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2002-08-02 11:42:40
Cook County Recorder 37.00

RECORDATION REQUESTED BY:
HERITAGE BANK
Chicago Heights Banking
Center
195 West Joe Orr Road
Chicago Heights, IL 60411

WHEN RECORDED MAIL TO:
HERITAGE BANK
Chicago Heights Banking
Center
195 West Joe Orr Road
Chicago Heights IL 60411



SEND TAX NOTICES TO:
HERITAGE BANK
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Center
195 West Joe Orr Road
Chicago Heights, IL 60411

FOR RECORDER'S USE ONLY

202-3911

This Hazardous Substances Agreement prepared by:

LINDA STASKO
HERITAGE BANK
195 West Joe Orr Road
Chicago Heights, IL 60411

HAZARDOUS SUBSTANCES CERTIFICATE AND INDEMNITY AGREEMENT

THIS HAZARDOUS SUBSTANCES AGREEMENT dated June 7, 2002, is made and executed among THOMAS C. CARLSTEAD, H. CHRIS CARLSTEAD JR. and DENNIS C. GILLEY, 1221 DARTMOUTH ROAD, FLOSSMOOR, IL 60422 (sometimes referred to below as "Borrower" and sometimes as "Indemnitor"); and HERITAGE BANK, Chicago Heights Banking Center, 195 West Joe Orr Road, Chicago Heights, IL 60411 (referred to below as "Lender"). For good and valuable consideration and to induce Lender to make a Loan to Borrower, each party executing this Agreement hereby represents and agrees with Lender as follows:

PROPERTY DESCRIPTION. The word "Property" as used in this Agreement means the following Real Property located in COOK County, State of Illinois:

See EXHIBIT "A", which is attached to this Agreement and made a part of this Agreement as if fully set forth herein.

The Real Property or its address is commonly known as 17100 S. HALSTED STREET, HARVEY, IL 60426. The Real Property tax identification number is 29-29-206-020 & 29-29-206-024

REPRESENTATIONS. The following representations are made to Lender, subject to disclosures made and accepted by Lender in writing:

Use of Property. After due inquiry and investigation, Indemnitor has no knowledge, or reason to believe, that there has been any use, generation, manufacture, storage, treatment, refinement, transportation, disposal, release, or threatened release of any Hazardous Substance by any person on, under, or about the Property.

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(1) Any spill, release or disposal of a Hazardous Substance on any of the Property, or in connection with any of its operations if such spill, release or disposal must be reported to any governmental authority under applicable Environmental Laws.

(2) Any contamination, or imminent threat of contamination, of the Property by Hazardous Substances, or any violation of Environmental Laws in connection with the Property or the operations conducted on the Property.

(3) Any order, notice of violation, fine or penalty or other similar action by any governmental authority relating to Hazardous Substances or Environmental Laws and the Property or the operations conducted on the Property.

Notices. Indemntor shall immediately notify Lender upon becoming aware of any of the following:

Preventive, Investigatory and Remedial Action. Indemntor shall exercise extreme care in handling Hazardous Substances if Indemntor uses or encounters any. Indemntor, at Indemntor's expense, shall undertake any and all preventive, investigatory or remedial action (including emergency response, removal, containment and other remedial action) (a) required by any applicable Environmental Laws or orders by any governmental authority having jurisdiction under Environmental Laws, or (b) necessary to prevent or minimize property damage (including damage to Occupant's own property), personal injury or damage to the environment, or the threat of any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Property or operations of any Occupant on the Property. In the event Indemntor fails to perform any of Indemntor's obligations under this section of the Agreement, Lender may (but shall not be required to) perform such obligations at Indemntor's expense. All such costs and expenses incurred by Lender under this section and otherwise under this Agreement shall be reimbursed by Indemntor to Lender upon demand with interest at the Loan default rate, or in the absence of a default rate, at the Loan interest rate. Lender and Indemntor intend that Lender shall have full recourse to Indemntor for any sum at any time due to Lender under this Agreement. In performing any such obligations of Indemntor, Lender shall at all times be deemed to be the agent of Indemntor and shall not be liable for such performance be deemed to be assuming any responsibility of Indemntor under any Environmental Law or to any third party. Indemntor hereby irrevocably appoints Lender as Indemntor's attorney-in-fact with full power to perform such of Indemntor's obligations under this section of the Agreement as Lender deems necessary and appropriate.

Compliance with Environmental Laws. Indemntor shall cause the Collateral and the operations conducted on it to comply with any and all Environmental Laws and orders of any governmental authorities having jurisdiction under any Environmental Laws with respect to such Collateral or operations, permits and authorizations required by Environmental Laws with respect to such Collateral or operations. Indemntor shall furnish Lender with copies of all such permits and authorizations and any amendments or renewals of them and shall notify Lender of any expiration or revocation of such permits or authorizations.

Use of Property. Indemntor will not use and does not intend to use the Property to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Substances.

AFFIRMATIVE COVENANTS. Subject to disclosures made and accepted by Lender in writing, Indemntor covenants with Lender as follows:

No Notices. Indemntor has received no summons, citation, directive, letter or other communication, written or oral, from any agency or department of any county or state or the U.S. Government concerning any intentional or unintentional action or omission on, under, or about the Property which has resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances into any waters or onto any lands or where damage may have resulted to the lands, waters, fish, shellfish, wildlife, biota, air or other natural resources.

Hazardous Substances. After due inquiry and investigation, Indemntor has no knowledge, or reason to believe, that the Collateral, whenever owned by previous Occupants, has ever contained asbestos, PCB or other Hazardous Substances, whether used in construction or stored on the Collateral.

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(4) Any judicial or administrative investigation or proceeding relating to Hazardous Substances or Environmental Laws and to the Property or the operations conducted on the Property.

(5) Any matters relating to Hazardous Substances or Environmental Laws that would give a reasonably prudent Lender cause to be concerned that the value of Lender's security interest in the Property may be reduced or threatened or that may impair, or threaten to impair, Indemnitor's ability to perform any of its obligations under this Agreement when such performance is due.

Access to Records. Indemnitor shall deliver to Lender, at Lender's request, copies of any and all documents in Indemnitor's possession or to which it has access relating to Hazardous Substances or Environmental Laws and the Property and the operations conducted on the Property, including without limitation results of laboratory analyses, site assessments or studies, environmental audit reports and other consultants' studies and reports.

Inspections. Lender reserves the right to inspect and investigate the Property and operations on it at any time and from time to time, and Indemnitor shall cooperate fully with Lender in such inspection and investigations. If Lender at any time has reason to believe that Indemnitor or any Occupants of the Property are not complying with all applicable Environmental Laws or with the requirements of this Agreement or that a material spill, release or disposal of Hazardous Substances has occurred on or under the Property, Lender may require Indemnitor to furnish Lender at Indemnitor's expense an environmental audit or a site assessment with respect to the matters of concern to Lender. Such audit or assessment shall be performed by a qualified consultant approved by Lender. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to any Indemnitor or to any other person.

INDEMNITOR'S WAIVER AND INDEMNIFICATION. Indemnitor hereby indemnifies and holds harmless Lender and Lender's officers, directors, employees and agents, and Lender's successors and assigns and their officers, directors, employees and agents against any and all claims, demands, losses, liabilities, costs and expenses (including without limitation attorneys' fees at trial and on any appeal or petition for review) incurred by such person (a) arising out of or relating to any investigatory or remedial action involving the Property, the operations conducted on the Property or any other operations of Indemnitor or any Occupant and required by Environmental Laws or by orders of any governmental authority having jurisdiction under any Environmental Laws, or (b) on account of injury to any person whatsoever or damage to any property arising out of, in connection with, or in any way relating to (i) the breach of any covenant contained in this Agreement, (ii) the violation of any Environmental Laws, (iii) the use, treatment, storage, generation, manufacture, transport, release, spill disposal or other handling of Hazardous Substances on the Property, (iv) the contamination of any of the Property by Hazardous Substances by any means whatsoever (including without limitation any presently existing contamination of the Property), or (v) any costs incurred by Lender pursuant to this Agreement. In addition to this indemnity, Indemnitor hereby releases and waives all present and future claims against Lender for indemnity or contribution in the event Indemnitor becomes liable for cleanup or other costs under any Environmental Laws.

PAYMENT: FULL RECOURSE TO INDEMNITOR. Indemnitor intends that Lender shall have full recourse to Indemnitor for Indemnitor's obligations under this Agreement as they become due to Lender. Such liabilities, losses, claims, damages and expenses shall be reimbursable to Lender as Lender's obligations to make payments with respect thereto are incurred, without any requirement of waiting for the ultimate outcome of any litigation, claim or other proceeding, and Indemnitor shall pay such liability, losses, claims, damages and expenses to Lender as so incurred within thirty (30) days after written notice from Lender. Lender's notice shall contain a brief itemization of the amounts incurred to the date of such notice. In addition to any remedy available for failure to pay periodically such amounts, such amounts shall thereafter bear interest at the Loan default rate, or in the absence of a default rate, at the Loan interest rate.

SURVIVAL. The covenants contained in this Agreement shall survive (A) the repayment of the Indebtedness, (B) any foreclosure, whether judicial or nonjudicial, of the Property, and (C) any delivery of a deed in lieu of foreclosure to Lender or any successor of Lender. The covenants contained in this Agreement shall be for the benefit of Lender and any successor to Lender, as holder of any security interest in the Property or the indebtedness secured thereby, or as owner of the Property following foreclosure or the delivery of a deed in lieu

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Notices. Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Indemnitor agrees to keep Lender informed at all times of Indemnitor's current address. Unless otherwise provided or required by law, if there is more than one Indemnitor, any

Agreement by Lender. granted or withheld in the sole discretion of Lender. Indemnitor hereby waives notice of acceptance of this consent to subsequent instances where such consent is required and in all cases such consent may be under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing of any of Indemnitor's obligations as to any future transactions. Whenever the consent of Lender is required or any course of dealing between Lender and Indemnitor, shall constitute a waiver of any of Lender's rights or strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless signing below is responsible for all obligations in this Agreement.

Joint and Several Liability. All obligations of Indemnitor under this Agreement shall be joint and several, and all references to Indemnitor shall mean each and every Indemnitor. This means that each Indemnitor

Choice of Venue. If there is a lawsuit, Indemnitor agrees upon Lender's request to submit to the jurisdiction of the courts of Cook County, State of Illinois.

Governing Law. This Agreement will be governed by, construed and enforced in accordance with federal law and the laws of the State of Illinois. This Agreement has been accepted by Lender in the State of Illinois.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Agreement, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction) appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveys' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Indemnitor also will pay any court costs, in addition to all other sums provided by law.

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

of foreclosure.

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UNOFFICIAL COPY**HAZARDOUS SUBSTANCES AGREEMENT**

Loan No: 22-290427-4

(Continued)

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notice given by Lender to any Indemnitee is deemed to be notice given to all Indemnitees.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Indemnitee's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Indemnitee, Lender, without notice to Indemnitee, may deal with Indemnitee's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Indemnitee from the obligations of this Agreement or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

Agreement. The word "Agreement" means this Hazardous Substances Agreement, as this Hazardous Substances Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Hazardous Substances Agreement from time to time.

Collateral. The word "Collateral" means all of Indemnitee's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Indemnitee's obligations or expenses incurred by Lender to enforce Indemnitee's obligations under this Agreement, together with interest on such amounts as provided in this Agreement.

Lender. The word "Lender" means HERITAGE BANK, its successors and assigns.

Occupant. The word "Occupant" means individually and collectively all persons or entities occupying or

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Property of Cook County Clerk's Office

Authorized Signer

[Signature]

LENDER:

DENNIS C. GILLEY, Individually

[Signature]

H. CHRIS CARLSTEAD JR., Individually

[Signature]

THOMAS C. CARLSTEAD, Individually

[Signature]

BORROWER:

EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH AGREES TO ITS TERMS. NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS AGREEMENT EFFECTIVE. THIS AGREEMENT IS DATED JUNE 7, 2002.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Agreement.

Property. The word "Property" means all of Indemitor's right, title and interest in and to all the Property as described in the "Collateral Description" section of this Agreement.

utilizing the Collateral, whether as owner, tenant, operator or other occupant.

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HAZARDOUS SUBSTANCES AGREEMENT

Loan No: 22-290427-4

(Continued)

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INDIVIDUAL ACKNOWLEDGMENT

STATE OF Illinois)
) SS
COUNTY OF Cook)

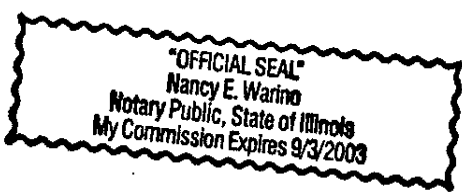
On this day before me, the undersigned Notary Public, personally appeared **THOMAS C. CARLSTEAD; H. CHRIS CARLSTEAD JR.; and DENNIS C. GILLEY**, to me known to be the individuals described in and who executed the Hazardous Substances Agreement, and acknowledged that they signed the Agreement as their free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 7th day of June, 2002

By Nancy E. Warino Residing at 830 Manor Ct, Glenwood, IL

Notary Public in and for the State of Illinois

My commission expires 9/3/03



LENDER ACKNOWLEDGMENT

STATE OF Illinois)
) SS
COUNTY OF Cook)

On this 7th day of June, 2002 before me, the undersigned Notary Public, personally appeared Mark Fleming and known to me to be the SVN, authorized agent for the Lender that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the said Lender, duly authorized by the Lender through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and that the seal affixed is the corporate seal of said Lender.

By Christina Burton Residing at Heriberto Bank

Notary Public in and for the State of Illinois

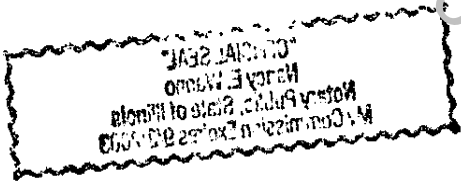
My commission expires 2/11/03



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EXHIBIT "A"

That part of the south 286.90 feet of the east $\frac{1}{2}$ of the northeast $\frac{1}{4}$ of Section 29, Township 36 North, Range 14, East of the Third Principal Meridian, lying east of the east line of the west 586 feet thereof and lying northwesterly of the following described line: Commencing at the southeast corner of the northeast $\frac{1}{4}$ of said Section 29; thence south 89 degrees 47 minutes 00 seconds west along the south line thereof, a distance of 856.99 feet to a point; thence north 00 degrees 13 minutes 00 seconds west along a line forming an angle of 90 degrees 00 minutes 00 seconds to the right of the last described line extended, a distance of 33 feet to a point; thence north 69 degrees 34 minutes 23 seconds east along a line forming an angle of 69 degrees 47 minutes 23 seconds to the right of the last described line extended a distance of 118.04 feet for the point of beginning (said point of beginning being on the east line of the west 586 feet of the east $\frac{1}{2}$ of the northeast $\frac{1}{4}$ of said Section 29); thence continuing north 69 degrees 34 minutes 23 seconds east a distance of 106.04 feet to a point; thence north 42 degrees 00 minutes 56 seconds east along a line forming an angle of 27 degrees 33 minutes 27 seconds to the left of the last described line extended, a distance of 331.54 feet to a point on the north line of the south 355.90 feet of the east $\frac{1}{2}$ of the northeast $\frac{1}{4}$ of said section 29 (said point being 425.36 feet west, as measured along the north line of said south 355.90 feet, of the east line of the northeast $\frac{1}{4}$ of said section 29) all in Cook County, Illinois.

17100 S. Halsted
Harvey, IL
Cook County