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1999-05-26 09:41:01  
Cook County Recorder 27.00



**INDEMNIFYING REAL ESTATE MORTGAGE**

This Mortgage made the 21 day of May, 1999, by Southwest Financial Bank and Trust Company, as Trustee under Trust Agreement dated October 1, 1996, and known as Trust Number 1-1354 of 9901 Southwestern Ave., Chicago, IL 60662, hereinafter referred to as "Mortgagor" unto MERCANTILE NATIONAL BANK OF INDIANA, with offices at 5243 Hohman Avenue, Hammond, Indiana, 46320, hereinafter referred to as "Mortgagee",

WITNESSETH:

UPP

This Mortgage is given in consideration of any loan or other financial accommodations by MERCANTILE NATIONAL BANK OF INDIANA to The First National Bank of Illinois as Trustee under Trust Agreement dated the 13<sup>th</sup> day of May, 1999 and known as Trust Number 5189 and Terry Kunes, and specifically to secure the payment of a certain note herewith, and all renewals, extensions, rewrites, refinances, modifications, consolidations and replacements thereof and substitutions thereof, not to exceed in the aggregate the principal sum of Four Million Forty Thousand and NO/100 Dollars (\$4,040,000.00) given to MERCANTILE NATIONAL BANK OF INDIANA by The First National Bank of Illinois as Trustee under Trust Agreement dated the 13<sup>th</sup> day of May, 1999 and known as Trust Number 5189 and Terry Kunes (hereinafter, "Borrower"), payable as therein provided, for the purpose of securing the repayment of said obligations, and to indemnify the Mortgagee from any loss or damage that it may incur by the failure of said obligations to be paid as agreed. *Notwithstanding any other provision contained herein to the contrary*, the maximum aggregate amount of principal, interest, premium, if any, future advances, other indebtedness sums (now owed or hereafter owed) advanced to protect the security of this Mortgage and expenses of Mortgagee secured by this Mortgage is Eight Million Eighty Thousand and NO/100 Dollars (\$8,080,000.00). The undersigned hereby mortgage and warrant to the Mortgagee, the property situated in Cook County, State of Illinois, described as follows, to-wit:

Parcel 1: Lot 2 in Owner's Subdivision of the East 280 feet of the West 746.70 feet of the North 466.70 feet of the North 70 acres of the West 1/2 of the Northwest 1/4 of Section 10, Township 36 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois,

Parcel 2: That part of Lots 2 and 3 in 144<sup>th</sup> Place Commercial Subdivision, being a Subdivision of part of the West 1/2 of the Northwest 1/4 of Section 10, Township 36 North, Range 12 East of the Third Principal Meridian, described as follows: Beginning at the Northwest corner of said Lot 2; thence North 89 degrees 52 minutes East, 436.55 feet to the Northeast corner of said Lot 3; thence South 0 degrees 41 minutes 57 seconds West, 125.00 feet; thence South 89 degrees 52 minutes West, 291.55 feet; thence South 0 degrees 41 minutes 57 seconds West, 112.02 feet; thence South 89 degrees 59 minutes West, 145.00 feet to the Southwest corner of said Lot 2; thence North 0 degrees 41 minutes 57 seconds East, 237.02 feet to the point of beginning, all in Cook County, Illinois,

P.I.N.# 27-10-100-010 Parcel 1 P.I.N.# 27-10-100-083 Parcel 2  
Property Address: 9513 W. 143<sup>rd</sup> St., Orland Park, IL 60462.

BOX 333-CTI

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together with all buildings, improvements, structures, appurtenances, fittings, equipment and fixtures attached, erected or used in connection with the property or hereafter acquired attached, erected, appurtenant or used in connection with the property, including but not limited to storm and screen windows and doors, cabinets, bathroom fixtures, drapes, shades, floor coverings, stoves, refrigerators and other appliances, gas, steam, electric and other air-conditioning, heating, and lighting apparatus, all of which are to be deemed to be a part of the property, whether, physically attached or not, together with all rents, issues, income, profits, rights, privileges, interests, easements and hereditaments thereof (hereinafter, "Property").

And that said Mortgagor does covenant with the said Mortgagee as follows: First, that Mortgagor is lawfully seized of the Property in fee simple; Second, that Mortgagor has a good right to convey the same; Third, that the same are free from all liens and encumbrances except as set out in Clause 5 below; Fourth, that the Mortgagee shall quietly enjoy and possess the same; and that the Mortgagor will warrant and defend the title to the same against all lawful claims.

The Mortgagor for himself, herself, his or her heirs, executors, administrators, successors, and assigns, covenants and agrees with the Mortgagee, its successors and assigns as follows:

1. If there is a default in the payment of any obligations hereby secured or in the performance of any of the Mortgagor's, Borrower's or Guarantor's, covenants set forth in this Mortgage or other instruments signed in connection with the obligations this Mortgage secures, or if Mortgagor should abandon the Property, or if the Property or any part thereof should be attached, levied upon or seized, or if the Mortgagor, Borrower, or Guarantor, should become bankrupt or insolvent or make an assignment for the benefit of creditors, or if a receiver should be appointed for the Mortgagor, Borrower, or Guarantor, then all obligations secured hereby shall, at Mortgagee's option, become immediately due and payable, without notice or demand, and the Property shall be subject to foreclosure of this Mortgage, and the Mortgagee, if it elects to foreclose the same, and at any time prior to the expiration of any period of redemption following judicial sale, shall become entitled to the immediate possession of the Property together with all the rents, issues, income and profits therefrom and Mortgagor will pay all costs and attorney's fees incurred by Mortgagee in the enforcement of the terms of this Mortgage.

2. For the duration of any obligation hereby secured: (a) The Mortgagor will keep the Property in its present state of repair, normal wear and tear excepted; (b) Mortgagor will pay all taxes and assessments imposed on the Property and will otherwise take such action and exercise such forbearance as may be necessary in order that the Property shall not hereafter become subject to any lien or encumbrance superior to this Mortgage; (c) Mortgagor will procure and maintain insurance with insurance companies acceptable to Mortgagee, against damage to or destruction of the improvements included in Property by fire and windstorm or by any cause customarily included in the terms "extended coverage" such insurance to be in a sum not at any time less than the value of such improvements or the total of the obligations then hereby secured, plus all taxes, assessments and indebtedness then secured by any liens or encumbrances superior hereto on the Property whichever is smaller, and to be payable to the Mortgagee as its interest may appear; (d) Mortgagor will deliver the policy or a certificate evidencing said insurance to the Mortgagee and will allow Mortgagee possession of the same, and the Mortgagee may collect the proceeds of any insurance. Mortgagor appoints Mortgagee as his attorney-in-fact to endorse any insurance checks and drafts payable to him; (e) This Mortgage and the obligations secured hereby may not be assumed, there can be no transfer or sale of any interest in the Mortgagor or any beneficial interest in Mortgagor, if Mortgagor is not a natural person but is a corporation, partnership, trust, or other legal entity, without prior written consent of the Mortgagee; (f) Mortgagor will pay and keep current any mortgage on the Property that is superior to this Mortgage and immediately advise Mortgagee in writing of his failure to do so; (g) Mortgagor will not further mortgage or encumber the Property in any way without the express written consent of the Mortgagee. This prohibition shall include the Mortgagor borrowing any future monies from any senior mortgage holder under any "other indebtedness" or "future advance" clause without the prior written consent of the Mortgagee; (h) Mortgagor shall not allow any judgment liens; mechanic's liens or other liens of any nature or kind to be placed against the Property, and if such lien or liens should be affixed or placed on the Property, Mortgagor shall immediately advise Mortgagee of this fact in writing and cause said lien to be satisfied and released within five (5) days from the entry thereof.

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3. If the Mortgagor shall fail to make any payment or to obtain any insurance, service or materials or pay or remove any liens on the Property necessary for the performance of any of Mortgagor's covenants above set forth, then the Mortgagee at its option may do so, and its expenditures for any such purpose shall be added to and become part of the obligations hereby secured. Any amount so added shall, from the date of payment thereof by the Mortgagee, bear interest at the rate of interest set forth in the obligation.

4. The Mortgagee at its option may extend the time or the payment of any obligation hereby secured, or reduce the payments thereon, or accept a note or renewal note therefor, or release any part of the security, or any person liable for the obligations without consent of any junior lienholder, and without the consent of the Mortgagor. No such extension, reduction, renewal or release shall affect the priority of this Mortgage or impair the security hereof in any manner whatsoever, or release, discharge or affect in any manner the personal liability of the Mortgagor to the Mortgagee. No delay by the Mortgagee in the exercise of any of its rights hereunder shall preclude the exercise thereof so long as the Borrower is in default of any of the obligations hereby secured and no failure of the Mortgagee to exercise any of its rights because of one default shall preclude the exercise thereof for a subsequent default. The Mortgagee may enforce any one or more of its rights or remedies hereunder successively or concurrently.

5. That the Property mortgaged hereby is free, clear and unencumbered except as to (a) real estate taxes not yet due; (b) usual easements, covenants and restrictions of record; (c) real estate mortgage dated November 10, 1996 to Southwest Financial Bank and Trust Company in the original amount of \$900,000.00, or other mortgages existing and of record as of the date hereof; (d) Other: None

6. In the event this Mortgage is subject to a mortgage set out in the paragraph above, or any other mortgage or encumbrance and that prior mortgage or encumbrance is in default or is foreclosed upon, or in the event Mortgagor without Mortgagee's prior written consent, sells or transfers any interest in this Property, then at the option of the Mortgagee, this Mortgage and the obligations it secures shall become immediately due and payable in full, and further, that the Mortgagee may immediately foreclose this Mortgage, all without any notice or demand whatsoever.

7. That the Mortgagor will indemnify and save harmless from, and repay on demand the Mortgagee for, any loss, damage, expense, or attorney's fees which may be incurred by the Mortgagee by reason of any suit or proceeding to which the Mortgagee is made a party on account of this Mortgage, and any loss, damage, expense, or attorney's fees so incurred by the Mortgagee is made a part of the obligations secured by this Mortgage.

8. That the Mortgagee shall, at its option, be entitled to be subrogated to any demand, lien, claim or right paid or satisfied by or with the monies advanced and hereby secured, and that the Mortgagee herein may, at any time or times in succession, without notice, extend the time of payment of the obligations hereby secured, or any part thereof, to any person or persons then under obligation to pay the same or affected by the lien hereby created, upon such terms as may be agreed upon by the Mortgagee and the party requesting the extension, without impairing in any way the lien or priority of this Mortgage. Upon payment of all sums secured by this Mortgage without charge to Mortgagor, Mortgagor shall pay all recordation costs.

9. Neither Mortgagor nor, to the best of Mortgagor's knowledge, any other party has used, generated, released, discharged, stored, or disposed of any hazardous waste, toxic substance, or related material (cumulatively "Hazardous Materials") in connection with the Property or transported any Hazardous Materials to or from the Property, in violation of any federal, state or local statute, regulation, or ordinance promulgated regarding the use, storage, and maintenance of Hazardous Materials. The term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes regulated by any governmental authority including, but not limited to, (i) petroleum; (ii) friable or nonfriable asbestos; (iii) polychlorinated biphenyls; (iv) those substances, materials or wastes designated as a "hazardous substance" pursuant to Section 307 of the Clean Water Act or any amendments or replacements to these statutes; (v) those substances, materials or wastes defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act or any amendments or replacements to that statute; or (vi) those substances, materials, or wastes defined as a "hazardous substance" pursuant to Section 101 of the

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Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), or any amendments or replacements to that statute or any other similar statute, rule, regulation or ordinance now or hereafter in effect.

Mortgagor has not violated and shall not violate any statute, regulation, ordinance, rule of law, contract or other agreement which might materially affect the Property (including, but not limited to, those governing Hazardous Materials) or Mortgagee's rights or interest in the Property pursuant to this Mortgage.

The Property: (1) contains no facilities that are subject to reporting under Section 312 of the Federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C.11022); (2) is not the site of any underground storage tanks for which notification is required under 42 U.S.C.6991a and any applicable state or local law, ordinance or regulation; (3) is not listed on the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) in accordance with Section 116 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C.9616); and (4) there are no environmental defects in the Property.

Mortgagor covenants and agrees to indemnify and save harmless Mortgagee from all liability, claims, obligations, losses, damages, actions, cases of action, costs and expenses (including, without limitation, reasonable attorneys' fees) which may arise or occur because of Mortgagor's breach of the aforesaid representations and warranties.

10. That all agreements and representations of the Mortgagor herein contained are made also for the benefit of any successor or assignee of the mortgagee.

11. That all rights and remedies secured to the Mortgagee by the covenants and agreements contained in this Mortgage are to be deemed cumulative and not in any way in derogation of the rights of the Mortgagee under laws of the State of Illinois.

12. The covenants, agreements, and conditions hereof shall be binding upon the Mortgagor and the heirs, personal representatives, successors, and assigns of the Mortgagor subject to the provision of paragraph 2 above, and shall inure to the benefit of the Mortgagee and its successors and assigns. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, this Mortgage has been executed by the Mortgagor or has caused the same to be executed by its representatives thereunto duly authorized on the date first written above.

Suburban Bank and Trust Company F/K/A,  
Southwest Financial Bank and Trust Company,  
as Trustee under Trust Agreement dated October 1, 1996,  
and known as Trust Number 1-1354

*Joseph D. Marszalek*  
By: Joseph D. Marszalek Trust Officer  
~~See attached signature page~~

Subscribed and sworn to this 21st day  
of May, 1999.

*Patricia M. Lake*  
Notary Public



This Mortgage prepared by May Logothetis as Vice President of Mercantile National Bank of Indiana