

UNOFFICIAL COPY

THIS INSTRUMENT PREPARED BY

SAVINGS OF AMERICA  
C/O HOME SAVINGS OF AMERICA  
P.O. BOX 7075  
PASADENA, CA. 91109  
ALL NOTICES TO LENDER SHALL BE  
MAILED OR DELIVERED TO THE ABOVE  
ADDRESS.

LOAN NO. 604431-7

MORTGAGE AND ASSIGNMENT OF RENTS  
ADJUSTABLE INTEREST RATE LOAN

85279732

This Mortgage, made this 7th day of NOVEMBER, 1985 between

BRUCE T. MORGAN AND SHEILA M. MORGAN, HUSBAND AND WIFE

herein called BORROWER, whose address is 1918 PHEASANT TRAIL  
(number and street)

INVERNESS  
(city)

IL  
(state)

60067  
(zip code)

HOME SAVINGS OF AMERICA, F.A.

a corporation, herein called LENDER.

WITNESSETH: Borrower hereby grants, conveys, mortgages and warrants to Lender the real property legally described as follows:

LOT 42 IN TEMPLE WOODS OF INVERNESS, BEING A SUBDIVISION OF PARTS OF SECTIONS 20 AND 21, ALL IN TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 16, 1959 AS DOCUMENT NUMBER 17570240, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS 1918 PHEASANT TRAIL, INVERNESS, IL. 60067

PTN: 02-20-200-023, VOL. 149

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Together with all interest which Borrower now has or may hereafter acquire in or to said property and in and to (a) all easements and rights of way appurtenant thereto; and (b) all buildings, structures, improvements, fixtures, and appurtenances now or hereafter placed thereon, including, but not limited to, all apparatus and equipment, whether or not physically affixed to the land or any building, used to provide or supply air cooling, air-conditioning, heat, gas, water, light, power, refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal or other services; and all waste event systems, antennas, pool equipment, window coverings, drapes and drapery rods, carpeting and floor covering, awnings, ranges, ovens, water heater, and attached cabinets; it being intended and agreed that such items be conclusively deemed to be affixed to and to be part of the real property that is covered hereby; and (c) all water and water rights (whether or not appurtenant). Borrower agrees to execute and deliver, from time to time, such further instruments as may be requested by Lender to confirm the lien of this Mortgage on any such equipment. The property conveyed to Lender hereunder is hereinafter referred to as "such property."

The Borrower absolutely and irrevocably grants, transfers and assigns to Lender the rents, income, issues, and profits of all property covered by this Mortgage.

FOR THE PURPOSE OF SECURING:

(1) Payment of the sum of \$ 175,000.00 with interest thereon, according to the terms of a promissory note of

even date herewith made by Borrower, payable to Lender or order, and all modifications, extensions or renewals thereof; (2) Payment of such sums as may be incurred, paid out, or advanced by Lender, or may otherwise be due to Lender, under any provision of this Mortgage and all modifications, extensions or renewals thereof; (3) Performance of each agreement of Borrower contained herein or incorporated herein by reference or contained in any papers executed by Borrower relating to the loan secured hereby; (4) Performance, if the loan secured hereby or any part thereof is for the purpose of constructing improvements on such property, of each provision or agreement of Borrower contained in any building loan agreement or other agreement between Borrower and Lender relating to such property; (5) The performance and keeping by Borrower of each of the covenants and agreements required to be kept and performed by Borrower pursuant to the terms of any lease and any and all other instruments creating Borrower's interest in or defining Borrower's right in respect to such property; (6) Compliance by Borrower with each and every monetary provision to be performed by Borrower under any Declaration of Covenants, Conditions and Restrictions pertaining to such property or any Declaration of Condominium Ownership and upon written request of Lender, the enforcement by Borrower of any covenant to pay maintenance or other charges, if the same have not been paid or valid legal steps taken to enforce such payment within 90 days after such written request is made; (7) At Lender's option, payment, with interest thereon, of any other present or future indebtedness or obligation of Borrower (or of any successor in interest of Borrower to such property) due to Lender, whether created directly or acquired by absolute or contingent assignment, whether due or not, whether otherwise secured or not, or whether existing at the time of the execution of this Mortgage or arising thereafter, the exercise of such option to be evidenced by a notice in writing to Borrower or any successor in interest of Borrower; (8) Performance of all agreements of Borrower to pay fees and charges to the Lender whether or not herein set forth; (9) Payment of charges, as allowed by law when such charges are made, for any statement regarding the obligation secured hereby.

TO PROTECT THE SECURITY OF THIS MORTGAGE, BORROWER AGREES:

(1) Construction or Improvements. To complete in good and workmanlike manner any building or improvement or repair relating thereto which may be begun on such property or contemplated by the loan secured hereby, to pay when due all costs and liabilities incurred therefor, and not to permit any mechanic's lien against such property, nor any stop notice against any loan proceeds. Borrower also agrees, anything in this Mortgage to the contrary notwithstanding, (a) to promptly commence work and to complete the proposed improvements promptly; (b) to complete same in accordance with plans and specifications as approved by Lender; (c) to allow Lender to inspect such property at all times during construction; (d) to replace any work or materials unsatisfactory to Lender, within fifteen (15) days after written notice from Lender of such fact, which notice may be given to Borrower by certified mail, sent to his last known address, or by personal service of the same.

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(16) **Acceleration Clause: Right of Lender to Declare All Sums Due on any Transfer, Etc.** Lender shall have the right, at its option, to declare any indebtedness and obligations secured hereby, irrespective of the maturity date specified in any note or agreement evidencing the same due and payable within 30 days after such declaration if (a) Borrower or any successor in interest to Borrower of such property sells, enters into a contract of sale, conveys or alienates such property or any part thereof, or suffers his title or any interest therein to be divested, whether voluntarily or involuntarily or leases such property or any part thereof for a term of 3 years or more, or changes or permits to be changed the character or use of the property, or drills or extracts or enters into a lease for the drilling for or extracting oil, gas or other hydrocarbon substance or any mineral of any kind or character on such property, or (b) Borrower is a partnership and the interest of a general partner is assigned or transferred, or (c) Borrower is a corporation and more than 25% of the corporate stock thereof is sold, transferred or assigned during a 12 month period, or (d) Borrower is a trust and there is a change of beneficial interest with respect to more than 25% of such property, or (e) Borrower has made any material misrepresentation or failed to disclose any material fact in those certain financial and other written representations and disclosures made by Borrower in order to induce Lender to enter into the transaction evidenced by the Promissory Note or notes or agreements which this Mortgage secures.

(17) **No Waivers by Lender.** No waiver by Lender of any right under this Mortgage shall be effective unless in writing. Waiver by Lender of any right granted to Lender under this Mortgage or of any provision of this Mortgage as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence. By accepting payment of any sum secured hereby after its due date or by making any payment or performing any act on behalf of Borrower that Borrower was obligated hereunder, but failed, to make or perform, or by adding any payment so made by Lender to the indebtedness secured hereby, Lender does not waive its right to require prompt payment when due of all other sums so secured or to require prompt performance of all other acts required hereunder, or to declare a default for failure so to pay.

(18) **Modification in Writing.** This Mortgage cannot be changed or modified except as otherwise provided in this Mortgage or by agreement in writing signed by Borrower, or any successor in interest to Borrower, and Lender.

(19) **Right to Collect and Receive Rents and Profits.** Notwithstanding any other provisions hereof, Lender hereby grants permission to Borrower to collect and retain the rents, income, issues and profits of such property as they become due and payable, but Lender reserves the right to revoke such permission at any time with or without cause by notice in writing to Borrower, mailed to Borrower at his last known address. In any event, such permission to Borrower automatically shall be revoked upon default by Borrower in payment of any indebtedness secured hereby or in the performance of any agreement hereunder. On any such default, Lender may at any time without notice, either in person, by agent, or by receiver to be appointed by the Court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of such property, or any part thereof, make, cancel, enforce or modify leases, obtain and eject tenants, set or modify rents, in its own name sue for or otherwise collect the rents, income, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, upon any indebtedness secured hereby and in such order as Lender may determine; and except for such application, Lender shall not be liable to any person for the collection or non-collection of any rents, income, issues or profits, nor the failure to assert or enforce any of the foregoing rights. The entering upon and taking possession of such property, the collection of such rents, income, issues or profits, the doing of other acts herein authorized, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(20) **Remedies.** No remedy herein provided shall be exclusive of any other remedy herein or now or hereafter existing by law, but shall be cumulative. Every power or remedy hereby given to Borrower or to Lender or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by them, and either of them may pursue inconsistent remedies. If Lender holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Borrower, Lender may, at its option, offset against any indebtedness owing by it to Borrower, the whole or any part of the indebtedness secured hereby. The Lender is hereby authorized and empowered at its option, without any obligation so to do, and without affecting the obligations hereof, to apply toward the payment of any indebtedness secured hereby and of the Borrower to the Lender, any and all sums of money which the Lender may have in its possession or under its control, including without limiting the generality of the foregoing, the indebtedness evidenced by any escrow or trust funds.

In order to assure the definiteness and certainty of the rights and obligations herein provided, Borrower waives any and all rights of offset of claims and no offset shall relieve Borrower from paying installments on the obligations secured hereby as they become due.

(21) **Foreclosure of Mortgage.** When the indebtedness hereby secured shall become due whether by acceleration or otherwise, the Lender 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 of sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographer's charges, publication cost and costs of procuring all abstracts of title or commitments for title insurance. Such fees, charges and costs may be estimated as to items to be expended after entry of the decree. Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the condition of the title to or the value of the Property. All expenditures and expenses of the nature of this paragraph mentioned shall become so much additional indebtedness secured hereby and shall be immediately due and payable with interest thereon at the rate specified in the Note. Such expenditures and expenses shall include expenditures made in connection with (a) any proceeding to which Lender shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured; (b) preparation for the commencement of any suit for foreclosure hereof after accrual of such right to foreclose whether or not actually commenced; (c) preparations for the defense of any threatened suit or proceeding which might affect the Property or the security thereon, whether or not actually commenced; (d) any efforts for collection of any past due indebtedness secured hereby. The proceeds of any foreclosure sale of the 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 this paragraph hereof; second, all other items which under the terms hereof constitute indebtedness secured by this Mortgage; third, any surplus to Borrower, his legal representatives or assigns, as their rights may appear.

(22) **Appointment of Receiver.** Upon or at any time after the filing of a complaint to foreclose this Mortgage the court in which such complaint is filed may appoint a receiver of the property or may appoint Lender as Mortgagee in possession. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the then value of the property whether the same shall be then occupied as a homestead or not. Such receiver or Mortgagee in possession shall have power to collect the rents, issues and profits of the premises during the pendency of such foreclosure suit, as well as during any further times when Borrower, his successors or assigns, 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 property during the whole said period. The court from time to time may authorize the receiver or Mortgagee in possession to apply the net income held by either of them in payment in whole or in part of the indebtedness and other sums secured hereby, or in payment of any tax, special assessment or other lien which may be or become superior to the lien hereof or superior to a decree foreclosing this Mortgage, provided such application is made prior to foreclosure sale. In case of a judicial sale, the property, or so much thereof as may then be affected by this Mortgage, may be sold in one parcel.

(23) **Waiver of Statute of Limitations.** Time is of the essence in all Borrower's obligations hereunder, and to the extent permitted by law, Borrower waives all present or future statutes of limitation with respect to any debt, demand or obligation secured hereunder, any action or proceeding for the purpose of enforcing this Mortgage or any rights or remedies hereunder.

(24) **Inspection and Business Records.** Lender at any time during the continuation of this Mortgage may enter and inspect such property at any reasonable time. Borrower agrees that in the event that such property is now or hereafter used for commercial or residential income purposes, that when requested by Lender, Borrower will promptly deliver to Lender such certified financial statements and profit and loss statements of such types and at such intervals as may be required by Lender which will be in form and content prepared according to the usual and acceptable accounting principles and practices, which statements shall cover the financial operations relating to such property, and Borrower further agrees when requested by Lender to promptly deliver, in writing such further additional information as required by Lender relating to any of such financial statements.

(25) **Governing Law: Severability.** The loan secured by this Mortgage is made pursuant to, and shall be construed and governed by, the laws of the United States and the rules and regulations promulgated thereunder, including the federal laws, rules and regulations for federal savings and loan associations. If any paragraph, clause or provision of this Mortgage or the note or any other notes or obligations secured by this Mortgage is construed or interpreted by a court of competent jurisdiction to be void, invalid or unenforceable, such decision shall affect only those paragraphs, clauses or provisions so construed or interpreted and shall not affect the remaining paragraphs, clauses and provisions of this Mortgage or the note or other notes or obligations secured by this Mortgage.

(26) **Injury to Property.** All causes of action of Borrower, whether accrued before or after the date of this Mortgage, for damage or injury to the property described in this Mortgage or any part thereof, or in connection with the transaction financed in whole or in part by the funds loaned to Borrower by Lender, or in connection with or affecting said property or any part thereof, including causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact, are, at Lender's option, assigned to Lender, and the proceeds thereof shall be paid to Lender who, after deducting therefrom all its expenses, including reasonable attorney's fees, may apply such proceeds to the sums secured by this Mortgage or to any deficiency under this Mortgage or may release any monies so received by it or any part thereof, as Lender may elect. Lender may at its option appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement thereof. Borrower agrees to execute any further assignments and other instruments as from time to time may be necessary to effectuate the foregoing provisions and as Lender shall request.

(27) **Offsets.** No indebtedness secured by this Mortgage shall be deemed to have been offset or to be offset or compensated by all or part of any claim, cause of action, counterclaim or part of any claim, cause of action, counterclaim or crossclaim, whether liquidated or unliquidated, which Borrower now or hereafter may have or may claim to have against Lender, and, in respect to the indebtedness now or hereafter secured hereby, Borrower waives, to the fullest extent permitted by law, the benefits of any applicable law, regulations or procedure which substantially provides that, where cross-demands for money have existed between persons at any point in time when neither demand was barred by the applicable statute of limitations, and an action is thereafter commenced by one such person, the other person may assert in his answer the defense of payment in that the two demands are compensated so far as they equal each other, notwithstanding that an independent action asserting his claim would at the time of filing his answer be barred by the applicable statute of limitations.

(28) **Misrepresentation or Nondisclosure.** Borrower has made certain written representations and disclosures in order to induce Lender to make the loan evidenced by the note or notes which this Mortgage secures, and in the event that Borrower has made any material misrepresentation or failed to disclose any material fact, Lender, at its option and without prior notice, shall have the right to declare the indebtedness secured by this Mortgage, irrespective of the maturity date specified in the note or notes, immediately due and payable.

(29) **Waiver of Homestead.** Borrower hereby waives all right of homestead exemption in such property.

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My commission expires

Given under my hand and official seal this 7TH day of NOVEMBER 19 85

day in person, and acknowledged that he personally known to me to be the same person(s) whose name(s) is subscribed to the foregoing instrument; appeared before me this free and voluntary act for

BRUCE T. MORGAN, HUSBAND TO SHEILA M. MORGAN THE UNDERSIGNED State of Illinois DUFAGE County ss. a Notary Public in and for said county and state, do hereby certify that

My Commission Expires October 31, 1988  
Given under my hand and official seal this 7th day of November 19 85

day in person, and acknowledged that she personally known to me to be the same person(s) whose name(s) is subscribed to the foregoing instrument; appeared before me this free and voluntary act for

BRUCE T. MORGAN AND SHEILA M. MORGAN, HUSBAND AND WIFE MARRIED TO BRUCE T. MORGAN, THE UNDERSIGNED State of Illinois COOK County ss. a Notary Public in and for said county and state, do hereby certify that

LOAN NO. 604431-7

Borrower BRUCE T. MORGAN  
Borrower SHEILA M. MORGAN

BRUCE T. MORGAN  
SHEILA M. MORGAN

BRUCE T. MORGAN  
SHEILA M. MORGAN

6. The principal amount due on this Note may be prepaid in whole or in part, at any time, giving notice.

(f) Notices of any change in the interest rate or amount of the regular monthly installment shall be deemed given by the holder when deposited in the United States mail postage prepaid, addressed to the maker, or, if the persons shown on the holder's records as transferee at the time of factor for purposes of paragraph 2 of this Note.

(g) Alternative index. If, at any time during the term of this Note, the index is no longer available or is otherwise unpublished, the holder may select an alternative published index over which the holder has no control, in which case such alternative index will become the index provided in paragraph 2 of this Note. Holder shall next determine the adjustment to the loan factor provided in paragraph 2 of this Note based upon the value of the substituted index as of the last preceding Interest Rate Adjustment Date on which the index was available or the date of this Note, whichever occurs later, such that the sum of the substituted index and the adjusted loan factor equal the sum of the prior index and the loan factor set forth in paragraph 2 of this Note as of such date. The most recent value of the substituted index, as announced from time to time, and such adjusted loan factor shall become the index and the loan factor for purposes of paragraph 2 of this Note.

(h) Waiver of increases. Interest rate increases in whole or in part, which do not constitute a waiver of the holder's right later to invoke such an increase, subject to the other provisions of this Note.

(i) Waiver of increases. Interest rate increases in whole or in part, which do not constitute a waiver of the holder's right later to invoke such an increase, subject to the other provisions of this Note.

paragraph (b), commencing on DECEMBER 20, 1990 and on the same date every five years thereafter, the amount of the regular monthly principal and interest payments on this Note will be adjusted to be sufficient so as to amortize the remaining principal balance as of the Due Date at the then current rate of interest if such interest were to continue in effect until the Due Date.

(c) Principal Balance Adjustments. If any adjustment to the interest rate results in a monthly payment being less than the amount of interest accrued for a month because of an interest rate adjustment or because of the 7% limitation on increases or decreases in the monthly payment amount, such adjustment will be added monthly to the unpaid principal balance and will thereafter bear interest at the interest rate that is from time to time payable on this Note. Notwithstanding any other provisions of this Note, including the 7% limitation contained in the preceding sub-paragraph (b), commencing on DECEMBER 20, 1990 and on the same date every five years thereafter, the amount of the regular monthly principal and interest payments on this Note will be adjusted to be sufficient so as to amortize the remaining principal balance as of the Due Date at the then current rate of interest if such interest were to continue in effect until the Due Date.

(d) Waiver of increases. Interest rate increases in whole or in part, which do not constitute a waiver of the holder's right later to invoke such an increase, subject to the other provisions of this Note.

(e) Waiver of increases. Interest rate increases in whole or in part, which do not constitute a waiver of the holder's right later to invoke such an increase, subject to the other provisions of this Note.

(f) Waiver of increases. Interest rate increases in whole or in part, which do not constitute a waiver of the holder's right later to invoke such an increase, subject to the other provisions of this Note.

(g) Waiver of increases. Interest rate increases in whole or in part, which do not constitute a waiver of the holder's right later to invoke such an increase, subject to the other provisions of this Note.

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(i) Waiver of increases. Interest rate increases in whole or in part, which do not constitute a waiver of the holder's right later to invoke such an increase, subject to the other provisions of this Note.

(j) Waiver of increases. Interest rate increases in whole or in part, which do not constitute a waiver of the holder's right later to invoke such an increase, subject to the other provisions of this Note.

(k) Waiver of increases. Interest rate increases in whole or in part, which do not constitute a waiver of the holder's right later to invoke such an increase, subject to the other provisions of this Note.

(l) Waiver of increases. Interest rate increases in whole or in part, which do not constitute a waiver of the holder's right later to invoke such an increase, subject to the other provisions of this Note.

(m) Waiver of increases. Interest rate increases in whole or in part, which do not constitute a waiver of the holder's right later to invoke such an increase, subject to the other provisions of this Note.

(n) Waiver of increases. Interest rate increases in whole or in part, which do not constitute a waiver of the holder's right later to invoke such an increase, subject to the other provisions of this Note.

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*Lawyer's Name*

*Bruce T. Morgan*

Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note plus \$276,200.00

(31) Notice to Borrower. Any notice to the Borrower provided for in the note or Mortgage shall be deemed given when it is deposited in the United States mail postage prepaid, addressed to the Borrower at the address of the Borrower as it appears in Lender's records pertaining to the loan evidenced by the note at the time notice is given.

(32) General Provisions. (a) This Mortgage applies to, inures to the benefit of, and binds, all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. (b) The term "Lender" shall mean the owner and holder (including a pledgee) of any note secured hereby, whether or not named as Lender herein. (c) Wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa. (d) Captions and paragraph headings used herein are for convenience only, are not a part of this agreement and shall not be used in construing it.

(33) Adjustable Rate Mortgage Provisions. Paragraphs 2 and 6 of the promissory note which this Mortgage secures are set forth below and incorporated herein: