

194914-2

Center - 1923

Ti/Ho/Gn

Prepared By and When
Recorded Return To:
William Kent Ihrig, Esq.
Anderson & Orcutt, P.A.
Landmark Centre
Suite 2400
401 East Jackson Street
Tampa, Florida 33602

95051925

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
95 SEP -6 AM 10:05
MARGARETE CLELAND
RECORDER

ASSIGNMENT OF LEASES AND RENTS

Document is NOT OFFICIAL!

Between:

This Document is the property of

CENTIER BANK OF WHITING,
AN INDIANA BANKING CORPORATION, AS TRUSTEE
UNDER TRUST AGREEMENT DATED JUNE 13, 1991
AND KNOWN AS TRUST NUMBER 1923,

as "Assignor";

and

THE INDEPENDENT ORDER OF FORESTERS,

as "Assignee";

with joinder of

HARKER/TRUMP, INC.,

the owner of one hundred percent (100%)
of the beneficial interest in Assignor.

Loan Amount: U.S.\$1,300,000.00

Dated: August 29, 1995

95065823

95 OCT 30 AM 10:06

MARGARETE CLELAND
RECORDER

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

Doc # 95051924

This document is being re-recorded to add the legal description

32.00
~~30.00~~
FF to
Su

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (the "Assignment") is made as of August 29, 1995, by Centier Bank of Whiting, an Indiana banking corporation, as Trustee Under Trust Agreement Dated June 13, 1991 and Known as Trust Number 1923, whose address is 9701 Indianapolis Boulevard, Highland, Indiana 46322 ("Assignor"), to The Independent Order of Foresters, its successors and assigns, 789 Don Mills Road, Don Mills, Ontario, Canada M3C 1T9 ("Assignee").

W I T N E S S E T H:

WHEREAS, contemporaneously and of even date herewith, Assignor executed and delivered to Assignee that one certain promissory note ("Note"), in the principal sum of U.S. \$1,300,000.00, payable to the order of Assignee and secured by that one certain Mortgage, Security Agreement, Financing Statement and Assignment of Rents (the "Mortgage"), dated of even date herewith, from Assignor to Assignee, covering certain real property in Lake County, Indiana, more fully described upon Exhibit "A" attached hereto and incorporated herein by reference which, along with the improvements constructed or to be constructed thereon, shall hereinafter be referred to as the "Mortgaged Properties"; and,

WHEREAS, the Mortgaged Properties are and, from time to time, may be leased, in whole or in part, to certain third parties; and,

WHEREAS, the parties hereto wish to provide additional security for Assignor's repayment of the obligation evidenced by the Note;

NOW, THEREFORE, for and in consideration of the loan made to Assignor by Assignee and for other good and valuable consideration, the parties do hereby agree as follows:

ARTICLE I
ASSIGNMENT

1.1. Assignor does hereby grant, transfer, and assign unto Assignee the following:

(a) All present and future leases, written or oral, and all agreements for the use or occupancy of any portion of the Mortgaged Properties, and any renewals, extensions, or substitutions of said leases and agreements and any and all further leases or agreements, including subleases thereunder, upon or covering the use or occupancy of all or part of the Mortgaged Properties, all of such leases, agreements, subleases, and tenancies, whether now or in

the future existing, being hereinafter collectively referred to as the "Leases";

(b) Any and all guaranties of payment or performance by lessees under any of the Leases; and

(c) The immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues, and profits now due or which may become due or to which Assignor may now or hereafter become entitled or may demand or claim, arising or issuing from or out of the Leases or from or out of the Mortgaged Properties, or any part thereof, including without limitation, minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges (including monthly rental or parking spaces), tax and insurance premium contributions and liquidated damages following default, premiums payable by any lessee upon the exercise of any cancellation privilege provided for in any of the Leases, and all proceeds payable under any policy of insurance covering the loss of rent resulting from untenantability caused by destruction or damage of the Mortgaged Properties, together with any and all rights and claims of any kind which Assignor may have against any lessee under the Leases or against any subtenants or occupants of the Mortgaged Properties, all such moneys, rights, and claims in this paragraph described being hereinafter referred to as the "Rents."

1.2. Assignor hereby authorizes and directs the lessees and tenants of the Mortgaged Properties that, upon written notice from Assignee, all Rents shall be paid directly to Assignee as they become due. Assignor hereby relieves the lessees and tenants from any liability to Assignor by reason of such payments being made to Assignee. This is intended as, and is, a present assignment; PROVIDED, HOWEVER, that Assignee hereby grants to Assignor a license to collect and receive all Rents. Such license shall be revocable by notice from Assignee to Assignor at any time after the occurrence of a "Default" (as defined in the Mortgage). Notification may be given to lessees and tenants at any time during which a Default is continuing. Such notice shall become effective one (1) day after being deposited in the United States mail, certified or registered, postage prepaid, addressed to Assignor at its address set forth in the preamble to this Assignment and to lessees at their respective addresses at the Mortgaged Properties.

1.3. This Assignment is made to secure payment of any and all indebtedness incurred under the Note, together with interest as provided therein, and all other amounts due thereunder and under all documents securing the Note. Any

default under this Assignment shall constitute a default under each of the other documents evidencing or securing the Note.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

To induce Assignee to loan funds evidenced by the Note, Assignor hereby represents and warrants to Assignee that:

2.1. Assignor has good title to the Leases and Rents hereby assigned and good right to assign the same, and that no other person, corporation or entity has any right, title or interest therein;

2.2. Assignor has duly and punctually performed all and singular the material terms, covenants, conditions, and warranties of the existing Leases on Assignor's part to be kept, observed, and performed up to the date hereof;

2.3. Assignor has not previously sold, assigned, transferred, mortgaged, or pledged the Leases or the Rents, whether now due or hereafter to become due;

2.4. Any Rents due for occupancy for any period subsequent to the date hereof have not been collected for more than one (1) month in advance of accrual and payment of any Rents has not otherwise been anticipated waived, released, discounted, set off, or otherwise discharged or compromised;

2.5. Assignor has not received any funds or deposits from any lessee in excess of one (1) month's rent for which credit has not already been made on account of accrued Rents; and

2.6. No lessee under any existing Lease is in default of any of the terms thereof.

ARTICLE III
ASSIGNOR'S COVENANTS

So long as this assignment remains in effect, Assignor covenants and agrees that (unless Assignee shall otherwise consent in writing):

3.1. Assignor shall observe, perform, and discharge all material obligations, covenants, and warranties of lessor provided for under the terms of the Leases, and shall give prompt notice to Assignee in the event that Assignor fails to observe, perform, and discharge such obligations, covenants, and warranties;

3.2. Assignor shall appear, in and defend any action or proceeding arising under, occurring out of, or in any manner connected with, the Leases or the obligations, duties, or liabilities of Assignor and any lessee thereunder and, upon request by Assignee, shall do so in the name and on behalf of Assignee but at the expense of Assignor, and Assignor shall pay all costs and expenses of Assignee, including reasonable attorneys' fees, in any action or proceeding in which Assignee may appear;

3.3. Assignor shall not receive or collect any Rents from any of the Leases for a period of more than one (1) month in advance;

3.4. Assignor shall not pledge, transfer, assign, mortgage, encumber, or allow to be encumbered any Leases or future payments of the Rents;

3.5. Except in the ordinary course of business, Assignor shall not waive, discount, set off, compromise, or in any manner release or discharge any lessee of any part of the Mortgaged Properties of any of the obligations, covenants, conditions, and agreements by said lessee to be kept, observed, and performed, including the obligation to pay rent in the manner and at the place and time specified in any Lease;

3.6. Except in the ordinary course of business, Assignor shall not terminate or consent to any surrender of any Lease, or modify or in any way alter the terms thereof, without the prior written consent of Assignee, and shall use all reasonable efforts to maintain each of the Leases in full force and effect during the term of the Mortgage;

3.7. Assignor shall not subordinate any Lease to any mortgage (other than to the Mortgage) or other encumbrance, or permit, consent, or agree to such subordination;

3.8. At the request of Assignee, Assignor shall assign and transfer to Assignee any and all subsequent Leases and execute and deliver all such further assurances and assignments as Assignee shall from time to time require;

3.9. Assignor covenants to hold all Rents collected or received by it after and during the continuance of any Event of Default or Default, as defined in the Note, the Mortgage, or any of the Loan Documents (as defined in Section 1.1 of the Mortgage), in trust for the use and benefit of Assignee; and

3.10. In the case of residential Leases, Assignor shall not modify the form of Lease submitted to Assignee.

ARTICLE IV
ASSIGNEE'S RIGHTS

Upon or at any time after a default in the payment of any indebtedness evidenced by the Note or the occurrence of an Event of Default or Default, as defined in the Note, the Mortgage or any of the Loan Documents (as defined in Section 1.1 of the Mortgage), Assignee, at its option and without notice or regard to the adequacy of the security for the indebtedness secured hereby, shall have the right, power, and authority to exercise and enforce any or all of the following rights and remedies:

4.1. To terminate the license granted to Assignor in Section 1.2 hereof to collect the Rents as aforesaid and, without taking possession, in Assignee's own name, demand, collect, receive, sue for, attach, and levy the Rents, to give proper receipts, releases, and acquittances therefor and after deducting all necessary and reasonable expenses of collection, including reasonable attorneys' fees, to apply the net proceeds thereof, together with any funds of Assignor deposited with Assignee, upon any indebtedness evidenced by the Note in such order as Assignee may determine;

4.2. To declare all sums secured hereby immediately due and payable and, at its option, exercise all of the rights and remedies provided for in the Note, the Mortgage, the Loan Documents (as defined in Section 1.1 of the Mortgage), the terms of this Assignment or any other instrument or document evidencing or securing the Note;

4.3. Without regard to the adequacy of the security for the repayment of the Note, with or without any action or proceeding, through any person or by any agent, or by a receiver to be appointed by court and irrespective of Assignor's possession, to enter upon (but such entry is not a condition to the effectiveness of this Assignment), take possession of, manage, and operate the Mortgaged Properties, or take part thereof, make, modify, enforce, cancel, or accept the surrender of any Lease, remove or evict any lessee, increase or reduce rents, decorate, clean, and make repairs, and otherwise do any act or incur any costs or expenses that Assignee shall deem proper to protect the security hereof, as fully and to the same extent as Assignor could do if in possession of the Mortgaged Properties, and in such event to apply any funds so collected to the operation and management of the Mortgaged Properties, but in such order as Assignee shall deem proper, and including payment of reasonable management, brokerage, and attorneys' fees, payment of any indebtedness evidenced by the Note, and the maintenance, without interest thereon, of a reserve or replacement fund.

The collection of the Rents and application thereof and/or the entry upon and taking of possession of the Mortgaged Properties as contemplated in this Article shall not cure or waive any default (except to the extent so cured), waive, modify, or affect any notice of default under the Note or this Assignment, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by Assignee, once exercised, shall continue for so long as Assignee shall elect, notwithstanding that its collection of the Rents may have cured for a time the original default. If, after exercising rights under this Article, Assignee shall thereafter elect to discontinue the exercise of such right or remedy, the same or any other right or remedy under this Article may be reasserted at any time and from time to time following any subsequent default.

None of the rights or remedies of Assignee under the Note or the Mortgage shall be delayed or in any way prejudiced by virtue of this Assignment, and this Assignment is intended to be cumulative of and in addition to all other rights, remedies, and securities granted to Assignee.

Document is NOT OFFICIAL!
This Document is the property of the Lake County Recorder!

ARTICLE V
MISCELLANEOUS

5.1. This Assignment shall further secure any extensions, renewals, and increases of the Note and any note or notes supplemental thereto and shall remain in effect as long as any part of the indebtedness evidenced by the Note or any extensions, renewals, increases, or supplemental notes remain unpaid, and upon payment in full of such indebtedness, this Assignment shall become and be void and of no effect and Assignee shall execute such releases hereof as Assignor shall request.

5.2. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Mortgaged Properties, or any part thereof, after default or from any other act or omission of Assignee in managing the Mortgaged Properties, or any part thereof. Assignee shall not be obligated to perform or discharge, any obligation, duty, or liability under the Leases or under or by reason of this Assignment, and Assignor shall, and does hereby agree to, indemnify Assignee for, and to hold Assignee harmless from, any and all liability, loss, or damage which may or might be incurred under the Leases or under or by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Assignee incur any such liability under the

Leases or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees shall be secured hereby and Assignor shall reimburse Assignee therefor immediately upon demand, and upon the failure of Assignor so to do Assignee may, at its option, declare all sums secured hereby and evidenced or secured by the Note and Mortgage immediately due and payable. It is further understood that this Assignment shall not operate to constitute Assignee as mortgagee in possession of the Mortgaged Properties, place responsibility for the control, care, management, or repair of the Mortgaged Properties upon Assignee, or for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make Assignee responsible or liable for any waste committed on the Mortgaged Properties by the lessees or any other parties, or for any dangerous or defective condition of the Mortgaged Properties, or for any negligence in the management, upkeep, repair, or control of the Mortgaged Properties, resulting in loss, injury, or death to any lessee, licensee, employee, or stranger.

This Document is the property of

5.3. This Assignment shall be governed by and be construed under the laws of the State of Indiana.

5.4. Except for notices pursuant to Section 1.2 hereof, all notices, requests, demands, or other communications hereunder shall be in writing and shall be addressed, if to Assignor or Assignee, to the party to be notified at the address set forth in the preamble hereof; or to such other address as either party may designate in writing, and to tenants, to their respective addresses at the Mortgaged Properties. All notices under this Section 5.4 shall be effective: (a) three (3) days after deposit in the U.S. Mail, postage prepaid, registered or certified mail, return receipt requested; (b) upon delivery, if delivered in person to the address set forth above; or (c) upon delivery, if sent by commercial express service, such as Federal Express; except that notices of change of address shall be effective ten (10) days after the effective date of all other notices hereunder.

5.5. For the purpose of curing any default under any of the Leases, Assignee may, but shall not be obligated to, do any act, pay any sum, or execute any document in the name of Assignor or as Assignor's attorney-in-fact, as well as in Assignee's own name, as Assignee in Assignee's discretion may determine. Assignor hereby irrevocably appoints Assignee as Assignor's true and lawful attorney-in-fact, in Assignor's name or otherwise, to do and perform all acts, pay any sum, and/or execute any and all documents that may, in the opinion of Assignee, be necessary or desirable to cure any such default or preserve any right of Assignor under any of the Leases, to preserve any rights of Assignor whatsoever, or to protect

Assignee's security interest. This appointment is coupled with an interest, is irrevocable, and shall not terminate until Assignor has performed all of its obligations, including the payment of all sums due to Assignee secured hereby.


5.6. All of Assignor's right, title, and interest assigned hereunder may be reassigned by Assignee and any subsequent Assignee, and the term "Assignee" as used herein includes any subsequent Assignee.

5.7. As used herein, the term "attorneys' fees" shall be deemed to also include charges for paralegals, law clerks, and other staff members operating under the supervision of an attorney. Any award or payment of attorneys' fees hereunder or by order of a court of competent jurisdiction shall include as a part thereof any and all sales and/or use taxes imposed thereon by any appropriate governmental authority.

5.8. This Assignment is executed by Centier Bank of Whiting, an Indiana corporation, not personally but solely as Trustee under Trust Agreement dated June 13, 1991, and known as Trust No. 1923 in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants, and conditions to be performed by Centier Bank of Whiting are undertaken by it solely as Trustee, as aforesaid, and not individually, and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against Centier Bank of Whiting by reason of any of the terms, provisions, stipulations, covenants, and/or statements contained in this Assignment.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be duly executed as of the day and year first written above.

WITNESSES:

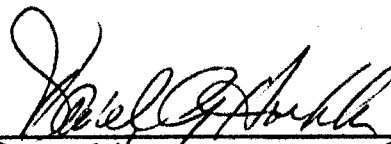


Timothy R. Scudak
(Printed Name of Witness)


(Printed Name of Witness)



CENTIER BANK OF WHITING, AN
INDIANA BANKING CORPORATION, AS
TRUSTEE UNDER TRUST AGREEMENT
DATED JUNE 13, 1991 AND
KNOWN AS TRUST NUMBER 1923

By: 

DANIEL H. HRUBACK, ASST. V.P. & TRUST OFFICER
(Name) (Title)

Attest: 

DAVID H. HRUBACK, VP & Secretary
SR. TRUST OFFICER

STATE OF INDIANA)
) SS
COUNTY OF LAKE)

BEFORE ME, PATRICIA M MILLER, a Notary Public in and for the state and county aforesaid, personally appeared Daniel J. Wrebeck and David H. Brubek, as Asst VP & Trust Officer and VP & Secy of Trust Secretary, respectively, of Centier Bank of Whiting, as Trustee under Trust Agreement dated June 13, 1991, and known as Trust No. 1923, and acknowledged the execution of the foregoing instrument this 29th day of August, 1995.

Document is
NOT OFFICIAL

Patricia M Miller
Notary Public
Patricia M. Miller
County of Residence - Lake

Exp 3/5/99

This Document is the property of
the Lake County Recorder!

STOP



JOINDER OF BENEFICIARY

The undersigned, being the sole beneficiary of, and being the holder and owner of all beneficial interest in, Assignor, hereby joins in the foregoing Assignment of Leases and Rents for the purposes of agreeing to be bound by all terms and conditions thereof including the performance of any and all covenants and agreements therein contained and for the purpose of joining in all representations and warranties made therein. The undersigned further agrees that this joinder shall be binding upon the undersigned's successors and/or assigns.

IN WITNESS WHEREOF, the undersigned has executed this joinder as of the day and year first above written.

Witnesses:

Robert Harper

HARKER TRUMP, INC., an
Indiana corporation

NOT OFFICIAL!

This Document is the property of
James C. Trump, President
the Lake County Recorder.

STATE OF INDIANA)

SS

COUNTY OF LAKE)

STOP

BEFORE ME, PATRICIA M. MILLER, a Notary Public in and for the state and county aforesaid, personally appeared James C. Trump, as President of Harker Trump, Inc., an Indiana corporation, and acknowledged the execution of the foregoing instrument this ~~11th~~ 29th day of August, 1995.

29TH



Patricia M. Miller

Notary Public Patricia M. Miller

Exp. 3/5/99

County of Residence - Lake

THIS DOCUMENT PREPARED BY WILLIAM KENT IHRIG, ESQUIRE.

WKI:BDB:tag
082595:46513

LEGAL DESCRIPTION

PARCEL 1: Lot 3 in Harker Trump Resubdivision of Lots 3 and 4 in the Resubdivision of the Corrected Plat of Harker Trump Industrial Park, as per plat thereof, recorded in Plat Book 78, Page 86 in the Office of the Recorder of Lake County, Indiana, which parcel encompasses the same property described as Lot 3 of the Resubdivision of the Corrected Plat of Harker Trump Industrial Park as recorded in Plat Book 70, Page 43 in the Office of the Recorder of Lake County, Indiana. Together with an Easement for ingress/egress to Summit Street granted in Plat Book 64, Page 46, Plat Book 68, Page 19, and Plat Book 70, Page 43, in the Recorders Office of Lake County, State of Indiana.

PARCEL 2: Lot 4 in Harker Trump Resubdivision of Lots 3 and 4 in the Resubdivision of the Corrected Plat of Harker Trump Industrial Park, as per plat thereof, recorded in Plat Book 78, Page 86 in the Office of the Recorder of Lake County, Indiana, which parcel encompasses the same property described as Lot 4 of the Resubdivision of the Corrected Plat of Harker Trump Industrial Park as recorded in Plat Book 70, Page 43 in the Recorders Office of Lake County, State of Indiana.



EXHIBIT "A"

BDB:jmr
(2)082395:47309