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Cook County Recorder 33.50

MORTGAGE

6701055242 *H...mo*
THIS INDENTURE made this

25th day of JANUARY, 2001, between
MERCHANTS CAPITAL CORPORATION
(hereinafter called "Mortgagor"), and
LAKESIDE BANK AS TRUSTEE UNDER
TRUST AGREEMENT NUMBER 10-1496
UNDER TRUST AGREEMENT DATED
APRIL 18th, 1991, (hereinafter called
"Mortgagee"), witnesseth:



0010080937

**COOK COUNTY
RECORDER
EUGENE "GENE" MOORE
ROLLING MEADOWS**

THAT WHEREAS the Mortgagor is justly indebted to the Mortgagee upon the Single Payment Promissory Note of even date herewith, in the principal sum of **SEVEN HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$775,000.00)**, payable to the order of and delivered to the Mortgagee, in an by which Note, the Mortgagor promises to pay the said principal sum and interest at the rate as provided in said Note, with a single full and final payment of the balance due on the 25TH day of MARCH, 2001.

The payment herein under are subject to the acceleration of or extension of the maturity date pursuant to paragraphs 3.2, 3.3, and 4.2 of the Real Estate Contract between the parties dated **January 8th, 2001**. These paragraphs provide for the notification of and setting of the full and final payment date and are not to be considered a merger of the Contract terms into the Note and Mortgage, and all of said principal and interest are made payable at such place as the Holders of the Note may, from time to time, in writing, appoint, and in absence of such appointment, then at the office of the Mortgagee in **Cook County, Illinois**.

NOW, THEREFORE, the Mortgagor to secure the payment of said principal sum of money and said interest in accordance with the terms, provisions and limitations of this mortgage, and the performance of the covenants and agreements herein contained, by the Mortgagors to be performed, and also in consideration of the sum of One Dollar (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, do by these presents CONVEY and WARRANT unto the Mortgagee, and the Mortgagee's successors and assigns, the following described Real estate and all of their estate, right, title and interest therein, situate, lying and being in the City of Chicago, County of Cook and State of Illinois, to-wit:

Legal Description: **LOTS 16 THROUGH 33 BOTH INCLUSIVE IN BLOCK 2 IN SUTTON'S SUBDIVISION OF BLOCK 28 IN CANAL TRUSTEE'S SUBDIVISION OF SECTION 33, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS; ALSO THAT PART OF THE VACATED ALLEY LYING SOUTH AND ADJOINING LOTS 16 TO 24 IN BLOCK 2 IN SUTTON'S SUBDIVISION AFORESAID, IN COOK COUNTY, ILLINOIS.**

Common Address: **412-444 WEST 38TH STREET, CHICAGO, ILLINOIS 60609**

2/2/01

PIN: 17-33-320-001-0000 and 17-33-320-011-0000
17-33-320-002-0000
17-33-320-003-0000
17-33-320-004-0000
17-33-320-005-0000

which, with the property hereinafter described, is referred to herein as the "Premises".

TOGETHER with all improvements, tenements, easements, fixtures, and appurtenances thereto belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagors may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily) and all apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light power, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing), screens, window shades, storm doors and windows, floor coverings, awnings, stoves, and water heaters. All of the foregoing are declared to be a part of said real estate whether physically attached thereto or not, and it is agreed that all similar apparatus, equipment or articles hereafter placed in the premises by the Mortgagors or their successors or assigns shall be considered as constituting part of the real estate.

TO HAVE AND TO HOLD the premises unto the Mortgagee, and the Mortgagee's successors and assigns, forever, for the purposes and upon the uses herein set forth, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois, which said rights and benefits the Mortgagors do hereby expressly release and waive.

1. **Restrictions On Transfer.** Mortgagor covenants and agrees that without the prior written consent of the holder or holders of the Note secured by this Mortgage that the Mortgagor(s) will not sell, transfer, convey or caused to be conveyed, including by the transfer of or sale under Articles of Agreement for Deed or otherwise allow a lien to be placed against or encumber the real estate which is the subject of this Mortgage, [(including in the event title to the subject real estate is held by a Land Trust by giving an assignment direct or collateral of any beneficial interest in any land trust which holds title to the said real estate except for the existing Collateral ABI to Lakeside Bank) so long as any part of the indebtedness due under said Note and secured by this Mortgage subsist and remains unpaid].

2. **Late Payment.** If any payment due under the secured Note is more than one (1) day late, there will be due a late payment charge in an amount equal to **\$30.00** per day in addition to the post-maturity interest.

3. **Liens.** In the event of the occurrence of any such lien, encumbrance, assignment, sale, transfer, or conveyance without the advance written consent of the holder or holders of said Note, the holder or holders of said Note may in his or their sole discretion, consider such an act of default and without notice, declare the entire unpaid balance of the

Note immediately due and payable, and may invoke any remedies permitted by this Mortgage, without further notice or demand on Mortgagor.

4. **Junior Security.** The Mortgagor shall not, without the prior written consent of the Mortgagee, have the right to place a Junior (and Subordinate) Mortgages against the real estate.

5. **Land Trust ABI.** Title will be placed in a Land Trust at **Lakeside Bank** in which event. The Mortgagee herein shall be given a Junior Collateral Security Assignment of Beneficial Interest in addition to the Mortgagees other rights herein, but only as applicable to this parcel of real estate and only if consented to by **Lakeside Bank** as existing Holder of the Collateral ABI on this Trust.

6. **Cross-Default Provision.** The Borrower's (Mortgagor's) default or breach under any Note or Agreement which secures this Mortgage an interest shall be a breach under the Mortgage Security Instrument and Lender may invoke any of the remedies permitted by the said Security Instrument Mortgage.

7. **Payment of Prior Liens, Etc.:** Because the Mortgage shall remain in control of the premises during the Post Title Transfer Demolition Period, both Mortgagor and Mortgagee agree that the responsible party shall:

A. Keep said premises free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof;

B. Pay when due any indebtedness which may be secured by a lien or charge on the premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee;

C. Comply with all requirements of law, municipal ordinances, or restrictions of record with respect to the premises and the use thereof;

D. Not suffer or permit any unlawful use of or any nuisance to exist upon the premises;

E. Not diminish or impair the value of the premises or the security intended to be effected by virtue of this Mortgage by any act or omission to act;

F. Appear in and defend any proceeding which in the opinion of the Mortgagee affects its security hereunder, and to pay all costs, expenses and attorneys' fees incurred or paid by the Mortgagee in any proceeding in which Mortgagee may participate in any capacity by reason of this Mortgage;

G. The Mortgage shall pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the note;

8. **Insurance.** Mortgagee shall provide liability insurance with such limits for personal injury and death and property in the sum of **FIVE MILLION DOLLARS (\$5,000,000.00)**. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagor with mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagor, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without ten (10) days' prior written notice to the Mortgagee. Mortgagor shall deliver all policies, including additional renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than ten (10) days prior to the respective dates of expiration.

9. **Mortgagee's Right To Act.** If Mortgagor fails to pay any claim, lien or encumbrance which shall have a prior lien to the lien of this indenture caused by the acts or conducts of the Mortgagor, or to pay, when due, any tax or assessment, or any insurance premium, or to keep the premises in repair, as aforesaid, or shall commit or permit waste, or if there be commenced any action or proceeding affecting the premises or the title thereto, then Mortgagee, at its option, may pay such claim, lien, encumbrance, tax, assessment or premium, with right of subrogation thereunder, may procure such abstracts or other evidence of title as it deems advisable to prevent or cure such waste, and may appear in any such action or proceeding and retain counsel therein, and take such action therein as Mortgagee deems advisable, and for any of such purposes Mortgagee may advance at the rate set forth in the Note, and all such sums and interest thereon shall be secured hereby.

10. **Performance/Default.**

A. If Mortgagor:

(1) defaults by failing to pay when due any payment required to be made to the Mortgagee or under the terms of this or any other Mortgage on this Real Estate; or

(2) defaults in the performance of any other covenant or agreement hereof and such default is not cured by Mortgagor within ten (10) days after written notice to Mortgagor (unless the default involves a dangerous condition which shall be cured forthwith); Mortgagee may treat such a default as a breach if this Mortgage and Mortgagee shall have any one or more of the following remedies in addition to all other rights and remedies provided at law or in equity:

(i) Declare the entire balance due and maintain an action for such amount;

(ii) Upon Mortgagor's failure to surrender possession, maintain an action for possession under the Forcible Entry and Detainer Act, subject to the rights of Mortgagor to reinstate as provided in that Act.

B. As additional security in the event of default, Mortgagor assigns to Seller all unpaid rents, and all rents which accrue thereafter, under any future lease or sublease on the real estate in addition to the remedies provided above and in conjunction with any one of them, Seller may collect any rent due and owing and may seek the appointment of a receiver.

C. If default is based upon the Mortgagor's failure to pay taxes, assessments, payments on other Mortgages on this Real Estate, insurance, or liens, the Mortgagee may elect to make such payments and add the amount to the principal balance due, which amounts shall become immediately due and payable by Mortgagors to the mortgage.

D. Anything contained in subparagraphs A. through C., to the contrary notwithstanding, this Mortgage shall not be forfeited, if within five (5) days after a telefaxed written notice of default, Mortgagor tenders to Mortgagee the entire unpaid principal balance of the Note and accrued interest then outstanding and cures any other defaults of a monetary nature affecting the premises or monetary claims arising from acts or obligations of Mortgagor under this Mortgage.

E. In the event of a default in the payment (when due) of the underlying Note, the Debtor agrees to pay all costs, expenses and fees of collection, including reasonable attorney's fees and court costs. No delay or omission on the part of the Mortgagee in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Bearer of any right or remedy shall preclude other or future exercise of any right or remedy.

F. This mortgage secures a commercial loan and Mortgagor waives presentment, notice and dishonor.

12. **Waiver.** The Mortgagor and all others who now or may at any time become liable for all or any part of the obligation evidenced hereby, jointly and severally waive and renounce any and all homestead and exemption rights

13. **Loan Costs.** The undersigned Mortgagor agrees to pay a sum to the Title Insurance Company costs and fees for the obtaining of a Title Company Mortgage Loan Policy, if the Mortgagee requires; as well as the cost of recording the Release Deed.

14. **Governing Law.** This Mortgage is to be governed and construed in accordance with the laws of the State of Illinois. This Mortgage may be amended only by an instrument in writing signed by the party against whom enforcement of the amendment is sought.

15. **Binding On Successors.** The obligations and liabilities of the Mortgagor under this Mortgage shall be binding upon the enforceable against its heirs, legal

representatives, administrators, successors and assigns. This Mortgage shall inure to the benefit of and may be enforced by the Mortgagee, its successors and assigns.

16. **Partial Invalidity.** In the event one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or un-enforceability shall not affect any other provision which had never been contained herein or therein.

This mortgage consists of **six (6) pages**. The covenants, conditions and provisions are incorporated herein by reference and are a part hereof and shall be binding o the Mortgagee, their heirs, successors and assigns.

WITNESS, the hand and seal of Mortgageors the day and year first above written.

LAKESIDE BANK AS TRUSTEE UNDER TRUST NUMBER 10-1496 UNDER TRUST AGREEMENT DATED APRIL 18TH, 1991

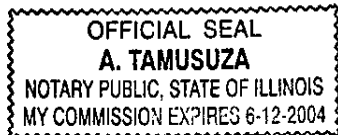
By: [Signature]
Its: ASST. TRUST OFFICER

By: [Signature]
It's: VICE PRESIDENT & TRUST OFFICER

STATE OF ILLINOIS)
COUNTY OF C O O K) ss:

I, Agnes Tamusuza, a Notary Public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that Vincent J. Tolve and David V. Pinkerton Officers of **LAKESIDE BANK AND TRUST COMPANY** who subscribed to the foregoing instrument as such, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act for the uses therein set forth.

GIVEN under my and Notarial Seal this 25TH day of JANUARY, 2001



[Signature]
Notary Public

Prepared By:

LAW OFFICES OF MARC BARNETT
2473 SOUTH ARCHER AVENUE
CHICAGO, ILLINOIS 60616

ADDRESS OF PROPERTY:

412-444 WEST 38TH STREET
CHICAGO, ILLINOIS 60609

Mail To:

John D. Purdy, Jr., Esquire
Martin, Craig, Chester & Sonnenschein
2215 York Road
Suite 550
Oak Brook, Illinois 60523

SEE RIDER ATTACHED HERETO AND MADE A PART HEREOF.



Lakeside Bank

55 WEST WACKER DRIVE • CHICAGO, ILLINOIS 60601-1699 • (312) 435-5100

MORTGAGE RIDER

THIS MORTGAGE or TRUST DEED is executed by **LAKESIDE BANK**, not personally, but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed by the other party(ies) hereunder and by every person now or hereafter claiming any right or security hereunder that nothing contained herein or in the Note secured by this Mortgage or Trust Deed shall be construed as creating any Liability on **LAKESIDE BANK** or on any of the beneficiaries under said Trust Agreement personally to pay said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder or to perform any covenants either express or implied herein contained, all such liability, if any, being expressly waived, and that any recovery on this Mortgage or Trust Deed and the Note secured hereby shall be solely against and out of the property hereby conveyed by enforcement of the provisions hereof and of said Note, but this waiver shall in no way affect the personal liability of the co-signer, endorser or guarantor of said Note.