

Cross Reference - Document #98028604

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2000-019731

STATE OF INDIANA
PORTER COUNTY
FILED FOR RECORD

2000 062004

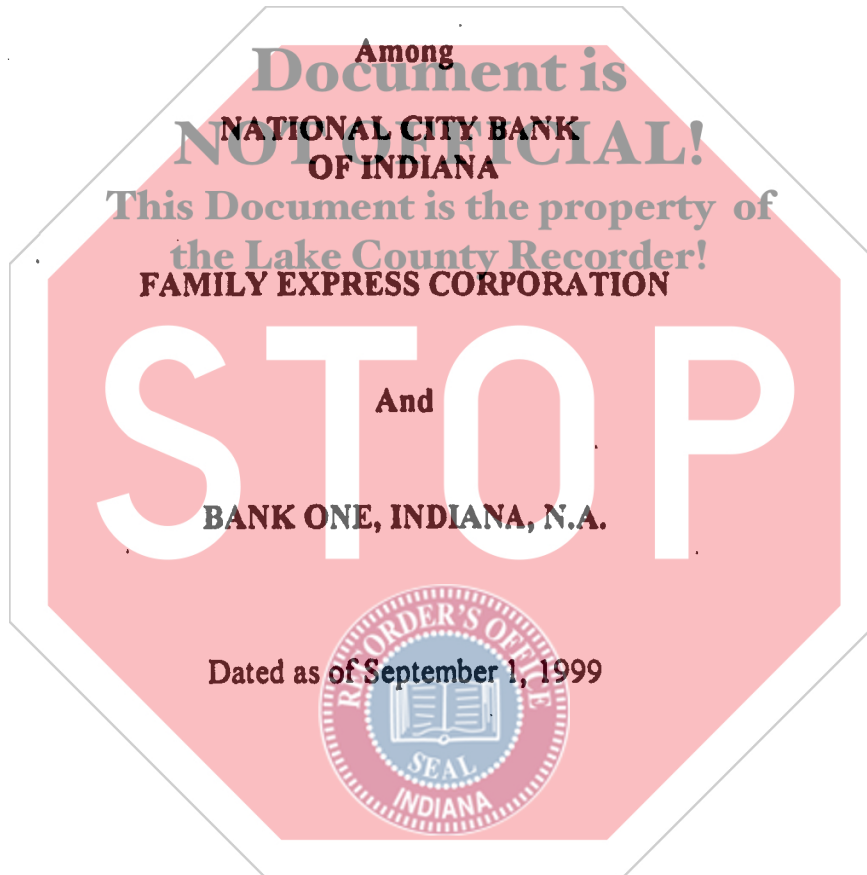
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MORIS W. CARTER
RECORDER

JACQUELYN M. STERLING
RECORDER

**ASSUMPTION, AMENDMENT AND
COLLATERAL ASSIGNMENT AGREEMENT**



OFFICE OF RECORDER OF PORTER CO.

VALPARAISO, IND. 8/15/2000

I hereby certify that this photograph is a true copy of
the original record which is in my custody in this office.

Jacquelyn M. Sterling

Recorder

29.00
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ASSUMPTION, AMENDMENT AND COLLATERAL ASSIGNMENT AGREEMENT

THIS ASSUMPTION, AMENDMENT AND COLLATERAL ASSIGNMENT AGREEMENT (this "Agreement") dated as of September 1, 1999, by and among National City Bank of Indiana, a national banking association organized under the laws of the United States of America (the "Assignor"), Family Express Corporation, an Indiana corporation (the "Company") and Bank One, Indiana, N.A., national banking association organized under the laws of the United States of America (the "Assignee");

RECITALS:

BOOK 811 PAGE 352

1. FE, LLC (the "Issuer") issued its Loan Program Notes (Variable Rate Series A) (the "Notes") in the aggregate principal amount of \$15,080,000 pursuant to a Master Indenture and a Supplemental Indenture No. 1 between the Issuer and National City Bank of Indiana, as successor to First of America Bank, N.A. (the "Bank"), as Trustee (the "Trustee") dated as of April 1, 1998 (the "Indenture"). The Issuer then loaned the proceeds of such Note to the Company pursuant to a Loan Agreement dated as of April 1, 1998.

2. In connection with the issuance of the Note, the Bank issued its Irrevocable Letter of Credit No. 023748 ("Letter of Credit") supporting the Notes. The Issuer and the Company also executed for the benefit of the Bank the various reimbursements agreements, mortgages, security agreements, collateral assignment and other security and collateral documents described in Exhibit A hereto (collectively, the "Collateral Documents"). The Assignor has acquired the Bank and consequently has acquired all of the Bank's right, title, interest and obligations with respect to the Collateral Documents and the Letter of Credit.

3. The Assignee and the Issuer wish to substitute a new Irrevocable Direct-Pay Letter of Credit (the "Assignee's Letter of Credit") issued by the Assignee upon expiration of the noteholder notice requirements contained in the Indenture. In addition, the Assignee will make a loan (the "Loan") to the Company in the original principal amount of \$6,000,000 in order to finance the acquisition of certain assets. The Assignor believes that the execution of the Loan and the Company's transactions financed by the Loan will create certain covenant defaults under the Master Reimbursement Agreement and the Borrower Reimbursement Agreement, both dated as of April 1, 1998 (the "Loan Covenant Defaults"). In order to accomplish the above prior to the effectiveness under the Indenture of the Assignee's Letter of Credit and in order to secure the Assignor's consent to the Loan Covenant Defaults, the Assignee will issue a short term Standby Letter of Credit (the "Standby Letter of Credit") to the Assignor such that, if a draw is made upon the Assignor's Letter of Credit, the Assignor can subsequently draw upon the Standby Letter of Credit for reimbursement to the Assignor. Once the Assignee's Letter of Credit becomes the effective Letter of Credit under the Indenture, the Assignor's Letter of Credit shall be immediately released and returned to the Bank and the Standby Letter of Credit shall be automatically terminated and returned to the Assignee. The Company and the Assignor are willing to enter into this Agreement for the benefit of Assignee to secure the Assignee with respect to the Loan and to secure the Assignee in the event the Standby Letter of Credit shall be drawn upon by the Assignor and to secure the Assignee upon the issuance

of the Assignee's Letter of Credit in substitution for the Assignor's Letter of Credit. With the receipt of the Standby Letter of Credit, the Assignor is willing to consent to the Loan Covenant Defaults.

NOW, THEREFORE, in consideration of the foregoing and of the respective representations and agreements herein contained, the parties hereto agree as follows:

1. **Assignment.** Effective upon the release of the Assignor's Letter of Credit pursuant to the provisions of the Indenture on or about November 1, 1999, the Assignor hereby assigns to the Assignee all of its right, title and interest and all of its rights, duties and obligations, whether express or implied, arising under the Collateral Documents. By executing this Agreement, the Assignor: (a) assumes no responsibility for and makes no representations or warranties regarding the enforceability, validity, priority or completeness of the Collateral Documents; and (b) assumes no responsibility for and makes no representations or warranties with respect to the Issuer, the Company or the Collateral Documents.

2. **Assumption.** Effective upon the release of the Assignor's Letter of Credit on or about November 1, 1999, the Assignee hereby irrevocably assumes all of the Assignor's right, title and interest and all of its rights, duties and obligations arising under the Collateral Documents. The Assignee hereby agrees to faithfully perform all of the duties imposed upon it under the Collateral Documents and to comply with all of the covenants therein contained.

3. **Hold Harmless.** The Assignee hereby agrees to release the Assignor from any and all liabilities and claims arising or resulting from or in any way connected with the Collateral Documents or this Agreement and hereby agrees to indemnify and hold harmless the Assignor against any and all claims or liabilities asserted by or on behalf of any person, firm, corporation, private or public, arising or resulting from, or in any way connected with, the Collateral Documents and any act, failure to act or misrepresentation by the Assignor in connection with, or in the performance of, any obligation or covenant contained in the Collateral Documents, including all liabilities, costs and expenses, including reasonable attorneys' fees, incurred in any action or proceeding brought by reason of any such claim. The Company agrees that the Assignee shall be authorized to enforce the Assignor's rights under the Collateral Documents to the extent necessary to secure reimbursement to the Assignee for any draws on its Letter of Credit, plus interest thereon to the date of reimbursement.

4. **Limited Power of Attorney.** The Assignor grants to the Assignee a limited power of attorney to prepare, execute on behalf of the Assignor and record assignments of any and all of the Collateral Documents, but only upon the simultaneous release of and return to the Assignor of the Assignor's Letter of Credit.

5. **Subrogation.** In consideration of the issuance of the Standby Letter of Credit to the Assignor, until such time as the Assignor's Letter of Credit has been released, the Assignor hereby grants to the Assignee, to the extent a draw is made upon the Standby Letter of Credit, a right of subrogation to the Assignee of the Assignor's rights under the Collateral Documents and hereby authorizes the Assignee to execute any rights or remedies under the Collateral Documents to the extent necessary to effect such subrogation. The Company agrees that the Assignee shall be authorized to enforce the Assignor's rights under the Collateral Documents to the extent necessary

to secure reimburse to the Assignee for any draws on the Standby Letter of Credit, plus interest thereon to the date of reimbursement, subject to Assignor's rights thereunder to the extent the Assignor's Letter of Credit has not been fully terminated and released to the Assignor..

6. Consent to Default. The Assignor hereby consents to the Loan Covenant Defaults.

7. Execution of Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

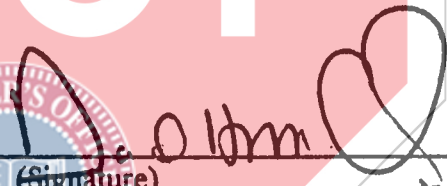
8. Governing Law. This Agreement shall be governed exclusively by, and construed in accordance with, the applicable laws of the State of Indiana.

9. Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the Assignee and Assignor and each of their respective successors and assigns.

IN WITNESS WHEREOF, the Assignee, the Company and Assignor have caused this Agreement to be executed in their respective names and their respective seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

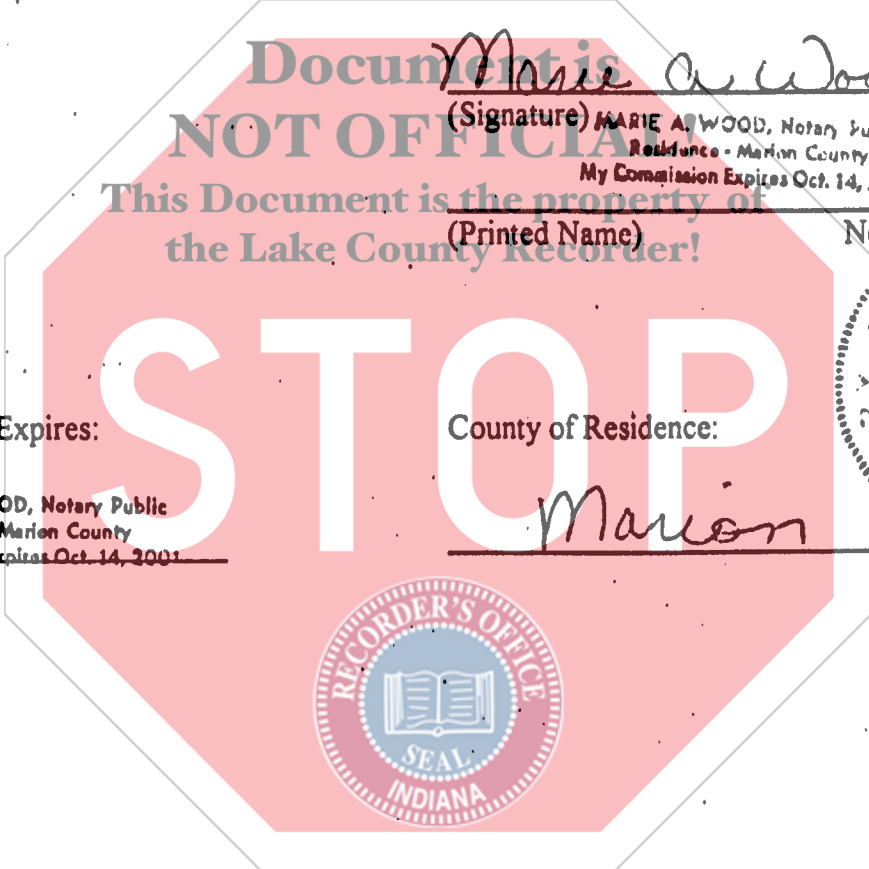
ASSIGNOR:

NATIONAL CITY BANK OF INDIANA


(Signature)
David H. Mills
(Printed Name)

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State personally appeared David H. Mills, and acknowledged the execution of the foregoing Assignment and Amendment Agreement. Witness my hand and Notarial Seal this 8 day of Sept. 8, 1999.



Marie A. Wood
(Signature) MARIE A. WOOD, Notary Public
Residence - Marion County
My Commission Expires Oct. 14, 2001

(Printed Name) Notary Public



My Commission Expires:

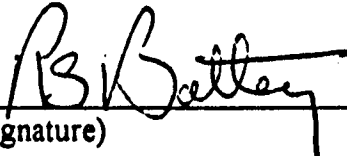
MARIE A. WOOD, Notary Public
Residence - Marion County
My Commission Expires Oct. 14, 2001

County of Residence:

Marion

ASSIGNEE:

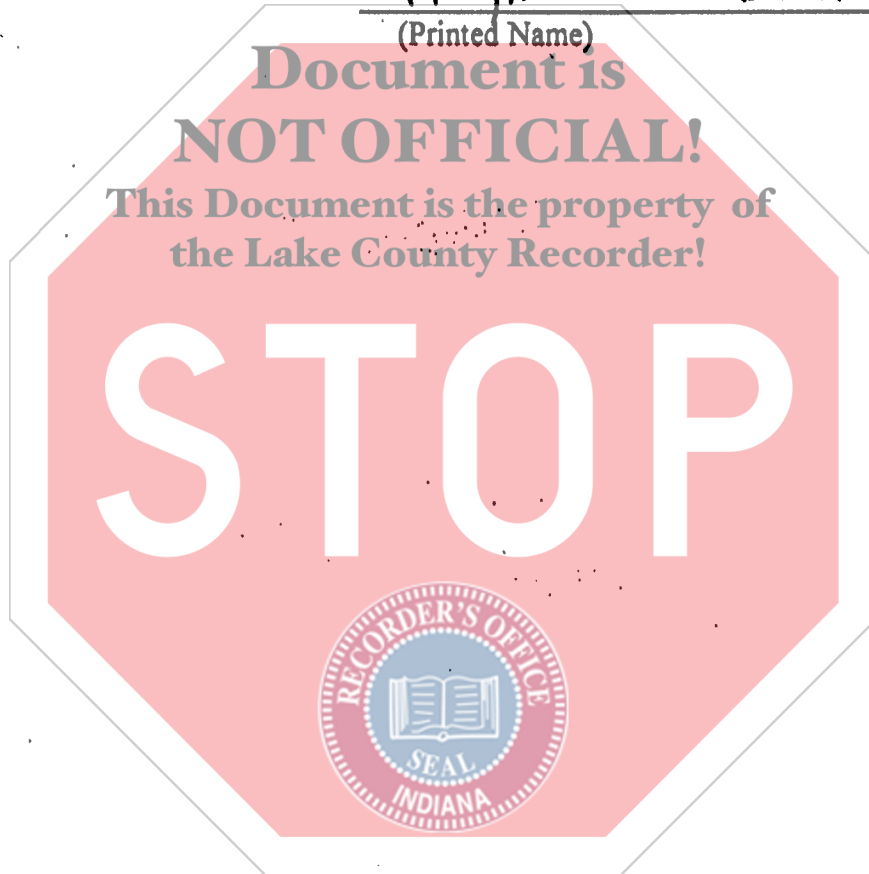
BANK ONE, INDIANA, N.A.



(Signature)

Raymond S. Batley

(Printed Name)



STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State personally appeared Raymond S. Batley, and acknowledged the execution of the foregoing Assignment and Amendment Agreement. Witness my hand and Notarial Seal this 8th day of September, 1999.



JULIA A. CARPENTER
Res. of Marion Co.
Comm. Exp. 3-13-2008

Julia A. Carpenter
(Signature)
NOT OFFICIAL!
This Document is the property of
the Lake County Recorder!
(Printed Name) _____ Notary Public

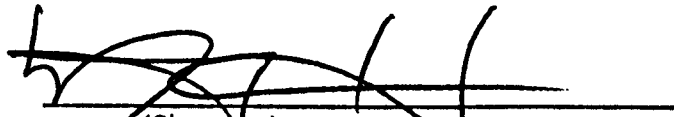
My Commission Expires: _____

County of Residence: _____



COMPANY:

FAMILY EXPRESS CORPORATION



(Signature)

Monique L. Hoen, Secretary

Docum (Printed Name)

NOT OFFICIAL!

**This Document is the property of
the Lake County Recorder!**

STOP



STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State personally appeared Margie A. Horn, and acknowledged the execution of the foregoing Assignment and Amendment Agreement. Witness my hand and Notarial Seal this 9 day of September, 1999.

Document is
Nancy S. Bowyer
NOT LEGAL!
(Signature)

This Document is the property of
NANCY S. BOWYER
the Lake County Recorder!
(Printed)



My Commission Expires:

County of Residence:

4-22-01

Porter

This instrument was prepared by Denise Y. Barkdull, ICE MILLER DONADIO & RYAN, One American Square, Box 82001, Indianapolis, Indiana 46282; Telephone (317) 236-2100.

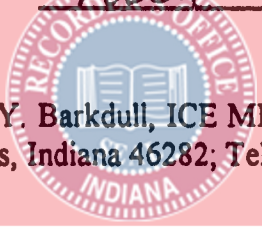


EXHIBIT A

1. Master Reimbursement Agreement dated as of April 1, 1998 between FE, LLC and the Bank
2. Borrower Reimbursement Agreement dated as of April 1, 1998 between Family Express Corporation and the Bank
3. Limited Personal Guaranty of Gus Olympidis dated as of April 1, 1998
4. Corporate Guaranty dated as of April 1, 1998 between Family Express Petro, Inc. and Bank
5. Security Agreement and License of Patents, Trademarks and Copyrights dated as of April 1, 1998 between Family Express Corporation and the Bank
- ✓ 6. Mortgage, Security Agreement and Assignment of Rents and Leases dated as of April 1, 1998 between Family Express Corporation and the Bank
- ✓ 7. Amendment to Leasehold Mortgage dated as of April 1, 1998 between Family Express Corporation and the Bank
8. Security Agreement dated as of April 1, 1998 between Bank and Company
- ✓ 9. UCC-2 Financing Statement number _____ filed with Lake County Recorder's office on _____, 1998
- ✓ 10. UCC-2 Financing Statement number _____ filed with Porter County Recorder's office on _____, 1998
- ✓ 11. UCC-2 Financing Statement number _____ filed with Jasper County Recorder's office on _____, 1998
- ✓ 12. UCC-2 Financing Statement number _____ filed with Jasper County Recorder's office on _____, 1998
- ✓ 13. UCC-2 Financing Statement number _____ filed with LaPorte County Recorder's office on _____, 1998
- ✓ 14. UCC-2 Financing Statement number _____ filed with Pulaski County Recorder's office on _____, 1998
- ✓ 15. UCC-2 Financing Statement number _____ filed with White County Recorder's office on _____, 1998
- ✓ 16. UCC-1 Financing Statement filed with Secretary of State's office on April 21, 1998. Filing number 2185349
- ✓ 17. UCC-1 Financing Statement filed with Secretary of State's office on April 21, 1998.. Filing number 2185350
- ✓ 18. UCC-1 Financing Statement filed with Secretary of State's office on April 21, 1998. Filing number 2185352
- ✓ 19. UCC-1 Financing Statement filed with the Secretary of State's office on April 21, 1998. Filing number 2185351