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2000 029007

Harold S. Dembo  
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333 West Wacker Drive  
Suite 1800  
Chicago, Illinois 60606  
KRW File No. 08792.02000

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORDS

2000 MAY -1 AM 9:10

MORRIS W. CARTER  
RECORDER

Document is  
**NOT OFFICIAL!**  
ASSIGNMENT OF LEASES AND RENTS  
This Document is the property of  
the Lake County Recorder!

**THIS ASSIGNMENT** is made as of the 20<sup>th</sup> day of April, 2000, by **HARBOR CLUB, L.L.C.**, an Illinois limited liability company, with its principal place of business at 200 South Wacker Drive, Suite 850, Chicago, Illinois 60606 (hereinafter collectively referred to as the "Borrower"), in favor of **SUCCESS NATIONAL BANK**, a national banking association, with its principal place of business at One Marriott Drive, Lincolnshire, Illinois 60069 (hereinafter referred to as the "Lender").

WITNESSETH:

**WHEREAS**, the Borrower and Patrick Glenn are liable to the Lender pursuant to a promissory note, dated of even date herewith, in the principal amount of ONE MILLION SIX HUNDRED THOUSAND AND NO/100 (\$1,600,000.00) DOLLARS (hereinafter called the "Mortgage Note"); and

**WHEREAS**, to secure payment of the Mortgage Note, the Borrower has executed and delivered to the Lender a Mortgage and Security Agreement of even date herewith (hereinafter called the "Mortgage"), covering, inter alia, real estate situated in the City of Hobart, County of Lake, State of Indiana, legally described on Exhibit "A" attached hereto and hereby made a part hereof, and the buildings and improvements and certain furniture, fixtures, furnishings, equipment, machinery and personal property owned by the Borrower now or hereafter located thereon (hereinafter collectively called the "Mortgaged Premises"); and

**WHEREAS**, the Lender, as a condition to making the loan evidenced by the Mortgage Note, has required the execution of this Assignment.

**NOW, THEREFORE**, in consideration of the premises, and in further consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) paid by the Lender to the Borrower, the receipt and sufficiency of which are hereby acknowledged, the Borrower does hereby grant, transfer, assign, set over and deliver to the Lender all of the Borrower's right, title and interest in, to and under all leases, subleases, licenses, concessions, tenancies and any other agreements creating the right of possession or the right of use without a transfer of title, whether written or oral, now or hereafter existing, and covering all or any part of

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TICOR TITLE INSURANCE  
Crown Point Indiana

Return:  
Title  
203 N. LaSalle Street  
Suite 1390  
Chicago IL 60601

2600  
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the Mortgaged Premises, together with any and all security deposits made thereunder, all extensions, amendments, modifications, renewals and replacements of any thereof, and any guaranties of the lessee's, sublessees, licensees, concessionaires, tenants or users (hereinafter collectively called "Lessees") obligations under any thereof, each of said leases, subleases, licenses, concessions, tenancies and agreements now existing and hereafter executed or entered, together with all such deposits, extensions, amendments, modifications, renewals, replacements and guaranties, being hereinafter collectively referred to as the "Leases." In addition to the foregoing, the Borrower does further hereby grant, transfer, set over and assign to the Lender all of the rents, income, revenues, royalties, issues, avails and profits, including, without limitation, all amounts payable to the Borrower on account of maintenance, repairs, taxes, insurance and common area or other charges by any other party to any Lease, and all amounts paid in compromise or in cancellation of Leases by any party thereto other than the Borrower, now or hereafter accruing or owing under or from Leases or otherwise from the Mortgaged Premises or any part thereof, whether accruing before or after foreclosure of the Mortgage or during any period of redemption therefrom (hereinafter collectively called "Rents"). All of said Leases and Rents are being hereby granted, transferred, set over and assigned for the purpose of securing:

(i) Payment of all of the monetary obligations (the "Liabilities") of Borrower under the Mortgage Note; and

(ii) Performance and discharge of each and every other obligation, covenant and agreement of the Borrower contained herein, in the Mortgage Note, in the Mortgage, and in any other instrument which secures or refers to the Mortgage Note (collectively, the "Loan Documents").

A. To protect the security of this Assignment, the Borrower agrees as follows:

1. To faithfully abide by, observe, perform and discharge each and every term, condition, obligation, covenant and agreement which the Borrower is now, or hereafter becomes, liable to observe, perform or discharge under the Leases; to give prompt written notice to the Lender of any notice of default under any Lease on the part of the Borrower received from a Lessee under any Lease, together with a accurate, complete copy of any such notice; and, at the sole cost and expense of the Borrower, to enforce or secure the performance of each and every obligation, covenant, condition and agreement to be performed by the Lessees under the Leases.

2. At the Borrower's sole cost and expense, to appear in and defend any dispute, action or proceeding arising under, growing out of or in any manner connected with or affecting any of the Leases or the obligations, duties or liabilities of the Borrower or any Lessee thereunder, and to pay all costs and expenses of the Lender, including reasonable attorneys' fees (prior to trial, at trial and on appeal), incurred in connection with any such dispute, action or proceeding in which the Lender may appear or with respect to which it may otherwise incur costs or expenses, whether or not the Lender prevails therein.

3. Should the Borrower fail to make any payment or to do any act as herein provided, then the Lender may, after ten (10) days prior written notice, and without releasing the Borrower from any obligation hereof, make or do the same in such manner and to such extent as the Lender may deem necessary or desirable to protect the security hereof, including specifically, without limiting its general powers, appearing in and defending any action or proceeding purporting to affect the security hereof or the rights or powers of the Lender, and observing, performing and discharging each and every obligation, covenant and agreement of the Borrower in the Leases contained. In exercising any such powers, the Lender may pay its

costs and expenses, employ counsel and incur and pay reasonable attorneys' fees (prior to trial, at trial and on appeal).

4. To reimburse the Lender, upon demand, for all the sums expended by the Lender under the authority hereof, together with interest thereon as specified in the Loan Agreements from the date expended.

5. Until the Liabilities shall have been paid in full, the Borrower covenants and agrees to provide the Lender with any executed copies of all Leases, to assign to the Lender any and all subsequent Leases upon all or any part of the Mortgaged Premises, and to make, execute and deliver to the Lender, upon demand, any and all instruments that may be necessary or desirable therefor or to otherwise effectuate the terms of this Assignment. The terms and conditions of this Assignment shall, however, apply to any such subsequent Leases, whether or not such instruments are executed or delivered by the Borrower.

6. Borrower agrees, without the prior consent and approval of the Lender, not to lease (whether long term or on a month to month basis) the Mortgaged Premises or any portion thereof; not to reduce rents, or accept rents more than one (1) month in advance; not to incur any indebtedness for borrowed money or otherwise to the tenant or guarantor of any Lease; not to waive, excuse or condone or in manner release or discharge the Lessees thereunder from any obligation, covenant, condition or agreement by said Lessee to be performed thereunder, including the obligation to pay the rental called for in the Leases in the manner and at the places and times specified therein; and not to modify, amend, extend or in any way alter the terms of said Leases and not to terminate the term of or accept a surrender thereof; and not to enter into any new Lease. The Borrower does by these presents expressly release, relinquish and surrender unto the Lender all of the Borrower's right, power and authority to modify, amend, extend, waive or in any manner alter the terms and provisions of the Leases, to reduce Rents, to waive, excuse or condone a default by a Lessee, to release or discharge any Lessee, to cancel or terminate the term of a Lease or to accept a surrender thereof, and to enter into any new Lease. Any attempt on the part of the Borrower to exercise any such right, power or authority, without the prior written consent of the Lender, which shall not be unreasonably withheld, shall be a nullity and shall be a default hereunder.

7. Borrower agrees not to consent to any assignment or sublease by a Lessee of any of its rights, title or interest in, to or under any Lease, unless such assignment or sublease is specifically authorized by the Lender in writing, which shall not be unreasonably withheld, or unless such assignment or sublease is specifically permitted under the terms of such Lease.

B. The Borrower hereby covenants and represents and warrants to the Lender that:

1. The Borrower has good right and lawful authority to assign, and has not executed any prior assignment or alienation of, its rights, title and interest in, to and under the Leases and in the Rents, or otherwise encumbered the same, except by the Mortgage.

2. To Borrower's knowledge, the Borrower has not performed or committed any act or executed any instrument, and is not bound by any law, statute, regulations, order, mortgage, indenture, contract or agreement, which might prevent the Lender from operating under any of the terms and provisions hereof, or which would limit the Lender in such operation.

3. No Rental has been or will be paid by any Lessee, nor has been or will be collected or accepted by the Borrower, for more than one (1) month in advance, and the payment of none of the Rents

to accrue for any portion of the Mortgaged Premises has been or will be in any other manner anticipated, waived, released, excused, reduced, discounted, or otherwise discharged or compromised by the Borrower. The Borrower hereby waives any right of set off against any person in possession of any portion of the Mortgaged Premises. The Borrower has not incurred and shall not incur any indebtedness to any Lessee.

4. The Borrower shall not execute or agree to any other assignment, pledge, encumbrance or transfer of any of the Leases or Rents.

5. The Leases in existence as of the date of this Assignment are in full force and effect and have not been amended or modified; and there is no default now existing under the Leases, nor has any event occurred which, with the passage of time and/or the giving of notice, would constitute a default thereunder, which has not been cured.

6. The Borrower shall not permit any of the Leases to become subordinate to any lien other than the liens hereof and of the Mortgage.

C. It is mutually agreed that:

1. This is a present, absolute, effective and completed assignment by the Borrower to the Lender of the Leases and Rents. However, so long as there exists no default or event of default under the Mortgage Note or the Mortgage, and no default exists in the performance of any obligation, covenant or agreement herein contained, the Borrower shall have a conditional license to collect, but not more than one (1) month in advance, all Rents from the Mortgaged Premises, in trust for the Lender, and to use the same for payment of Taxes (as that term is defined in the Mortgage), insurance premiums which the Borrower is required to pay under Section 8 of the Mortgage, all other costs and expenses which the Borrower is required to pay under and pursuant to the Mortgage and to this Assignment, and the indebtedness secured hereby, as and when due, before using said Rents for any other purpose.

2. Upon or at any time after the occurrence of a Default, or if any representation or warranty made by the Borrower to the Lender in connection herewith is untrue in any material respect, the Lender may, after ten (10) days prior written notice to Borrower and Borrower's failure to cure same, at its option, either in person or by agent, without regard for the adequacy of the security for the indebtedness secured hereby or the solvency of the Borrower, with or without bringing any action or proceeding, or by a receiver or trustee to be appointed by a court, enter upon, take possession of, maintain, manage and operate the Mortgaged Premises, make, enforce, modify and accept the surrender of Leases, obtain or evict tenants, fix or modify Rents, refund and collect security deposits, make tenant improvements, and do any acts which the Lender deems proper to protect the security hereof, and either with or without taking possession of the Mortgaged Premises, in its own name, sue for or otherwise demand, collect and receive all Rents, and apply the same upon the costs of collection thereof, including the reasonable fees and costs of agents and attorneys employed by the Lender; upon the costs of managing and operating the Mortgaged Premises, including taxes, insurance, maintenance, repairs and the fees of a professional managing agent; and upon any indebtedness secured hereby, in such order as the Lender may determine, subject to applicable statutory requirements, if any. The Lender or such a receiver shall be entitled to remain in possession of the Mortgaged Premises and to collect the Rents throughout any statutory period of redemption from a foreclosure sale. The entering upon and taking possession of the Mortgaged Premises, the collection of such Rents and the application thereof as aforesaid shall not cure or waive a Default or waive, modify or affect any notice of default, or invalidate any act done pursuant to such Default. The Lender may, without entering into possession or pursuing any other remedy as provided in this section or at law or in equity, or in conjunction with such

possession or pursuit of other remedy, give notice to any or all Lessees authorizing and directing said Lessees to pay Rents directly to the Lender with concurrent notice to the Borrower. If a Lessee receives such a notice, the Borrower hereby directs such Lessee to make payment pursuant thereto, and it shall be conclusively presumed, as between the Borrower and such Lessee, that the Lessee is obligated and entitled to make such payment to the Lender, and that such payment constitutes payment of Rents under the Lease in question. Such notice may be given in the Lender's name. The Borrower shall in every way facilitate the payment of Rents to the Lender, when the Lender has the right to receive the same hereunder. The Lender shall be accountable only for Rents actually collected hereunder and not for the rental value of the Mortgaged Premises. The Lender's failure to collect, or discontinuance from collecting, at any time, and from time to time, any Rents shall not in any manner affect the rights of the Lender to thereafter collect the same.

3. The Lender shall not be deemed to be a partner or, or a joint venturer with, the Borrower with respect to the Mortgaged Premises, or to be a participant of any kind in the management or operation of the Mortgaged Premises. The Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Lease, or with respect to the Mortgaged Premises or the inspection, maintenance or repair thereof, under or by reason of the Assignment. Unless Lender forecloses on the Premises, the Lender shall have no liability to any person, party or entity as the result of any death, bodily or personal injury, or property damage occurring in, on or about the Mortgaged Premises, and the Borrower shall and does hereby agree to defend and indemnify the Lender against, and to hold it harmless from, any and all liability, loss or damage which the Lender may or might incur under the Leases, by reason of any death, bodily or personal injury or property damage occurring on or about the Mortgaged Premises, or otherwise under or by reason of this Assignment, and against and from any and all claims and demands whatsoever which may be asserted against the Lender by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in any Lease, or by reason of any such death, personal injury or property damage. Should the Lender incur any such liability, loss or damage under any Lease, by reason of any such death, bodily or personal injury or property damage, or under or by reason of this Assignment, or in the defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees (including such costs, expenses and fees on appeal), whether or not the Lender prevails therein, together with interest thereon at the interest rate specified in the Loan Agreements or the Loan Documents from the date paid, and the Borrower shall reimburse the Lender therefor immediately upon demand. Neither this Assignment, nor the exercise by the Lender of its rights hereunder, shall be deemed to constitute the Lender a mortgagee in possession of the Mortgaged Premises, unless the Lender expressly elects in writing to be so constituted.

4. If any default or event of default by the Borrower shall occur under the Mortgage Note or under the Mortgage, or if default shall occur in the performance of any of the covenants, obligations or agreements of the Borrower under this Assignment, or if any representation or warranty made by the Borrower to the Lender in connection with the loan evidenced by the Mortgage Note is untrue in any material respect, then the Lender may, at its option, declare all sums secured hereby immediately due and payable, subject to applicable grace periods and cure rights, and, in addition to making available to the Lender any remedies for default herein set forth, such default, event of default or breach of representation or warranty shall, at the Lender's sole option, constitute and be deemed to be an event of default under the Mortgage, entitling the Lender to every and all rights and remedies therein contained, in addition to those rights and remedies herein set forth, without regard to the adequacy of security for the indebtedness secured hereby, the commission of waste or the insolvency of the Borrower.

5. Upon the payment in full of the Liabilities, as evidenced by the recording or filing of any instrument of satisfaction or full release of the Mortgage, unless there shall have been recorded another mortgage in favor of the Lender covering all or any portion of the Mortgaged Premises, this Assignment shall become and be void and of no further effect. Notwithstanding the foregoing, this Assignment shall not be terminated or become null and void as a result of a foreclosure of the Mortgage or a conveyance of title to the Mortgaged Premises, or any portion thereof, to the Lender in lieu of foreclosure, and this Assignment shall continue in full force and effect during any statutory period of redemption from such a foreclosure and notwithstanding the transfer of title to the Mortgaged Premises, or any portion thereof, as a result of completion of such a foreclosure or such a conveyance.

6. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and they are intended to be limited to the extent necessary so that they will not render this Assignment invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Assignment shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the other terms hereof shall be in no way affected thereby. The Lender shall be entitled to all rights and remedies available at law, in equity or under statute now and/or at the time of exercise thereof, even though such rights and remedies were not available on the date first above written.

7. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the Borrower and the Lender; provided, however, that nothing in this section is intended to be or shall be construed as a waiver of the rights of the Lender under the Mortgage.

8. This Assignment is given as security in addition to the security of the Mortgage and all of the Loan Documents, and not as part of the security thereof. All rights and remedies herein conferred may be exercised whether or not foreclosure proceedings are pending under the Mortgage and during any statutory period of redemption. The Lender shall not be required to resort first to the security of this Assignment or of the Mortgage before resorting to the security of the other, and the Lender may exercise the security hereof and of the Mortgage concurrently or independently and in any order of preference, all rights and remedies of the Lender set forth herein, in the Mortgage, at law, in equity, under statute and by contract being cumulative.

9. All notices, demands or documents which are required or permitted to be given or served hereunder shall be in writing, and shall given and made in accordance with the Loan Agreement.

10. This Assignment, and the interpretation and enforcement thereof, shall be governed by the laws of the State of Illinois, except that the provisions of the laws of the state where the Mortgaged Premises are located shall be applicable to the creation, perfection and enforcement of the lien created hereby.

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

**HARBOR CLUB, L.L.C.**, an Illinois limited liability company

By: \_\_\_\_\_

Gerald W. Fogelson  
Its: Manager



STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

I, Christine S. Bricker, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Gerald W. Fogelson, as Manager of HARBOR CLUB, L.L.C., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager of said Company, 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 the free and voluntary act of said Company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 25<sup>th</sup> day of April, 2000.

"OFFICIAL SEAL"  
CHRISTINE S. BRICKER  
Notary Public, State of Illinois  
My Commission Expires 9/23/2002

Christine S. Bricker  
Notary Public





**EXHIBIT "A"**

**LEGAL DESCRIPTION**

Part of the Southwest 1/4 of Section 29, Township 36 North, Range 7 West of the 2nd Principal Meridian, described as follows:

Beginning at the intersection of the Northerly right-of-way line of the Pittsburgh, Fort Wayne and Chicago Railroad and the West line of said Southwest 1/4; thence North 00 degrees 00 minutes 00 seconds East along said West line, 965.00 feet; thence South 73 degrees 29 minutes 44 seconds East, 704.00 feet; thence South 27 degrees 55 minutes 11 seconds West, 145.00 feet; thence South 10 degrees 14 minutes 42 seconds West, 180.00 feet; thence South 09 degrees 22 minutes 52 seconds East, 50.00 feet; thence South 51 degrees 08 minutes 59 seconds West, 40.00 feet; thence South 08 degrees 47 minutes 53 seconds East 70.00 feet; thence South 53 degrees 29 minutes 28 seconds East, 105.00 feet; thence South 21 degrees 42 minutes 56 seconds East, 80.00 feet; thence South 32 degrees 13 minutes 36 seconds East, 138.00 feet; thence South 40 degrees 08 minutes 35 seconds East, 100.00 feet; thence South 29 degrees 53 minutes 09 seconds East, 170.00 feet; thence South 26 degrees 46 minutes 04 seconds East, 130.00 feet; thence South 45 degrees 20 minutes 44 seconds East, 100.00 feet; thence South 41 degrees 31 minutes 55 seconds East, 100.00 feet; thence South 33 degrees 21 minutes 59 seconds East, 63.00 feet; thence South 74 degrees 42 minutes 07 seconds East, 50.00 feet; thence North 77 degrees 32 minutes 02 seconds East, 40.00 feet; thence South 22 degrees 31 minutes 09 seconds West, 95.39 feet to the Northerly line of the Pittsburgh, Fort Wayne and Chicago Railroad; thence North 64 degrees 51 minutes 00 seconds West, along said Northerly line 1019.30 feet; thence Westerly along a curve to the right with a radius of 5678.04 feet for an arc distance of 369.46 feet to the point of beginning, in Lake County, Indiana.

Tax Key No.: 17-10-2 Taxing Unit 27

Commonly known as: Harbor Club, Hobart, Indiana

