



CONDITIONAL ASSIGNMENT OF RENTALS

139009

THIS INDENTURE made this 21st day of November, 1990 by and between BANK ONE, MERRILLVILLE, NA; of Merrillville, Indiana, hereinafter known and designated as "BANK" and: FIRST BUILDERS OF INDIANA, INC.

WITNESSETH:

WHEREAS, The Undersigned did on November 21, 1990 execute a certain promissory note, calling for the payment of the principal sum of ONE HUNDRED FIFTY SEVEN THOUSAND EIGHT HUNDRED FORTY AND 00/100 Dollars (\$ 157,840.00), together with interest payable to the order of Bank, and did secure the payment thereof by a mortgage on the following described real estate, to-wit:

Lot 7 in the Estates at Bristol Farms Phase 1, an addition to the Town of Schererville, as per plat thereof, recorded in Plat Book 66, page 50, in the Office of the Recorder of Lake County, Indiana.

a/k/a 2848 Manchester Lane, Schererville, Indiana 46375

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STATE OF INDIANA, S.S. ROBERT J. ...
REC'D ...
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NOW THEREFORE, for valuable consideration and as a part of the consideration for said loan and as additional security for the repayment of said loan, the Undersigned does hereby sell, assign, transfer and set over unto said Bank its successors and assigns, all of the rents, issues and profits due or to become due of and from said real estate hereinabove described, and does hereby authorize said Bank to operate, maintain, manage, and when necessary, to lease said premises hereinabove described or any part thereof, and to take possession thereof in 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; and the tenants in, upon and about said real estate and all others having an interest in and to said premises are hereby authorized to pay unto said Bank, or its order, all sums due or to become due under such tenancy, and said Bank is hereby authorized to give for and in behalf of said Undersigned full receipt for any payments so made.

Said Bank is further authorized, but shall not be obligated, to pay taxes, assessments, and charges on the premises; insure, repair and/or improve the buildings located thereon; to procure public liability insurance covering said mortgaged premises; and expend such sums of money as may be necessary to defend the title or property or the use thereof, or recover rents and profits, or protect rental rights, and/or make such other expenditures for said property, as it may in its sole discretion deem necessary, proper or expedient. Said Bank may, but shall not be obliged 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 said property, and shall be repaid to said Bank before any distribution as hereinafter set out. Should the rents and profits be insufficient to pay advances so made by said Bank, any unpaid balance shall become part of the debt secured by the said mortgage and shall bear interest from the date of advancement at the rate of five (5) points above the rate of interest that would have been charged if the loan were not in default. In no event, however, will the rate of interest charged be more than the maximum permitted by law, in the event such advancements are made after the mortgage debt has been reduced to judgment, the Undersigned will, subject to the other terms, covenants and conditions herein contained, pay such advancements with interest to said Bank in addition to any amount necessary to pay and satisfy the judgment, interest and costs, or to redeem the property from foreclosure sale, and said Bank shall be entitled to retain possession of the property until such advancements and interest are fully paid.

It is further agreed that said Bank 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 said Bank for failure to rent the premises or any part thereof, or for failure to make collections 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 said Bank only, and shall not be held to create any duties or liabilities except as herein expressly set out. For the purpose of accounting the correctness of the books and records of said Bank shall be deemed conclusive.

It is further understood and agreed that said Bank shall, in the exercise of its control and management of the premises hereinabove described, be deemed the agent of the Undersigned 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 with the said premises.

It is further understood and agreed that the acceptance by said Bank of any payments under any lease or contract with reference to the said premises from any tenant or other person shall not bar or abridge any of the rights of said Bank under its mortgage.

This contract shall remain in full force and effect so long as the above-described mortgage remains an enforceable lien; and in the event of foreclosure, then during the period of redemption after sheriff's sale and until recording of the sheriff's deed issued under such foreclosure proceedings. This agreement shall not affect the right of the Undersigned to redeem from foreclosure of said mortgage, but such redemption shall not terminate this agreement unless and until said mortgage debt or any judgment rendered thereon plus interest, costs and expenses and any advancements made by said Bank, with interest as above mentioned, have been fully paid to it. In the event of the termination of this agreement, the Undersigned will approve and accept any and all outstanding leases made by said Bank and/or its agents, 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 and shall bind all persons hereafter acquiring any interest in the said premises, 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 said Bank 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 said Bank:

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- (1) To the repayment to said Bank of any and all amounts advanced by it under the terms of this agreement together with interest on the respective advancements from the date of the same at the rate of five (5) points above the rate of interest that would have been charged if the loan were not in default. In no event, however, will the rate of interest charged be more than the maximum permitted by law.
- (2) To the payment of taxes, assessments and charges and the expense of insurance; but said Bank shall not be obligated to keep insurance on said premises or to make repairs to and/or improvements on said property;
- (3) To the payment of all other necessary expenses to the management, protection and/or preservation of the property;
- (4) To the payment of all amounts due or to become due under the said mortgage 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 said premises at the time such payment is made.

It is understood and agreed that this agreement is but additional security for the payment of said mortgage debt and shall not be deemed to be any payment thereof except as to money actually received by said Bank and applied as such payment under the terms of this agreement; nor shall this agreement be deemed a waiver of any default occurring hereafter in the full performance of the conditions of the said mortgage; nor shall the application of any or all money received by said Bank under this agreement toward curing such default received by said Bank in any manner waive such default or prevent foreclosure because of the same, said Bank hereby expressly reserving all of its rights and privileges under the said mortgage as fully as though this agreement had not been entered into.

Said Bank shall not be liable for any act or failure to act under the terms of this agreement except for willful misconduct or gross negligence; nor shall the said Bank be liable for the act or omission of any agent if said Bank shall have used reasonable care in the selection of such agent.

Notwithstanding 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 said Bank, it is agreed that so long as the said mortgage is not in default the Undersigned is to be permitted to collect and retain such rents, issues and profits; provided however, that in no event shall the Undersigned 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 and provided further that in the event of a default in the payment of the principal or interest secured by said mortgage, or in the event of a breach of any of the terms and covenants of said mortgage, or in the event the real estate hereinafter described shall come into the hands of any officer of the court pursuant to bankruptcy proceedings or under any writ of any nature whatsoever against said real estate, then upon the happening of any one or more of such events, without any notice whatsoever on the part of the Bank being given, said Bank shall have the immediate and automatic right to the management and control of said real estate and the improvements thereon to the full extent of all rights given to it under this agreement.

The entry by the Bank upon the mortgaged premises under the terms of this instrument shall not constitute the said Bank a "Mortgagee in possession" in contemplation of law, except at the option of the Bank.

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 successor assigns.

WITNESS my hand and seal this said 21st day of November, 1990.

FIRST BUILDERS OF INDIANA, INC., an Indiana Corporation.

By Ronald F. McColly
Ronald F. McColly, President

By Jack R. Halverson
Jack R. Halverson, Secretary



STATE OF Indiana)
) SS;
 COUNTY OF Lake)

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, the above named Ronald F. McColly as President and Jack R. Halverson as Secretary of FIRST BUILDERS OF INDIANA, INC.

who acknowledged the execution of the above and foregoing Conditional Assignment of Rentals as their free act and deed and for the uses and purposes therein set forth.

WITNESS my hand and Notarial Seal this 21st day of November, 1990.

Debra Swartz
 Notary Public

My Commission Expires:

3-8-91

Resident of Lake County, Indiana

This document prepared by: A. James Babusiak, Vice President, Commercial Loan Department