

# UNOFFICIAL COPY

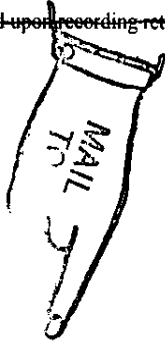
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1999-12-22 14:52:50  
Cook County Recorder 43.50



This instrument was prepared by, and upon recording return to:

Foley and Lardner  
One IBM Plaza  
Suite 3300  
3330 North Wabash Avenue  
Chicago, IL 60611



Attn: Nicole A. Liffbrig, Esq.

RETURN TO: *M. Owens*  
TICOR TITLE INSURANCE  
203 N. LaSALLE, STE. ~~400~~ 1390  
CHICAGO, IL 60601  
RE: *990027412*

Above Space for Recorder's use only

## MORTGAGE

*12*

TICOR TITLE INSURANCE

THIS MORTGAGE, made as of December 1, 1999, between the record owner of the Mortgaged Property (as hereinafter defined), Firststar Bank, N.A., as successor trustee to Firststar Bank Illinois, as Trustee under Trust Agreement dated October 7, 1998, known as Trust Number 7164 ("Trustee"), having an office at 104 N. Oak Park Avenue, Oak Park, Illinois 60301, and Hartz Construction Co., Inc. ("Beneficiary"), with a mailing address of 8995 West 95th Street, Palos Hills, Illinois, 60465-5030 (Trustee and Beneficiary are herein collectively referred to as "Borrower"), and Firststar Bank, National Association, with a mailing address of 30 N. Michigan Avenue, Suite 300, Chicago, Illinois 60602, herein referred to as "Bank," witnesseth:

*455766 3/8*

THAT WHEREAS the Borrower is justly indebted to the Bank, in the sum of Seven Million Four Hundred Forty Three Thousand Five Hundred Twenty and No/100 Dollars (\$7,443,520.00), in and by the terms of that certain Reimbursement Agreement by and between Bank and Borrower of even date herewith pursuant to which Bank has issued that certain Irrevocable Transferable Letter of Credit to Old Kent Bank, for the benefit of Borrower of even date herewith (the "Letter of Credit"). The Reimbursement Agreement, the Letter of Credit, this Mortgage, and any other instrument evidencing, securing or executed in connection with the issuance of the Letter of Credit are collectively referred to as the "Loan Documents." The Borrower promises to pay amounts coming due under the Loan Documents, together with interest at the rate and as provided in the Loan Documents, with a final payment due on the first day of February 1, 2004. All of said principal and interest are made payable at such place as Bank, its successors or assigns, from time to time, in writing appoint, and in absence of such appointment, then at the Chicago office of the Bank. Pursuant to the Reimbursement Agreement, the Bank has issued its Letter of Credit at the request of the Borrower, and any and all draws under such Letter or Credit shall be deemed to be "Indebtedness" as secured hereunder, together with all Obligations (as defined in the Reimbursement Agreement) and liabilities due or to become due to Bank, all amounts, sums, and expenses paid hereunder by or payable to Bank according to the terms of the Loan Documents, and all other covenants, obligations, and liabilities of Borrower under the Loan Documents.

NOW, THEREFORE, the Borrower, to secure the payment of said Indebtedness, in accordance with the terms, provisions and limitations of this Mortgage and the Loan Documents, and the performance of, and the covenants and agreements herein contained, by the Borrower to be performed, and also in consideration of the sum of One Dollar in hand paid, the receipt whereof is hereby acknowledged, does by these presents CONVEY AND WARRANT unto the Bank, and the Bank's successors and assigns, the real estate and all of Borrower's estate, right, title and interest therein, situate, lying and being in the Village of Tinley Park, COUNTY OF COOK IN THE STATE OF ILLINOIS, described on Exhibit A attached hereto and made a part hereof which, with the property hereinafter described, is referred to herein as the "Mortgaged Property."

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 Borrower 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. 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 Mortgaged Property by Borrower or its

TO HAVE AND TO HOLD the Mortgaged Property unto the Bank, and the Bank'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 Borrower does hereby expressly release and waive.

**COVENANTS, CONDITIONS AND PROVISIONS:**

1. Borrower shall (1) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Mortgaged Property which may become damaged or be destroyed; (2) keep said Mortgaged Property in good condition and repair, without waste, and free from mechanic's or other liens or claims for lien not expressly subordinated to the lien thereof; (3) pay when due any indebtedness which may be secured by a lien or charge on the Mortgaged Property superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to the Bank; (4) complete within a reasonable time any building or buildings now or at any time in process of erection upon said Mortgaged Property; (5) comply with all requirements of law or municipal ordinances with respect to the Mortgaged Property and the use thereof; (6) make no material alterations in said Mortgaged Property except as required by law or municipal ordinance. **Notwithstanding the foregoing, Borrower shall have the right to develop the Mortgaged Premises in compliance with the Development Agreement (as such term is defined in the Reimbursement Agreement).**
2. Borrower shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the Mortgaged Property when due, and shall, upon written request, furnish to the Bank duplicate receipts therefor. To prevent default hereunder Borrower shall pay in full under protest, in the manner provided by statute, any tax or assessment which Borrower may desire to contest.
3. In the event of the enactment after this date of any law of Illinois deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon the Bank the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages of the Bank's interest in the property, or the manner of collection of taxes, so as to affect this mortgage or the debt secured hereby or the holder thereof, then and in any such event, the Borrower, upon demand by the Bank, shall pay such taxes or assessments, or reimburse the Bank therefor; provided, however, that if in the opinion of counsel for the Bank (a) it might be unlawful to require Borrower to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, the Bank may elect, by notice in writing given to Borrower, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.
4. If, by the laws of the United States of America or of any state having jurisdiction in the Mortgaged Property, any tax is due or becomes due in respect of the issuance of the Reimbursement Agreement or other Loan Documents hereby secured, the Borrower covenants and agrees to pay such tax in the manner required by any such law. The Borrower further covenants to hold harmless and agrees to indemnify the Bank, and the Bank's successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Reimbursement Agreement or other Loan Documents secured hereby.
5. At such time as the Borrower is not in default either under the terms of the Reimbursement Agreement secured hereby or under the terms of this Mortgage, the Borrower shall have such privilege of making payments (in addition to the required payments) only as may be provided in said Reimbursement Agreement.
6. Borrower shall keep all buildings and improvements now or hereafter situated on said Mortgaged Property insured against loss or damage by fire, lightning and windstorm under policies providing for payment by the insurance companies of moneys sufficient either to pay the cost of replacing or repairing the same or to pay in full the indebtedness secured hereby, all in companies satisfactory to the Bank, under insurance policies payable, in case of loss or damage, to Bank, such rights to be evidenced by the standard mortgage clause to be attached to each policy, and shall deliver all policies, including additional and renewal policies, to the Bank, and in case of insurance about to expire, shall deliver renewal policies not less than ten days prior to the respective dates of expiration.
7. In case of default therein, Bank may, but need not, make any payment or perform any act hereinbefore required of Borrower in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said Mortgaged Property or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorney's fees, and any other moneys advanced by Bank to protect the mortgaged Mortgaged Property and the lien hereof, shall be so much additional indebtedness secured hereby and shall become

immediately due and payable without notice and with interest thereon at the highest rate now permitted by Illinois law. Inaction of Bank shall never be considered as a waiver of any right accruing to the Bank on account of any default hereunder on the part of the Borrower.

8. The Bank making any payment hereby authorized relating to taxes or assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.
9. Borrower shall pay the Obligations and each item of indebtedness herein mentioned, both principal and interest, when due according to the terms of the Reimbursement Agreement or other Loan Documents. At the option of the Bank and without notice to Borrower, all unpaid indebtedness secured by this Mortgage shall, notwithstanding anything in the Loan Documents to the contrary, become due and payable (a) immediately in the case of default in making payment of any installment of principal or interest on the Reimbursement Agreement or other Loan Documents, or (b) when default shall occur and continue for three days in the performance of any other agreement of the Borrower herein contained, or (c) upon the occurrence of any Event of Default (as defined in the Reimbursement Agreement).
10. When the Indebtedness secured hereby shall become due whether by acceleration or otherwise, Bank shall have the right to foreclose the lien hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Bank for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches, and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Bank may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature in this paragraph mentioned shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the highest rate now permitted by Illinois law, when paid or incurred by Bank in connection with (a) any proceeding, including probate and bankruptcy proceedings, to which the Bank shall be a party, either as plaintiff, claimant or defendant, by reason of this mortgage or any indebtedness hereby secured; or (b) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; or (c) preparations for the defense of any actual or threatened suit or proceeding which might affect the Mortgaged Property or the security hereof.
11. The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Reimbursement Agreement or other Loan Documents, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Reimbursement Agreement or other Loan Documents; fourth, all remaining unpaid Obligations (as such term is defined in the Reimbursement Agreement); fifth, any overplus to Borrower, their heirs, legal representatives or assigns, as their rights may appear.
12. Upon or any time after the filing of a complaint to foreclose this Mortgage the court in which such complaint is filed may appoint receiver of said Mortgaged Property. Such appointment may be made either before or after the sale, without notice, without regard to the solvency or insolvency of Borrower at the time of application for such receiver and without regard to the then value of the Mortgaged Property or whether the same shall be then occupied as a homestead or not, and the Bank may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of said Mortgaged Property during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of said period. The Court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (1) The indebtedness secured hereby, or by any decree foreclosing this mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; (2) the deficiency in case of a sale and deficiency.
13. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Reimbursement Agreement hereby secured.

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14. The Bank shall have the right to inspect the Mortgaged Property at all reasonable times and access thereto shall be permitted for that purpose.
15. Upon the occurrence of an Event of Default (as defined in the Reimbursement Agreement), the Borrower shall periodically deposit with the Bank such sums as the Bank may reasonably require for payment of taxes and assessments on the Mortgaged Property. No such deposit shall bear any interest.
16. If the payment of said Indebtedness or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in said Mortgaged Property, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by the Bank, notwithstanding such extension, variation or release.
17. The Bank shall execute a release of this Mortgage and lien thereof by proper instrument concurrently with any reduction of the principal amount of indebtedness hereby secured and such release shall be a corresponding reduction of principal amount of indebtedness relating thereto (so long as the Bank is not obligated (through a letter issued on behalf of the Borrower or otherwise) to extend additional credit to the Borrower) and payment of a reasonable fee to the Bank for the execution of such release provided however if the Borrower provides the Bank with the necessary and appropriate documents for the execution of such release no payment of a reasonable fee to the Bank shall be required.
18. This Mortgage and all provisions hereof, shall extend to and be binding upon Borrower and all persons claiming under or through Borrower, and the word "Borrower" when used herein shall include all such persons and all persons liable for the payment of the Indebtedness or any part thereof, whether or not such persons shall have executed the Reimbursement Agreement or this mortgage. The word "Bank" when used herein shall include the successors and assigns of the Bank named herein and the holder or holders, from time to time, of the debt secured hereby.
19. It is the understanding and intention of the parties hereto that the Mortgaged Property shall be subdivided by Borrower and developed as individual residential parcels (the "Parcels," or each individually, the "Parcel"). The Bank's release from time to time of its interest in one or more parcels shall not affect retaining its interest in the remaining Parcels still held by Borrower.
20. The proceeds of the Indebtedness referred to herein shall be used solely for business purposes and in furtherance of the regular business affairs of Borrower, and the entire principal obligation secured by this Mortgage constitutes (i) a "business loan" as that term is defined in, and for all purposes of, 815 ILCS 205/4(c), and (ii) a "loan secured by a mortgage on real estate" within the purview and operation of 815 ILCS 205/4(b).
21. Borrower represents and warrants that the Mortgaged Property does not fall within the categories of real property covered by the Illinois Responsible Property Transfer Act, 765 ILCS 90/3 et seq., as amended (the "Transfer Act"). Borrower shall protect, indemnify and hold Bank and Bank's directors, officers, employees, agents, successors and assigns harmless from and against any and all loss, damage, cost, expense, liability and penalty (including, without limitation, reasonable attorneys' fees and costs) arising out of or attributable to any violation of the statutory disclosure requirements of the Transfer Act. This indemnity shall survive the satisfaction, release, or extinguishment of lien of this Mortgage, including, without limitation, any extinguishment of the lien of this Mortgage by foreclosure or deed-in-lieu thereof.
22. This Mortgage secures the payment of the entire indebtedness, including, without limitation, all amounts hereunder, and all costs and expenses referred herein; provided, however that the total amount secured by this Mortgage shall not exceed an amount equal to three hundred percent (300%) of the amount of the Obligations.
23. To the full extent Borrower may legally do so, Borrower agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any laws now or hereafter in force providing for any appraisal or appraisement, valuation, stay, extension or redemption, and waives and releases all rights of redemption, reinstatement, valuation, appraisal or appraisement, stay of execution, extension and notice of election to accelerate or declare due the whole of the indebtedness.
24. It is the intention of Borrower and Bank that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "Act"), Illinois Compiled Statutes, 735 ILCS 5/15-1101 et seq., and with respect to such Act Borrower agrees and covenants that:

(a) Borrower and Bank shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Bank shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference;

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(b) Wherever provision is made in this mortgage for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Bank, or to confer authority upon Bank to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Bank shall continue in the Bank as judgment creditor or Bank until confirmation of sale;

(c) All advances, disbursements and expenditures made or incurred by Bank before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by the Mortgage or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(1) all advances by Bank in accordance with the terms of the Mortgage to: (i) preserve, maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (ii) preserve the lien of the Mortgage or the priority thereof; or (iii) enforce the Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

(2) payments by Bank of (i) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (iii) other obligations authorized by the Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

(3) advances by Bank in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(4) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of the Mortgage as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Bank for the enforcement of the Mortgage or arising from the interest of the Bank hereunder; or (iii) in preparation for or in connection with the commencement, prosecution or defense of any other action related to the Mortgage or the Mortgaged Property;

(5) Bank's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Section 5/15-1508(b)(1) of the Act;

(6) expenses deductible from proceeds of sale as referred to in Section 5/15-1512(a) and (b) of the Act;

(7) expenses incurred and expenditures made by Bank for any one or more of the following: (i) if the Mortgaged Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Borrower's interest in the Mortgaged Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Bank whether or not Bank or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Bank takes possession of the Mortgaged Property imposed by Section 5/15-1704(c)(1) of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Bank to be required for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property; (vii) if the loan secured hereby is a construction loan, costs incurred by Bank for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (viii) payments required to be paid by Borrower or Bank pursuant to any lease or other agreement for occupancy of the Mortgaged Property and (ix) if the Mortgage is insured, payment of FHA or private mortgage insurance required to keep such insurance in force.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Note.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

- (i) any determination of the amount of indebtedness secured by this Mortgage at any time;
- (ii) the indebtedness found due and owing to the Bank in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (iii) if right of redemption has not been waived by this Mortgage, computation of amounts required to redeem, pursuant to Sections 5/15-1603(d) and 5/15-1603(e) of the Act;
- (iv) determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;
- (v) application of income in the hands of any receiver or Bank in possession; and
- (vi) computation of any deficiency judgment pursuant to Sections 5/15-1508(b)(2), 5/15-1508(e) and 5/15-1511 of the Act;

(d) In addition to any provision of this Mortgage authorizing the Bank to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Bank shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Bank, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1703 of the Act; and

(e) Borrower acknowledges that the Mortgaged Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act. Pursuant to Section 5/15-1601(b) of the Act, Borrower hereby waives any and all right of redemption.

25. Pursuant to the Collateral Protection Act (815 ILCS 180(1)) Borrower acknowledges that unless Borrower provides Bank with evidence of the insurance required by the Mortgage, the Reimbursement Agreement and/or Letter of Credit, Bank may purchase insurance at Borrower's expense to protect Bank's interest in the Mortgaged Property. This insurance may but need not protect the interest of Borrower. The coverage which Bank purchases may not pay any claim that Borrower or any claim that is made against Borrower in connection with the Mortgaged Property. Borrower may later cancel any insurance purchased by Bank that only providing Bank with evidence that Borrower has obtained insurance as required by the Loan Documents. If Bank purchases insurance for the Mortgaged Property, Borrower will be responsible for the cost of that insurance including any interest or any other charges Bank may impose in connection with the placement of the insurance until the date of cancellation or expiration of the insurance. The cost of the insurance may be added to the total outstanding balance or obligations secured hereunder. If the cost of the insurance may be more than the cost of the insurance, Borrower may be able to acquire on its own.
26. In the event of a conflict between the terms of this Mortgage and the terms of the Reimbursement Agreement, the terms of the Reimbursement Agreement shall prevail.
27. This instrument is executed by Firststar Bank, N.A., 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 said Trustee hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said Trustee personally to pay any indebtedness accruing hereunder or to perform any covenant either express or implied herein contained (it being understood and agreed that each of the provisions of this Mortgage, except this paragraph, shall constitute a condition and not a covenant or agreement regardless of whether the same may be couched in language of a promissory covenant or agreement), all such personal liability, if any, being expressly waived by the Lender and by every person now or hereafter claiming any right hereunder, and insofar as said Trustee is concerned, the Bank shall look solely to the Mortgaged Property hereby mortgaged or conveyed and to other security agreements, documents or instruments or guarantees evidencing or securing the secured indebtedness for the payment thereof, by the enforcement of the liens, charges or other rights created by the Loan Documents, in the manner herein and in the Loan Documents provided.

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28. Beneficiary represents and warrants that it is the sole beneficiary of the Trustee, that it has sole power of direction over Trustee; that all representations and warranties contained in the Loan Documents are true and correct as if made solely by Beneficiary; and Beneficiary hereby covenants and agrees to perform all covenants and obligations of the Borrower as set forth in the Loan Documents.

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Property of Cook County Clerk's Office

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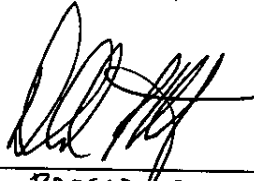
Witness the hand and seal of Borrower the day and year first above written.

BENEFICIARY:

TRUSTEE:

Hartz Construction Co., Inc.

Firststar Bank, N.A., not personally, but as Trustee as aforesaid

By:   
Its: PRESIDENT

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

Property of Cook County Clerk's Office

**C9188713**



# UNOFFICIAL COPY

State of Illinois )  
                          ) SS  
County of Cook )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that

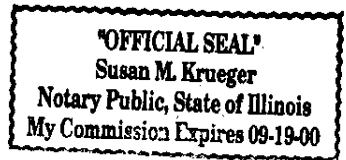
IMPRESS  
SEAL  
HERE

Personally known to me to be the same person DONALD L. HARTZ whose name PRESIDENT subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that

T h E signed, sealed and delivered the said instrument as \_\_\_\_\_ free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal, this 14th day of December 19 99

Commission expires 09-19 2000 Susan M. Krueger  
NOTARY PUBLIC



State of Illinois )  
                          ) SS  
County of Cook )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that

IMPRESS  
SEAL  
HERE

Personally known to me to be the same person \_\_\_\_\_ whose name \_\_\_\_\_ subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that

   h    signed, sealed and delivered the said instrument as \_\_\_\_\_ free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Commission expires \_\_\_\_\_ 19 \_\_\_\_\_  
NOTARY PUBLIC

**09188713**

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Witness the hand and seal of Borrower the day and year first above written.

BENEFICIARY:

TRUSTEE:

Hartz Construction Co., Inc.

Firststar Bank, N.A., not personally, but as Trustee as aforesaid

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

By: Angela McElwain  
Its: Land Trust Officer

Property of Cook County Clerk's Office

**C9188713**

# UNOFFICIAL COPY

State of Illinois )  
                          ) SS  
County of Cook )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Angela McClain Land Trust Officer of Firststar Bank, N.A.

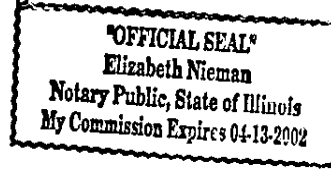
Personally known to me to be the same person- \_\_\_\_\_ whose name \_\_\_\_\_ subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that

IMPRESS  
SEAL  
HERE

s h e signed, sealed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal, this 15th day of December 19 99

Commission expires \_\_\_\_\_ 19 \_\_\_\_\_  
*Elizabeth Nieman*  
NOTARY PUBLIC



State of Illinois )  
                          ) SS  
County of Cook )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that

Personally known to me to be the same person- \_\_\_\_\_ whose name \_\_\_\_\_ subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that

IMPRESS  
SEAL  
HERE

h signed, sealed and delivered the said instrument as \_\_\_\_\_ free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Commission expires \_\_\_\_\_ 19 \_\_\_\_\_  
NOTARY PUBLIC

**09188713**

# UNOFFICIAL COPY

EXHIBIT A  
Legal Description

LOTS 3, 4 AND 5 IN MILLENIUM LAKES SUBDIVISION IN THE NORTHWEST ¼ OF SECTION 6, NORTH OF THE INDIAN BOUNDARY LINE IN TOWNSHIP 35 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PIN: 31-06-100-014-0000; 31-06-100-015-0000; 31-06-100-017-0000

Property of Cook County Clerk's Office

**09188713**

Trust No. 7164