

19-801084-5

THIS OPEN END MORTGAGE (herein "Mortgage") is made this 15th day of June 19 89 between the Mortgagee, JOHN P GABRIEL AND KATHLEEN L GABRIEL, HIS WIFE

(herein "Borrower") and the Mortgagee, **PATHWAY FINANCIAL-A Federal Association**, a corporation organized and existing under the laws of the United States of America, whose address is 100 North State Street, Chicago, Illinois 60602, herein "Lender".

WHEREAS, Borrower is indebted to Lender in the principal sum of up to us \$ 74000.00 or so much thereof as may be advanced and outstanding, with interest thereon, which indebtedness is evidenced by Borrower's Variable Interest Rate Promissory Note dated June 15, 1989 and extensions and renewals thereof (herein "Note"), and the Pathway Financial Line of Credit Agreement and Disclosure Statement, which documents, along with this Mortgage are collectively referred to as the "Credit Documents", providing for monthly payments of interest, with the principal balance of the indebtedness, if not sooner paid or required to be paid, due and payable 8 years from the date hereof.

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If this is secured by Commercial Real Estate, Lender has the option to call the entire principal interest and other charges on each calendar year anniversary date

TO SECURE TO LENDER the repayment of the indebtedness evidenced by the Note, and also such future advances as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of execution hereof, with interest thereon, the payment of all other sums with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender the following described property located in the County of COOK State of Illinois:

*05/11/89*

LOT 5 IN LOS PALOS RESUBDIVISION, BEING A SUBDIVISION OF LOTS 34 TO 44 BOTH INCLUSIVE, IN LOS PALOS PHASE 11, BEING A SUBDIVISION OF PART OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 37 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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#1951 # 1 8-89-89320952  
COOK COUNTY RECORDER

Permanent Tax Identification Number 23-10-206-032  
Which has the address of 9020 WOODED PATH DR PALOS HILLS  
60465 (herein "Property Address")

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property or the leasehold estate if this Mortgage is on a leasehold are hereinafter referred to as the "Property".

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

*#1325*  
*JPS*  
*AKS*

14. Transfer of the Property. If Borrower sells or transfers all or any part of the Property or an interest therein (including the creation of a lien or encumbrance subordinate to this Mortgage), or a transfer by devise, descent, or by operation of law upon the death of a joint tenant, or for the grant of any leasehold interest of three years or less not containing an option to purchase, Borrower shall cause to be submitted information required by Lender to evaluate the transfer as if a new loan were being made in writing.

13. Borrower's Copy. Borrower shall be furnished a confirmed copy of the Note and of this Mortgage at the time of execution or after recordation hereof. Borrower shall be furnished a confirmed copy of the Note and of this Mortgage at the time of sums to the extent not prohibited by applicable law or limited herein.

12. Governing Law; Severability. The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage in the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage and the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein, "costs" includes attorneys' fees, include all

11. Notice. Except for any notice required under applicable law to be given in another matter, Lender may give notice to Borrower at the Property address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to the address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided by certified mail shall be deemed to have been provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property address or at such other address as Borrower may designate by notice to Lender as provided herein.

10. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and obligations contained herein and the rights hereunder shall inure to the respective successors and assigns of Lender and Borrower, and shall be binding on the heirs, assigns, personal representatives, and assigns of Lender and Borrower. Lender and Borrower shall be jointly and severally liable for the performance of the obligations of this Mortgage. Lender and Borrower shall be jointly and severally liable for the performance of the obligations of this Mortgage. Lender and Borrower shall be jointly and severally liable for the performance of the obligations of this Mortgage.

9. Borrower Not Released; Forbearance by Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor or assign of Borrower shall not operate to release in any manner the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or assign of Borrower or to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

8. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage deed of trust or other security agreement with which such has priority over this Mortgage.

7. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

6. Protection of Lender's Security. Borrower shall perform the covenants and agreements contained in the Credit Documents, or any action or proceeding commenced when materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest in the Property. Lender shall maintain such insurance in effect until such time as the requirement for such insurance is terminated in accordance with Borrower's and Lender's written agreement or applicable law.

5. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments. Borrower shall keep the Property in good repair, and shall not commit waste or permit, waste or permit impairment or deterioration of the Property and shall comply with the provisions of any applicable laws, ordinances, regulations, rules, and covenants of any condominium or a planned unit development. Borrower shall maintain the Property in accordance with applicable laws, ordinances, regulations, rules, and covenants of any condominium or a planned unit development. Borrower shall maintain the Property in accordance with applicable laws, ordinances, regulations, rules, and covenants of any condominium or a planned unit development.

4. Hazard Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, theft, vandalism, explosion, riot, civil commotion, aircraft or motor vehicle, and such other hazards as Lender may require in such amounts and for such periods as Lender may require. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, theft, vandalism, explosion, riot, civil commotion, aircraft or motor vehicle, and such other hazards as Lender may require in such amounts and for such periods as Lender may require.

3. Prior Mortgages and Deeds of Trust; Charges; Liens. Borrower shall perform all of Borrower's obligations under any mortgage deed of trust or other security agreement with a lender which has priority over this Mortgage, including but not limited to the payment of principal and interest on the mortgage, and the payment of taxes, assessments and other charges, fees and impositions attributable to the Property, which may attach a priority over this Mortgage, and assets or payments or ground rents (if any).

2. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note and this mortgage shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 6 hereof, then to interest payable on the Note, and then to the principal of the Note.

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and all charges as provided in the Note.

COVENANTS. Borrower and Lender covenant and agree as follows:

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COVENANTS

# UNOFFICIAL COPY

If Lender, on the basis of any information obtained regarding the transferee, reasonably determines that Lender's security may be impaired, or that there is an unacceptable likelihood of a breach of any covenant or agreement in this Mortgage, or if the required information is not submitted, Lender may declare all of the sums secured by this Mortgage to be immediately due and payable. If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 11 hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed or delivered within which Borrower may pay the sums declared due. If Borrower fails to pay such sums or to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 15 hereof.

**15. Acceleration; Remedies.** Except as provided in paragraph 14 hereof, upon Borrower's breach of any covenant or agreement of Borrower under any of the Credit Documents, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 11 hereof specifying the breach. (2) the action required to cure such breach; (3) a date, not less than 30 days from the date the notice is mailed to Borrower by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding, and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the nonexistence of a default or any other defense of Borrower to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect in such proceeding all expenses of foreclosure, including but not limited to reasonable attorney's fees and costs of documentary, evidence, abstracts and the reports.

**16. Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Mortgage due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to entry of judgment enforcing this Mortgage if (a) Borrower pays Lender all sums which would be then due under this Mortgage and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage; and (d) Borrower takes such action as provided in paragraph 15 hereof, including but not limited to reasonable attorney's fees, and (e) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

**17. Assignment of Rents; Appointment of Receiver.** As additional security, hereunder Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 15 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 15 hereof or abandonment of the Property, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property, and to collect the rents of the Property, including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

**18. Release.** Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage without charge to Borrower. Lender shall pay all costs of recordation, if any.

**19. Waiver of Homestead.** Borrower hereby waives all right of homestead exemption in the Property.

## REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER SUPERIOR MORTGAGES OR LIENS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, BORROWER has executed this Mortgage.

*John P. Gabriel*  
Borrower signed by JOHN P. GABRIEL  
*Kathleen L. Gabriel*  
Borrower signed by KATHLEEN L. GABRIEL

STATE OF ILLINOIS, COOK County ss

THE UNDERSIGNED a Notary Public in and for said county and state,

do hereby certify that JOHN P. GABRIEL AND KATHLEEN L. GABRIEL, HIS WIFE

personally known to me the same person(s) whose names ARE

subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that THE Y

signed and delivered the said instrument as THEIR free voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 15th day of June, 1989

My Commission expires

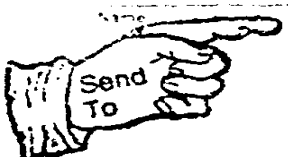
OFFICIAL SEAL  
THERESA R. ANDREWS  
Cook County  
Notary Public  
My Commission Expires 4/28/93

*Theresa R. Andrews*  
Notary Public

This instrument was prepared by

RITA TOBECK

1 PATHWAY CENTER, MATTESON, ILLINOIS 60443



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