

845589

AGREEMENT FOR CONDITIONAL ASSIGNMENT OF RENTALS

CHICAGO TITLE INSURANCE COMPANY
INDIANA DIVISION

THIS INDENTURE made this 14th day of March, 1986, by and between the CALUMET NATIONAL BANK, a corporation duly organized and existing by virtue of the laws of the United States of America (hereinafter called "Lender"), and CALUMET NATIONAL BANK, not personally, but as Trustee under Trust Agreement dated September 23, 1981, and known as Trust No. P-2853, and THOMAS J. FRANKO and MARGE FRANKO, husband and wife, DAVID J. LEE and RICHARD J. STERK and BETTY STERK, husband and wife, all of whom shall be jointly and severally liable hereunder, (hereinafter called "Borrower").

845588

W I T N E S S E T H:

WHEREAS, the Borrower did execute and deliver to Lender a certain loan commitment letter (hereinafter the "Commitment") and a certain Mortgage Note of even date herewith (hereinafter called the "Note") providing for the payment of the principal sum of Six Hundred Twenty-two Thousand Five Hundred Dollars (\$622,500.00) together with interest payable to the order of Lender, and did execute and deliver to Lender a Mortgage of even date herewith on the following described real estate, to-wit:

Lot 5, Block 3, Townsend and Godfrey Addition, in the City of Hammond, as shown in Plat Book 1, page 40 in Lake County, Indiana.

RECORDED
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STATE OF INDIANA
LAKE COUNTY

together with all improvements now and hereafter placed or constructed thereon (hereinafter be called the "Real Estate"), and

WHEREAS, in conjunction with said Mortgage Note and Mortgage, Borrower did also execute and deliver to Lender, or cause to be executed and delivered to Lender, a loan Commitment letter, a certain First Mortgage Refinance and Construction Loan Agreement, and a Security Agreement, all of even date herewith, and the construction plans and specifications and all other documents and instruments relating to the loan from Lender to Borrower, whether or not executed by either party hereto, and any document or instrument referred to in the foregoing, (all of which, together with the Commitment, Mortgage Note, Mortgage, and this Agreement are hereinafter called the "Loan Documents").

NOW, THEREFORE, for valuable consideration and as part of the consideration for said Note and as additional security for the repayment of said Note, and the performance of all of Borrower's obligations under the Loan Documents, the Borrower does hereby sell, assign, transfer and set over unto Lender, its successors and assigns, all of the rents, issues and profits due or to become due of and from the Real Estate; the right to operate, maintain, manage and when necessary to lease the Real Estate or any part thereof; and the right to take possession of the Real Estate in

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its own name or in the name of an agent and to collect all rents, issues and profits therefrom and of and from the improvements thereon and apply said sums of money so collected as hereinafter provided. The tenants in, upon and about the Real Estate and all others having an interest in and to the Real Estate are hereby authorized to pay unto Lender, or to its order, all sums due or to become due under such tenancy, and Lender is hereby authorized to give for and in behalf of the Borrower full receipt for any payments so made.

Lender is further authorized, but shall not be obligated, to pay taxes, assessments and charges on the Real Estate, insure, repair and/or improve the buildings located thereon; and expend such sums as may be necessary to defend the title to the Real Estate or the use thereof, or recover rents and profits, or protect rental rights, and/or make such other expenditures for the Real Estate as it may in its sole discretion deem necessary, proper or expedient. Lender may, but shall not be obligated, to advance funds for any of the above purposes, and any amount so advanced shall be a first and prior claim on the rents and profits realized from the Real Estate and shall be repaid to Lender before any distribution as hereinafter set out. Should the rents and profits be insufficient to pay advances so made by Lender, any unpaid balance shall become part of the debt secured by said Mortgage and the Security Agreement, and the other Loan Documents, and shall bear interest at the rate equal to the rate on the Note from the date of the advancements, and in the event such advancements are made after the debt evidenced by the Loan Documents has been reduced to judgment, Borrower will, subject to the other terms, covenants and conditions herein contained, pay such advancements with interest to Lender in addition to any amount necessary to pay and satisfy the judgment, interest and costs, or to redeem the Real Estate from foreclosure sale, and Lender shall be entitled to retain possession of the Real Estate until such advancements and interest are fully paid.

It is further agreed that Lender shall be required to account for only such rentals and payments as are actually collected by it. Nothing herein contained shall be deemed to create any liability on the part of Lender for failure to rent the Real Estate or any part thereof, or for failure to make collection of rentals, or for failure to do any of the things which are authorized herein. This instrument is a grant of rights and privileges to Lender only and shall not be held to create any duties or liabilities, except as herein expressly set out. For the purposes of accounting, the correctness of the books and records of Lender shall be deemed conclusive.

It is further understood and agreed that Lender shall, in the exercise of its control and management of the Real Estate, be deemed the agent of Borrower, and shall not be liable for any damage to any person or property where such damage arises out of the operation of or in connection the Real Estate.

It is further understood and agreed that the acceptance by Lender of any payments under any lease or contract with reference to the Real Estate from any tenants or other persons shall not bar or abridge any of the rights of Lender under the Loan Documents.

This Agreement shall remain in full force and effect so long as the said Mortgage and the said Security Agreement remain enforceable liens; and in the event of a foreclosure, then during the pendency of the foreclosure suit and the period of stay of execution until recording the Sheriff's deed issued under such foreclosure proceedings. In event of the termination of this Agreement, the Borrower will approve and accept any and all outstanding leases made by Lender and/or its agent, but only to the extent of a period of one (1) year from the date of the termination of this Agreement.

The provisions of this Agreement are a covenant running with the land herein described as the Real Estate, and shall bind all persons hereinafter acquiring any interest in the Real Estate, and it is expressly agreed that the within assignment and grant of rights and powers is coupled with an interest.

Any amount received or collected by Lender by virtue of this Agreement shall be applied as follows, but not necessarily in the order stated, the priority of payment of such items to be within the sole discretion of Lender:

1. The repayment to Lender of any and all amounts advanced by it under the terms of this Agreement together with interest as provided on the respective advancements from the date of same;
2. To the payment of taxes, assessments and charges and the expense of insurance; but Lender shall not be obligated to keep insurance on the Real Estate or to make repairs to and/or improvements on the Real Estate;
3. To the payment of all other necessary expenses to the management, protection and/or preservation of the Real Estate;
4. To the payment of all amounts due or to become due under the Loan Documents and/or to the payment of any judgment rendered thereon together with costs and expenses;
5. The surplus, if any, after full payment of the above, shall be paid to the then owner of the Real Estate at the time such payment is made.

It is understood and agreed that this Agreement is but additional security for the payment of the debt evidenced by the Loan Documents, and shall not be deemed to be any payment thereof except as to money actually received by Lender and applied as such

payment under the terms of this Agreement; nor shall this Agreement be deemed a waiver of any default occurring hereinafter in the full performance of the conditions of the Loan Documents, nor shall the application of any or all money received by Lender under this Agreement toward curing such default in any manner waive such default or prevent foreclosure because of the same, Lender hereby expressly reserving all of its rights and privileges under the Loan Documents as fully as though this Agreement had not been entered into.

Lender shall not be liable for any act or failure to act under the terms of this Agreement except for wilful misconduct or gross negligence, nor shall the Lender be liable for the act or omission of any agent, if Lender shall have used reasonable care in the selection of such agent.

Notwithstanding that this instrument is a present and executed assignment of the rents, issues and profits and a present and executed grant of the powers hereinbefore granted to Lender, it is agreed that so long as the Borrower is not in default under the Loan Documents, the Borrower is to be permitted to collect and retain said rents, issues and profits; provided, however, that in no event shall the Borrower have authority to collect any rents, issues or profits for any period in excess of thirty (30) days from the date of any such collection unless such excess shall be immediately applied toward the unpaid principal balance owed to Lender under the Loan Documents; and provided further, that if the Real Estate shall come into the hands of any officer of any court on any writ of any nature whatsoever against the Real Estate, as the property of the Borrower, then upon the happening of any one or more such events, without any notice of election on the part of Lender being given, Lender shall have the immediate and automatic right to the management and control of the Real Estate and the improvements thereon to the full extent of all rights given to it under this Agreement even though there be no existing default on the part of the Borrower.

Borrower hereby warrants, represents and covenants that attached hereto and incorporated herein by reference as Exhibit "A" is a true and complete listing of all existing tenancies affecting the Real Estate, including the name of the tenant, term of the tenancy and annual rentals therefrom, and that Borrower has delivered to Lender, concurrent with the execution hereof, copies of all written leases evidencing said tenancies. Borrower covenants that it will not permit the subletting or assignment of the leases evidencing said tenancies, or any future tenancies, withhold the prior written consent of Lender, which consent shall not be unreasonably withheld, that it will advise Lender in writing of the termination of any of the leases creating said tenancies, and of the creation of all future leases and tenancies, including therewith all information with respect thereto as is set forth on Exhibit "A" hereto, and that it will deliver to Lender copies of all written leases evidencing said tenancies.

This Agreement shall not be terminated except as herein provided, and shall not be altered, modified or amended except by written agreement signed by the parties hereto.

That the terms, covenants and agreements herein contained shall be binding alike on the parties hereto, their heirs, executors, administrators and/or assigns.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Trustee in form purporting to be the representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal representations, covenants, undertaking, and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally, but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the Calumet National Bank, Trustee on account of this instrument or on account of any representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

LENDER:

CALUMET NATIONAL BANK

By: R. Garry Bradley
R. Garry Bradley
Senior Vice President

BORROWER:

CALUMET NATIONAL BANK, not
personally, but as Trustee under
Trust No. P-2853

By: Cletis J. Epple 18 + T 0

Thomas J. Franko
Thomas J. Franko

Marge Franko
Marge Franko

David J. Lee
David J. Lee

Richard J. Sterk
Richard J. Sterk

Betty Sterk
Betty Sterk

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

LENDER

Before me, a Notary Public in and for said County and State, on this 14th day of March, 1986, personally appeared R. GARRY BRADLEY, the Senior Vice President of Calumet National Bank, and acknowledged the execution of the above and foregoing Agreement for Conditional Assignment of Rentals to be his voluntary act and deed on behalf of said Bank.

Witness my hand and Notarial Seal.

Irene L. Buchholz
Irene L. Buchholz Notary Public

My Commission Expires:

County of Residence:

6-5-88

Lake

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

TRUST

I, Irene L. Buchholz, a Notary Public in and for said county in the State aforesaid, do hereby certify that Cletus F. Epple of Calumet National Bank personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Cletus F. Epple

Cletus F. Epple appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as a free and voluntary act of Calumet National Bank, as Trustee, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 14th day of March, 1986.

Irene L. Buchholz
Irene L. Buchholz Notary Public

My Commission Expires:

County of Residence:

6-5-88

Lake

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Before me, a Notary Public in and for said County and State, on this 7TH day of MARCH, 1986, personally appeared THOMAS J. FRANKO and MARGE FRANKO, husband and wife, acknowledged the execution of the above and foregoing Agreement for Conditional Assignment of Rentals to be their voluntary act and deed.

Witness my hand and Notarial Seal.

Caryl Jean Johnson
Notary Public

My Commission Expires:

County of Residence:

7-26-87

Lake

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Before me, a Notary Public in and for said County and State, on this 7TH day of MARCH, 1986, personally appeared DAVID J. LEE and acknowledged the execution of the above and foregoing Agreement for Conditional Assignment of Rentals to be his voluntary act and deed.

Witness my hand and Notarial Seal.

Caryl Jean Johnson
Notary Public

My Commission Expires:

County of Residence:

7-26-87

Lake

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Before me, a Notary Public in and for said County and State, on this 7TH day of MARCH, 1986, personally appeared RICHARD J. STERK and BETTY STERK, husband and wife, acknowledged the execution of the above and foregoing Agreement for Conditional Assignment of Rentals to be their voluntary act and deed.

Witness my hand and Notarial Seal.

Caul Joe Johnson
Notary Public

My Commission Expires:

7-26-87

County of Residence:

Lake

This instrument prepared by Glenn R. Patterson, Attorney At Law, 9013 Indianapolis Boulevard, Highland, Indiana 46322

EXISTING TENANCIES

| <u>Name of Tenant</u> | <u>Term of Tenancy</u> | <u>Annual Rental</u> |
|--|---|----------------------|
| Ten Ech Engineering | (1)one Year w/ (1)one Year option | \$ 11,537 |
| Eric Watkins | (3) Three Years | 5,963 |
| Jack Gray -Putters | (3) Three Years | 4,441 |
| Lake County Job Training Corp | (1) One Year W/ (5) five year option | 76,800 |
| CSA TW | (3) Three Years | 16,362 |
| While you Were Out | (3) Three Years | 4,050. |
| Sterk's Super Foods | (2) Two Years | <u>87,375</u> |
| Total Leased space 64.6% | 16,491 Sq.Ft. | <u>136,528</u> |
| Average Square Foot Rental \$8.27 | | |
| Total Sq. Ft. Leasable | <u>25,517</u> | |
| Remaining Leasable space 35.4% | 9,026 | |
| Remaining Leases @ \$6.95 remaining gross rentals | \$ 62,730 | |
| Rentals per Signed Leases@2/24/86 | <u>136,528</u> | |
| Total Gross Rentals | 199,258 | |
| Amount Previously Projected | <u>171,600</u> | |
| Excess Rentals | \$ 27,658 | |