paid
REGISTER OF DEEDS
FORSYTH CO. N.C.

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