

- (iii) failure by Borrower to meet any condition set forth in Lease;
- (iv) should any event occur under any agreement made by Borrower with any third person whereby that person might declare immediately due and payable any indebtedness owing by Borrower to such third person; or
- (v) should Borrower fail promptly to pay, when due, any debt due any third person,

then and thereupon Lender may: (a) declare the total indebtedness due by Borrower to Lender, secured by this assignment, immediately due and payable; (b) proceed to enter upon, take possession of, and operate the Premises under this assignment without becoming a mortgagee in possession; (c) proceed to perform any and all obligations of Borrower, contained under Lease, and exercise any and all rights of Borrower therein contained as fully as Borrower itself could, and this without regard to the adequacy of security for the indebtedness hereby secured and with or without the bringing of any legal action or the causing of any receiver to be appointed by any court; (d) make, enforce, modify and accept the surrender of Lease, or any single Lease if more than one be assigned hereunder; (e) obtain and evict tenants; (f) fix or modify rent; and (g) do all other acts which Lender may deem necessary or proper to protect its security. Borrower does hereby specifically authorize Lender, in Borrower's name or in Lender's name, to sue for or otherwise collect and receive all rents, issues and profits, including those past due and unpaid, and apply the same first against all costs and expenses of operation of the Premises, of the performance of Borrower's obligations under Lease and of collection, including reasonable attorneys' fees. Any amounts remaining after such application shall be applied next to interest on, and then to the principal of, the indebtedness secured hereby and upon the payment in full thereof, both principal and interest, then this assignment and all rights of Lender hereunder shall cease and terminate. Entry upon and taking possession of the property and the collection of the rents and the application thereof, as aforesaid, shall in no wise operate to cure or waive any default under any other instrument given by Borrower to Lender, or prohibit the taking of any other action by Borrower under any such instrument or at law or in equity to enforce payment of the indebtedness secured by Lease or to realize on any other security.

Borrower further agrees that:

1. Should Borrower fail to perform or observe any covenant or comply with any condition contained in the Lease, then Lender, but without obligation so to do and without notice to or demand on Borrower or releasing Borrower from its obligation so to do, may perform such covenant or condition and, to the extent that Lender shall incur any costs or pay any monies in connection therewith, including any costs or expenses of litigation, then costs, expense or payment shall be included in the indebtedness secured hereby and shall bear interest from the incurring or payment thereof at the rate of ~~eight~~ (8) fifteen (15%) per cent per annum.
2. No action taken by Borrower or Lender shall cause or permit the estate of any Lessee under any Lease to merge with Borrower's reversionary interest.
3. Lender shall not be obligated to perform or discharge any obligation of Borrower under Lease, and Borrower agrees to indemnify and hold Lender harmless against any and all liability, loss or damage which Lender may incur under the Lease or under or by reason of this assignment and of and from all claims and demands whatsoever which may be asserted against it by reason of an act of Lender under this assignment or under Lease.

The parties agree that wherever used in this assignment, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the words "Borrower" and "Lender" shall include individuals, corporations (and if a corporation, its officers, employees, agents or attorneys) and any and all other persons or entities and the respective heirs, executors, legal representatives, administrators, successors and assigns of the parties hereto, and all those holding under either of them; the word "note" shall also include one or more notes or bonds, and the pronouns used herein shall include, when appropriate, either gender and both singular and plural, and the grammatical construction of sentences shall conform thereto.

IN WITNESS WHEREOF, Borrower has caused these presents to be executed on the date hereinabove written.

Jan Laurens  
John R. Parks  
 Signed, sealed and delivered in the presence of:  
Delora K. Douglas  
Melanie C. Nass

ENCINA PROPERTIES, a South Carolina  
 Limited Partnership

By: LADNER & COMPANY, INC.  
 By: [Signature]  
 AND: James E. Gault

(CORPORATE SEAL)

Notary Public  
 My commission expires:

**SCHEDULE A**

(Here set forth the following information for each lease and, to the extent appropriate, each modification thereof: name of lessor, name of lessee (the "Lessee"), date, book and page of recording, remaining length of current term, and address or other identification of leased premises.)

All leases now or hereafter affecting all or any portion of Premises, including all subleases, renewals, extensions and guaranties thereof, including specifically but without limitation all apartment tenant leases now or hereafter affecting the apartment project to be constructed on Premises by Borrower to be known as Birdsnest Apartments. Borrower is or will be the lessor under each lease.

STATE OF Georgia )  
 COUNTY OF Fulton )

**ACKNOWLEDGMENT**

The foregoing instrument was acknowledged before me this 3<sup>RD</sup> day of September, 1980, by James E. Gault, as Secretary, and Harold G. Gault, as Vice President, of LADNER & COMPANY, INC., a corporation, on behalf of the corporation as General Partner of Encina Properties, a South Carolina Limited Partnership, on behalf of the partnership.

John R. Parks  
 Notary Public for Georgia  
 My commission expires: \_\_\_\_\_

RECORDED SEP 3 1980 at 4:49 P.M.

Notary Public, Georgia, State of Large  
 My Commission Expires Oct 23, 1982

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